PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 5. TEXAS FACILITIES COMMISSION

CHAPTER 115. FACILITIES LEASING PROGRAM

Introduction and Background.

The Texas Facilities Commission ("Commission") proposes an amendment to Chapter 115, §115.13, and a new Subchapter B §§115.20 - 115.22. During its rule review, published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8915), the Commission reviewed and considered Texas Administrative Code, Title 1, Chapter 115, Facilities Leasing Program, for readoption, revision, or repeal in accordance with Texas Government Code §2001.039 (West 2008). The Commission determined that Chapter 115 was still necessary. Revisions to the rules, however, are necessary to ensure consistency with governing statutes and to provide guidance and clarity to situations where a state lease is cancelled due to lack of funding. Through a concurrent notice of adopted rule review, the Commission readopted Texas Administrative Code, Title 1, Part 5, Chapter 115 with amendments. The revised rules are proposed pursuant to the Commission's rulemaking authority found in Texas Government Code, §2167.0021(b) and §2167.008 (West 2008).

Section by Section Summary.

Section 115.13 establishes guidelines for determining best value in procurement of leased space. Subsection (b) lists the criteria to be used in the evaluation of qualified sites. Subsection (b)(8) references the "Facilities Master Plan." In order to be consistent with the Commission's governing statutes, Texas Government Code, §§2166.101-.104 (West Supp. 2015), the Commission proposes to amend subsection (b)(8) to reference the "master facilities plan."

In addition to the proposed amendment, the Commission proposes a new Subchapter B concerning the cancellation of a lease due to a lack of funding. Proposed new §115.20 will provide definitions for the subchapter. Proposed new §115.21 sets out the procedure for determining whether a leased facility is an idle facility or has idle capacity. Proposed new §115.22 sets out the procedure for the cancellation of a lease due to a lack of funding. The proposed rules provide a process by which any request to cancel a lease due to a lack of funding is accompanied by a written determination of the facts justifying such a request as well as the approval of the requesting agency's governing body or executive director.

Fiscal Note.

Harvey Hilderbran, Executive Director, has determined that for each year of the first five-year period the proposed rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the proposed rules.

Public Benefit/Cost Note.

Mr. Hilderbran has also determined that for each year of the first five-year period the proposed rules are in effect the public benefit will be further clarification by conforming to existing statutory language and guidance to governmental entities as well as transparency for the public on the Commission's process for cancelling a lease due to a lack of funding.

Mr. Hilderbran has further determined that there will be no effect on individuals or large, small, and micro-businesses as a result of the proposed new rules. Consequently, an Economic Impact Statement and Regulatory Flexibility Analysis, pursuant to Texas Government Code §2006.002 (West 2008 & Supp. 2015), is not required.

In addition, Mr. Hilderbran has determined that for each year of the first five-year period the proposed rules are in effect there should be no effect on a local economy; therefore, no local employment impact statement is required under the Administrative Procedure Act, Texas Government Code §2001.022 (West 2008).

Takings Impact Assessment.

Mr. Hilderbran has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, does not constitute a taking under Texas Government Code §2007.043 (West 2008 & Supp. 2015).

Request for Comments.

Interested persons may submit written comments on the proposed rules to the General Counsel, Legal Services Division, Texas Facilities Commission, P.O. Box 13047, Austin, Texas 78711-3047. Comments may also be sent via email to *rulescomments@tfc.state.tx.us*. For comments submitted electronically, please include "Chapter 115 Facilities Leasing Program" in the subject line. Comments must be received no later than thirty (30) days from the date of publication of the proposed rules in the *Texas Register.* Comments should be organized in a manner consistent with the organization of the proposed rules. Questions concerning the proposed rules may be directed to Ms. Kay Molina, General Counsel, at (512) 463-7220.

SUBCHAPTER A. STATE LEASED PROPERTY

1 TAC §115.13

Statutory Authority.

The amendment to §115.13(b)(8) is proposed pursuant to Texas Government Code, §2167.0021(b), which directs the Commission to adopt rules establishing guidelines for the determination of best value in a lease contract, and §2167.008, which directs the Commission to adopt rules necessary to administer its duties under Chapter 2167 (West 2008).

Cross Reference to Statute.

The statutory provisions affected by the proposed rule amendment are those set forth in Chapter 2167 of the Texas Government Code.

§115.13. Best Value Guidelines.

(a) The Commission shall develop procedures, deadlines, site analyses and market analyses to ensure that recommendations for lease procurements reflect the best value to the State of Texas.

(b) In determining the specific procedures to be used to evaluate the properties and identification of the best value to the state, the Commission shall develop and maintain documents in the permanent lease file of the Commission detailing its evaluation of each of the following criteria for all qualified sites selected for final consideration:

(1) analysis of the total cost of occupancy offered by the proposed Lessor;

(2) utility costs;

(3) age, type and condition of the premises;

(4) costs, if any, of improvements required to meet the approved agency specifications;

(5) location of the property and access to public facilities and transportation;

(6) access to and cost of parking;

(7) security of premises;

(8) space planning considerations including implementation of the master facilities plan [~~Facilities Master Plan~~] and space consolidation options;

(9) direct and indirect costs of relocation; and

(10) any other considerations relevant to the approved agency specifications and existing market conditions.

(c) Prior to making a recommendation to the Commission, an assessment of the proposed Lessor shall be performed to determine the relevant experience, financial condition, and history of bankruptcy, litigation and judgments involving the proposed Lessor, and, as appropriate, its owners, officers, directors, subsidiaries, affiliates, or predecessors that may be relevant indicators of proposed Lessor's ability to perform under the lease contract. The findings of this inquiry shall be maintained in the permanent lease file of the Commission.

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 April 21, 2016.

TRD-201601906
Kay Molina
General Counsel
Texas Facilities Commission
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 463-7220

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SUBCHAPTER B. CANCELLATION OF LEASE DUE TO LACK OF FUNDING

1 TAC §§115.20 - 115.22

Statutory Authority.

The new rules are proposed pursuant to Texas Government Code, §2167.008, which directs the Commission to adopt rules necessary to administer its duties under Chapter 2167 (West 2008).

Cross Reference to Statute.

The statutory provisions affected by the proposed rule amendment are those set forth in Chapter 2167 of the Texas Government Code.

§115.20. Definitions.

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

(1) "Cost of idle facilities or idle capacity" means costs such as maintenance, repair, housing, rent, and other related costs, e.g., insurance, interest, property taxes and depreciation or use allowances.

(2) "Facilities" means land and buildings or any portion thereof, equipment individually or collectively, or any other tangible capital asset, wherever located, and whether owned or leased by the governmental agency.

(3) "Funding Out Clause" means the constitutional prohibitions on spending as set out in Sections 49 and 49a, Article III, Texas Constitution and codified in Texas Government Code §2167.055(e) (West 2008) which are incorporated into the state lease, as amended.

(4) "Governmental agency" means a board, commission, department, office, or other agency in the executive branch of state government, including an institution of higher education as defined by §61.003, Education Code.

(5) "Idle capacity" means the unused capacity of partially used facilities. It is the difference between: (a) that which a facility could achieve under 100 percent operating time on a one-shift basis less operating interruptions resulting from time lost for repairs, setups, unsatisfactory materials, and other normal delays; and (b) the extent to which the facility was actually used to meet demands during the accounting period. A multi-shift basis should be used if it can be shown that this amount of usage would normally be expected for the type of facility involved.

(6) "Idle facilities" means completely unused facilities that are excess to the governmental agency's current needs.

§115.21. Determination of Idle Capacity or Idle Facilities.

(a) Prior to requesting that the Commission cancel a lease due to lack of funding, the governmental agency shall determine that it occupies idle facilities or has idle capacity due to one of the following factors:

(1) changes in program requirements;

(2) the implementation of changes that result in a reduction in staff;

(3) consolidation of office or building space to achieve cost efficiencies;

(4) a change in client demographics resulting in the need to relocate staff to other locations; or

(5) efforts to achieve more economical operations, reorganization, termination, or other causes which could not have been reasonably foreseen.

(b) Upon furnishing a written determination that the governmental agency occupies idle facilities or has idle capacity based upon the factors set out in subsection (a) above to the Commission, a lease may be considered for cancellation by the Commission upon request by a governmental agency.

§115.22. Cancellation of Lease Upon Request by a Governmental Agency Due to Lack of Funding.

(a) Unless a governmental agency has been abolished by the Legislature, a governmental agency that elects to invoke the Funding Out Clause to cancel a lease due to lack of funding shall request the Commission to either cancel the lease or make the leased premises available to another governmental agency.

(b) A request by a governmental agency to cancel a lease due to lack of funding must have the approval of the governing body of the governmental agency making the request. Any agency under the authority of an individual commissioner or executive director, appointed by or directly accountable to the Governor, must provide evidence of notification to the Office of the Governor in order for such a request to be considered for action by the Commission.

(c) Unless the term of the lease is amended by written agreement between a lessor and the Commission, the Commission will serve written notice to the lessor of intent to cancel the lease effective on a date certain at least 180 days prior to the date of the lease cancellation. Notice to the lessor is effective upon receipt if served by electronic mail directed to the lessor's designated contact on the Commission's database. Rent shall continue to be paid through the date that the lessee vacates the facilities or through the end of the biennium, whichever is later, for which funds had been certified pursuant to Texas Government Code §2167.101 (West 2008).

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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Kay Molina
General Counsel
Texas Facilities Commission
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION

SUBCHAPTER J. FINANCIAL AID ADVISORY COMMITTEE

19 TAC §§1.149 - 1.151, 1.154

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§1.149 - 1.151 and §1.154 concerning the Financial Aid Advisory Committee. The changes to rules are described as follows.

Section 1.149 regarding authority and purpose removes redundant language.

Section 1.150 regarding definitions removes unnecessary language referring to the location of the Texas Financial Aid Information Center call center and the College for All Texans website. Section 1.150(3) removes the definition of "Commissioner" as the term is not referenced in the rule.

Section 1.151(a) regarding committee membership and officers adds language regarding the composition of the committee's membership to include representatives employed in the non-profit sector. Section 1.151(b)(1) - (4) language is modified to state the minimum of one representative from the health-related sector to be included in the committee. Language is also added to clarify that the committee will be comprised of at least one student representative from a health-related institution or a four-year institution; one student representative from a two-year college sector; and one representative from the Texas Association of Student Financial Aid Administrators (TASFAA). Each will serve as non-voting members on the committee. Language referencing the specific professional associations is removed from §1.151(c). Section 1.151(e)(2) adds language to clarify the appointment procedures in which the vice chair succeeds the presiding officer. Section 1.151(g) adds language clarifying the one-year term of the TASFAA appointed committee member.

Section 1.154 regarding tasks assigned the committee adds language which provides clarity to the committee's role to provide guidance and advice on tasks assigned to the Coordinating Board.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be will be the efficient and transparent administration of the advisory committee. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Deputy Assistant Commissioner for Student Financial Assistance Programs, Texas Higher Education Coordinating Board, at 1200 E. Anderson Lane, Austin, Texas 78752 and *Charles.Puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The rules are proposed under the Texas Education Code, §61.026, which authorizes the Coordinating Board to adopt rules in accordance with the statute and Board rules.

The proposed rules affect TEC, Chapter 61, Subchapter B, §61.0776 and Texas Government Code, Chapter 2110, §2110.0012.

§1.149. Authority and Specific Purposes of the Financial Aid Advisory Committee.

(a) (No change.)

(b) Purposes.

(1) (No change.)

(2) In addition, the committee shall provide insight on [~~review~~] state financial aid program policies and procedures (e.g. eligibility, allocations, disbursement processes, etc.); [~~review state financial aid reports, including their uses; recommend changes in the allocation of financial aid funds to address state goals;~~] review the collection, use, and reporting [~~and uses~~] of data; and identify areas of research for consideration.

§1.150. Definitions.

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

(1) (No change.)

(2) Center for Financial Aid Information--The state's entity for developing and disseminating information about financial aid for college, consisting of the Texas Financial Aid Information Center call center [~~housed at the Texas Guaranteed Student Loan Corporation,~~] and the College for All Texans website [~~housed on the Board's website~~].

(3) - (4) (No change.)

§1.151. Committee Membership and Officers.

(a) Membership shall consist of financial aid practitioners, public school counselors, and other persons employed in the non-profit sector in roles with responsibility for advising students regarding financial aid [~~who can provide insight into the informational needs of students~~].

(b) Membership on the committee will include:

(1) at least two representatives from the following sectors [~~each sector~~] of higher education: [~~(~~]four-year public universities, [~~health-related institutions,~~] two-year colleges, and private institutions[~~)~~]; and at least one representative from a health-related institution;

(2) at least one student representative[~~; if two are selected, one is to be~~] from a health-related institution or the four-year college sector; and at least one student representative from the two-year college sector, who serve as non-voting members;

(3) two representatives of school districts; and

(4) one representative from the Texas Association of Student Financial Aid Administrators (TASFAA), named by the TASFAA Board, who serves as a non-voting member.

(c) Interested persons[~~, such as the Independent Colleges and Universities of Texas (ICUT), Texas Association of State College and University Business Officers (TASCUBO), and the Texas Association of Community Colleges (TACC),~~] and legislative and governmental relations staff shall be regularly advised of committee meetings.

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

(e) Members of the committee shall select:

(1) the presiding officer, who will be responsible for conducting meetings and conveying committee recommendations to the Board, and who will be selected from the financial aid practitioners serving on the committee; and

(2) the vice chair, who will succeed the presiding officer at the end of the presiding officer's year of service, and who will be selected from the financial aid practitioners serving on the committee.

(f) (No change.)

(g) Members shall serve for a term of three years, except that, regardless of the number of years previously on the committee, terms for persons who serve as chair of the committee will include the year as chair and the subsequent year as immediate-past chair; and the terms of persons who serve as vice chair will include the year as vice chair, the subsequent year as chair, and a following year as immediate-past chair of the committee. Student members of the committee will serve two-year terms. The TASFAA representative will serve a one-year term. Persons who have previously served on the committee are eligible to serve again.

§1.154. Tasks Assigned the Committee.

(a) Tasks assigned the committee include providing the agency with guidance and advice to:

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

(b) Other tasks to be addressed include:

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

[~~(3) review and make recommendations on financial aid allocations to ensure state goals are met;~~]

(3) [~~(4)~~] review the collection, [~~and~~] use, and reporting of financial aid data; and

(4) [~~(5)~~] identify areas of research for consideration.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §4.12

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §4.12, concerning tracking of participation of students with intellectual and developmental disabilities (IDD). This new requirement is based upon Senate Bill 37, enacted by the 84th Texas Legislature Session. The bill became effective September 1, 2015. Specifically, the proposed new section defines IDD for the purposes of tracking students, and establishes that the Coordinating Board may collect information from institutions of higher education regarding the undergraduate and graduate participation of students with IDD, as required by Texas Education Code, Subchapter C, §61.0664.

Dr. Julie Eklund, Assistant Commissioner, Texas Higher Education Coordinating Board, has determined that for each year of the first five years the section is in effect, there will be no significant fiscal impact to the state.

Dr. Eklund has determined that for the first five years the section is in effect, the public benefits anticipated as a result of administering the section will be greater understanding of the participation of persons with IDD at institutions of higher education.

There are no substantial costs to Texas higher education institutions required to comply with this section as proposed. There is no impact on local employment.

Comments on the proposed section may be submitted to Dr. Julie Eklund, Assistant Commissioner, Strategic Planning and Funding, Texas Higher Education Coordinating Board, 1200 East Anderson Lane, Austin, Texas 78752, *julie.eklund@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new section is proposed under Texas Education Code, §61.0664, Collection and Study of Data on Participation of Persons with Intellectual and Developmental Disabilities in Higher Education, which requires the board to collect and maintain data relating to undergraduate and graduate level participation of persons with intellectual and developmental disabilities (IDD) at institutions of higher education.

The proposed new section affects Texas Education Code, §61.0664.

§4.12. Tracking Participation of Students with Intellectual and Developmental Disabilities (IDD).

(a) For the purpose of this rule, Intellectual and Developmental Disability (IDD) will be defined as a neurodevelopmental disorder that must meet the following criteria:

(1) Deficits in intellectual functions, such as reasoning, problem solving, planning, abstract thinking, judgement, academic learning, and learning from experience.

(2) Deficits in adaptive functioning that result in failure to meet developmental and sociocultural standards for personal independence and social responsibility. Without ongoing support, the adaptive deficits limit functioning in one or more activities of daily life, such a communication, social participation, and independent living, across multiple environments, such as home, school, work and community.

(3) Paragraphs (1) and (2) of this subsection may occur after the developmental period (such as in the case of a traumatic brain injury).

(4) Students with IDD may include those diagnosed with an Autism Spectrum Disorder.

(b) For the purpose of this rule, "postsecondary transitional program or postsecondary program for students with IDD" will be defined as a degree, certificate or non-degree program for students with IDD that is offered by an institution of higher education. These programs are designed to support students with IDD who want to continue academic, career, and independent living instruction following completion of secondary education.

(c) The Coordinating Board may collect, as part of its ongoing regular data collection process, information about students with IDD for the purpose of analyzing factors affecting the college participation and outcomes of persons with IDD at public institutions of higher education. Institutions may only report students who have been identified through self-identification and/or documented receipt of special services. Students who do not self-identify will not be reflected in the data. Institutions may, but are not required to, collect consent forms regarding reporting of the data outlined in subsection (d) of this section from students who have self-identified with an IDD. In the case where a student has an appointed legal guardian, the guardian will act on behalf of the student for the purposes of this rule.

(d) All public institutions of higher education shall provide to the Coordinating Board data (as specified in subsection (e) of this section) regarding the enrollment of individuals with IDD in their undergraduate, graduate and technical continuing education programs. Data about these students' participation in postsecondary transitional programs or postsecondary programs for students with IDD will also be collected, but student-level data will not be collected for students enrolled in these programs unless they are also enrolled in credit-bearing college-level coursework or technical continuing education. Institutions of higher education and the Coordinating Board shall follow all federal privacy requirements under the Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) when collecting and reporting data for the purposes of this rule.

(e) Two additional items will be added to the CBM Student Reports (CBM001, CBM00A, and CBM0E1) for the purposes of this ongoing study. The definitions in subsections (a) and (b) of this section will apply to the data collection for these items.

(1) An item with three options in which the student is reported as:

(A) not identified as having an IDD;

(B) identified as having an IDD;

(C) identified as having an autism spectrum developmental disorder but not an intellectual disability.

(2) An item with three options indicating if:

(A) the student never participated in a postsecondary transitional program or postsecondary program for students with IDD;

(B) the student participated in a postsecondary transitional program or postsecondary program for students with IDD;

(C) it is unknown if the student ever participated in a postsecondary transitional program or postsecondary program for students with IDD.

(f) Access to the identifiers above in the CBM Student Report which indicate if an enrolled student has an IDD as defined will not be made available to the Education Research Centers, established under Texas Education Code §1.005, as part of regular data requests unless this information is specified and approved by the advisory board established under Texas Education Code §1.006 as relating to the research study proposed.

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §5.5

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §5.5 concerning the Uniform Admission Policy. Specifically, House Bill 2472, passed by the 84th Texas Legislature, Regular Session, repealed Texas Education Code (TEC) §51.803(a)(3), which indicated The University of Texas at Austin would lose the authority to offer admission under TEC §51.803(a-1) after the 2017-2018 academic year. As a result, the institution will continue indefinitely to have the authority under TEC §51.803(a-1) to limit its automatic admission of entering first-time freshmen in the top 10 percent of their high school classes to no more than 75 percent of the institution's enrollment capacity for first-time entering undergraduate students.

Mr. R. Jerel Booker, J.D., Assistant Commissioner for College Readiness and Success, has determined that for each year of the first five years the section is in effect, there will not be any fiscal implications for state or local governments as a result of enforcing or administering the rules.

Mr. Booker has also determined that for each of the first five years the section is in effect, the public benefit anticipated as a result of administering the section will be consistency in The University of Texas at Austin's policies in admitting first-time freshmen in the top 10 percent of their high school classes. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the section as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Jerel Booker, Texas Higher Education Coordinating Board, J.D., P.O. Box 12788, Austin, Texas 78711 or via email in care of Jane Caldwell, who may be reached at *jane.caldwell@thecb.state.tx.us*. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §51.803, which provides the Coordinating Board with the authority to adopt rules for the Uniform Admission Policy.

The amendments affect Texas Education Code, §51.803.

§5.5. Uniform Admission Policy.

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

(e) For the period beginning with [~~from~~] the 2011-2012 academic year [~~through the 2017-2018 academic year~~], The University of Texas at Austin is not required to admit applicants under this subchapter in excess of the number needed to fill 75 percent of first-time resident undergraduate students.

(f) - (j) (No change.)

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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CHAPTER 13. FINANCIAL PLANNING

SUBCHAPTER M. TOTAL RESEARCH EXPENDITURES

19 TAC §§13.300 - 13.304

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§13.300 - 13.304 concerning standards and accounting methods for determining total research expenditures. The intent of these new sections is to prescribe standards and accounting methods for total restricted research expenditures required by Texas Education Code, Chapter 62, Subchapter C, §62.053.

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

Dr. Peebles has also determined that for the first five years the new rules are in effect, the public benefits anticipated as a result of administering the sections will be the clarification of how total research expenditures are accounted. There are no significant economic costs anticipated to persons and institutions who are required to comply with the sections as proposed. There is no impact on local employment.

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

The new sections are proposed under the Texas Education Code, Chapter 62, Subchapter C, §62.053, which authorized the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended.

The new sections affect the implementation of Texas Education Code, §§62.051 - 62.0535 and §§62.131 - 62.137.

§13.300. Purpose and Scope.

The purpose of this subchapter is to establish standards and accounting methods for determining total research expenditures based on all research conducted at Texas institutions of higher education.

§13.301. Authority.

Texas Education Code, §61.0662, requires the Coordinating Board to maintain an inventory of all institutional and programmatic research activities being conducted by all institutions of higher education. Texas Education Code, §62.051, establishes the Texas Research University Fund and §62.053, authorizes the Coordinating Board to prescribe standards and accounting methods for determining the amount of total research funds expended.

§13.302. Definitions.

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

(1) Annual Financial Report (AFR)--Institutional financial report for one fiscal year as required by Texas Education Code, §51.005.

(2) Areas of Special Interest--Major research topics important to the public as listed in the Research Expenditure Survey.

(3) Coordinating Board or Board--The Texas Higher Education Coordinating Board.

(4) Research Expenditures or Expenditures--In a specific fiscal year, expenditure of funds paid out by an institution to support institutional Research and Development activities.

(5) Pass-through to sub-recipient--External award funds that are passed from one entity to a sub-recipient. The sub-recipient expends the award funds on behalf, of or in connection with, the pass-through entity.

(6) Research and Development (R&D)--All research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions:

(A) Research--The systematic study directed toward fuller scientific knowledge or understanding of the subject studied.

(B) Development--The systematic use of knowledge or understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes.

(C) R&D Training--R&D also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(7) Research Expenditure Survey--Instrument that establishes total R&D expenditures for each institution by research field and areas of special interest, both accounted by funding source. The survey includes a Research Expenditure Survey specific definition of R&D and reporting guidelines for R&D activities.

(8) Research fields--Subject areas for R&D as listed in the Research Expenditure Survey.

(9) Sources and Uses Template--An annual survey, part of the Annual Financial Report, of Texas general academic and health-related institutions to detail financial information and provide specific information about revenues and expenditures.

§13.303. Standards and Accounting Methods for Determining Total Research Expenditures.

(a) Each institution reports R&D expenditures annually in the Research Expenditure Survey.

(b) R&D expenditures for Texas A&M University include consolidated expenses from Texas A&M University and its service agencies.

(c) Research expenses from the AFR are reconciled to the total R&D expenditures of the Research Expenditure Survey by a:

(1) Decrease of the AFR total by the amount of R&D expenses that do not meet the narrow definition of R&D expenditures used in the Coordinating Board's Research Expenditure Survey.

(2) Increase of the AFR total by the amount of indirect costs associated with expenses for R&D as reported through the Research Expenditure Survey.

(3) Increase of the AFR total by the amount of capital outlay for research equipment, not including R&D plant expenses or construction.

(4) Increase of the AFR total by the amount of expenditures for conduct of R&D made by an institution's research foundation or 501(c) corporation on behalf of the institution and not reported in the institution's AFR, including indirect costs.

(5) Increase of the AFR total by the amount of pass-throughs from Texas Engineering Experiment Station as defined for the Research Expenditure Survey.

§13.304. Reporting of Total Research Expenditures.

(a) The Board shall annually post a report of total research expenditures of all public institutions of higher education on its website.

(b) Not later than January 1 of each year, the Board shall submit to the legislature information regarding human stem cell research obtained by the Board from reports required by this subsection.

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

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER C. HINSON-HAZLEWOOD COLLEGE STUDENT LOAN PROGRAM

19 TAC §§21.53 - 21.55

The Texas Higher Education Coordinating Board (Coordinating Board, THECB) proposes amendments to §§21.53 - 21.55 concerning the Hinson-Hazlewood College Student Loan Program (HHCSLP).

Section 21.53 is amended to remove the definition for "Career college", which does not meet the definition of an eligible institution as defined in Texas Education Code, §61.003. The section has been renumbered accordingly.

Section 21.54 regarding the eligibility of institutions is amended to align the language in rules with the eligibility provisions in Texas Education Code, §61.003. The previous language has been stricken.

Section 21.55 regarding student eligibility requirements is amended to remove the reference to students attending career colleges, as these institutions are not eligible to participate in the loan program.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner for Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be better understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Fi-

nancial Aid Programs, Texas Higher Education Coordinating Board, at 1200 E. Anderson Lane, Austin, Texas 78752 or *charles.puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 52, which states that the Coordinating Board shall administer the student loan program authorized by this chapter pursuant to Article III, §§50b-4, 50b-5, 50b-6, and 50b-7, of the Texas Constitution.

The amendments affect Texas Education Code, Chapter 52.

§21.53. Definitions.

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

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

[~~(5) Career college--an educational institution that is not a public or private nonprofit educational institution and is approved by the U.S. Secretary of Education under the Higher Education Act of 1965, as amended, and the regulations found in 34 C.F.R. §600.5.~~]

(5) [~~(6)~~] Commissioner--the Commissioner of Higher Education.

(6) [~~(7)~~] Cosigner/Accommodation Party--one who signs a student loan promissory note and thereby assumes liability for the debt and all fees and expenses associated with the note, who is not a direct beneficiary of the proceeds of the loan.

(7) [~~(8)~~] Cost of Attendance--expenses, including direct educational costs (tuition, fees, books, and supplies) as well as indirect educational costs (room and board, transportation, and personal expenses) incurred by a typical student receiving financial aid in attending a particular college.

(8) [~~(9)~~] Default--the failure of a borrower and cosigner, if any, to make loan installment payments when due for a total of 180 days for CAL and HELP loans and 270 days for FFELP and HEAL loans.

(9) [~~(10)~~] Deferment--any period during which a borrower, upon adequate showing of entitlement under the terms of the particular lending program, shall be eligible to suspend payments.

(10) [~~(11)~~] FFELP--the Federal Family Education Loan Program, formerly the Guaranteed Student Loan Program, authorized by the Higher Education Act of 1965, as amended, 20 U.S.C. §§1071 - 1087-4. Included in the FFELP are Federal Stafford Loans and Federal Supplemental Loans for Students.

(11) [~~(12)~~] Forbearance--discretionary permission from the Commissioner or his designees that allows a borrower to cease payments temporarily, or allows an extension of time for making payments, or temporarily reduces the payment amount from the amount that was previously scheduled.

(12) [~~(13)~~] FSL--the Robert T. Stafford Federal Student Loan Program to be known as "Federal Stafford Loans," formerly known as Stafford Loans and Guaranteed Student Loans, which included Federal Insured Student Loans. FSLs are made under provisions of the Federal Family Education Loan Program; but, for purposes of this subchapter, the acronym FSL will designate those rules specific to FSL.

(13) [~~(14)~~] FSLS--Federal Supplemental Loans for Students, formerly known as Supplemental Loans for Students and Auxiliary Loans for Students. The FSLS are made under provisions of the Federal Family Education Loan Program; but, for purposes of this subchapter, the acronym FSLS will designate those rules specific to FSLS.

(14) [~~(15)~~] Fund--the Texas Opportunity Plan Fund as created by the Constitution of the State of Texas, Article III, 50b; the Student Loan Revenue Bond Fund authorized in the Texas Education Code, Chapter 56, Subchapter H; and/or the Student Loan Auxiliary Fund, authorized in the Texas Education Code, Chapter 52, Subchapter F.

(15) [~~(16)~~] HEAL or HEALP--Health Education Assistance Loan Program authorized by the Public Health Service Act, as amended, 42 U.S.C. §§292 - 292y.

(16) [~~(17)~~] HELP--Health Education Loan Program.

(17) [~~(18)~~] Hinson-Hazlewood College Student Loan Program, or Program--the commonly used name for the Board program which provides and administers FFELP, CAL, HEAL, and HELP student loans under the authority of Texas Education Code, §§52.31 - 52.40.

(18) [~~(19)~~] Hinson-Hazlewood College Student Loan Program Officer--a full-time administrative official of an institution who will act as the Board's on-campus agent.

(19) [~~(20)~~] Regional Education Service Center--a center established and operated by the Commissioner of Education under Texas Education Code, Chapter 8.

(20) [~~(21)~~] Resident of Texas--a resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

(21) [~~(22)~~] Revenue Bond Fund--the Student Loan Revenue Bond Fund, authorized in the Texas Education Code, Chapter 56, Subchapter H.

§21.54. Eligibility of Institutions.

(a) Eligible higher educational institution means a public or private nonprofit institution of higher education, including a junior college, accredited by a recognized accrediting agency as defined by Texas Education Code §61.003, or a regional education service center or other entity that offers an alternative educator certification program approved by the State Board for Educator Certification, Texas Education Code, Chapter 21, §21.049: [~~The following institutions or entities located in Texas and approved by the U.S. Department of Education for the purpose of guaranteeing the Board against loss due to the death, disability, or default of borrower shall be eligible to participate in the Program:~~]

(1) is located in this state; and

(2) complies with the rules of the board promulgated in accordance with this subchapter.

[~~(1) Institutions of Higher Education as defined in Texas Education Code, §61.003(8);~~]

[~~(2) Private or Independent Institutions of Higher Education as defined in Texas Education Code, §61.003(15);~~]

[~~(3) Career colleges that offer degree programs approved by the Board under §§12.1 - 12.46 of this title (relating to Career Schools and Colleges); and~~]

[~~(4) Nonprofit private postsecondary educational institutions accredited by an agency recognized by the Board in §7.4(a)~~

~~of this title (relating to Exemptions, Revocation of Exemptions, and Certificates of Authorization).]~~

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

§21.55. Eligibility of Students.

(a) Subject to the requirement in subsection (b) of this provision, the Commissioner may authorize, or cause to be authorized, Hinson-Hazlewood College Student Loans to students at any eligible institution which certifies that the student meets program qualifications, if the student:

(1) - (8) (No change.)

~~[(9) enrolled in a degree program approved by the Board under the provisions of §§12.1 - 12.46 of this title (relating to Career Schools and Colleges) and is otherwise eligible under the provisions of this section for a student enrolled in a career college;]~~

(9) [~~(10)~~] for FSLP, has been issued or will be issued a student loan under any loan program administered by the Board.

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

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

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SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1080, 21.1081, 21.1083 - 21.1085, 21.1087, 21.1088

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.1080; 21.1081; 21.1083 - 21.1085; 21.1087; and 21.1088 concerning the Educational Aide Exemption Program.

Specifically, the amendment to §21.1080 strikes reference to the former citation, §54.214, which was re-designated as §54.363 in 2011.

Changes to §21.1081 introduce terms relevant to new requirements for students receiving continuation awards, beginning fall 2014 (Senate Bill 1210, 83rd Legislature, Regular Session). The new provisions include a grade point average requirement for graduate and undergraduate students and a loss of eligibility once an undergraduate student reaches the credit hour limit for formula funding. The inclusion of definitions for "Continuation Award" and "Excessive hours" caused subsequent definitions to be renumbered. In addition, the definition of "Financial need" is revised to align with the definition found in other state programs.

Section 21.1083 is amended to reflect two subsections, (a) and (b), to distinguish between the general eligibility requirements and the provisions for continuation awards. In subsection (a)(3), the section number for "Hardship Provisions" is updated from §21.1089 to §21.1088. New subsection (b) indicates the Senate Bill 1210, 83rd Texas Legislature requirements regarding grade point average and number of completed hours for continuation awards.

The titles for §21.1084 and §21.1085 have been updated to reflect current rules. The amendments to §21.1085(a) and (b) indicate that the exemption covers a student's full tuition and mandatory fee charges and only applies to courses for which an institution receives formula funding. Outdated language has been removed.

Section 21.1087 adds the Texas Education Code citation, §21.050(c), which authorizes an exemption from student teaching for Educational Aide award recipients.

Section 21.1088 outlines hardship provisions that institutions must follow to allow an individual, even though he or she failed to meet program grade point average requirements, to receive an exemption if that failure was due to circumstances outlined in statute as a basis for special consideration. Such circumstances include illness, caring for another person, military deployment or other just causes acceptable to the institution. In addition, in keeping with Senate Bill 1210, the new sections indicate institutions may, on a showing of good cause, allow an undergraduate to receive the exemption although he or she has completed a number of hours considered excessive under §21.1083(b) of this subchapter (relating to Continuation Awards). The former language relating to hardship provisions for recipients who are unable to remain employed for the full term has been stricken.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the sections will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed. D., Deputy Assistant Commissioner, Student Financial Aid Programs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, *charles.puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §54.363, which provides the Coordinating Board with the authority to adopt rules to implement the Educational Aide Exemption Program.

The amendments affect Texas Education Code, §54.363.

§21.1080. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Chapter 54, Subchapter B, Tuition Rates. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §54.363 [~~(formerly 54.214)~~], relating to an exemption for Educational Aides [~~educational aides~~].

(b) Purpose. The purpose of the Educational Aide Exemption Program is to encourage certain Educational Aides [~~educational aides~~] to complete full teacher certification by providing need-based exemp-

tions from the payment of tuition and certain mandatory fees at Texas public institutions of higher education.

§21.1081. Definitions.

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

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

(3) Continuation Award--An exemption from tuition and fees awarded to a student in accordance with this subchapter who has received the exemption in a previous semester, and which is awarded in accordance with this subchapter.

(4) [~~(3)~~] Cost of attendance--A Board-approved estimate of the expenses incurred by a typical financial aid student attending a particular college or university. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(5) [~~(4)~~] Educational Aide--A person who has been employed by a public school district in Texas in a teaching capacity working in the classroom directly with the students for at least one year on a full-time basis. It may include substitute teachers who have been employed by a public school district in Texas for 180 or more full days in a teaching capacity working in the classroom directly with students.

(6) Excessive Hours--In accordance with Texas Education Code §54.014, for undergraduates, hours in excess of 30 more than those required for completion of the degree program in which the student is enrolled.

(7) [~~(5)~~] Expected family contribution--The amount of discretionary income that should be available to a student from his or her resources and that of his/her family, as determined following the federal methodology.

(8) [~~(6)~~] Financial need--The Cost of attendance at a particular public or private institution of higher education less the Expected family contribution. The Cost of attendance and family contribution are to be determined in accordance with Board guidelines. [~~An indication of a student's inability to meet the full cost of attending a college or university, measured by one of the following methods:~~]

[~~(A) The cost of attendance at a particular public or private institution of higher education less the expected family contribution. The cost of attendance and family contribution are to be determined in accordance with Board guidelines; or~~]

[~~(B) An income methodology, which considers a student to have financial need if his or her adjusted gross annual income is less than income levels set annually by the Commissioner. If the student is a dependent, the family's adjusted gross family income is considered; if the student is independent, only the student's income (and the income of the student's spouse, if he or she is married) is considered.~~]

(9) [~~(7)~~] Program Officer--The individual named by each participating institution's chief executive officer to serve as agent for the Board. The Program Officer has primary responsibility for all ministerial acts required by the program, including the determination of student eligibility, maintenance of all records and preparation and submission of reports reflecting program transactions. Unless otherwise indicated by the administration, the director of student financial aid shall serve as Program Officer.

(10) [~~(8)~~] Resident of Texas--A resident of the State of Texas as determined in accordance with Chapter 21, Subchapter B of this title (relating to Determination of Resident Status). Nonresident students who are eligible to pay resident tuition rates are not residents of Texas.

§21.1083. Eligible Students.

(a) To receive an award through the Educational Aide Exemption Program, a student must:

(1) be a Resident [~~resident~~] of Texas;

(2) have met the definition of an Educational Aide at some time during the five years preceding the term or semester for which the student is awarded his or her initial exemption;

(3) be employed in some capacity by a school district in Texas during the full term for which the student receives the award unless granted a hardship waiver as described in §21.1088 [~~§21.1089~~] of this title (relating to Hardship Provisions);

(4) show Financial need;

(5) if he or she received an exemption through this subchapter prior to the fall 2012 semester, be enrolled in courses required for teacher certification at the institution granting an exemption under this subchapter or (if enrolled in lower-level course-work), sign a statement indicating an intention to become certified as a teacher and teach in Texas;

(6) if he or she received his or her first award through this subchapter in fall 2012 or later, be enrolled at the institution granting an exemption under this subchapter in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in this state;

(7) meet the academic progress standards of the institution;

(8) follow application procedures and schedules as indicated by the Board;

(9) have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law; and

(10) apply for an exemption by the end of the term for which the exemption is to apply.

(b) If receiving a Continuation Award in fall 2014 or later, a person receiving a Continuation Award at the beginning of the term or semester in which the award is received must also:

(1) if classified as an undergraduate or a graduate, be meeting the institution's financial aid grade point average requirement for making satisfactory academic progress towards a degree or certificate in accordance with the institution's policy regarding eligibility for financial aid, unless granted a hardship waiver by the institution in keeping with §21.1088 of this title (relating to Hardship Provisions); and

(2) if classified as a resident undergraduate, have not completed a number of semester credit hours that is considered to be excessive under Texas Education Code, §54.014, unless granted a hardship waiver by the institution in keeping with §21.1088 of this title (relating to Hardship Provisions). In determining the number of hours an undergraduate has completed, semester credit hours completed include transfer credit hours that count towards the person's undergraduate degree or certificate requirements, but exclude:

(A) hours earned exclusively by examination;

(B) hours earned for a course for which the person received credit toward the person's high school academic requirements; and

(C) hours earned for developmental courses that the institution required the person to take under Texas Education Code, §51.3062 or under the former provisions of Texas Education Code, §51.306.

§21.1084. The Application [~~and Awarding Process~~].

(a) Institutions are not required to provide exemptions under this subchapter beyond those funded through appropriations specifically designated for this purpose. The Board shall advise institutions of the availability of funds as soon as possible after funding is known.

(b) Application forms and instructions developed by the Board will be distributed through financial aid offices of approved institutions.

(c) If only limited funds are available:

(1) the Board will advise institutions of a deadline for submitting applications and the number of applications each institution may submit to compete for funds;

(2) institutions will forward to the Board applications for students they have determined to be eligible; and

(3) the Board will then select recipients for the limited funds on a first come/first served basis and announce recipients to institutions.

§21.1085. Award Amounts [~~and Processing Cycle~~].

(a) Amounts. Students receiving awards through the Educational Aide Exemption Program shall be exempted from the payment of the total [~~(or reimbursed for)~~] resident tuition and required fees, other than laboratory and class fees, for courses taken during the relevant term.

(b) An exemption under this title only applies to courses for which an institution receives formula funding.

[~~(b) Form of Award - Exemption or Reimbursement.~~]

[~~(1) If applications are processed and announced in time, institutions should exempt recipients from the payment of such charges and then request reimbursement from the Board.~~]

[~~(2) If applications are processed and/or announced too late for the student to be exempted from such payments at registration, the student may be required to pay these charges first, and then be reimbursed by the institution.~~]

[~~(c) Unique Requirements for Each Term.~~]

[~~(1) Fall awards are made on the basis of the original fall/spring application that will be posted on the Coordinating Board's website for institutions to download and provide to students.~~]

[~~(2) Spring awards are based on the original fall/spring application. If the student was not a recipient during the fall term, the original application functions as a stand-alone spring application. If the applicant also received a fall award, the spring award shall not be granted by the institution until the school or school district confirms to the institution that it will still be employing the applicant in the spring term.~~]

[~~(3) Summer awards are to be based on a summer application that will be posted on the Coordinating Board's website for institutions to download and provide to students. Institutions and school districts will be advised by the Board of the availability of the summer application by March 1 of each year.~~]

§21.1087. Exemption from Student Teaching.

(a) An individual who receives a bachelor's degree required for a teaching certificate on the basis of higher education coursework completed while receiving an award through this subchapter shall not be required by his or her institution to participate in any field experience or internship consisting of student teaching as a requirement to receive a teaching certificate, in accordance with Texas Education Code, §21.050(c).

(b) An individual who receives a bachelor's degree prior to receiving his or her first award under this subchapter is not eligible for a student teaching exemption under subsection (a) of this section.

§21.1088. Hardship Provisions.

(a) Each institution of higher education is required to adopt a policy to allow a student who fails to maintain a grade point average as required by §21.1083(b) of this subchapter to receive an exemption in another semester or term on a showing of hardship or other good cause, including:

(1) a showing of a severe illness or other debilitating condition that could affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care could affect the student's academic performance;

(3) the student's active duty or other service in the United States armed forces or the student's active duty in the Texas National Guard; or

(4) any other cause considered acceptable by the institution.

(b) An institution may, on a showing of good cause, permit an undergraduate Continuation Award applicant to receive an exemption or waiver although he or she has completed a number of semester credit hours that is considered excessive under Texas Education Code §54.014. [~~An individual is considered to meet the employment requirements listed in §21.1083(3) of this title (relating to Eligible Students) if he or she was employed at the beginning of the relevant term but was unable to remain employed throughout the term for reasons beyond his or her control. Such situations include, but are not limited to, the following:~~]

[~~(1) a severe illness or other debilitating condition that may affect the individual's ability to continue employment;~~]

[~~(2) responsibility for the care of a temporarily disabled dependent that may affect the recipient's ability to continue employment; or~~]

[~~(3) performance of active duty military 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.

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Texas Higher Education Coordinating Board
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SUBCHAPTER KK. MATH AND SCIENCE SCHOLARS LOAN REPAYMENT PROGRAM

19 TAC §§21.2021 - 21.2029

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.2021 - 21.2029, concerning the Math and Science Scholars Loan Repayment Program. The 83rd Texas Legislature authorized the Math and Science Scholars Loan Repayment Program. However, funds for the Program were first appropriated by the 84th Texas Legislature. The statute specifies that awards will first be made based on teaching service during the 2016-2017 school year. Texas Education Code §61.9840 states that the Coordinating Board shall adopt rules necessary for the administration of this program.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs for THECB has determined that for each year of the first five years the sections are in effect, there will not be any fiscal implications to state or local government as a result of enforcing or administering these rules.

Dr. Puls has also determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of administering the section may be improved retention of math and science teachers, who demonstrated high academic achievement as math and science majors, at Texas public schools that receive federal Title I assistance. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There may be a positive impact on local employment, if teachers in the local area qualify for assistance.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D, Deputy Assistant Commissioner, Student Financial Aid Programs, Texas Higher Education Coordinating Board at 1200 E. Anderson Lane, Austin, Texas 78752 or *charles.puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §61.9840, which authorizes the Coordinating Board to adopt rules necessary for the administration of the Math and Science Scholars Loan Repayment Program.

§21.2021. Authority and Purpose.

(a) Authority. Authority for this subchapter is provided in the Texas Education Code, Subchapter KK, Math and Science Scholars Loan Repayment Program. These rules establish procedures to administer the subchapter as prescribed in the Texas Education Code, §§61.9831 - 61.9841.

(b) Purpose. The purpose of the Math and Science Scholars Loan Repayment Program is to encourage teachers, who demonstrated high academic achievement as math or science majors, to teach math or science in Texas public schools for eight years, the first four of which are at Title I schools.

§21.2022. Definitions.

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

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

(2) Commissioner--The Commissioner of Higher Education, the chief executive officer of the Board.

(3) Employment Service Period--A period of at least 9 months of a 12-month academic year.

(4) Program--The Math and Science Scholars Loan Repayment Program.

(5) Title I school--Texas public schools that receive federal funding under Title I, Elementary and Secondary Education Act of 1965 (20 U.S.C. §6301 et seq.)

§21.2023. Eligibility for Enrollment in the Program.

(a) To be eligible for the Board to conditionally approve an application and encumber loan repayment funds, a teacher must:

(1) ensure that the Board has received the completed enrollment application and transcripts of the applicant's postsecondary coursework, and any other requested documents by the established deadline posted on the Program web page;

(2) be a U.S. citizen;

(3) have completed an undergraduate or graduate program in mathematics or science;

(4) have earned a cumulative GPA of at least 3.5 on a four-point scale, or the equivalent, at the institution from which the teacher graduated;

(5) be certified under the Texas Education Code, Subchapter B, Chapter 21, or under a probationary teaching certificate, to teach mathematics or science in a Texas public school;

(6) have secured an employment contract as a full-time classroom teacher to teach mathematics or science in a Title I school at the time of application for enrollment in the Program;

(7) not receive any other state or federal loan repayment assistance, including a Teacher Education Assistance for College and Higher Education (TEACH) Grant or teacher loan forgiveness;

(8) not be in default on any education loan; and

(9) enter into an agreement with the Board that includes the provisions stated in subsection (b) of this section.

(b) The agreement with the Board must include the following provisions:

(1) the applicant will accept an offer of continued employment to teach mathematics or science, as applicable based on the teacher's certification, for an average of at least four hours each school day in a Title I school, for four consecutive years, beginning with the school year that has recently begun or the upcoming school year at the time of the application for enrollment in the Program;

(2) the applicant will complete four additional consecutive school years teaching mathematics or science, as applicable based on the teacher's certification, for an average of at least four hours each school day in any Texas public school, beginning with the school year immediately following the last of the four consecutive school years described by paragraph (1) of this subsection; and

(3) the applicant understands that loan repayment awards are contingent on available funding received, the Board may make a financial commitment only based on funds that have been appropriated for each two-year state budget period, and the teacher will be released from the teaching obligation for any year of employment for which funds are not available.

§21.2024. Application Ranking Priorities.

(a) Renewal applicants shall be given priority over first-time applicants unless a break in Employment Service Periods has occurred as a result of the circumstances described in §21.2025 of this title (relating to Exceptions to Consecutive Years of Employment Requirement).

(b) If there are not sufficient funds to encumber awards for all eligible applicants for enrollment in the Program, applications shall

be ranked according to a cumulative ranking system developed by the Board based on:

(1) the number of mathematics and science courses completed by the applicants;

(2) the grade received by each applicant for each of those courses; and

(3) employment at schools having the highest percentages of students who are eligible for free or reduced cost lunches.

§21.2025. Exceptions to Consecutive Years of Employment Requirement.

Although funding limitations may require the Board to exercise the ranking priorities established in §21.2024 of this title (relating to Application Ranking Priorities) a teacher who has enrolled in the Program shall not lose Program eligibility due to failure to meet the consecutive years of qualifying employment requirement if the break in employment service is a result of the person's:

(1) full-time enrollment in a course of study related to the field of teaching that is approved by the State Board for Educator Certification and provided by a Texas institution of higher education, as defined in Texas Education Code §61.003;

(2) service on active duty as a member of the armed forces of the United States, including as a member of a reserve or National Guard unit called for active duty;

(3) temporary total disability for a period of not more than 36 months as established by the affidavit of a qualified physician;

(4) inability to secure employment as required in a Title I school for a period not to exceed 12 months, because of care required by a disabled spouse or child; or

(5) inability, despite reasonable efforts, to secure, for a single period not to exceed 12 months, employment in a Title I school.

§21.2026. Eligibility for Disbursement of Award

To be eligible for disbursement of a loan repayment award, a teacher must:

(1) for teachers having a probationary teaching certificate during the initial year in the Program, have received a standard teaching certificate by the beginning of the second year of employment, to qualify for a second-year award.

(2) for the first four years of employment, submit all required end-of-year forms verifying completion of one, two, three, or four consecutive years of employment as a full-time classroom teacher in a Title I school; and

(3) following the first four years of employment, submit all required end-of-service period forms verifying completion of five, six, seven, or eight consecutive years of employment as a full-time classroom teacher in any Texas public school.

§21.2027. Eligible Lender and Eligible Education Loan.

(a) The Board shall retain the right to determine the eligibility of lenders and holders of education loans to which payments may be made. An eligible lender or holder shall, in general, make or hold education loans made to individuals for purposes of undergraduate, medical and graduate medical education and shall not be any private individual. An eligible lender or holder may be, but is not limited to, a bank, savings and loan association, credit union, institution of higher education, student loans secondary market, governmental agency, or private foundation.

(b) To be eligible for repayment, an education loan must:

(1) be evidenced by a promissory note for loans to pay for the cost of attendance for undergraduate or graduate education;

(2) not be in default at the time of the teacher's application;

(3) not have an existing obligation to provide service for loan forgiveness through another program;

(4) not be subject to repayment through another student loan repayment or loan forgiveness program;

(5) if the loan was consolidated with other loans, the teacher must provide documentation of the portion of the consolidated debt that was originated to pay for the cost of attendance for the teacher's undergraduate or graduate education; and

(6) not be an education loan made to oneself from one's own insurance policy or pension plan or from the insurance policy or pension plan of a spouse or other relative.

§21.2028. Disbursement of Repayment Assistance and Award Amount.

(a) The annual repayment(s) shall be in one disbursement made payable to the servicer(s) or holder(s) of the loan upon the teacher's completion of each year of qualifying employment.

(b) The Commissioner or his or her designee shall determine the maximum annual repayment amount in each state fiscal year, taking into consideration the amount of available funding and the number of eligible applicants.

(c) A teacher who transfers to a Texas public school that is not a Title I school after completing four consecutive years of employment at a Title I school may qualify for no more than 75% of the annual award amount established for the fiscal year.

§21.2029. Limitations.

(a) No more than 4,000 eligible teachers shall receive loan repayment assistance in any school year.

(b) In the 2016-2017 school year, no more than 1,000 teachers shall receive loan repayment assistance.

(c) In the 2017-2018 school year, no more than 2,000 teachers shall receive loan repayment assistance.

(d) In the 2018-2019 school year, no more than 3,000 teachers shall receive loan repayment assistance.

(e) Failure to meet Program requirements will result in nonpayment for the applicable year of employment and removal from 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 April 25, 2016.

TRD-201601937
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §22.23

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §22.23, concerning the Provisions for the Tuition Equalization Grant Program. Specifically, §22.23(c)(3)(B) is amended to remove language pertaining to penalties for late reports and late refunds, as this provision does not benefit the student if such penalties are imposed.

Dr. Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, has determined that for each year of the first five years the section is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Dr. Puls has also determined that for each year of the first five years the section is in effect, the public benefit anticipated as a result of administering this section will be the institution's ability to better meet the needs of their student populations. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Charles W. Puls, Ed.D., Deputy Assistant Commissioner, Student Financial Aid Programs, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711, (512) 427-6365, *charles.puls@thecb.state.tx.us.* Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code §61.229 which provides the Coordinating Board with the authority to adopt rules to implement the Tuition Equalization Grant (TEG) Program.

The amendments affect 19 TAC Chapter 22, Subchapter B, §22.23.

§22.23. Institutions.

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

(c) Responsibilities.

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

(3) Reporting[~~.~~]

[~~(A)~~] Requirements/Deadlines. All institutions must meet Board reporting requirements in a timely fashion.

(A) [~~(i)~~] Such reporting requirements shall include but are not limited to reports specific to allocation and reallocation of grant funds (including the TEG Need Survey, the TEG year-end student-by-student report, the Coordinating Board's Education Data Center CBM001 and CBM009 reports, and the Financial Aid Database Report) as well as progress reports of program activities.

(B) [~~(ii)~~] Each participating institution shall have its TEG Program operations audited on an annual basis by an independent auditor or by an internal audit office that is independent of the financial aid and disbursing offices. Reports on findings and corrective action plans (if necessary) are due to the Board by April 15 each year.

[~~(B) Penalties for Late Reports and/or Late Refunds.~~]

~~*[(i)* An institution that postmarks or electronically submits a progress report a week or more after its due date will be ineligible to receive additional funding through the reallocation occurring at that time.]~~

~~*[(ii)* The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each report that is postmarked or submitted electronically more than a week late. The penalty may also be invoked if the report is timely, but refunds owed to the Program by the institution are not made to the Board or the Comptroller of Public Accounts' Office within one week after due.]~~

~~*[(iii)* The Commissioner may assess more severe penalties against an institution if any report or refund is received by the Board more than one month after its due date. The Commissioner may penalize an institution by reducing its allocation of funds in the following year by up to 10 percent for each late refund of grant funds. If grant funds are returned more than a week after the announced return date, they will be considered late.]~~

~~*[(iv)* The maximum penalty for a single year is 30 percent of the school's allocation. If penalties are invoked in two consecutive years, the institution may be penalized an additional 20 percent.]~~

[~~(C) Appeal of Penalty. If the Commissioner determines that a penalty is appropriate, the institution will be notified by certified mail, addressed to the Chief Executive Officer and copied to the Program Officer and/or Financial Aid Director. Within 21 days from the time that the Program Officer receives the written notice, the institution must submit a written response appealing the Commissioner's decision, or the penalty shall become final and no longer subject to an appeal. An appeal under this section will be conducted in accordance with the rules provided in Chapter 1 of this title.~~]

(4) (No change.)

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

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

TRD-201601938
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

SUBCHAPTER EE. COMMISSIONER'S RULES CONCERNING THE COMMUNITIES IN SCHOOLS PROGRAM

The Texas Education Agency (TEA) proposes amendments to §§89.1501, 89.1503-89.1505, 89.1507, and 89.1511 and the repeal of §89.1509, concerning the Communities In Schools (CIS) program. The proposed amendments and repeal would modify the rules to reflect updates in program management and to more closely match current practice.

The CIS program is a statewide youth dropout prevention program that provides effective assistance to Texas public school students who are at risk of dropping out of school or engaging in delinquent conduct, including students who are in family conflict or emotional crisis. In 2003, the 78th Texas Legislature passed Senate Bill 1038, which transferred the CIS program from the Department of Family and Protective Services, formerly known as the Department of Protective and Regulatory Services, to the TEA. In accordance with the Texas Education Code (TEC), §33.156, the commissioner of education adopted 19 TAC Chapter 89, Subchapter EE, effective July 4, 2005, establishing definitions and the equitable funding formula for local CIS programs.

The rules were last amended effective December 27, 2011, to provide clarification for dissemination of funds for new CIS programs and replicating the youth dropout prevention program in areas not served by the program.

The proposed revisions to 19 TAC Chapter 89, Subchapter EE, would update the rules as follows.

Section 89.1501, Definitions, would be amended to remove terms that are adequately defined in the TEC, §33.151.

Section 89.1503, Funding, would be amended to increase the time a program would be designated as a developing program, clarify language, and remove language that does not align with current practice or is duplicative of the TEC, Chapter 33, Subchapter E.

Section 89.1504, Demonstration of Community Participation, would be amended to clarify the requirement for a developing program.

Section 89.1505, Eligibility and Grant Application, would be amended to remove language that is duplicative of the TEC, Chapter 33, Subchapter E.

Section 89.1507, Case-Managed Students, would be amended to align with revised 19 TAC §89.1501 and align with current practice.

Section 89.1509, Other Provisions, would be repealed to remove language that is duplicative of the TEC, Chapter 33, Subchapter E.

Section 89.1511, Performance Standards and Revocation of Grant Award, would be amended to align with current practice.

The proposed rule actions would have no procedural or reporting implications. The proposed rule actions would have no locally maintained paperwork requirements.

FISCAL NOTE. Monica Martinez, associate commissioner for standards and programs, has determined that for the first five-year period the proposed amendments and repeal are in effect there will be no additional costs for state or local government as a result of enforcing or administering the proposed rule actions. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Ms. Martinez has determined that for each year of the first five years the proposed amendments and repeal are in effect the public benefit anticipated as a result of enforcing the rule actions would be updating the rules to reflect current practice and clarify expectations for local programs. There is no anticipated economic cost to persons who are required to comply with the proposed amendments and repeal.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins May 6, 2016, and ends June 6, 2016. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. Comments may also be submitted electronically to rules@tea.texas.gov. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14 calendar days after notice of the proposal has been published in the *Texas Register* on May 6, 2016.

19 TAC §§89.1501, 89.1503 - 89.1505, 89.1507, 89.1511

STATUTORY AUTHORITY. The amendments are proposed under the Texas Education Code (TEC), §33.154, which authorizes the commissioner to adopt rules that implement policies regarding the setting of performance standards for the Communities In Schools (CIS) programs, the collection of information to determine accomplishment of those standards, and withholding funding from any program that consistently fails to meet the standards; and TEC, §33.156, which directs the agency to develop an equitable funding formula to fund the local CIS programs and authorizes the local CIS programs to accept other funding from federal, state, school, or other sources.

CROSS REFERENCE TO STATUTE. The amendments implement the TEC, §33.154 and §33.156.

§89.1501. Definitions.

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

(1) Case-managed student--A student who is assessed to be in need of and receives Communities In Schools (CIS) services to address academic, attendance, behavior, retention, graduation, and/or [~~or~~] social service needs related to improving student achievement according to the requirements in the grant application.

[~~(2) Communities In Schools program--The statewide exemplary youth dropout prevention program authorized under the Texas Education Code (TEC), Chapter 33, Subchapter E (Communities In Schools Program).~~]

(2) [~~(3)~~] Developing program--An entity funded through the replication process for the purposes of establishing and implementing a local CIS program within a five-year [~~four-year~~] period following the requirements in the grant application.

[~~(4) Eligible student--A student at risk of dropping out of school as defined under the TEC, §33.151(4)(A)-(C), or a student who exhibits delinquent conduct as defined by the Texas Family Code, §51.03.~~]

[~~(5) Expansion--The process of a local CIS program establishing CIS services on a new school campus or in a new school district or expanding services to serve additional students on existing campuses, resulting in an increase of students served.~~]

[~~(6) Fiscal year--A one-year period beginning on September 1 of a calendar year and continuing through August 31 of the next calendar year.~~]

(3) [~~(7)~~] Local CIS program--A Communities In Schools 501(c)(3) non-profit organization established in accordance with the program model and state guidelines authorized by state law [~~to operate for the purposes stated in paragraph (2) of this section~~] and meeting all the requirements in the grant application for establishing and maintaining a local CIS program.

[~~(8) Replication--The process of establishing a new local CIS program in an area of the state designated by the Texas Education Agency to be an area of critical need for a local CIS program.~~]

[~~(9) Special initiative--The implementation of a specialized activity to address dropout prevention within the context of the CIS model.~~]

[~~(10) Total Quality Systems (TQS)--A comprehensive set of board, general organization and business, and site standards to reinforce CIS' commitment to evidence-based practice and accountability throughout the network. A local CIS program will undergo a TQS accreditation process from the CIS national office as required in the grant application.~~]

§89.1503. Funding.

(a) Equitable funding formula. As authorized by the Texas Education Code (TEC), §33.156, the Texas Education Agency (TEA) shall establish the funding of local Communities In Schools (CIS) programs in accordance with this section. State and federal funds remaining after allocations described in subsection (c)(1) of this section shall be allocated to local CIS programs.

(b) Developing programs.

(1) A developing program may [~~shall~~] receive a funding amount each year for a minimum of five [~~no more than four~~] years, including the first-year start-up [~~start up~~] funding for planning purposes. Priority will be given to developing programs as funds are allocated.

(2) A developing program that has met all the requirements for establishing a local CIS program before the fifth [~~fourth~~] year may request to be considered as a local CIS program for funding determined under subsection (c)(2) of this section if approved by the TEA.

(c) Allocation.

(1) Annually, after federal and state funds for the CIS program have been set aside for administration, no more than 10% in total may be allocated for the following:

(A) CIS database development and maintenance;

(B) [~~competitive~~] grant opportunities, as applicable, [~~for special initiatives~~] in accordance with subsection (e) [~~(e)(2)~~] of this section; and

(C) state leadership activities benefitting local CIS programs in accordance with the TEC, §33.154 [~~§89.1509(e) of this title (relating to Other Provisions)~~].

(2) Local CIS programs shall receive a funding amount each year to be allocated based on the following criteria:

(A) an equal base amount of funds, as determined by the TEA;

(B) no less than 50% nor more than 80% of the specified funding amount based on the relative proportion of the number of case-managed students to be served by each local CIS program to the total number of case-managed students to be served by all local CIS programs;

[~~(C) no more than 25% of the specified funding amount based on performance benchmarks, as determined by the TEA; and~~]

(C) [~~(D)~~] no less than 5.0% nor more than 15% of the specified funding amount based on the weighted financial resources of the individual communities and school districts, if less than the average financial resources of all school districts participating in the program.

(i) Data elements used for calculation of the financial resources allocation. Weighted financial resources will be determined using the following data elements for the first year of the preceding biennium:

(I) taxable property values determined in accordance with Government Code, Chapter 403, Subchapter M, for school districts listed in each program's current grant application;

(II) weighted average daily attendance (WADA), as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application; and

(III) the number of eligible students at the campus level, as reported by the school districts and verified by the TEA, in school districts listed in each program's current grant application.

(ii) Method used for calculation of the weighted financial resources. Weighted financial resources of a local CIS program are calculated in the following way.

(I) The weighted average taxable property value per WADA (wealth per WADA) for all local CIS programs is determined by first multiplying the wealth per WADA for each district within the CIS program by the district's WADA, summing the results for all districts, and then dividing the resulting sum by the total WADA in the CIS program.

(II) The average wealth per WADA for all CIS programs is then calculated.

(III) A local CIS program with a below-average wealth per WADA receives weighted financial resources. The weighted financial resources for a local CIS program with a below-average wealth per WADA are calculated as follows.

(-a-) The weighted eligible students number is derived by dividing the eligible students number by the ratio of the local CIS program's wealth per WADA to the average program wealth per WADA.

(-b-) The weighted eligible students numbers for all programs with a below-average wealth per WADA are summed.

(-c-) The ratio of each individual program's weighted eligible students to the total weighted eligible students is applied to the total amount allocated for the financial resources allocation. This amount forms the program's financial resources allocation.

[~~(3) The TEA may choose, for the purpose of minimizing disruption in services as a result of changes in funding allocation, to limit the annual amount of changes in funding allocation from one biennium to the next. This may include limiting the increase or decrease from the prior-year funding to an amount no more than 25% of the change produced by the provisions of this subsection and/or by establishing minimum and maximum funding amounts.~~]

[~~(4) If there is no increase in the funds appropriated by the General Appropriations Act for the state CIS program, the TEA may choose to maintain CIS program funding allocations at the current level.~~]

[~~(5) If there is a decrease in the funds appropriated by the General Appropriations Act for the state CIS program, each local CIS program's allocation may be reduced proportionally.~~]

(3) [~~(6)~~] If a local CIS program declines to accept allocated grant funds, the TEA may [~~competitively~~] redistribute grant funding

competitively, equally, or based on a formula among participating local CIS programs.

[~~(7) The TEA may reallocate any funding not used in the first year of the biennium to the second year of the biennium.~~]

(d) CIS program replication and expansion. Should the legislature authorize an increase in the funds appropriated for the state CIS program or should funds become available because of loss of program funding or grant revocation, the TEA may designate an amount of the increase to be reserved for replication and/or expansion.

(1) Replication. The TEA may determine and retain a funding amount for replication of the CIS program in areas of the state that are not served by a participating CIS program. Replication funds may be made available through a competitive request for application process or through any other process the TEA deems necessary. First-year replication funding may be a one-time planning grant for the development of a business plan. [~~Any funds not used for replication may be used for expansion.~~]

(2) Expansion. The TEA may determine and retain a funding amount for expansion of the CIS program [~~using any one or a combination of the funding methods specified in subparagraphs (A)-(D) of this paragraph, in addition to allocation of funds in accordance with subsection (e)(2)(A), (C), and (D) of this section. Funds allocated for expansion will become part of the funding allocation~~].

[~~(A) Proportion of eligible students. An amount determined by the TEA may be distributed to each local CIS program based on the relative proportion of the number of eligible students attending school districts served by the respective program to the number of eligible students in all districts served by the CIS program. Funds provided to local programs for expansion must be used to serve the district(s) for which the program received expansion funding.~~]

[~~(B) Proportion of total case-managed students. An amount determined by the TEA may be distributed to each local CIS program based on the relative proportion of the number of case-managed students as identified in the current year's grant application for each local CIS program to the total number of case-managed students for all CIS programs.~~]

[~~(C) Program allocation. An amount determined by the TEA may be distributed to each local CIS program based on the ratio of the total amount of grant funding allocated to the local CIS program to the total amount of grant funding allocated to all local CIS programs.~~]

[~~(D) Competitive process. Funds may be distributed through a competitive request for application process.~~]

[~~(E) Decline of expansion funds. If a local CIS program declines to accept grant funds for the expansion of a program, the total amount of grant funding available for expansion will be redistributed in accordance with this paragraph among local CIS programs participating in expansion activities.~~]

(e) Special initiatives. If the TEA partners or contracts with other agencies or entities to implement special initiatives, activities, or programs that support dropout prevention efforts, local CIS programs will have the discretion of whether to participate in the special initiatives. Selection of local CIS programs for participation may be determined by the TEA and the partner, or contractor, depending on the variables of the initiative.

[~~(e) Availability of additional funding opportunities. Pursuant to the TEC, §33.154(a)(7)(C), the TEA will make available to local CIS programs and developing programs information regarding state and federal grant opportunities.~~]

[~~(1) Other funding. Should other funding sources become available for CIS, these funds may be made available for replication, expansion, and/or special initiatives and allocated through such processes as the TEA deems appropriate to include the funding methods in subsection (d) of this section.~~]

[~~(2) Special initiatives. If the TEA partners or contracts with other agencies or entities to implement special initiatives, activities, or programs that support dropout prevention efforts, local CIS programs will have the discretion of whether to participate in the special initiatives. Selection of local CIS programs for participation may be determined by the TEA and the partner, or contractor, depending on the variables of the initiative. Notwithstanding funds appropriated by the General Appropriations Act for the state CIS program, the TEA may designate no more than 10% for competitive grant opportunities for special initiatives in accordance with subsection (e)(1)(B) of this section.~~]

[~~(f) Funding plan. Each local CIS program shall develop a funding plan addressing the local, state, and federal resources available to ensure that the level of service is maintained and describing how those resources will be coordinated to continue delivery of CIS services in the region if state funding is reduced.~~]

§89.1504. Demonstration of Community Participation.

(a) Each [~~Pursuant to the Texas Education Code, §33.156, each~~] local Communities In Schools (CIS) program must provide cash or in-kind contributions to operate the CIS program in an amount equal to at least 25% of the total funding allocated to the local CIS program by the Texas Education Agency (TEA). The contribution may be met using private, local, state, or federal sources. Developing programs must comply with this provision beginning in the second year of operation.

(b) In-kind contributions may include the use of facilities, office space, and equipment and the provision of administrative services, program services, and supplies.

(c) The TEA may choose not to award funding to a local CIS program if the TEA determines that the total estimated allocation by the TEA and the local CIS program's matching contribution of 25% is insufficient to adequately serve the required number of case-managed students as determined in §89.1507 of this title (relating to Case-Managed Students).

§89.1505. Eligibility and Grant Application.

[~~(a) Applicants eligible to receive grant funds are:~~]

[~~(1) as specified in the Texas Education Code, §33.152, local Communities In Schools (CIS) programs established under the Texas Labor Code, Chapter 305, as it existed on August 31, 1999, and its predecessor statute, the Texas Unemployment Compensation Act (Article 5221b-9d, Vernon's Texas Civil Statutes); and~~]

[~~(2) developing programs as defined in §89.1501(3) of this title (relating to Definitions).~~]

(a) [~~(b)~~] A local Communities In Schools (CIS) [~~CIS~~] program or a developing program must submit a grant application each year in accordance with procedures established by the commissioner of education.

(b) [~~(c)~~] To remain eligible for grant funding, a local CIS program or a developing program must meet all deadlines and requirements set forth in §89.1511 of this title (relating to Performance Standards and Revocation of Grant Award) and in the grant application.

§89.1507. Case-Managed Students.

(a) Each local Communities In Schools (CIS) program is required to serve [~~each year~~] a specific number of case-managed students

each year[, as defined in §89.1501(1) of this title (relating to Definitions)]. The specific number of case-managed students to be served will be identified in the [each] annual grant application.

[(b) Each local CIS program may be required to serve an increased number of case-managed students if the Texas Education Agency (TEA) receives an increase in the funds appropriated in the General Appropriations Act for the CIS program and/or if the performance measure related to the number of case-managed students served is increased.]

(b) [(c)] To determine [an increase in] the number of case-managed students to be served by each local CIS program, the Texas Education Agency (TEA) [TEA] will [use the number of case-managed students as determined in the current year's grant application and] apply one of the following calculations:

(1) the relative proportion of the number of eligible students attending the campuses [school districts] served or to be served by the respective local CIS program to the number of eligible students in all campuses [districts] served or to be served by all CIS programs; [or]

(2) the relative proportion of the number of campuses served or to be served according to the most recent data by the respective local CIS program to the number of campuses served or to be served by all CIS programs; or

(3) [(2)] the relative proportion of the specified number of case-managed students for the respective local CIS program as identified in the current year's grant application to the total number of case-managed students for all CIS programs.

(c) The TEA may reduce the number of case-managed students for programs that cannot stay within the required maximum number of case-managed students per site as determined in the grant application. Grant funding will be reduced accordingly.

[(d) Each local CIS program may be allowed to serve a decreased number of case-managed students if the TEA receives a decrease in the funds appropriated in the General Appropriations Act for the CIS program. The specific number of case-managed students to be served if funding is decreased will be identified in each annual grant application.]

§89.1511. Performance Standards and Revocation of Grant Award.

(a) Performance standards for a local Communities In Schools (CIS) program regarding the number of case-managed students served.

(1) A local CIS program that fails to serve the number of case-managed students indicated in its grant application by the end of the school year of any given year will receive a reduced case-managed student target the following grant year and a proportional reduction in funding [grant funding based only on the number of case-managed students the program actually served in that given year].

(2) Following the end of a given school year [(Year 1)], a local CIS program that fails to serve the number of case-managed students identified in its grant application must submit to the Texas Education Agency (TEA) [a letter of explanation detailing the reasons the local CIS program did not serve the number of case-managed students indicated in its grant application. Additionally,] a Program Improvement Plan (PIP) detailing how the CIS program will reach the case-managed student target as [Year 1 target by the end of the second school year (Year 2) is] required. The PIP must include the following:

(A) local program contact information;

(B) the number of case-managed students listed in the grant application;

(C) the actual number of case-managed students served;

(D) an explanation detailing the reasons the local CIS program did not serve the number of case-managed students indicated in its grant application;

(E) [(D)] a list of the proposed strategies and initiatives that will be implemented to meet the case-managed student target;

(F) [(E)] [a list of the] timelines for each proposed strategy and initiative; and

(G) [(F)] a list of fiscal, logistical, and human resources to be used to meet the case-managed student target.

[(3) A local CIS program that fails to meet the Year 1 target for case-managed students in Year 2 will:]

[(A) receive payment only for the number of case-managed students the program actually served;]

[(B) have its grant application modified to reflect a decreased number of case-managed students and decreased funding for Year 3; and]

[(C) be placed on probation for Year 3.]

[(4) A local CIS program placed on probation:]

[(A) must update its PIP to show how it will modify its program to meet the Year 3 case-managed student target; and]

[(B) will not qualify for any increases in grant awards. The commissioner may waive this requirement if the local CIS program fails to meet its case-managed student target as a result of circumstances, such as a natural disaster, beyond the program's control.]

[(5) A local CIS program that fails to meet its Year 3 case-managed student target by the end of Year 3 may have its grant award non-renewed or revoked.]

[(6) A local CIS program that successfully reaches its Year 3 case-managed student target at the end of Year 3 will be removed from probation.]

(3) [(7)] A local CIS program may have its grant award non-renewed or revoked if it fails to meet its case-managed student target as identified in the grant application for three [four] years out of a four-year [five-year] period.

(b) Performance standards for a local CIS program regarding state targets in academic achievement, [attendance,] behavior, dropout rates, graduation, and promotion/retention.

(1) In accordance with the Texas Education Code (TEC), §33.154(a)(2), performance standards that consider student academic achievement, behavior, dropout rates, graduation, and promotion/retention shall be [are] established for local CIS programs within the annual grant application [in the objective areas of academic achievement, attendance, behavior, dropout rates, graduation, and promotion/retention].

(2) Each local CIS program shall report data to the TEA that indicates performance on the established standards [must meet the performance standards stated in its grant application each year].

(3) The TEA shall notify local CIS programs that did not meet performance standards in any [objective] area, within a 5.0% variance, following the end of each school year.

(4) A local CIS program that fails to meet performance standard(s) in any [objective] area within a 5.0% variance must submit to the TEA [a letter of explanation detailing the reasons the program

was unable to meet state established performance standard(s). Additionally,] a PIP detailing how the CIS program will improve in [reach] the performance standard by the end of the next grant year period [is required]. The PIP shall include the following:

(A) local program contact information;

(B) a list of the [objective area(s) and the] performance standard(s) as listed in the grant application with the program's associated performance percentages;

[(C) a list of the actual standard(s) met for each objective area(s);]

(C) [(D)] a list of the proposed strategies and initiatives that will be implemented to meet the performance standard(s) that were not met;

(D) [(E)] [a list of the] timelines for each proposed strategy and initiative; and

(E) [(F)] a list of fiscal, logistical, and human resources to be used to reach the performance standard(s).

(5) The TEA will review and provide feedback on PIPs [within 30 days of receipt].

[(6) A local CIS program that fails to meet the performance standard in the same objective area for academic achievement, attendance, or behavior for Year 2 or two consecutive years must submit an updated PIP for approval by the TEA and may not be eligible for additional CIS funding opportunities outside of the CIS grant allocation described in §89.1503 of this title (relating to Funding). A local CIS program that fails to meet the performance standard in the same objective area for dropout, graduation, and promotion/retention for Year 2 or two consecutive years will be placed on probation for Year 3.]

[(7) A local CIS program placed on probation:]

[(A) must update its PIP to show how it will modify its program to meet the Year 3 performance standards; and]

[(B) will not qualify for any increases in grant awards. The commissioner may waive this requirement if the local CIS program fails to meet its performance standards as a result of circumstances, such as a natural disaster, beyond the program's control.]

[(8) A local CIS program that fails to meet the Year 3 performance standard in the same objective area for academic achievement, attendance, or behavior by the end of Year 3 must submit an updated PIP for approval by the TEA and may not be eligible for additional CIS funding opportunities outside of the CIS grant allocation described in §89.1503 of this title. A local CIS program that fails to meet the Year 3 performance standard in the same objective area for dropout, graduation, and promotion/retention by the end of Year 3 may have its grant award non-renewed or revoked.]

[(9) A local CIS program may have its grant award non-renewed or revoked if it fails to meet the performance standard in the same objective area for dropout, graduation, and promotion/retention as identified in the grant application for four years out of a five-year period.]

(c) Performance standards for a developing program. A developing program that does not meet the requirements for establishing a local CIS program as specified in the request for application may have its grant funding non-renewed or revoked in accordance with subsection (d)(2) [(e)] of this section.

[(d) Total Quality Systems (TQS) accreditation.]

[(1) Each local CIS program must be TQS accredited by October 31, 2015, as required in the TEA grant application.]

[(2) A local CIS program that does not sustain TQS accreditation must develop and submit a TQS work plan for approval by the TEA which details the steps to correct identified TQS standards for the following two grant years. The TQS work plan shall be in a format determined by the TEA.]

[(3) A local CIS program that does not correct the identified TQS standards at the end of Year 2 must submit a revised work plan to the TEA for the following grant year.]

[(4) A local CIS program that does not correct the identified TQS standards at the end of Year 3 may have its grant award non-renewed or revoked for Year 4.]

(d) [(e)] Revocation of grant award.

(1) The commissioner may deny renewal of or future eligibility for [revoke] the grant award of a local CIS program based on any of the following:

(A) non-compliance with the grant application assurances and/or requirements; or

(B) failure to improve after being placed on a PIP for three consecutive years.

[(A) failure to serve the number of case-managed students identified in its grant application for three consecutive years;]

[(B) failure to meet the performance standard in the same objective area for dropout, graduation, and promotion/retention within a 5.0% variance as identified in the local CIS program's grant application for three consecutive years;]

[(C) consistently failing to serve the target number of case-managed students and meet the performance standard in the same objective area for dropout, graduation, and promotion/retention within a 5.0% variance as identified in its grant application for four years out of a five-year period; or]

[(D) failure to correct the identified TQS standards for three consecutive years.]

(2) The commissioner may deny renewal of or revoke the grant award of a developing program based on any of the following:

(A) non-compliance with the grant application assurances and/or requirements;

(B) lack of program success as evidenced by progress reports and program data;

(C) failure to meet performance standards specified in the application; or

(D) failure to provide accurate, timely, and complete information as required by the TEA to evaluate the effectiveness of the developing program.

(3) A decision by the commissioner to deny renewal or revoke authorization of a grant award is final and may not be appealed.

(4) Revoked funds may be used for CIS program replication and/or expansion in accordance with §89.1503(d) of this title (relating to Funding).

(5) A program whose grant has been non-renewed or revoked is eligible to apply for replication funding in accordance with §89.1503(d) of this title after one year from the fiscal year the grant was non-renewed or revoked.

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 April 25, 2016.

TRD-201601928
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 475-1497

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19 TAC §89.1509

STATUTORY AUTHORITY. The repeal is proposed under the Texas Education Code (TEC), §33.154, which authorizes the commissioner to adopt rules that implement policies regarding the setting of performance standards for the Communities In Schools (CIS) programs, the collection of information to determine accomplishment of those standards, and withholding funding from any program that consistently fails to meet the standards; and TEC, §33.156, which directs the agency to develop an equitable funding formula to fund the local CIS programs and authorizes the local CIS programs to accept other funding from federal, state, school, or other sources.

CROSS REFERENCE TO STATUTE. The repeal implements the TEC, §33.154 and §33.156.

§89.1509. Other Provisions.

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 April 25, 2016.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER B. TEXAS WOMEN'S HEALTH PROGRAM

25 TAC §§39.31 - 39.45

The Executive Commissioner of the Texas Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes the repeal of §§39.31 - 39.45, concerning the Texas Women's Health Program.

BACKGROUND AND PURPOSE

The Texas Women's Health Program operates within the department's Preventive and Primary Care Unit's (PPCU) Primary Health Care Services Program, which has statutory authority to provide to eligible clients primary health care services, including family planning services and health screenings. The Texas Women's Health Program provides clients--women ages 18 - 44 who are at or below 185% of the federal poverty level--with family planning and related services, including annual contraceptives, testing for breast and cervical cancer, testing for sexually transmitted infections (STIs), and treatment for certain STIs.

In 2014, the Sunset Advisory Commission reviewed the Texas Health and Human Services enterprise, including its women's health programs. In December 2014, the Sunset Commission issued the management decision to require HHSC to consolidate the women's health care programs in order to improve service and efficiency for clients and providers. This decision included the recommendation to consolidate the existing Texas Women's Health Program at HHSC and the Expanded Primary Health Care Program at the department into one program and division at HHSC.

In response to the Sunset Commission's recommendations, the 84th Legislature enacted Texas Government Code, §531.0201(a)(2)(C) to transfer client services functions performed by the department to HHSC. Texas Government Code, §531.0204(a)(1) and (3)(A) were also enacted to require the Executive Commissioner of HHSC to develop a transition plan which included an outline of the HHSC's reorganized structure, and to define client services functions.

Furthermore, the 2016-17 General Appropriations Act, H.B. 1, 84th Legislature, Regular Session, 2015, merged the women's health strategies (DSHS Strategy B.1.3., Family Planning Services, and Strategy B.1.4., Community Primary Care Services) into a single strategy within the HHSC Budget (HHSC Strategy D.2.3., Women's Health Services). To increase access to women's health and family planning services, Rider 76, Article II, allocated $100 million for the new women's health programs.

The transition plan developed by HHSC pursuant to Texas Government Code, §531.0204, included the transfer of women's health services performed in the HHSC Texas Women's Health Program and the department's Expanded Primary Health Care Program and Family Planning Program to HHSC as of September 1, 2015. HHSC's transition plan also details the consolidation of the Texas Women's Health Program and Expanded Primary Health Care Program.

On July 1, 2016, HHSC will consolidate the Texas Women's Health Program and the Expanded Primary Healthcare Program into a new program fully funded by state general revenue. The new program will be named the Healthy Texas Women Program. The Healthy Texas Women Program will be a successor program to the Medicaid Women's Health Program and therefore subject to Texas Human Resources Code, §32.024(c-1).

SECTION-BY-SECTION SUMMARY

New rules for the Healthy Texas Women Program will be placed under HHSC in 1 TAC Part 15, Chapter 382, Subchapter A. As a result, §§39.31 - 39.45 governing the department's Texas Women's Health Program are no longer necessary and must be repealed.

FISCAL NOTE

Lesley French, Women's Health Program, Director, has determined that for each year of the first five years that the sections

will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Lesley French has also determined that there will not be an adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. 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 sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Lesley French has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of repealing the sections will be continued access to health services for eligible, low-income women in Texas through the proposed new program at HHSC.

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

Written comments on the proposal may be submitted to Meagan Kirby, Program Specialist, Department of State Health Services P.O. Box 149347, Austin, Texas 78714-9347; by fax to (512) 776-7203; or by email to *Meagan.kirby@hhsc.state.tx.us* within 30 days of publication of this proposal in the *Texas Register.*

LEGAL CERTIFICATION

The Department of State Health Services General Counsel, Lisa Hernandez, certifies that the proposed repeal of the rules has been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

These repeals are authorized generally by Health and Safety Code, §12.001 and §1001.071, and more specifically by Health and Safety Code, §§31.002(a)(4)(C) and (H), 31.003, and 31.004, under which DSHS may establish a program providing primary health care services, including family planning services and health screenings, and to adopt rules governing the type of services to be provided, the eligibility of recipients, and administration of the program. In addition, by Government Code, §531.0055 and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The repeals affect Government Code, Chapter 531; and Health and Safety Code, Chapters 31 and 1001.

§39.31. Introduction.
§39.32. Non-entitlement and Availability.
§39.33. Definitions.
§39.34. Client Eligibility.
§39.35. Application Procedures.
§39.36. Financial Eligibility Requirements.
§39.37. Denial, Suspension, or Termination of Services; Client Appeals.
§39.38. Health-Care Providers.
§39.39. Covered Services.
§39.40. Non-covered Services.
§39.41. Reimbursement.
§39.42. Provider's Request for Review of Claim Denial.
§39.43. Confidentiality.
§39.44. Audits; Reports.
§39.45. Severability.

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 April 22, 2016.

TRD-201601917
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 776-6972

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CHAPTER 56. FAMILY PLANNING

25 TAC §§56.1 - 56.15, 56.18, 56.19

The Executive Commissioner of the Health and Human Services Commission (HHSC), on behalf of the Department of State Health Services (department), proposes the repeal of §§56.1 - 56.15, 56.18 and 56.19, concerning the Family Planning Program.

BACKGROUND AND PURPOSE

The Family Planning Program provides statewide family planning services to low-income women and men who do not have other sources of payment for services. The target population is women and men of reproductive age who are at or below 250% of the Federal Poverty Level. Family planning services include preventive health, medical, counseling, and educational services.

The repeal of the rules implements the Sunset Commission's recommendation that the administration of the Family Planning Program be transferred to HHSC from the department. New Family Planning Program rules are proposed under Title 1 of the TAC, Part 15, Chapter 382, Subchapter B, concerning the Family Planning Program. In response to the Sunset Commission's recommendation, the 84th Texas Legislature enacted Texas Government Code, §531.0201(a)(2)(C), to transfer client services functions performed by the department to HHSC. Texas Government Code, §531.0204(a)(1) and (3)(A) were also enacted to require the Executive Commissioner of the HHSC to develop a transition plan which included an outline of the commission's reorganized structure, and a definition of client services functions.

The transition plan developed by HHSC pursuant to Texas Government Code, §531.0204, included the transfer of women's health services performed by the department's Family Planning Program to HHSC as of September 1, 2015. HHSC's transition plan also details the expansion of the Family Planning Program to serve more women with a larger array of services. HHSC's updated Family Planning Program will begin operating on July 1, 2016.

SECTION-BY-SECTION SUMMARY

The repeal of §§56.1 - 56.15, 56.18 and 56.19 will remove the Family Planning Program rules from the department rules in its entirety. Proposed new Family Planning Program rules will be placed under HHSC in 1 TAC Part 15, Chapter 382, Subchapter B, concerning the Family Planning Program.

FISCAL NOTE

Lesley French, Women's Health Program, Director, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Lesley French has also determined that there will be no adverse impact on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the sections. 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 sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Lesley French has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of enforcing or administering the sections will be continued access to family planning services for eligible, low-income men and women in Texas.

REGULATORY ANALYSIS

The department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule 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 Claudia Himes-Crayton, Health and Human Services Commission, P.O. Box 149347, Mail Code 0224, Austin, Texas 78714-9347 or by email to famplan@hhsc.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 repeals have been reviewed by legal counsel and found to be within the state agencies' authority to adopt.

STATUTORY AUTHORITY

The repeals are authorized by Texas Government Code, §531.0055, 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 repeals affect Texas Government Code, Chapter 531; and Texas Health and Safety Code, Chapter 1001.

§56.1. Introduction.
§56.2. Definitions.
§56.3. Purposes.
§56.4. Maximum Rates and Specific Codes.
§56.5. Contraceptive Methods.
§56.6. Prohibition of Abortion.
§56.7. Requirements for Reimbursement of Family Planning Services.
§56.8. Records Retention.
§56.9. Abuse Reporting.
§56.10. Freedom of Choice.
§56.11. Confidentiality.
§56.12. Eligibility for Family Planning Services.
§56.13. Consent.
§56.14. Family Planning for Adolescents.
§56.15. Civil Rights.
§56.18. Family Planning Genetics Services Provided.
§56.19. Limitations of Family Planning Genetics 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 April 22, 2016.

TRD-201601916
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 776-6972

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CHAPTER 419. MENTAL HEALTH SERVICES--MEDICAID STATE OPERATING AGENCY RESPONSIBILITIES

SUBCHAPTER A. YOUTH EMPOWERMENT SERVICES (YES)

25 TAC §419.7

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes new §419.7, concerning the Youth Empowerment Services (YES) Waiver program.

BACKGROUND AND PURPOSE

The department administers the YES Waiver program, which provides comprehensive home and community-based services for children, ages 3 through 18, up to a child's 19th birthday, at risk of institutionalization or out-of-home placement due to their serious emotional disturbance (SED). The current rules in §§419.1 - 419.6 and 419.8 implemented the YES Waiver as a pilot program under the waiver provisions of the federal Social Security Act, §1915(c) in 2009.

New §419.7 will establish a rule for the maintenance of a YES Waiver inquiry list and for the priority population for placement on the YES Waiver inquiry list. The new rule will ensure that interested individuals have timely and fair access to the YES Waiver program and to reduce the number of children with SED relinquished to the conservatorship of the state. The approved YES waiver already requires local mental health authorities (LHMAs) to maintain an updated inquiry list of waiver participants living in the local service area who are seeking services. This new rule will provide guidance on the responsibilities of LHMAs in maintaining their YES Waiver inquiry list. Vacancies are offered to waiver participants on a first come, first served basis according to the chronological date of the waiver participant's registration on the waiver inquiry list.

In 2013, the 83rd Legislature directed the YES Waiver to expand statewide. The Centers for Medicare and Medicaid Services (CMS) has approved an amendment to expand the YES Waiver statewide as a Medicaid program retroactive to September 1, 2015.

In addition, the YES Waiver program is seeking an amendment to the waiver, effective in the Summer of 2016, which will bring foster care children into the program and will provide for reserved capacity waiver vacancies, pending approval by CMS. Two essential elements of the department's operating responsibilities are: 1) managing waiver enrollment through the review of YES Waiver inquiry lists; and 2) monitoring waiver expenditures through the allocation, or reallocation, of waiver vacancy slots across the state.

New §419.7 will also reserve a small percentage of the total number of YES Waiver vacancies for reserve capacity and will define the population of children who will be considered for a reserve capacity vacancy. Children who are at imminent risk of relinquishment will have priority placement on a YES Waiver inquiry list over children who are already in the custody of the state.

SECTION-BY-SECTION SUMMARY

New 419.7 establishes a rule for the maintenance of the YES Waiver inquiry list. The new rule describes how request is submitted to add the child or adolescent's name on the inquiry list. The new rule describes how an inquiry list request date is determined. The proposed new rule describes the circumstances under which the child's or adolescent's name is removed from an inquiry list. The proposed new rule describes the priority population of children who will be considered for a reserve capacity vacancy.

FISCAL NOTE

Lauren Lacefield Lewis, Associate Commissioner, Division for Mental Health and Substance Abuse Services, 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.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Lewis has 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. Lewis 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 to ensure fair access to the YES Waiver program by interested individuals and to reduce the number of children with SED placed in conservatorship of the state.

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 Annette Brown, Department of State Health Services, Mail Code, 2012, 8317 Cross Park Dr., Suite 350, Austin, Texas 78754 or by email to Annette.Brown@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 new section is authorized by Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001.

The new section affects Government Code, Chapter 531; and Health and Safety Code, Chapter 1001.

§419.7. Inquiry List.

(a) Inquiry List. A list, maintained by each LMHA, of children and adolescents as defined by §419.2 of this title (relating to Definitions) who are interested in receiving YES Waiver program services and who reside in the LMHA's service area.

(1) Only a child or adolescent or the child's or adolescent's LAR may place a child's or adolescent's name on the inquiry list.

(2) The LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received.

(b) Maintenance of Inquiry List. The LMHA must maintain an up-to-date inquiry list.

(1) The LMHA must remove a child's or adolescent's name from the inquiry list if it is documented that:

(A) the child or adolescent or LAR has requested in writing that the child or adolescent's name be removed from the inquiry list;

(B) the child or adolescent or LAR has declined in writing YES Waiver program services;

(C) the child or adolescent or LAR has not responded to the LMHA's notification of a waiver vacancy within 30 calendar days of the LMHA's notification of the vacancy;

(D) the child or adolescent has moved out of Texas; or

(E) the child or adolescent is deceased.

(2) If a child's or adolescent's name is removed from an inquiry list in accordance with paragraph (1) of this subsection, and if the child or adolescent, LAR, or LMHA requests that the child's or adolescent's name be reinstated on the inquiry list, the child or adolescent, LAR, or LMHA may request that the department review the circumstances under which the child's or adolescent's name was removed from the LMHA's inquiry list. At its discretion the department may:

(A) reinstate the child's or adolescent's name on the inquiry list according to the original date the child or adolescent or LAR requested the child's or adolescent's name be added in accordance with subsection (a) of this section; or

(B) add the child's or adolescent's name to the inquiry list according to the date the child or adolescent or LAR requested that the department review the circumstances under which the child or adolescent's name was removed.

(c) Denial of enrollment. The department shall remove a child's or adolescent's name from an LMHA's inquiry list if the department has denied the child's or adolescent's enrollment in the YES Waiver program and the child or adolescent or LAR has had an opportunity to exercise the child or adolescent's right to appeal the decision in accordance with §419.8 of this title (relating to Right to Fair Hearing) and did not appeal the decision, or appealed the decision and did not prevail.

(d) Reserve capacity. There are a percentage of vacancies in the YES Waiver program that are reserved for children or adolescents who are at imminent risk of being relinquished to state custody.

(1) If a child or adolescent whose name has been added to the LMHA's inquiry list must wait to be enrolled, then the LMHA must screen the child or adolescent for imminent risk of relinquishment.

(2) If the LMHA determines that the child or adolescent may be at imminent risk of relinquishment, the LMHA must complete the YES Waiver Reserve Capacity Screening Form and submit to the department for review.

(3) If the department determines that the child or adolescent is at imminent risk of relinquishment, the department must authorize the LMHA to complete the enrollment process within three business days.

(4) If a child or adolescent is denied reserve capacity, then the LMHA must assign the child or adolescent a registration date on the inquiry list that is based on the chronological date and time the phone call or voice message requesting YES Waiver program services was received in accordance with subsection (a)(2) 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-201601918
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION

SUBCHAPTER U. ENHANCED CONTRACTS AND PERFORMANCE MONITORING

28 TAC §1.2201

The Texas Department of Insurance proposes new 28 TAC Chapter 1, Subchapter U, consisting of new §1.2201. The proposed new rule implements procedures for contracts for the purchase of goods or services from private vendors.

EXPLANATION. TDI proposes the new rule in response to SB 20, 84th Legislature, Regular Session (2015). SB 20 requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance monitoring and prescribes certain reporting requirements. The proposed rule includes four criteria to determine whether enhanced contract or performance monitoring is appropriate and establishes the new procedure. The procedure specifies that the procurement director will report all contracts requiring enhanced contract or performance monitoring to the appropriate commissioner. The appropriate commissioner is the commissioner of insurance for contracts related to TDI, the commissioner of workers' compensation for contracts related to the Division of Workers' Compensation, or both commissioners for contracts related to both DWC and TDI.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Mike Powers, Director, Procurement and General Services, Administrative Operations Division, has determined that for each year of the first five years the proposed section is 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. Mr. Powers does not anticipate any measurable effect on local employment or the local economy as a result of this proposal.

PUBLIC BENEFIT AND COST NOTE. TDI has determined that the public benefits as a result of enforcing the rule will be to enhance reporting requirements for certain kinds of purchasing contracts, and increased government transparency and accountability. The proposed new §1.2201 does not create or impose any new costs on parties outside TDI.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. TDI has determined that there will be no effect on small or micro businesses required to comply with this proposed rule. Any costs to entities or to individuals who are required to comply with the proposed rule are imposed by SB 20, not by the rule. Therefore, no economic impact statement or regulatory flexibility analysis is required under Government Code §2006.002.

TAKINGS IMPACT ASSESSMENT. TDI has determined that no private real property interests are affected by this proposal and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action. As a result, this proposal does not constitute a taking or require a takings impact assessment under Government Code §2007.043.

REQUEST FOR PUBLIC COMMENT. If you wish to comment on this proposal you must do so in writing no later than 5 p.m., Central time, on June 6, 2016. Please send one copy of your comments to 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; or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comment to Mike Powers, Director, Procurement and General Services, Administrative Operations Division, Mail Code 112-FM, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to mike.powers@tdi.texas.gov. If you wish to request a public hearing on this proposal, you must submit your request separate from your comments to the Texas Department of Insurance, Office of Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov 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 rule is proposed under Government Code §2261.253, Insurance Code §36.001, and Labor Code §402.00113. Government Code §2261.253(c) states that each state agency shall by rule establish a procedure to identify each contract that requires enhanced contract or performance monitoring and submit information on the contract to the officer who governs the agency. 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. Labor Code §402.00113 provides that DWC is administratively attached to TDI.

CROSS REFERENCE TO STATUTE. Government Code §2261.253 is implemented by this rule.

§1.2201. Enhanced Contracts and Performance Monitoring.

Under Government Code §2261.253, the Texas Department of Insurance implements the following procedures for contracts for the purchase of goods or services from private vendors until the contract expires or is completed.

(1) For each contract with a value greater than $25,000, the procurement director will evaluate whether enhanced contract or performance monitoring is appropriate. The procurement director may evaluate whether enhanced contract or performance monitoring is appropriate for contracts with a value less than $25,000. Criteria that may be considered include:

(A) total cost of the contract, including contract renewals;

(B) risk of loss to the department under the contract;

(C) department resources available for enhanced contract or performance monitoring; and

(D) whether the vendor is a foreign or domestic person or entity.

(2) After evaluation of the contract, if enhanced contract or performance monitoring is appropriate, the procurement director or designee will immediately report to the commissioner of insurance, the commissioner of workers' compensation, or both commissioners, as appropriate based on the subject matter of the contract:

(A) the basis for determination as to whether enhanced contract or performance monitoring is appropriate;

(B) include any serious issues or risks identified with the contract, if applicable; and

(C) if enhanced contract or performance monitoring is appropriate, the department's plan for carrying out the enhanced contract or performance monitoring.

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 April 25, 2016.

TRD-201601955
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 676-6584

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE
SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION
DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4605

The Texas Department of Insurance proposes amendments to 28 TAC §5.4605, concerning Items Not Requiring an Inspection for the Purposes of Windstorm and Hail Insurance Coverage through the Texas Windstorm Insurance Association (association). The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, repaired, or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted several windstorm building codes for the association's plan of operation.

As part of its inspections program, TDI has developed a list of certain items not requiring an inspection for compliance with the association's plan of operation. Section 5.4605 lists the items that currently do not require an inspection for the purposes of windstorm and hail insurance coverage through the association, provided that any repairs, replacements, or procedures are made with like kind and quality materials, fasteners, and craftsmanship as compared to the structure before the repairs, replacements, or procedures are made; and as compared to the parts of the building, listed items may be installed or replaced without requiring an inspection. The amendments would add certain items to the list and modify other items currently listed.

The proposed amendments add three new items to the rule list: 1) leveling of an existing pier and beam foundation or piling foundation, if no repairs are made; 2) repairs or replacement of preformed flanges with a collar or sleeve used for mechanical, plumbing, or electrical roof penetrations; and 3) repairs or replacement of storm doors or screen doors (a supplemental door installed on the outside of an exterior door). The proposed amendments also modify four existing items on the list: 1) repairs to roof coverings with a cumulative area of less than 100 square feet (one square), not involving roof decking or framing members; 2) repairs to porch and balcony handrails and guardrails; 3) replacement of glass in windows or glass doors or replacement of exterior side-hinged doors not involving the frames provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure; and 4) repairs or replacement of exterior wall coverings provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure. The purpose of the uniform list of items not requiring inspection is to allow for cost-effective repairs or replacement to various items on a structure.

FISCAL NOTE. Sam Nelson, director, Inspections Office of the Regulatory Policy Division, has determined that for each year of the first five years the proposed amended sections will be in effect, there will be minimal fiscal impact to state and local governments as a result of enforcement or administration of this proposal. Mr. Nelson does not anticipate any measurable effect on local employment or the local economy as a result of enforcement or administration of this proposal. Some local governments are association policyholders. A local government would experience a positive economic effect if items designated by the rule are covered by the association's windstorm and hail insurance policies without the requirement that the items be inspected.

PUBLIC BENEFIT AND COST NOTE. For each year of the first five years the proposed amended sections are in effect, Mr. Nelson expects that administering or enforcing this rule will have the public benefit of increasing coverage of items designated by the rule under the association's windstorm and hail insurance policies without the added burden of the inspection requirement.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Mr. Nelson has determined that the proposed amended rule will have a negligible impact on small and micro businesses in the state. As a result, and in compliance with Government Code §2006.002(c), TDI is not required to prepare a regulatory flexibility analysis.

TAKINGS IMPACT ASSESSMENT. TDI has determined that this proposal does not affect any private real property interests and 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. If you wish to comment on the proposal, you must submit written comments no later than 5 p.m., Central time, on June 6, 2016. TDI requires two copies of your comments. Send one copy to the Office of Chief Clerk by email to chiefclerk@tdi.texas.gov, or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy by email to *sam.nelson@tdi.texas.gov,* or by mail to Sam Nelson, Director, Inspections Office, Mail Code 103-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must submit any request for a public hearing separately to the Office of Chief Clerk, before the close of the public comment period. If TDI holds a hearing, it will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amendments under Insurance Code §§2210.251, 2210.008 and 36.001. Section 2210.251 states property inspection requirements for association windstorm and hail insurance. Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A. Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the

powers and duties of TDI under the Insurance Code and other laws of the state.

CROSS REFERENCE TO STATUTE. The proposed amendments affect Insurance Code §2210.251.

§5.4605. Items Not Requiring an Inspection for the Purposes of Windstorm and Hail Insurance Coverage through the Texas Windstorm Insurance Association.

The items listed in this section do not require an inspection for compliance with the windstorm and hail insurance coverage through the Texas Windstorm Insurance Association provided that any repairs, replacements, or procedures are made with like kind and quality materials, fasteners, and craftsmanship as compared to the structure before the repairs, replacements, or procedures are made, and as compared to the parts of the building which are not repaired. In addition, if no structural change is made, the initial installation or replacement of the listed items may be made without requiring an inspection. The items are as follows:

(1) repairs to roof coverings with a cumulative area of [~~roofs~~] less than 100 square feet (one square), not involving roof decking or framing members,

(2) repairs or replacement of gutters,

(3) replacement of decorative shutters,

(4) repairs to breakaway walls,

(5) fascia repairs,

(6) repairs to porch and balcony handrails and guardrails [~~railings~~],

(7) repairs to stairways or steps, [~~stairways/steps~~] and wheelchair ramps,

(8) protective measures before a storm,

(9) temporary repairs after a storm;

(10) leveling and repairs to an existing slab on grade foundation, unless wall and/or foundation anchorage is altered or repaired,

(11) leveling of an existing pier and beam foundation or piling foundation, if no repairs are made,

(12) [~~(11)~~] fence repair,

(13) [~~(12)~~] painting, carpeting, and refinishing,

(14) [~~(13)~~] plumbing and electrical repairs,

(15) repairs or replacement of preformed flanges with a collar or sleeve used for mechanical, plumbing, or electrical roof penetrations,

(16) [~~(14)~~] repairs to slabs poured on the ground for patios (including slabs under homes on pilings),

(17) [~~(15)~~] repairs or replacement of soffits less than 24 inches in width,

(18) [~~(16)~~] repairs or replacement of nonstructural [~~non-structural~~] interior fixtures, cabinets, partitions (nonloadbearing) [~~(non-loadbearing)~~], surfaces, trims or equipment,

(19) [~~(17)~~] replacement of glass in windows or glass doors or replacement of exterior side-hinged doors not involving the frames provided that the area is less than 10 percent [%] of the surface area of the affected side (elevation) of the structure, [~~and~~]

(20) [~~(18)~~] repairs or replacement of exterior wall coverings [~~siding~~] provided that the area is less than 10 percent [%] of the surface area of the affected side (elevation) of the structure, and [~~.~~]

(21) repairs or replacement of storm doors or screen doors (a supplemental door installed on the outside of an exterior door).

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 April 22, 2016.

TRD-201601915
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 676-6584

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.582

The Comptroller of Public Accounts proposes amendments to §3.582, concerning Margin: Passive Entities. This amendment memorializes a policy change effective for reports originally due on or after January 1, 2011; clarifies policy regarding entities with no federal gross income; implements House Bill 2891, 84th Legislature, 2015 (HB 2891); and edits the section to improve readability.

The effective date in subsection (a) is amended to recognize that some provisions have effective dates other than January 1, 2008.

Subsection (c) and paragraph (1) are amended to improve readability.

Subsection (c)(3) is added to clarify that an entity with no federal gross income does not qualify as a passive entity.

Subsection (g) is amended to improve readability and clarity.

Headings are added to subsection (g)(1) and (2) to improve readability and for purposes of consistency. Also, "No Tax Due" is added to clarify what type of report may need to be filed.

Paragraph (1) is amended to memorialize a change in policy effective for franchise tax reports originally due on or after January 1, 2011, requiring passive entities that are registered or are required to be registered with either the Texas Secretary of State or the comptroller's office to file a No Tax Due Report to affirm that the entity qualifies as passive for the period upon which the tax is based. See STAR Accession No. 201204390L (April 2012). The former policy, which did not require an entity that filed as passive on a prior report to file a subsequent franchise tax report as long as the entity continued to qualify as passive, is deleted from the subsection.

New paragraph (3) is added to give guidance regarding a passive entity's filing responsibility for Information Reports and to implement HB 2891. Entities that qualify as passive are not required to file a Public Information or an Ownership Information Report; however, a limited partnership that qualifies as passive may be required to file with the secretary of state.

Former paragraph (3), on reporting requirements for entities that no longer qualify as passive, is removed from subsection (g) on "reporting requirement for passive entities," and is now subsection (h). A heading is added to improve readability and the content is amended to reflect the change in filing requirements as discussed in the amendment to paragraph (1). An unregistered entity that no longer qualifies as passive must register with the comptroller's office and begin filing annual franchise tax reports.

Subsection (h)(1) is added to direct a taxpayer to §3.584 of this title (relating to Margin: Reports and Payments) for information on reporting for periods the entity does not qualify as passive. Paragraph (2) is added to direct a taxpayer to subsection (g)(1) for information on reporting for subsequent periods the entity qualifies as passive.

Former subsection (g)(4), on responding to notifications, is moved and is now subsection (i). A heading has also been added to improve readability.

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 clarifying franchise tax filing requirements. This section is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, §111.002 (Comptroller's Rules; Compliance; Forfeiture) which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The section implements Tax Code, §171.0003 (Definition of Passive Entity).

§3.582. Margin: Passive Entities.

(a) Effective Date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, unless otherwise provided.

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

(1) Active trade or business--For the purposes of this section only:

(A) an entity conducts an active trade or business if the activities include active operations that form a part of the process of earning income or profit, and the entity performs active management and operational functions;

(B) activities performed by the entity include activities performed by persons outside the entity, including independent contractors, to the extent that the persons perform services on behalf of the entity and those services constitute all or part of the entity's trade or business; or

(C) an entity conducts an active trade or business if assets, including royalties, patents, trademarks, and other intangible assets, held by the entity are used in the active trade or business of one or more related entities.

(2) Business trust--An entity as defined by Internal Revenue Code, Treasury Regulation, §301.7701-4(b).

(3) Federal gross income--Income that is reported on the entity's federal income tax return, to the extent the amount reported complies with federal income tax law.

(4) General partnership--A partnership as described in Revised Partnership Act, Article 6132b-1.01 et. seq., or Business Organizations Code, Title 4, Chapter 152, or an equivalent statute in another jurisdiction.

(5) Limited liability partnership--A partnership registered pursuant to Revised Partnership Act, Article 6132b-3.08, or Business Organizations Code, Title 4, Chapters 152 and 153, Subchapter H, or an equivalent statute in another jurisdiction.

(6) Limited partnership--A partnership formed pursuant to Revised Partnership Act, Article 6132a-1, or Business Organizations Code, Title 4, Chapter 153, or an equivalent statute in another jurisdiction.

(7) Net capital gains--Net capital gains as defined under the Internal Revenue Code.

(8) Net gains--Net gains as defined under the Internal Revenue Code.

(9) Non-controlling interest--For the purposes of this section only, an interest that is less than or equal to 50% that is held by an investor, either directly or indirectly, in an investee.

(10) Security--

(A) an instrument defined by Internal Revenue Code, §475(c)(2), where the holder of the instrument has a non-controlling interest in the issuer/investee;

(B) an instrument described by Internal Revenue Code, §475(e)(2)(B), (C), (D);

(C) an interest in a partnership where the investor has a non-controlling interest in the investee;

(D) an interest in a limited liability company where the investor has a non-controlling interest in the investee; or

(E) a beneficial interest in a trust where the investor has a non-controlling interest in the investee.

(c) Qualification as a passive entity. To qualify as a passive entity:

(1) [~~to qualify as a passive entity,~~] the entity must be one of the following for the entire period on which the tax is based:

(A) general partnership;

(B) limited partnership;

(C) limited liability partnership; or

(D) trust, other than a business trust; and

(2) at least 90% of an entity's federal gross income for the period on which margin is based must consist of the following sources of income:

(A) dividends, interest, foreign currency exchange gain, periodic and nonperiodic payments with respect to notional principal contracts, option premiums, cash settlements or termination payments with respect to a financial instrument, and income from a limited liability company;

(B) distributive shares of partnership income to the extent that those distributive shares of income are greater than zero;

(C) net capital gains from the sale of real property, net gains from the sale of commodities traded on a commodities exchange, and net gains from the sale of securities; and

(D) royalties from mineral properties, bonuses from mineral properties, delay rental income from mineral properties and income from other nonoperating mineral interests including nonoperating working interests not described in subsection (d)(2) of this section.

(3) An entity with no federal gross income does not qualify as a passive entity under paragraph (2) of this subsection.

(d) The income described by subsection (c)(2) of this section, does not include:

(1) rent; or

(2) income received by a nonoperator from mineral properties under a joint operating agreement if the nonoperator is a member of an affiliated group and another member of that group is the operator under the same joint operating agreement.

(e) Conducting an active trade or business. To be considered a passive entity, an entity may not receive more than 10% of its federal gross income for the period on which margin is based from conducting an active trade or business. Income described by subsection (c)(2) of this section, may not be treated as income from conducting an active trade or business.

(f) Activities that do not constitute an active trade or business:

(1) ownership of a royalty interest or a nonoperating working interest in mineral rights;

(2) payment of compensation to employees or independent contractors for financial or legal services reasonably necessary for the operation of the entity; and

(3) holding a seat on the board of directors of an entity does not, by itself, constitute conduct of an active trade or business.

(g) Reporting requirement for [~~a~~] passive entities [~~entity~~]. If an entity meets all of the qualifications in subsection (c) of this section [~~of a passive entity~~] for the [~~reporting~~] period upon which the franchise tax is based, the entity owes [~~will owe~~] no tax; however, the entity may be required to file a No Tax Due Report [~~an information report~~] subject to the following paragraphs:

(1) Passive entities registered or required to be registered. A partnership or trust that qualifies as a passive entity for the period upon which the franchise tax is based, and is registered or required to be registered with the comptroller's office or with the secretary of state's office, is required to [~~must~~] file a No Tax Due Report with the comptroller's office. [~~an information report as a passive entity for the first report that it qualifies as passive. An entity that has filed as passive on a previous report will not be required to file subsequent franchise tax reports, as long as the entity continues to qualify as passive.~~]

(2) Passive entities not registered or otherwise required to be registered. A partnership or trust that qualifies as a passive entity for the period upon which the franchise tax report is based, and is not registered or otherwise required to be registered with the comptroller's office or with the secretary of state's office, is [~~will~~] not [~~be~~] required to [~~register with or~~] file a No Tax Due Report [~~franchise tax report~~] with the comptroller's office.

(3) Information Report. An entity that qualifies as a passive entity is not required to file a Public Information Report or an Ownership Information Report with the comptroller's office; however, a limited partnership that qualifies as a passive entity may be required to file a periodic report with the secretary of state's office. For more information, see Business Organization Code, Title 4, Chapter 153, Subchapter G.

(h) [~~(3)~~] Unregistered entities that no longer qualify as passive. A [~~Any~~] passive entity that is[~~, whether or~~] not [~~it is~~] registered with the comptroller's office or with the secretary of state's office and[~~,~~] that no longer qualifies as passive, must register with the comptroller's office and begin filing annual [~~file a~~] franchise tax reports. [~~report for the period in which the entity does not qualify as passive, and any subsequent periods, until the entity once again files with the comptroller's office as a passive entity.~~]

(1) For the periods that the entity does not qualify as passive, see §3.584 of this title (relating to Margin: Reports and Payments).

(2) For periods that the entity subsequently qualifies as passive, see subsection (g)(1) of this section.

(i) [~~(4)~~] Response to notification required. If a passive entity receives notification in writing from the comptroller asking if the entity is taxable, the entity must reply to the comptroller within 30 days of the notice.

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 April 20, 2016.

TRD-201601876
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 475-0387

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CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER B. PAYMENT PROCESSING--ELECTRONIC FUNDS TRANSFERS

34 TAC §5.12

The Comptroller of Public Accounts proposes an amendment to §5.12 regarding processing payments through electronic funds transfers.

The proposed amendment to subsection (g)(1) updates the email address to which any questions, comments, or complaints

may be sent concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and concerning §5.12.

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 providing the current comptroller email address for any questions, comments, or complaints regarding payments through electronic funds transfers. The proposed amendment 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.*

This amendment is proposed under Government Code, §403.016, which requires the comptroller to adopt rules regarding an electronic funds transfer system.

This amendment implements Government Code, §403.016.

§5.12. Processing Payments Through Electronic Funds Transfers.

(a) Applicability. These rules govern EFT payments by the comptroller on behalf of custodial and paying state agencies as part of the electronic funds transfer system authorized by Government Code, §403.016.

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

(1) Automated clearing house (ACH)--A central distribution and settlement point for the electronic clearing of debits and credits between financial institutions subject to regulation under rules of an automated clearing house association and applicable regulatory law.

(2) ACH rules--The operating rules and guidelines governing the ACH network published by NACHA, the Electronic Payments Association and applicable federal regulatory law.

(3) Comptroller--The Comptroller of Public Accounts for the State of Texas.

(4) Comptroller approved EFTS form--An EFTS form approved by the comptroller for use by a custodial or paying state agency in the EFTS.

(5) Credit entry--A type of EFT entry that the comptroller initiates on behalf of a paying state agency to credit a state payee's EFTS account at a domestic financial institution.

(6) Custodial state agency--A state agency that establishes and maintains the state payee's account information. The custodial state agency may or may not be the paying state agency.

(7) Direct deposit--A form of EFT payment using ACH for the electronic transfer of funds directly into a state payee EFTS account at a domestic financial institution.

(8) Electronic funds transfer (EFT)--A transfer of funds which is initiated by the comptroller as originator to the originating depository financial institution to order, instruct, or authorize a receiving depository financial institution to perform a credit entry, reversal, or reclamation in accordance with this subchapter. For purposes of these rules, an EFT does not include a transaction originated by wire transfer, check, draft, warrant, or other paper instrument.

(9) EFTS authorization--A state payee's agreement to allow the comptroller to originate state-issued payments by EFT on behalf of a paying state agency to a state payee EFTS account. A state payee may provide EFTS authorization and notice under Government Code, §403.016 by:

(A) submitting an EFTS authorization with a state payee's agreement on a comptroller approved form, or

(B) providing an agreement to a custodial state agency or a paying state agency in a manner deemed appropriate by that agency and the comptroller, and as required by law and NACHA rules.

(10) EFTS form--An electronic or paper form submitted by a state payee as part of the EFTS. An EFTS form used by a custodial state agency or paying state agency is subject to comptroller approval.

(11) Electronic funds transfer system (EFTS)--A system authorized by Government Code, §403.016, that is administered by the comptroller in accordance with these rules to make EFT payments to state payees on behalf of a paying state agency.

(12) Financial institution--A state or national bank, a state or federal savings and loan association, a mutual savings bank, or a state or federal credit union that complies with NACHA rules and may be an originating depository financial institution or a receiving depository financial institution.

(13) International ACH transaction (IAT)--An ACH entry involving a financial agency (as defined by NACHA rules) that is not located in the territorial jurisdiction of the United States. An international ACH transaction may be referred to as an IAT entry or IAT.

(14) NACHA--The National Automated Clearing House Association is the electronic payments association that establishes standards, rules and procedures that enable domestic financial institutions to exchange payments electronically.

(15) Notification of change (NOC)--Information sent by a financial institution through the ACH network to notify the comptroller that previously valid information for a state payee has become outdated or that information contained in a prenotification is erroneous.

(16) Originating depository financial institution--A financial institution that originates ACH entries on behalf of the comptroller and transmits ACH entries through the ACH network in accordance with NACHA rules.

(17) Originator--The comptroller acts as the originator and authorizes an originating depository financial institution to transmit, on behalf of the state, a credit entry, reclamation, reversal, or prenotification entry to a state payee EFTS account at a domestic financial institution.

(18) Paycard--A payment card issued to a state employee that provides access to payroll funds deposited to a designated account at a domestic financial institution as part of the EFTS through the comptroller's paycard contract.

(19) Paying state agency--A state agency for which the comptroller initiates payment. The term includes the comptroller of public accounts. A paying state agency may or may not be the custodial state agency.

(20) Prenotification--A non-dollar entry sent by the comptroller through the ACH network to alert a receiving depository financial institution that a live dollar credit entry will be forthcoming and to request verification of the state payee's EFTS account information.

(21) Receiving depository financial institution--A financial institution that receives ACH entries to a state payee EFTS account.

(22) Reclamation--A request made by the comptroller in compliance with NACHA rules, to an originating depository financial institution to reclaim from a receiving depository financial institution any amounts received by a state payee after the state payee's death or legal incapacity, or the death of a beneficiary of a state payee.

(23) Regulation E--The regulations adopted by the Board of Governors of the Federal Reserve System at 12 C.F.R. Part 205, as they may be amended, to implement the Electronic Fund Transfer Act (15 U.S.C. §1693 *et seq.).*

(24) Reversal--An EFT entry initiated by the comptroller at the request of a paying state agency to correct an erroneous credit entry previously transmitted to a state payee EFTS account. The comptroller may initiate a reversal of an EFT payment of state employee payroll in certain limited circumstances, including a state employee's termination, retirement, or death.

(25) State agency--

(A) a department, commission, board, office, or other agency in the executive or legislative branch of state government that is created by the constitution or a statute of this state, including the comptroller of public accounts;

(B) the supreme court of Texas, the court of criminal appeals, a court of appeals, or a state judicial agency; or

(C) a university system and an institution of higher education as defined by Education Code, §61.003 other than a public junior college.

(26) State payee--A person to whom a state payment is issued, including an individual, state employee, annuitant, business, vendor, governmental entity, or other legal recipient paid by the State of Texas.

(27) State payee EFTS account--An account at a domestic financial institution designated by a state payee for EFTS payments.

(28) Warrant--A state payment in the form of a paper instrument which is subject to applicable state law, is drawn on the State of Texas treasury funds, and is payable to a state payee on behalf of a paying state agency by the comptroller or by a state agency with delegated authority to issue warrants under Government Code, §403.060. A warrant is not an approved means of electronic funds transfer as set out in subsection (c) of this section.

(29) Wire transfer--An unconditional order to a financial institution to pay a fixed or determinable amount of money to a state payee upon receipt or on a day stated in the order that is transmitted by electronic or other means. Wire transfer is not an approved means of electronic fund transfer, as set out in subsection (c) of this section.

(c) Approved types of EFTS payments.

(1) The comptroller will approve the types of EFTS payments the state may use by rule and amend the approval based upon the comptroller's procedures and current technology.

(2) EFTS payment types approved by the comptroller to a state payee EFTS account include:

(A) direct deposit, except an IAT; and

(B) paycard.

(3) Any other type of payment which is not an approved type of EFTS payment under paragraph (2) of this subsection is not considered to be an approved type of EFTS payment under these rules. Warrants, wire transfers, and IAT are not approved types of EFTS payments.

(d) Compliance with applicable NACHA rules and regulation. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable law and NACHA regulations in EFTS transactions.

(e) Confidentiality. Each participant in the EFTS, including the comptroller, the paying state agency, the custodial state agency, and the state payee, shall comply with applicable confidentiality requirements under the law, including maintaining the confidentiality of financial institution account numbers and state payee social security numbers.

(f) Audit. The comptroller is subject to audit by NACHA for compliance with the NACHA rules concerning EFT transactions under this chapter. The comptroller may audit a paying or custodial state agency for compliance with applicable regulatory or NACHA rules concerning EFT transactions under this chapter. A paying or custodial state agency shall comply with an audit under this chapter.

(g) Notification.

(1) Any questions, comments, or complaints concerning the comptroller's electronic funds transfer system as it relates to Government Code, §403.016 and these rules may be sent to the comptroller by mail to: Texas Comptroller of Public Accounts, Fiscal Management, 111 E. 17th Street, Room 911, Austin, Texas, 78711, or by email to tins.mail@cpa.texas.gov[~~tins.mail@cpa.state.tx.us~~], or at such other email address as the comptroller may designate.

(2) The comptroller may provide additional information and updates on its website regarding notification.

(3) The comptroller may require the custodial state agency, the paying state agency, the state payee, and the financial institution to provide contact information as appropriate.

(h) Conflict of law. If there is a conflict in law between any of these rules and applicable law, the applicable law shall apply. If any provision of these rules are held to be invalid, illegal, or unenforceable due to a conflict of law, it will not affect any other provisions of these rules, and the rules will be construed as if such invalid or illegal or unenforceable provision had never been contained herein.

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 April 25, 2016.

TRD-201601919
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 2. CAPITOL ACCESS PASS

37 TAC §§2.1, 2.2, 2.7, 2.8, 2.13

The Texas Department of Public Safety (the department) proposes amendments to §§2.1, 2.2, 2.7, 2.8, and 2.13, concerning Capitol Access Pass. These amendments are necessary in part to implement House Bill 910, enacted by the 84th Texas Legislature, to reflect changes in the name of the license to carry a handgun. In addition, the expiration date on the Capitol Access Pass is to be extended to provide a five-year period of validity.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of these rules will be consistency with new legislation (replacing references to "concealed handgun license" with "license to carry a handgun"); and greater administrative efficiency resulting from less frequent renewals of the Capitol Access Pass.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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 the risks to human health from environmental exposure.

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at *https://www.txdps.state.tx.us/rsd/contact/default.aspx*. Select "Capitol Access Pass". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and §411.0625, which requires the department adopt rules necessary to administer the program.

Texas Government Code, §411.004(3) and §411.0625, are affected by this proposal.

§2.1. Definitions.

In this chapter, and unless otherwise defined in this section, all terms are defined by Government Code, §411.171 and §6.1 of this title (relating to Definitions).

(1) Capitol access pass (pass)--The authorization granted by the Texas Department of Public Safety allowing a person to enter the Texas State Capitol building and the Capitol Extension, including any public space in the Capitol or Capitol Extension, in the same manner as the department allows entry to a person who presents a [~~concealed handgun~~] license to carry a handgun issued under Government Code, Chapter 411, Subchapter H.

(2) License to carry a handgun [~~Concealed handgun license (CHL)~~]--The license issued under Government Code, Chapter 411, Subchapter H.

(3) Department--The Texas Department of Public Safety.

(4) Pass holder--A person to whom a Capitol access pass has been issued.

§2.2. Eligibility.

To be eligible for a Capitol access pass, a person must be a resident of this state and must otherwise meet all eligibility requirements applicable to a [~~concealed handgun~~] license to carry a handgun under Government Code, §411.172.

§2.7. Application Review and Background Investigation.

(a) The review of an application for a Capitol access pass, and the background check of the applicant, will be based on a comparison of the eligibility criteria for a [~~concealed handgun~~] license to carry a handgun and the criminal history information available to the department. The statutory deadlines provided in Government Code, Chapter 411, Subchapter H, relating to the processing such applications, are not applicable.

(b) If an application is found to be deficient, the department will notify the applicant of the deficiency. The applicant will have 30 days from the date of the notice of deficiency to amend the application. After this period has expired, the application will be terminated.

§2.8. Expiration.

A Capitol access pass expires on December 31st of the fifth year following the date of issuance [~~each odd-numbered year, regardless of when issued~~]. An expired pass may not be renewed. A new application is required if the pass is not renewed prior to expiration.

§2.13. No Relationship to [~~Concealed Handgun~~] License to Carry a Handgun.

(a) The pass confers no rights or privileges beyond the access to the Capitol and the Capitol Extension otherwise provided to a person who presents a [~~concealed handgun~~] license to carry a handgun issued under Government Code, Chapter 411, Subchapter H. The possession of a Capitol access pass does not authorize a person to carry a [~~concealed~~] handgun.

(b) The approval of an application for a Capitol access pass has no bearing on a person's eligibility for a [~~concealed handgun~~] license to carry a handgun. All applications, fees, reviews, or adverse actions relating to a pass are independent of such matters as they may relate to a [~~concealed handgun~~] license to carry a handgun or application for such license.

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 April 19, 2016.

TRD-201601854
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 424-5848

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CHAPTER 10. IGNITION INTERLOCK DEVICE

SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §§10.1 - 10.4

The Texas Department of Public Safety (the department) proposes new §§10.1 - 10.4, concerning General Provisions. These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. The proposed new Subchapter A of Chapter 10 is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater clarity and simplicity in the administrative rules governing the approval and installation of ignition interlock devices.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at *https://www.txdps.state.tx.us/rsd/contact/default.aspx.* Select "Ignition Interlock". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.247 and §521.2476 are affected by this proposal.

§10.1. Definitions.

The following words and terms, when used in this chapter, shall have the meanings detailed in this section, unless indicated otherwise.

(1) Act--Texas Transportation Code, §§521.241, 521.247, 521.2475, and 521.2476.

(2) Appropriate judicial authority--Court orders or personnel of the Texas judicial system including but not limited to the court or judge ordering an installation, or the related probation, parole, or pretrial service authorities.

(3) Authorization--The authority granted by the department to a vendor to engage in the business of installing or servicing ignition interlock devices.

(4) Department--The Texas Department of Public Safety.

(5) IID or device--An ignition interlock device as defined in Texas Transportation Code, §521.241(2).

(6) Mobile unit--A motor vehicle equipped to perform interlock device service or installation at a temporary location.

(7) Service center--A fixed physical location at which interlock device installation, service, or removal is performed.

(8) Vendor--One who engages in the business of installation, service, or removal of ignition interlock devices at a service center or with a mobile unit.

(9) Manufacturer--The actual producer of the device.

§10.2. Address and Business Information.

(a) Vendors and manufacturers of approved devices shall at all times maintain on file with the department the current mailing and principal place of business addresses. Vendors shall maintain on file with the department the physical addresses of all service centers, and a current and valid electronic mail address. The principal place of business address of a vendor must be a physical address and may not be a post office box.

(b) Vendors and manufacturers of approved devices shall notify the department within 30 calendar days of any change to the mailing or business address by submitting the appropriate department approved form.

(c) Vendors and manufacturers of approved devices shall notify the department within 30 calendar days of any change of ownership or company name change by submitting the appropriate department approved form.

§10.3. Notice.

(a) The department is entitled to rely on the mailing and electronic mail address currently on file for all purposes relating to notification. The failure to maintain a current mailing address and an electronic mail address with the department is not a defense to any action based on the vendor's, manufacturer's, or applicant's failure to respond.

(b) Service of notice upon a vendor, manufacturer, or applicant is complete and receipt is presumed upon the date the notice is sent, if sent before 5:00 p.m. by facsimile or electronic mail, and 3 business days following the date sent if by regular United States mail.

(c) The department may send notice of denials or revocations by electronic mail; regular United States mail; certified mail, return receipt requested; or hand-delivery. Refused or unclaimed certified mail will be presumed to have been received as provided by subsection (b) of this section.

§10.4. Hearings.

(a) A request for a hearing must be submitted in writing (by mail, facsimile, or electronic mail) within 30 calendar days of the receipt of the Notice of Denial or Revocation.

(b) Hearings will be conducted before the State Office of Administrative Hearings, pursuant to Texas Government Code, Chapter 2001.

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 April 19, 2016.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

SUBCHAPTER B. VENDOR AUTHORIZATION

37 TAC §§10.11 - 10.16

The Texas Department of Public Safety (the department) proposes new §§10.11 - 10.16, concerning Vendor Authorization. These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. The proposed new Subchapter B of Chapter 10 is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater clarity and simplicity in the administrative rules governing the approval and installation of ignition interlock devices.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at *https://www.txdps.state.tx.us/rsd/contact/default.aspx.* Select "Ignition Interlock". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.247 and §521.2476 are affected by this proposal.

§10.11. Application.

(a) Application for vendor authorization must be made in the manner required by the department. The application must contain all materials or information required by this chapter, and the initial inspection fee must be paid as provided in §10.15 of this title (relating to Inspections and Fees).

(b) In order to maintain authorization, the vendor must have:

(1) All necessary equipment and tools for the proper installation, removal, inspection, calibration, repair, and maintenance, of the type of IID(s) to be installed or serviced by the vendor, as determined by the device manufacturer and standard industry protocols;

(2) A designated waiting area separate from the installation area, to ensure customers do not observe the installation of the IID; and

(3) Proof of liability insurance providing coverage for damages arising out of the operation or use of IIDs with a minimum policy limit of $1,000,000 per occurrence and $3,000,000 aggregate total.

(c) If an incomplete application is received, notice will be sent to the applicant stating that the application is incomplete and specifying the information required for acceptance. The applicant has 60 calendar days after receipt of notice to provide the required information and submit a complete application. If an applicant fails to furnish the documentation, the application will be considered withdrawn.

(d) An application is complete when:

(1) It contains all of the items required pursuant to this section;

(2) All required fees have been paid; and

(3) All requests for additional information have been satisfied.

§10.12. Vendor Standards.

Vendors shall comply with the standards detailed in this section:

(1) Perform a visual inspection of the device and the vehicle in which it is installed to ensure that no tampering or circumvention has occurred. Evidence of tampering with an IID shall be reported to the judicial authority responsible for ordering the specific installation involved, to the supervising officer if any, and to the department, not later than 48 hours after the vendor discovers the evidence of tampering;

(2) Document and retain the records on the removal of any device by the vendor;

(3) Maintain a record of each complaint by a customer relating to the operation of the device, including:

(A) name of the customer;

(B) judicial authority ordering the installation;

(C) date of the complaint;

(D) nature of the complaint;

(E) identifying information related to the device; and

(F) name of individual who received the complaint;

(4) Maintain a record of the responses to customer complaints including:

(A) the action taken to address the complaint;

(B) any action taken to resolve the complaint; and

(C) the date and name of the person who resolved the complaint;

(5) Conduct a calibration confirmation test on each device at the time of installation and on each occasion of service, and maintain all records of such tests;

(6) Properly store the alcohol reference solution, the breath alcohol simulator, or reference gas standard in a manner that maintains the integrity of the calibration solution;

(7) Install the device with anti-tampering evident tape or seals on all connections;

(8) Display conspicuously in the service center the authorization issued by the department under the Act and this chapter;

(9) Display conspicuously in the service center, a sign containing the name, mailing address, and telephone number of the department, and a statement informing consumers or recipients of services that complaints against the vendor can be directed to the department;

(10) Only install devices that are approved under §521.247 of the Act;

(11) Maintain liability insurance coverage for damages arising out of the operation or use of devices in amounts and under the terms specified by the department in §10.11 of this title (relating to Application);

(12) Comply with any applicable court order regarding the installation or inspection of a device and the activation of any anti-circumvention feature of the device;

(13) Repair or replace a device within 48 hours after receiving notice of a complaint regarding the operation of the device, if device is confirmed to have malfunctioned;

(14) Maintain a record of each action taken by the vendor with respect to each device installed by the vendor, including each action taken as a result of an attempt to circumvent the device, until at least the fifth anniversary after the date of installation;

(15) Upon request of any court, supervising officer, or the department, make available for inspection or provide a copy of any report or record required under this chapter;

(16) Satisfy the standards for equipment and facilities, as required by this chapter;

(17) Pay the required inspection fee within 60 calendar days of receipt of notice that payment is due;

(18) Pay any past due fees within 30 days of notification of a past due amount, insufficiency of funds, or denied payment;

(19) Cooperate with any inspection or audit performed by department personnel;

(20) Submit annually, in a manner prescribed by the department, a written report of each ignition interlock device service and feature made available by the vendor; and

(21) Submit a written report of any violation of a court order to the appropriate judicial authority, including the issuing court and the person's supervising officer, if any, not later than 48 hours after the vendor discovers the violation.

§10.13. Denial of Application for Vendor Authorization.

(a) The department may deny an application for vendor authorization if:

(1) The applicant attempts to obtain an authorization by means of fraud, misrepresentation, or concealment of a material fact;

(2) The applicant's prior authorization has been revoked and the basis for the revocation remains;

(3) The applicant fails to satisfy the standards for equipment and facilities, or insurance, as required by this chapter, or

(4) Otherwise violates the Act or this chapter.

(b) The denial will become final on the thirtieth calendar day following the vendor's receipt of the notice of denial, unless the vendor requests a hearing as outlined in §10.4 of this title (relating to Hearings).

§10.14. Revocation of Vendor Authorization.

(a) The department may revoke an authorization if the vendor:

(1) Fails to submit the required reports to the department pursuant to §10.12 of this title (relating to Vendor Standards);

(2) Willfully or knowingly submits false, inaccurate, or incomplete information to the department;

(3) Violates any provision of §10.12 of this title;

(4) Fails to pay the annual inspection fee as provided in §10.15 (relating to Inspections and Fees);

(5) Violates any law of this state relating to the conduct of business in this state; or

(6) Otherwise violates the Act or this chapter.

(b) Prior to taking action against an authorization for a violation of subsection (a) of this section, the department will provide notice pursuant to §10.3 of this title (relating to Notice).

(c) The department's determination to revoke an authorization may be based on the following considerations:

(1) The seriousness of the violation, including the nature, circumstances, extent, and gravity of the violation;

(2) The economic harm to property or the public caused by the violation;

(3) The effect of the violation on the efficient administration of the program;

(4) The history of previous violations, including any warnings or other attempts to gain compliance;

(5) Efforts to correct the violation; and

(6) Any other matter that justice may require.

(d) The revocation will become final on the thirtieth calendar day following the vendor's receipt of the notice of revocation, unless the vendor requests a hearing as outlined in §10.4 of this title (relating to Hearings).

(e) The revocation proceeding may be dismissed, or the revocation may be probated, upon a showing of compliance.

§10.15. Inspections and Fees.

(a) To ensure compliance with the standards and procedures provided in this chapter and in the Act, the department will conduct an initial inspection at the department's discretion, prior to or following the issuance of the authorization and on an annual basis.

(b) The inspection fee shall be $450. The fee for the initial inspection shall be paid at the time of original application for authorization. The fee for each subsequent annual inspection shall be paid within 60 calendar days of notification. Revocation action may be initiated per §10.14 of this title (relating to Revocation of Vendor Authorization) if payment of the annual inspection fee is not made within 60 calendar days of notification. Inspection fees are neither refundable nor transferable.

(c) Should a fee payment be returned or dishonored, the applicant or vendor must promptly make payment by cashier's check or money order. If payment is not made within 30 calendar days of notification, the application will be abandoned as "incomplete". If the authorization was issued prior to notification of the insufficiency of funds, and proper payment is not made within 30 calendar days of notification, revocation proceedings will be initiated under §10.14 of this title.

(d) Failure to cooperate with the department representative during an inspection may result in denial of an application or revocation of an authorization.

(e) This section does not preclude the department from investigating complaints or conducting audits at the department's discretion for which no fee will be charged.

§10.16. Low Breath Volume Medical Exemption.

The minimum breath sampling size of an IID may be reduced to 1.2 liters for a device user with diminished lung capacity. Diminished capacity may be established through documentation from the appropriate judicial authority, advising of the necessity for the lower breath volume requirement. This documentation should be maintained in the manner required of calibration and maintenance records under §10.12 of this title (relating to Vendor Standards).

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 April 19, 2016.

TRD-201601856

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 424-5848

SUBCHAPTER C. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES - SPECIAL CONDITIONS FOR VENDOR AUTHORIZATIONS

37 TAC §§10.21 - 10.24

The Texas Department of Public Safety (the department) proposes new §§10.21 - 10.24, concerning Military Service Members, Veterans, and Spouses - Special Conditions for Vendor Authorizations. These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. The proposed new Subchapter C of Chapter 10 is intended to implement the requirements of Occupations Code, Chapter 55, as amended by Senate Bill 1307, enacted by the 84th Texas Legislature. The bill requires the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be clarification and expression of the exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246

or by email at *https://www.txdps.state.tx.us/rsd/contact/default.aspx.* Select "Ignition Interlock". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Occupations Code, §55.02 which authorizes a state agency that issues a license to adopt rules to exempt an individual who holds a license issued by the agency from an increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

Texas Government Code, §411.004(3) and Occupations Code, §55.02 are affected by this proposal.

§10.21. Definitions.

For purposes of this subchapter, the terms 'military service member', 'military veteran', and 'military spouse' have the meanings provided in Texas Occupations Code, §55.001.

§10.22. Exemption from Penalty for Failure to Renew in Timely Manner.

An individual who holds a vendor authorization issued under the Act is exempt from any increased fee or other penalty for failing to renew the authorization in a timely manner if the individual establishes to the satisfaction of the department the individual failed to renew the authorization in a timely manner because the individual was serving as a military service member.

§10.23. Extension of Authorization Renewal Deadlines for Military Members.

A military service member who holds a vendor authorization issued under the Act, is entitled to 2 years of additional time to complete:

(1) Any continuing education requirements; and

(2) Any other requirement related to the renewal of the person's authorization.

§10.24. Alternative Licensing for Military Service Members, Military Veterans, and Military Spouses.

(a) An individual who is a military service member, military veteran, or military spouse may apply for a vendor authorization under this section if the individual:

(1) Holds a current authorization issued by another jurisdiction with licensing requirements substantially equivalent to the Act's requirements for the authorization; or

(2) Within the 5 years preceding the application date, held a vendor authorization in this state.

(b) The department may accept alternative demonstrations of professional competence in lieu of existing experience, training, or educational requirements.

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 April 19, 2016.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 424-5848

SUBCHAPTER D. IGNITION INTERLOCK DEVICE APPROVAL

37 TAC §10.31, §10.32

The Texas Department of Public Safety (the department) proposes new §10.31 and §10.32, concerning Ignition Interlock Device Approval. These new sections are filed simultaneously with the repeal of current Subchapter B of Chapter 19, consisting of §§19.21 - 19.29. The proposed new Subchapter D of Chapter 10 is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be greater clarity and simplicity in the administrative rules governing the approval and installation of ignition interlock devices.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at *https://www.txdps.state.tx.us/rsd/contact/default.aspx.* Select "Ignition Interlock". Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the

department's work, and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.247 and §521.2476 are affected by this proposal.

§10.31. Application for Device Approval.

(a) Prior to submission of the request for approval, the device model must be tested for compliance with model specifications for breath alcohol ignition interlock devices established by the National Highway Traffic Safety Administration (NHTSA) at one or more independent laboratories not affiliated with the device manufacturer or the applicant seeking device approval. The testing specifications must be the most current ignition interlock model specifications published by NHTSA at the time that approval is requested. The testing laboratory must be accredited to the ISO 17025:2005 standard, or to a similar standard with an accreditation scope appropriate to the testing of breath alcohol ignition interlock devices.

(b) An application for approval of a device must include:

(1) A written request for approval with contact information for the applicant;

(2) A production model of the device that is to be approved;

(3) Manuals and other documentation necessary for the installation and operation of the device;

(4) Documentation of all test data and results pursuant to the requirements of this section, with the name(s) of and contact information for each testing laboratory;

(5) A certified check or money order in the amount of $500.00, payable to the Texas Department of Public Safety, as a nonrefundable administrative processing fee; and

(6) A notarized document describing the results of the testing from each independent laboratory involved in establishing NHTSA compliance. The document shall certify that the device model complies with the most current specifications for breath alcohol ignition interlock devices established by NHTSA.

§10.32. Denial of Request for Approval; Revocation of Device Approval.

(a) A request for device approval may be denied if the device fails to meet the requirements for approval.

(b) Prior approval of a device may be revoked if changes in National Highway Traffic Safety Administration model specifications are such that the device no longer meets the requirements for approval.

(c) Denial of a request for device model approval, or revocation of a prior approval, may be appealed as provided in §10.4 of this title (relating to Hearings).

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

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CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER K. INTERAGENCY AGREEMENTS

37 TAC §15.172

The Texas Department of Public Safety (the department) proposes amendments to §15.172, concerning Issuance by Counties. These amendments are necessary to remove the pilot program designation and statutory reference to Texas Transportation Code, §521.008, as a result of legislation passed by the 84th Texas Legislature.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be the public will have additional locations to replace and renew driver licenses and identification cards.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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 the risks to human health from environmental exposure.

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

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

This proposal is made pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.009, which authorizes the department to enter into agreements with certain counties for issuance of duplicate and renewal driver licenses, election identification certificates, and personal identification certificates.

Texas Government Code, §411.004(3), and Texas Transportation Code, §521.009, are affected by this proposal.

§15.172. Issuance by Counties.

[~~(a)~~] A county may [~~is eligible to~~] enter into a Memorandum of Understanding with the department for the [~~pilot~~] program to issue certain renewal and duplicate driver licenses, personal identification certificates, and election identification certificates if it: [~~meets the criteria spelled out in Texas Transportation Code, §521.008(a)(1) - (4)~~].

[~~(b) A county may provide the services outlined in Texas Transportation Code, §521.008(a-1)(1) - (6) if it:~~]

(1) has county employees who have successfully passed the department's background check;

(2) has county employees who have successfully completed the department prescribed training set out in the Memorandum of Understanding; and

(3) conforms to the operating requirements and standards of the Memorandum of Understanding between the department and the county.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §§16.1 - 16.15

The Texas Department of Public Safety (the department) proposes the repeal of §§16.1 - 16.15, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. The repeal of §§16.1 - 16.15 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the alignment of both state and federal commercial driver license laws.

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

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

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

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.1. Who Must Be Licensed.
§16.2. Commercial Motor Vehicles and Licensing Definitions.
§16.3. Persons Exempted.
§16.4. Classes of Commercial Driver Licenses.
§16.5. Tow Truck Operators.
§16.6. Vehicle Inspection Inspectors and Mechanics.
§16.7. Manufactured Housing.
§16.8. Qualifications To Drive in Interstate Commerce.
§16.9. Qualifications To Drive in Intrastate Commerce.
§16.10. Exemptions and Qualifications.
§16.11. Restrictions.
§16.12. Endorsements.
§16.13. Farm-Related Service Industry Waiver.
§16.14. Qualifications To Obtain Interstate Skills Performance Evaluation Certificate.
§16.15. Proof of Domicile.

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 April 19, 2016.

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D. Phillip Adkins
General Counsel
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37 TAC §§16.1 - 16.7

The Texas Department of Public Safety (the department) proposes new §§16.1 - 16.7, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. This proposal is necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the alignment of both state and federal commercial driver license laws, thereby increasing effective enforcement and compliance of commercial laws.

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

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

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

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.1. General Requirements.

All rules and regulations adopted in this chapter apply to every person, including employers of such persons, who holds a Texas commercial driver license (CDL) or operates a commercial motor vehicle (CMV) in this state, regardless if they are operating in interstate, foreign, or intrastate commerce.

(1) The department incorporates by reference and adopts:

(A) The Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations (CFR) Part 383 including all interpretations thereto, as amended through March 1, 2016. Where there is conflict between 49 CFR Part 383 and Texas Transportation Code, Chapter 522, Texas Transportation Code, Chapter 522 controls.

(B) 49 CFR §390.5.

(2) The CFRs detailed in this paragraph are excepted from adoption:

(A) 49 CFR §383.3(d)(3).

(B) 49 CFR §383.3(e).

(C) 49 CFR §383.3(g).

(D) 49 CFR §383.31(a).

(E) 49 CFR §383.31(b).

(F) 49 CFR §383.51(c)(9).

(G) 49 CFR §383.75.

(H) 49 CFR §383.153(10).

§16.2. Chapter Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) Act--Texas Transportation Code, Chapter 522.

(2) Disqualifying offense--Has the meaning assigned by Texas Transportation Code, §522.081.

(3) Knowledge exam--Written, computerized, or automated exam.

(4) Out-of-service order--Has the meaning assigned by 49 CFR §383.5 or Texas Transportation Code, §522.003(23).

(5) Recreational vehicle--A vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own mode of power or is mounted on or towed by another vehicle and is driven for personal use only.

(6) Serious traffic conviction--Has the meaning assigned by Texas Transportation Code, §522.003.

(7) Serious traffic violation--Has the meaning assigned by Texas Transportation Code, §522.003(25) and §16.62 of this title (relating to Serious Traffic Violations and Habitual Violators).

(8) Skills exam--Driver or road exam.

§16.3. Persons Exempted.

Persons exempted from commercial driver license (CDL) requirements are:

(1) A person operating a vehicle that is controlled and operated by a farmer which is used to transport agricultural products, farm machinery, or farm supplies to or from a farm and which is not used in the operations of a common or contract carrier and used within 150 miles of the person's farm.

(A) Under this exemption, a rancher is considered a farmer.

(B) A farmer and his farmhands are equally exempt when the farmhands are in the employ of the farmer.

(C) One who purchases a crop in a field and only harvests and transports the produce, but takes no part in the planting and cultivating of the product, is not considered a farmer.

(D) One who purchases acres of growing timber and cultivates and harvests it over a period of months or years is considered a farmer.

(2) A person operating a fire fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter, or a fire fighter employed by a private company, for example, a refinery. This would not exempt operators of vehicles used by utility companies.

(A) Drivers of industrial emergency response vehicles, including an industrial ambulance are exempt only if the vehicle is operated in compliance with criteria established by the Texas Industrial Fire Training Board or the State Firemen's and Fire Marshall's Association of Texas.

(B) Drivers of public or private ambulances are exempt only if they have been issued a license by the Department of State Health Services.

(C) Electric company employees repairing downed power lines are not exempt.

(3) A person operating a military vehicle or a commercial motor vehicle, when operated for military purposes by military personnel, members of the reserves and national guard on active duty (including personnel on full-time national guard duty), personnel on part-time training duty, and national guard military technicians. This exemption includes the operation of vehicles leased by the United States government for use by the military branches of government.

(4) A person operating a vehicle that is a recreational vehicle that is driven for personal use.

(A) For purposes of this exemption recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own motive power or is mounted on or towed by another vehicle.

(B) This exemption includes travel trailers, camping trailers, truck campers, and motor homes.

(5) A person operating a vehicle that is owned, leased, or controlled by an air carrier, as defined by Texas Transportation Code, §21.155(d), and that is driven or operated exclusively by an employee of the air carrier only on the premises of an airport, as defined by Texas Transportation Code, §22.001(2), on service roads to which the public does not have access.

(6) A person operating a vehicle used exclusively to transport seed cotton modules or cotton burrs.

§16.4. Manufactured Housing.

Drivers who transport manufactured housing on highways must have the proper commercial driver license (CDL) if the vehicle meets the weight criteria for a commercial motor vehicle (CMV) as defined in 49 CFR §390.5. In determining whether the towed unit exceeds 10,000 pounds and whether the gross combination weight rating (GCWR) totals 26,001 or more pounds, the manufactured housing being drawn and trailers carrying the manufactured housing are motor vehicles for purposes of the Act.

§16.5. Qualifications to Drive in Intrastate Commerce.

A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in intrastate commerce must meet the same requirements as those for interstate driving (49 CFR §391.41), except for:

(1) The applicant must be at least 18 years of age.

(2) The applicant must have held a driver license for a minimum of 3 years.

(3) An applicant may present the department's vision or limb waiver certificate instead of meeting the vision or physical requirements of 49 CFR §391.41. Waivers may only be renewed through the Texas Department of Public Safety, Driver License Division/Enforcement and Compliance Service, P.O. Box 4087, Austin, Texas 78773-0310.

(4) A driver who operates a motor vehicle in intrastate commerce only, and does not transport property requiring a hazardous material placard, and was regularly employed operating a CMV in Texas prior to August 28, 1989, is not required to meet the federal physical and vision standards.

(5) A driver who operates a CMV in intrastate commerce only may obtain a vision or limb waiver from the department provided the qualifications detailed in this section are met: (Only one waiver can be used to obtain a CDL.)

(A) Vision waiver requirements:

(i) The applicant has 20/40 (Snellen) or better distant visual acuity with corrective lenses in the better eye; or

(ii) The applicant's vision is uncorrectable in one eye and the applicant does not wear corrective lenses, then uncorrected vision must be at least 20/25 (Snellen) in the better eye;

(iii) The applicant has the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber, and

(iv) The applicant must present a medical certificate as required under 49 CFR §391.43.

(v) Applicants may be referred to a vision specialist in cases involving a failure on the vision examination:

(I) When the applicant protests the results of the vision examination; or

(II) When other conditions necessitate verification by a medical professional.

(B) Limb waiver requirements:

(i) Medical certificate required under 49 CFR §391.43; and

(ii) Pass a comprehensive driving examination in the appropriate class vehicle (equipped with all necessary vehicle modifications) for the CDL for which the applicant is applying.

(6) Applications for a Texas intrastate vision or limb waiver will include a review of the applicant's driving record for the three-year period immediately preceding the date of the application. An applicant may obtain a waiver from the department only if their driving record:

(A) contains no suspensions, revocations, disqualifications or cancellations of the driver license based on an alcohol, drug or driving related conviction or an administrative action resulting from the operation of any motor vehicle, including a personal vehicle;

(B) contains no involvement in an crash for which a citation was issued resulting in a conviction for a moving violation;

(C) contains no convictions for a disqualifying offense or more than one serious traffic conviction during the three-year period, which disqualified or should have disqualified the applicant in

accordance with the driver disqualification provisions of Texas Transportation Code, §522.081; or

(D) contains no more than two convictions for moving violations in a CMV.

(7) If the driving record shows either convictions for moving violations or crash involvement but does not indicate the type of vehicle operated or the number of miles per hour above the posted speed limit, the department may request additional official documentation (e.g., a copy of the citation or crash report, or copies of court records) from the applicant.

(8) If the applicant is arrested, cited for, or convicted of any disqualifying offense or other moving violations during the period an application is pending, the applicant must immediately report such arrests, citations, or convictions to the Texas Department of Public Safety, Driver License Division/Enforcement and Compliance Service, P.O. Box 4087, Austin, Texas 78773-0310. No waiver determination will be completed while any charge against the applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of an application will be considered in the overall driving record. The applicant must also report any conviction that is not listed on the driving record because of processing delays. If a subsequent review of the applicant's driving record identifies incidents that should have been reported, any waiver issued may be revoked.

(9) Applicants for a Texas intrastate vision or limb waiver must be able to meet all other physical requirements specified in 49 CFR §391.41 without the benefit of any other waiver.

(10) Applicants for a CDL must present a valid vision or limb waiver certificate obtained from the department's Enforcement and Compliance Service in Austin. A vision waiver may be used to obtain a Hazardous Materials Endorsement; however, a limb waiver cannot be used to obtain this endorsement.

(11) All recipients of a Texas intrastate vision/limb waiver will be required to have a license with the appropriate restrictions as they apply. Waiver recipients will be notified in writing by means of the most recent address on file of the requirement to add the restrictions and will be given 60 days to comply. Failure to comply within the specified period may result in the revocation of any waiver and their disqualification as a CMV driver.

(12) Applications for the renewal of the vision or limb waiver certificates will be granted provided the applicant's driving history continues to meet the requirements as detailed in paragraph (5) of this section and the applicant for:

(A) a vision waiver continues to meet the vision standards listed in paragraph (5)(A) of this section and all other requirements of 49 CFR §391.41; or

(B) a limb waiver certificate continues to meet all other requirements of 49 CFR §391.41.

(13) Applicants denied a vision/limb waiver may appeal the decision of the department by contacting the department's designee, in writing, within 20 days after receiving notification of the denial. The request for an appeal must contain the name, address, and driver license number of the applicant, the reasons why the waiver should be granted, and include all pertinent documents which support the reasons why the waiver should be granted. The denial is stayed pending the review of the director or his designee. The decision of the department's designee is final.

(14) Waiver certificates will be approved by department's designee and are valid for a period not to exceed 2 years after the date of the applicant's medical examiner's physical examination.

(15) If the vision or limb waiver application is approved, the applicant must obtain a CDL with the appropriate restrictions within 60 days of the approval. Failure to obtain the CDL with the appropriate restrictions within the 60 day period may result in the cancellation of the waiver certificate. Any cancellations will require the applicant to reapply for the waiver.

(16) If the vision or limb waiver application is denied and the applicant currently holds a CDL, the CDL privilege will be cancelled and a demand for the surrender of the CDL will be made.

(17) If the holder of a Texas vision/limb waiver fails to renew the waiver, the driver will be notified in writing by the department of this requirement via the most recent address on file. Proper notification is presumed if the notification is mailed by first-class mail to the applicant or licensee at the last mailing address on file with the department. Failure to comply within a 60 day period may result in the cancellation of their CDL and the demand for the surrender of the CDL currently held.

(18) Prior to the renewal of their CDL those applicants who were previously issued a vision waiver with an indefinite expiration date must comply with this section in order to retain their CDL. Notice of this requirement will be sent to the mailing address on record. Failure to comply with this section will result in the denial of their renewal application and the cancellation of their CDL operating privilege.

§16.6. Farm-Related Service Industry Waiver.

(a) The department must waive the commercial driver license (CDL) knowledge and skill exams required by Texas Transportation Code, §522.022, and provide for the issuance of a restricted CDL to an employee of a farm-related service industry (FRSI) in accordance to 49 CFR 383. The department is subject to any condition or requirement established for the waiver by the Federal Highway Administration. In addition to any restriction or limitation imposed by this section, a restricted CDL issued under this regulation is subject to any restriction or limitation imposed by the secretary of the highway administration.

(b) Fees for an FRSI CDL are the same as for a regular CDL and will be calculated the same way. A $10 duplicate fee must be charged each time an applicant revalidates the waiver period.

(c) The FRSI CDL must have a P restriction. The validity period must be continuous, for a minimum period of 30 days, and cannot exceed 180 days in any 12 month period. The FRSI CDL cannot be renewed more than 30 days prior to the expiration date of the existing FRSI CDL issuance period and cannot exceed the expiration date of the CDL.

§16.7. Proof of Domicile.

(a) A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in interstate commerce must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

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

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

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

(e) Acceptable proof of domicile documents are:

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

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

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

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

(5) A valid, unexpired Texas license to carry a handgun.

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

(7) A Selective Service card.

(8) A medical or health card.

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

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

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

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

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

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

(15) A current automobile payment booklet.

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

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

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

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

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

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

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable documents demonstrating family relationship may include but are not limited to:

(i) marriage license;

(ii) military dependent identification card;

(iii) birth certificate; and

(iv) adoption records.

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

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

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

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

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

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D. Phillip Adkins
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SUBCHAPTER B. APPLICATION REQUIREMENTS AND EXAMINATIONS

37 TAC §§16.21 - 16.30

The Texas Department of Public Safety (the department) proposes new §§16.21 - 16.30, concerning Application Requirements and Examinations. This proposal is necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the

alignment of both state and federal commercial driver license laws, thereby increasing effective enforcement and compliance of commercial laws.

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

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

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

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.21. Application for Texas Commercial Driver License (CDL).

(a) An application must be completed by all original applicants for a CDL.

(b) Original applicants for:

(1) a Texas CDL must present proof of identity as required by §15.24 of this title (relating to Identification of Applicants).

(2) a Non-Domiciled Texas CDL must present proof of identity as required by Texas Transportation Code, §522.021(a-1).

(c) A separate application must be completed by all applicants for a farm-related service industry (FRSI) restricted CDL. The reverse side of the application must be completed by the applicant's employer. This application will also be used any time the holder of an FRSI CDL requests to renew or revalidate the license.

(d) The applicant must provide proof of Social Security number. For a list of acceptable documents for providing the Social Security number, refer to §15.42(b) of this title (relating to Social Security Number).

(e) All applicants must provide information relating to United States citizenship or lawful presence and provide their county of residence at the time of application.

§16.22. Substitute Experience for Commercial Driver License (CDL) Driving Skills Exam.

(a) To be accepted, the applicant must be employed in an exempt status or legally operating a commercial motor vehicle (CMV).

(b) This waiver to substitute experience for the CDL driving skills exam may only be claimed one time. This waiver certification may only be completed when converting from a non-commercial driver license to a CDL or when applying for an original Texas CDL when coming from another state. Any later transaction including advance in grade, removal of restrictions, or addition of an endorsement will necessitate a skills exam if required by law or regulation.

(c) A certification must accompany this waiver as evidence that the applicant is employed as a CMV operator in an exempt status or legally operating a CMV at the time of application. The signatures on the certification must be original signatures. A notarized letter from the employer on letterhead stationary will be accepted instead of the certification form. The letter must contain the elements in the certification form. If the applicant has been employed by more than one employer during the last two years, the applicant may present more than one certification to certify employment as a CMV operator in an exempt status or legally operating a CMV for the two year period required.

§16.23. Medical Certificate Requirements.

(a) Commercial driver license (CDL) holders and original CDL applicants must self-certify to one of the categories detailed in this subsection:

(1) Non-excepted interstate. A person who operates or expects to operate in interstate commerce, is both subject to and meets the qualification requirements under 49 CFR Part 391, and is required to obtain a medical examiner's certificate by 49 CFR §391.45.

(2) Excepted interstate. A person who operates or expects to operate in interstate commerce, but engages exclusively in transportation or operations excepted under 49 CFR §§390.3(f), 391.2, 391.68, or 398.3 from all or parts of the qualification requirements of 49 CFR §391, and is therefore not required to obtain a medical examiner's certificate by 49 CFR §391.45.

(3) Non-excepted intrastate. A person who operates only in intrastate commerce, and is both subject to and meets the State of Texas driver qualification requirements under §4.11 of this title (relating to General Applicability and Definitions) and is required to obtain a medical examiner's certificate.

(4) Excepted intrastate. A person who operates in intrastate commerce, but engages exclusively in transportation or operations excepted as provided by §4.12 of this title (relating to Exemptions and Exceptions) and is therefore not required to obtain a medical examiner's certificate.

(b) CDL holders and original CDL applicants who certify to subsection (a)(1) or (3) of this section are required to provide a valid medical certificate to the department. The department must deny the issuance of the CDL if a medical certificate is required or expired and a valid medical certificate is not provided at the time of issuance or renewal.

(c) The department must downgrade a holder's CDL to a non-CDL on the 60th day after expiration of the medical certificate if a valid medical certificate is required and is not provided to the department.

§16.24. Falsification.

(a) A person who knowingly falsifies information or certifications on an application for a commercial driver license (CDL) is subject to a 60 day cancellation of the person's CDL, commercial driver learner's permit, or application.

(b) Within 30 days after discovering that the applicant has provided false information, the director of the department or his designee will notify the person that his CDL, commercial driver learner's permit, or application will be canceled for 60 days beginning on the 20th

calendar day after notification. Date of notification is the date appearing at the top of the cancellation order issued to the person. Proper notification is presumed if the notification is mailed by first-class mail to the applicant or licensee at the last mailing address on file with the department. The department may, alternatively, personally serve the notification and order. If the cancellation order is personally served, the person may choose to have the 60 day cancellation period effective immediately upon service.

(c) A person may appeal the cancellation order by timely requesting a hearing in writing. The request for hearing must be received by the department before the effective date of cancellation for the appeal to be timely. If a timely request for a hearing is made, the director will appoint a hearing officer from within the department. The hearing will be held in the county where application was made, in the Texas county where the applicant of licensee resides, or in a county adjoining either the county of residence or county of application, as determined by the director.

(d) Notification of the hearing will be sent to the person by first-class mail at the last mailing address on file with the department or to an address specifically referred to in the written appeal. Notice of the hearing will be sent at least 10 calendar days prior to the date of hearing. The cancellation action will not be held in abeyance pending a hearing of final determination of the hearing officer.

(e) The only issue at the administrative hearing is whether the person did or did not falsify application or certification information. The hearing officer has the only authority to make an affirmative or a negative finding on this issue. The hearing officer will report the finding to the director. If an affirmative finding is reported, the license or application will remain canceled for the duration of the 60 day cancellation period. If a negative finding is reported, the license or application will be immediately reinstated by the department.

(f) If the falsification is discovered at the driver license office during the application process, the applicant will not be permitted to continue with the application and examination procedures. The department employee who discovers the falsification will immediately notify the Enforcement and Compliance Service at the department headquarters in Austin so that formal cancellation action may be initiated. A person may not submit a new application for a CDL or commercial driver learner's permit pending formal action by the department.

(g) A person may not submit a new application for a CDL or commercial driver learner's permit during the 60 day cancellation period or while an appeal is pending. After the cancellation period has expired, the person must reapply as an original applicant.

§16.25. Cancellation of Commercial Driver License (CDL).

(a) The department will cancel a commercial driver license (CDL) upon confirmation of:

(1) A nonpayment of fee;

(2) The applicant is suspended in another state;

(3) An original CDL obtained through fraudulent means;

(4) An obtained CDL without satisfying all qualification requirements;

(5) A mental incapacity;

(6) A false statement convictions in which the statement was made to the department; or

(7) A license issued to person not entitled thereto.

(b) Upon cancellation of the license, the department will send notice to the individual demanding the surrender of the Texas CDL.

(c) When applicable the department can require re-examination of all appropriate exams.

§16.26. Written Exams Required.

(a) An original applicant for a Texas commercial driver license (CDL) must take the signs, rules, and the appropriate Class A or Class B exams as well as any required and necessary CDL exams. A holder of a valid CDL from another state need not take the CDL exams if the out-of-state license indicates those exams were administered in that other state.

(b) Current Texas license holders will be required to take only required and necessary CDL exams, unless advancing in grade, in which case the appropriate Class A or Class B exams will be required.

(c) All CDL applicants must take and pass the CDL general knowledge exam, except those persons who currently hold a CDL from another state.

(d) Class A CDL applicants must take and pass the combination vehicle exam even though there will be no endorsement for combination vehicles. Those persons currently holding a CDL issued by another state will not be required to take this exam unless they wish to advance in grade.

(e) For applicants who already hold a CDL issued by another state and for all applicants for renewals of CDLs, the hazardous materials knowledge examination will be required to maintain this endorsement.

(f) Persons who do not take and pass the air brake exam will be restricted to driving vehicles without air brakes. Applicants holding an out-of-state CDL will be exempt from this exam unless that license indicates they are restricted to driving vehicles not equipped with air brakes.

§16.27. Passing Rates for Written Exams.

(a) Signs, rules, Class A and Class B, and motorcycle exams will require correct answers of 70% or more of the questions for the applicant to pass.

(b) Commercial driver license (CDL) examinations will require correct answers on 80% or more of the questions for the applicant to pass.

(c) All required exams outlined in §16.26 of this title (relating to Written Exams Required) must be passed in order to obtain a CDL and the appropriate endorsements.

§16.28. Skills Exam Required.

(a) An applicant will be required to take the skills exam if:

(1) applying as a original applicant for a driver license; or

(2) the applicant is unable to present a certification substituting experience for the commercial driver license (CDL) skills exam.

(b) An applicant who holds a CDL from another state will not be required to take a skills exam when making an application for an original Texas CDL of the same class and with the same restrictions and endorsements.

§16.29. Waivers from Skills Exam.

(a) An applicant may be exempted from the skills exam if:

(1) currently licensed (in Texas or in another state);

(2) for the 2 years preceding application:

(A) has not had more than one license at any one time;

(B) has not had any license suspended, revoked, disqualified, denied, or canceled;

(C) has not had a conviction for any disqualifying offense, such as Driving While Intoxicated, Driving Under the Influence of Drugs, Failure to Give Information and Render Aid, Refusal or Failure of a Blood, Breath, or Urine Exam, failure to comply with any offense as cited in Texas Transportation Code, Chapter 550, a felony involving the use of a commercial motor vehicle (CMV), or use of a CMV in the commission of a felony involving manufacturing, distributing, or dispensing a controlled substance; and

(D) has not been convicted for a serious traffic violation. These convictions may result from the operation of any vehicle; and

(3) regularly employed in a job requiring the operation of a CMV:

(A) has previously taken and passed a skills exam given by a state with a classified licensing system and the exam was behind-the-wheel in a representative vehicle for the driver license classification; or

(B) has operated for at least two years immediately preceding application for a commercial driver license (CDL), a vehicle representative of the CMV the applicant operates or expects to operate.

(b) Waivers for the skills exam only apply to original applicants for CDL. Those who subsequently apply for an advance in grade, removal of restriction, or addition of endorsement after receiving a CDL will not be given a second waiver of any required skills exams.

(c) Waivers for the skills exam apply only to CMV operators with an exempt status and those legally operating CMVs such as the operation of CMVs on non-public roads in large company lots such as power or chemical companies.

(d) Applicants who hold a CDL from another state will not be required to take any knowledge or skills exams when making an application for an original Texas CDL of the same class and with the same restrictions or endorsements excluding the hazardous materials endorsement. Applicants desiring to retain the hazardous materials endorsement must take and pass the hazardous materials knowledge examination and pass a background check conducted by the appropriate federal agency. To maintain the hazardous materials endorsement beyond the initial 90 day period from date the CDL is issued, the department must receive a notification of no security threat from the appropriate federal agency conducting the background check. Applicants must surrender a valid CDL license, a valid CDL temporary permit, or other acceptable proof that the person has a valid license from another state in order to have the exams waived.

§16.30. Check of Applicant.

Upon acceptance of the sworn application and documents, the department will conduct a Commercial Driver License Information System/National Driver Register/Problem Driver Pointer System (CDLIS/NDR/PDPS) inquiry on the commercial driver license (CDL) applicant. No license will be issued if a match indicates possible multiple licenses. If necessary, independent inquiries to other states will be made to confirm the identity of the match and to verify the existence of suspension, revocation, denial, and cancellation actions taken by other states. No license will be issued until it is confirmed that the match is another person or the cause for the action has been resolved.

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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D. Phillip Adkins
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37 TAC §§16.31 - 16.56

The Texas Department of Public Safety (the department) proposes the repeal of §§16.31 - 16.56, concerning Application Requirements and Examinations. The repeal of §§16.31 - 16.56 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the alignment of both state and federal commercial driver license laws.

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

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

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

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.31. DL-14A Application For Texas Driver License.

§16.32. CDL-1 Supplement Application for Texas Driver License-Certifications and Record of Commercial Driver's License (CDL) Examination.

§16.33. CDL-2 Exemption Certificate.

§16.34. CDL-3 Substitute for Commercial Driver License (CDL) Driving Skills Test.

§16.35. CDL-3A Certification of Employment.

§16.36. CDL-4 Qualifications of Interstate Driver Certification.

§16.37. CDL-5 Qualifications of Intrastate Driver Certification and Exemption.

§16.38. DL-2 Receipt of Surrendered License/Affidavit.

§16.39. CDL-10 Certification of Part 391 Exemption.

§16.40. Completion of Application.

§16.41. Medical Certificate Requirements.

§16.42. Falsification.

§16.43. Cancellation of Commercial Driver License.

§16.44. Written Tests Required.

§16.45. Passing Rates for Written Tests.

§16.46. Skills Test Required.

§16.47. Waivers from Skills Tests.

§16.48. Road Test.

§16.49. Safety Inspection.

§16.50. Pre-trip Inspection.

§16.51. Road Test Maneuvers.

§16.52. Testing of Residents.

§16.53. Check of Applicant.

§16.54. Oral Tests.

§16.55. Spanish Language Tests.

§16.56. CDL-40 Supplemental Examination.

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. SANCTIONS AND DISQUALIFICATIONS

37 TAC §§16.61 - 16.67

The Texas Department of Public Safety (the department) proposes new §§16.61 - 16.67, concerning Sanctions and Disqualifications. This proposal is necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the alignment of both state and federal commercial driver license laws, thereby increasing effective enforcement and compliance of commercial laws.

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

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

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

The new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.61. Driving a Commercial Motor Vehicle (CMV) without a Commercial Driver License (CDL).

(a) A person may be disqualified from driving a commercial motor vehicle (CMV) even if:

(1) that person does not hold a commercial driver license (CDL); or

(2) that person is domiciled in another state or in a foreign jurisdiction.

(b) If a person has been disqualified from driving a CMV, and that person did not hold a CDL (either current or expired) at the time of the disqualification, that person must apply at a driver license office as an original CDL applicant in order to receive a CDL when the disqualification period is over.

§16.62. Serious Traffic Violations and Habitual Violators.

The Commercial Driver's License Act, Texas Transportation Code, Chapter 522, defines certain motor vehicle offenses as "serious traffic violations" for the purpose of administering the Act. An improper or

erratic traffic lane change is one of the definitions of a "serious traffic violation" as set out in the Act. Since an improper or erratic lane change is not an offense title in Texas, the department has designated the specific sections of the Texas Transportation Code, Chapter 545, as improper or erratic traffic lane changes for disqualification purposes pursuant to Texas Transportation Code, §522.081. This interpretation is also meant to apply to the defensive driving section of the Texas Transportation Code, §§543.111 - 543.114. A conviction of either of these offenses will be considered by the department as a "serious traffic violation":

(1) Texas Transportation Code, §545.060 - "Changed Lane when Unsafe."

(2) Texas Transportation Code, §545.061 - "Failure to Yield Right-of-Way-Changing Lanes."

§16.63. Notice and Hearing Procedures for Commercial Driver License Disqualifications.

Administrative hearings for non-resident commercial driver licensees will be scheduled in the county where the non-resident last made application for a Texas driver license, unless the licensee requests an alternative Texas county. The request must be in writing and part of the licensee's original request for the administrative hearing.

§16.64. Application of Motor Vehicle Safety Responsibility Act.

A person disqualified from driving a commercial motor vehicle will not be subject to suspension of the person's noncommercial driver license or suspension of motor vehicle registrations in the name of such person under the Motor Vehicle Safety Responsibility Act, Texas Transportation Code, Chapter 601, on the basis of the disqualification alone.

§16.65. Disqualifications.

Driver disqualifications as set out in 49 CFR Part 383 and detailed in this section are adopted by the department.

(1) First violation. A driver is disqualified for not less than 180 days nor more than one year if the driver is convicted of a first violation of an out-of-service order.

(2) Second violation. A driver is disqualified for not less than two years nor more than five years if, during any 10 year period, the driver is convicted of two violations of out-of-service orders in separate incidents.

(3) Third or subsequent violation. A driver is disqualified for not less than three years nor more than five years if, during any ten-year period, the driver is convicted of three or more violations of out-of-service orders in separate incidents.

(4) Special rule for hazardous materials and passenger offenses. A driver is disqualified for a period of not less than 180 days nor more than two years if the driver is convicted of a first violation of an out-of-service order while transporting hazardous materials required to be placarded under the Hazardous Materials Transportation Act (49 USC §§1801-1813), or while operating a motor vehicle designed to transport more than 15 passengers, including the driver. A driver is disqualified for a period of not less than three years nor more than five years if, during any ten-year period, the driver is convicted of any subsequent violations of out-of-service orders, in separate incidents, while transporting hazardous materials required to be placarded under the Hazardous Materials Act, or while operating motor vehicles designed to transport more than 15 passengers, including the driver.

(5) Court to report conviction. If a driver is convicted of an offense under the Texas Transportation Code, §522.071, the convicting court must order a disqualification period as set out in paragraphs (1) - (4) of this section. The court must report the conviction and disqualification on a form approved by the department. If the court fails to set a period of disqualification, the department must disqualify the CMV driving privileges for 90 days for the first violation, one year for a second violation, and three years for the third or subsequent violation. If the court fails to set a period of suspension for convictions of these offenses which occurred while transporting hazardous materials required to be placarded under the Hazardous Materials Act or while operating a motor vehicle designed to transport more than 15 passengers, including the driver, the department must disqualify the CMV driving privileges for 180 days for the first violation and three years if, during any ten-year period, the driver is convicted of any subsequent violations.

§16.66. Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers.

(a) General rule. Any person who violates Texas Transportation Code, §522.071(a)(5), §522.072 or the rules set forth in Subparts B and C of 49 CFR Part 383, may be subject to civil or criminal penalties as provided for in this section or in 49 USC Part 521(b).

(b) Driver violations. A driver who is convicted of violating an out-of-service order must be subject to a civil or administrative penalty of not less than $2,500 for a first conviction, and not less than $5,000 for a second conviction, in addition to a disqualification action.

(c) Employer violations. An employer who is convicted of a violation of 49 CFR §383.37(c) or Texas Transportation Code, §522.072(a)(3) must be subject to a maximum civil or administrative penalty of not less than $2,750 and not more than $25,000. An employer who is convicted of a violation of 49 CFR §383.37(d) or Texas Transportation Code, §522.072(b) must be subject to a civil or administrative penalty of not more than $10,000.

(d) Penalties. Civil penalties for violations of the regulations adopted herein may be assessed by a court of competent jurisdiction or assessed as an administrative penalty under the provisions of Texas Transportation Code, Chapter 644.

§16.67. Occupational/Essential Need License Prohibition.

If a person's driver license or driving privilege is suspended, revoked, cancelled, or denied under any law in this state the person's commercial driver license will be disqualified pursuant to Texas Transportation Code, §522.089. A person whose license or driving privilege is disqualified may not be granted an occupational or essential need license to operate a commercial motor vehicle (CMV).

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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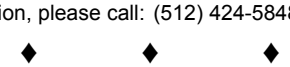

SUBCHAPTER C. CHANGE OF LICENSE STATUS, RENEWALS, SURRENDER OF LICENSE, FEES

37 TAC §§16.71 - 16.73, 16.75 - 16.78

The Texas Department of Public Safety (the department) proposes the repeal of §§16.71 - 16.73 and 16.75 - 16.78, concerning Change of License Status, Renewals, Surrender of License, Fees. The repeal of §§16.71 - 16.73 and 16.75 - 16.78 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the alignment of both state and federal commercial driver license laws.

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

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

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

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.71. Change in Class or Type.

§16.72. Renewals.

§16.73. Surrender of License.

§16.75. Credits.

§16.76. Motorcycle Education Fees.

§16.77. Duplicates.

§16.78. Exam Fees.

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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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §§16.92 - 16.95, 16.97 - 16.106

The Texas Department of Public Safety (the department) proposes the repeal of §§16.92 - 16.95 and 16.97 - 16.106, concerning Sanctions and Disqualifications. The repeal of §§16.92 - 16.95 and 16.97 - 16.106 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be the alignment of both state and federal commercial driver license laws.

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

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

Comments on this proposal may be submitted to Ron Coleman, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-

5233; or by email to *DLDrulecomments@dps.texas.gov.* Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.92. Driving a Commercial Motor Vehicle (CMV) without a Commercial Drivers License (CDL).

§16.93. Serious Traffic Violations and Habitual Violators.

§16.94. Out-of-State Convictions.

§16.95. Notice and Hearing Procedures for Commercial Driver License Disqualifications.

§16.97. Occupational Licenses.

§16.98. Determination of Lifetime Disqualification when Administrative Hearing Required.

§16.99. Lifetime Disqualifications.

§16.100. Information on Traffic Convictions Reported.

§16.101. Application of Motor Vehicle Safety Responsibility Act.

§16.102. Administrative Hearings Subject to Texas Transportation Code, Chapter 724 or Texas Transportation Code, Chapter 524.

§16.103. Disqualifications and Penalties for Violations of Out-of-Service Orders.

§16.104. Disqualifications.

§16.105. Special Penalties Pertaining to Violation of Out-of-Service Orders and Railroad Grade Crossing Violations for Drivers and Employers.

§16.106. Occupational/Essential Need License Prohibition.

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 April 19, 2016.

TRD-201601863
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 424-5848

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CHAPTER 18. DRIVER EDUCATION
SUBCHAPTER A. ISSUANCE AND EXAMINATION REQUIREMENTS FOR LEARNER AND PROVISIONAL LICENSES

37 TAC §18.4

The Texas Department of Public Safety (the department) proposes amendments to §18.4, concerning Examinations Administered by a Driver Education School or Parent Taught Driver Education Course Provider. These amendments are necessary to remove information related to driver education program administration transferred to the Texas Department of Licensing and Regulation (TDLR) by the 84th Texas Legislature.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period this rule is in effect, the public benefit anticipated as a result of this rule will be the public will have clearer understanding of driver education program administration.

The Department has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. "Major environmental rule" is defined to mean a rule that the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure 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 the risks to human health from environmental exposure.

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

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

The amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; Texas Education Code, §1001.052 which authorizes the Texas Commission of Licensing and Regulation to adopt comprehensive rules governing driving safety courses and §§1001.201 - 1001.214.

Texas Government Code, §411.004(3) and Texas Education Code, §§1001.052, 1001.201 - 1001.214 are affected by this proposal.

§18.4. Examinations Administered by a Driver Education School or Parent Taught Driver Education Course Provider.

(a) Prior to application for a learner license, the driver education school or parent taught driver education course provider may administer the Class C Road Signs exam and the Class C Road Rules exam to each student. The student must achieve a score of at least 70% on each exam to pass. The driver education school may administer the vision exam. Applicants completing a parent taught driver education course are required to take and pass the vision exam at a driver license office. The driver education school will administer the exams in accordance with the guidelines detailed in this subsection:

(1) Vision. A suitable device that utilizes the Snellen Method of Measurement and American Medical Association (AMA) Visual Efficiency Rating for accurately measuring the student's visual acuity is required and must be used in a manner consistent with the procedures prescribed by the device manufacturer. The results of the student's visual acuity will be recorded on the Texas Driver Education Certificate. Upon presentation of the certificate, the driver license office personnel will evaluate the exam results and if vision limitations are present, add the proper restriction(s) to the learner license. A student with obvious visual problems shall be referred to the driver license office for examination and any necessary referrals to a vision specialist.

(2) Class C Road Signs and Class C Road Rules Examinations. The driver education school or parent taught driver education course provider will obtain the exams from the Texas Department of Public Safety and may reproduce and electronically administer the exams if the most current version available from the department is used. The exams will be available in English and Spanish. Other languages and oral exams must be referred to a driver license office. Exam results will be recorded on the Texas Driver Education Certificate. No student shall be examined prior to his or her 15th birthday.

(3) No review prior to examination. Tests may not be reviewed prior to examination. The driver education school or parent taught driver education course provider may review exams after completion, but may not provide copies of the exam to the student.

(b) The Texas Driver Education Certificate shall be completed and dated on the same day examination is completed. The certificate will serve as verification to the department that the student has met the training and examination requirements.

[~~(c) The actual exams or electronic record of all exams shall be maintained by the driver education school or parent taught driver education course provider as part of the permanent student instruction record. These records must be available for inspection and review by department or Texas Education Agency (TEA) personnel for a period of three years from the date of the exams.~~]

[~~(d) A parent taught driver education course provider that discontinues operation shall notify the department in writing and provide student records to the department or ensure access for the required period.~~]

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 April 19, 2016.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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For further information, please call: (512) 424-5848

CHAPTER 19. BREATH ALCOHOL TESTING REGULATIONS

SUBCHAPTER B. TEXAS IGNITION INTERLOCK DEVICE REGULATIONS

37 TAC §§19.21 - 19.29

The Texas Department of Public Safety (the department) proposes the repeal of §§19.21 - 19.29, concerning Texas Ignition Interlock Device Regulations. The repeal of this subchapter is filed simultaneously with proposed new Chapter 10, concerning Ignition Interlock Device. The proposed new chapter is intended to reorganize and consolidate the rules governing the Ignition Interlock Device program and to generally improve the clarity of the related rules.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the repeals are in effect, the public benefit anticipated as a result of enforcing the repeals will be greater clarity and simplicity in the administrative rules governing the approval and installation of ignition interlock devices.

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

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

Comments on this proposal may be submitted to Steve Moninger, Regulatory Services Division, Department of Public Safety, P.O. Box 4087, MSC-0240, Austin, Texas 78773-0246 or by email at https://www.txdps.state.tx.us/rsd/contact/default.aspx. Select "Ignition Interlock." Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.247 and §521.2476, which authorize the department to adopt rules relating to the approval of ignition interlock devices and the authorization of ignition interlock device vendors to conduct business in the state.

Texas Government Code, §411.004(3) and Texas Transportation Code, §521.247 and §521.2476 are affected by this proposal.

§19.21. Explanation of Terms and Actions.

§19.22. Procedure for Device Approval.

§19.23. Technical Requirements.

§19.24. Miscellaneous Requirements.

§19.25. Maintenance and Calibration Requirements.

§19.26. Approval, Denial, and Withdrawal of Approval.

§19.27. Certification and Inspection of Service Centers.

§19.28. Service Representative.

§19.29. Ignition Interlock Device Inspector.

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 April 19, 2016.

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D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 424-5848

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §§147.1 - 147.6

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 147, Subchapter A, §§147.1 - 147.6, concerning general rules for hearings. The amendments are proposed to capitalize titles throughout the rules, change the section symbol to the word "Section" in §147.5 and update the language in §147.6 to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the hearing process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to bettie.wells@tdcj.texas.gov. Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.036 508.0441, 508.281, and 508.283, Government Code. Section 508.036 authorizes the board adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 relates to the board member and parole commissioners' release and revocation duties. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§147.1. Public Hearings.

(a) All hearings on matters not confidential or privileged by law, or both, shall be open to the public.

(b) Appropriate federal and state constitutional provisions, statutes, regulations, and judicial precedent establishing the confidential or privileged nature of information presented shall be given effect by the Hearing Officer [~~hearing officer~~].

(c) To effect this provision, the Hearing Officer [~~hearing officer~~] shall have the authority to close the hearing to the extent necessary to protect against the improper disclosure of confidential and/or privileged information.

(d) If the Hearing Officer [~~hearing officer~~] closes the hearing pursuant to this section, in no event shall the Hearing Officer [~~hearing officer~~] exclude from the hearing a party as defined by Section 141.111 of this title (relating to Definition and Terms) and includes:

(1) the releasee;

(2) the releasee's attorney;

(3) the releasee's interpreter;

(4) Board Member [~~member~~] or Board employee;

(5) TDCJ employee;

(6) County jail employee; and

(7) Prosecuting attorney.

(e) When the Hearing Officer [~~hearing officer~~] closes the hearing, the Hearing Officer [~~hearing officer~~] shall announce on the record that the hearing will be closed to the public to protect the confidential and/or privileged information being introduced into evidence. After the confidential and/or privileged evidence is obtained, the Hearing Officer [~~hearing officer~~] shall open the hearing to the public and announce the same on the record.

§147.2. Authority of Hearing Officers.

(a) A Hearing Officer [~~hearing officer~~] shall have the following authority:

(1) to administer oaths;

(2) to examine witnesses;

(3) to rule on the admissibility of evidence;

(4) to rule on motions and objections;

(5) to recess any hearing from time to time and place to place;

(6) to reopen, upon order of a parole panel, or reconvene, or both, any hearing;

(7) to issue on behalf of the Board [~~board~~] subpoenas, warrants, and other documents authorized by and signed by a Board Member [~~board member~~] in accordance with statutory authority;

(8) to maintain order and decorum throughout the course of any proceedings;

(9) to collect documents and exhibits comprising the record of the hearing;

(10) to prepare the report of the hearing and make a recommendation to the Board [~~board~~] for disposition of the case; and

(11) to act as the finder of facts and determine the weight to be given to particular evidence or testimony and to determine the credibility of witnesses.

(b) If a Hearing Officer [~~hearing officer~~] fails to complete an assigned case, another officer may complete the case without the necessity of duplicating any duty or function performed by the previous Hearing Officer [~~hearing officer~~].

§147.3. Ex Parte Consultations.

Unless required for the disposition of matters authorized by law, Hearing Officers, Board Members [~~hearing officers, board members~~] and Parole Commissioners [~~parole commissioners~~] assigned to render a decision or to make findings of fact and conclusions of law in an individual case may not communicate, directly or indirectly, in connection with any issue of fact or law with any party, except on notice and opportunity for all parties to participate.

§147.4. Motions.

Unless made during a hearing, motions shall be made in writing, set forth the relief or order sought, and shall be filed with the Hearing Officer [~~hearing officer~~]. Motions based on matters which do not appear of record shall be supported by affidavit.

§147.5. Witnesses.

(a) The Hearing Officer [~~hearing officer~~] may determine whether a witness may be excused under the rule that excludes witnesses from the hearing.

(1) In no event shall the Hearing Officer [~~hearing officer~~] exclude from the hearing a party under the authority of this section. For these purposes, the term "party" means the definition in Section [§]141.111 of this title (relating to Definition of Terms) and includes:

(A) the releasee;

(B) the releasee's attorney; and

(C) no more than one representative of the TDCJ Parole Division who has acted or served in the capacity of supervising, advising, or agent officer in the case.

(2) In the event that it appears to the satisfaction of the Hearing Officer [~~hearing officer~~] that an individual who is present at the hearing and intended to be called by a party as a witness has no relevant, probative, noncumulative testimony to offer on any material issue of fact or law, then the Hearing Officer [~~hearing officer~~], in his sound discretion, may determine that such individual should not be placed under the rule and excluded from the hearing.

(b) All witnesses who testify in person are subject to cross-examination unless the Hearing Officer [~~hearing officer~~] specifically finds good cause for lack of confrontation and cross-examination.

(c) Witnesses personally served with a subpoena and who fail to appear at the hearing, and upon good cause determined by the Hearing Officer [~~hearing officer~~], may present testimony by written statement.

§147.6. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ Parole Division documents, staff memoranda or reports submitted to or considered by the Hearing Officer [~~hearing officer~~] involved in making the decision, and any decision, opinion, or report by the Hearing Officer [~~hearing officer~~] presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety[~~, and at the board's option shall be either copied or transcribed upon the request and deposit of estimated costs by any party~~].

(c) The hearing record is made a part of the official parole record maintained by the TDCJ Parole Division. All requests for copies of the hearing report or hearing recording shall be addressed to the TDCJ Parole Division.

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-201601922
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 406-5388

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SUBCHAPTER B. EVIDENCE

37 TAC §§147.21 - 147.24, 147.27

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 147, Subchapter B, §§147.21 - 147.24 and 147.27, concerning evidence. The amendments are proposed to capitalize hearing officer throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the hearing process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.texas.gov.* Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 relates to the board member and parole commissioners' release and revocation duties. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§147.21. Order.

The Hearing Officer [~~hearing officer~~] shall determine the order of presentation of evidence.

§147.22. Rules.

Hearing Officers [~~officers~~] shall apply the Texas Rules of Evidence. When necessary to ascertain facts not reasonably susceptible of proof under these rules, evidence not admissible thereunder may be admitted, except where precluded by statute, if it is of a type commonly relied upon by reasonably prudent persons in the conduct of their affairs.

§147.23. Privilege.

Hearing Officers [~~officers~~] shall give effect to the rules of privilege recognized by law.

§147.24. Relevant Testimony.

Testimony shall be confined to the subject of the pending matter. In the event any party at a hearing shall pursue a line of questioning that is, in the opinion of the Hearing Officer [~~hearing officer~~], irrelevant, incompetent, unduly repetitious, or immaterial, such questioning shall be terminated.

§147.27. Decisions.

Objections to evidence offers may be made and shall be ruled upon by the Hearing Officer [~~hearing officer~~] and any objections and the rulings thereon shall be noted in the record.

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

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Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 406-5388

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CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §148.48

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 148, §148.48, concerning Record. The amendments are proposed to reflect the Parole Division as the custodian of record.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.texas.gov.* Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under §§508.036, 508.0441, 508.045, 508.141, and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§148.48. Record.

(a) The record in any case includes all pleadings, motions, and rulings; evidence received or considered; matters officially noticed; questions and offers of proof, objections, and rulings on them; all relevant TDCJ-PD documents, staff memoranda or reports submitted to or considered by the hearing officer involved in making the decision; and any decision, opinion, or report by the hearing officer presiding at the hearing.

(b) All hearings shall be electronically recorded in their entirety[~~, and at the board's option shall be either copied or transcribed upon the request and deposit of estimated costs by any party~~].

(c) The hearing record is made a part of the official parole record maintained by the TDCJ Parole Division. All requests for copies of the hearing report or hearing recording shall be addressed to the TDCJ Parole Division.

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-201601927
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
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For further information, please call: (512) 406-5388

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CHAPTER 149. MANDATORY SUPERVISION SUBCHAPTER B. SELECTION FOR MANDATORY SUPERVISION

37 TAC §149.16

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC §149.16 concerning mandatory release certificate. The amendment is proposed to capitalize chair within the rule.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment to this section will be to bring the rule into compliance with current board practice. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.texas.gov.* Written comments from the general public should be received within 30 days of the publication of this proposal.

The amendment is proposed under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

No other statutes, articles, or codes are affected by these amendments.

§149.16. Mandatory Release Certificate.

(a) When a mandatory release plan has been approved, a mandatory release certificate shall be issued and signed with a facsimile signature of the Chair [~~chair~~].

(b) The approval of discretionary mandatory supervision may be withdrawn by the parole panel prior to the release of the offender.

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 April 25, 2016.

TRD-201601925
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 406-5388

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CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS

SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55, §150.56

The Texas Board of Pardons and Paroles proposes amendments to 37 TAC Chapter 150, Subchapter A, §150.55 and §150.56, concerning published policies of the board. The amendments are proposed to capitalize titles throughout the rules.

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendments are in effect, no fiscal implications exist for state or local government as a result of enforcing or administering these sections.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing the amendments to these sections will be to clarify the procedures in the hearing process. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rules as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendments will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.texas.gov.* Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rules are proposed under Subtitle B, Ethics, Chapter 572 and §508.0441, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy under which a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions. Section 508.035, Government Code, designates the presiding officer to establish policies and procedures to further the efficient administration of the business of the board.

No other statutes, articles, or codes are affected by these amendments.

§150.55. Conflict of Interest Policy.

(a) Section 1--Policy.

(1) It is the policy of the Board [~~board~~] that no Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall have any interest, financial or otherwise, direct or indirect; or engage in any business transaction or professional activity or incur any obligations of any nature which is in substantial conflict with the proper discharge of his duties in the public interest. In implementing this policy, there are provided the following standards of conduct, disclosure, and disqualification to be observed in the performance of their official duties.

(2) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall respect and comply with the law and not allow his family, social, or other relationships to influence his conduct, decisions, or judgment.

(b) Section 2--Disclosure.

(1) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall submit generally and on a case by case basis written notice to the Presiding Officer (Chair [~~presiding officer (chair~~]) of any substantial interest held by the Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] in a business entity doing business with the Board of Criminal Justice of the TDCJ or its component divisions and the Board [~~board~~].

(2) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] having a personal or private interest in any measure, proposal, or decision pending before the Board [~~board~~] (including parole and release decisions) shall immediately notify the Chair [~~chair~~] in writing of such interest. The Chair [~~chair~~] shall publicly disclose the Board Member's [~~board member's~~] or Parole Commissioner's [~~parole commissioner's~~] interest to the Board [~~board~~] in a meeting of the Board [~~board~~]. The Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall not vote or otherwise participate in the decision. The disclosure shall be entered into the minutes or official record of the meeting.

(3) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall consider the possibility that he is involved in a conflict of interest before making any decision or vote.

(4) If a Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] is uncertain whether any part of the conflict of interest policy applies to him in a specific matter, he shall request the General Counsel [~~general counsel~~] of the Board [~~board~~] to determine whether a disqualifying conflict of interest exists.

(c) Section 3--Standards of Conduct.

(1) No Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall accept or solicit any gift, favor, or service that might reasonably tend to influence him in the discharge of his official duties or that he knows or should know is being offered with the intent to influence his official conduct.

(2) No Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall accept employment or engage in any business or professional activity which he might reasonably expect would require or induce him to disclose confidential information acquired by reason of his official duties.

(3) No Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall accept other employment or compensation which would reasonably be expected to impair his independence of judgment in the performance of his official duties.

(4) No Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall make personal investments that could reasonably be expected to create a substantial conflict between his private interest and the public interest.

(5) No Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall intentionally or knowingly solicit, accept, or agree to accept any benefit for having exercised his official powers or performed his official duties in favor of another.

(d) Section 4--Disqualification.

(1) Disqualification. A Board Member [~~board member~~] shall recuse himself or herself from voting on all clemency matters; and a Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall recuse themselves from voting on all release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) they know that individually or as a fiduciary, they have an interest in the subject matter before them; or

(B) the Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] or his/her spouse is related by affinity or consanguinity within the third degree to a person who is the subject of the decision before them.

(2) Recusal. A Board Member [~~board member~~] shall disqualify himself or herself from voting on all clemency matters; and a Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall disqualify themselves from voting on all release on parole or mandatory supervision decisions, and decisions to continue, modify, or revoke parole or mandatory supervision when:

(A) their impartiality might reasonably be questioned;

(B) they have a personal bias or prejudice concerning the subject matter or person in the decision before them; or

(C) the Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] was a complainant, a material witness, or has served as counsel for the state or the defense in the prosecution of the subject of the parole decision or revocation decision before them.

(e) Section 5--Documentation.

(1) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall notify the Chair [~~chair~~] and General Counsel [~~general counsel~~] in writing when they disqualify or recuse themselves from voting;

(2) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall provide the specific reason for disqualification or recusal;

(3) Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall document the recusal or disqualification on the minute sheet of the offender's file; and

(4) A Board Member [~~board member~~] or Parole Commissioner [~~parole commissioner~~] shall place the written notification in the offender's file.

§150.56. Policies Pertaining to the Administration of the Agency.

(a) The Board [~~board~~] has overall managerial responsibility for developing, promulgating, and investigating policies on parole and mandatory supervision.

(b) The Presiding Officer [~~presiding officer~~] of the Board [~~board~~] or the Presiding Officer's [~~presiding officer's~~] designee acts as the agency's liaison to the legislature. The Board [~~board~~] shall have final approval over all proposed legislation before being submitted to the legislature.

(c) The Presiding Officer [~~presiding officer~~] of the Board [~~board~~] or the Presiding Officer's [~~presiding officer's~~] designee shall serve as agency spokesperson on all matters pertaining to Board [~~board~~] policy.

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 April 25, 2016.

TRD-201601926
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 406-5388

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 819. TEXAS WORKFORCE COMMISSION CIVIL RIGHTS DIVISION

The Texas Workforce Commission (Commission) proposes the following new section to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter H. Discriminatory Housing Practices, §819.136

The Commission proposes amendments to the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter A. General Provisions, §§819.1 - 819.3

Subchapter B. Equal Employment Opportunity Provisions, §819.11 and §819.12

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §§819.23 - 819.25

Subchapter D. Equal Employment Opportunity Complaints and Appeals Process, §§819.46, 819.47, 819.50, and 819.52

Subchapter E. Equal Employment Opportunity Deferrals, §819.72

Subchapter G. Texas Fair Housing Act Provisions, §819.112

Subchapter H. Discriminatory Housing Practices, §819.122

Subchapter I. Texas Fair Housing Act Complaints and Appeals Process, §§819.151, 819.153, and 819.156

Subchapter J. Fair Housing Deferral to Municipalities, §819.171

Subchapter L. Fair Housing Fund, §819.221

The Commission proposes the repeal of the following sections of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter C. Equal Employment Opportunity Reports, Training, and Reviews, §819.22

Subchapter J. Fair Housing Deferral to Municipalities, §819.172

The Commission proposes the repeal of the following subchapter of Chapter 819, relating to the Texas Workforce Commission Civil Rights Division, in its entirety:

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

The Commission proposes the following new subchapter to Chapter 819, relating to the Texas Workforce Commission Civil Rights Division:

Subchapter K. Fair Housing Administrative Hearings and Judicial Review, §§819.191 - 819.201

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The 84th Texas Legislature, Regular Session (2015), enacted the following changes, requiring amendments to Chapter 819, the Texas Workforce Commission Civil Rights Division rules:

--Senate Bill (SB) 208, relating to the continuing functions of the Texas Workforce Commission (Agency), which abolishes the Commission on Human Rights and transfers its duties to the Agency, in addition to streamlining and clarifying several CRD functions, including review of other state agencies and reporting requirements to the legislature.

--SB 1267, relating to contested cases conducted under the Administrative Procedure Act (APA);

--House Bill (HB) 2154, relating to the functions and operation of the State Office of Administrative Hearings, resulting in changes to Texas Government Code, Chapter 2001, APA;

--HB 577, relating to pay, benefits, and requirements for state active duty service members; and

--SB 652, relating to excluding a franchisor as an employer of a franchisee or a franchisee's employees, which impacts the definition of "Employer" in §819.11.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§819.1. Purpose

Section 819.1 adds a reference to Texas Government Code §437.204 and Subchapter I and removes the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

§819.2. Definitions

Section 819.2(1) and (2) are amended to remove the definition of "Commission on Human Rights" and add the definitions of "Agency" and "Commission" to implement SB 208.

Section 819.2(4), the definition of CRD director, is amended to implement SB 208 by:

--removing Texas Labor Code reference §301.154 and adding the reference to §301.009(a); and

--adding that the CRD director is the Agency's authorized designee to implement SB 208.

Certain paragraphs have been renumbered to reflect additions.

§819.3. Roles and Responsibilities of Commission on Human Rights, CRD, and CRD Director

Section 819.3 is amended by renaming the section title as "Roles and Responsibilities of the Texas Workforce Commission and CRD" to implement SB 208.

Section 819.3(a) is amended by replacing "Commission on Human Rights" with "Agency" to implement SB 208.

Section 819.3(a)(2) is amended by adding that the Agency's executive director will appoint the CRD director in order to implement SB 208.

Section 819.3(a)(3) is amended to add that the Agency's executive director will supervise its CRD director in administering the activities of CRD.

Section 819.3(b)(1) is amended to add the reference to Texas Government Code §437.204 and Subchapter I and remove the reference to Texas Government Code, Chapter 419, Subchapter F (relating to the review of fire department tests) and Chapter 437 to clarify that the Agency enforces discrimination claims by state military members against employers other than the Texas Military Forces due to deployment for training or active duty, and to implement SB 208 and HB 577.

Section 819.3(c), Agency Personnel Policies Applicable to CRD Director, is removed to implement SB 208.

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

The Commission proposes the following amendments to Subchapter B:

§819.11. Definitions

Section 819.11(6) is amended to clarify the definition of "Employer" to implement:

--HB 577, which excludes the Texas Military Forces from being considered employers; and

--SB 652, which excludes franchisors from being considered employers.

Section 819.11(8) is amended by clarifying that "Mediation" is an "alternative dispute resolution" process intended to "resolve" a dispute and removing "prior to reasonable cause determination or dismissal of a perfected complaint." This change aligns the definition with Agency practice.

§819.12. Unlawful Employment Practices

Section 819.12(g) is amended to replace "Commission on Human Rights" with "Agency" and to update section language to implement SB 208.

Certain paragraphs and subparagraphs have been renumbered and relettered to reflect revisions.

SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

The Commission proposes the following amendments to Subchapter C:

§819.22. Review of Firefighter Tests

Section 819.22, "Review of Firefighter Tests," is repealed to implement SB 208.

§819.23. Review of State Agency Policies and Procedures

Section 819.23(a) and new (b) update procedures in reviewing other state agencies' personnel policies and procedures systems (PPPS), which allows reviews of state agencies' PPPS more frequently than every six years, using risk assessment with the implementation of SB 208.

Certain subsections have been relettered to reflect additions.

§819.24. Standard Employment Discrimination Training

Section 819.24(a) is amended to:

--remove the requirement that a preapproved list of standard and compliance training be maintained; and

--add that the Agency shall develop materials for use by state agencies in providing standard employment discrimination training.

§819.25. Compliance Employment Discrimination Training

Section 819.25(b):

--removes the requirement that preapproved list of standard and compliance training be maintained by CRD; and

--adds that compliance training may be provided by the Agency or by another entity or person approved by the Agency.

SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

The Commission proposes the following amendments to Subchapter D:

§819.46. Dismissal of Complaint

Section 819.46(b) is amended to align with Texas Labor Code §21.208 on the legal communication method to the complainant, respondent, and any applicable federal enforcement agency.

§819.47. Cause Determination

Section 819.47(b) is amended to replace "Commission on Human Rights" with "Commission members" to implement SB 208.

§819.50. Right to File a Civil Action

Section 819.50(a)(2) is amended to replace "shall" with "may" to align with Texas Labor Code §21.252(c).

§819.52. Judicial Enforcement

Section 819.52(a) is amended to add "On a majority vote of the Commission" to implement SB 208.

Section 819.52(b) is amended to specify that the Commission makes the determination to bring a civil action and that CRD shall notify the complainant by certified mail to implement SB 208.

Section 819.52(c) is amended to replace "Commission on Human Rights" with "Commission" to implement SB 208.

SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

The Commission proposes the following amendments to Subchapter E:

§819.72. Requirements for a Local Commission

Section 819.72 is amended to reflect current operations by specifying that the local commission must be currently certified by EEOC as a Fair Employment Practices Agency (FEPA).

Certain paragraphs in this section have been renumbered to accommodate revisions.

SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

The Commission proposes the following amendments to Subchapter G:

§819.112. Definitions

Section 819.112(8)(A)(ii) is amended to replace "mental retardation" with "intellectual disability," in accordance with rule changes that were previously approved in June 2014.

SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

The Commission proposes the following amendments to Subchapter H:

§819.122. Exemptions Based on Familial Status

The heading to §819.122 is amended to add "Three" to emphasize that there are three distinct exemptions.

Section 819.122(a) is amended by adding language in reference to a federal or state program for clarification.

Section 819.122(b) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended for and solely occupied by individuals 62 years of age or older.

Section 819.122(c) is amended to add language clarifying that discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing intended and operated for occupancy by individuals 55 years of age or older, given specific criteria.

New §819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation

New §819.136, "Prohibited Interference, Coercion, Intimidation, or Retaliation," retains the provisions of §819.201 of Subchapter K of this chapter, concurrently proposed for repeal.

SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

The Commission proposes the following amendments to Subchapter I:

§819.151. Filing a Complaint

Section 819.151(h) is amended to replace "Commission on Human Rights" with "Commission" and to specify that if a majority of the Commission does not approve the complaint, the complaint shall be withdrawn by CRD to implement SB 208.

§819.153. Investigation of a Complaint

Section 819.153(a) is amended to add language further clarifying CRD internal practice.

Section 819.153(d) is amended to remove the phrase "within 10 days of identification" to align with Texas Property Code §301.084 and §301.081(f)(3).

Section 819.153(k) is amended to add "unless it is impracticable to do so" to align with federal Fair Housing Act §810(a)(1)(C).

§819.156. Reasonable Cause Determination and Issuance of a Charge

Section 819.156(a) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208. Additionally, "and" is changed to "or" to clarify that reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent, or otherwise disclosed during the investigation.

Section 819.156(e) is amended to add "trial of" to align with Texas Property Code §301.092 and federal Fair Housing Act §810(g)(4) and to reflect that a charge may not be issued upon commencement of a trial of a civil action rather than commencement of the civil action itself.

SUBCHAPTER J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

The Commission proposes the following amendments to Subchapter J:

§819.171. Deferral

Section 819.171 is amended to reflect that CRD may defer proceedings and refer complaints to a municipality that is currently certified by the U.S. Department of Housing and Urban Development (HUD) by adding the phrase "as a Fair Housing Assistance Program (FHAP) to investigate fair housing complaints and enforce violations" to (a) and removing subsections (b) and (c).

§819.172. Memoranda of Understanding

Section 819.172 is repealed in order to eliminate the requirement of memoranda of understanding, thereby streamlining fair housing deferrals to municipalities.

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission proposes the repeal of Subchapter K in its entirety:

§819.191. Administrative Hearings

§819.192. Ex Parte Communications

§819.193. Proposal for Decision and Hearing Officer's Report

§819.194. Countersignature by the CRD Director

§819.195. Oral Argument before the Commission on Human Rights

§819.196. Pleading Before Order

§819.197. Form and Content of the Order

§819.198. Final Order

§819.199. Rehearing

§819.200. Judicial Review

§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation

SUBCHAPTER K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

The Commission proposes new Subchapter K:

Subchapter K is being repealed and replaced to streamline, update, and clarify the rules governing administrative proceedings for adjudication of fair housing complaints as required in Texas Property Code, Chapter 301.

New Subchapter K aligns with APA, as amended by SB 1267 and HB 2154, regarding notices of hearing, proposals for decision, motions for rehearing, and suits for judicial review.

§819.191. Administrative Hearings

New §819.191 provides that FHA hearings will be conducted by the Agency's Special Hearings Department in accordance with Texas Government Code, Chapter 2001.

§819.192. Parties

New §819.192 sets forth requirement and time frame in regards to parties.

§819.193. Evidence and Prehearing Conference

New §819.193 provides for the admissibility of evidence and handling of exhibits.

§819.194. Notice of Hearing

New §819.194 sets forth the requirements and time frames for issuing a notice of hearing.

§819.195. Postponement and Continuance

New §819.195 provides that a hearing may be postponed at the discretion of the hearing officer.

§819.196. Default

New §819.196 sets forth the procedures to be followed if a party does not appear for a hearing.

§819.197. Ex Parte Communications

New §819.197 generally prohibits communication between parties and a Commission member or Agency employee outside of the hearing process.

§819.198. Proposal for Decision

New §819.198 sets forth the procedures for drafting and exchanging the proposal for decision and exceptions to the proposal.

§819.199. Commission Decision

New §819.199 sets forth the procedures for issuing the Commission decision and when the decision becomes final.

§819.200. Motion for Rehearing

New §819.200 describes the procedures and deadlines for filing a motion for rehearing.

§819.201. Judicial Review

New §819.201 sets forth the right to appeal the Commission decision to a court under Texas Government Code, Chapter 2001.

SUBCHAPTER L. FAIR HOUSING FUND

The Commission proposes the following amendments to Subchapter L:

§819.221. Fair Housing Fund

Section 819.221(c) is amended to replace "Commission on Human Rights" with "Agency" to implement SB 208.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Lowell Keig, Director, Civil Rights Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to gain further efficiencies in the investigation of complaints, reviews of policies and procedural systems of state agencies and reporting of data to elected state leadership and the public.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on September 8, 2015. The Commission also conducted a conference call with Board executive directors and Board staff on September 11, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to TWCPolicyComments@twc.state.tx.us. Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §§819.1 - 819.3

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.1. Purpose.

The purpose of this chapter is to implement the following statutory provisions: Texas Labor Code, Chapter 21 (relating to employment discrimination [~~Employment Discrimination~~]) and Chapter 301, Subchapter I (relating to the Civil Rights Division); Texas Property Code, Chapter 301, (relating to the Texas Fair Housing Act); and Texas Government Code, Chapter 437, §437.204 and Subchapter I (relating to unlawful termination of state military members ordered to training or

duty) [~~Chapter 419, Subchapter F (relating to Review of Fire Department Tests)~~].

§819.2. Definitions.

In addition to the definitions contained in §800.2 of this title, the following words and terms, when used in this chapter, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--The unit of state government established under Texas Labor Code, Chapter 301, that is presided over by the Commission.

(2) [~~(1)~~] Commission--The body of governance established under Texas Labor Code, Chapter 301. [~~Commission on Human Rights--The body of governance of the Texas Workforce Commission Civil Rights Division composed of seven members appointed by the Governor, as established under Texas Labor Code §301.153.~~]

(3) [~~(2)~~] Complainant--A person claiming to be aggrieved by a violation of Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301, and who files a complaint under one of these chapters.

(4) [~~(3)~~] CRD--Texas Workforce Commission Civil Rights Division.

(5) [~~(4)~~] CRD director--The director, or the director's authorized designee, of the Texas Workforce Commission Civil Rights Division, as established under Texas Labor Code §301.009(a). The CRD director is the authorized designee of the Agency's executive director for purposes of enforcing the statutes referenced in §819.1 of this subchapter [~~§301.154~~].

(6) [~~(5)~~] Fair Employment Practices Agency--A state or local government agency designated by the U.S. Equal Employment Opportunity Commission (EEOC) to investigate perfected employment discrimination complaints in the state or local government agency's jurisdiction.

(7) [~~(6)~~] Fair Housing Assistance Program Agency--A state or local government agency designated by the U.S. Department of Housing and Urban Development (HUD) to investigate Fair Housing Act complaints in the state or local government agency's jurisdiction.

(8) [~~(7)~~] Party--A person who, having a justiciable interest in a matter before CRD, is admitted to full participation in a proceeding concerning that matter.

(9) [~~(8)~~] Person--One or more individuals or an association, corporation, joint stock company, labor organization, legal representative, mutual company, partnership, receiver, trust, trustee, trustee in bankruptcy, unincorporated organization, the state, or a political subdivision or agency of the state.

(10) [~~(9)~~] Respondent--A person against whom a complaint has been filed in accordance with Texas Labor Code, Chapter 21, or Texas Property Code, Chapter 301.

§819.3. Roles and Responsibilities of the Texas Workforce Commission and [~~on Human Rights,~~] CRD[~~, and CRD Director~~].

(a) Responsibilities of the Agency [~~Commission on Human Rights~~]:

(1) Establish policies for CRD;

(2) Appoint CRD director by and through the Agency's executive director;

(3) Supervise CRD director by and through the Agency's executive director in administering the activities of CRD;

(4) Serve as the state Fair Employment Practices Agency (FEPA), which [~~that~~] is authorized, with respect to unlawful employment practices, to:

(A) seek relief;

(B) grant relief; and

(C) institute civil proceedings; and

(5) Serve as the state Fair Housing Assistance Program (FHAP), which is authorized [~~Agency~~], with respect to unlawful housing practices, to:

(A) seek relief;

(B) grant relief; and

(C) institute civil proceedings.

(b) Responsibilities of CRD:

(1) Administer Texas Labor Code, Chapter 21; Texas Property Code, Chapter 301; and Texas Government Code §437.204 and Subchapter I [~~Texas Government Code, Chapter 419, Subchapter F, and Chapter 437~~]; and

(2) Collect, analyze, and report statewide information regarding employment and housing discrimination complaints filed with CRD, EEOC, HUD, local commissions, and municipalities in Texas to be included in CRD's annual report to the Governor and the Texas legislature [~~Legislature~~].

[~~(c) Agency Personnel Policies Applicable to CRD Director:~~]

[~~(1) The CRD director is an appointee of the Commission on Human Rights and an employee of the Agency, and therefore accountable to both.~~]

[~~(2) The Agency executive director and the chair of the Commission on Human Rights shall consult on all personnel matters impacting the employment status of the CRD director.~~]

[~~(3) The Commission on Human Rights has the authority to appoint, supervise, and terminate the CRD director.~~]

[~~(4) The Agency executive director, in consultation with the chair of the Commission on Human Rights, has the authority to take any personnel action pursuant to Agency personnel policy, excluding termination.~~]

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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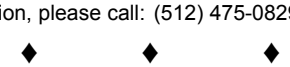

SUBCHAPTER B. EQUAL EMPLOYMENT OPPORTUNITY PROVISIONS

40 TAC §819.11, §819.12

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission

with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.11. Definitions.

The following words and terms, when used in Subchapter B, Equal Employment Opportunity Provisions; Subchapter C, Equal Employment Opportunity Reports, Training, and Reviews; Subchapter D, Equal Employment Opportunity Complaints and Appeals Process; Subchapter E, Equal Employment Opportunity Deferrals; and Subchapter F, Equal Employment Opportunity Records and Recordkeeping shall have the following meanings, unless the context clearly indicates otherwise.

(1) Bona fide occupational qualification--A qualification:

(A) that is reasonably related to the satisfactory performance of the duties of a job; and

(B) for which there is a factual basis for believing that no members of the excluded group would be able to satisfactorily perform the duties of the job with safety and efficiency.

(2) Civil Rights Act--The Civil Rights Act of 1964, as amended by the Equal Employment Opportunity Act of 1972 and the Civil Rights Act of 1991; the Age Discrimination in Employment Act of 1976, as amended; the Rehabilitation Act of 1973, as amended; the Americans with Disabilities Act of 1990, as amended; and Texas Labor Code, Chapter 21, regarding Employment Discrimination.

(3) Complaint--A written statement made under oath stating that an unlawful employment practice has been committed, setting forth the facts on which the complaint is based, and received within 180 days of the alleged unlawful employment practice.

(4) Conciliation--The settlement of a dispute by mutual written agreement in order to avoid litigation where a determination has been made that there is reasonable cause to believe an unlawful employment practice has occurred.

(5) Disability--A mental or physical impairment that substantially limits at least one major life activity of an individual, a record of such mental or physical impairment, or being regarded as having such an impairment as set forth in §3(2) of the Americans with Disabilities Act of 1990, as amended, and Texas Labor Code §21.002(6).

(6) Employer--A person who is engaged in an industry affecting commerce and who has 15 or more employees for each working day in each of 20 or more calendar weeks in the current or preceding calendar year and any agent of that person. The term includes an individual elected to public office in Texas or a political subdivision of Texas, or a political subdivision and any state agency or instrumentality, including public institutions of higher education, regardless of the number of individuals employed. The term excludes a franchisor from being considered an employer of a franchisee or a franchisee's employees. The term also exempts the Texas Military Forces from being an employer, as claims of discrimination against the Texas Military Forces by service members on state active duty shall be processed in accordance with military regulations and procedures as authorized by Texas Government Code §437.212.

(7) Local commission--Created by one or more political subdivisions acting jointly, pursuant to Texas Labor Code §21.152, and recognized as a Fair Employment Practices Agency by EEOC pursuant to U.S. Civil Rights Act, Title VII, §706, as amended by the Equal Employment Opportunity Act of 1972, the Civil Rights Act of 1991, and the Americans With Disabilities Act of 1990, as amended.

(8) Mediation--An alternative dispute resolution [~~A~~] process to resolve [~~settle~~] a dispute by mutual written agreement among the complainant, respondent, and CRD [~~prior to reasonable cause determination or dismissal of a perfected complaint~~].

(9) Perfected complaint--An employment discrimination complaint that CRD has determined meets all of the requirements of Texas Labor Code, Chapter 21, and for which CRD will initiate an investigation.

§819.12. Unlawful Employment Practices.

(a) Discrimination by Employer. An employer commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, the employer:

(1) fails or refuses to hire an individual, discharges an individual, or discriminates in any other manner against an individual in connection with compensation or the terms, conditions, or privileges of employment; or

(2) limits, segregates, or classifies an employee or applicant for employment in a manner that deprives or tends to deprive an individual of an employment opportunity or adversely affects in any other manner the status of an employee.

(b) Discrimination by Employment Agency. An employment agency commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) fails or refuses to refer for employment or discriminates in any other manner against an individual; or

(2) classifies or refers an individual for employment on that basis.

(c) Discrimination by Labor Organization. A labor organization commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it:

(1) excludes or expels from membership or discriminates in any other manner against an individual; or

(2) limits, segregates, or classifies a member or an applicant for membership, or classifies or fails or refuses to refer for employment an individual in an manner that:

(A) deprives or tends to deprive an individual of any employment opportunity;

(B) limits an employment opportunity or adversely affects in any other manner the status of an employee or of an applicant for employment; or

(C) causes or attempts to cause an employer to violate this subchapter.

(d) Admission or Participation in Training Program. An employer, labor organization, or joint labor management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if based on race, color, disability, religion, sex, national origin, or age, it discriminates against an individual in admission to or participation in the program, unless a training or retraining opportunity or program is provided under an affirmative action plan approved by federal or state law, rule, or court order. The prohibition against discrimination based on age applies only to individuals who are at least 40 years of age but younger than 56 years of age.

(e) Retaliation. An employer, employment agency, or labor organization, commits an unlawful employment practice based on race, color, disability, religion, sex, national origin, or age if the employer,

employment agency, or labor organization retaliates or discriminates against a person who:

(1) opposes a discriminatory practice;

(2) makes or files a charge;

(3) files a complaint; or

(4) testifies, assists, or participates in any manner in an investigation, proceeding, or hearing.

(f) Aiding or Abetting Discrimination. An employer, employment agency, or labor organization commits an unlawful employment practice if it aids, abets, incites, or coerces a person to engage in an unlawful discriminatory practice based on race, color, disability, religion, sex, national origin, or age.

(g) Interference with the Agency or [~~Commission on Human Rights and~~] CRD. An employer, employment agency, or labor organization commits an unlawful employment practice if it willfully interferes with the performance of a duty or the exercise of a power by CRD or by the Agency in relation to [~~Commission on Human Rights or~~] CRD.

(h) Prevention of Compliance. An employer, employment agency, or labor organization, commits an unlawful employment practice if it willfully obstructs or prevents a person from complying with Texas Labor Code, Chapter 21, or a rule adopted or order issued under Texas Labor Code, Chapter 21.

(i) Discriminatory Notice or Advertisement.

[~~(1)~~] An employer, employment agency, labor organization, or joint labor-management committee controlling an apprenticeship, on-the-job training, or other training or retraining program commits an unlawful employment practice if it prints or publishes or causes to be printed or published a notice or advertisement relating to employment that:

(1) [~~(A)~~] indicates a preference, limitation, specification, or discrimination based on race, color, disability, religion, sex, national origin, or age; and

(2) [~~(B)~~] concerns an employee's status, employment, or admission to or membership or participation in a labor organization or training or retraining program.

(j) [~~(2)~~] A bona fide occupational qualification is an affirmative defense to discrimination.

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SUBCHAPTER C. EQUAL EMPLOYMENT OPPORTUNITY REPORTS, TRAINING, AND REVIEWS

40 TAC §819.22

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.22. Review of Firefighter Tests.

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 §§819.23 - 819.25

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.23. Review of State Agency Policies and Procedures.

(a) Except as provided by subsection (b) of this section, CRD shall review the personnel policies and procedures system (PPPS) of each state agency once every six years on a staggered schedule to determine compliance with Texas Labor Code, Chapter 21.

(b) CRD may conduct a review of the PPPS of a state agency more frequently than required by subsection (a) when such review is indicated by a risk assessment based on the following criteria:

(1) Data on complaints against a state agency;

(2) Previous review findings;

(3) Changes in leadership of a state agency;

(4) The date of the last on-site review;

(5) Compliance by the state agency with submission of a self-assessment to CRD; and

(6) Any other related information collected and maintained by the Agency.

(c) [~~(b)~~] CRD shall notify a state agency of its review of the agency's personnel policies and procedures by mail, or electronic communication upon agreement of the agency, at the beginning of the fiscal year in which CRD is to conduct the review. The review of each state agency shall be completed and recommendations issued on or before the one-year anniversary date on which CRD issued its notification letter to the agency head.

§819.24. Standard Employment Discrimination Training.

(a) Each state agency shall provide its employees with standard employment discrimination training no later than the 30th day after the date the employee is hired by the agency, with supplemental training every two years thereafter. The Agency shall develop or approve the materials for use by state agencies in providing standard employment discrimination training. [~~Each state agency shall provide the standard training using a training program from CRD's preapproved list of training programs that have been reviewed and certified by CRD as compliant with its training standards, including the standards set forth in this subchapter.~~]

(b) The minimum standards for the content of standard employment discrimination training shall include, but not be limited to, requiring participants to:

(1) identify an unlawful employment practice according to the Civil Rights Act;

(2) apply knowledge of the applicable laws by correctly identifying whether individual case studies would be considered violations;

(3) identify the protected classes under federal and state law;

(4) list a complainant's rights and remedies;

(5) identify the agency personnel to whom a complaint shall be addressed; and

(6) describe the general stages involved in processing a complaint.

§819.25. Compliance Employment Discrimination Training.

(a) For purposes of this section, the term "complaint with merit" shall mean a complaint that is resolved, either by a cause finding or through withdrawal of the complaint with a remedy favorable to the complainant, such as a negotiated settlement, withdrawal with benefits, or conciliation.

(b) State agencies receiving three or more complaints with merit within a fiscal year shall provide compliance employment discrimination training. The training may be provided by the Agency or by another entity or person approved by the Agency. [~~The compliance training may be provided using a training program from CRD's preapproved list of training programs. If a state agency chooses to provide compliance training using a person or state agency not included on CRD's list of preapproved training programs, the training provider and the training program to be used by the person or state agency shall be reviewed and approved for compliance with CRD standards.~~]

(c) CRD's minimum standards for the content of compliance employment discrimination training shall include, but not be limited to, requiring participants to:

(1) distinguish between disparate treatment and disparate impact;

(2) identify the elements of a complaint involving disparate treatment and disparate impact;

(3) explain the defenses available to an employer resulting from both statute and case law involving disparate treatment and disparate impact;

(4) explain the burden of proof requirements for disparate treatment and disparate impact;

(5) identify criteria for accurately measuring compliance with applicable laws;

(6) define the different types of employment discrimination;

(7) identify the appropriate action to be taken in a situation involving a potential case of employment discrimination; and

(8) describe strategies for prevention of employment discrimination.

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SUBCHAPTER D. EQUAL EMPLOYMENT OPPORTUNITY COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.46, 819.47, 819.50, 819.52

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.46. Dismissal of Complaint.

(a) The CRD director may dismiss a complaint if:

(1) it is not filed timely;

(2) it fails to state a claim under Texas Labor Code, Chapter 21;

(3) a complainant fails to perfect a complaint within 10 days of the receipt of the complaint; or

(4) a complainant fails to cooperate, fails or refuses to appear or to be available for interviews or conferences, or fails or refuses to provide requested information. Prior to dismissing the complaint, the complainant shall be notified and given a reasonable time to respond.

(b) CRD shall notify the complainant [~~and the respondent, and any agencies,~~] as required by law, by certified mail of its dismissal of a complaint. The respondent and any federal enforcement agency shall be notified of the dismissal of a complaint.

(c) CRD shall notify the complainant, by mail, of the complainant's right to file a civil action against the respondent named in the perfected complaint pursuant to Texas Labor Code §21.208 and §21.252, and §819.50 of this subchapter.

§819.47. Cause Determination.

(a) The CRD director shall review the investigation report and record of evidence to determine if there is reasonable cause to believe the respondent has engaged in an unlawful employment practice.

(b) If after the review, the CRD director determines that reasonable cause exists, the CRD director shall confer with [~~a panel of three commissioners of~~] the Commission members [~~on Human Rights, as identified by the chair of the Commission on Human Rights~~]. If at least two of the three Commission members [~~commissioners~~] concur with the CRD director's determination that the respondent has engaged in an unlawful employment practice, the CRD director shall issue a letter of cause determination. The cause determination letter shall be provided by mail, or electronic communication upon agreement of the person or entity, to the complainant, respondent, and any agency as required by law and shall contain the CRD director's finding that the evidence supports the perfected complaint and include an invitation to participate in conciliation.

§819.50. Right to File a Civil Action.

(a) CRD shall inform the complainant by certified mail of:

(1) the dismissal of a complaint filed with CRD; or

(2) the failure to resolve a complaint in writing that was filed with CRD 180 days previously. CRD shall inform the complainant of the complainant's right to request from CRD a notice of right to file a civil action against the respondent. Upon receipt of a written request, CRD may [~~shall~~] issue a notice of right to file a civil action.

(b) Before the expiration of 180 days after filing the complaint and upon a written request from a complainant, CRD shall issue a notice of right to file a civil action if:

(1) written confirmation by a physician licensed to practice medicine in Texas states that the complainant has a life threatening illness; or

(2) certification by the CRD director states that the administrative processing of the perfected complaint cannot be completed before the expiration of the 180th day after the complaint was filed. The certification shall take into account the exigent circumstances of the complainant.

(c) CRD shall issue notice under subsection (b) of this section by certified mail no later than the fifth business day after receipt of the complainant's request.

(d) The complainant's written request shall include the respondent's name, CRD complaint number, and EEOC complaint number if the complaint has been deferred by EEOC.

§819.52. Judicial Enforcement.

(a) On a majority vote of the Commission, CRD may bring a civil action against a respondent named in a perfected complaint pursuant to the requirements of Texas Labor Code §21.251.

(b) Upon a determination by the Commission [~~CRD~~] to bring a civil action, CRD [~~it~~] shall notify the complainant by certified mail.

(c) On a majority vote of the Commission [~~on Human Rights~~], CRD may pursue intervention in a civil action pursuant to the requirements of Texas Labor Code §21.255.

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SUBCHAPTER E. EQUAL EMPLOYMENT OPPORTUNITY DEFERRALS

40 TAC §819.72

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.72. Requirements for a Local Commission.

[~~(a)~~] To be a local commission eligible to receive deferrals from CRD, pursuant to Texas Labor Code §§21.151 - 21.156, and this chapter, the local commission must be currently certified by the EEOC as a Fair Employment Practices Agency (FEPA). [~~following materials and information shall be submitted to CRD:~~]

[~~(1) A letter from EEOC verifying the local commission's designation as a Fair Employment Practices Agency;~~]

[~~(2) A copy of the local ordinance that prohibits practices designated as unlawful under Texas Labor Code, Chapter 21;~~]

[~~(3) A copy of rules, policies, and procedures governing the operations of the local commission;~~]

[~~(4) A copy of an organizational chart of the internal structure of the local commission and its relationship to the governing authorities of the political subdivision or subdivisions of which it is a part; and~~]

[~~(5) A copy of the local commission's budget and resources.~~]

[~~(b) Upon examination of the materials and information provided by a local commission, the CRD director shall provide written notification to the local commission of its eligibility to receive deferrals.~~]

[~~(c) If CRD determines that the local commission is not eligible to receive deferrals, it shall identify in writing the reasons and provide the local commission the necessary assistance to comply with the requirements established by Texas Labor Code §§21.151 - 21.156, and this chapter.~~]

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SUBCHAPTER G. TEXAS FAIR HOUSING ACT PROVISIONS

40 TAC §819.112

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.112. Definitions.

The following words and terms, when used in Subchapter G, Texas Fair Housing Act Provisions; Subchapter H, Discriminatory Housing Practices; Subchapter I, Texas Fair Housing Act Complaints and Appeals Process; Subchapter J, Fair Housing Deferral to Municipalities; Subchapter K, Fair Housing Administrative Hearings and Judicial Review; and Subchapter L, Fair Housing Fund, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Accessible or readily accessible to and usable by--Means a [~~A~~] public or common use area can be approached, entered, and used [~~that is accessible~~] by individuals with disabilities, as set forth in Texas Property Code §301.025(c)(3). Compliance with the appropriate requirements of the American National Standards Institute (ANSI) for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(2) Accessible building entrance--A building entrance that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(3) Accessible route--A route that is accessible by individuals with disabilities, as set forth in Texas Property Code §301.025(c). Compliance with the appropriate requirements of ANSI for buildings and facilities providing accessibility and usability for persons having physical disabilities, commonly cited as ANSI A117.1, satisfies this requirement.

(4) Building--A structure, facility, or the portion thereof that contains or serves one or more dwelling units.

(5) Common use areas--Rooms, spaces, or elements inside or outside of a building that are made available for the use of residents or the guests of a building. These areas include, but are not limited to, hallways, lounges, lobbies, laundry rooms, refuse rooms, mailrooms, recreational areas, and passageways among and between buildings.

(6) Complaint--A written statement made under oath stating that an unlawful housing practice has been committed, setting forth the facts on which the complaint is based, and received within one year of the date the alleged unlawful housing practice occurred or terminated, whichever is later, and for which CRD shall initiate an investigation.

(7) Controlled substance--Any drug or other substance or immediate precursor as defined in the Controlled Substances Act, 21 U.S.C. §802 or the Texas Controlled Substances Act, Texas Health and Safety Code Chapter 481.

(8) Disability--A mental or physical impairment that substantially limits at least one major life activity, a record of such an impairment, or being regarded as having such an impairment. The term does not include current illegal use of or addiction to any drug or illegal or [~~federally~~] controlled substance; and reference to "an individual with a disability" or perceived as "disabled" does not apply to an individual based on that individual's sexual orientation or because that individual is a transvestite.

(A) Physical [~~Mental~~] or mental [~~physical~~] impairment includes:

(i) any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems: neurological, musculoskeletal, special sense organs, respiratory, including speech organs, cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine; or

(ii) any mental or psychological disorder, such as intellectual disability [~~mental retardation~~], organic brain syndrome, emotional or mental illness, and specific learning disabilities. The term "physical or mental impairment" includes, but is not limited to, such diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, autism, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, human immunodeficiency virus infection, intellectual disability, emotional illness, drug addiction (other than addiction caused by current, illegal use of a controlled substance) and alcoholism.

(B) Major life activity means a function such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning, and working.

(C) A record of having such an impairment means a history of, or misclassification as having, a mental or physical impairment that substantially limits one or more major life activity.

(D) Being regarded as having an impairment means having:

(i) a physical or mental impairment that does not substantially limit one or more major life activity but that is treated by another person as constituting such a limitation;

(ii) a physical or mental impairment that substantially limits one or more major life activity only as a result of the attitudes of others toward such impairment; or

(iii) none of the impairments in subparagraph (A) of this paragraph but is treated by another person as having such an impairment.

(9) Discriminatory housing practice--An action prohibited by Texas Fair Housing Act, Subchapter B, or conduct that is an offense under Texas Fair Housing Act, Subchapter I.

(10) Entrance--Any access point to a building or portion of a building used by residents for the purpose of entering the building.

(11) Exterior--All areas of the premises outside of an individual dwelling unit.

(12) Ground floor--Within a building, any floor with an entrance on an accessible route. A building may have more than one ground floor.

(13) Interior--The spaces, parts, components, or elements of an individual dwelling unit.

(14) Modification--Any change to the public or common use areas of a building or any change to a dwelling unit.

(15) Premises--The interior or exterior spaces, parts, components, or elements of a building, including individual dwelling units and the public and common use areas of a building.

(16) Public use areas--Interior or exterior rooms or spaces of a building that are made available to the general public. Public use may be provided at a building that is privately or publicly owned.

(17) Site--A parcel of land bounded by a property line or a designated portion of a public right of way.

(18) Texas Fair Housing Act--Texas Property Code, Chapter 301.

(19) United States Fair Housing Act--Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1988.

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SUBCHAPTER H. DISCRIMINATORY HOUSING PRACTICES

40 TAC §819.122, §819.136

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.122. Three Exemptions Based on Familial Status.

(a) Discrimination prohibitions under the Texas Fair Housing Act based on familial status do not apply to housing provided under any federal or state program that is designed and operated specifically to assist elderly individuals, as defined in the federal or state program.

(b) Discrimination prohibitions under the [~~The~~] Texas Fair Housing Act based on familial status do [~~does~~] not apply to housing intended for and solely occupied by individuals 62 years of age or older. This exemption shall apply regardless of the fact that:

(1) there were individuals residing in such housing on September 13, 1988, who were under 62 years of age, provided that all new occupants are 62 years of age or older;

(2) there are unoccupied units, provided that such units are reserved for occupancy for individuals 62 years of age or older; or

(3) there are units occupied by employees of the housing (and family members residing in the same unit) who are under 62 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

(c) Discrimination prohibitions under the [~~The~~] Texas Fair Housing Act based on familial status do [~~does~~] not apply to housing intended and operated for occupancy by individuals 55 years of age or older if:

(1) at least 80[~~%~~] percent of the units in the housing facility are occupied by at least one person 55 years of age or older. However:

(A) a newly constructed housing facility for first occupancy after March 12, 1989, need not comply with this 80[~~%~~] percent occupancy requirement until 25[~~%~~] percent of the units in the facility are occupied; and

(B) a housing facility or community may not evict, refuse to renew leases, or otherwise penalize families with children in order to achieve occupancy of at least 80[~~%~~] percent of the occupied units by at least one person 55 years of age or older;

(2) the owner or manager of a housing facility publishes and adheres to policies and procedures that demonstrate an intent by the owner or manager to provide housing for individuals 55 years of age or older. The following factors, among others, are relevant in determining whether the owner or manager of a housing facility has complied with the requirements of this paragraph:

(A) The manner in which the housing facility is described to prospective residents;

(B) The nature of any advertising designed to attract prospective residents;

(C) Age verification procedures;

(D) Lease provisions;

(E) Written rules and regulations;

(F) Actual practices of the housing facility or community; and

(G) Public posting in common areas of statements describing the facility or community as housing for individuals 55 years of age or older; and

(3) the housing facility satisfies the requirements of this section regardless of the fact that:

(A) as of September 13, 1988, under 80[~~%~~] percent of the occupied units in the housing facility were occupied by at least one person 55 years of age or older, provided that at least 80[~~%~~] percent of the units that were occupied by new occupants after September 13, 1988, were occupied by at least one person 55 years of age or older;

(B) there are unoccupied units, provided that at least 80[~~%~~] percent of such units are reserved for occupancy by at least one person 55 years of age or older; and

(C) there are units occupied by employees of the housing facility (and family members residing in the same unit) who are under 55 years of age provided they perform substantial duties directly related to the management or maintenance of the housing.

§819.136. Prohibited Interference, Coercion, Intimidation, or Retaliation.

(a) It is unlawful to interfere, coerce, intimidate, or retaliate against any person in the exercise or enjoyment of, or on account of that person having exercised or enjoyed, or on account of that person having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by the Texas Fair Housing Act.

(b) Prohibited conduct made unlawful under this section includes, but is not limited to:

(1) coercing a person, either orally, in writing, or by other means, to deny or limit the benefits provided that person in connection with the sale or rental of a dwelling or in connection with a residential real estate-related transaction based on race, color, disability, religion, sex, national origin, or familial status;

(2) threatening, intimidating, or interfering with individuals in their enjoyment of a dwelling based on race, color, disability, religion, sex, national origin, or familial status of such individuals, or of visitors or associates of such individuals;

(3) threatening an employee or agent with dismissal or an adverse employment action, or taking such adverse employment action, for any effort to assist a person seeking access to the sale or rental of a dwelling or seeking access to any residential real estate-related transaction, based on the race, color, disability, religion, sex, national origin, or familial status of that person or of any person associated with that individual;

(4) intimidating or threatening any person because that person is engaging in activities designed to make other individuals aware of, or encouraging such other individuals to exercise rights granted or protected by this chapter; and

(5) retaliating against any person because that person has made a complaint, testified, assisted, or participated in any manner in a proceeding under the Texas Fair Housing Act.

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

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SUBCHAPTER I. TEXAS FAIR HOUSING ACT COMPLAINTS AND APPEALS PROCESS

40 TAC §§819.151, 819.153, 819.156

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.151. Filing a Complaint.

(a) A person may telephone, write, visit, e-mail, fax, or otherwise contact CRD to obtain information on filing a complaint with CRD.

(b) At the complainant's request, CRD:

(1) shall confer with the complainant about the facts and circumstances that may constitute the alleged unlawful housing practice; and

(2) shall assist the complainant with preparation of the complaint if the facts and circumstances constitute an alleged unlawful housing practice; or

(3) may advise the complainant if the facts and circumstances presented to CRD do not appear to constitute an unlawful housing practice.

(c) The complaint shall be filed in writing and under oath with CRD by electronic communication, mail, fax, or in person with:

(1) the CRD office on a CRD-provided form;

(2) a HUD office; or

(3) a local municipality certified by HUD.

(d) The CRD director may require complaints to be made in writing, under oath, on a prescribed form. The complaint shall include the following information:

(1) The name and address of the complainant;

(2) The name and address of the respondent;

(3) A description and address of the dwelling that is involved, if appropriate;

(4) The basis for the alleged discriminatory housing practices, which may include any of the following: race, color, disability, religion, sex, national origin, or familial status;

(5) A concise statement of the facts and circumstances that constitute alleged discriminatory housing practices under the Texas Fair Housing Act, including identification of personal harm, reason given to complainant by respondent for the action taken; and

(6) A declaration of unlawful discrimination under federal or state law.

(e) A complaint shall be filed on or before the first anniversary of the date the alleged discriminatory housing practice occurs or terminates, whichever is later.

(f) The date of the filing of the complaint is the date when it is received by CRD or dual-filed with HUD, except when the CRD director determines that a complaint is timely filed for the purposes of the one-year period for filing of complaints upon submission of written information (including information provided by telephone by the complainant and documented by CRD) that is substantially equivalent to the information identified in subsection (d) of this section. When a complaint alleges discriminatory housing practices that are continuing, as manifested in a number of incidents of such conduct, the complaint shall be timely when filed within one year of the last alleged occurrence.

(g) A complaint may be amended to cure technical defects or omissions, or to clarify and amplify allegations made therein. Such amendment or amendments alleging additional acts that constitute unlawful housing practices related to or growing out of the subject matter of the original complaint shall relate back to the date the complaint was first filed. CRD shall provide a copy of the complaint to the respondent. An amended complaint shall be subject to the procedures set forth in applicable law.

(h) The CRD director may file a complaint when the CRD director receives information from a credible source that one or more individuals may have violated the rights of one or more individuals protected by the Texas Fair Housing Act. A complaint filed by the CRD director shall be considered for approval by the Commission at a [~~on Human Rights at its first regularly scheduled~~] meeting following the filing of the complaint. Upon a majority vote of the Commission

[~~on Human Rights~~], the complaint is approved and any investigation of the complaint shall continue. If a majority of the Commission [~~on Human Rights~~] does not approve the complaint, such complaint shall be withdrawn by CRD.

(i) The complainant and respondent shall be notified periodically by CRD of the status of their complaint, unless the notice would jeopardize an undercover investigation by another state, federal, or local government.

(j) Upon the acceptance of a complaint, the CRD director shall notify by mail, or electronic communication upon agreement of the complainant, each complainant on whose behalf the complaint was filed. The notice shall:

(1) acknowledge the filing of the complaint and state the date that the complaint was accepted for filing;

(2) include a copy of the complaint;

(3) advise the complainant of the time limits applicable to complaint processing and of the procedural rights and obligations of the complainant under the Texas Fair Housing Act and this chapter;

(4) advise the complainant of his or her right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice. The notice shall state that the computation of this two-year period excludes any time during which an administrative hearing is pending under this chapter and Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice; and

(5) advise the complainant that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act and this chapter.

§819.153. Investigation of a Complaint.

(a) Upon the acceptance of a complaint under this chapter, CRD shall initiate an investigation. The CRD director may initiate an investigation to determine whether a complaint should be filed under this chapter and the Texas Fair Housing Act, Subchapter E. Such investigations shall be conducted in accordance with the procedures set forth in this chapter. CRD also may invite the parties to participate in a voluntary mediation program in an effort to conciliate the dispute.

(b) The CRD director shall determine the scope and nature of the investigation within the context of the allegations set forth in the complaint.

(c) At all reasonable times in the complaint investigation, the CRD director shall have access to:

(1) necessary witnesses for examination under oath or affirmation; and

(2) records, documents, and other information relevant to the investigation of alleged violations of the Texas Fair Housing Act, for inspection and copying.

(d) Within 20 days of the acceptance of a complaint or amended complaint under this chapter, the CRD director shall serve a notice on each respondent by regular mail, or electronic communication upon agreement of the respondent. A person who is not named as a respondent in a complaint, but who is identified in the course of the investigation under the Texas Fair Housing Act, Subchapter E, and this chapter, as a person who is alleged to be engaged or to have engaged in the discriminatory housing practice upon which the complaint is based, may be joined as an additional or substitute respondent by service of a notice on the person under this section [~~within 10 days of identification~~].

(e) The notice to a respondent shall include, but not be limited to, the following:

(1) Identification of the alleged discriminatory housing practice upon which the complaint is based, and a copy of the complaint;

(2) Date that the complaint was accepted for filing;

(3) Time limits applicable to complaint processing under this chapter and the procedural rights and obligations of the respondent under the Texas Fair Housing Act, and this chapter, including the opportunity to submit an answer to the complaint within 10 days of the receipt of the notice;

(4) Complainant's right to commence a civil action under the Texas Fair Housing Act, Subchapter H, and federal law, not later than two years after the occurrence or termination of the alleged discriminatory housing practice; an explanation that the computation of the two-year period excludes any time during which an administrative hearing is pending under this chapter or the Texas Fair Housing Act, Subchapter E, with respect to a complaint or charge based on the alleged discriminatory housing practice;

(5) If the person is not named in the complaint, but is being joined as an additional or substitute respondent, an explanation of the basis for the CRD director's belief that the joined person is properly joined as a respondent;

(6) Instruction that retaliation against any person because he or she made a complaint or testified, assisted, or participated in an investigation, conciliation, or an administrative proceeding under this chapter is a discriminatory housing practice that is prohibited under the Texas Fair Housing Act;

(7) Invitation to enter into a conciliation agreement for the purpose of resolving the complaint; and

(8) Initial request for information and documentation concerning the facts and circumstances surrounding the alleged discriminatory housing practice set forth in the complaint.

(f) The respondent may file an answer not later than 10 days after receipt of the notice described in this section. The respondent may assert any defense that might be available to a defendant in a court of law. The written answer shall either be signed under oath or subscribed by the person making the declaration as true under penalty of perjury and in substantially the form prescribed by Texas Civil Practice and Remedies Code, Chapter 132, or its successor statute.

(g) An answer may be reasonably and fairly amended at any time.

(h) CRD may conduct discovery in aid of the investigation by the same methods and to the same extent that parties may conduct discovery in an administrative proceeding under the Texas Fair Housing Act, Subchapter E. The CRD director shall have the power to issue subpoenas described under the Texas Fair Housing Act, Subchapter D, in support of the investigation.

(i) As part of the complaint investigation, CRD may request information relevant to the alleged violations of the Texas Fair Housing Act. In obtaining this information, CRD may use, but is not limited to using, any of the following:

(1) Oral and video interviews and depositions;

(2) Written interrogatories;

(3) Production of documents and records;

(4) Requests for admissions;

(5) On-site inspection of respondent's facilities;

(6) Written statements or affidavits;

(7) A written statement of position or information provided by the complainant or the respondent that is either under oath or subscribed in conformity with this section regarding the allegations in the complaint; or

(8) Other forms of discovery authorized by the Administrative Procedure Act, Texas Government Code §§2001.081 - 2001.103, or the Texas Rules of Civil Procedure.

(j) CRD may establish time requirements regarding responses to requests for information relevant to an investigation of alleged violations of the Texas Fair Housing Act. The CRD director may extend such time requirements for good cause shown.

(k) CRD shall complete the initial investigation of the alleged discriminatory housing practice within 100 days of the filing of the complaint, unless it is impracticable to do so.

(l) The complaint shall remain open until a no reasonable cause determination is made, a charge is made, or a conciliation agreement is executed and approved under this chapter and the Texas Fair Housing Act, Subchapter E.

(m) At the end of each investigation under this chapter, CRD shall prepare a final investigative report. The investigative report shall contain:

(1) the names and dates of contacts with witnesses. The report shall not disclose the names of witnesses that request anonymity; however, the names of such witnesses may be required to be disclosed in the course of an administrative hearing or a civil action;

(2) a summary and the dates of correspondence and other contacts with the complainant and the respondent;

(3) a summary description of other pertinent records;

(4) a summary of witness statements; and

(5) answers to interrogatories.

(n) A final investigative report may be amended if additional evidence is discovered.

(o) CRD shall provide a summary of the final determination and shall make available the full investigative report to the complainant and the respondent.

§819.156. Reasonable Cause Determination and Issuance of a Charge.

(a) If a conciliation agreement under this chapter and the Texas Fair Housing Act, Subchapter E, has not been executed by the complainant and the respondent, and approved by the CRD director, the CRD director on behalf of the Agency [~~Commission on Human Rights~~], within the time limits set forth in subsection (f) of this section, shall determine whether, based on the totality of the factual circumstances known at the time of the decision, reasonable cause exists to believe that a discriminatory housing practice has occurred. The reasonable cause determination shall be based solely on the facts concerning the alleged discriminatory housing practice, provided by complainant and respondent or [~~and~~] otherwise disclosed during the investigation. In making the reasonable cause determination, the CRD director shall consider whether the facts concerning the alleged discriminatory housing practice are sufficient to warrant the initiation of a civil action in state district court.

(b) If the CRD director determines that reasonable cause exists, the CRD director shall immediately issue a charge under the Texas Fair Housing Act, Subchapter E, and this chapter on behalf of the complainant, and shall notify the complainant and the respondent of this determination by certified mail or personal service.

(c) If the CRD director determines that no reasonable cause exists, the CRD director shall issue a short written statement of the facts upon which the CRD director has based the no reasonable cause determination; dismiss the complaint; notify the complainant and the respondent of the dismissal (including the written statement of facts) by certified mail or personal service; and make public disclosure of the dismissal.

(d) If the CRD director determines that the matter involves the legality of local zoning or land use laws or ordinances, the CRD director, in lieu of making a determination regarding reasonable cause, shall refer the investigative materials to the Office of the Attorney General for appropriate action under the Texas Fair Housing Act, Subchapter G, and shall notify the complainant and the respondent of this action by certified mail or personal service.

(e) The CRD director shall not issue a charge under this chapter and the Texas Fair Housing Act, Subchapter E, regarding an alleged discriminatory housing practice, if a complainant has commenced the trial of a civil action under federal or state law seeking relief with respect to the alleged discriminatory housing practice. If a charge is not issued because of the commencement of a trial of a civil action, the CRD director shall notify the complainant and the respondent by certified mail or personal service.

(f) The CRD director shall make a reasonable cause determination within 100 days after filing of the complaint.

(g) If the CRD director is unable to make the determination within the 100-day period, the CRD director shall notify the complainant and the respondent, by certified mail or personal service, of the reasons for the delay.

(h) The CRD director shall notify the complainant and respondent, and any aggrieved person on whose behalf a complaint has been filed, that they may elect to have the claims asserted in the charge decided in a civil action, as provided in Texas Property Code §301.131, or an administrative hearing pursuant to §819.191 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 J. FAIR HOUSING DEFERRAL TO MUNICIPALITIES

40 TAC §819.171

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it

deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.171. Deferral.

[~~(a)~~] Pursuant to [~~the~~] Texas Fair Housing Act §301.068, CRD may defer proceedings and refer complaints to a municipality that is currently [~~has been~~] certified by HUD as a Fair Housing Assistance Program (FHAP) to investigate fair housing complaints and enforce violations.

~~[(b) A local municipality certified by HUD shall submit the following materials and information to CRD before a deferral or referral shall be made:]~~

~~[(1) A copy of the local ordinance that is determined to be substantially equivalent to federal law;]~~

~~[(2) A letter verifying that the ordinance of the municipality has been approved by HUD as substantially equivalent to federal law;]~~

~~[(3) A copy of rules, policies, and procedures governing the administration and enforcement of the local ordinance determined to be substantially equivalent to federal law and the Texas Fair Housing Act; and]~~

~~[(4) A copy of the organizational chart of the municipality's internal structure for enforcing the local ordinance determined to be substantially equivalent to federal law and the Texas Fair Housing Act.]~~

~~[(c) Upon examination of the materials and information provided by the municipality, the CRD director shall notify the municipality in writing as to the determination of its eligibility.]~~

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 §819.172

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.172. Memoranda of Understanding.

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 K. FAIR HOUSING ADMINISTRATIVE HEARINGS AND JUDICIAL REVIEW

40 TAC §§819.191 - 819.201

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.191. Administrative Hearings.
§819.192. Ex Parte Communications.
§819.193. Proposal for Decision and Hearing Officer's Report.
§819.194. Countersignature by the CRD Director.
§819.195. Oral Argument before the Commission on Human Rights.
§819.196. Pleading Before Order.
§819.197. Form and Content of the Order.
§819.198. Final Order.
§819.199. Rehearing.
§819.200. Judicial Review.
§819.201. Prohibited Interference, Coercion, Intimidation, or Retaliation.

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 §§819.191 - 819.201

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Texas Government Code, Chapter 552.

§819.191. Administrative Hearings.

(a) Administrative hearings shall be conducted by the Agency's Special Hearings Department pursuant to the procedures set forth in this Subchapter K, which incorporates the procedures set forth in Texas Government Code, Chapter 2001, Subchapters C - D, F - H, and Z, and adapts such procedures specifically for fair housing

administrative hearings. If any procedures under this Subchapter K are in conflict with Texas Government Code, Chapter 2001, Subchapters C - D, F - H, or Z, such subchapters under Chapter 2001 shall control.

(b) Hearings may be conducted by electronic means, including but not limited to telephonic hearings, unless the hearing officer determines that an in-person hearing is necessary.

(c) Parties needing special accommodations, including the need for a bilingual or sign language interpreter, shall make this request before the hearing is set, if possible, or as soon as practical.

§819.192. Parties.

(a) Parties to proceedings under this section are the Agency, respondent(s) and any intervenors. Respondents include persons named as such in a charge issued under §819.156.

(b) An aggrieved person as defined under Texas Property Code §301.003(1) is not a party but may file a motion to intervene. Requests for intervention shall be filed within 50 days after the issuance of the charge; however, the hearing officer may allow intervention beyond that time. An intervenor's right to participate as a party may be restricted by order of the hearing officer.

(c) Intervention shall be permitted if the person requesting intervention is:

(1) The aggrieved person on whose behalf the charge is issued; or

(2) An aggrieved person who claims an interest in the property or transaction that is the subject of the charge and the disposition of the charge may, as a practical matter, impair or impede this person's ability to protect that interest, unless the aggrieved person is adequately represented by the existing parties.

(d) If an aggrieved person does not intervene within 50 days after issuance of the charge, and the parties have reached a settlement, the hearing officer shall dismiss the case.

§819.193. Evidence and Prehearing Conference.

(a) Evidence Generally. Evidence, including hearsay evidence, shall be admitted if it is relevant and if in the judgment of the hearing officer it is the kind of evidence on which reasonably prudent persons are accustomed to rely in conducting their affairs. However, the hearing officer may exclude evidence if its probative value is outweighed by the danger of unfair prejudice, by confusion of the issues, or by reasonable concern for undue delay, waste of time, or needless presentation of cumulative evidence.

(b) Exchange of Exhibits. To be considered as evidence in a decision, any document or physical evidence must be entered as an exhibit at the hearing. Any documentary evidence to be presented during a telephonic hearing shall be exchanged with all parties in advance of the hearing and a copy shall be provided to the hearing officer in advance of the hearing. Upon consideration of a party's proffered reason for failure to exchange documentary evidence in advance of the hearing, the hearing officer may admit or exclude same, or grant a postponement of the hearing, in the discretion of the hearing officer.

(c) Stipulations. The parties, with the consent of the hearing officer, may agree in writing to facts that are not in controversy. The hearing officer may decide the appeal on the basis of such stipulations or, at the hearing officer's discretion, may set the appeal for hearing and take such further evidence as the hearing officer deems necessary.

(d) The hearing officer may, on the hearing officer's own motion or at the request of any party, set an informal prehearing conference and require that all parties attend. Notice of the conference shall be in writing to each party. The conference will be held in accordance with §819.191 of these Rules, and will be an official part of the hearing record. Pursuant to the conference, the hearing officer may consider:

(1) establishing the identities of parties and witnesses;

(2) the agreement of the parties on facts that are not in controversy;

(3) conciliation of the dispute;

(4) clarification of the issues;

(5) procedures for scheduling and conduct of the hearing;

(6) exchange of documents; and

(7) any other matter that promotes the orderly and prompt conduct of the hearing.

§819.194. Notice of Hearing.

(a) The Agency shall assign a hearing officer and mail a notice of hearing to the parties and/or their designated representatives. The notice of hearing shall be in writing and include:

(1) a statement of the date, time, place, and nature of the hearing;

(2) a statement of the legal authority and jurisdiction under which the hearing is to be held;

(3) a reference to the particular sections of the statutes and rules involved; and

(4) a short, plain statement of the factual matters asserted.

(b) The notice of hearing shall be issued at least 10 calendar days before the date of the hearing by sending it to each party's last known address as shown by Agency records by first-class mail.

§819.195. Postponement and Continuance.

On the hearing officer's own motion, or for good cause, at a party's request, the hearing officer may postpone or continue a hearing.

§819.196. Default.

If a party to whom a notice of hearing is served or provided under this section fails to appear for hearing, the hearing officer may proceed in that party's absence on a default basis. If a proposal for decision or final decision is issued, the factual allegations listed in the notice of hearing may be deemed admitted. If a party fails to appear at a hearing, the hearing officer will issue a notice of default to that party. A party may file a motion no later than 15 calendar days after the notice of default is mailed to set aside a default announced at the hearing and to reopen the record. If a timely motion to set aside a default is filed, the hearing officer may grant the motion, set aside the default, and reopen the hearing for good cause shown, or in the interests of justice.

§819.197. Ex Parte Communications.

(a) Except as provided in this chapter, and unless required for the disposition of ex parte matters authorized by law, neither the hearing officer nor a Commission member may communicate, directly or indirectly, in connection with any issue of fact or law with a party or representative of a party, except on notice and opportunity for all parties to participate.

(b) The hearing officer or a Commission member may communicate concerning the case with an Agency employee who has not participated in the hearing, but may do so only for the purpose of using the special skills or knowledge of the Agency and its staff in evaluating the evidence.

(c) For purposes of this section, the Agency is considered to be a party to the case.

§819.198. Proposal for Decision.

(a) The hearing officer shall prepare a proposal for decision containing a statement of the reasons for the proposed decision and of each finding of fact and conclusion of law.

(b) The hearing officer shall submit a copy of the proposal for decision to each party by first-class mail. The parties may submit to the hearing officer exceptions to the proposal for decision and replies to exceptions to the proposal for decision.

(c) Exceptions shall be filed within 15 calendar days after the date of service of the proposal for decision. A reply to the exceptions shall be filed within 15 calendar days of the filing of the exceptions. The date of service shall be presumed to be on the third day after the date on which the proposal for decision is mailed. The hearing officer may extend or shorten the time to file exceptions or replies.

(d) The hearing officer shall review all exceptions and replies and notify the parties as to whether the hearing officer recommends any changes to the proposal for decision.

(e) The hearing officer will not issue a proposal for decision during the 15-day period referenced in §819.196 within which a defaulting party may file a motion to set aside a default and to reopen the record.

§819.199. Commission Decision.

(a) After the time for filing exceptions and replies to exceptions has expired, the Commission shall consider the hearing officer's report and the proposal for decision. The Commission may adopt the proposal for decision, modify and adopt it, reject it and issue a Commission decision, or remand the matter to the hearing officer. The Commission shall issue its decision within 60 calendar days of the end of the exceptions period. The hearing officer may extend the period in which the decision may be signed and prepare the decision for the Commission.

(b) A Commission decision that is adverse to one or more parties shall be in writing and signed after a majority vote of the Commission. Such a decision shall include findings of fact and conclusions of law separately stated. Findings of fact, if set forth in statutory language, shall be accompanied by a concise and explicit statement of the underlying facts supporting the findings. Findings of fact shall be based exclusively on the evidence and on matters officially noticed.

(c) The Agency shall notify each party to a contested case of any decision or order of the Commission by first-class mail.

(d) A Commission decision becomes final:

(1) if a motion for rehearing is not filed on time, on the expiration of the period for filing a motion for rehearing;

(2) if a motion for rehearing is filed on time, on the date:

(A) the order overruling the motion for rehearing is signed; or

(B) the motion is overruled by operation of law;

(3) if the Commission finds that an imminent peril to the public health, safety, or welfare requires immediate effect of a decision on the date the decision is signed, provided that the Commission incorporates in the decision a factual and legal basis establishing such imminent peril; or

(4) on the date specified in the decision for a case in which all parties agree to the specified date in writing or on the record, if the specified date is not before the date the decision is signed or later than the 20th day after the date the decision was issued.

§819.200. Motion for Rehearing.

(a) A motion for rehearing is required to exhaust all administrative remedies. A motion for rehearing must be filed not later than the 25th calendar day after the date the Commission decision is signed, unless the time for filing the motion has been modified by agreement between the parties and approved by the Commission. Any reply to a motion for rehearing shall be filed with the Commission not later than the 40th calendar day after the date the Commission decision is signed. A party filing a motion for rehearing or a reply to a motion for rehearing shall serve a copy on each party within the filing deadline.

(b) The Commission may, by written order, extend the time for filing motions and replies and for taking Commission action. No extension may extend the period for Commission action beyond 100 days after the date the decision is signed. In the event of an extension, a motion for rehearing is denied on the date fixed by the written order or, in the absence of a fixed date, 100 days from the date the decision is signed.

(c) If a party files a motion for rehearing, the Commission may:

(1) grant such motion and remand for rehearing;

(2) deny such motion, either expressly or by operation of law; or

(3) render a decision and issue an order that no rehearing shall be necessary because imminent peril to the public health, safety, or welfare requires immediate effect be given to the final order.

(d) If the Commission does not act on the motion for rehearing within 55 calendar days after the date the decision was signed, the motion is denied by operation of law and the decision is final.

(e) A motion for rehearing must identify with particularity findings of fact or conclusions of law that are the subject of the complaint and any evidentiary or legal ruling claimed to be erroneous. The motion must also state the legal and factual basis for the claimed error.

§819.201. Judicial Review.

(a) A person who has exhausted all administrative remedies available under the Texas Fair Housing Act and who is aggrieved by a final decision of the Commission is entitled to judicial review under the substantial evidence rule as set forth in Administrative Procedure Act §2001.001, et seq.

(b) Proceedings for judicial review are instituted by filing a petition in a Travis County district court within 30 calendar days after the final decision is mailed.

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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Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: June 5, 2016
For further information, please call: (512) 475-0829

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SUBCHAPTER L. FAIR HOUSING FUND

40 TAC §819.221

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Texas Government Code, Chapter 552.

§819.221. Fair Housing Fund.

(a) A fair housing fund is a fund in the state treasury in the custody of the Texas Comptroller of Public Accounts.

(b) Civil penalties assessed against a respondent under the Texas Fair Housing Act, Subchapters E and G, shall be deposited to the credit of the fair housing fund.

(c) The Agency [~~Commission on Human Rights~~] may use monies deposited to the credit of the fair housing fund for the administration of the Texas Fair Housing Act.

(d) Gifts and grants received as authorized by the Texas Fair Housing Act, Subchapter D, shall be deposited to the credit of the fair housing fund.

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 April 20, 2016.

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