TEXAS REGISTER

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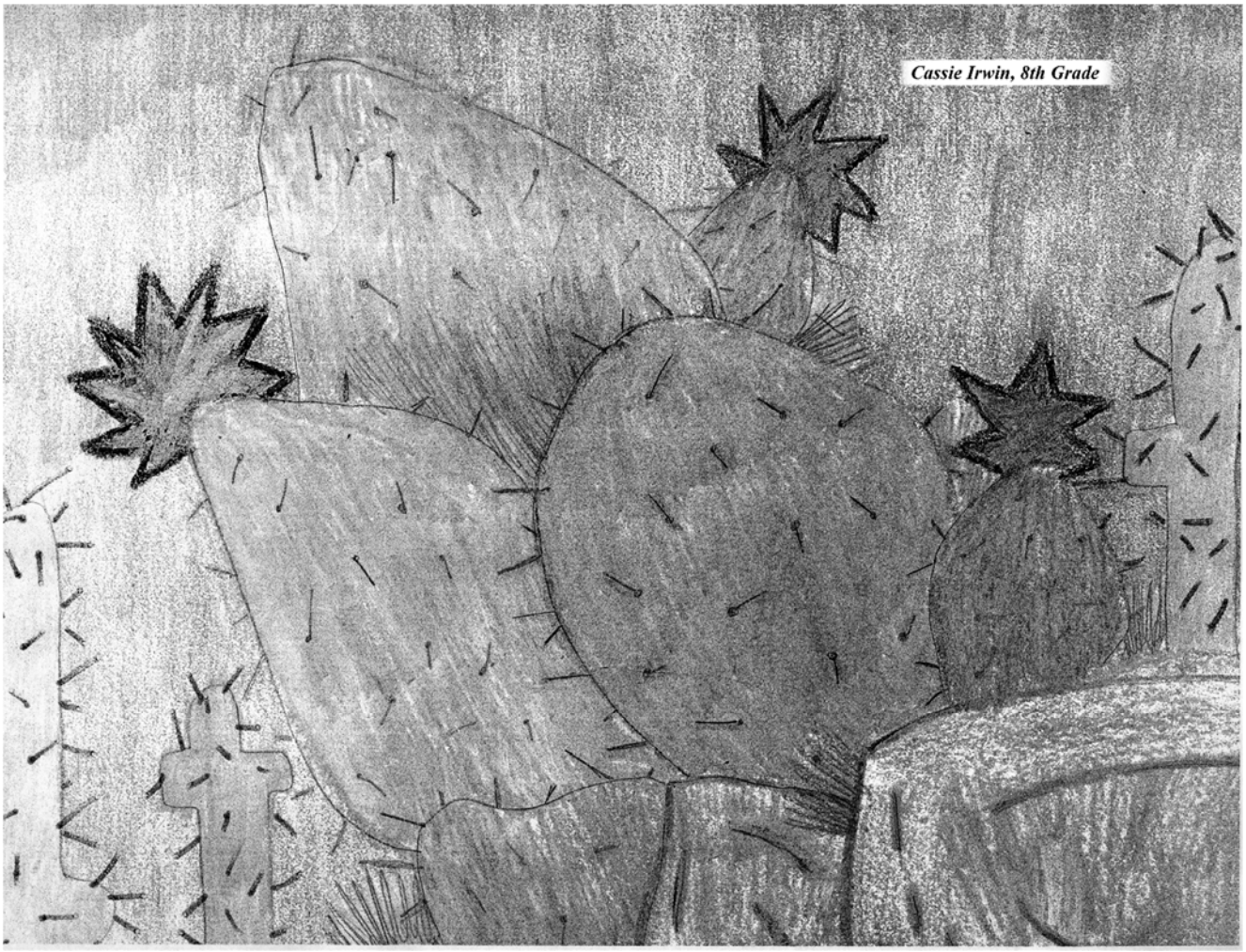

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http://www.sos.state.tx.us
register@sos.texas.gov

Secretary of State –
Carlos H. Cascos

Director – Robert Sumners

Staff
Leti Benavides
Dana Blanton
Deana Lackey
Jill S. Ledbetter
Joy L. Morgan
Barbara Strickland
Tami Washburn

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THE ATTORNEY GENERAL

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

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Opinions

Opinion No. KP-0082

Mr. Allen Cline, Chairman

Texas State Board of Acupuncture Examiners

Post Office Box 2018

Austin, Texas 78768-2018

Re: Whether licensed physical therapists are authorized to practice trigger point dry needling (RQ-068-KP)

S U M M A R Y

A court would likely conclude that the Board of Physical Therapy Examiners has authority to determine that trigger point dry needling is within the scope of practice of physical therapy.

Opinion No. KP-0083

Ms. Jean L. Olinger, D.M., Presiding Officer

Texas Funeral Service Commission

Post Office Box 12217

Austin, Texas 78711

Re: Whether a county is responsible for costs associated with transporting a body from an autopsy to its final destination (RQ-0069-KP)

S U M M A R Y

A commissioners court is authorized to pay the cost of transporting a body to its final destination following an autopsy ordered by a justice of the peace only if a body is not claimed for burial or is to be buried at public expense and if the Anatomical Board of the State of Texas does not require the body. Otherwise, the cost of transporting the body to its final destination is the responsibility of the person with the legal duty to inter the deceased, or that person's agent.

Opinion No. KP-0084

The Honorable J.D. Lambright

Montgomery County Attorney

501 North Thompson, Suite 300

Conroe, Texas 77301

Re: Questions related to an emergency services district's sales and use tax election that failed to exclude territory where the sales tax was already capped at two percent (RQ-0070-KP)

S U M M A R Y

No relevant statutory provision authorizes the Montgomery County Emergency Services District #7, the East Montgomery County Improvement District, or the Economic Development Zone #4 to retroactively exclude from the May 2015 election territory with a tax rate that, when combined with the increased tax rate from the election, exceeds the two percent statutory cap on sales and use tax rates. The Texas Comptroller is without authority to selectively collect the sales tax in only the territory in which the combined sales tax rate does not exceed the cap.

Any of the districts are authorized to conduct a future election to, upon approval of its voters, abolish the sales and use tax or change the rate of a sales and use tax.

Opinion No. KP-0085

Ms. Kimberly Corley, Executive Director

Railroad Commission of Texas

Post Office Box 12967

Austin, Texas 78711-2967

Re: Whether the tax on crude oil petroleum produced in this State remains in effect in light of the Eighty-fourth Legislature's passage of Senate Bill 757 and House Bill 7 (RQ-0072-KP)

S U M M A R Y

Because the Legislature repealed section 81.111 of the Natural Resources Code and the authority to levy a tax was not reenacted or revived by other legislation, the tax on crude oil petroleum formerly levied by section 81.111 does not remain in effect after the effective date of its repeal.

Opinion No. KP-0086

The Honorable Drew Darby, Chair

Committee on Energy Resources

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: The effect of section 113.054 of the Natural Resources Code on a political subdivision's authority to adopt ordinances relating to the liquefied petroleum gas industry (RQ-0073-KP)

S U M M A R Y

Section 113.054 of the Natural Resources Code preempts and supersedes existing local ordinances, orders, or rules without regard to their level of restriction or date of enactment, and without regard to whether the Texas Railroad Commission has adopted rules or standards governing a particular aspect or phase of the liquefied petroleum gas ("LPG") industry, absent the Commission's permission as otherwise provided by section 113.054.

A political subdivision may petition the Commission under section 113.054 for permission to promulgate local provisions relating to any aspect or phase of the LPG industry only when such local provisions would be more restrictive than the rules or standards adopted by the Commission.

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

TRD-201602306
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: May 10, 2016

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 13. CULTURAL RESOURCES

PART 2. TEXAS HISTORICAL COMMISSION

CHAPTER 13. ADMINISTRATION OF THE STATE FRANCHISE TAX CREDITS FOR CERTIFIED REHABILITATION OF CERTIFIED HISTORIC STRUCTURES

13 TAC §§13.1, 13.2, 13.6

The Texas Historical Commission proposes amendments to 13 TAC §13.1, relating to Definitions, §13.2, relating to Qualification Requirements, and §13.6, relating to the application review process. These changes are necessary to clarify the circumstances under which lessees may be eligible to apply for the franchise tax credit, to clarify requirements for non-profit entities newly allowed to participate in the program, and to allow certain partial rehabilitations to participate in the program.

Section 13.1 defines the words and terms used in the rules. The proposed amendment to that section specifies which long-term lessees may be considered to be an owner of a property and thus may become eligible to receive a tax credit. The requirement proposed is consistent with the requirements of Internal Revenue Code §47(c)(2). A long-term lessee of a property may be considered an owner if their current lease term is at minimum 27.5 years for residential rental property, or 39 years for nonresidential real property.

The proposed amendment to §13.2 implements changes to the Tax Code made by House Bill 3230, 84th Texas Legislature. This legislation established that entities not subject to the franchise tax under §171.063, Tax Code, are not ineligible to claim eligible costs and expenses as part of the tax credit program. Although this policy change was directly addressed by a previous amendment to §13.1, eligibility for these projects is secondarily constrained by an existing rule in §13.2 that disqualifies applicants if they fail to submit an application prior to project completion. Some otherwise eligible projects could be incidentally disqualified by this provision due to the timing of the legislative change. The proposed amendment to §13.2 will waive this requirement only for the affected projects in the calendar year between the date when this program went into effect, and the date when H.B. 3230 went into effect, thus eliminating this inconsistency and ensuring these projects will remain eligible.

Section 13.6 describes the application review process and further specifies how the scope of the project may be defined for review purposes. The third proposed amendment will, under certain circumstances, allow portions of a larger scope of work to be considered as an individual project.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules. There will be no fiscal impact on small or micro businesses.

Mr. Wolfe has also determined that for each year of the first five-year period these amended rules are in effect the public benefit anticipated will be an increased efficiency and effectiveness in the implementation of the Texas Administrative Code. Additionally, Mr. Wolfe has determined that there will be no effect on small businesses.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Government Code §442.005 and Texas Tax Code §171.909, which provide the Commission with authority to promulgate rules that will reasonably effect the purposes of those chapters.

No other statutes, articles, or codes are affected by these amendments.

§13.1. Definitions.

The following words and terms when used in these rules shall have the following meanings unless the context clearly indicates otherwise:

(1) Applicant--The entity that has submitted an application for a building or structure it owns or for which it has a contract to purchase.

(2) Application--A fully completed Texas Historic Preservation Tax Credit Certification Application form submitted to the Commission, which includes three parts:

(A) Part A - Evaluation of Significance, to be used by the Commission to make a determination whether the building is a certified historic structure;

(B) Part B - Description of Rehabilitation, to be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation; and

(C) Part C - Request for Certification of Completed Work, to be used by the Commission to review completed projects for compliance with the work approved under Part B.

(3) Application fee--The fee charged by the Commission and paid by the applicant for the review of Part B and Part C of the application as follows:

Figure: 13 TAC §13.1(3) (No change.)

(4) Audited cost report--Such documentation as defined by the Comptroller in 34 TAC Chapter 3, Tax Administration.

(5) Building--Any edifice enclosing a space within its walls, and usually covered by a roof, the purpose of which is principally to shelter any form of human activity, such as shelter or housing, or to provide working, office, parking, display, or sales space. The term includes among other examples, banks, office buildings, factories, warehouses, barns, railway or bus stations, and stores and may also be used to refer to a historically and functionally related unit, such as a courthouse and jail or a house and barn. Functional constructions made usually for purposes other than creating human shelter or activity such as bridges, windmills, and towers are not considered buildings under this definition and are not eligible to be certified historic structures.

(6) Certificate of eligibility--A document issued by the Commission to the Owner, following review and approval of a Part C application, that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation; and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(7) Certified historic structure--A building or buildings located on a property in Texas that is certified by the Commission as:

(A) listed individually in the National Register of Historic Places;

(B) designated as a Recorded Texas Historic Landmark under §442.006, Texas Government Code, or as a State Antiquities Landmark under Chapter 191, Texas Natural Resources Code; §21.6 and §26.3(63) - (64) of this title; or

(C) certified by the Commission as contributing to the historic significance of:

(i) a historic district listed in the National Register of Historic Places; or

(ii) a certified local district as per 36 CFR §67.9.

(8) Certified local district--A local historic district certified by the United States Department of the Interior in accordance with 36 C.F.R. §67.9.

(9) Certified rehabilitation--The rehabilitation of a certified historic structure that the Commission has certified as meeting the Standards for Rehabilitation. If the project is submitted for the federal rehabilitation tax credit it must be reviewed by the National Park Service prior to a determination that it meets the requirements for a certificated rehabilitation under this rule. In the absence of a determination for the federal rehabilitation tax credit, the Commission shall have the sole responsibility for certifying the project.

(10) Commission--The Texas Historical Commission. For the purpose of notifications or filing of any applications or other correspondence, delivery shall be made via postal mail to: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276; or by overnight delivery at: Texas Historic Preservation Tax Credit Program, Texas Historical Commission, 1700 North Congress Avenue, Suite B-65, Austin, Texas 78701.

(11) Comptroller--The Texas Comptroller of Public Accounts.

(12) Contributing--A building in a historic district considered to be historically, culturally, or architecturally significant according to the criteria established by state or federal government, including those formally promulgated by the National Park Service and the United States Department of the Interior at 36 C.F.R. Part 60 and applicable National Register bulletins.

(13) Credit--The tax credit for the certified rehabilitation of certified historic structures available pursuant to Chapter 171, Subchapter S of the Texas Tax Code.

(14) District--A geographically definable area, urban or rural, possessing a significant concentration, linkage, or continuity of sites, buildings, structures, or objects united by past events or aesthetically by plan or physical development. A district may also comprise individual elements separated geographically but linked by association or history.

(15) Eligible costs and expenses--The qualified rehabilitation expenditures as defined by §47(c)(2), Internal Revenue Code, including rehabilitation expenses as set out in 26 C.F.R. §1.48-12(c), incurred during the project. The depreciation and tax-exempt use provisions of §47(c)(2) do not apply to the costs and expenses incurred by an entity exempt from the tax imposed by §171.063 of the Tax Code.

(16) Federal rehabilitation tax credit--A federal income tax credit for 20% of qualified rehabilitation expenditures with respect to a certified historic structure, as defined in §47, Internal Revenue Code; 26 C.F.R. §1.48-12; and 36 C.F.R. Part 67.

(17) National Park Service--The agency of the U.S. Department of the Interior that is responsible for certifying projects to receive the federal rehabilitation tax credit.

(18) Owner--A person, partnership, company, corporation, whether for profit or not, governmental body, or other entity holding a legal or equitable interest in a Property or Structure, which can include a full or partial ownership interest. A long-term lessee of a property may be considered an owner if their current lease term is at minimum 27.5 years for residential rental property, or 39 years for nonresidential real property, as referenced by §47(c)(2), Internal Revenue Code.

(19) Phased development--A rehabilitation project which may reasonably be expected to be completed in two or more distinct states of development, as defined by United States Treasury Regulation 26 C.F.R. §1.48-12(b)(2)(v). Each phase of a phased development can independently support an Application for a credit as though it was a stand-alone rehabilitation. If any completed phase of the rehabilitation project does not meet the requirements of a certified rehabilitation, future applications by the same owner for the same certified historic structure will not be considered.

(20) Placed in service--A status obtained upon completion of the rehabilitation project when the building is ready to be reoccupied and any permits and licenses needed to occupy the building have been issued. Evidence of the date a property is placed in service includes a certificate of occupancy issued by the local building official and/or an architect's certificate of substantial completion.

(21) Property--A parcel of real property containing one or more buildings or structures that is the subject of an application for a credit.

(22) Rehabilitation--The process of returning a building or buildings to a state of utility, through repair or alteration, which makes possible an efficient use while retaining those portions and features of the building and its site and environment which are significant.

(23) Rehabilitation plan--Descriptions, drawings, construction plans, and specifications for the proposed rehabilitation of a certified historic structure in sufficient detail to enable the Commission to evaluate compliance with the Standards for Rehabilitation.

(24) Standards for Rehabilitation--The United States Secretary of the Interior's Standards for Rehabilitation as defined in 36 C.F.R. §67.7.

(25) Structure--A building; see also certified historic structure.

§13.2. Qualification Requirements.

(a) Qualification for credit.

(1) An Owner is eligible for a credit for eligible costs and expenses incurred in the certified rehabilitation of a certified historic structure if:

(A) the rehabilitated certified historic structure is placed in service on or after September 1, 2013;

(B) the Owner has an ownership interest in the certified historic structure in the year during which the structure is placed in service after the rehabilitation; and

(C) the total amount of the eligible costs and expenses incurred exceeds $5,000.

(2) A property for which eligible costs and expenses are submitted for the credit must meet Internal Revenue Code §47(c)(2) which includes:

(A) non-residential real property; or

(B) residential rental property.

(b) Eligible costs and expenses. Eligible costs and expenses means those costs and expenses allowed pursuant to Internal Revenue Code §47(c)(2). Such eligible costs and expenses, include, but are not limited to:

(1) expenditures associated with structural components as defined by United States Treasury Regulation §1.48-1(e)(2) including walls, partitions, floors, ceilings, windows and doors, stairs, elevators, escalators, sprinkling systems, fire escapes, components of central air conditioning, heating, plumbing, and electrical systems and other components related to the operation or maintenance of the building;

(2) architectural services;

(3) engineering services;

(4) construction management and labor, materials, and reasonable overhead;

(5) subcontracted services;

(6) development fees;

(7) construction period interest and taxes; and

(8) other items referenced in Internal Revenue Code §47(c)(2).

(c) Ineligible costs and expenses. Eligible costs and expenses as defined in Internal Revenue Code §47(c)(2) do not include the following:

(1) the cost of acquiring any interest in the property;

(2) the personal labor by the applicant;

(3) any cost associated with the enlargement of an existing building;

(4) site work expenditures, including any landscaping, sidewalks, paving, decks, outdoor lighting remote from the building, fencing, retaining walls or similar expenditures; or

(5) any cost associated with the rehabilitation of an outbuilding or ancillary structure unless it is certified by the Commission to contribute to the historical significance of the property.

(d) Eligibility date for costs and expenses.

(1) If the rehabilitated certified historic structure is placed in service on or after September 1, 2013, but before January 1, 2015, the Application may include eligible costs and expenses for the project incurred up to 60 months prior to the date the property is placed in service.

(2) If the rehabilitated certified historic structure is placed in service on or after January 1, 2015, Part A of the Texas Historic Preservation Tax Credit Certification Application must be submitted prior to the building being placed in service. Projects completed on or after January 1, 2015, but before January 1, 2016, are exempt from this requirement only if their costs and expenses were incurred by an entity exempt from the tax imposed by §171.063 of the Tax Code within a 60 month period prior to the building's placed in service date.

(3) While the credit may be claimed for eligible costs and expenses incurred prior to the filing of an application, potential applicants are urged to file Parts A and B of the application at the earliest possible date. This will allow the Commission to review the application and provide guidance to the applicant that will increase the chances that the application will ultimately be approved and the credit received.

(e) Phased development. Part B applications for rehabilitation of the same certified historic structure may be submitted by the same owner only if they describe clearly defined phases of work that align with a cost report that separates the eligible costs and expenses by phase. Separate Part B and C applications shall be submitted for review by the Commission prior to issuance of a certificate of eligibility for each phase.

(f) Amount of credit. The total amount of credit available is twenty-five percent (25%) of the aggregate eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure.

§13.6. Application Review Process.

(a) Application form. The Commission staff will develop the application and may modify it as needed over time. All required forms, including application Parts A, B, C, and amendment forms, are available from the Commission at no cost.

(b) Delivery. Applications will be accepted beginning on January 1, 2015 and continuously thereafter. Applications should be delivered to the Commission by mail, hand delivery, or courier service. Faxed or emailed applications will not be accepted.

(c) Application Part A - Evaluation of Significance. Part A of the application will be used by the Commission to confirm historic designation or to determine if the property is eligible for qualification as a certified historic structure.

(1) If a property is individually listed in the National Register of Historic Places or designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, the property is qualified as a certified historic structure.

(2) The applicant will be responsible for providing sufficient information to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a building is eligible for designation as a certified historic structure, the staff may request additional information from the applicant. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff review of Part A of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part A of the application.

(4) There is no fee to review Part A of the application.

(d) Application Part B - Description of Rehabilitation. Part B of the application will be used by the Commission to review proposed projects for compliance with the Standards for Rehabilitation.

(1) The applicant will be responsible for providing sufficient information, including photographs taken prior to the project, to the Commission with which the Commission staff may make a determination. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, staff may request additional information from the applicant, usually required to be submitted within 30 days. If the additional information requested is not provided in a timely manner, the application will be considered incomplete and review of the application will be placed on hold until sufficient information is received.

(2) The Commission staff will review Part B of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part B of the application. In reviewing Part B of the application, the Commission shall determine if Part B is approved or not as follows:

(A) Consistent with the Standards for Rehabilitation as determined by the Commission. If all aspects of the Part B of the application meet the standards for rehabilitation, no additional information is required, and no conditions are imposed on the work, Part B is approved.

(B) Consistent with the Standards for Rehabilitation with specific conditions of work required. The Commission may determine that the work described in the plan must be performed in a specific manner or with specific materials in order to fully comply with the Standards for Rehabilitation. In such cases, the Part B may be approved with specific conditions required. For applications found to be consistent with the Standards for Rehabilitation with specific conditions required, the applicant shall provide written acceptance to the Commission of all specific conditions required. Otherwise the application will be determined to be not consistent with the Standards for Rehabilitation; applications found to be consistent with the Standards for Rehabilitation with specific conditions required may proceed with the work but will only be eligible for the credit if the conditions listed are met as part of the rehabilitation work. Failure to follow the conditions may result in a determination by the Commission that the project is not consistent with the Standards for Rehabilitation; or

(C) Not consistent with the Standards for Rehabilitation. Applications found not to be consistent with the Standards for Rehabilitation will be considered to be ineligible applications; the Commission shall make recommendations to the applicant that might bring the project into conformance with the Standards for Rehabilitation, however no warranty is made that the recommendations will bring the project into compliance with the Standards for Rehabilitation; the applicant may reapply and it will be treated as a new application and will be subject to a new application fee.

(3) An application fee is required to be received by the Commission before Commission review of Part B of the application. The fee is based on the estimated amount of eligible costs and expenses listed by the applicant on Part B of the application.

(A) Applicants must submit the fee with their Part B application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the estimated aggregate eligible costs and expenses indicated in the Part B application and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments to a pending application or approved project do not require additional fees.

(4) Amendment Sheet. Changes to the project not anticipated in the original application shall be submitted to the Commission on an amendment sheet and must be approved by the Commission as consistent with the Standards for Rehabilitation before they are included in the project. The Commission shall review the amendment sheet and issue a determination in writing regarding whether or not the proposed change in the project is consistent with the Standards for Rehabilitation.

(5) Scope of Review. The review encompasses the building's site and environment as well as any buildings that were functionally related historically. Therefore, any new construction and site improvements occurring on the historic property are considered part of the project. Individual condominiums or commercial spaces within a larger historic building are not considered individual properties apart from the whole. The scope of review for a project is not limited to the work that qualifies as an eligible expense. Likewise, all work completed by the current owner twenty-four (24) months before the submission of the application is considered part of the project, as is the cumulative effect of any work in previously completed or future phases.

(A) An applicant may elect to apply to receive the credit on only the exterior portions of a larger project that includes other work, in which case the scope of review will be limited to the exterior work. For properties that are individually listed on the National Register of Historic Places, are designated as a Recorded Texas Historic Landmark or State Antiquities Landmark, or determined to be eligible for these designations, the scope of review must also include primary interior spaces.

(B) For these projects described above, all work completed by the current owner twenty-four (24) months before the submission of the application, and within the same scope of review (e.g. exterior and/or primary interior) is considered part of the project, as is the cumulative effect of any work in previously completed or future phases within the same scope of review.

(e) Application Part C - Request for Certification of Completed Work. Part C of the application will be used by the Commission to review completed projects for compliance with the work approved under Part B.

(1) The applicant shall file Part C of the application after the building is placed in service.

(2) The applicant will be responsible for providing sufficient information, including photographs before and after the project, to the Commission by which the Commission staff may verify compliance with the approved Part B. If all requested information is not provided to make a determination that a project is eligible as a certified rehabilitation, the application is incomplete and review of the application will be placed on hold until sufficient information is received.

(3) The Commission staff will review Part C of a complete application, unless otherwise provided in §13.8 of this title, and shall notify the applicant in writing of any determination it makes upon completing the review of Part C of the application.

(A) If the completed project is found to be in compliance with the approved Part B and any required conditions and consis-

tent with the Standards for Rehabilitation, and the building is a certified historic structure at the time of the application, the Commission shall approve the project. The Commission then shall issue to the applicant a certificate of eligibility that confirms the property to which the eligible costs and expenses relate is a certified historic structure and the rehabilitation qualifies as a certified rehabilitation and specifies the date the certified historic structure was first placed in service after the rehabilitation.

(B) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project cannot, in the opinion of the Commission, be brought into compliance, or if the building is not a certified historic structure at the time of the application, then the Commission shall deny Part C of the application and no certificate of eligibility shall be issued.

(C) If the completed project is not consistent with the Standards for Rehabilitation, with the approved Part B, and/or the specific conditions required, and the project can, in the opinion of the Commission, be brought into compliance, the Commission may issue remedial conditions that will bring the project into compliance. The applicant shall complete the remedial work and file an amended Part C. If the remedial work, in the opinion of the Commission, brings the project into compliance, then the Commission shall issue a certificate of eligibility.

(4) An application fee is charged before Commission review of the Part C of the application based on the amount of eligible costs and expenses listed by applicant on Part C of the application.

(A) Applicants must submit the fee with their Part C application or the application will be placed on hold until the fee is received. The fee is calculated according to a fee schedule approved by the Commission and included in the application.

(B) The fee is based on the eligible costs and expenses as indicated in the audited cost report and is not refundable. Resubmission of a rejected application or under any other circumstances will require a new fee. Amendments do not require additional 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.

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

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Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 463-6094

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CHAPTER 19. TEXAS MAIN STREET PROGRAM

13 TAC §19.1, §19.5

The Texas Historical Commission (THC) proposes amendments to §19.1 and §19.5 of Chapter 19 (Title 13, Part 2 of the Texas Administrative Code) relating to the Texas Main Street Program ("the program").

The Texas Historical Commission's Texas Main Street Program is the agency's responsibility under §442.014, Title 4 Subtitle D of the Texas Government Code. The Texas Main Street Program utilizes a national model established by the National Trust for Historic Preservation and the agency has been the state coordinating program for thirty-five years. Administration of the program must comply with the requirements of the national Main Street America program. Local communities in Texas wishing to participate in the program must apply and participate under the auspices of the Texas Historical Commission. Currently, eighty-seven communities with populations from approximately 1,800 to 325,000 actively participate in the program statewide.

The purpose of the Texas Main Street Program is to assist communities in the preservation and revitalization of their historic downtowns and commercial neighborhood districts. The Main Street Approach advocates a return to community self-reliance, local empowerment and the rebuilding of traditional commercial districts based on their unique assets: distinctive architecture, a pedestrian-friendly environment, personal service, local ownership and a sense of community. The Main Street Approach is a comprehensive strategy tailored to meet local needs and opportunities. It encompasses work in four distinct areas combined to address all of the commercial district's needs. The model is based on the premise of a local organization of volunteers led by a local professional manager working in cooperation with the city and business communities. The Texas Historical Commission provides training, technical, and organizational assistance to the local participants.

The amendment of Chapter 19 is proposed to clarify language in the administration of the Texas Main Street Program. The National Trust for Historic Preservation, through its non-profit subsidiary the National Main Street Center has revised nomenclature within their Main Street America model of the program. For consistency, the amended §19.1 and §19.5 will refer to the Main Street Approach rather than the specific points for which nomenclature has changed and may change again in the future.

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

Mr. Wolfe has determined for each year of the first five-year period the amendment of the rules are in effect the public benefit anticipated as a result of the amendment of the existing rules will be an increased clarity of the administration of the Texas Main Street Program. Additionally, Mr. Wolfe has determined there will be no effect on small or micro businesses.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711-2276. Comments will be accepted for 30 days after publication in the *Texas Register.*

Amendment of §19.1 and §19.5 of Chapter 19 (Title 13, Part 2 of the Texas Administrative Code) relating to the Texas Main Street Program ("the program") is proposed under §442.005(q), Title 4 Subtitle D of the Texas Government Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

The proposal of these amended rules implements §442.014 of the Texas Government Code.

No other statutes, articles, or codes are affected by these amendments.

§19.1. Object.

(a) The Texas Historical Commission (Commission) is specifically empowered to designate and provide assistance to Texas cities through the Texas Main Street Program.

(b) The mission of the Texas Main Street Program is to assist Texas communities in the preservation and revitalization of historic downtowns and commercial neighborhood districts in accordance with the national [~~National~~] Main Street [~~Four Point~~] Approach [~~of organization, economic restructuring, design, and promotion~~].

§19.5. Assistance Provided.

(a) Training. Each new Texas Main Street City will receive at no charge basic training for its Main Street manager at the beginning of the program. All new Main Street boards will receive at no charge comprehensive board training at the beginning of their city's Main Street Program. Additional training and continuing education is available throughout a city's participation in the Texas Main Street Program. Provisional and affiliate participants may receive training through the program subject to available Commission resources.

(b) Technical assistance. Each Texas Main Street City receives technical assistance and training in the Main Street Approach [~~areas of design, economic restructuring, promotion and organization~~]. Provisional and affiliate participants receive technical assistance at the discretion of the program subject to available Commission resources.

(c) Main Street network. Each Texas Main Street City is eligible to receive Texas Main Street publications and participate in Texas Main Street networking opportunities. Provisional and affiliate participants are eligible for the Main Street network.

(d) Fees. Participants in the Texas Main Street Program will pay a fee for participation in the program. The amount of the fee is determined by the Commission. After a city's [~~cities~~] acceptance into the program, any subsequent fees based on population shall be based on the most recent decennial census. The Commission may waive the fee for a Texas Main Street Small City in their first three years of participation.

(e) Main Street Status. In order to remain a Texas Main Street City, the community must be certified on an annual basis by the Texas Main Street office to confirm that the community meets all of the requirements for designation.

(f) Reclassification. Participants shall be reclassified as necessary between Texas Main Street Small City and Texas Main Street Urban City based on the most recent decennial census. Changes in fees necessitated by reclassification of a city shall be assessed upon the following year's renewal. The Commission may establish a fee schedule in subsection (d) of this section that graduates fee increases caused by reclassification.

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 May 4, 2016.

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Mark Wolfe
Executive Director
Texas Historical Commission
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CHAPTER 24. RESTRICTED CULTURAL RESOURCE INFORMATION

13 TAC §§24.7, 24.13, 24.15, 24.17, 24.19

The Texas Historical Commission (THC) proposes amendments to 13 TAC Chapter 24, §24.7 concerning Definitions, §24.13 concerning Restricted Information, §24.15 concerning Access to Both Public and Restricted Cultural Resource Information, §24.17 concerning Criteria for Access to Restricted Information, and §24.19 concerning Restricted Information Application Submission and Review Procedures. These changes are needed to further clarify the conditions and procedures related to access to restricted information under the control of the Commission.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rule amendments.

Mr. Wolfe has also determined that for each year of the first five-year period the rule amendments are in effect the public benefit anticipated as a result of these amendments will be improved care of site locational information associated with cultural resources in the State of Texas. Additionally, Mr. Wolfe as determined that there will be no effect on small businesses, and there is no anticipated economic cost to persons who are required to comply with these rule amendments as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under Title 9, Chapter 191 of the Texas Natural Resources Code, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

No other statutes, articles or codes are affected by these proposed amendments.

§24.7. Definitions.

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

(1) Access account--Confidential transaction record verifying an individual's identity and authority to access the restricted information within the THSA database.

(2) Access agreement--A contract signed or otherwise accepted by all users of RCRI, which states that they agree to comply with the rules governing the use of RCRI, including the restricted data contained within the THSA database.

(3) Access committee--The RCRI Access Committee. A standing committee composed of the Director of the Archeology Division, the Director of the History Programs Division, the State Marine Archeologist, and the Director of the Texas Archeological Research Laboratory of the University of Texas at Austin, or their designees, which has the authority to determine an applicant's qualification for access to restricted information, and the ability to grant or deny such access.

(4) Agency--A department, commission, board, office or other federal or state governmental agency body.

(5) Applicant--An individual who submits an application request for access to RCRI data sources, including the THSA database.

(6) Application [~~form~~]--The personal data submitted [~~completed information packet filed~~] by an applicant being considered for access privileges to RCRI.

(7) Cultural resource information--Data pertaining to cultural resources, including but not limited to site records, reports, location information, notes, photographs, and maps.

(8) Atlas--The Texas Historic Sites Atlas (THSA).

(9) Cultural resource--A site or place where there is physical evidence of past human activities, such as structures, shipwrecks, artifacts or alterations of the natural environment, and which is fifty or more years old.

(10) Curriculum vitae--Brief account of the applicant's career and qualifications.

(11) Database--Structured information and data contained in a computer file.

(12) Legitimate scientific or legal interest--An interest based on specific research goals associated with professional archeological, historical, or architectural research as defined in Chapter 191 of the Texas Natural Resources Code, or [~~legal jurisdiction directly related to~~] ownership and management of sites classified as restricted under this title.

[~~(A) Firms engaged in the business of cultural resource management for profit that do not have a qualified staff archeologist do not have a legitimate scientific or legal interest.~~]

[~~(B) Entities granted access to RCRI solely on the basis of ownership shall be granted access only to information on the sites they actually own, to the extent it is practical to limit such access. They shall not be granted statewide access to the restricted portion of the THSA.~~]

[~~(C) Technical support personnel working with and under the supervision of a currently authorized RCRI user that has a legitimate scientific or legal interest.~~]

[~~(D) College students must submit a letter from a sponsoring professor, verifying their need to access the restricted data of the THSA together with the RCRI application form. If access is approved, students must work under the supervision of a currently authorized RCRI user.~~]

(13) Political subdivision--A political subdivision of the State, as defined in §191.003 [~~Chapter 191~~] of the Texas Natural Resources Code.

(14) RCRI--Restricted Cultural Resource Information contained within the THSA database, the libraries, files, documents and maps held by the commission.

(15) RCRI user--An individual who accesses and uses restricted information contained within the THSA database or within the libraries, files, documents, and maps held by the commission.

(16) Site--A cultural resource location containing physical evidence of either a prehistoric and/or historic occupation, or activity, building, or structure, whether standing, in ruin, or vanished, where the location itself maintains historical or archeological integrity regardless of the integrity of any existing structure.

(17) Site location--Information concerning the location, placement, or locality of a cultural resource.

(18) Site records--All data and information relating to the character, condition, and location of any archeological site or other cultural resource, and all data and information pertinent to collections of material remains. Site records include, but are not limited to, digital and hard copy images, photographs, maps, notes, drawings, site data forms, documents, sound tapes, spatial imagery and other forms of electronic data.

(19) Spatial imagery--Imagery used to illustrate and indicate locations on the surface of the earth, including but not limited to geographic maps; plotting; aerial, satellite and remote sensing imagery; georeferenced images.

(20) Steward--A current member of the Texas Archeological Stewardship Network.

(21) Texas Historic Sites Atlas--The electronic database documenting historical and archeological sites and properties in the state of Texas, survey locational data, as well as the computer database server on which this information resides and the system that provides access to this database through the Internet.

(22) THSA [~~TSHA~~] Coordinator--A member of the commission staff appointed [~~to this position~~] by the Executive Director to have primary responsibility for operation and maintenance of THSA.

§24.13. Restricted Information.

The following categories of information are [~~hereby defined as~~] Restricted Cultural Resource Information (RCRI).

(1) All archeological survey site location and site record information that contains location descriptions, coordinate data, or [~~locational data such as longitude and latitude, Universal Transverse Mercator coordinates, and~~] spatial imagery [~~or detailed descriptions~~] that would allow an individual to determine the location of an archeological site.

(2) The address or site location of historic structures or other non-archeological cultural resources nominated for or listed in the National Register of Historic Places or registered as State Archeological Landmarks, if the owner of the property has specifically requested that such information not be distributed to the general public.

(3) The site location of cemeteries determined by the commission to be at risk of harm.

§24.15. Access to Both Public and Restricted Cultural Resource Information.

All persons desiring to view or use RCRI compiled and maintained by the commission, in its libraries, files, and maps, or within the THSA database must be approved through the commission's application process as defined in §24.17 and §24.19 of this title (relating to Restricted Information Access Criteria and Application Submission and Review Procedures), and agree to abide by the rules of usage established by an RCRI Access Agreement. No access agreement document is needed for persons wishing to access public information in the THSA database or the libraries or files of the commission if restricted information is not contained within those materials. Persons wishing to view or use the RCRI data must submit an [~~a written~~] application on a form supplied by the commission, and agree to the terms of the [~~sign an RCRI Access Agreement if approved for~~] RCRI access agreement approved for RCRI access. RCRI access is granted for up to a 4-year period and is renewable.

§24.17. Criteria for Access to Restricted Information.

(a) Qualified applicants meeting one or more of the following criteria may be granted access by the THSA Coordinator:

(1) Meet the Secretary of Interior's Professional Qualifications Standards (36 CFR Part 61) for Archeology.

(2) Meet the definition of professional archeologist, or principal investigator as defined by §26.5 of this title (relating to Definitions).

(3) Be a current member of the Texas Archeological Stewardship Network.

(b) Applications from persons not meeting the criteria set forth in subsection (a) of this section must have a clear and legitimate scientific or legal interest in being granted access to RCRI. Their applications will be reviewed by the access committee, and access will be granted or denied by the committee as specified in §24.19 of this title (relating to Restricted Information Application Submission and Review Procedures).

(c) If an applicant is denied access to RCRI, the applicant may appeal that decision before the commission at one of its regularly scheduled public meetings. Appeals must be submitted in writing to the commission at least 30 days prior to a scheduled meeting of the commission.

(d) Limitations on access to RCRI.

(1) Firms engaged in the business of cultural resource management for profit that do not have a qualified staff archeologist do not have a legitimate scientific or legal interest and may not be granted access to RCRI.

(2) Entities granted access to RCRI solely on the basis of ownership shall be granted access only to information on the sites they actually own, to the extent it is practical to limit such access. They shall not be granted statewide access to the restricted portion of the THSA.

(3) Technical support personnel working with and under the supervision of a currently authorized RCRI user who has a legitimate scientific or legal interest may be granted access.

(4) College students must submit a letter from a sponsoring professor, verifying their need to access the restricted data of the THSA together with the RCRI application form. If access is approved, students must work under the supervision of a currently-authorized RCRI user.

§24.19. Restricted Information Application Submission and Review Procedures.

(a) Application forms. All persons requesting access to RCRI must complete and submit the application form provided by the commission. This application [~~form~~] must indicate the type of information to which access is desired, the nature of the proposed research and any special user requirements during access, the name of the person desiring access, when access is needed, and for how long. For student applications, a letter is also required from a sponsoring professor, verifying the applicants' legitimate scientific need for access.

(b) Curriculum vitae. To prove his or her credentials for access, an applicant who is not a member of the Texas Archeological Stewardship Network must also submit a current curriculum vitae to the commission, if such a document is not already on file with the commission.

(c) Access agreement. The applicant must also agree to the terms of the [~~sign an~~] access agreement provided by the commission and submit it. A copy of the access agreement document will be kept on file at the commission.

(d) Initial review by the THSA Coordinator. The THSA Coordinator reviews all applications and vitae for completeness and will notify the applicant of any additional information required.

(e) Consideration of qualified application. When all required application information has been received and reviewed, the THSA Coordinator will either rule on access relative to criteria set forth in §24.17(a) of this title (relating to Criteria for Access to Restricted Information), or forward the application to the access committee. If the applicant is approved for RCRI access under §24.17(a) of this title, the THSA Coordinator will notify the applicant of this approval within 10 working days. The access committee will review all applications requiring further consideration for qualification within 20 working days of receipt under §24.17(b) of this title, and the THSA Coordinator will notify the applicant of the committee's decision.

(f) Denial of application. If an application is denied, the THSA Coordinator will notify the applicant in writing or through electronic submission of the reasons for denial. Any appeals of these decisions must be made before the commission at one of its regularly scheduled public meetings.

(g) Registration of approved applicant. The THSA Coordinator will register the applicant as an RCRI user, and a [~~written~~] notice documenting registration will be forwarded to the registered RCRI user. The [~~When appropriate, the~~] commission will also supply the applicant with a THSA Access Account, which will enable the applicant to access the restricted portion of the THSA database.

(h) The commission may conduct an investigation to verify any information submitted on an application.

(i) False information. If the access committee determines that an applicant provided false information on an application, the committee will take the following actions.

(1) Recommend denial of the application.

(2) Notify the applicant of the information considered to be false and give the applicant a reasonable period of time, not to exceed 30 days, to respond.

(3) If, upon examination of the applicant's response, or failure to respond, the access committee determines that false information was knowingly provided on the application, the access committee may recommend to the commission that the applicant be denied access to RCRI for a period not to exceed two years.

(4) The commission may consider and act on this recommendation[~~, upon due notice to the applicant,~~] at any regular or called meeting of the commission. The applicant will be given notice of at least seven days of the intent to consider the application at the meeting.

(j) Special provision for access to the THC Library or RCRI data. Temporary access to the archeological materials in the THC Library or information in the RCRI may be granted to persons qualified under either §24.17(a) or (b) of this title by a THC staff archeologist. Such authorization must be signed by the THC staff member and a copy kept on file at 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.

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CHAPTER 28. HISTORIC SHIPWRECKS

13 TAC §28.6, §28.9

The Texas Historical Commission (THC) proposes amendments to 13 TAC Chapter 28, §28.6 concerning Conduct of Activities and §28.9 concerning Analysis and Presentation of Data. These changes are needed to further clarify the collection and presentation of marine remote-sensing data as part of permitted underwater archeological investigations.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering these rule amendments.

Mr. Wolfe has also determined that for each year of the first five-year period the rule amendments are in effect the public benefit anticipated as a result of these amendments will be improved care of site locational information associated with cultural resource in the State of Texas. Additionally, Mr. Wolfe as determined that there will be no effect on small businesses, and there is no anticipated economic cost to persons who are required to comply with these rule amendments as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The amendments are proposed under Title 9, Chapter 191 of the Texas Natural Resources Code, which provides the Commission with authority to promulgate rules that will reasonably effect the purposes of this chapter.

No other statutes, articles or codes are affected by these proposed amendments.

§28.6. Conduct of Activities.

(a) All persons shall conduct their activities in Texas' submerged lands in a manner designed to avoid damage to shipwrecks in Texas' submerged lands, and to protect and preserve the cultural resources of Texas. If, during the conduct of activities in submerged state land tracts, a person discovers the existence of a shipwreck, the person shall promptly notify the commission of the existence of the historic property and shall conduct the activities in a manner that will avoid damage to the shipwreck.

(b) When a person submits an application for a permit from the U.S. Army Corps of Engineers, the person shall describe the proposed activity in sufficient detail to enable the commission to review the U.S. Army Corps of Engineers' public notice publication, and determine if the proposed activity may impact a shipwreck.

(c) If the proposed activity is in an area where a shipwreck is known to exist, or where there is a likelihood that a shipwreck exists, the commission may require an archeological survey, the purpose of which is to locate shipwrecks.

(d) Conduct of such a survey may be recommended by the commission to the U.S. Army Corps of Engineers, and may be required as a condition of issuance of the permit from the U.S. Army Corps of Engineers. Such survey must be done under a Texas Antiquities Permit issued by the commission. The Texas Antiquities Permit is issued only to a qualified archeologist and allows the commission to monitor the quality and results of the survey.

(e) The commission has set the following minimum standards for conducting a survey.

(1) Horizontal positioning.

(A) Texas' submerged lands within bays and rivers and within the 3 nautical mile line in the Gulf of Mexico.

(i) The avoidance margin in this area is fifty (50) meters.

(ii) The maximum survey line spacing in this area is twenty (20) meters.

(B) Texas' submerged lands offshore beyond the 3 nautical mile line in the Gulf of Mexico.

(i) The avoidance margin in this area is one-hundred and fifty (150) meters.

(ii) The maximum survey line spacing in this area is thirty (30) meters.

(C) The geographical extent of an archeological survey must include the construction impacts (e.g. anchor patterns of construction barges) at the margin of the primary activity and the size of the avoidance margin. Survey for a linear project (e.g. pipelines, dredged channels, and utility lines) must include the centerline of the project route and at least one offset line each side of the centerline. A survey for marine seismic activity that employs drilling and detonation of buried explosive charges must, at a minimum, collect data along at least one line of survey crossing each source point and extending at least 20 meters to either side of each source point. The survey area must be adequate to allow movement of the proposed activity such that it is outside of the avoidance margin of any significant magnetic anomaly or sonar target yet fully within the area surveyed.

(D) If avoidance of an anomaly or target determined to be significant by the archeologist holding the survey permit is not feasible, further investigation of the anomaly or target will be required as stated in subsections (g), (i) and (j) of this section. Such further investigation must also be conducted under a permit issued by the commission.

(2) Instrumentation and Survey Procedures. Instrumentation is classified as remote sensing equipment that detects the presence of an object by its inherent physical properties or by signals reflected from the object. The preferred suite of remote sensing equipment includes, but is not limited to, a marine magnetometer, a high-resolution side-scan sonar, and a recording fathometer.

(A) The magnetometer should be set to detect and record the magnetic environment at 1-second intervals or less and the data should be recorded on computer disc or other appropriate computer media. The distance of the magnetometer should not exceed 6 meters from the marine bed.

(B) The side-scan sonar should use a transceiver designated as a 300 kHz transceiver minimum and should be operated in that frequency or a higher frequency if available and the data should be recorded on computer disc or other appropriate computer media.

(C) The fathometer must be capable of recording bathymetric data through digital output to a computer.

(D) The magnetometer, side-scan sonar, and fathometer, to the extent possible, should be interfaced, either directly or through computer files, with the global positioning system receiver to coordinate positions with the remote sensing equipment data.

(E) A differentially corrected global positioning system (GPS) receiver or system of equal or greater accuracy will be used for navigation and positioning.

(F) The positioning system must collect accurate position data at the same time interval as the magnetometer to preclude the

necessity of interpolating positions between more widely spaced position fixes.

(3) Variance from the parameters specified in this section may be requested from the commission. Such variance must be based on quantifiable factors, e.g. the water is too shallow for effective use of side-scan sonar. Likewise, the commission may modify the parameters for a given survey area based on information held by the commission, e.g. survey line spacing may be decreased in the immediate vicinity of a known state archeological landmark beyond the 3 nautical mile line in the Gulf of Mexico.

(f) If a person detects a significant anomaly or sonar target as a result of conducting the survey described in this section, the person shall record a specific UTM, Latitude/Longitude, or state plane coordinate position, along with the geodetic datum in which the coordinates were recorded, and either:

(1) Conduct a thorough and good faith effort to search out the object causing the anomaly or sonar target and identify whether the object might possibly be a state archeological landmark or eligible property in Texas' submerged lands. Excavation in order to make an identification at this stage of investigation is prohibited without a permit issued by the commission. Or, the person may:

(2) Relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the anomaly or sonar target and thereby avoid damage to a shipwreck.

(g) If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is definitely not a shipwreck, and if the commission concurs with that determination, the person may perform the activity in a normal, routine manner.

(h) If the person determines, through actions conducted under subsection (e) of this section, that the object causing the significant anomaly or sonar target is a shipwreck or might be a shipwreck, the person shall either:

(1) Notify the commission of the existence of a shipwreck or possible shipwreck, report the coordinate position to the commission and relocate the activity to an area outside of the appropriate avoidance margin in order to avoid disturbance of the object causing the significant anomaly or sonar target and thereby avoid damage to a shipwreck; or

(2) Notify the commission of the existence of a shipwreck or possible shipwreck and report the coordinate position to the commission; whereupon the commission can perform its activities described in Subchapter C, Powers and Duties, and Subchapter E, Prohibitions, of the Antiquities Code of Texas. The commission may require additional archeological investigations of the shipwreck or possible shipwreck, or, if the commission concurs that no damage will occur to the shipwreck from the proposed activity, the commission may authorize the person to proceed with the proposed activity in a normal, routine manner.

(i) Investigation by archeological divers to identify the source of an anomaly or sonar target is appropriate under a survey permit. Such investigations may involve removal of overburden to expose small section of a buried object but shall not involve extensive excavation or artifact recovery. Survey level diving investigations must be approved as part of the survey permit issued to the archeologist or as a separate survey permit.

§28.9. Analysis and Presentation of Data.

Analysis and presentation of magnetometer and side-scan sonar data upon completion of a survey to locate submerged cultural resources are subject to the following, in addition to requirements under §26.24 of this title (relating to Reports Relating to Archeological Permits).

(1) If the survey is of sufficient duration, the magnetometer data will be corrected for diurnal variation using either separate data collected concurrently specifically for the purpose of diurnal corrections or through the use of an appropriate algorithm or mathematical formula.

(2) Magnetometer data will be presented on maps, aerial, or satellite imagery in a contour format. In order to facilitate review of this data by the THC, it should be presented at a scale sufficient for examination. Magnetic anomalies recommended for avoidance or investigation shall be illustrated at a scale and showing isolines at appropriate levels to illustrate the complexity and intensity of individual anomalies. Illustrating anomalies at this scale may require separate illustrations from the overall survey map.

(3) Maps illustrating magnetic anomalies will show the actual survey lines followed by the survey vessel and thus the position of each anomaly in relation to the survey lines.

(4) Positive and negative nodes of magnetic anomalies shall be indicated either by different colors of isolines (e.g. red for positive node, blue for negative node) or by variation in line type (e.g. hatched or dashed) for the negative isolines.

(5) Sonar data will be presented as a mosaic on maps, aerial, or satellite imagery. Sonar targets recommended for avoidance shall be presented at a scale suitable to show diagnostic attributes and may require separate illustrations from the overall survey map.

(6) The avoidance margin for significant magnetic anomalies and sonar targets, defined in 13 TAC Chapter 28, Rule §28.2, must be illustrated in the overall contour maps and sonar mosaics.

(7) [~~(6)~~] A map of the survey area must be included in the survey report showing both the proposed survey lines and the actual survey lines.

(8) [~~(7)~~] A table of anomalies and sonar targets recommended for avoidance or investigation, including the positions of those anomalies, or targets, shall be included in the report.

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 29. MANAGEMENT AND CARE OF ARTIFACTS AND COLLECTIONS

13 TAC §§29.4 - 29.6

The Texas Historical Commission (THC) proposes amendments to 13 TAC Chapter 29, §29.4 concerning Definitions, §29.5 concerning Disposition of Archeological Collections, and §29.6 concerning Certification of Curatorial Facilities for State-Associated Held-in-Trust Collections under the jurisdiction of the Antiquities Code of Texas (Title 9, Chapter 191, of the Texas Natural Re-

sources Code). These changes are needed to further clarify the conditions and procedures related to the management and care of artifacts and collections under the control of the Commission.

Mark Wolfe, Executive Director, has determined that for the first five-year period the amended rules are in effect there will be minimal fiscal implications for state or local governments as a result of enforcing or administering the amended rules.

Mr. Wolfe 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 the implementation of these rules will be better care of artifacts collected with public funds. There will be minimal effects on small businesses or micro-businesses. There are minimal anticipated economic costs to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Mark Wolfe, Executive Director, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711. Comments will be accepted for 30 days after publication in the *Texas Register.*

The rule amendments are proposed under both §442.005(q) of the Texas Government Code and §191.052, Title 9, Chapter 191 of the Texas Natural Resources Code, which provides the Texas Historical Commission with the authority to promulgate rules and conditions to reasonably effect the purposes of this chapter.

No other statutes, articles or codes are affected by these proposed amendments.

§29.4. Definitions.

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

(1) Accession--means the formal acceptance of a collection and it's recording into the holdings of a curatorial facility and generally includes a transfer of title. For held-in-trust collections, stewardship but not title is transferred to the curatorial facility.

(2) Accessions inventory--means an inventory conducted at the time of accessioning when a collection or historical item is placed at the designated curatorial facility. It is similar to a baseline inventory in that it is comprised of the categories represented in the collection, quantities, and linear feet of documentation as appropriate.

(3) Antiquities--means the tangible aspects of the past, which relate to human life and culture. Some examples include objects, written histories, architecture [~~architectural significance~~], cultural traditions and patterns, art forms, and technologies.

(4) Artifact--means an object that has been removed from an archeological site.

(5) Baseline inventory--means the most basic inventory done by summary count within general categories (similar to an entry or accessions inventory).

(6) Cataloging--means assigning an object to an established classification system and having a record containing identification, provenience, accession and catalog numbers, and location of that object in the collection storage area.

(7) Certification--means a process through which a curatorial facility establishes that it has achieved certain standards and follows acceptable practices with respect to its collections.

(8) Certified curatorial facility--means a museum or repository that has been certified by the Commission for the purposes of curating state-associated collections.

(9) Collection--means an associated set of objects, samples, records, or documents or an associated set of documents only.

(10) Commission--means the Texas Historical Commission and its staff.

(11) Conservation--means scientific laboratory process for cleaning, stabilizing, restoring, and preserving artifacts.

(12) Conservation Survey--means inspection and documentation by facility staff, of condition of collection objects on an ongoing basis as part of routine collections management work.

(13) Cultural resource--means any building, site, district, structure, object, historic [~~pre-twentieth century~~] shipwreck, data, and locations of historical, archeological, educational, or scientific interest, including, but not limited to, prehistoric and historic Native American or aboriginal campsites, dwellings, and habitation sites, archeological sites of every character, treasure embedded in the earth, sunken or abandoned ships and wrecks of the sea or any part of the contents thereof, maps, records, documents, books, artifacts, and implements of culture in any way related to the inhabitants' prehistory, history, natural history, government, or culture. Examples of cultural resources include Native American mounds and campgrounds, aboriginal lithic resource areas, early industrial and engineering sites, rock art, early cottage, and craft industry sites, bison kill sites, cemeteries, battlegrounds, all manner of historical structures, local historical records, etc.

(14) Curatorial facility--means a museum or repository that professionally manages collections on a long term basis.

(15) Deaccession--means the permanent removal of an object or collection from the holdings of a curatorial facility.

(16) Designated curatorial facility--means any curatorial facility that is holding or seeking to hold any state associated collection on behalf of the Commission.

(17) Destructive analysis--means destroying all or a portion of an object or sample to gain specialized information. For purposes of these rules, it does not include analysis of objects or samples prior to their being accessioned by a curatorial facility.

(18) Disposal--means the discard of an object or sample after being recovered and prior to accession, or after deaccession.

(19) Held-in-trust agreement--means the document signed by the Commission and the designated curatorial facility that provides for the transfer of stewardship to the curatorial facility for the state-associated collection, provides the state-associated collection's accession number and accessions inventory, and notes any conditions or restrictions.

(20) Held-in-trust collection--means those state-associated collections under the authority of the Texas Historical Commission that are placed in a curatorial facility for care and management; stewardship is transferred to that curatorial facility but not ownership.

(21) Inventory--means a physically-checked, itemized list of the objects in a curatorial facility's holdings. Itemized refers to having some sort of categorization, whether it be object-by-object or some type of grouping. Inventory is usually performed by numerical count, but weight may be considered in addition to or instead of a count, where it may be appropriate.

(22) Museum--means a legally organized not-for-profit institution, essentially educational in nature; having a formally stated mission; with a professionally trained staff that uses and interprets objects for the public through regularly scheduled programs and exhibits; with a program of documentation, care, and use of collection or tangi-

ble objects; and having a program of maintenance and presentation of exhibits.

(23) Political subdivision--means a local government entity created and operating under the laws of this state, including a city, county, school district, or special district created under the Texas Constitution, Article III, Section 52(b)(1) or (2), or Article XVI, Section 59.

(24) Preventive conservation--means to maintain the collections in stable condition through preventive maintenance, condition surveys, environmental controls, and pest management.

(25) Public lands--means non-federal public lands that are owned or controlled by the State of Texas or any of its political subdivisions, including the tidelands, submerged land, and the bed of the sea within the jurisdiction of the State of Texas.

(26) Relocation inventory--means a physically-checked, itemized list of a specific subset of objects that have been moved from their permanent location within the holdings of the curatorial facility.

(27) Repository--means a permanent, not-for-profit educational or research-oriented agency or institution, having a professionally trained staff, that provides in-perpetuity legal housing and curation of collections.

(28) Significance--means a trait attributable to sites, buildings, structures and objects of historical, architectural, and archeological (cultural) value which are eligible for designation to State Antiquities [~~Archeological~~] Landmark status and protection under the Antiquities Code of Texas. Similarly, a trait attributable to properties included in or determined eligible for inclusion in the National Register of Historic Places.

(29) Site--means any place or location containing physical evidence of human activity. Examples of sites include: the location of prehistoric or historic occupations or activities, a group or district of buildings or structures that share a common historical context or period of significance, and designed landscapes such as parks and gardens.

(30) Spot-check inventory--means an organized location search to produce a physically-checked, itemized list of a predetermined subset of objects for which the curatorial facility is responsible.

(31) State-associated collections--means the collections owned by the State and under the authority of the Texas Historical Commission. This includes the following:

(A) Permitted collections--means collections that are the result of work governed by the Texas Antiquities Code of Texas on land or under waters belonging to the State of Texas or any political subdivision of the State requiring the issuance of a permit by the Commission.

(B) Non-permitted collections--means collections that are the result of work governed by the Antiquities Code on land or under waters belonging to the State of Texas or any political subdivision of the State conducted by Commission personnel without the issuance of a permit.

(C) Purchased collections--means collections that are the result of the acquisition of significant historical items by the Commission through Texas Historical Artifacts Acquisition Program or use of other State funds.

(D) Donated collections--means collections that are the result of a gift, donation, or bequest to the Commission.

(E) Court-action collections--means collections that are awarded to the Commission by a court through confiscation of illegally-obtained archeological artifacts or any other material that may be awarded to the Commission by a court of law.

(32) State Antiquities [~~Archeological~~] Landmark--means an archeological site, archeological collection, ruin, building, structure, cultural landscape, site, engineering feature, monument or other object, or district that is eligible to be designated as a landmark or is already officially designated as a landmark. [~~any cultural resource or site located in, on, or under the surface of any lands belonging to the State of Texas or any county, city, or other political subdivision of the state, or a site officially designated as a landmark at an open public meeting before the Commission.~~]

§29.5. Disposition of State Associated Collections [~~Archeological Collections~~].

(a) Ownership. All specimens, artifacts, materials, and samples plus original field notes, maps, drawings, photographs, and standard state site survey forms, resulting from the investigations remain the property of the State of Texas. Certain exceptions left to the discretion of the Commission are contained in the Texas Natural Resources Code, §191.052(b). The Commission will determine the final disposition of all artifacts, specimens, materials, and data recovered by investigations on State Antiquities [~~Archeological~~] Landmarks or potential landmarks, which remain the property of the State. These state-associated collections [~~Antiquities from State Archeological Landmarks~~] are of inestimable historical and scientific value and should be preserved and utilized in such a way as to benefit all the citizens of Texas. It is the rule of the Commission that such antiquities shall never be used for commercial exploitation. (see also 13 TAC §26.17 [~~§26.27~~] (relating to Principal Investigator's Responsibilities for Disposition of Archeological Artifacts and Data)).

(b) Housing, conserving, and exhibiting state-associated collections [~~antiquities from State Archeological Landmarks~~]. (see also 13 TAC §26.17 [~~§26.27~~])

(1) After investigations conducted under the jurisdiction of the Antiquities Code of Texas have [~~investigation of a State Archeological Landmark has~~] culminated in the reporting of results, these state-associated collections [~~the antiquities~~] will be permanently preserved in research collections at a curatorial facility certified by the Commission. Prior to the expiration of a permit, proof that state-associated [~~archeological~~] collections [~~and related field notes~~] are housed in a curatorial facility is required. Failure to demonstrate proof before the permit expiration date may result in the principal investigator and co-principal investigator falling into default status. (see also 13 TAC §26.17 [~~§26.27~~])

(2) Institutions housing state-associated collections [~~antiquities from State Archeological Landmarks~~] will also be responsible for adequate security of the collections, continued conservation, periodic inventory, and for making the collections available to qualified institutions, individuals, or corporations for research purposes. (see also 13 TAC §26.17 [~~§26.27~~])

(3) Exhibits of state-associated collections [~~materials recovered from State Archeological Landmarks~~] will be made in such a way as to provide the maximum amount of historical, scientific, archeological, and educational information to all the citizens of Texas. First preference will be given to traveling exhibits following guidelines provided by the Commission and originating at an adequate facility nearest to the point of recovery. Permanent exhibits of antiquities may be prepared by institutions maintaining such collections following guidelines provided by the Commission. A variety of special, short-term exhibits may also be authorized by the Commission. (see also 13 TAC §26.17 [~~§26.27~~])

(c) Access to state-associated collections [~~antiquities~~] for research purposes--collections [~~antiquities~~] retained under direct supervision of the Commission will be available under the following conditions:

(1) Request for access to collections must be made in writing to the curatorial facility holding the collections indicating to which collection and what part of the collection access is desired; nature of research and special requirements during access; who will have access, when, and for how long; type of report which will result; and expected date of report.

(2) Access will be granted during regular working hours to qualified institutions or individuals for research culminating in nonpermit reporting. A copy of the report will be provided to the Commission.

(3) Data such as descriptions or photos when available will be provided to institutions or individuals on a limited basis for research culminating in nonprofit reporting. A copy of the report will be provided to the Commission.

(4) Access will be granted to corporations or individuals preparing articles or books to be published on a profit-making basis only if there will be no interference with conservation activities or regular research projects; photos are made and data collected in the facility housing the collection; arrangements for access are made in writing at least one month in advance; cost of photos and data and a reasonable charge of or supervision by responsible personnel are paid by the corporation or individual desiring access; planned article or publication does not encourage or condone treasure hunting activity on public lands, State Antiquities [~~Archeological~~] Landmarks, or National Register sites, or other activities which damage, alter, or destroy cultural resources; proper credit for photos and data are indicated in the report; a copy of the report will be provided to the Commission.

(5) The Commission may maintain a file of standard photographs and captions available for purchase by the public.

(6) A written agreement containing the appropriate stipulations will be prepared and executed prior to the access.

(7) Curatorial facilities certified by the Commission shall promulgate reasonable procedures governing access to those collections under their stewardship.

(d) Deaccession. The Commission's rules for deaccession recognize the special responsibility associated with the receipt and maintenance of objects of cultural, historical, and scientific significance in the public trust. Although curatorial facilities become stewards of held-in-trust collections, title is retained by the Commission for the State. Thus, the decision to deaccession held-in-trust objects or state-associated collections is the responsibility of the Commission. The Commission recognizes the need for periodic reevaluations and thoughtful selection necessary for the growth and proper care of collections. The practice of deaccessioning under well-defined guidelines provides this opportunity.

(1) Deaccessioning may be through voluntary or involuntary means. The transfer, exchange, or deterioration beyond repair or stabilization or other voluntary removal from a collection in a curatorial facility is subject to the limitations of this rule.

(2) Involuntary removal from collections occurs when objects, samples, or records are lost through theft, disappearance, or natural disaster. If the whereabouts of the object, sample, or record is unknown, it may be removed from the responsibility of the curatorial facility, but the Commission will not relinquish title in case the object, sample, or record subsequently is returned.

(e) Certified curatorial facilities. Authority to deal with deaccessioning of limited categories of objects and samples from held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these deaccessioning actions.

(1) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all deaccession actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with this rule.

(2) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit written deaccession requests of objects and samples from held-in-trust collections to the Commission.

(3) Requests to deaccession a held-in-trust collection in its entirety must be submitted to the Commission.

(4) The reasons for deaccessioning all or part of held-in-trust collections include, but are not limited to, the following:

(A) Objects lacking provenience that are not significant or useful for research, exhibit, or educational purposes in and of themselves;

(B) Objects or collections that do not relate to the stated mission of the curatorial facility. Objects or collections that are relevant to the stated mission of the curatorial facility may not be deaccessioned on the grounds that they are not relevant to the research interests of current staff or faculty;

(C) Objects that have decayed or decomposed beyond reasonable use or repair or that by their condition constitute a hazard in the collections;

(D) Objects that have been noted as missing from a collection beyond the time of the next collections-wide inventory are determined irretrievable and subject to be deaccessioned as lost;

(E) Objects suspected as stolen from the collections must be reported to the Commission in writing immediately for notification to similar curatorial facilities, appropriate organizations, and law enforcement agencies. Objects suspected as stolen and not recovered after a period of three years or until the time of the next collections-wide inventory are determined irretrievable and subject to being deaccessioned as stolen;

(F) Objects that have been stolen and for which an insurance claim has been paid to the curatorial facility;

(G) Objects that may be subject to deaccessioning as required by federal laws; and

(H) Deaccession for reasons not listed above must be approved on a case-by-case basis by the Commission.

(f) Title to Objects or Collections Deaccessioned. If deaccessioning is for the purpose of transfer or exchange, Commission retains title for the State to the object or collection. A new held-in-trust agreement must be executed between the receiving curatorial facility and the THC.

(1) If deaccessioning is due to theft or loss, the Commission will retain title for the State to the object or collection in case it is

ever recovered, but the curatorial facility will no longer be responsible for the object or collection.

(2) If deaccessioning is due to deterioration or damage beyond repair or stabilization, the Commission relinquishes title for the State to the object or collection and the object or collection must be discarded in a suitable manner.

(g) Destructive Analysis. The Commission's rules for destructive analysis apply only to samples and objects from held-in-trust collections accessioned into the holdings of a curatorial facility. Destructive analysis of samples or objects prior to placement in a curatorial facility is covered by the research design approved for the Antiquities Permit. Authority to deal with destructive analysis requests of approved categories of objects and samples from state-associated held-in-trust collections is delegated to a curatorial facility certified by the Commission to hold state held-in-trust collections through a contractual agreement between the curatorial facility and the Commission. Annual reports will be submitted to the Commission on these destructive analysis actions.

(1) A written research proposal must be submitted to the curatorial facility stating research goals, specific samples or objects from a held-in-trust collection to be destroyed, and research credentials in order for the curatorial facility to establish whether the destructive analysis is warranted.

(2) If the Commission determines that a curatorial facility has acted in violation of the contractual agreement and this rule, the contractual agreement will be terminated. From that date forward, the Commission will review and decide on all destructive analysis actions of that curatorial facility concerning held-in-trust objects and samples. A new contractual agreement may be executed at such time as the Commission determines that the curatorial facility has come into compliance with these rules.

(3) Curatorial facilities not yet certified by the Commission to hold state held-in-trust collections shall submit destructive analysis requests of objects and samples from held-in-trust collections to the Commission.

(4) Conditions for approval of destructive analysis may include qualifications of the researcher, uniqueness of the project, scientific value of the knowledge sought to be gained, and the importance, size, and condition of the object or sample.

(5) Objects and samples from held-in-trust collections approved for destructive analysis purposes are loaned to the institution where the researcher is affiliated. Objects and samples will not be loaned to individuals for destructive analysis.

(6) If the curatorial facility denies a request for destructive analysis of a sample or object from a held-in-trust collection, appeal of the decision is through the Commission.

(7) Information gained from the analysis must be provided to the curatorial facility as a condition of all loans for destructive analysis purposes. After completion of destructive analysis, the researcher must return the information (usually in the form of a research report) in order for the loan to be closed. Two copies of any publications resulting from the analysis must be sent to the curatorial facility. If the object or sample is not completely destroyed by the destructive analysis, the remainder must be returned to the curatorial facility.

(8) It is the responsibility of the curatorial facility to monitor materials on loan for destructive analysis, to assure their correct use, and to note the returned data in the records.

(9) The Commission does not relinquish title for the State to an object or sample that has undergone destructive analysis and the object or sample is not deaccessioned.

§29.6. Certification of Curatorial Facilities for State-Associated Held-in-Trust Collections.

(a) Establishment of certification program.

(1) The Commission shall determine through the program established by this subchapter appropriate facilities to house state-associated held-in-trust collections generated or purchased by the Commission, generated through antiquities permits issued under the authority of the Commission as provided by the Texas Natural Resources Code, Chapter 191, donated to the Commission, or placed with the Commission through the order of a court.

(2) The certification process shall consider the management and care of all state-associated collections at the curatorial facility.

(3) The requirements of this subchapter related to the placement of state-associated collections in certified curatorial facilities shall apply to the following:

(A) All collections placed in curatorial facilities by the Commission after December 31, 2005; and,

(B) All collections generated under antiquities permits on public lands after December 31, 2005.

(4) Except as provided in paragraph (9) of this subsection, no collection or any component of a collection as described under the jurisdiction of this subchapter may be placed in a curatorial facility that is not certified through the process established by this section.

(5) This section does not apply to the placement of collections in curatorial facilities prior to the effective date of this requirement as specified in subsection (a)(3), above. It does apply to any subsequent transfer of collections or a component of a collection taking place after the effective date of this requirement as specified in subsection (a)(3)(A) - (B), above.

(6) This section does not apply to the loan of a collection or a component of a collection to a facility not certified by the Commission.

(7) Certification shall be effective for a period of ten years, after which time, the curatorial facility must apply for renewal [~~through the procedures provided in this subchapter~~]. Renewal will be based upon a review of the standing of the facility in regards to disabling or deficiency factors assigned during the initial certification and the standards for certification in place at the time renewal is requested.

(8) The certification process shall be implemented upon the effective date of these rules, and the staff of the Commission shall develop procedures to begin the review of applicants at the earliest possible date. The requirement that all new collections shall be placed only in certified curatorial facilities shall be effective as specified in subsection (a)(3)(A) - (B), above.

(9) A curatorial facility that has submitted the application for certification provided by subsection (b)(1) of this section by the date provided in subsection (a)(3) of this section may continue to accept held-in-trust collections after that date so long as its application is pending and the application process has not been terminated or its application rejected by the commission.

(b) Procedures for Certification.

(1) Application. A curatorial facility seeking certification from the Commission shall apply to the Commission on a form provided by the Commission.

(A) The form shall require the applicant to provide essential information and documentation to allow the Commission to determine whether the facility is a curatorial facility within the definition of that term.

(B) Staff of the Commission shall evaluate the application and make a recommendation to the executive director on whether the facility should be allowed to proceed with the certification process.

(C) The executive director may determine that the certification review should be terminated at this point in the process. Such termination would be due to a clear failure of the curatorial facility to meet the criteria for certification developed under this subchapter.

(2) Submission of written materials for certification.

(A) The form shall require the applicant to provide essential information and documentation to allow the Commission to determine whether the facility is a curatorial facility within the definition of that term.

(B) The self-evaluation and other materials must be submitted to the Commission within six months after the certification review packet is mailed. A one time extension not to exceed six months may be granted by the Commission staff upon request.

(C) The completed documentation shall be reviewed by the Commission. If clarification or additional information is requested by the Commission, the facility shall have 30 days to furnish the information required.

(D) Failure to provide the requested information or inadequacy of the materials provided may lead to the termination of the review process.

(E) Staff of the Commission shall review the self-evaluation and other written materials provided and make a recommendation to the executive director on whether the facility should be allowed to proceed with the certification process.

(F) The executive director may determine that the review should be terminated at this point in the process.

(3) Field review.

(A) A curatorial facility that has submitted its self-evaluation and other written materials and approved to proceed with the certification process shall be contacted to arrange for a field review.

(B) At a time to be agreed upon by the Commission staff and the facility, an on-site evaluation of the facility shall be conducted by the Commission.

(C) Field review of the curatorial facility will be conducted by qualified staff of the Commission. Confidentiality will be maintained within the limits of the Public Information Act.

(D) An applicant for certification must make their facilities and records freely available to the field reviewers of the Commission in order to be considered for certification.

(E) Upon completion of the on-site evaluation, the persons performing the evaluation shall complete a written report of the on-site evaluation.

(F) The written report and recommendation shall be submitted to the executive director for his review. The executive director may approve, disapprove, or amend the recommendation.

(G) The applicant shall be provided not less than 30 days notice of the Commission meeting when its application will be considered and provided a copy of the executive director's recommendation, the report of the on-site evaluation, and any other relevant documents.

(H) The applicant shall have the opportunity to present written and oral information in support of its application to the staff and the Commission or committees thereof.

(4) Consideration by the Commission.

(A) The Commission may direct that this matter be considered in a committee of the Commission prior to consideration by the full Commission.

(B) The Commission shall consider the recommendations of the staff and/or executive director and all other matters submitted or prepared in connection with the application and shall make a decision on the certification of the curatorial facility. The decision of the Commission shall be provided in writing to the curatorial facility. If certification is denied, the Commission shall provide reasons for the denial to the curatorial facility.

(C) The decision of the Commission shall be based on the matters properly submitted in the certification process, and the decision shall measure the qualifications, stated objectives, and resources of the curatorial facility against the standards for certification established by the Commission.

(i) The Commission shall consider the evaluation of the curatorial facility and determine which, if any, disabling and deficiency factors may be present in the curatorial facility.

(ii) The Commission shall grant certification of the curatorial facility based on the disabling and deficiency factors by the following standards:

(I) Four or more disabling factors, certification denied;

(II) Three or fewer disabling factors and no more than four deficiency factors, certification granted;

(III) Three or fewer disabling factors and five or six deficiency factors, provisional status granted; or

(IV) Three or fewer disabling factors and seven or more deficiency factors, certification denied.

(D) If a curatorial facility is certified with existing disabling factors or deficiencies, these factors must be addressed before subsequent certification can take place. The curatorial facility must submit a plan and schedule for correcting the factors to the Commission within 90 days of the notice of certification. The Commission shall consider the plan and schedule and either approve it or return it to the curatorial facility with suggested revisions. The curatorial facility shall resubmit the plan and schedule until approved by the Commission. If these factors have not been addressed by the end of its certification period, then the curatorial facility will be decertified at the end of the certification period. The curatorial facility must wait two years before reapplying for certification, at which time it will be certified only if it has addressed all prior deficiency and disabling factors.

(E) Provisional status.

(i) If the Commission determines that the curatorial facility does not meet all of the qualifications for certification, but should be granted provisional status, the curatorial facility must submit a plan and schedule for correcting the factors to the Commission within 90 days of the approval of provisional status. The Commission

shall consider the plan and schedule and either approve it or return it to the curatorial facility with suggested revisions. The curatorial facility shall resubmit the plan and schedule until approved by the Commission. If such factors are addressed and appropriate evidence of such measures is presented to the Commission, the Commission may grant certification to the curatorial facility at the next succeeding quarterly meeting of the Commission.

(ii) A curatorial facility that is granted provisional status shall be considered as a certified curatorial facility unless it subsequently fails to address the disabling and deficiency factors within the time allotted, at which time the Commission may vote to deny certification.

(iii) Provisional status shall initially be granted for a period of three years. The period may be extended for up to three one-year increments by the Commission if the curatorial facility is determined to be making progress in remedying the disabling and deficiency factors. Provisional status may not be extended beyond the six-year limit. Each extension will require justification and a vote of the Commission.

(F) Except as provided by this subchapter, a curatorial facility that is denied certification by the Commission may not reapply for certification within one year of the denial of its application.

(c) Appeal.

(1) If the executive director has determined that the review of an application for certification of a curatorial facility should be terminated prior to field review, the curatorial facility may appeal that decision to the Commission by requesting in writing a review of the decision at the next succeeding quarterly Commission meeting, provided that such request must be received not less than 30 days prior to the meeting. The curatorial facility and the executive director may submit arguments in writing to the Commission concerning the appeal.

(2) If the executive director and/or staff recommend against certification of a curatorial facility, the facility may respond in writing to such recommendation. If the curatorial facility determines that it needs additional time to respond to the staff and/or executive director's recommendation, it may request that the consideration of the certification be delayed until the next succeeding quarterly meeting, and shall submit its response not less than 30 days prior to the next succeeding quarterly meeting. Only one such delay in the consideration of certification shall be granted, except on vote of the Commission.

(3) The staff or the executive director may comment on any response of the curatorial facility.

(4) Except as may otherwise be provided by law, the decision of the Commission on certification of a curatorial facility is final.

(d) Criteria for Certification. Each applicant for certification must meet the following criteria to be certified.

(1) The Commission shall develop and adopt objective criteria for the evaluation of curatorial facilities.

(2) The criteria shall be in writing and shall be made available to any person requesting them.

(3) The evaluation shall focus on the care and management of all state-associated held-in-trust collections present at the facility.

(4) The following certification criteria will be used to evaluate curatorial facilities:

(A) Governance.

(i) specific mission statement;

(ii) institutional organization document; and

(iii) evidence of not-for-profit status.

(B) Clear Fiscal Plan.

(C) Policy. Written, integrated collections management policy addressing:

(i) acquisitions;

(ii) scope of collections;

(iii) legal title;

(iv) held-in-trust agreements;

(v) contract of gift;

(vi) accessioning;

(vii) deaccessioning and disposal of collections or collection items;

(viii) cataloging;

(ix) loans;

(x) destructive loans of held-in-trust collections;

(xi) inventory;

(xii) adequate and appropriate insurance;

(xiii) appraisals;

(xiv) access to collections;

(xv) record keeping;

(xvi) collections care;

(xvii) conservation;

(xviii) emergency preparedness;

(xix) integrated pest management; and

(xx) security.

(D) Procedures. Written, integrated collections management procedures addressing:

(i) acquisitions;

(ii) held-in-trust agreement;

(iii) accessioning;

(iv) deaccessioning and disposal of collections or collection items;

(v) cataloging;

(vi) loans;

(vii) destructive loans of held-in-trust collections;

(viii) inventory;

(ix) insurance;

(x) access to collections;

(xi) record keeping;

(xii) collections care;

(xiii) conservation;

(xiv) emergency preparedness;

(xv) integrated pest management; and

(xvi) security.

(E) Physical Facilities.

(i) sound, appropriate structure;

(ii) adequate and appropriate insurance;

(iii) security system;

(iv) fire prevention, detection, and suppression programs; and

(v) environmental controls (temperature, relative humidity, air particulates).

(F) Staff.

(i) written code of ethics;

(ii) written job descriptions;

(iii) minimum one full-time staff member trained in collections care; and

(iv) support for staff training programs in collections care and memberships to museum-related organizations.

(G) Visiting scholars and researchers.

(i) written policy concerning access to collections; and

(ii) written procedures concerning security, access, and handling of collections.

(H) Records management.

(i) functional accession, catalog, inventory, and photo documentation system;

(ii) updated and current list of held-in-trust state-associated collections; and

(iii) baseline inventory of each held-in-trust state-associated collection.

(I) Collections care.

(i) housing;

(I) appropriate housing units with adequate and appropriate space; and

(II) accessible and organized collections.

(ii) packaging;

(I) appropriate materials;

(II) appropriate object spacing; and

(III) appropriate organization of collections.

(e) Application of criteria. In making the determination of certification status, all of the above criteria are considered. In particular, at the Application stage, the curatorial facility must fit the definition; have a mission statement, a statement of purpose, and a scope-of-collections statement; and have a written integrated collections management policy. If the curatorial facility does not meet these three basic criteria, then certification is denied and the process goes no further. At the Commission level, disabling factors could prevent certification. Deficiency factors could result in provisional status or denial. Where appropriate, the criteria for evaluation for curatorial facilities to be developed by the commission will contain objective standards against which disabling and deficiency factors are measured.

(1) Disabling factors are the absence of any of the following:

(A) written procedures and plans;

(B) written held-in-trust agreements for state-associated collections;

(C) list of held-in-trust state-associated collections;

(D) baseline inventory for each held-in-trust state-associated collection;

(E) record keeping system;

(F) accession system;

(G) catalog system;

(H) inventory system;

(I) environmental controls (temperature, relative humidity, air particulates);

(J) fire prevention, detection, and suppression programs;

(K) full-time employee trained in collections care;

(L) appropriate physical facilities; and

(M) appropriate housing or housing conditions.

(2) Deficiency factors are the following:

(A) substandard policies;

(B) substandard procedures and plans;

(C) incomplete held-in-trust agreements for state-associated collections;

(D) incomplete list of held-in-trust state-associated collections;

(E) incomplete baseline inventory for each held-in-trust state-associated collection;

(F) inadequate record keeping system;

(G) inadequate accession system;

(H) inadequate catalog system;

(I) incomplete cataloging of held-in-trust state associated collections;

(J) inadequate inventory system;

(K) substandard environmental controls (temperature, relative humidity, air particulates);

(L) substandard fire prevention, detection, or suppression programs;

(M) substandard physical facilities;

(N) substandard housing or housing conditions; and

(O) substandard packaging.

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 May 6, 2016.

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Mark Wolfe
Executive Director
Texas Historical Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 463-1858

TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 25. OPTIONAL RETIREMENT PROGRAM

SUBCHAPTER A. OPTIONAL RETIREMENT PROGRAM

19 TAC §§25.3 - 25.6

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§25.3, 25.4, 25.5 and 25.6 concerning the Optional Retirement Program (ORP). The intent of these amendments is to incorporate changes in state law and IRS-related interpretations; to make technical corrections; and to add clarifying language.

Amendments to §25.3 (Definitions) incorporate changes in state law made by HB 9 (2015) that eliminated the 90-day waiting period for active membership in the Employees Retirement System of Texas (ERS); improve clarity in the definition of "Full-time" by focusing on the term's meaning for ORP purposes (rather than including part of the Teacher Retirement System of Texas (TRS) definition); clarify that an employee's "Initial ORP Eligibility Date" is the first date that all four eligibility criteria are met; improve clarity in the definition of "Initial ORP Eligibility Period" by referencing the "Initial ORP Eligibility Date" definition; and improve clarity in the definition of "ORP Election Period" by replacing "appropriate" forms with "TRS-28 ORP election" form or, for employees of the Coordinating Board, the ORP election form provided by the Board.

Amendments to §25.4 (Eligibility to Elect ORP) improve clarity in the "100 Percent Effort" eligibility requirement; incorporate changes in state law made by HB 9 (84th Texas Legislature) that eliminated the 90-day waiting period for active membership in ERS; improve clarity by replacing "appropriate" forms with "TRS-28 ORP election" form or, for employees of the Coordinating Board, the ORP election form provided by the Board; clarify that an employee who elects ORP after the first day of the month must earn enough compensation between the election date and the end of that month to cover the amount of the employee's ORP contribution for that month (otherwise, the ORP participation start date must be the first of the following month); clarify that institutional orientation and enrollment procedures must include both new employees and current employees who transfer to an ORP-eligible position; and remove provisions regarding extension of a participant's 90-day ORP election period if the institution fails to notify the participant in a timely manner of his or her eligibility to elect ORP. This change is being made in response to an interpretation by TRS of IRS code and regulations that affect both retirement plans.

Amendments to §25.5 (ORP Vesting and Participation) replace the specific definition of a temporary position with a reference to the TRS definition; and update language to incorporate IRS changes regarding a participant's transfer of ORP funds from one ORP company to another ("contract exchange").

Amendments to §25.6 (Uniform Administration of ORP) make a technical correction by replacing "plan" year with "tax" year regarding the timeframe for stopping ORP contributions once a participant meets applicable IRS contribution limits (to account for institutions with plan years that don't coincide with the tax year); clarify that withdrawn TRS member contributions cannot be rolled over into a participant's ORP account prior to termination of ORP participation; improve clarity by replacing "appropriate" forms with "TRS-28 ORP election" form; clarify that ORP employers must maintain documentation of a participant's first date of participation in Texas ORP (for determining a participant's grandfather status) whether or not the employer provides an ORP supplement; replace specific proportionality provisions that apply to the funding sources of employer contributions with a reference to applicable state law and the General Appropriations Act; clarify that ORP companies must deposit ORP funds on the same "business" day as received (rather than same day); and update language to incorporate IRS changes regarding a participant's transfer of ORP funds from one ORP company to another ("contract exchange") and to another ORP employer's plan ("plan-to-plan transfer").

Amendments to §25.6 also clarify that prohibited pre-termination "access" to ORP funds includes partial and full withdrawals; clarify that "plan provisions" are governing documents for the program (in addition to applicable laws and regulations); clarify that an ORP company is authorized to release a participant's ORP funds when the institution sends a notice that the participant has retired (not just when a "break in service" has occurred); replace specific provisions for rectifying a prohibited distribution with a reference to applicable IRS procedures; update the normal due date for institutions to submit the annual ORP report (changed from November 1 to October 1 to provide the Legislative Budget Board with earlier access to the data); specify that ORP employers must provide a link to the Coordinating Board's ORP website (rather than providing a specific link to the "Overview of TRS and ORP" or placing the document on the employer's webpage) to ensure that ORP-eligible employees will access the most recent version; and specify that ORP employers must provide a caution against withdrawing all ORP funds not only to terminating participants who may anticipate enrolling in the retiree group insurance program administered by ERS at a future date but also to participants at the time of enrollment (based on ERS interpretation of insurance statute).

Ms. Tonia Scaperlanda, Director of Human Resources, has determined that for the first five years there will be no fiscal implications for state or local governments as a result of the proposed amendments.

Ms. Scaperlanda has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be improved administration of this retirement program for public higher education employees. There are no significant economic costs anticipated to persons and institutions who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Tonia Scaperlanda, Director of Human Resources, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711 or via email at texorp@thecb.state.tx.us. Com-

ments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amended sections are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rulemaking authority; Texas Government Code, §830.002(c), which provides the Coordinating Board with authority to develop policies, practices, and procedures to provide greater uniformity in the administration of ORP; §830.101(b), which provides the Coordinating Board with specific rulemaking authority to establish eligibility for participation in ORP; and §830.006(b), which provides that institutions must keep records, make certifications, and furnish to the Coordinating Board information and reports as required by the Coordinating Board to enable it to carry out its ORP-related functions.

The proposed amendments affect the implementation of Texas Government Code, Chapter 830, §§830.001 - 830.205.

§25.3. 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) ERS--[~~The~~] Employees Retirement System of Texas.

[~~(6) ERS Waiting Period--A period of 90 calendar days beginning with the first day of employment with the Board in a position that is otherwise eligible for membership in ERS. In accordance with state law, active membership in ERS does not become effective until the 91st calendar day.~~]

[~~(A) The ERS waiting period does not apply to:~~]

~~*(i)* new employees of the Board who are already members of ERS based on contributions made during prior employment with the Board or other state agency that have not been withdrawn; or~~]

~~*(ii)* new employees of the Board who elected ORP in lieu of ERS in a prior period of employment with the Board and who are eligible to resume ORP participation.~~]

[~~(B) As provided in §25.4(h) of this title (relating to Active Membership in Retirement System Requirement), a new employee of the Board who becomes employed in an ORP-eligible position and who is subject to the ERS waiting period is not permitted to elect ORP in lieu of ERS until satisfying the ERS waiting period because the election of ORP is in lieu of active membership in ERS.~~]

(6) [~~(7)~~] Full-time--For purposes of determining initial ORP eligibility, the term "full-time" shall mean employment for the standard full-time workload established by the institution ("100 percent effort") [~~at a rate comparable to the rate of compensation for other persons in similar positions for a definite period of four and one-half months or a full semester of more than four calendar months~~].

(7) [~~(8)~~] Initial ORP Eligibility Date--The first day of an ORP-eligible employee's 90-day ORP election period. An employee's initial ORP eligibility date shall be the first date that the employee meets all four criteria in §25.4(a) of this title (relating to Eligibility Criteria), including employment in an ORP-eligible position that is expected to be full-time (i.e., 100 percent effort) for a period of at least one full semester or four and one-half months. [~~determined as follows:~~]

[~~(A) Employees of Institutions of Higher Education. For employees of a Texas public institution of higher education, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.~~]

[~~(B) Employees of the Board.~~]

~~*(i)* Non-ERS Members. For a new employee of the Board who has never been a member of ERS or who is a former member of ERS who canceled membership by withdrawing employee contributions from ERS after termination from a prior period of employment, the initial ORP eligibility date shall be the 91st calendar day of employment in an ERS-eligible position that is also an ORP-eligible position.~~]

~~*(ii)* Current ERS Members. For an employee of the Board who is a current member of ERS at the time that he or she becomes employed in an ORP-eligible position, the initial ORP eligibility date shall be the first day of employment in an ORP-eligible position.~~]

(8) [~~(9)~~] Initial ORP Eligibility Period--The period of time an ORP participant must be employed on a full-time basis ("100 percent effort") beginning with the initial ORP eligibility date, as defined in paragraph (7) of this section, and ending after [~~first date of employment in an ORP-eligible position that is expected to be 100 percent effort for a period of at least~~] one full semester or four and one-half months. [~~For new employees of the Board who become employed in an ORP-eligible position, the initial ORP eligibility period includes the 90-day ERS waiting period, if applicable.~~]

(9) [~~(10)~~] Major Department Requirement--One of the factors used to determine whether a position is ORP-eligible in the "Other Key Administrator" category as defined in §25.4(k) of this title (relating to Eligible Positions). A department or budget entity at a public institution of higher education shall meet this requirement if:

(A) the department or budget entity is considered a "major" department by the institution based on the specific organizational size and structure of that institution; and

(B) the department or budget entity has its own budget, policies and programs.

(10) [~~(11)~~] ORP--[~~The~~] Optional Retirement Program.

(11) [~~(12)~~] ORP Election Period--The period of time during which ORP-eligible employees have a once-per-lifetime opportunity to elect to participate in ORP in lieu of the applicable retirement system. The ORP election period shall begin on an employee's initial ORP eligibility date, as defined in paragraph (7) of this section, and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board [~~and submitting the appropriate forms to the ORP employer~~]; or

(B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first business [~~working~~] day after the 90th calendar day.

(12) [~~(13)~~] ORP Employer--All public institutions of higher education in Texas and the Board.

(13) [~~(14)~~] ORP Retiree--An individual who participated in ORP while employed with a Texas public institution of higher education or the Board and who established retiree status by meeting the applicable retiree insurance requirements and enrolling in retiree group insurance provided by ERS, The University of Texas System, or The Texas A&M University System, regardless of whether currently enrolled.

(14) [~~(15)~~] Principal Activity Requirement--One of the factors used to determine whether a position is ORP-eligible based on the

percent of effort required by the position to be devoted to ORP-eligible duties. The principal activity requirement shall be met if at least 51 percent of the position's duties are devoted to ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions), with two exceptions:

(A) During Initial ORP Eligibility Period. During an employee's initial ORP eligibility period (when the position is required to be 100 percent effort to qualify as ORP-eligible), if the ORP-eligible duties associated with an ORP-eligible category are less than 51 percent of the activities for a particular position, the position shall be considered to meet the principal activity requirement if all of the position's other duties are ORP-eligible duties under one of the other ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions), for a total of 100 percent effort devoted to ORP-eligible duties, as would be the case, for example, for a position with required duties that are 50 percent instruction and/or research (faculty position) and 50 percent department chair (faculty administrator position).

(B) After Initial ORP Eligibility Period. For a participant who has completed the initial ORP eligibility period but who has not vested in ORP and who fills a position that is less than 100 percent effort but at least 50 percent effort, then the principal activity requirement shall be considered met if at least 50 percent effort is devoted to applicable ORP-eligible duties in one of the ORP-eligible categories defined in §25.4(k) of this title (relating to Eligible Positions).

(15) [~~(16)~~] TRS--[~~The~~] Teacher Retirement System of Texas.

(16) [~~(17)~~] Vesting Requirement--The minimum amount of ORP participation required to attain vested status. An ORP participant shall be considered vested on the first day of the second year of active participation in lieu of the applicable retirement system, as provided in §25.5(a) of this title (relating to Vesting Requirement). A vested participant shall have ownership rights to the employer contributions in his or her ORP accounts, meaning that, upon termination of employment with all ORP employers or reaching age 70-1/2, he or she may access both the employee and employer contributions (and any net earnings) in his or her accounts. A vested participant shall remain in ORP even if subsequently employed in a position that is not ORP-eligible, as provided in §25.5(f) of this title (relating to Employment in a non-ORP-Eligible Position).

§25.4. Eligibility to Elect ORP.

(a) Eligibility Criteria. An employee shall be eligible to make a once-per-lifetime irrevocable election of ORP in lieu of the applicable retirement system if all of the following criteria are met:

(1) (No change.)

(2) 100 Percent Effort: Employment in an ORP-eligible position that is expected to be [~~on a~~] full-time [~~basis~~] (i.e., 100 percent effort) for a period of at least one full semester or four and one-half months [~~(including the 90-day waiting period for active membership in ERS for employees of the Board, if applicable)~~].

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

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

(b) - (e) (No change.)

(f) 90-Day ORP Election Period. An employee who meets the eligibility criteria in subsection [~~section~~] (a) of this section shall be provided an ORP election period, as defined in §25.3 of this title (relating to Definitions), during which an election to participate in ORP may be made by signing the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board [~~and submitting the appropriate forms to the ORP employer~~].

[~~(1) After 90-Day ERS Waiting Period. For new employees of the Board, the 90-day ORP election period shall follow the 90-day ERS membership waiting period, if applicable.~~]

(1) [~~(2)~~] Beginning and Ending Dates. The 90-day ORP election period shall begin on the employee's initial ORP eligibility date, as defined in §25.3 of this title (relating to Definitions), and shall end on the earlier of:

(A) the date the employee makes an ORP election by signing the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board [~~and submitting the appropriate forms to the ORP employer~~]; or

(B) the 90th calendar day after the employee's initial ORP eligibility date, not including the initial ORP eligibility date and including the 90th calendar day. If the 90th calendar day after the initial ORP eligibility date falls on a weekend or holiday, the deadline shall be extended until the first business [~~working~~] day after the 90th calendar day.

(2) [~~(3)~~] Written Notification. In accordance with §25.6(h)(2) of this title (relating to ORP Election Period Dates), each ORP employer shall, within 15 business days of an ORP-eligible employee's initial ORP eligibility date, provide written notification to the ORP-eligible employee that indicates the beginning and ending dates of his or her ORP election period and the local procedures for submitting the election form and additional required paperwork.

(3) [~~(4)~~] Once-per-Lifetime Irrevocable Election. An employee who is eligible to elect ORP shall have only one opportunity during his or her lifetime, including any future periods of employment in Texas public higher education, to elect ORP in lieu of the applicable retirement system, and the election may never be revoked.

(A) Default Election. Failure to elect ORP during the 90-day ORP election period shall be a default election to continue membership in the applicable retirement system.

(i) ORP in Lieu of TRS. An employee of a Texas public institution of higher education who does not elect ORP in lieu of TRS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of TRS, even if subsequently employed in an ORP-eligible position at the same or another Texas public institution of higher education.

(ii) ORP in Lieu of ERS. An employee of the Board who does not elect ORP in lieu of ERS during the 90-day ORP election period shall never again be eligible to elect ORP in lieu of ERS, even if subsequently employed in an ORP-eligible position at the Board.

(B) Irrevocable. An election of ORP shall be irrevocable. An employee who elects ORP shall remain in ORP, except as provided by §25.5(f) and (g) [~~subsections (f) and (g) of §25.5~~] of this title (relating to ORP Vesting and Participation). A default election of the applicable retirement system, as described subparagraph [~~(3)~~](A) of this paragraph [~~subsection~~] shall be irrevocable. An employee who fails to elect ORP during the ORP election period shall remain in the applicable retirement system in accordance with the laws and rules governing eligibility for the retirement system.

(C) Separate Elections. As provided in subsection (d) of this section, an election of ORP in lieu of TRS at a Texas public institution of higher education shall be considered separate and distinct from an election of ORP in lieu of ERS at the Board; therefore, an election of ORP in lieu of one retirement system shall not preclude an eligible employee's election of ORP in lieu of the other retirement system if subsequently employed in a position that is eligible to elect ORP in lieu of the other retirement system.

(4) [~~(5)~~] Company Selection Required at Election. An employee who elects to participate in ORP shall select an ORP company from the ORP employer's list of authorized companies in conjunction with the election of ORP. An ORP employer shall establish a policy that failure to select an authorized company may result in disciplinary action up to and including termination of employment because retirement contributions are required by law as a condition of employment.

(5) [~~(6)~~] Waiver of Retirement System Benefits. An election of ORP shall be a waiver of the employee's rights to any benefits that may have accrued from prior membership in the applicable retirement system, other than benefits resulting from transfers of service credit between the applicable retirement systems and reinstatement of withdrawn service credit under the ERS/TRS service transfer law, even if the participant has met the applicable system's vesting requirement. Except as provided by §25.5(f) and (g) [~~subsections (f) and (g) of §25.5~~] of this title (relating to ORP Vesting and Participation) and the ERS/TRS service transfer law, an ORP participant shall not be eligible to become an active member of the applicable retirement system or receive any benefits from the system other than a return of employee contributions that may have been deposited with the system (and accrued interest, if any).

(g) Participation Start Date. The first day that ORP contributions are made shall be determined as follows.

(1) Election on Initial ORP Eligibility Date.

(A) Employees of Institutions of Higher Education.

(i) New Employees. For new employees who sign the TRS-28 ORP election form [~~and submit the appropriate ORP election forms~~] on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) Transfers within Same Institution. For employees who transfer from a non-ORP-eligible position to an ORP-eligible position within the same institution and who sign the TRS-28 ORP election form [~~and submit the appropriate ORP election forms~~] on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both TRS and ORP during the same month, as provided in §25.6(a)(4) of this title (relating to No Dual Contributions), the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls[~~, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis~~].

(B) Employees of the Board. [~~The participation start date for ORP-eligible Board employees who elect ORP on their initial ORP eligibility date, as defined in §25.3 of this title (relating to Definitions), by signing and submitting the appropriate forms on or before their initial ORP eligibility date shall be based on whether they were subject to the 90-day ERS waiting period.~~]

(i) [~~Board Employees not subject to 90-Day ERS Waiting Period.~~]

[(I)] New Employees. For new Board employees [~~who are not subject to the 90-day ERS waiting period because they are already members of ERS and~~] who sign [~~and submit~~] the [~~appropriate~~] ORP election form provided by the Board [~~forms~~] on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment).

(ii) [~~(II)~~] Transfers within the Board. For Board employees [~~who are not subject to the 90-day ERS waiting period because they are already members of ERS and~~] who transfer from a non-ORP-eligible position at the Board to an ORP-eligible position at the Board, and who sign [~~and submit~~] the [~~appropriate~~] ORP election form [~~forms~~] provided by the Board on or before their initial ORP eligibility date, the participation start date shall be the initial ORP eligibility date (i.e., first day of ORP-eligible employment), unless the initial ORP eligibility date is not the first day of the month, in which case, to avoid dual contributions to both ERS and ORP during the same month, as provided in §25.6(a)(4) of this title, the participation start date shall be the first day of the month following the month in which the initial ORP eligibility date falls[~~, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis~~].

[(ii) ~~Board Employees subject to 90-Day ERS Waiting Period. To avoid partial month contributions for employees who are subject to the 90-day ERS waiting period and who sign and submit the appropriate ORP election forms on or before their initial ORP eligibility date, the amount of the ORP contribution for the month in which their initial ORP eligibility date falls shall be based on salary earned during that entire month, so the participation start date shall be the first day of the month in which the initial ORP eligibility date falls, or the first day of the applicable payroll period, if payroll is not processed on a monthly basis.~~]

(2) Election After Initial ORP Eligibility Date. The participation start date for ORP-eligible employees who sign the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board [~~and submit the appropriate ORP election forms~~] after their initial ORP eligibility date, shall be the first day of the month following the date that the form is [~~forms are~~] signed [~~and submitted~~], with the following exceptions:

(A) During Month of Initial ORP Eligibility Date. ORP employers may establish a policy that employees who elect ORP by signing the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board [~~and submitting the appropriate forms~~] after their initial ORP eligibility date but before the end of [~~payroll has been processed for~~] the month in which the initial ORP eligibility date falls may be treated as if they had signed [~~and submitted~~] the form [~~forms~~] on or before their initial ORP eligibility date as provided by paragraph (1) of this subsection, provided the employee earns enough compensation between the date of the election and the end of the month in which the initial ORP eligibility date falls to cover the employee's ORP contribution for the entire month.

(B) After Month of Initial ORP Eligibility Date: ORP employers may establish a policy that employees who elect ORP by signing the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board [~~and submitting the appropriate forms~~] after the month in which their initial ORP eligibility date falls, but before the end of [~~payroll has been processed for~~] the month in which the form is [~~forms are~~] signed [~~and submitted~~], may start participating in the month in which the form is [~~forms are~~] signed [~~and submitted~~] rather than the first of the following month, provided the employee earns enough compensation between the date of the election and the end of the month in which the form is signed to cover the employee's ORP contribution for the entire month. To avoid partial month payments, contributions for these participants shall be based on salary earned during the entire month in which the form is [~~forms are~~] signed [~~and submitted, or during the entire pay period in which the forms are signed and submitted, if payroll is not processed on a monthly basis~~].

(C) (No change.)

(h) Active Membership in Retirement System Requirement. Participation in ORP shall be an alternative to active membership in the applicable retirement system.

[~~(1) Board Employees Subject to 90-Day ERS Waiting Period. Employees who are not current members of ERS when they become employed in an ORP-eligible position at the Board shall not be eligible to elect ORP in lieu of ERS until the 90-day ERS waiting period has been satisfied.~~]

[~~(2) Retirees Not Eligible. Employees who have retired from TRS or ERS are no longer active members of the applicable retirement system; therefore, a~~]

(1) A TRS retiree shall not be eligible to elect ORP in lieu of TRS at a Texas public institution of higher education. [~~and an~~]

(2) An ERS retiree shall not be eligible to elect ORP in lieu of ERS at the Board.

(i) Automatic Retirement System Enrollment. A new employee at a Texas public institution of higher education who is eligible to elect ORP in lieu of TRS shall be automatically enrolled in TRS until an election to participate in ORP is made by signing the TRS-28 ORP election form [~~and submitting the appropriate forms to the institution~~] as provided in subsection (g) of this section. A new Board employee who is eligible to elect ORP in lieu of ERS shall be automatically enrolled in ERS[~~, following the 90-day ERS waiting period, if applicable,~~] until an election to participate in ORP is made by signing the ORP election form provided by the Board [~~and submitting the appropriate forms to the Board~~] as provided in subsection (g) of this section.

(j) - (n) (No change.)

(o) Administrative Errors.

(1) Orientation Procedures. Each ORP employer shall develop and implement effective orientation and enrollment procedures to ensure appropriate and timely processing of newly eligible employees' retirement plan choices, including procedures for both new employees and current employees who transfer to an ORP-eligible position.

(2) Rectification. In the event an administrative error occurs which prevents the normal processing of an ORP-eligible employee's election, the ORP employer shall rectify the error as soon as practicable and in a manner that results in a situation that is as close to the originally expected outcome as possible, within applicable federal and state laws and rules.

(A) To ensure compliance with applicable IRS code and regulations, an ORP-eligible employee shall not be eligible to elect ORP after the end of the employee's ORP election period as defined by §25.3 of this title (relating to Definitions).

(B) If an ORP employer fails to provide an opportunity for an ORP-eligible employee to elect ORP on or before the employee's initial ORP eligibility date, the ORP employer shall, immediately upon discovery of the failure, provide notification to the employee that the administrative error occurred.

(i) If the ORP employer's notification is made within the ORP-eligible employee's ORP election period as defined in §25.3 of this title (relating to Definitions), the employee shall only be eligible to elect ORP in lieu of the applicable retirement system within the remainder of the employee's ORP election period. The employee's ORP election period shall not be extended due to an ORP employer's failure to provide an opportunity for the ORP-eligible employee to elect ORP on or before the employee's initial ORP-eligibility date.

(ii) If the ORP employer's notification is not made within the ORP-eligible employee's ORP election period as defined in §25.3 of this title (relating to Definitions), the employee shall not be eligible to elect ORP in lieu of the applicable retirement system.

(C) An ORP-eligible employee's ORP election period shall not be extended due to an ORP employer's failure to timely process an ORP-eligible employee's ORP election form.

(3) (No change.)

[~~(4) Failure to Notify Error. If an ORP employer fails to notify an ORP-eligible employee of his or her eligible status on or before the employee's initial ORP eligibility date, the ORP employer shall notify the eligible employee as soon as the oversight is discovered. The 90-day ORP election period for the eligible employee shall begin on the date that the employee is notified, and the participation start date shall be determined in accordance with subsection (g) of this section.~~]

(p) (No change.)

§25.5. ORP Vesting and Participation.

(a) - (f) (No change.)

(g) Employment in a Non-Benefits-Eligible Position.

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

(3) Definition. For purposes of this subsection, a non-benefits-eligible position shall be defined as a position that is one or more of the following:

(A) less than 50 percent effort;

(B) temporary, as defined by TRS for employees of Texas public institutions of higher education [~~expected to last less than a full semester or a period of four and one-half months (i.e., temporary)~~]; or

(C) requires student status as a condition of employment.

(4) - (7) (No change.)

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

(j) Termination of Participation. An employee shall terminate participation in ORP only upon death, retirement (including disability retirement), or termination of employment with all Texas public institutions of higher education (if the election of ORP was in lieu of TRS) or termination of employment with the Board (if the election of ORP was in lieu of ERS).

(1) (No change.)

(2) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies (contract exchange) shall not be considered a termination of employment for ORP purposes.

§25.6. Uniform Administration of ORP.

(a) Contributions.

(1) (No change.)

(2) IRS Limits on Defined Contributions. Contributions to a participant's ORP account shall not exceed the maximum amount allowed under §415(c) of the Internal Revenue Code of 1986, as amended.

(A) (No change.)

(B) Stopping ORP Contributions. In the absence of a 415(m) plan, an ORP employer shall discontinue ORP contributions

for participants who reach the 415(c) limit for the remainder of the applicable tax [plan] year.

(C) (No change.)

(3) No Co-Mingling of ORP and non-ORP Funds.

(A) No Non-Texas ORP Funds. No non-Texas ORP funds, including any withdrawn TRS member contributions, may be rolled over or transferred to an ORP account prior to the participant's termination of ORP participation.

(B) - (C) (No change.)

(4) No Dual Contributions. A contribution to the applicable retirement system and to an ORP company within the same calendar month shall not be permitted, except when a person terminates employment in a position covered by the applicable retirement system and, prior to the end of the calendar month in which the termination occurs, becomes employed in an ORP-eligible position at a different ORP employer and elects to participate in ORP by signing the TRS-28 ORP election form or, for employees of the Board, the ORP election form provided by the Board on a date that results in an [and submitting the appropriate forms to the ORP employer in such manner that the] ORP participation start date that is prior to the end of that same calendar month, as provided in §25.4(g) of this title (relating to Participation Start Date).

(5) Eligible Compensation.

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

(C) Stopping ORP Contributions. An ORP employer shall discontinue ORP contributions for participants who reach the 401(a)(17) limit for the remainder of the applicable tax [plan] year.

(6) Contribution Rates. The amount of each participant's ORP contribution shall be a percentage of the participant's eligible compensation as established by the ORP statute and the General Appropriations Act for each biennium. Each contribution shall include an amount based on the employee rate and an amount based on the employer rate.

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

(C) Supplemental Employer Rate. Institutions may provide a supplement to the state base rate under the following conditions:

(i) - (v) (No change.)

(vi) All ORP employers shall maintain documentation of a participant's first date to participate in ORP in lieu of the applicable retirement system at any ORP employer and shall provide that information to any future ORP employers of the participant for purposes of determining the participant's grandfather status. This information shall be maintained for as long as the employer's plan exists regardless of whether the ORP employer provides a supplemental employer rate contribution and regardless of the amount of any supplemental employer rate contribution provided.

(7) Proportionality. ORP employers shall pay ORP employer contributions from the appropriate funding source in accordance with applicable proportionality provisions, including provisions in the General Appropriations Act and §830.201 of the Texas Government Code.

[(A) ORP employers Other than Community Colleges. Texas public institutions of higher education, not including public community colleges, and the Board shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid from. General Revenue funds may only be used for ORP employer contributions for the portion of a participant's salary that is actually paid with General Revenue.]

[(B) Public Community Colleges. Public community colleges shall pay ORP employer contributions on a proportionate basis from the same funding source that a participant's salary is paid from, except that all participants who are eligible to have all or part of their salary paid from General Revenue shall be eligible for General Revenue funding of their ORP employer contributions for the part of their salaries that is eligible for General Revenue funding, whether or not the salary is actually paid from General Revenue. Eligibility for General Revenue funding shall be based on the Elements of Expenditure.]

[(C) Not Applicable to Supplemental Employer Contributions. The proportionality provisions in this paragraph do not apply to supplemental employer contributions that an ORP employer may make as provided by subparagraph (6)(C) of this subsection.]

(8) - (9) (No change.)

(10) Same-Day Credit. ORP companies shall deposit each participant's ORP contributions into the accounts and/or funds designated by the participant effective on the same business day that the contributions are received by the company if the funds are received before the close of business and on the next business day if the funds are received after the close of business. A company that does not comply with this provision shall not be eligible to be authorized as an ORP company by any ORP employer.

(11) (No change.)

(b) Withdrawal of Retirement System Funds. An employee who elects to participate in ORP may withdraw any member [employee] contributions (plus accrued interest, if any) that he or she may have accumulated in the applicable retirement system prior to the election of ORP. Withdrawn member contributions shall not be rolled over into the participant's ORP account prior to termination of ORP participation.

(c) ORP Companies.

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

(6) Participant's Change of Companies.

(A) - (D) (No change.)

(E) Transfers of Prior Contributions.

(i) Each ORP employer shall include a provision in the employer's ORP plan that permits participants to execute a contract exchange to [Participants may] transfer ORP funds that were contributed during the current or prior periods of employment with the [same or another] ORP employer to another ORP company that is authorized by the employer to receive the funds[, but only if their current ORP employer authorizes it after confirming that the funds are being transferred to a valid ORP contract]. A contract exchange [transfer of prior contributions] shall not be counted against the number of changes required under subparagraph (B) of this paragraph.

(ii) Each ORP employer may include provisions in the employer's ORP plan that permit participants to transfer ORP funds from one ORP employer's plan to another ORP employer's plan provided both employer plans include provisions authorizing such plan-to-plan transfers.

(7) - (16) (No change.)

(d) - (e) (No change.)

(f) Distribution Restrictions.

(1) Restricted Access.

(A) No Pre-Termination Access unless Age 70-1/2. ORP participants shall not access any of their ORP funds by any means (including partial or full withdrawals) until the earlier of the date that they:

(i) terminate all employment with all ORP employers; or

(ii) reach age 70-1/2 years.

(B) No Loans or Hardship Withdrawals.

(i) Loans, financial hardship withdrawals, or any other method that provides a participant with any type of access to ORP funds prior to the earlier of termination of employment or attainment of age 70-1/2 shall not be permitted.

(ii) ORP products may provide for loans or hardship withdrawals after the participant's termination of employment or attainment of age 70-1/2, if permissible under applicable laws, [~~and~~] regulations and plan provisions.

(C) - (D) (No change.)

(E) Transfer of Funds is not a Termination. A transfer of ORP funds between ORP accounts or ORP companies (contract exchange) shall not be considered a termination of employment for ORP purposes.

(F) - (G) (No change.)

(2) Authorization to Release ORP Funds. An ORP company shall not release any ORP funds to a participant until receipt of notification from the participant's ORP employer that a break in service or retirement has occurred, except when the participant has reached age 70-1/2, in which case, the ORP company may release funds upon verification that the participant has reached age 70-1/2. The ORP employer's termination notification may be referred to as a vesting letter because it indicates whether the participant has met the ORP vesting requirement.

(A) (No change.)

(B) Vested Participants. If a participant terminates after meeting the vesting requirement, all funds shall be available in accordance with applicable federal law, plan provisions and contractual provisions, but non-ORP-related early withdrawal penalties, such as additional federal income taxes or contractual surrender fees, may apply depending on factors such as the participant's product selection and age at termination.

(3) Prohibited Distribution by ORP Company. If an ORP company provides a participant with any access to ORP funds prior to the earlier of the participant's termination of employment with all ORP employers or attainment of age 70-1/2, then the ORP employer, as the plan sponsor, and the ORP company, as the trustee of the funds, shall rectify the situation in accordance with applicable IRS procedures. [~~that company shall be responsible for making a prohibited distribution and the following provisions apply.~~]

[~~(A) Redeposit. The participant's ORP employer shall require the company to:~~]

[~~*(i)* redeposit funds to the employee's ORP account as if no withdrawal had been made; and~~]

[~~*(ii)* provide written verification to the ORP employer that the account has been fully restored with no adverse impact to the employee.~~]

[~~(B) Company Suspension. The ORP employer may suspend a company from doing further business with the ORP employer's participants at any time a company fails to comply with these provisions.~~]

[~~(C) Separate Transaction Not Related to ORP. A prohibited distribution, such as a loan that is not authorized under the ORP statute, is not related to ORP and shall be treated as a separate transaction between the company and the individual, for example, as an unsecured loan.~~]

(g) ORP Employer Reports.

(1) (No change.)

(2) Annual Report.

(A) (No change.)

(B) Due Date. The required information shall be reported on a fiscal year basis and shall normally be due on October [~~November~~] 1 of each year for the most recent fiscal year ending August 31.

(3) (No change.)

(h) Required Notices to Employees.

(1) Basic Information for Newly Eligible Employees. On or before an ORP-eligible employee's initial ORP eligibility date, which is the first day of his or her 90-day ORP election period, each institution shall provide the ORP-eligible employee with written introductory information on ORP developed by the Board and titled, "An Overview of TRS and ORP for Employees Eligible to Elect ORP."

(A) (No change.)

(B) Electronic Notification. An institution may meet this notification requirement by:

(i) placing [~~on its website the electronic version of the Overview document that is provided by the Board, and/or placing~~] a link on its website to [~~the Overview document that is available on~~] the Board's ORP website;

(ii) providing the ORP-eligible employee with local internet/intranet access to the [~~electronic version of the document or~~] link to the Board's ORP website; and

(iii) within the required timeframe, notifying the ORP-eligible employee in writing of the location of the [~~electronic version or~~] link to the Board's ORP website.

(2) - (3) (No change.)

(4) Possible Retiree Group Insurance Eligibility. ORP employers shall include in their normal out-processing procedures for terminated employees, a notification to ORP participants that includes the following information:

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

(C) for ORP employers that are covered under the group insurance program administered by ERS, a caution to the participant to refrain from withdrawing all of his or her ORP funds if the participant enrolls [~~anticipates enrolling~~] in the group insurance program administered by ERS as an ORP retiree or anticipates enrolling at a later date.

(D) (No change.)

(5) (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 May 9, 2016.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1005

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1005(b) is not included in the print version of the Texas Register. The figure is available in the html version of the May 20, 2016, issue of the Texas Register on-line.)

The Texas Education Agency (TEA) proposes an amendment to §97.1005, concerning accountability and performance monitoring. The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The proposed amendment would adopt the 2016 PBMAS Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

House Bill 3459, 78th Texas Legislature, 2003, added the Texas Education Code (TEC), §7.027, limiting and redirecting monitoring done by the TEA to that required to ensure school district and charter school compliance with federal law and regulations; financial accountability, including compliance with grant requirements; and data integrity for purposes of the Public Education Information Management System and accountability under TEC, Chapter 39. Legislation passed in 2005 renumbered TEC, §7.027, to TEC, §7.028. To meet this monitoring requirement, the agency developed the PBMAS, which is used in conjunction with other evaluation systems, to monitor performance and program effectiveness of special programs in school districts and charter schools.

The TEA has adopted its PBMAS Manual in rule since 2005. The PBMAS is a dynamic system that evolves over time, so the specific criteria and calculations for monitoring performance and program effectiveness may differ from year to year. The intent is to update 19 TAC §97.1005 annually to refer to the most recently published PBMAS Manual.

The proposed amendment to 19 TAC §97.1005 would update the current rule by adopting the 2016 PBMAS Manual, which describes the specific criteria and calculations that will be used to assign 2016 PBMAS performance levels.

The 2016 PBMAS includes several key changes from the 2015 system. The ongoing transition to the State of Texas Assessments of Academic Readiness (STAAR®) is reflected in the 2016 PBMAS with the incorporation of STAAR® performance standards in accordance with 19 TAC §101.3041, Performance Standards. Any STAAR® mathematics data from the 2015 PBMAS used in the 2016 PBMAS for aggregation or required improvement purposes reflect the new Grades 3-8 STAAR® mathematics performance standards. Additionally, the 2016 PBMAS includes STAAR® data based on the Student Success Initiative grade-advancement requirements that were reinstituted for mathematics in the 2015-2016 school year. New cut points that reflect the ongoing STAAR® transition were implemented for the STAAR® end-of-course (EOC) indicators, and performance level assignments were added for the STAAR® EOC English language arts (ELA, i.e., English I and English II) indicators.

New cut points were implemented for the annual dropout rate and graduation rate indicators in all four program areas to account for statutory changes in graduation requirements and expectations. The Recommended High School Program and Distinguished Achievement Program indicators in all four program areas were deleted since these indicators no longer correspond with current state graduation requirements and expectations.

In addition to the new cut points for the graduation rate indicators referenced above, the graduation rate in the Bilingual Education/English as a Second Language program area will be determined based on students identified as an English Language Learner (ELL) at any time while attending Grades 9-12 in a Texas public school rather than determined only based on students identified as ELLs in their last year in a Texas public school. This change provides a more comprehensive evaluation of ELL graduation rates and increases the number of students included in the indicator, thereby increasing the number of districts meeting minimum size requirements and evaluated under the indicator.

For the 2015 PBMAS, special performance level (PL) provisions were added to the Career and Technical Education (CTE) EOC indicator that evaluates students served in special education (SPED): Indicator #4(i-iv) (CTE SPED STAAR EOC Passing Rate). These provisions were designed to address the inclusion of STAAR® A and STAAR® Alternate 2 results. For the 2016 PBMAS, the targeted hold harmless component of those provisions will be discontinued, and PL assignments will be based on the new cut points applicable to the other CTE EOC indicators.

For the 2015 PBMAS, special PL provisions were added to SPED Indicator #1(i-v) (SPED STAAR 3-8 Passing Rate) and SPED Indicator #3(i-iv) (SPED STAAR EOC Passing Rate). These provisions were designed to address the inclusion of STAAR® A and STAAR® Alternate 2 results. For the 2016 PBMAS, the targeted hold harmless component of those provisions will be discontinued. However, the PL 4 assignment added in the 2015 PBMAS will continue to be assigned in the 2016 PBMAS. Additionally, the PL 3 and PL 4 assignments for SPED Indicator #1(i-v) will be based on adjusted cut points.

The 6-11 and 12-21 age groups that were used for the SPED Regular Class ≥80% Rate and SPED Regular Class <40% Rate indicators have been combined into one 6-21 age group, resulting in the deletion of two indicators. To meet federal requirements under 20 U.S.C. §1418(d) and 34 Code of Federal Regulations §300.646, the two remaining 6-21 age group indicators will include Report Only designations of significant disproportionality based on race or ethnicity.

Additionally, the 2016 PBMAS marks the beginning of a transition to a new PL structure for SPED Indicator #11 (SPED African American [Not Hispanic/Latino] Representation), SPED Indica-

tor #12 (SPED Hispanic Representation), and SPED Indicator #13 (SPED LEP Representation). This new structure aligns with the transition already made in the 2015 PBMAS for the special education discipline indicators' PL structure and will, beginning with the 2017 PBMAS, replace the current percentage point difference with a disproportionality rate. Changes to the PBMAS indicators for 2016 are marked in the manual as *"New!"* for easy reference.

The proposal would establish in rule the PBMAS procedures for assigning the 2016 PBMAS performance levels. Applicable procedures will be adopted each year as annual versions of the PBMAS Manual are published.

The proposed amendment would have no locally maintained paperwork requirements.

FISCAL NOTE. Criss Cloudt, associate commissioner for assessment and accountability, has determined that for the first five-year period the amendment is in effect there will be no additional costs for state or local government as a result of enforcing or administering the amendment. There is no effect on local economy for the first five years that the proposed amendment is in effect; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

PUBLIC BENEFIT/COST NOTE. Dr. Cloudt has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment will be to continue to inform the public of the existence of annual manuals specifying PBMAS procedures by including this rule in the Texas Administrative Code. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

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

REQUEST FOR PUBLIC COMMENT. The public comment period on the proposal begins May 20, 2016, and ends June 20, 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 20, 2016.

STATUTORY AUTHORITY. The amendment is proposed under the Texas Education Code (TEC), §7.028, which authorizes the agency to monitor as necessary to ensure school district and charter school compliance with state and federal law and regulations; TEC, §29.001(5), which authorizes the agency to effectively monitor all local educational agencies (LEAs) to ensure that rules relating to the delivery of services to children with disabilities are applied in a consistent and uniform manner, to ensure that LEAs are complying with those rules, and to ensure that specific reports filed by LEAs are accurate and complete; TEC, §29.010(a), which authorizes the agency to adopt and implement a comprehensive system for monitoring LEA compliance with federal and state laws relating to special education, including ongoing analysis of LEA special education data; TEC, §29.062, which authorizes the agency to monitor the effectiveness of LEA programs concerning students with limited English proficiency; TEC, §39.051 and §39.052, which authorize the commissioner to determine criteria for accreditation statuses and to determine the accreditation status of each school district and open-enrollment charter school; TEC, §39.054(b-1), which authorizes the agency to consider the effectiveness of district programs for special populations, including career and technical education programs, when determining accreditation statuses; TEC, §§39.056-39.058, which authorize the commissioner to adopt procedures relating to on-site and special accreditation investigations; and TEC, §39.102 and §39.104, which authorize the commissioner to implement procedures to impose interventions and sanctions for school districts and open-enrollment charter schools.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§7.028, 29.001(5), 29.010(a), 29.062, 39.051, 39.052, 39.054(b-1), 39.056-39.058, 39.102, and 39.104.

§97.1005. Performance-Based Monitoring Analysis System.

(a) In accordance with Texas Education Code, §7.028(a), the purpose of the Performance-Based Monitoring Analysis System (PBMAS) is to report annually on the performance of school districts and charter schools in selected program areas: bilingual education/English as a Second Language, career and technical education, special education, and certain Title programs under [~~the~~] federal law [~~No Child Left Behind Act~~]. The performance of a school district or charter school is reported through indicators of student performance and program effectiveness and corresponding performance levels established by the commissioner of education.

(b) The assignment of performance levels for school districts and charter schools in the 2016 [~~2015~~] PBMAS is based on specific criteria and calculations, which are described in the 2016 PBMAS [~~2015~~] Manual provided in this subsection.
Figure: 19 TAC §97.1005(b)
[~~Figure: 19 TAC §97.1005(b)~~]

(c) The specific criteria and calculations used in the PBMAS are established annually by the commissioner of education and communicated to all school districts and charter schools.

(d) The specific criteria and calculations used in the annual PBMAS manual adopted for prior school years remain in effect for all purposes, including accountability and performance monitoring, data standards, and audits, with respect to those school years.

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602272
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.9

The Texas Board of Nursing (Board) proposes an amendment to §211.9, concerning General Considerations. The amendment is proposed under the authority of the Occupations Code §301.151. Section 301.151 authorizes the Board to adopt rules necessary to perform its statutory duties and conduct its business. The proposed amendment addresses the parliamentary procedures under which Board proceedings will be conducted.

Background

The Board's current rule provides that all Board and committee meetings will be conducted under the provisions of Robert's Rules of Order Newly Revised. While Robert's Rules of Order may serve large assemblies and professional parliamentarians well, they are comprehensive, detailed, and overly complex for the majority of situations faced by typical occupational boards. Occupational licensing boards are usually small, and individuals appointed to serve on them are typically private citizens selected for their expertise in the regulated industry. Because of this, the Board desires to simplify the parliamentary processes utilized at its meetings.

At its April 2016 meeting, the Board voted, in open meeting, to adopt a Simplified Parliamentary Policy (policy) to govern its committee and board meetings. The policy is designed to allow flexibility in handling situations that are unique to the Board and to conform to the specific requirements of Texas law. Further, the policy is designed to be applied in a manner that encourages fair and open debate; majority rule; courtesy; good order; common sense; and efficiency.

The newly adopted policy addresses several major issues that the Board routinely encounters during its meetings. First, the policy addresses Board decisions. Under the newly adopted policy, all Board decisions must be decided by a majority of the members present at a meeting in which a quorum of the Board has been convened. The policy also defines a quorum of the Board consistent with the specific requirements of the Texas Government Code §551.001 and Board Rule §211.5.

Second, the policy defines the duties and powers of the Board's presiding officer in simple terms. Under the policy, the Board's chairperson may engage in debate, initiate action, and vote on the Board's agenda items. The policy also simplifies the voting process for the Board, requiring motions and seconds to be utilized by the members when voting on agenda items. The policy also allows for matters to be deemed approved when no objections from Board members are noted.

The policy also regulates the Board's general course of debate. For instance, under the policy, general discussion of a matter may be had prior to a motion determinative of the matter, if permitted by the Board's chairperson. The policy also allows a motion determinative of a matter to be made without the necessity of debate. The policy also encourages the orderly presentation of matters by requiring individuals to be recognized by the chairperson before speaking; for all discussion and debate to be addressed to the chairperson or the body generally; and for all remarks to be civil in content and tone. Further, in order for motions to be easily understood by those voting on them, the policy requires all motions to be cast in affirmative language, when possible, and dilatory, frivolous, rude, or absurd motions are prohibited.

The policy also requires all members to vote on every matter coming before the Board, unless they are disqualified under the Board's conflict of interest and recusal policy. The policy also requires every member to timely disclose any conflicts of interest and/or potential grounds for disqualification from voting on a particular matter in accordance with the Board's conflict of interest and recusal policy. Finally, the policy contains a simplified process for raising points of order, appeals, suspension and/or amendment of the rules, and adjournment of a meeting.

In many ways, the newly adopted policy reflects the processes under which the Board currently operates. However, the newly adopted policy may help clarify some procedural issues that may arise and serves to encourage the resolution of the Board's business in an efficient and easily comprehensible manner.

Section by Section Overview

Proposed amended §211.9(a) provides that Board and committee meetings shall be conducted pursuant to the Board's adopted Simplified Parliamentary Policy.

Fiscal Note. Katherine Thomas, Executive Director, has determined that for each year of the first five years the proposed amendment will be in effect, there will be no fiscal impact to state or local governments.

Public Benefit/Cost Note. Ms. Thomas has also determined that for each year of the first five years the proposed amendment is in effect, the anticipated public benefit will be the adoption of rules that encourage the resolution of the Board's business in an efficient and easily comprehensible manner and encourage fair and open debate; majority rule; courtesy; good order; common sense; and compliance with the requirements of Texas law.

There are no anticipated costs of compliance with the proposal. The proposed amendment affects the processes under which the Board's meetings are conducted; however, the proposal does not impose any direct requirement upon any Board regulated entity. The parliamentary policy adopted by the Board is merely intended to simplify the processes under which the Board's meetings are conducted. As such, the Board does not anticipate that any costs of compliance will result from the proposal.

Economic Impact Statement and Regulatory Flexibility Analysis for Small and Micro Businesses. As required by the Government Code §2006.002(c) and (f), the Board has determined that the proposed amendment will not have an adverse economic effect on any individual, Board regulated entity, or other entity required to comply with the proposed amendment because there are no anticipated costs of compliance with the proposal. As such, the Board is not required to prepare a regulatory flexibility analysis.

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

Request for Public Comment. To be considered, written comments on the proposal or any request for a public hearing must be submitted no later than 5:00 p.m. on June 20 to James W. Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, or by e-mail to dusty.johnston@bon.texas.gov, or faxed to (512) 305-8101. If

a hearing is held, written and oral comments presented at the hearing will be considered.

Statutory Authority. The amendment is proposed under the authority of the Occupations Code §301.151.

Section 301.151 addresses the Board's rulemaking authority. Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Cross Reference To Statute. The following statutes are affected by this proposal: Occupations Code, §301.151.

§211.9. General Considerations.

(a) Parliamentary procedure. Board and committee meetings shall be conducted pursuant to the Board's adopted Simplified Parliamentary Policy [~~provisions of Robert's Rules of Order Newly Revised~~].

(b) - (e) (No change.)

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602247
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 305-6822

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.53

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.53, Requirements for Licensure, in Chapter 535, General Provisions.

The amendments are proposed to clarify that a business entity must be qualified to transact business in Texas at all times to maintain an active license and that the business entity must notify TREC when it is no longer qualified to transact business in Texas. In addition, the amendments more fully set out the scope of required errors and omissions insurance coverage.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be better clarity in the rule and greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.53. Business Entity; Designated Broker.

(a) Business Entity.

(1) A business entity must be qualified to transact business in Texas to receive, maintain or renew a broker license.

(2) A Franchise Tax Account Status page from the Texas Comptroller of Public Accounts issued within 21 days prior to the date of its license or renewal application constitutes evidence of being qualified to transact business in Texas.

(3) A business entity must notify the Commission not later than the 10th day after the date it receives notice that it is not qualified to transact business in Texas.

(4) [~~(3)~~] A foreign business entity must meet the additional requirements of §535.132 of this chapter to be eligible for a broker's license.

(b) Designated Broker.

(1) For the purposes of qualifying for, maintaining, or renewing a license, a business entity must designate an individual holding an active Texas real estate broker license in good standing with the Commission to act for it.

(2) An individual licensed broker is not in good standing with the Commission if:

(A) the broker's license is revoked or suspended, including probated revocation or suspension;

(B) a business entity licensed by the Commission while the broker was the designated broker for that business entity had its license revoked or suspended, including probated revocation or suspension, in the past two years;

(C) the broker has any unpaid or past due monetary obligations to the Commission, including administrative penalties and recovery fund payments; or

(D) a business entity licensed by the Commission has any unpaid or past due monetary obligations to the Commission, including administrative penalties and recovery fund payments, that were incurred while the broker was the designated broker for the entity;

(3) Regardless of the type of business entity, the designated broker must be a managing officer of the business entity.

(4) The business entity may not act as a broker during any period in which it does not have a designated broker to act for it who meets the requirements of the Act.

(5) To obtain or renew a license, or upon any change in the business entity's designated broker, the entity must provide to the Commission:

(A) proof of the designated broker's current status as an officer, manager or general partner for that entity; and

(B) if the designated broker does not own directly at least 10 percent of the business entity, proof that the business entity maintains [appropriate] errors and omissions insurance: [if the designated broker does not own directly at least 10 percent of the entity]

(i) in at least the minimum coverage limits required by the Act; and

(ii) that provides coverage for losses due to a violation of the Act or this Chapter.

(6) A broker may not act as a designated broker at any time while the broker's license is inactive, expired, suspended, or revoked.

[(c) If a licensed corporation or limited liability company is dissolved with the secretary of state then any license held by that corporation or company immediately becomes null and void.]

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 May 3, 2016.

TRD-201602104
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 936-3092

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22 TAC §535.55

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.55, Education and Sponsorship Requirements for a Salesperson, in Chapter 535, General Provisions.

The amendments are proposed to align the rule with statutory changes in SB 699, enacted by the 84th Legislature regarding the number of hours required for continuing education and changing term "salesperson" to "sales agent."

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater consistency in the rules.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.55. Education and Sponsorship Requirements for a Sales Agent [~~Salesperson~~] License.

(a) Education requirements for an initial sales agent [salesperson] license. An applicant for an initial sales agent [salesperson] license must provide the Commission with satisfactory evidence of completion of 180 hours of qualifying real estate courses as required under the Act as follows:

(1) 60 hours of Principles of Real Estate;

(2) 30 hours of Law of Agency;

(3) 30 hours of Law of Contracts;

(4) 30 hours of Promulgated Contracts Forms; and

(5) 30 hours of Real Estate Finance.

(b) Additional education requirements. A sales agent [salesperson] must complete an additional 90 classroom hours in qualifying courses by the expiration date of the sales agent's [salesperson's] initial licensing period and report those hours in accordance with the requirements of §535.91 of this title.

(c) The Commission may waive the education required for a real estate sales agent [salesperson] license if the applicant:

(1) was licensed either as a Texas real estate broker or as a Texas real estate sales agent [salesperson] within two years before the filing of the application; and

(2) completed any qualifying real estate courses or real estate related courses that would have been required for a timely renewal of the prior license, or, if the renewal of the prior license was not subject to the completion of qualifying real estate courses or real estate related courses, completed at least the number of [15] hours of continuing education courses required by §535.92(a) of this title within the two-year period before filing an application for an active license.

(d) The Commission will issue an applicant an inactive sales agent [salesperson] license upon satisfaction of subsection (a) of this section. An inactive sales agent [salesperson] may not practice as a licensed sales agent [salesperson] until sponsored by an active Texas licensed broker.

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 May 3, 2016.

TRD-201602105

Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.65

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.65, Responsibilities and Operations of Providers of Qualifying Courses, in Chapter 535, General Provisions.

The amendments are proposed to remove the requirement for education completion certificates to include the registration date since that information not necessary for the Commission to calculate compliance with statutory timeframes for course completion.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be reduction of work and duplication on education certificates.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.65. Responsibilities and Operations of Providers of Qualifying Courses.

(a) - (i) (No change.)

(j) Course completion certificate.

(1) Upon successful completion of a core course, a provider shall issue a course completion certificate that a student can submit to the Commission. The course completion certificate shall show:

(A) the provider's name and approval number;

(B) the instructor's name and instructor license number assigned by the Commission;

(C) the course title;

(D) course numbers;

(E) the number of classroom credit hours;

(F) the dates the student [~~registered for,~~] began and completed the course; and

(G) printed name and signature of an official of the provider on record with the Commission.

(2) A provider may withhold any official completion documentation required by this subsection from a student until the student has fulfilled all financial obligations to the provider.

(3) A provider shall maintain adequate security against forgery for official completion documentation required by this subsection.

(k) - (m) (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 May 3, 2016.

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Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.72

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.72, Approval of Non-elective Continuing Education Courses in Chapter 535, General Provisions.

The amendments are proposed to clarify that classroom students must take the promulgated final examination independently prior to the instructor reviewing the correct answers.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater clarity in the rule.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.72. Approval of Non-elective Continuing Education Courses.

(a) - (h) (No change.)

(i) Course examinations.

(1) A provider must administer a final examination promulgated by the Commission for non-elective CE courses beginning January 1, 2017 as follows:

(A) For classroom delivery, the examination will be given as a part of class instruction time with each student answering the examination questions independently followed by a review of the correct answers [~~being reviewed~~] by the instructor. There is no minimum passing grade required to receive credit. [~~and students will not be graded;~~]

(B) For distance education delivery, the examination will be given after completion of regular course work and must be:

(i) proctored by a member of the provider faculty or staff, or third party proctor set out in §535.65(i)(5) of this title, who is present at the test site and has positively identified that the student taking the examination is the student registered for and who took the course; or

(ii) administered using a computer under conditions that satisfy the Commission that the student taking the examination is the student registered for and who took the course; and

(iii) graded with a pass rate of 70% in order for a student to receive credit for the course; and

(iv) kept confidential.

(2) A provider may not give credit to a student who fails a final examination and subsequent final examination as provided for in subsection (j) of this section.

(j) - (m) (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 May 3, 2016.

TRD-201602107
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER H. RECOVERY FUND

22 TAC §535.83

The Texas Real Estate Commission (TREC) proposes new §535.83, Association of Designated Broker on Claim, in Chapter 535, General Provisions.

The new section is proposed to clarify which designated broker is to be associated with a licensed business entity when a Real Estate Recovery Trust Account claim is filed or paid on behalf of that licensed business entity.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed new section is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed new section.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The new section is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed new section.

§535.83. Association of Designated Broker on Claim.

For purposes of §1101.6011 and §1101.610(e) of the Act, the designated broker associated with the claim against a business entity is the broker who was the designated broker at the time of the act that is the subject of the underlying judgment.

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 May 3, 2016.

TRD-201602109
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER L. INACTIVE LICENSE STATUS

22 TAC §535.123

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.123, Inactive Broker Status, in Chapter 535, General Provisions.

The amendments are proposed to clarify that a licensed business entity becomes inactive when it is no longer qualified to transact business in Texas or its designated broker's license is suspended, including probated suspension.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.123. Inactive Broker Status.

(a) (No change.)

(b) The license of a business entity broker immediately becomes inactive when:

(1) the Commission receives an application for inactive status from the broker;

(2) the entity is not qualified to transact business in Texas [~~forfeits its charter~~];

(3) the designated broker's license:

(A) expires;

(B) is suspended, including a probated suspension; or

(C) is [~~or~~] revoked; or

(4) the designated broker dies or resigns as designated broker.

(c) The broker must confirm to the Commission in writing that the broker has given all sales agents [~~salespersons~~] sponsored by the broker written notice of termination of sponsorship at least 30 days before filing the application for inactive status.

(d) - (e) (No change.)

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

Filed with the Office of the Secretary of State on May 3, 2016.

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SUBCHAPTER Q. ADMINISTRATIVE PENALTIES

22 TAC §535.191

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.191, Schedule of Administrative Penalties, in Chapter 535, General Provisions.

The amendments are proposed to lower the administrative penalty for bad check violations and include a penalty for violations of 22 TAC §535.53.

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no significant anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect, the public benefit anticipated as a result of enforcing the section will be greater consumer protection.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this proposal are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

§535.191. Schedule of Administrative Penalties.

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

(c) An administrative penalty range of $100-$1,500 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §1101.552;

(2) §1101.652(a)(3)

(3) [~~(2)~~] §1101.652(a)(7);

(4) [~~(3)~~] §§1101.652(a-1)(3);

(5) [~~(4)~~] §1101.652(b)(23);

(6) [~~(5)~~] §1101.652(b)(29);

(7) [~~(6)~~] 22 TAC §535.21(a);

(8) 22 TAC §535.53;

(9) [~~(7)~~] 22 TAC §535.91(d);

(10) [~~(8)~~] 22 TAC §535.154; and

(11) [~~(9)~~] 22 TAC §535.300.

(d) An administrative penalty range of $500-$3,000 per violation per day may be assessed for violations of the following sections of the Act and Rules:

(1) §§1101.652(a)(4)[~~(3)~~]-(5);

(2) §1101.652(a-1)(2);

(3) §1101.652(b)(1);

(4) §§1101.652(b)(7)-(8);

(5) §1101.652(b)(12);

(6) §1101.652(b)(14);

(7) §1101.652(b)(22);

(8) §1101.652(b)(28);

(9) §§1101.652(b)(30)-(31);

(10) §1101.654(a);

(11) 22 TAC §535.2; and

(12) 22 TAC §535.144.

(e) - (f) (No change.)

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

Filed with the Office of the Secretary of State on May 3, 2016.

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SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.227 - 535.233

The Texas Real Estate Commission (TREC) proposes amendments to 22 TAC §535.227, Standards of Practice: General Provisions, §535.228, Standards of Practice: Minimum Inspection Requirements for Structural Systems, §535.229 Standards of Practice: Minimum Inspection Requirements for Electrical Systems, §535.230 Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems, §535.231 Standards of Practice: Minimum Inspection Requirements for Plumbing Systems, §535.232 Standards of Practice: Minimum Inspection Requirements for Appliances, and §535.233 Standards of Practice: Minimum Inspection Requirements for Optional Systems in Subchapter R, Real Estate Inspectors.

The proposed amendments to §535.227, Standards of Practice: General Provisions, provide clarity and consistency by restructuring and renumbering this section, streamlining wording, and removing redundant language. These amendments move §535.227(b) to subsection (a), and renumber the other subsections accordingly. Language was added to subsection (a) clarifying when the SOPs apply, and the definitions for "specialized equipment," "specialized procedures," "substantially completed," and "technically exhaustive" were incorporated into the body of subsection (a) because those definitions are not used elsewhere in the rules.

The proposed amendments to §535.228, Standards of Practice: Minimum Inspection Requirements for Structural Systems, and §535.233, Standards of Practice: Minimum Inspection Requirements for Optional Systems, renumber and restructure those provisions, streamline wording, and remove redundant language to provide clarity and consistency.

The proposed amendments to §535.229, Standards of Practice: Minimum Inspection Requirements for Electrical Systems, §535.230, Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems, §535.231, Standards of Practice: Minimum Inspection Requirements for Plumbing Systems, and §535.232, Standards of Practice: Minimum Inspection Requirements for Appliances, renumber and restructure those provisions for clarity and consistency.

Kristen Worman, Deputy General Counsel, has determined that for the first five-year period the proposed amendments are in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the sections. There is no anticipated impact on small businesses, micro-businesses or local or state employment as a result of implementing the sections. There is no anticipated significant economic cost to persons who are required to comply with the proposed amendments.

Ms. Worman also has determined that for each year of the first five years the sections as proposed are in effect the public benefits anticipated as a result of enforcing the sections will be requirements that are consistent with the statute and easier for consumers and license holders to read and understand.

Comments on the proposal may be submitted to Kristen Worman, Deputy General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendments are proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Chapter 1102, Texas Occupations Code. No other statute, code or article is affected by the proposed amendments.

§535.227. Standards of Practice: General Provisions.

(a) Scope.

(1) These standards of practice apply when a professional inspector or real estate inspector who is licensed under this chapter accepts employment to perform a real estate inspection for a prospective buyer or seller of real property.

(2) These standards of practice define the minimum requirements for a real estate inspection conducted on a one to four family unity that is substantially completed. Substantially completed means the stage of construction when a new building, addition, improvement, or alteration to an existing building can be occupied or used for its intended purpose.

(3) For the purposes of these standards of practice a real estate inspection:

(A) is a limited visual survey and basic performance evaluation of the systems and components of a building using normal controls that provides information regarding the general condition of a residence at the time of inspection.

(B) is not intended to be a comprehensive investigation or exploratory probe to determine the cause of effect of deficiencies noted by the inspector; and

(C) does not require the use of:

(i) specialized equipment, including but not limited to:

(I) thermal imaging equipment;

(II) moisture meters;

(III) gas or carbon monoxide detection equipment;

(IV) environmental testing equipment and devices;

(V) elevation determination devices; or

(VI) ladders capable of reaching surfaces over one story above ground surfaces; or

(ii) specialized procedures, including but not limited to:

(I) environmental testing;

(II) elevation measurement;

(III) calculations; or any method employing destructive testing that damages otherwise sound materials or finishes.

(4) These standards of practice do not prohibit an inspector from providing a higher level of inspection performance than required by these standards of practice or from inspecting components and systems in addition to those listed under the standards of practice.

(b) [~~(a)~~] Definitions.

(1) Accessible--In the reasonable judgment of the inspector, capable of being approached, entered, or viewed without:

(A) hazard to the inspector;

(B) having to climb over obstacles, moving furnishings or large, heavy, or fragile objects;

(C) using specialized equipment or procedures;

(D) disassembling items other than covers or panels intended to be removed for inspection;

(E) damaging property, permanent construction or building finish; or

(F) using a ladder for portions of the inspection other than the roof or attic space.

(2) Chapter 1102--Texas Occupations Code, Chapter 1102.

(3) Component--A part of a system.

(4) Cosmetic--Related only to appearance or aesthetics, and not related to performance, operability, or water penetration.

(5) Deficiency--In the reasonable judgment of the inspector, a condition that:

(A) adversely and materially affects the performance of a system, or component; or

(B) constitutes a hazard to life, limb, or property as specified by these standards of practice.

(6) Deficient--Reported as having one or more deficiencies.

(7) Inspect--To operate in normal ranges using ordinary controls at typical settings, look at and examine accessible systems or components and report observed deficiencies as specified by these standards of practice.

(8) Performance--Achievement of an operation, function or configuration relative to accepted industry standard practices with consideration of age and normal wear and tear from ordinary use.

(9) Report--To provide the inspector's opinions and findings on the standard inspection report form as required by §535.222 and §535.223 of this title.

[~~(10) Specialized equipment--Equipment such as thermal imaging equipment, moisture meters, gas or carbon monoxide detection equipment, environmental testing equipment and devices, elevation determination devices, and ladders capable of reaching surfaces over one story above ground surfaces.~~]

[~~(11) Specialized procedures--Procedures such as environmental testing, elevation measurement, calculations and any method employing destructive testing that damages otherwise sound materials or finishes.~~]

(10) [~~(12)~~] Standards of practice--§§535.227 - 535.233 of this title.

[~~(13) Substantially completed--The stage of construction when a new building, addition, improvement, or alteration to an existing building is sufficiently complete that the building, addition, improvement or alteration can be occupied or used for its intended purpose.~~]

[~~(14) Technically Exhaustive--A comprehensive investigation beyond the scope of a real estate inspection which would involve determining the cause or effect of deficiencies, exploratory probing or discovery, the use of specialized knowledge, equipment or procedures.~~]

[~~(b) Scope.~~]

[~~(1) These standards of practice define the minimum levels of inspection required for substantially completed residential improvements to real property up to four dwelling units. A real estate inspection is a non-technically exhaustive, limited visual survey and basic performance evaluation of the systems and components of a building using normal controls and does not require the use of specialized equipment or procedures. The purpose of the inspection is to provide the client with information regarding the general condition of the residence at the time of inspection. The inspector may provide a higher level of inspection performance than required by these standards of practice and may inspect components and systems in addition to those described by the standards of practice.~~]

(c) [~~(2)~~] General Requirements. The inspector shall:

(1) [~~(A)~~] operate fixed or installed equipment and appliances listed herein in at least one mode with ordinary controls at typical settings;

(2) [~~(B)~~] visually inspect accessible systems or components from near proximity to the systems and components, and from the interior of the attic and crawl spaces; and

(3) [~~(C)~~] complete the standard inspection report form as required by §535.222 and §535.223 of this title.

(d) [~~(3)~~] General limitations. The inspector is not required to:

(1) [~~(A)~~] inspect:

(A) [~~(i)~~] items other than those listed within these standards of practice;

(B) [~~(ii)~~] elevators;

(C) [~~(iii)~~] detached buildings, decks, docks, fences, or waterfront structures or equipment;

(D) [~~(iv)~~] anything buried, hidden, latent, or concealed;

(E) [~~(v)~~] sub-surface drainage systems;

(F) [~~(vi)~~] automated or programmable control systems, automatic shut-off, photoelectric sensors, timers, clocks, metering devices, signal lights, lightning arrestor system, remote controls, security or data distribution systems, solar panels or smart home automation components; or

(G) [~~(vii)~~] concrete flatwork such as driveways, sidewalks, walkways, paving stones or patios;

(2) [~~(B)~~] report:

(A) [~~(i)~~] past repairs that appear to be effective and workmanlike except as specifically required by these standards;

(B) [~~(ii)~~] cosmetic or aesthetic conditions; or

(C) [~~(iii)~~] wear and tear from ordinary use;

(3) [~~(C)~~] determine:

~~[(i) insurability, warrantability, suitability, adequacy, compatibility, capacity, reliability, marketability, operating costs, recalls, counterfeit products, product lawsuits, life expectancy, age, energy efficiency, vapor barriers, thermostatic performance, compliance with any code, listing, testing or protocol authority, utility sources, or manufacturer or regulatory requirements except as specifically required by these standards;]~~

(A) [~~(ii)~~] the presence or absence of pests, termites, or other wood-destroying insects or organisms;

(B) [~~(iii)~~] the presence, absence, or risk of: [~~asbestos, lead-based paint, mold, mildew, corrosive or contaminated drywall "Chinese Drywall" or any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;~~]

(i) asbestos;

(ii) lead-based paint;

(iii) mold, mildew;

(iv) corrosive or contaminated drywall "Chinese Drywall"; or

(v) any other environmental hazard, environmental pathogen, carcinogen, toxin, mycotoxin, pollutant, fungal presence or activity, or poison;

(C) [~~(iv)~~] types of wood or preservative treatment and fastener compatibility; or

(D) [~~(v)~~] the cause or source of a condition;

(E) the cause or effect of deficiencies;

(F) any of the following issues concerning a system or component:

(i) insurability or warrantability;

(ii) suitability, adequacy, compatibility, capacity, reliability, marketability, or operating costs;

(iii) recalls, counterfeit products, or product lawsuits;

(iv) life expectancy or age;

(v) energy efficiency, vapor barriers, or thermostatic performance;

(vi) compliance with any code, listing, testing or protocol authority;

(vii) utility sources; or

(viii) manufacturer or regulatory requirements, except as specifically required by these standards;

(4) [~~(D)~~] anticipate future events or conditions, including but not limited to:

(A) [~~(i)~~] decay, deterioration, or damage that may occur after the inspection;

(B) [~~(ii)~~] deficiencies from abuse, misuse or lack of use;

(C) [~~(iii)~~] changes in performance of any component or system due to changes in use or occupancy;

(D) [~~(iv)~~] the consequences of the inspection or its effects on current or future buyers and sellers;

(E) [~~(v)~~] common household accidents, personal injury, or death;

(F) [~~(vi)~~] the presence of water penetrations; or

(G) [~~(vii)~~] future performance of any item;

(5) [~~(E)~~] operate shut-off, safety, stop, pressure or pressure-regulating valves or items requiring the use of codes, keys, combinations, or similar devices;

(6) [~~(F)~~] designate conditions as safe;

(7) [~~(G)~~] recommend or provide engineering, architectural, appraisal, mitigation, physical surveying, realty, or other specialist services;

(8) [~~(H)~~] review historical records, installation instructions, repair plans, cost estimates, disclosure documents, or other reports;

(9) [~~(I)~~] verify sizing, efficiency, or adequacy of the ground surface drainage system;

(10) [~~(J)~~] verify sizing, efficiency, or adequacy of the gutter and downspout system;

(11) [~~(K)~~] operate recirculation or sump pumps;

(12) [~~(L)~~] remedy conditions preventing inspection of any item;

(13) [~~(M)~~] apply open flame or light a pilot to operate any appliance;

(14) [~~(N)~~] turn on decommissioned equipment, systems or utility services; or

(15) [~~(O)~~] provide repair cost estimates, recommendations, or re-inspection services.

(e) [~~(4)~~] In the event of a conflict between the [~~specific provisions and~~] general provisions set out in this section, and the specific provisions specified elsewhere in the standards of practice, specific provisions shall take precedence.

(f) [~~(5)~~] Departure provision.

(1) [~~(A)~~] An inspector may depart from the inspection of a component or system required by the standards of practice only if:

(A) [~~(i)~~] the inspector and client agree the item is not to be inspected;

(B) [~~(ii)~~] the inspector is not qualified to inspect the item;

(C) [~~(iii)~~] in the reasonable judgment of the inspector, the inspector determines that: [~~conditions exist that prevent inspection of an item;~~]

(i) conditions exist that prevent inspection of an item;

(ii) conditions or materials are hazardous to the health or safety of the inspector; or

(iii) the actions of the inspector may cause damage to the property;

(D) [~~(iv)~~] the item is a common element of a multi-family development and is not in physical contact with the unit being inspected, such as the foundation under another building or a part of the foundation under another unit in the same building.[~~;~~]

~~[(v) the inspector reasonably determines that conditions or materials are hazardous to the health or safety of the inspector; or]~~

~~[(vi) in the reasonable judgment of the inspector, the actions of the inspector may cause damage to the property.]~~

(2) [~~(B)~~] If an inspector departs from the inspection of a component or system required by the standards of practice, the inspector shall:

(A) [~~(i)~~] notify the client at the earliest practical opportunity that the component or system will not be inspected; and

(B) [~~(ii)~~] make an appropriate notation on the inspection report form, stating the reason the component or system was not inspected.

(3) [~~(C)~~] If the inspector routinely departs from inspection of a component or system required by the standards of practice, and the inspector has reason to believe that the property being inspected includes that component or system, the earliest practical opportunity for the notice required by this subsection is the first contact the inspector makes with the prospective client.

(g) [~~(e)~~] Enforcement. Failure to comply with the standards of practice is grounds for disciplinary action as prescribed by Chapter 1102.

§535.228. Standards of Practice: Minimum Inspection Requirements for Structural Systems.

(a) Foundations. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] render a written opinion as to the performance of the foundation; and

(B) [~~(2)~~] report:

(i) [~~(A)~~] the type of foundations;

(ii) [~~(B)~~] the vantage point from which the crawl space was inspected;

(C) [~~(3)~~] generally report present and visible indications used to render the opinion of adverse performance, such as:

(i) [~~(A)~~] binding, out-of-square, non-latching doors;

(ii) [~~(B)~~] framing or frieze board separations;

(iii) [~~(C)~~] sloping floors;

(iv) [~~(D)~~] window, wall, floor, or ceiling cracks or separations; and

(v) [~~(E)~~] rotating, buckling, cracking, or deflecting masonry cladding.

(D) [~~(4)~~] report as Deficient:

(i) [~~(A)~~] deteriorated materials;

(ii) [~~(B)~~] deficiencies in foundation components such as; beams, joists, bridging, blocking, piers, posts, pilings, columns, sills or subfloor;

(iii) [~~(C)~~] deficiencies in retaining walls related to foundation performance;

(iv) [~~(D)~~] exposed or damaged reinforcement;

(v) [~~(E)~~] crawl space ventilation that is not performing; and

(vi) [~~(F)~~] crawl space drainage that is not performing.

(2) [~~(5)~~] The inspector is not required to:

(A) enter a crawl space or any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high;

(B) provide an exhaustive list of indicators of possible adverse performance; or

(C) inspect retaining walls not related to foundation performance.

(b) Grading and drainage. [~~The inspector shall:~~]

(1) The inspector shall report as Deficient:

(A) drainage around the foundation that is not performing;

(B) deficiencies in grade levels around the foundation; and

(C) deficiencies in installed gutter and downspout systems.

(2) The inspector is not required to:

(A) inspect flatwork or detention/retention ponds (except as related to slope and drainage);

(B) determine area hydrology or the presence of underground water; or

(C) determine the efficiency or performance of underground or surface drainage systems.

(c) Roof covering materials. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] inspect the roof covering materials from the surface of the roof;

(B) [~~(2)~~] report:

(i) [~~(A)~~] type of roof coverings;

(ii) [~~(B)~~] vantage point from where the roof was inspected;

(iii) [~~(C)~~] evidence of water penetration;

(iv) [~~(D)~~] evidence of previous repairs to the roof covering material, flashing details, skylights and other roof penetrations; and

(C) [~~(3)~~] report as Deficient deficiencies in:

(i) [~~(A)~~] fasteners;

(ii) [~~(B)~~] adhesion;

(iii) [~~(C)~~] roof covering materials;

(iv) [~~(D)~~] flashing details;

(v) [~~(E)~~] skylights; and

(vi) [~~(F)~~] other roof penetrations.

(2) [~~(4)~~] The inspector is not required to:

~~[(A) determine the remaining life expectancy of the roof covering;]~~

(A) [~~(B)~~] inspect the roof from the roof level if, in the inspector's reasonable judgment:[~~, the inspector cannot safely reach or stay on the roof or significant damage to the roof covering materials may result from walking on the roof;~~]

(i) the inspector cannot safely reach or stay on the roof; or

(ii) significant damage to the roof covering materials may result from walking on the roof;

(B) [~~(C)~~] determine:

(i) the remaining life expectancy of the roof covering; or

(ii) the number of layers of roof covering material;

(C) [~~(D)~~] identify latent hail damage;

(D) [~~(E)~~] exhaustively examine all fasteners and adhesion, or

(E) [~~(F)~~] provide an exhaustive list of locations of deficiencies and water penetrations.

(d) Roof structures and attics. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report:

(i) [~~(A)~~] the vantage point from which the attic space was inspected;

(ii) [~~(B)~~] approximate average depth of attic insulation;

(iii) [~~(C)~~] evidence of water penetration;

(B) [~~(2)~~] report as Deficient:

(i) [~~(A)~~] attic space ventilation that is not performing;

(ii) [~~(B)~~] deflections or depressions in the roof surface as related to adverse performance of the framing and decking;

(iii) [~~(C)~~] missing insulation;

(iv) [~~(D)~~] deficiencies in:

(I) [~~(i)~~] installed framing members and decking;

(II) [~~(ii)~~] attic access ladders and access openings; and

(III) [~~(iii)~~] attic ventilators.

(2) [~~(3)~~] The inspector is not required to:

(A) enter attics or unfinished spaces where openings are less than 22 inches by 30 inches or headroom is less than 30 inches;

(B) operate powered ventilators; or

(C) provide an exhaustive list of locations of deficiencies and water penetrations.

(e) Interior walls, ceilings, floors, and doors. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report evidence of water penetration;

(B) [~~(2)~~] report as Deficient:

(i) [~~(A)~~] deficiencies in the condition and performance of doors and hardware;

(ii) [~~(B)~~] deficiencies related to structural performance or water penetration; and

(iii) [~~(C)~~] the absence of or deficiencies in fire separation between the garage and the living space and between the garage and its attic.

(2) [~~(3)~~] The inspector is not required to:

(A) report cosmetic damage or the condition of floor, wall, or ceiling coverings; paints, stains, or other surface coatings; cabinets; or countertops, or

(B) provide an exhaustive list of locations of deficiencies and water penetrations.

(f) Exterior walls, doors, and windows. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report evidence of water penetration;

(B) [~~(2)~~] report as Deficient:

(i) [~~(A)~~] the absence of performing emergency escape and rescue openings in all sleeping rooms;

(ii) [~~(B)~~] a solid wood door less than 1-3/8 inches in thickness, a solid or honeycomb core steel door less than 1-3/8 inches thick, or a 20-minute fire-rated door between the residence and an attached garage;

(iii) [~~(C)~~] missing or damaged screens;

(iv) [~~(D)~~] deficiencies related to structural performance or water penetration;

(v) [~~(E)~~] deficiencies in:

(I) [~~(i)~~] weather stripping, gaskets or other air barrier materials;

(II) [~~(ii)~~] claddings;

(III) [~~(iii)~~] water resistant materials and coatings;

(IV) [~~(iv)~~] flashing details and terminations;

(V) [~~(v)~~] the condition and performance of exterior doors, garage doors and hardware; and

(VI) [~~(vi)~~] the condition and performance of windows and components.

(2) [~~(3)~~] The inspector is not required to:

(A) report the condition of awnings, blinds, shutters, security devices, or other non-structural systems;

(B) determine the cosmetic condition of paints, stains, or other surface coatings; or

(C) operate a lock if the key is not available.

(D) provide an exhaustive list of locations of deficiencies and water penetrations.

(g) Exterior and interior glazing. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report as Deficient:

(i) [~~(A)~~] insulated windows that are obviously fogged or display other evidence of broken seals;

(ii) [~~(B)~~] deficiencies in glazing, weather stripping and glazing compound in windows and doors; and

(iii) [~~(C)~~] the absence of safety glass in hazardous locations.

(2) The inspector is not required to:

(A) exhaustively inspect insulated windows for evidence of broken seals;

(B) exhaustively inspect glazing for identifying labels; or

(C) identify specific locations of damage.

(h) Interior and exterior stairways. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report as Deficient:

(i) [~~(A)~~] spacing between intermediate balusters, spindles, or rails for steps, stairways, guards, and railings that permit passage of an object greater than 4 inches in diameter, except that on the open side of the staircase treads, spheres less than 4-3/8 inches in diameter may pass through the guard rail balusters or spindles; and

(ii) [~~(B)~~] deficiencies in steps, stairways, landings, guardrails, and handrails.

(2) The inspector is not required to exhaustively measure every stairway component.

(i) Fireplaces and chimneys. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report as Deficient:

(i) [~~(A)~~] built-up creosote in accessible areas of the firebox and flue;

(ii) [~~(B)~~] the presence of combustible materials in near proximity to the firebox opening;

(iii) [~~(C)~~] the absence of fireblocking at the attic penetration of the chimney flue, where accessible; and

(iv) [~~(D)~~] deficiencies in the:

(I) [~~(i)~~] damper;

(II) [~~(ii)~~] lintel, hearth, hearth extension, and firebox;

(III) [~~(iii)~~] gas valve and location;

(IV) [~~(iv)~~] circulating fan;

(V) [~~(v)~~] combustion air vents; and

(VI) [~~(vi)~~] chimney structure, termination, coping, crown, caps, and spark arrestor.

(2) The inspector is not required to:

(A) verify the integrity of the flue;

(B) perform a chimney smoke test; or

(C) determine the adequacy of the draft.

(j) Porches, Balconies, Decks, and Carports. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] inspect:

(i) [~~(A)~~] attached balconies, carports, and porches;

(ii) [~~(B)~~] abutting porches, decks, and balconies that are used for ingress and egress; and

(B) [~~(2)~~] report as Deficient:

(i) [~~(A)~~] on decks 30 inches or higher above the adjacent grade, spacings between intermediate balusters, spindles, or rails that permit passage of an object greater than four inches in diameter; and

(ii) [~~(B)~~] deficiencies in accessible components.

(2) [~~(3)~~] The inspector is not required to:

(A) exhaustively measure every porch, balcony, deck, or attached carport components; or

(B) enter any area where headroom is less than 18 inches or the access opening is less than 24 inches wide and 18 inches high.

§535.229. Standards of Practice: Minimum Inspection Requirements for Electrical Systems.

(a) Service entrance and panels. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] report as Deficient:

(i) [~~(A)~~] a drop, weatherhead or mast that is not securely fastened to the building;

(ii) [~~(B)~~] the absence of or deficiencies in the grounding electrode system;

(iii) [~~(C)~~] missing or damaged dead fronts or covers plates;

(iv) [~~(D)~~] conductors not protected from the edges of electrical cabinets, gutters, or cutout boxes;

(v) [~~(E)~~] electrical cabinets and panel boards not appropriate for their location; such as a clothes closet, bathrooms or where they are exposed to physical damage;

(vi) [~~(F)~~] electrical cabinets and panel boards that are not accessible or do not have a minimum of 36-inches of clearance in front of them;

(vii) [~~(G)~~] deficiencies in:

(I) [~~(i)~~] electrical cabinets, gutters, cutout boxes, and panel boards;

(II) [~~(ii)~~] the insulation of the service entrance conductors, drip loop, separation of conductors at weatherheads, and clearances;

(III) [~~(iii)~~] the compatibility of overcurrent devices and conductors;

(IV) [~~(iv)~~] the overcurrent device and circuit for labeled and listed 240 volt appliances;

(V) [~~(v)~~] bonding and grounding;

(VI) [~~(vi)~~] conductors;

(VII) [~~(vii)~~] the operation of installed ground-fault or arc-fault circuit interrupter devices; and

(viii) [~~(H)~~] the absence of:

(I) [~~(i)~~] trip ties on 240 volt overcurrent devices or multi-wire branch circuit;

(II) [~~(ii)~~] appropriate connections;

(III) [~~(iii)~~] anti-oxidants on aluminum conductor terminations;

(IV) [~~(iv)~~] a main disconnecting means.

(2) The inspector is not required to:

(A) determine present or future sufficiency of service capacity amperage, voltage, or the capacity of the electrical system;

(B) test arc-fault circuit interrupter devices when the property is occupied or damage to personal property may result, in the inspector's reasonable judgment;

(C) conduct voltage drop calculations;

(D) determine the accuracy of overcurrent device labeling;

(E) remove covers where hazardous as judged by the inspector;

(F) verify the effectiveness of overcurrent devices; or

(G) operate overcurrent devices.

(b) Branch circuits, connected devices, and fixtures. [~~The inspector shall:~~]

(1) The inspector shall:

(A) [~~(1)~~] manually test the installed and accessible smoke and carbon monoxide alarms;

(B) [~~(2)~~] report the type of branch circuit conductors;

(C) [~~(3)~~] report as Deficient:

(i) [~~(A)~~] the absence of ground-fault circuit interrupter protection in all:

(I) [~~(i)~~] bathroom receptacles;

(II) [~~(ii)~~] garage receptacles;

(III) [~~(iii)~~] outdoor receptacles;

(IV) [~~(iv)~~] crawl space receptacles;

(V) [~~(v)~~] unfinished basement receptacles;

(VI) [~~(vi)~~] kitchen countertop receptacles; and

(VII) [~~(vii)~~] receptacles that are located within six feet of the outside edge of a sink;

(ii) [~~(B)~~] the failure of operation of ground-fault circuit interrupter protection devices;

(iii) [~~(C)~~] missing or damaged receptacle, switch or junction box covers;

(iv) [~~(D)~~] the absence of:

(I) [~~(i)~~] equipment disconnects;

(II) [~~(ii)~~] appropriate connections, such as copper/aluminum approved devices, if branch circuit aluminum conductors are discovered in the main or sub-panel based on a random sampling of accessible receptacles and switches;

(v) [~~(E)~~] deficiencies in:

(I) [~~(i)~~] receptacles;

(II) [~~(ii)~~] switches;

(III) [~~(iii)~~] bonding or grounding;

(IV) [~~(iv)~~] wiring, wiring terminations, junction boxes, devices, and fixtures, including improper location;

(V) [~~(v)~~] doorbell and chime components;

(VI) [~~(vi)~~] smoke and carbon monoxide alarms;

(vi) [~~(F)~~] improper use of extension cords;

(vii) [~~(G)~~] deficiencies in or absences of conduit, where applicable; and

(vii) [~~(H)~~] the absence of smoke alarms:

(I) [~~(i)~~] in each sleeping room;

(II) [~~(ii)~~] outside each separate sleeping area in the immediate vicinity of the sleeping rooms; and

(III) [~~(iii)~~] in the living space of each story of the dwelling.

(2) [~~(4)~~] The inspector is not required to:

(A) inspect low voltage wiring;

(B) disassemble mechanical appliances;

(C) verify the effectiveness of smoke alarms;

(D) verify interconnectivity of smoke alarms;

(E) activate smoke or carbon monoxide alarms that are or may be monitored or require the use of codes;

(F) verify that smoke alarms are suitable for the hearing-impaired;

(G) remove the covers of junction, fixture, receptacle or switch boxes unless specifically required by these standards.

§535.230. Standards of Practice: Minimum Inspection Requirements for Heating, Ventilation, and Air Conditioning Systems.

(a) Heating equipment. [~~The inspector shall:~~]

(1) General requirements. [~~report:~~]

(A) The inspector shall report:

(i) [~~(A)~~] the type of heating systems;

(ii) [~~(B)~~] the energy sources;

(B) [~~(2)~~] report as Deficient:

(i) [~~(A)~~] inoperative units;

(ii) [~~(B)~~] deficiencies in the thermostats;

(iii) [~~(C)~~] inappropriate location;

(iv) [~~(D)~~] the lack of protection from physical damage;

(v) [~~(E)~~] burners, burner ignition devices or heating elements, switches, and thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(vi) [~~(F)~~] the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(vii) [~~(G)~~] when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(viii) [~~(H)~~] deficiencies in mounting and performance of window and wall units;

(2) [~~(I)~~] in electric units, deficiencies in:

(A) [~~(i)~~] performance of heat pumps;

(B) [~~(ii)~~] performance of heating elements; and

(C) [~~(iii)~~] condition of conductors; and

(3) [~~(J)~~] in gas units:

(A) [~~(i)~~] gas leaks;

(B) [~~(ii)~~] flame impingement, uplifting flame, improper flame color, or excessive scale buildup;

(C) [~~(iii)~~] the absence of a gas shut-off valve within six feet of the appliance;

(D) [~~(iv)~~] the absence of a gas appliance connector or one that exceeds six feet in length;

(E) [~~(v)~~] gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings; and

(F) [~~(vi)~~] deficiencies in:

(i) [~~(I)~~] combustion, and dilution air;

(ii) [~~(II)~~] gas shut-off valves;

(iii) [~~(III)~~] access to a gas shutoff valves that prohibits full operation;

(iv) [~~(IV)~~] gas appliance connector materials; and

(v) [~~(V)~~] the vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances; and

(b) Cooling equipment. [~~other than evaporative coolers. The inspector shall:~~]

(1) Requirements for cooling units other than evaporative coolers. [~~report the type of systems;~~]

(A) the inspector shall report the type of systems;

(B) [~~(2)~~] the inspector shall report as Deficient:

(i) [~~(A)~~] inoperative units;

(ii) [~~(B)~~] inadequate cooling as demonstrated by its performance;

(iii) [~~(C)~~] the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(iv) [~~(D)~~] when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(v) [~~(E)~~] noticeable vibration of blowers or fans;

(vi) [~~(F)~~] water in the auxiliary/secondary drain pan;

(vii) [~~(G)~~] a primary drain pipe that discharges in a sewer vent;

(viii) [~~(H)~~] missing or deficient refrigerant pipe insulation;

(ix) [~~(I)~~] dirty coils, where accessible;

(x) [~~(J)~~] condensing units lacking adequate clearances or air circulation or that has deficiencies in the fins, location, levelness, or elevation above grade surfaces;

(xi) [~~(K)~~] deficiencies in:

(I) [~~(i)~~] the condensate drain and auxiliary/secondary pan and drain system;

(II) [~~(ii)~~] mounting and performance of window or wall units; and

(III) [~~(iii)~~] thermostats.

(2) [~~(c)~~] Requirements for evaporative [~~Evaporative~~] coolers. [~~The inspector shall:~~]

(A) [~~(1)~~] The inspector shall report:

(i) [~~(A)~~] type of systems;

(ii) [~~(B)~~] the type of water supply line;

(B) [~~(2)~~] The inspector shall report as Deficient:

(i) [~~(A)~~] inoperative units;

(ii) [~~(B)~~] inadequate access and clearances;

(iii) [~~(C)~~] deficiencies in performance or mounting;

(iv) [~~(D)~~] missing or damaged components;

(v) [~~(E)~~] the presence of active water leaks; and

(vi) [~~(F)~~] the absence of backflow prevention.

(c) [~~(d)~~] Duct systems, chases, and vents. [~~The inspector shall report as Deficient:~~]

(1) The inspector shall report as Deficient:

(A) [~~(1)~~ damaged duct systems or improper material;

(B) [~~(2)~~] damaged or missing duct insulation;

(C) [~~(3)~~] the absence of air flow at accessible supply registers;

(D) [~~(4)~~] the presence of gas piping and sewer vents concealed in ducts, plenums and chases;

(E) [~~(5)~~] ducts or plenums in contact with earth; and

(2) [~~(6)~~] The inspector shall report as Deficient deficiencies in:

(A) filters;

(B) grills or registers; and

(C) the location of return air openings.

(d) [~~(e)~~] For heating, ventilation, and air conditioning systems inspected under this section, the [~~The~~] inspector is not required to perform the following actions:

(1) program digital thermostats or controls;

(2) inspect:

(A) for pressure of the system refrigerant, type of refrigerant, or refrigerant leaks;

(B) winterized or decommissioned equipment; or

(C) duct fans, humidifiers, dehumidifiers, air purifiers, motorized dampers, electronic air filters, multi-stage controllers, sequencers, heat reclaimers, wood burning stoves, boilers, oil-fired units, supplemental heating appliances, de-icing provisions, or reversing valves;

(3) operate:

(A) setback features on thermostats or controls;

(B) cooling equipment when the outdoor temperature is less than 60 degrees Fahrenheit;

(C) radiant heaters, steam heat systems, or unvented gas-fired heating appliances; or

(D) heat pumps, in the heat pump mode, when the outdoor temperature is above 70 degrees;

(4) verify:

(A) compatibility of components;

(B) tonnage match of indoor coils and outside coils or condensing units;

(C) the accuracy of thermostats; or

(D) the integrity of the heat exchanger; or

(5) determine:

(A) sizing, efficiency, or adequacy of the system;

(B) balanced air flow of the conditioned air to the various parts of the building; or

(C) types of materials contained in insulation.

§535.231. Standards of Practice: Minimum Inspection Requirements for Plumbing Systems.

(a) Plumbing systems. [~~The inspector shall:~~]

(1) The inspector shall: [~~report:~~]

(A) report: [~~location of water meter;~~]

(i) [~~(A)~~ location of water meter;

(ii) [~~(B)~~] location of homeowners main water supply shutoff valve; and

(iii) [~~(C)~~] static water pressure;

(B) [~~(2)~~] report as Deficient:

(i) [~~(A)~~] the presence of active leaks;

(ii) [~~(B)~~] the lack of a pressure reducing valve when the water pressure exceeds 80 PSI;

(iii) [~~(C)~~] the lack of an expansion tank at the water heater(s) when a pressure reducing valve is in place at the water supply line/system;

(iv) [~~(D)~~] the absence of:

(I) [~~(i)~~] fixture shut-off valves;

(II) [~~(ii)~~] dielectric unions, when applicable;

(III) [~~(iii)~~] back-flow devices, anti-siphon devices, or air gaps at the flow end of fixtures; and

(v) [~~(E)~~] deficiencies in:

(I) [~~(i)~~] water supply pipes and waste pipes;

(II) [~~(ii)~~] the installation and termination of the vent system;

(III) [~~(iii)~~] the performance of fixtures and faucets not connected to an appliance;

(IV) [~~(iv)~~] water supply, as determined by viewing functional flow in two fixtures operated simultaneously;

(V) [~~(v)~~] fixture drain performance;

(VI) [~~(vi)~~] orientation of hot and cold faucets;

(VII) [~~(vii)~~] installed mechanical drain stops;

(VIII) [~~(viii)~~] commodes, fixtures, showers, tubs, and enclosures; and

(IX) [~~(ix)~~] the condition of the gas distribution system.

(2) [~~(3)~~] The inspector is not required to:

(A) operate any main, branch, or shut-off valves;

(B) operate or inspect sump pumps or waste ejector pumps;

(C) verify the performance of:

(i) the bathtub overflow;

(ii) clothes washing machine drains or hose bibbs; or

(iii) floor drains;

(D) inspect:

(i) any system that has been winterized, shut down or otherwise secured;

(ii) circulating pumps, free-standing appliances, solar water heating systems, water-conditioning equipment, filter systems, water mains, private water supply systems, water wells, pressure tanks, sprinkler systems, swimming pools, or fire sprinkler systems;

(iii) inaccessible gas supply system components for leaks;

(iv) for sewer clean-outs; or

(v) for the presence or performance of private sewage disposal systems; or

(E) determine:

(i) quality, potability, or volume of the water supply; or

(ii) effectiveness of backflow or anti-siphon devices.

(b) Water heaters. [~~The inspector shall:~~]

(1) General Requirements. [~~report:~~]

(A) The inspector shall:

(i) report:

(I) [~~(A)~~] the energy source;

(II) [~~(B)~~] the capacity of the units;

(ii) [~~(2)~~] report as Deficient:

(I) [~~(A)~~] inoperative units;

(II) [~~(B)~~] leaking or corroded fittings or tanks;

(III) [~~(C)~~] damaged or missing components;

(IV) [~~(D)~~] the absence of a cold water shut-off valve;

(V) [~~(E)~~] if applicable, the absence of a pan or a pan drain system that does not terminate over a waste receptor or to the exterior of the building above the ground surface;

(VI) [~~(F)~~] inappropriate locations;

(VII) [~~(G)~~] the lack of protection from physical damage;

(VIII) [~~(H)~~] burners, burner ignition devices or heating elements, switches, or thermostats that are not a minimum of 18 inches above the lowest garage floor elevation, unless the unit is listed for garage floor installation;

(IX) [~~(I)~~] the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish;

(X) [~~(J)~~] when applicable; a floored passageway and service platform that would allow access for equipment inspection, service, repair or replacement;

(XI) [~~(K)~~] the absence of or deficiencies in the temperature and pressure relief valve and discharge piping;

(XII) [~~(L)~~] a temperature and pressure relief valve that failed to operate, when tested manually;

(B) The inspector is not required to:

(i) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;

(ii) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or

(iii) determine the efficiency or adequacy of the unit.

(2) [~~(M)~~] Requirements for [~~in~~] electric units. The inspector shall report as Deficient[~~,~~] deficiencies in:

(A) [~~(i)~~] performance of heating elements; and

(B) [~~(ii)~~] condition of conductors; and

(3) [~~(N)~~] Requirements for [~~in~~] gas units. The inspector shall report as Deficient:

(A) [~~(i)~~] gas leaks;

(B) [~~(ii)~~] flame impingement, uplifting flame, improper flame color, or excessive scale build-up;

(C) [~~(iii)~~] the absence of a gas shut-off valve within six feet of the appliance;

(D) [~~(iv)~~] the absence of a gas appliance connector or one that exceeds six feet in length;

(E) [~~(v)~~] gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(F) [~~(vi)~~] deficiencies in:

(i) [~~(I)~~] combustion and dilution air;

(ii) [~~(II)~~] gas shut-off valves;

(iii) [~~(III)~~] access to a gas shutoff valves that prohibit full operation;

(iv) [~~(IV)~~] gas appliance connector materials; and

(v) [~~(V)~~] vent pipe, draft hood, draft, proximity to combustibles, and vent termination point and clearances.

~~[(3) The inspector is not required to:]~~

~~[(A) verify the effectiveness of the temperature and pressure relief valve, discharge piping, or pan drain pipes;]~~

~~[(B) operate the temperature and pressure relief valve if the operation of the valve may, in the inspector's reasonable judgment, cause damage to persons or property; or]~~

~~[(C) determine the efficiency or adequacy of the unit.]~~

(c) Hydro-massage therapy equipment. [~~The inspector shall:~~]

(1) The inspector shall ~~report as Deficient~~:

(A) report as Deficient:

(i) [~~(A)~~] inoperative units;

(ii) [~~(B)~~] the presence of active leaks;

(iii) [~~(C)~~] deficiencies in components and performance;

(iv) [~~(D)~~] missing and damaged components;

(v) [~~(E)~~] the absence of an opening that would allow access to equipment for inspection, service, repair or replacement without removing permanent construction or building finish; and

(vi) [~~(F)~~] the absence or failure of operation of ground-fault circuit interrupter protection devices; and

(2) The inspector is not required to determine the adequacy of self-draining features of circulation systems.

§535.232. Standards of Practice: Minimum Inspection Requirements for Appliances.

(a) General provisions. The inspector is not required to:

(1) operate or determine the condition of other auxiliary components of inspected items;

(2) test for microwave oven radiation leaks;

(3) inspect self-cleaning functions;

(4) disassemble appliances;

(5) determine the adequacy of venting systems; or

(6) determine proper routing and lengths of duct systems.

(b) [~~(a)~~] Dishwashers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) rusted, missing or damaged components;

(4) the presence of active water leaks; and

(5) the absence of backflow prevention.

(c) [~~(b)~~] Food waste disposers. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components; and

(4) the presence of active water leaks.

(d) [~~(c)~~] Range hoods and exhaust systems. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building, if the unit is not of a re-circulating type or configuration; and

(5) improper duct material.

(e) [~~(d)~~] Electric or gas ranges, cooktops, and ovens. The inspector shall report as Deficient:

(1) inoperative units;

(2) missing or damaged components;

(3) combustible material within thirty inches above the cook top burners;

(4) absence of an anti-tip device, if applicable;

(5) gas leaks;

(6) the absence of a gas shutoff valve within six feet of the appliance;

(7) the absence of a gas appliance connector or one that exceeds six feet in length;

(8) gas appliance connectors that are concealed within or extended through walls, floors, partitions, ceilings or appliance housings;

(9) deficiencies in:

(A) thermostat accuracy (within 25 degrees at a setting of 350° F);

(B) mounting and performance;

(C) gas shut-off valves;

(D) access to a gas shutoff valves that prohibits full operation; and

(E) gas appliance connector materials.

(f) [~~(e)~~] Microwave ovens. The inspector shall inspect built-in units and report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting; and

(3) missing or damaged components.

(g) [~~(f)~~] Mechanical exhaust systems and bathroom heaters. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) ducts that do not terminate outside the building; and

(5) a gas heater that is not vented to the exterior of the building unless the unit is listed as an unvented type.

(h) [~~(g)~~] Garage door operators. The inspector shall report as Deficient:

(1) inoperative units;

(2) deficiencies in performance or mounting;

(3) missing or damaged components;

(4) installed photoelectric sensors located more than six inches above the garage floor; and

(5) door locks or side ropes that have not been removed or disabled.

(i) [~~(h)~~] Dryer exhaust systems. The inspector shall report as Deficient:

(1) missing or damaged components;

(2) the absence of a dryer exhaust system when provisions are present for a dryer;

(3) ducts that do not terminate to the outside of the building;

(4) screened terminations; and

(5) ducts that are not made of metal with a smooth interior finish.

[~~(i) The inspector is not required to:~~]

[~~(1) operate or determine the condition of other auxiliary components of inspected items;~~]

[~~(2) test for microwave oven radiation leaks;~~]

[~~(3) inspect self-cleaning functions;~~]

[~~(4) disassemble appliances;~~]

[~~(5) determine the adequacy of venting systems; or~~]

[~~(6) determine proper routing and lengths of duct systems.~~]

§535.233. Standards of Practice: Minimum Inspection Requirements for Optional Systems.

(a) An inspector is not required to inspect the components or systems described under this section.

(b) If an inspector agrees to inspect a component or system described under [~~in~~] this section, the general provisions under §535.227 of this title [~~(relating to Standards of Practice: General Provisions)~~] and the [~~applicable~~] provisions and requirements of this section applicable to that component or system [~~of this section~~] apply.

(c) [~~(1)~~] Landscape irrigation (sprinkler) systems. [~~The inspector shall:~~]

(1) The inspector shall:

(A) manually operate all zones or stations on the system through the controller;

(B) report as Deficient:

(i) the absence of a rain or moisture sensor,

(ii) inoperative zone valves;

(iii) surface water leaks;

(iv) the absence of a backflow prevention device;

(v) the absence of shut-off valves between the water meter and backflow device;

(vi) deficiencies in the performance and mounting of the controller;

(vii) missing or damaged components; and

(viii) deficiencies in the performance of the water emission devices; such as, sprayer heads, rotary sprinkler heads, bubblers or drip lines.

(2) [~~(C)~~] The inspector is not required to inspect:

(A) [~~(i)~~] for effective coverage of the irrigation system;

(B) [~~(ii)~~] the automatic function of the controller;

(C) [~~(iii)~~] the effectiveness of the sensors; such as, rain, moisture, wind, flow or freeze sensors; or

(D) [~~(iv)~~] sizing and effectiveness of backflow prevention device.

(d) [~~(2)~~] Swimming pools, spas, hot tubs, and equipment. [~~The inspector shall:~~]

(1) The inspector shall:

(A) report the type of construction;

(B) report as Deficient:

(i) the presence of a single blockable main drain (potential entrapment hazard);

(ii) a pump motor, blower, or other electrical equipment that lacks bonding;

(iii) the absence of or deficiencies in safety barriers;

(iv) water leaks in above-ground pipes and equipment;

(v) the absence or failure in performance of ground-fault circuit interrupter protection devices; and

(vi) deficiencies in:

(I) surfaces;

(II) tiles, coping, and decks;

(III) slides, steps, diving boards, handrails, and other equipment;

(IV) drains, skimmers, and valves;

(V) filters, gauges, pumps, motors, controls, and sweeps;

(VI) lighting fixtures; and

(VII) the pool heater that these standards of practice require to be reported for the heating system.

(2) [~~(C)~~] The inspector is not required to:

(A) [~~(i)~~] disassemble filters or dismantle or otherwise open any components or lines;

(B) [~~(ii)~~] operate valves;

(C) [~~(iii)~~] uncover or excavate any lines or concealed components of the system;

(D) [~~(iv)~~] fill the pool, spa, or hot tub with water;

(E) [~~(v)~~] inspect any system that has been winterized, shut down, or otherwise secured;

(F) [~~(vi)~~] determine the presence of sub-surface water tables;

(G) [~~(vii)~~] determine the effectiveness of entrapment covers;

(H) [~~(viii)~~] determine the presence of pool shell or sub-surface leaks; or

(I) [~~(ix)~~] inspect ancillary equipment such as computer controls, covers, chlorinators or other chemical dispensers, or water ionization devices or conditioners other than required by this section.

(e) [~~(3)~~] Outbuildings. [~~The inspector shall report as Deficient:~~]

(1) [~~(A)~~] The inspector shall report as Deficient the absence or failure in performance of ground-fault circuit interrupter protection devices in grade-level portions of unfinished accessory buildings used for storage or work areas, boathouses, and boat hoists; and

(2) [~~(B)~~] The inspector shall report as Deficient deficiencies in the structural, electrical, plumbing, heating, ventilation, and cooling systems that these standards of practice require to be reported for the principal building.

(f) [~~(4)~~] Private water wells. [~~The inspector shall:~~]

(1) The inspector shall:

(A) operate at least two fixtures simultaneously;

(B) recommend or arrange to have performed coliform testing;

(C) report:

(i) the type of pump and storage equipment;

(ii) the proximity of any known septic system;

(D) report as Deficient deficiencies in:

(i) water pressure and flow and performance of pressure switches;

(ii) the condition of accessible equipment and components; and

(iii) the well head, including improper site drainage and clearances.

(2) [~~(E)~~] The inspector is not required to:

(A) [~~(i)~~] open, uncover, or remove the pump, heads, screens, lines, or other components of the system;

(B) [~~(ii)~~] determine the reliability of the water supply or source; or

(C) [~~(iii)~~] locate or verify underground water leaks.

(g) [~~(5)~~] Private sewage disposal (septic) systems. [~~The inspector shall:~~]

(1) The inspector shall:

(A) report:

(i) the type of system;

(ii) the location of the drain or distribution field;

(iii) the proximity of any known water wells, underground cisterns, water supply lines, bodies of water, sharp slopes or breaks, easement lines, property lines, soil absorption systems, swimming pools, or sprinkler systems;

(B) report as Deficient:

(i) visual or olfactory evidence of effluent seepage or flow at the surface of the ground;

(ii) inoperative aerators or dosing pumps; and

(iii) deficiencies in:

(I) accessible components;

(II) functional flow;

(III) site drainage and clearances around or adjacent to the system; and

(IV) the aerobic discharge system.

(2) [~~(C)~~] The inspector is not required to:

(A) [~~(i)~~] excavate or uncover the system or its components;

(B) [~~(ii)~~] determine the size, adequacy, or efficiency of the system; or

(C) [~~(iii)~~] determine the type of construction used.

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 May 3, 2016.

TRD-201602112
Kristen Worman
Deputy General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 936-3093

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS

SUBCHAPTER D. STATE EMPLOYEE HEALTH FITNESS AND EDUCATION PROGRAMS

25 TAC §1.61

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes the repeal of §1.61, concerning the Worksite Wellness Advisory Board (board).

BACKGROUND AND PURPOSE

The purpose of the repeal is to implement Government Code, Chapter 664, amended by Senate Bill (SB) 277, 84th Legislature, Regular Session, 2015, which abolished the board.

The board was created by the Legislature in 2007 to advise the department, executive commissioner, and statewide wellness coordinator on worksite wellness issues, including funding and resource development for worksite wellness programs; identifying food service vendors that successfully market healthy foods; best practices for worksite wellness used by the private sector; and worksite wellness features and architecture for new state buildings based on features and architecture used by the private sector.

The board was one of several advisory committees recommended for abolishment by the Sunset Advisory Commission in 2014. Subsequent to the repeal of the statutory requirements for this and other committees, the commission conducted a comprehensive analysis and sought stakeholder input on the continuation of the advisory committees abolished in statute to determine if there was a need to recreate any of the committees in rule. No comments were received regarding the discontinuation of the board. The department will continue to obtain input on worksite wellness issues through ongoing interactions with staff of state agencies and stakeholder groups.

SECTION-BY-SECTION SUMMARY

Section 1.61 is being repealed because this rule is no longer necessary. SB 277 amended Government Code, Chapter 664, by abolishing the board.

FISCAL NOTE

Mr. Brett Spencer, Manager of the Primary Prevention Branch, has determined that for each year of the first five years that the repeal will be in effect, there will be no fiscal implications to the state or local governments as a result of enforcing or administering the repealed section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Mr. Spencer has determined that there will be no effect on small businesses or micro-businesses or persons who are required to comply with the section as proposed. This was determined by consideration that the topics addressed by the board applied only to Texas state agencies and imposed no responsibilities or limitations on small or micro-businesses.

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

Mr. Spencer has also determined that for each year of the first five years that the section will be repealed, the public will benefit from repeal of the section. The public benefit anticipated from enforcing or administering the repealed section is to remove a rule from the department's rules database that is longer necessary.

REGULATORY ANALYSIS

The department has determined that this 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 proposed repeal 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 Brett Spencer, Primary Prevention Branch, Department of State Health Services, Mail Code 1965, P.O. Box 149347, Austin, Texas 78714-9347, (512) 776-6161, or by email to Brett.Spencer@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

STATUTORY AUTHORITY

The repeal is authorized by Government Code, Chapter 664, which has been amended to remove reference to rules concerning the Worksite Wellness Advisory Board; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of 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 repeal affects Government Code, Chapters 551 and Chapter 664; and Health and Safety Code, Chapter 1001.

§1.61. Worksite Wellness Advisory Board.

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602262
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 776-6972

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PART 6. STATEWIDE HEALTH COORDINATING COUNCIL

CHAPTER 571. HEALTH PLANNING AND RESOURCE DEVELOPMENT

The Statewide Health Coordinating Council (council) proposes an amendment to §571.1 and the repeal of §§571.11 - 571.13, concerning general provisions, state health plan and plan implementation, and the Health Information Technology Advisory Committee (advisory committee).

BACKGROUND AND PURPOSE

The council issues directives for and provides guidance on the development of the state health plan, submits the plan to the Health and Human Services Commission for review and comment, and approves the plan for submission to the governor. The Department of State Health Services (department), in accordance with rules adopted by the council, prepares and reviews a proposed state health plan every six years and revises and updates the plan biennially. The department submits the proposed plan to the council. The rules proposed for amendment, readoption, and repeal implement Health and Safety Code, Chapter 104, Statewide Health Coordinating Council and State Health Plan, and outline the development and implementation of the state health plan.

The council formed the advisory committee in 2006 pursuant to Health and Safety Code, §104.0156 and developed a long-range plan for health care information technology, including the use of electronic medical records, computerized clinical support systems, computerized physician order entry, regional data sharing interchanges for health care information, and other methods of incorporating information technology in pursuit of greater cost-effectiveness and better patient outcomes in health care. The rules proposed for repeal implemented the advisory committee.

Government Code, §2001.039, governs an agency's review of rules, and generally requires that a state agency review a rule no later than the fourth anniversary of the date on which the rule takes effect and every four years after that date. A state agency's review of a rule must include an assessment of whether the reasons for adopting each rule continue to exist.

The amendment to §571.1 and the readoption of §571.2 are necessary to comply with Health and Safety Code, §104.012. Section 571.2 is readopted without changes to the rule.

The repeal of §§571.11 - 571.13 for the advisory committee is necessary as the council's reasons for initially adopting the rules no longer exist, given the completion of the long-range plan mandated by Health and Safety Code, §104.0156.

SECTION-BY-SECTION SUMMARY

The amendment to §571.1(c) replaces the "Texas Department of Health" with the "Texas Department of State Health Services" to reflect House Bill 2292, 78th Legislature, Regular Session, 2003, which abolished the Texas Department of Health and created the department.

FISCAL NOTE

Matthew Turner, PhD, MPH, Center for Health Statistics, has determined that for each year of the first five years that the sections are 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

Dr. Turner has also determined that there will be no adverse economic costs to 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-busi-

nesses will not be required to alter their business practices in order to comply with the sections.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated 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, Dr. Turner also has determined that for each year of the first five years the sections are in effect, the public will benefit from their adoption. These updated rules clarify the relationship between the council and the department and remove outdated text.

REGULATORY ANALYSIS

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Matthew Turner, PhD, MPH, Health Professions Resource Center, Center for Health Statistics, Department of State Health Services, Mail Code 1898, P.O. Box 149347, Austin, Texas 78714-9347 or by email to matt.turner@dshs.texas.gov. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

SUBCHAPTER A. STATEWIDE HEALTH COORDINATING COUNCIL

25 TAC §571.1

STATUTORY AUTHORITY

The amendment is authorized by Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan. The review of the rules implements Government Code, §2001.039.

The amendment affects Health and Safety Code, Chapter 104.

§571.1. General Provisions.

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

(c) Assistance. The Texas Department of State Health Services (department) shall assist the council in performing the council's duties and functions as described in a memorandum of understanding between the council and the department.

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602098
Matt Turner
Health Professions Resource Center
Statewide Health Coordinating Council
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 776-6972

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SUBCHAPTER B. HEALTH INFORMATION TECHNOLOGY ADVISORY COMMITTEE

25 TAC §§571.11 - 571.13

STATUTORY AUTHORITY

The repeals are authorized by Health and Safety Code, §104.012, which authorizes the council to adopt rules governing the development and implementation of the state health plan. The review of the rules implements Government Code, §2001.039.

The repeals affect Health and Safety Code, Chapter 104.

§571.11. Definitions.

§571.12. Objectives.

§571.13. Committee Constitution.

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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Matt Turner
Health Professions Resource Center
Statewide Health Coordinating Council
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For further information, please call: (512) 776-6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.584

The Comptroller of Public Accounts proposes amendments to §3.584, concerning margin: reports and payments. The amendments implement Senate Bill 1, 82nd Legislature, First Called Session, 2011 (SB 1); House Bill 500, 83rd Legislature, 2013 (HB 500); House Bill 32, 84th Legislature, 2015 (HB 32); House Bill 2891, 84th Legislature, 2015 (HB 2891); Senate Bill 1049, 84th Legislature, 2015 (SB 1049); and Senate Bill 1364, 84th Legislature, 2015 (SB 1364). The amendments also update the section to reflect policy decisions and to improve readability.

Subsection (b) is now titled "definitions" and is amended to include definitions currently located throughout this section and to add definitions for terms not previously defined for use within this section. Information originally in subsection (b) concerning nontaxable entity reporting is now in new subsection (c)(7).

New paragraph (1) is added to include the definition of "beginning date" for franchise tax reporting purposes. This definition was originally under subsection (c)(1)(A) and is amended to add the beginning date for a taxable entity that qualifies as a new veteran-owned business as provided in SB 1049.

New paragraph (2) defines the term "primarily engaged in retail or wholesale trade." The new definition incorporates information that was provided in subsection (d)(3) of the current section, with changes. The subparagraphs have been rearranged. Information for taxable entities that produce some of the products they sell is now located in subparagraph (C). Clauses (i) - (iii) are added to subparagraph (C) to include guidance for determining whether a taxable entity produces the products it sells. The content of subparagraph (C)(i), regarding modifications made to an acquired product, was previously provided in subsection (d)(3). Subparagraph (C)(ii) and (iii) are added to memorialize comptroller policy from STAR Accession No. 201508350L.

New paragraph (3) adds an updated definition of "retail trade." The meaning of retail trade was originally included in former subsection (d)(3), concerning the rate, but was referenced only as being "under Division...G" of the Standard Industrial Classification (SIC) Manual. Subparagraph (A) defines retail trade as originally provided in House Bill 3, 79th Legislature, Third Called Session, 2006 (HB 3), to mean "the activities described in Division G" of the SIC Manual. Subparagraph (B) expands the definition of retail trade under SB 1, to include apparel rental activities classified as SIC Industry 5999 or 7299. Subparagraph (C) adds to the definition of retail trade, as further expanded by HB 500, to include SIC Industry Group 753, Automotive Repair Shops; rental-purchase agreement activities regulated by Chapter 92, Business & Commerce Code; activities involving the rental or leasing of tools, party and event supplies, and furniture that are classified as SIC Industry 7359; and heavy construction equipment rental or leasing activities classified as SIC Industry 7353.

New paragraph (4) defines and abbreviates the term "Standard Industrial Classification Manual" as SIC Manual to improve readability throughout this section.

New paragraph (5) adds the definition of "wholesale trade" as originally defined in HB 3, to mean "the activities described in Division F" of the SIC Manual. The meaning of wholesale trade was originally included in former subsection (d)(3), referenced only as being "under Division F" of the SIC Manual.

New paragraph (6) defines the term "unrelated party." This term is used in the definition of "primarily engaged in retail or wholesale trade" in subsection (b)(2) and was not previously defined.

Subsection (c) concerning reports and due dates is amended for readability and to eliminate redundant information. The information regarding each type of report was separated and renumbered to be addressed as individual paragraphs that include initial reports, first annual reports, annual reports, and final reports. Subsequent paragraphs include reporting information regarding extensions, transition, nontaxable entities, passive entities, combined reporting, postmark dates, and receivership.

Paragraph (1) now includes only the filing information for initial reports from former subparagraph (B) without change. The information in former paragraph (1) on first annual reports and initial reports is removed because the same information was also provided in former subparagraphs (B) and (C). The information in former paragraph (1) on reporting for a taxable entity in receivership is moved to new paragraph (12). The definition of "beginning date" in former subparagraph (A) is moved to new subsection (b) concerning definitions. The information in former subparagraph (C)(i) on first annual reports is moved to paragraph (2), replacing the information in paragraph (2) on the date of filing which is moved to new paragraph (11). The information in former subparagraph (C)(ii) on annual reports is moved to new paragraph (3). The information in former subparagraphs (D)- (H) has been moved to new paragraphs (4), (5), (6), (8), and (9) respectively. New paragraph (5) is amended to add the title to the referenced Tax Code section.

Paragraph (2), now titled "First annual reports," includes information from former paragraph (1)(C)(i) without change.

New paragraph (3) includes the information on annual reports previously provided in former paragraph (1)(C)(ii) without change.

New paragraph (4) includes the reference to §3.592 of this title for information on final reports previously provided in former paragraph (1)(E) but is amended to specify the due date for final reports.

New paragraph (5) amends the information on extensions previously provided in former paragraph (1)(D) by including the information on extensions from Tax Code, §111.057 (Extension for Filing a Report) instead of referencing §3.1 of this title because §3.1 no longer contains information on extensions.

New paragraph (6) includes the transition information previously provided in former paragraph (1)(F) without change.

New paragraph (7) includes the information on nontaxable entities previously provided in subsection (b) without change.

New paragraph (8) includes the information on passive entities previously provided in former paragraph (1)(G) without change.

New paragraph (9) includes the information on combined reporting previously provided in former paragraph (1)(H) but is amended to delete the name of §3.590 of this title as it has already been referenced in new subsection (b)(6).

New paragraph (10) on new veteran-owned businesses is added to reference §3.574 of this title for information concerning the reporting requirements of a qualifying new veteran-owned business.

New paragraph (11), titled "Date of filing," amends former paragraph (2) by replacing the original information with a reference to §3.13 of this title which provides updated information regarding postmarks, timely filing of reports, and timely payments.

New paragraph (12) is added to include information on receivership previously provided in former paragraph (1) without change.

Under subsection (d), the annual election language in paragraph (1) is deleted as it is no longer relevant. A policy change retroactively allows the method of computing margin to be amended to the cost of goods sold or compensation methods regardless of what method was elected on an original report. Paragraphs (2) - (8) are renumbered accordingly.

Renumbered paragraph (1) is retitled "margin computation" to be consistent with Tax Code, §171.101 (Determination of Taxable Margin), and is restructured to implement HB 500, which adds

a fourth method for computing margin. The information in original subparagraphs (A), (B), and (C) providing each of the three computation methods historically allowed for computing margin are renumbered as (i), (ii), and (iii) and are included in new subparagraph (A) which provides the margin computation for reports originally due on or after January 1, 2008, and before January 1, 2014. New subparagraph (B) provides the margin computation for reports due on or after January 1, 2014, which includes a $1 million deduction from total revenue as a fourth method.

Renumbered paragraph (2), titled "rate," is restructured to implement HB 32; to include the historic tax rates and their effective dates; and to move definitions to subsection (b). The phrase referencing retail and wholesale trade as "under Division F or G of the 1987 Standard Industrial Classification Manual published by the Federal Office of Management and Budget" is removed from this paragraph and replaced with expanded, updated definitions of retail and wholesale trade in subsections (b)(3) and (5) respectively. The definition of "primarily engaged in retail or wholesale trade" in former subparagraphs (A)-(C) is moved to subsection (b)(2).

New subparagraph (A) provides the rates for reports originally due on or after January 1, 2008, and before January 1, 2014. Subparagraph (B) now provides the rates for reports originally due on or after January 1, 2014, and before January 1, 2015, as provided in HB 500. Subparagraph (C) now provides the rates for reports originally due on or after January 1, 2015, and before January 1, 2016, as provided in HB 500. Subparagraph (D) now provides the tax rates for reports originally due on or after January 1, 2016, as provided in HB 32.

Renumbered paragraph (4) is amended to implement the electronic filing requirement for No Tax Due Reports under SB 1364, and to clarify that the tiered partnership exception relates to the filing of No Tax Due Reports. To maintain consistency with report titles, the word "Information" is deleted from the report previously titled "No Tax Due Information Report" throughout the section as the name of the report has been revised for 2016. Clause (iii) of subparagraph (A) is amended to implement HB 500, which repealed the $600,000 no tax due threshold, making the $1 million threshold permanent although increased to $1,030,000 under Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction), which requires the threshold to be adjusted biennially based on the Consumer Price Index (CPI). Clause (iv) is added to include the CPI-adjusted no tax due threshold for reports originally due on or after January 1, 2014, but before January 1, 2016. Clause (v) is added to include the CPI-adjusted no tax due threshold for reports originally due on or after January 1, 2016, but before January 1, 2018. Clause (vi) provides that the threshold amount for reports originally due on or after January 1, 2018, will be determined under Tax Code, §171.006.

Renumbered paragraph (5) is amended to implement the repeal of the discounts from HB 500.

Renumbered paragraph (6) is amended to implement HB 32, which increased the total revenue threshold for qualification to file using the E-Z Computation method and decreased the E-Z Computation tax rate. New subparagraph (A) is added to provide the threshold and rate information originally provided under this paragraph, changed only by the addition of an effective date and an amended reference to renumbered paragraph (5). New subparagraph (B) is added to provide the threshold and rate information for reports originally due on or after January 1, 2016. New subparagraph (C) is added to provide the restrictions on deductions originally provided under this paragraph but is amended to clarify that no deductions to compute margin, credits, or other adjustments are allowed.

Renumbered paragraph (7)(A) is amended to correct the references to renumbered paragraphs (4), (5), and (6).

Subsection (e)(1), (3)(A), (4), and (6) are amended to add titles for the referenced Tax Code sections.

Subsection (f)(1), concerning amended reports, is amended to reflect the policy change that removed the restrictions on changing margin computation methods to cost of goods sold or compensation. Paragraph (5) is amended to add title to referenced Tax Code section.

Subsection (i)(1) and (2) are titled to improve readability. Paragraph (1), now titled "public information report," is amended to include additional entities required to file a public information report under HB 2891. Paragraph (2), now titled "ownership information report," is reworded to make a distinction between taxable entities required to file a public information report and an ownership information report. Paragraphs (1), (2), (3), and (4) are amended to add titles of referenced Tax Code sections. Paragraph (4) is also amended to correct the Tax Code section referenced.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule to current legislation and policy. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

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.

This amendment implements Tax Code, §§111.057 (Extension for Filing a Report), 171.0001 (General Definitions), 171.0022 (Temporary Permissive Alternative Rates for 2014), 171.0023 (Temporary Permissive Alternative Rates for 2015), 171.101 (Determination of Taxable Margin), and 171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

§3.584. Margin: Reports and Payments.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise. [~~Nontaxable entities. See §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities) for information concerning nontaxable entities. Except for passive entities (see~~

~~§3.582 (relating to Margin: Passive Entities)), a nontaxable entity that has not notified the comptroller or the secretary of state that it is doing business in Texas, or that has previously notified the comptroller that it is not taxable, must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. If an 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.~~]

(1) Beginning date--

(A) except as provided by subparagraph (B) of this paragraph:

(i) for a taxable entity chartered or organized in this state, the date on which the taxable entity's charter or organization takes effect; and

(ii) for a foreign taxable entity, the date on which the taxable entity begins doing business in this state; or

(B) for a taxable entity that qualifies as a new veteran-owned business, as defined in §3.574 of this title (relating to Margin: New Veteran-Owned Businesses), the earlier of:

(i) the fifth anniversary of the date on which the taxable entity begins doing business in this state; or

(ii) the date the taxable entity ceases to qualify as a new veteran-owned business.

(2) Primarily engaged in retail or wholesale trade--A taxable entity is primarily engaged in retail or wholesale trade only if:

(A) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity, or gas.

(B) the total revenue from the taxable entity's activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than retail and wholesale trade; and

(C) less than 50% of the total revenue from the taxable entity's activities in retail or wholesale trade comes from the sale of products the taxable entity produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs, except for those businesses under Major Group 58 (eating and drinking establishments). For purposes of this subparagraph only:

(i) A taxable entity produces the product that it sells if the taxable entity acquires the product and makes modifications to the product that increase the sales price of the product by more than 10%.

(ii) A taxable entity produces the product that it sells if the taxable entity manufactures, develops, or creates tangible personal property that is incorporated into, installed in, or becomes a component part of the product that it sells. For example:

(I) A taxable entity produces an electronic device that it sells when the taxable entity produces a computer program, such as an application or operating system, that is installed in the device, even if the device is manufactured by an unrelated party.

(II) A taxable entity produces a drug that it sells when the taxable entity produces the active ingredient in the drug, even it the drug is manufactured by an unrelated party.

(iii) A taxable entity does not produce a product that it sells if the product is manufactured by an unrelated party to the taxable entity's specifications.

(3) Retail trade--

(A) for reports originally due on or after January 1, 2008, and before January 1, 2012, the activities described in Division G of the SIC Manual;

(B) for reports originally due on or after January 1, 2012, and before January 1, 2014:

(i) the activities described in Division G of the SIC Manual; and

(ii) apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual; and

(C) for reports originally due on or after January 1, 2014:

(i) the activities described in Division G of the SIC Manual;

(ii) apparel rental activities classified as Industry 5999 or 7299 of the SIC Manual;

(iii) the activities classified as Automotive Repair Shops, Industry Group 753 of the SIC Manual;

(iv) rental-purchase agreement activities regulated by Business & Commerce Code, Chapter 92;

(v) rental or leasing of tools, party and event supplies, and furniture, classified as Industry 7359 of the SIC Manual; and

(vi) heavy construction equipment rental or leasing activities, classified as Industry 7353 of the SIC Manual.

(4) SIC Manual--The 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(5) Wholesale trade--The activities described in Division F of the SIC Manual.

(6) Unrelated party--With respect to a taxable entity, an entity that is not part of the same affiliated group, as defined in §3.590(b)(1) of this title (relating to Margin: Combined Reporting).

(c) Reports and due dates.

~~[(1) Each taxable entity subject to the franchise tax levied by Tax Code, §171.001, with a beginning date of October 4, 2009, or later, must file a first annual franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the taxable entity. Each taxable entity subject to the franchise tax levied by Tax Code, §171.001, with a beginning date prior to October 4, 2009, must file an initial franchise tax report, and thereafter an annual franchise tax report, and at the same time must pay the franchise tax and any applicable penalties and interest due by the taxable entity. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a taxable entity in receivership. A debtor in possession or the appointed trustee or receiver of a taxable entity in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax pursuant to the plan of reorganization or arrangement.]~~

~~[(A) "Beginning date" means:]~~

~~[(i) for a taxable entity chartered or organized in this state, the date on which the taxable entity's charter or organization takes effect; and]~~

~~[(ii) for a foreign taxable entity, the date on which the taxable entity begins doing business in this state.]~~

(1) [~~(B)~~] Initial report. For taxable entities with a beginning date prior to October 4, 2009, both the initial report and payment of the tax due, if any, are due no later than 89 days after the first anniversary date of the beginning date. The taxable margin computed on the initial report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is at least 60 days before the original due date of the initial report, or, if there is no such ending date, then ending on the day that is the last day of the calendar month nearest to the end of the taxable entity's first year of business. If the period used to compute business done for purposes of the initial report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the initial report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the initial report. The privilege period for the initial report is from the beginning date through December 31 of the year in which the initial report is originally due.

[~~(C) Annual report.~~]

(2) [~~(i)~~] First annual report. For taxable entities with a beginning date of October 4, 2009, or later, both the first annual report and payment of the tax due, if any, are due no later than May 15 of the year following the year the entity became subject to the tax (i.e., the beginning date). The taxable margin computed on the first annual report is based on the business done during the period beginning on the beginning date and ending on the last accounting period ending date for federal income tax purposes that is in the same calendar year as the beginning date. The privilege period for the first annual report is from the beginning date through December 31 of the year in which the first annual report is originally due.

(3) [~~(ii)~~] Annual report. The annual franchise tax report must be filed and the tax paid no later than May 15 of each year. The taxable margin computed on an annual report is based on the business done during the period beginning with the day after the last date upon which tax was computed under Tax Code, Chapter 171 on a previous report, and ending with the last accounting period ending date for federal income tax purposes ending in the calendar year before the calendar year in which the report is originally due, or, if there is no such ending date, then ending on December 31 of the calendar year before the calendar year in which the report is originally due. A taxable entity that uses a 52 - 53 week accounting year end and has an accounting year ending the first four days of January of the year in which the annual report is originally due may use the preceding December 31 as the date through which taxable margin is computed. If the period used to compute business done for purposes of the annual report differs from the taxable entity's last accounting period for federal income tax purposes, then the taxable entity's total revenue for purposes of the annual report shall be computed as if the taxable entity had reported its federal taxable income on an Internal Revenue Service form covering the period used to compute business done for purposes of the annual report. The privilege period for an annual report is January 1 through December 31 of the year in which the annual report is originally due.

(4) Final report. A final tax report and payment of the additional tax are due within 60 days after the taxable entity no longer has sufficient nexus with Texas to be subject to the franchise tax. See §3.592 of this title (relating to Margin: Additional Tax) for further information concerning the additional tax imposed by Tax Code, §171.0011.

(5) [~~(D)~~] Extensions. [~~See §3.1 of this title (relating to Request for Extension of Time in Which to File Report), for extensions of time to file an initial or final report.~~]

(A) Annual report. See §3.585 of this title (relating to Margin: Annual Report Extensions), for extensions of time to file an annual report, including the first annual report.

(B) Final report. A taxable entity will be granted a 45-day extension of time to file a final report, if the taxable entity:

(i) requests the extension on or before the filing date;

(ii) requests the extension on a form provided by the comptroller; and

(iii) remits 90% or more of the tax reported as due on the final report.

(6) [~~(F)~~] Transition. See §3.595 of this title (relating to Margin: Transition) for transitional information concerning tax rates and privilege periods as a result of certain legislative changes.

(7) Nontaxable entities. See §3.581 of this title (relating to Margin: Taxable and Nontaxable Entities) for information concerning nontaxable entities. Except for passive entities (see §3.582 of this title (relating to Margin: Passive Entities)), a nontaxable entity that has not notified the comptroller or the secretary of state that it is doing business in Texas, or that has previously notified the comptroller that it is not taxable, must notify the comptroller in writing only when the entity no longer qualifies as a nontaxable entity. If an entity receives notification in writing from the comptroller asking for information to determine if the entity is a taxable entity, the entity must reply to the comptroller within 30 days of the notice.

(8) [~~(G)~~] Passive entities. See §3.582 of this title, for information concerning the reporting requirements for a passive entity.

(9) [~~(H)~~] Combined reporting. Taxable entities that are part of an affiliated group engaged in a unitary business must file a combined group report in lieu of individual reports, except that a public information report or ownership information report must be filed for each member of the combined group with nexus. See §3.590 of this title [~~(relating to Margin: Combined Reporting),~~] for rules on filing a combined report.

(10) New veteran-owned businesses. See §3.574 of this title for information concerning the reporting requirements for a qualifying new veteran-owned business.

(11) Date of filing. See §3.13 (relating to Postmarks, Timely Filing of Reports, and Timely Payment of Taxes and Fees) for information concerning the requirements for timely filing.

(12) Receivership. It is the responsibility of a receiver to file franchise tax reports and pay the franchise tax of a taxable entity in receivership. A debtor in possession or the appointed trustee or receiver of a taxable entity in reorganization or arrangement proceedings under the Bankruptcy Act is responsible for filing franchise tax reports and paying the franchise tax pursuant to the plan of reorganization or arrangement.

[~~(2) The postmark date (or meter-mark if there is no postmark) on the envelope in which the report or payment is received determines the date of filing.~~]

(d) Calculation of tax.

[~~(1) Annual Election. If eligible, a taxable entity must make an annual election to deduct cost of goods sold or compensation by the due date or at the time the report is filed, whichever is later. The election is made by filing the franchise tax report using one method or the other. (See §3.588 of this title (relating to Margin: Cost of Goods Sold) and §3.589 of this title (relating to Margin: Compensation) for eligibility.). If an election is not made, the taxable entity's margin~~

will be calculated as 70% of total revenue. After the due date of the report, a taxable entity may not amend its report to change its election to cost of goods sold or compensation. However, a taxable entity may amend its report to change its method of computing margin from cost of goods sold or compensation to 70% of total revenue or, if eligible, the E-Z Computation.]

(1) [(2)] Margin computation. [Calculation.] A taxable entity's margin equals the least of the following [three]calculations, if eligible:

(A) For reports originally due on or after January 1, 2008, and before January 1, 2014:

(i) [(A)] total [Total] revenue minus cost of goods sold;

(ii) [(B)] total [Total] revenue minus compensation; or

(iii) [(C)] 70% of total revenue.

(B) For reports originally due on or after January 1, 2014:

(i) total revenue minus cost of goods sold;

(ii) total revenue minus compensation;

(iii) 70% of total revenue; or

(iv) total revenue minus $1 million.

(2) [(3)] Rate. Except as provided by paragraph (6) of this subsection:

(A) For reports originally due on or after January 1, 2008, but before January 1, 2014:

(i) a [A] tax rate of 1.0% of taxable margin applies to most taxable entities; and[. A]

(ii) a tax rate of 0.5% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade. [under division F or G of the 1987 Standard Industrial Classification Manual published by the Federal Office of Management and Budget. A taxable entity is primarily engaged in retail or wholesale trade only if:]

(B) For reports originally due on or after January 1, 2014, but before January 1, 2015:

(i) a tax rate of 0.975% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.4875% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(C) For reports originally due on or after January 1, 2015, but before January 1, 2016:

(i) a tax rate of 0.95% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.475% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

(D) For reports originally due on or after January 1, 2016:

(i) a tax rate of 0.75% of taxable margin applies to most taxable entities; and

(ii) a tax rate of 0.375% of taxable margin applies to taxable entities primarily engaged in retail or wholesale trade.

[(A) the total revenue from its activities in retail and wholesale trade is greater than the total revenue from its activities in trades other than the retail and wholesale trade;]

[(B) less than 50% of the total revenue from activities in retail or wholesale trade comes from the sale of products it produces or products produced by an entity that is part of an affiliated group to which the taxable entity also belongs, except for those businesses under Major Group 58 (eating and drinking establishments). A product is not considered to be produced if modifications made to the acquired product do not increase its sales price by more than 10%; and]

[(C) the taxable entity does not provide retail or wholesale utilities, including telecommunications services, electricity or gas.]

(3) [(4)] Annualized Total Revenue. When the accounting period on which a report is based is more or less than 12 months, a taxable entity must annualize its total revenue to determine its eligibility for the no tax due threshold, discounts, and E-Z Computation. The amount of total revenue used in the actual tax calculations will not change as a result of annualizing revenue. To annualize total revenue, an entity will divide total revenue by the number of days in the period upon which the report is based, and then multiply the result by 365. Examples are as follows:

(A) a taxable entity's 2010 franchise tax report is based on the period September 15, 2009 through December 31, 2009 (108 days), and its total revenue for the period is $375,000. The taxable entity's annualized total revenue is $1,267,361 ($375,000 divided by 108 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity does not qualify for the $1,000,000 no tax due threshold but is eligible to file using the E-Z computation. The discounts do not apply in years when the no tax due threshold is $1,000,000;

(B) a taxable entity's 2010 franchise tax report is based on the period March 1, 2008 through December 31, 2009 (671 days), and its total revenue for the period is $1,375,000. The taxable entity's annualized total revenue is $747,951 ($1,375,000 divided by 671 days multiplied by 365 days). Based on its annualized total revenue, the taxable entity qualifies for the $1,000,000 no tax due threshold and is eligible to file using the No Tax Due Information Report.

(4) [(5)] No tax due. Effective September 1, 2015, No Tax Due Reports are required to be filed electronically. See §3.587(c)(8)(C) of this title (relating to Margin: Total Revenue) for the tiered partnership exception to filing No Tax Due Reports.

(A) A taxable entity owes no tax and may file a No Tax Due [Information] Report if its annualized total revenue is:

(i) for reports originally due on or after January 1, 2008, but before January 1, 2010, $300,000 or less;

(ii) for reports originally due on or after January 1, 2010, but before January 1, 2012, $1 million or less; [and]

(iii) for reports originally due on or after January 1, 2012, but before January 1, 2014, $1,030,000 [$600,000] or less;[, or the amount determined under Tax Code, §171.006.]

(iv) for reports originally due on or after January 1, 2014, but before January 1, 2016, $1,080,000 or less;

(v) for reports originally due on or after January 1, 2016, but before January 1, 2018, $1,110,000 or less; and

(vi) for reports originally due on or after January 1, 2018, the amount determined under Tax Code, §171.006 (Adjustment of Eligibility for No Tax Due, Discounts, and Compensation Deduction).

(B) A taxable entity that has zero Texas receipts owes no tax and may file a No Tax Due [~~Information~~] Report.

(C) A taxable entity that has tax due of less than $1,000 owes no tax; however, the entity cannot file a No Tax Due [~~Information~~] Report and must file a regular annual report or, if qualified, the E-Z Computation Report.

(5) [~~(6)~~] Discount. A taxable entity is entitled to a discount of the tax imposed as follows.

(A) For reports originally due on or after January 1, 2008, but before January 1, 2010, if annualized total revenue is:

(i) greater than $300,000 and less than $400,000, the discount is 80% of tax due;

(ii) greater than or equal to $400,000 and less than $500,000, the discount is 60% of tax due;

(iii) greater than or equal to $500,000 and less than $700,000, the discount is 40% of tax due;

(iv) greater than or equal to $700,000 and less than $900,000, the discount is 20% of tax due.

(B) For reports originally due on or after January 1, 2010 [~~but before January 1, 2012,~~] there are no discounts.

[~~(C) For reports originally due on or after January 1, 2012, if annualized total revenue is:~~]

[~~*(i)* greater than $600,000 and less than $700,000, the discount is 40% of tax due;~~]

[~~*(ii)* greater than or equal to $700,000 and less than $900,000, the discount is 20% of tax due.~~]

(6) [~~(7)~~] E-Z Computation.

(A) For reports originally due on or after January 1, 2008, and before January 1, 2016, a [A] taxable entity with annualized total revenue of $10 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under [~~Under~~] the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.575% to apportioned total revenue and subtracting any applicable discount as provided by paragraph (5) [~~(6)~~] of this subsection.

(B) For reports originally due on or after January 1, 2016, a taxable entity with annualized total revenue of $20 million or less may choose to pay the franchise tax by using the E-Z Computation method. For this period, under the E-Z Computation, a taxable entity's tax liability is computed by applying a tax rate of 0.331% to apportioned total revenue.

(C) No deductions to compute margin, [~~deduction is allowed for cost of goods sold or compensation if a taxable entity chooses to compute its tax liability under the E-Z Computation. Additionally, no other~~] credits, or other adjustments are allowed if a taxable entity chooses to compute its tax liability under the E-Z Computation.

(7) [~~(8)~~] Tiered partnership provision. See §3.587[~~(b)(14) and (c)(8)~~] of this title for information concerning the tiered partnership provision.

(A) Eligibility for no tax due, discounts and the E-Z Computation. For eligible entities choosing to file under the tiered partnership provision, paragraphs (4), (5), and (6) [~~and (7)~~] of this subsection do not apply to an upper or lower tier entity if, before the attribution of total revenue by a lower tier entity to upper tier entities, the lower tier entity does not meet the criteria.

(B) Tiered Partnership Report. The lower tier entity must submit a report to the comptroller indicating its total revenue before attribution and the amount of total revenue that each upper tier entity must include with the upper tier entity's own total revenue. Each upper tier entity must submit a report to the comptroller indicating the lower tier entity's total revenue before attribution and the amount of the lower tier entity's total revenue that was passed to the upper tier entity and is included in the total revenue of the upper tier entity.

(e) Penalty and interest on delinquent taxes.

(1) Tax Code, §171.362 (Penalty for Failure to Pay Tax or File Report), imposes a 5.0% penalty on the amount of franchise tax due by a taxable entity that fails to report or pay the tax when due. If any part of the tax is not reported or paid within 30 days after the due date, an additional 5.0% penalty is imposed on the amount of tax unpaid. There is a minimum penalty of $1.00. Delinquent taxes accrue interest beginning 60 days after the due date. For example, if payment is made on the 61st day after the due date, one day's interest is due. The annual rate of interest on delinquent taxes is the prime rate plus one percent, as published in The Wall Street Journal on the first day of each calendar year that is not a Saturday, Sunday, or legal holiday.

(2) When a taxable entity is issued an audit assessment or other underpayment notice based on a deficiency, penalties under Tax Code, §171.362, and interest are applied as of the date that the underpaid tax was originally due, including any extensions, not from the date of the deficiency determination or date the deficiency determination is final.

(3) A deficiency determination is final 30 days after the date on which the service of the notice of the determination is completed. Service by mail is complete when the notice is deposited with the United States Postal Service.

(A) The amount of a determination is due and payable 10 days after it becomes final. If the amount of the determination is not paid within 10 days after the day it became final, a penalty under Tax Code, §111.0081 (When Payment is Required), of 10% of the tax assessed will be added. For example, if a deficiency determination is made in the amount of $1,000 tax (plus the initial penalty and interest), but the total amount of the deficiency is not paid until the 41st day after the deficiency notice is served, $1,200 plus interest would be due (i.e., $1,000 tax, $100 initial penalty for not paying when originally due, $100 penalty for not paying deficiency determination within 10 days after it became final, plus interest accrued to the date of payment at the applicable statutory rate).

(B) A petition for redetermination must be filed within 30 days after the date on which the service of the notice of determination is completed, or the redetermination is barred.

(C) A decision on a petition for redetermination becomes final 20 days after service on the petitioner of the notice of the decision. The amount of a determination is due and payable 20 days after the decision is final. If the amount of the determination is not paid within 20 days after the day the decision becomes final, a penalty under Tax Code, §111.0081, of 10% of the tax assessed will be added. Using the previous example, on the 41st day after service of the decision, $1,200 plus interest would be due (i.e., $1,000 tax, $100 initial penalty, $100 additional penalty and the applicable accrued interest).

(4) A jeopardy determination is final 20 days after the date on which the service of the notice is completed unless a petition for redetermination is filed before the determination becomes final. Service by mail is complete when the notice is deposited with the United States Postal Service. The amount of the determination is due and payable im-

mediately. If the amount determined is not paid within 20 days from the date of service, a penalty, under Tax Code, §111.022 (Jeopardy Determination), of 10% of the amount of tax and interest assessed will be added.

(5) If the comptroller determines that a taxable entity exercised reasonable diligence to comply with the statutory filing or payment requirements, the comptroller may waive penalties or interest for the late filing of a report or for a late payment. The taxable entity requesting waiver must furnish a detailed description of the circumstances that caused the late filing or late payment and the diligence exercised by the taxable entity in attempting to comply with the statutory requirements. See §3.5 of this title (relating to Waiver of Penalty or Interest) for additional information.

(6) If a taxable entity fails to comply with Tax Code, §171.212 (Report of Changes to Federal Income Tax Return), the taxable entity is liable for a penalty of 10% of the tax that should have been reported and had not previously been reported to the comptroller under Tax Code, §171.212. This penalty is in addition to any other penalty provided by law.

(f) Amended reports. In filing an amended report, the taxable entity must type or print on the top of the report the phrase "Amended Report." The report should be forwarded with a cover letter of explanation, with enclosures necessary to support the amendment. Applicable penalties and interest must be reported and paid along with any additional amount of tax shown to be due on the amended report.

(1) A taxable entity may file an amended report for the purpose of correcting a mathematical or other error in a report, for the purpose of supporting a claim for refund, or to change its method of computing margin [~~to 70% of total revenue~~] or, if qualified, to use the E-Z Computation. [~~After the due date of the report, an amended report may not be filed to change the method of computing margin to a cost of goods sold deduction or to a compensation deduction.~~]

(2) A taxable entity that has been audited by the Internal Revenue Service must file an amended franchise tax report within 120 days after the Revenue Agent's Report (RAR) is final, if the RAR results in changes to taxable margin reported for franchise tax purposes. An RAR is final when all administrative appeals with the Internal Revenue Service have been exhausted or waived. An administrative appeal with the Internal Revenue Service does not include an action or proceeding in the United States Tax Court or any other federal court.

(3) A taxable entity whose taxable margin is changed as a result of an audit or other adjustment by a competent authority other than the Internal Revenue Service must file an amended franchise tax report within 120 days after the adjustment is final. An adjustment is final when all administrative or other appeals have been exhausted or waived. For the purposes of this section, a competent authority includes, but is not limited to, the United States Tax Court, United States District Courts, United States Courts of Appeals, and United States Supreme Court.

(4) A taxable entity must file an amended franchise tax report within 120 days after the taxable entity files an amended federal income tax return that changes the taxable entity's taxable margin. A taxable entity is considered to have filed an amended federal income tax return if the taxable entity is a member of an affiliated group during a period in which an amended consolidated federal income tax return is filed.

(5) A final determination resulting from an Internal Revenue Service administrative proceeding (including an audit), or a judicial proceeding arising from an administrative proceeding, that affects the amount of franchise tax liability must be reported to the comptroller before the expiration of 120 days after the day on which the determination becomes final. See Tax Code, §111.206 (Exception to Limitation: Determination Resulting from Administrative Proceeding).

(6) Because the 10% penalty provided for in Tax Code, §171.212 only applies to deficiencies, failure to file an amended return in which a refund would result will not cause a 10% penalty to be imposed.

(g) Comptroller audit. During the course of an audit or other examination of a taxable entity's franchise tax account, the comptroller may examine financial statements, working papers, registers, memoranda, contracts, corporate minutes, and any other business papers used in connection with its accounting system. In connection with the examination, the comptroller may also examine any of the taxable entity's officers or employees under oath.

(h) Payment of determination. The payment of a determination issued to a taxable entity for an estimated tax liability shall not satisfy the reporting requirements set forth in Tax Code, Chapter 171, Subchapter E, concerning reports and records.

(i) Information report. Each taxable entity on which the franchise tax is imposed must file an information report.

(1) Public information report. For a taxable entity legally formed as a corporation, limited liability company, limited partnership, professional association, or financial institution, a public information report as described in Tax Code, §171.203 (Public Information Report), is due at the same time each initial and annual, including the first annual, report is due. An authorized person must sign the public information report on behalf of the taxable entity under a certification that:

(A) all information contained in the report is true and correct to the best of the authorized person's knowledge; and

(B) a copy of the report has been mailed to each person named in the report who is an officer, director, or manager and who is not employed by the taxable entity or a related (at least 10% ownership) taxable entity on the date the report is filed.

(C) A report that is filed electronically complies with the signature and certification requirements of this provision.

(2) Ownership information report. Taxable [~~For all other taxable~~] entities not required to file a public information report must file[,] an ownership information report as described in Tax Code, §171.201 (Initial Report) and §171.202 (Annual Report) is due at the same time each initial and annual, including the first annual, report is due.

(3) Failure to file or sign a public information report or ownership information report shall result in the forfeiture of corporate or business privileges as provided by Tax Code, §171.251 (Forfeiture of Corporate Privileges) and §171.2515 (Forfeiture of Right of Taxable Entity to Transact Business in this State). If the corporate or business privileges are forfeited, each officer or director of the taxable entity may be liable for each debt of the taxable entity that is created or incurred in Texas after the date on which the report is due and before the corporate or business privileges are revived, as provided by Tax Code, §171.255 (Liability of Directors and Officers).

(4) The provisions of paragraph (3) of this subsection, concerning forfeiture of corporate privileges do not apply to a banking taxable entity or a savings and loan association, as defined in Tax Code, §171.0001 (General Definitions) [~~§171.001~~].

(5) For purposes of this subsection:

(A) authorized person means, in the case of a corporation, an officer, director or other authorized person of the corporation;

(B) authorized person means, in the case of a limited liability company, a member, manager or other authorized person of the limited liability company;

(C) authorized person means, in the case of a limited partnership, a partner or other authorized person of the partnership;

(D) director includes a manager of a limited liability company, a general partner in a limited partnership and a general partner in a partnership registered as a limited liability partnership;

(E) authorized person also includes a paid preparer authorized to sign the report.

(6) Taxable entities that are members of a combined group and do not have nexus in Texas are not required to file an ownership information report or a public information report.

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 May 9, 2016.

TRD-201602267
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 475-0387

34 TAC §3.588

The Comptroller of Public Accounts proposes amendments to §3.588, concerning margin: cost of goods sold. Subsection (b)(3) is amended to correct the definition of the term "goods" to conform with the statutory language in Tax Code, §171.1012(a)(1) (Determination of Cost of Goods Sold). The amendment specifically deletes the portion of the definition of "goods" that incorrectly includes the husbandry of animals, the growing and harvesting of crops, and the severance of timber from realty. These terms are statutorily defined as "goods" solely for purposes of Tax Code, §171.1012(e)(14), which addresses compensation paid to an undocumented worker. The agency has determined that there is no statutory basis for expanding the definition of "goods" found in Tax Code, §171.1012(a)(1) to incorporate these activities. Subsection (b)(11), defining "undocumented worker," is deleted because this term also applies only for the purposes of Tax Code, §171.1012(e)(14). The language deleted from subsection (b)(3) and (11) is incorporated in subsection (g)(14) to conform with the statutory language in Tax Code, §171.1012(e)(14).

Subsection (g)(14) is amended to incorporate the deleted portion of the definition of "goods" under subsection (b)(3) and the definition of "undocumented worker" deleted from subsection (b)(11) to conform with the statutory language in Tax Code, §171.1012(e)(14).

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by conforming the rule's provisions to current statutes. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

This amendment is proposed under Tax Code, Chapter 171 and 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, and taxes, fees, or other charges which the comptroller administers under the law.

The amendment implements Tax Code, §171.1012 (Determination of Cost of Goods Sold).

§3.588. Margin: Cost of Goods Sold.

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

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

(1) Arm's length--The standard of conduct under which entities that are not related parties and that have substantially equal bargaining power, each acting in its own interest, would negotiate or carry out a particular transaction.

(2) Computer program--A series of instructions that are coded for acceptance or use by a computer system and that are designed to permit the computer system to process data and provide results and information. The series of instructions may be contained in or on magnetic tapes, printed instructions, or other tangible or electronic media.

(3) Goods--Real or tangible personal property sold in the ordinary course of business of a taxable entity. [~~"Goods" includes:~~]

[~~(A) the husbandry of animals;~~]

[~~(B) the growing and harvesting of crops;~~]

[~~(C) the severance of timber from realty.~~]

(4) Heavy construction equipment--Self-propelled, self-powered, or pull-type equipment that weighs at least 3,000 pounds and is intended to be used for construction. The term does not include a motor vehicle required to be titled and registered.

(5) Lending institution--An entity that makes loans and:

(A) is regulated by the Federal Reserve Board, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the Commodity Futures Trading Commission, the Office of Thrift Supervision, the Texas Department of Banking, the Office of Consumer Credit Commissioner, the Credit Union Department, or any comparable regulatory body;

(B) is licensed by, registered with, or otherwise regulated by the Department of Savings and Mortgage Lending;

(C) is a "broker" or "dealer" as defined by the Securities Exchange Act of 1934 at 15 U.S.C. §78c; or

(D) provides financing to unrelated parties solely for agricultural production.

(6) Principal business activity--The activity in which a taxable entity derives the largest percentage of its "total revenue".

(7) Production--Construction, manufacture, installation occurring during the manufacturing or construction process, development, mining, extraction, improvement, creation, raising, or growth.

(8) Related party--A person, corporation, or other entity, including an entity that is treated as a pass-through or disregarded entity for purposes of federal taxation, whether the person, corporation, or entity is subject to the tax under this chapter or not, in which one person, corporation, or entity, or set of related persons, corporations, or entities, directly or indirectly owns or controls a controlling interest in another entity.

(9) Service costs--Indirect costs and administrative overhead costs that can be identified specifically with a service department or function, or that directly benefit or are incurred by reason of a service department or function. For purposes of this section, a service department includes personnel (including costs of recruiting, hiring, relocating, assigning, and maintaining personnel records or employees); accounting (including accounts payable, disbursements, and payroll functions); data processing; security; legal; general financial planning and management; and other similar departments or functions.

(10) Tangible personal property--

(A) includes:

(i) personal property that can be seen, weighed, measured, felt, or touched or that is perceptible to the senses in any other manner;

(ii) films, sound recordings, videotapes, live and prerecorded television and radio programs, books, and other similar property embodying words, ideas, concepts, images, or sound, without regard to the means or methods of distribution or the medium in which the property is embodied, for which, as costs are incurred in producing the property, it is intended or is reasonably likely that any medium in which the property is embodied will be mass-distributed by the creator or any one or more third parties in a form that is not substantially altered; and

(iii) a computer program, as defined in paragraph (2) of this subsection.

(B) does not include:

(i) intangible property or

(ii) services.

~~[(11) Undocumented worker--A person who is not lawfully entitled to be present and employed in the United States.]~~

(c) General rules for determining cost of goods sold.

(1) Affiliated entities. Notwithstanding any other provision of this section, a payment made by one member of an affiliated group to another member of that affiliated group not included in the combined group may be subtracted as a cost of goods sold only if it is a transaction made at arm's length.

(2) Capitalization or expensing of certain costs. The election to capitalize or expense allowable costs is made by filing the franchise tax report using one method or the other. The election is for the entire period on which the report is based and may not be changed after the due date or the date the report is filed, whichever is later. A taxable entity that is allowed a subtraction by this section for a cost of goods sold and that is subject to Internal Revenue Code, §§263A, 460, or 471 (including a taxable entity subject to §471 that elects to use LIFO under §472), may elect to:

(A) Capitalize those costs in the same manner and to the same extent that the taxable entity capitalized those costs on its federal income tax return, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section. A taxable entity that elects to capitalize costs on its first report due on or after January 1, 2008, may include, in beginning inventory, costs allowable for franchise tax purposes that would be in beginning inventory for federal income tax purposes.

(i) If the taxable entity elects to capitalize those costs allowed under this section as a cost of goods sold, it must capitalize each cost allowed under this section that it capitalized on its federal income tax return.

(ii) If the taxable entity later elects to begin expensing those costs allowed under this section as a cost of goods sold, the entity may not deduct any cost incurred before the first day of the period on which the report is based, including any ending inventory from a previous report.

(B) Expense those costs, except for those costs excluded under subsection (g) of this section, or in accordance with subsections (d), (e), and (f) of this section.

(i) If the taxable entity elects to expense those costs allowed under this section as a cost of goods sold, costs incurred before the first day of the period on which the report is based may not be subtracted as a cost of goods sold.

(ii) If the taxable entity later elects to begin capitalizing those costs allowed under this section as a cost of goods sold, costs incurred prior to the accounting period on which the report is based may not be capitalized.

(3) Election to subtract cost of goods sold. A taxable entity, if eligible, must make an annual election to subtract cost of goods sold in computing margin by the due date, or at the time the report is filed, whichever is later. The election to subtract cost of goods sold is made by filing the franchise tax report using the cost of goods sold method. An amended report may be filed within the time allowed by Tax Code, §111.107 to change the method of computing margin to the cost of goods sold deduction method or from the cost of goods sold deduction method to the compensation deduction method, 70% of total revenue, or, if otherwise qualified, the E-Z computation method. An election may also be changed as part of an audit. See §3.584 of this title (relating to Margin: Reports and Payments).

(4) Exclusions from total revenue. Any expense excluded from total revenue (see §3.587 of this title (relating to Margin: Total Revenue)) may not be included in the determination of cost of goods sold.

(5) Film and broadcasting. A taxable entity whose principal business activity is film or television production or broadcasting or the sale of broadcast rights or the distribution of tangible personal property described by subsection (b)(10)(A)(ii) of this section, or any combination of these activities, and who elects to use cost of goods sold to determine margin, may include as cost of goods sold:

(A) the costs described in this section in relation to the property;

(B) depreciation, amortization, and other expenses directly related to the acquisition, production, or use of the property, including

(C) expenses for the right to broadcast or use the property.

(6) Lending institutions. Notwithstanding any other provision of this section, if the taxable entity is a lending institution that offers loans to the public and elects to subtract cost of goods sold, the entity may subtract as a cost of goods sold an amount equal to interest expense.

(A) This paragraph does not apply to entities primarily engaged in an activity described by category 5932 of the 1987 Standard Industrial Classification Manual published by the federal Office of Management and Budget.

(B) For purposes of this subsection, an entity engaged in lending to unrelated parties solely for agricultural production offers loans to the public.

(7) Mixed transactions. If a transaction contains elements of both a sale of tangible personal property and a service, a taxable entity may only subtract as cost of goods sold the costs otherwise allowed by this section in relation to the tangible personal property sold.

(8) Owner of goods. A taxable entity may make a subtraction under this section in relation to the cost of goods sold only if that entity owns the goods. The determination of whether a taxable entity is an owner is based on all of the facts and circumstances, including the various benefits and burdens of ownership vested with the taxable entity.

(A) A taxable entity furnishing labor or materials to a project for the construction, improvement, remodeling, repair, or industrial maintenance (as the term "maintenance" is defined in §3.357 of this title (relating to Nonresidential Real Property Repair, Remodeling, and Restoration; Real Property Maintenance)), of real property is considered to be an owner of the labor or materials and may include the costs, as allowed by this section, in the computation of the cost of goods sold.

(B) Solely for the purposes of this section, a taxable entity shall be treated as the owner of goods being manufactured or produced by the entity under a contract with the federal government, including any subcontracts that support a contract with the federal government, notwithstanding that the Federal Acquisition Regulations may require that title or risk of loss with respect to those goods be transferred to the federal government before the manufacture or production of those goods is complete.

(9) Rentals and leases. Notwithstanding any other provision of this section, the following taxable entities may subtract as cost of goods sold the costs otherwise allowed by this section in relation to tangible personal property that the entity rents or leases in the ordinary course of business of the entity:

(A) a motor vehicle rental company that remits a tax on gross receipts imposed under Tax Code, §152.026 or a motor vehicle leasing company;

(B) a heavy construction equipment rental or leasing company; and

(C) a railcar rolling stock rental or leasing company.

(10) Reporting methods. A taxable entity shall determine its cost of goods sold, except as otherwise provided by this section, in accordance with the methods used on the federal income tax return on which the report under this chapter is based. This subsection does not affect the type or category of cost of goods sold that may be subtracted under this section.

(11) Restaurants and bars. Entities engaged in activities described in Major Group 58 (Eating and Drinking Places) of the Standard Industrial Classification Manual may deduct for cost of goods sold only those expenses allowed under subsections (d), (e) and (f) of this section, that relate to the acquisition and production of food and beverages. Any costs related to both the production of food and beverages and to other activities must be allocated to production on a reasonable basis.

(d) Direct costs. The cost of goods sold includes all direct costs of acquiring or producing the goods. Direct costs include:

(1) Labor costs. A taxable entity may include in its cost of goods sold calculation labor costs, other than service costs, that are properly allocable to the acquisition or production of goods and are of the type subject to capitalization or allocation under Treasury Regulation Sections 1.263A-1(e) or 1.460-5 as direct labor costs, indirect labor costs, employee benefit expenses, or pension and other related costs, without regard to whether the taxable entity is required to or actually capitalizes such costs for federal income tax purposes.

(A) For purposes of this section, labor costs include W-2 wages, IRS Form 1099 payments for labor, temporary labor expenses, payroll taxes, pension contributions, and employee benefits expenses, including, but not limited to, health insurance and per diem reimbursements for travel expenses, to the extent deductible for federal tax purposes.

(B) Labor costs under this paragraph shall not include any type of costs includable in subsection (f) or excluded in subsection (g) of this section. Costs for labor that do not meet the requirements set forth in this paragraph may still be subtracted as a cost of goods sold if the cost is allowed under another provision of this section. For example, service costs may be included in a taxable entity's cost of goods sold calculation to the extent provided by subsection (f) of this section.

(2) Incorporated materials. A taxable entity may include in its cost of goods sold calculation the cost of materials that are an integral part of specific property produced.

(3) Consumable materials. A taxable entity may include in its cost of goods sold calculation the cost of materials that are consumed in the ordinary course of performing production activities.

(4) Handling costs. A taxable entity may include in its cost of goods sold calculation handling costs, including costs attributable to processing, assembling, repackaging, and inbound transportation.

(5) Storage costs. A taxable entity may include in its cost of goods sold calculation storage costs, including the costs of carrying, storing, or warehousing property, subject to subsection (g) of this section, concerning excluded costs.

(6) Depreciation, depletion, and amortization. A taxable entity may include in its cost of goods sold calculation depreciation, depletion, and amortization reported on the federal income tax return on which the report under this chapter is based, to the extent associated with and necessary for the production of goods, including recovery described by Internal Revenue Code, §197, and property described in Internal Revenue Code, §179.

(7) Rentals and leases. A taxable entity may include in its cost of goods sold calculation the cost of renting or leasing equipment, facilities, or real property directly used for the production of the goods, including pollution control equipment and intangible drilling and dry hole costs.

(8) Repair and maintenance. A taxable entity may include in its cost of goods sold calculation the cost of repairing and maintaining equipment, facilities, or real property directly used for the production of the goods, including pollution control devices.

(9) Research and development. A taxable entity may include in its cost of goods sold calculation the costs attributable to research, experimental, engineering, and design activities directly related to the production of the goods, including all research or experimental expenditures described by Internal Revenue Code, §174.

(10) Mineral production. A taxable entity may include in its cost of goods sold calculation geological and geophysical costs incurred to identify and locate property that has the potential to produce minerals.

(11) Taxes. A taxable entity may include in its cost of goods sold calculation taxes paid in relation to acquiring or producing any material, including property taxes paid on buildings and equipment, and taxes paid in relation to services that are a direct cost of production.

(12) Electricity. A taxable entity may include in its cost of goods sold calculation the cost of producing or acquiring electricity sold.

(13) A taxable entity may include in its cost of goods sold calculation a contribution to a partnership in which the taxable entity owns an interest that is used to fund activities, the costs of which would otherwise be treated as cost of goods sold of the partnership, but only to the extent that those costs are related to goods distributed to the contributing taxable entity as goods-in-kind in the ordinary course of production activities rather than being sold by the partnership.

(e) Additional costs. In addition to the amounts includable under subsection (d) of this section, the cost of goods sold includes the following costs in relation to the taxable entity's goods:

(1) deterioration of the goods;

(2) obsolescence of the goods;

(3) spoilage and abandonment, including the costs of rework, reclamation, and scrap;

(4) if the property is held for future production, preproduction direct costs allocable to the property, including storage and handling costs, as provided by subsection (d)(4) and (5) of this section;

(5) postproduction direct costs allocable to the property, including storage and handling costs, as provided by subsection (d)(4) and (5) of this section;

(6) the cost of insurance on a plant or a facility, machinery, equipment, or materials directly used in the production of the goods;

(7) the cost of insurance on the produced goods;

(8) the cost of utilities, including electricity, gas, and water, directly used in the production of the goods;

(9) the costs of quality control, including replacement of defective components pursuant to standard warranty policies, inspection directly allocable to the production of the goods, and repairs and maintenance of goods; and

(10) licensing or franchise costs, including fees incurred in securing the contractual right to use a trademark, corporate plan, manufacturing procedure, special recipe, or other similar right directly associated with the goods produced.

(f) Indirect or administrative overhead costs. A taxable entity may subtract as a cost of goods sold service costs, as defined in subsection (b)(9) of this section, that it can demonstrate are reasonably allocable to the acquisition or production of goods. The amount subtracted may not exceed 4.0% of total indirect and administrative overhead costs.

(1) Any costs already subtracted under subsections (d) or (e) of this section may not be subtracted under this subsection.

(2) Any costs excluded under subsection (g) of this section may not be subtracted under this subsection.

(g) Costs not included. The cost of goods sold does not include the following costs in relation to the taxable entity's goods:

(1) the cost of renting or leasing equipment, facilities, or real property that is not used for the production of the goods;

(2) selling costs, including employee expenses related to sales;

(3) distribution costs, including outbound transportation costs;

(4) advertising costs;

(5) idle facility expenses;

(6) rehandling costs;

(7) bidding costs, which are the costs incurred in the solicitation of contracts ultimately awarded to the taxable entity;

(8) unsuccessful bidding costs, which are the costs incurred in the solicitation of contracts not awarded to the taxable entity;

(9) interest, including interest on debt incurred or continued during the production period to finance the production of the goods;

(10) income taxes, including local, state, federal, and foreign income taxes, and franchise taxes that are assessed on the taxable entity based on income;

(11) strike expenses, including costs associated with hiring employees to replace striking personnel, but not including the wages of the replacement personnel, costs of security, and legal fees associated with settling strikes;

(12) officers' compensation;

(13) costs of operation of a facility that is:

(A) located on property owned or leased by the federal government; and

(B) managed or operated primarily to house members of the armed forces of the United States;

(14) any compensation paid to an undocumented worker used for the production of goods, provided that, as used in this paragraph only, the following terms shall have the following meanings:[~~; and~~]

(A) "undocumented worker" means a person who is not lawfully entitled to be present and employed in the United States; and

(B) "goods" includes the husbandry of animals, the growing and harvesting of crops, and the severance of timber from realty; and

(15) costs funded by a partnership contribution, to the extent that the contributing taxable entity made the cost of goods sold deduction under subsection (d)(13) 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.

Filed with the Office of the Secretary of State on May 5, 2016.

TRD-201602192

Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 15. TEXAS VETERANS COMMISSION

CHAPTER 460. FUND FOR VETERANS' ASSISTANCE PROGRAM

The Texas Veterans Commission (Commission) proposes amendments to Chapter 460, Subchapter A, §460.10, concerning Limitations on Grant Funds; Subchapter B, §460.21, concerning Monitoring Activities; and Subchapter C, §460.31, concerning Noncompliance.

PURPOSE AND BACKGROUND

The proposed amendments are made following a comprehensive review of the chapter under Government Code §2001.039, which requires each state agency to periodically review and consider for readoption each of its rules. The Commission has determined that the need for these rules continues to exist but that they should be amended to update or clarify where needed.

The proposed rule amendments update obsolete references to provide current citations to the Code of Federal Regulations which provide a government-wide framework for grants management. Previous federal regulations found in OMB Circulars are now superseded by recent modifications to the Uniform Grant Guidance in the Code of Federal Regulations.

The Executive Office of the President, Office of Management and Budget (OMB) is streamlining the federal government's guidance on Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards. The OMB has consolidated the guidance previously contained in multiple OMB Circulars, including A-87 (Cost Principles for State and Local, and Indian Tribal Governments) and A-122 (Cost Principles for Nonprofit Organizations), into a streamlined format that aims to improve both clarity and accessibility. The final guidance is now located in Title 2, Part 200 of the Code of Federal Regulations (2 C.F.R. 200, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This new guidance became effective December 26, 2014.

EXPLANATION OF SECTIONS

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE GRANT PROGRAM

§460.10. Limitations on Grant Funds.

Section 460.10(10) deletes obsolete references to OMB Circulars A-87 and A-122 and replaces them with the updated reference to Title 2, Part 200 of the Code of Federal Regulations.

SUBCHAPTER B. MONITORING ACTIVITIES

§460.21. Monitoring Activities.

Section 460.21(c) deletes obsolete references to OMB Circulars A-87 and A-122 and replaces them with the updated reference to Title 2, Part 200 of the Code of Federal Regulations.

SUBCHAPTER C. CORRECTIVE ACTION

§460.31. Noncompliance.

Section 460.31(a)(4) deletes obsolete references to OMB Circulars A-87 and A-122 and replaces them with the updated reference to Title 2, Part 200 of the Code of Federal Regulations.

IMPACT STATEMENTS

Michelle Nall, Chief Financial Officer, Texas Veterans Commission, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There will be no increase in expenditures or revenue for state government and no fiscal impact for local government as a result of the proposed amended rules.

There are no anticipated economic costs to persons required to comply with the proposed amended rules.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amended rules will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Tim Shatto, Operations Manager/Interim Director, Veterans Employment Services, Texas Veterans Commission, has determined that there is no significant negative impact upon employment conditions in the state as a result of the proposed amended rules.

Charles Catoe, Director, Fund for Veterans' Assistance, Texas Veterans Commission, 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 or administering the amended rules will be the rules will contain the appropriate references to the regulations applicable to the Fund for Veterans' Assistance Grant Program, which are now consolidated and easier to apply and administer.

COMMENTS

Comments on the proposed amended rules may be submitted to Texas Veterans Commission, Attention: General Counsel, P.O. Box 12277, Austin, Texas 78711; faxed to (512) 463-3288; or emailed to *rulemaking@tvc.texas.gov.* For comments submitted electronically, please include "Proposed Rules" in the subject line. The Commission must receive comments postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS REGARDING THE FUND FOR VETERANS' ASSISTANCE PROGRAM

40 TAC §460.10

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

§460.10. Limitations on Grant Funds.

Grant funds cannot be used for the following:

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

(10) any cost that is not allowable under the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, State of Texas Uniform Grant Management Standards (UGMS), or 2 C.F.R. 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [~~OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or under OMB Circular A-122 (Cost Principles for Nonprofit Organizations)~~].

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 May 9, 2016.

TRD-201602259
Charles Catoe
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Earliest possible date of adoption: June 19, 2916
For further information, please call: (512) 463-6535

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SUBCHAPTER B. MONITORING ACTIVITIES

40 TAC §460.21

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

§460.21. Monitoring Activities.

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

(c) Monitoring activities shall assess a Grantee's compliance with the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and 2 C.F.R. 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [~~OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations)~~].

(d) - (e) (No change.)

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

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TRD-201602260
Charles Catoe
Director, Fund for Veterans' Assistance
Texas Veterans Commission
Earliest possible date of adoption: June 19, 2916
For further information, please call: (512) 463-6535

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SUBCHAPTER C. CORRECTIVE ACTION

40 TAC §460.31

STATUTORY AUTHORITY

The amended rule is proposed under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; and Texas Government Code §434.017, which authorizes the Commission to establish rules governing the award of grants by the Commission.

The amendments implement the Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, 2 C.F.R. Part 200.

§460.31. Noncompliance.

(a) The Agency may assess corrective action for failure to ensure, at any time during the grant period, compliance with the following:

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

(4) the Grant Agreement, the Fund for Veterans' Assistance Fiscal Guidelines, the State of Texas Uniform Grant Management Standards (UGMS), and 2 C.F.R. 200 - Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards [~~OMB Circular A-87 (Cost Principles for State and Local, and Indian Tribal Governments) or OMB Circular A-122 (Cost Principles for Nonprofit Organizations)~~].

(b) (No change.)

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

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Charles Catoe
Director, Fund for Veterans' Assistance
Texas Veterans Commission
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For further information, please call: (512) 463-6535

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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER D. SCHOOL INVESTIGATIONS

40 TAC §§700.401 - 700.412

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.401 - 700.412, concerning

school investigations, in Chapter 700, Child Protective Services (CPS). The primary purpose of the revisions is to comply with legislative changes from the most recent legislative session. Senate Bill (SB) 206, enacted during the 84th Regular Session of the Texas Legislature, amended Texas Family Code §261.406(b) regarding entities that must be notified when DFPS completes an investigation of alleged abuse or neglect of a child by school personnel or volunteers in a school setting. Prior law mandated that upon completion of a school investigation, DFPS send a copy of the investigation report to the Texas Education Agency (TEA), the State Board for Educator Certification, the local school board or the school's governing body, the superintendent of the school district, and the school principal or director (unless the principal or director is alleged to have committed the abuse and neglect), to allow those officials to take appropriate action. The statute was amended to limit DFPS's duty to only providing notification of the completed report to TEA. The rationale for the change was that the notice requirement was unnecessarily burdensome for CPS caseworkers and that other provisions in the Family Code already contained more appropriate reporting provisions to ensure proper steps are taken to notify any entity within the school hierarchy as necessary to protect a child from potential harm. The entities other than TEA may still receive copies of the completed report upon request.

In addition, minor edits were made to update and "clean-up" the current rules.

The amendment to §700.401: (1) clarifies that CPS investigates abuse and neglect in a school setting as defined in §700.402(a)(2) of this title (relating to What do the terms used in this subchapter mean when Child Protective Services investigates reports of child abuse and neglect in a school?); (2) updates the rule to a question and answer format; and (3) updates the name of the department to the Department of Family and Protective Services.

The amendment to §700.402: (1) clarifies which terms and definitions only apply to school investigations and which terms and definitions apply to school investigations as well as investigations that are not conducted in a school setting; (2) deletes terms and definitions that are already defined in Subchapter E of this chapter (relating to Intake, Investigation, and Assessment Investigations); (3) updates the definition of school personnel and volunteers to persons who have access to children in a school setting and are providing services to or caring for children; (4) clarifies that a school setting for purposes of a Child Protective Services school investigation does not include school settings involving only children in facilities of the Texas Department of Aging and Disability Services and the Texas Department of State Health Services when the facility contracts with the local school district to provide educational services and does not include school settings that are a part of childcare operations regulated by the Child Care Licensing division of the Texas Department of Family and Protective Services (DFPS); (5) updates the definition of a reporter as the person who makes a report of child abuse or neglect to DFPS or a law enforcement agency; (6) adds the definition for alleged victim; (7) updates the rule to a question and answer format; and (8) reorganizes the structure of the rule.

The amendment to §700.403: (1) deletes the definition of "reasonable physical discipline" as it is already defined in Subchapter E of this chapter; (2) rewrites subsection (b) to clarify that any action that school personnel or volunteers take to avoid imminent harm to the child or others should not involve acts of unnecessary force or inappropriate use of restraints or seclusion; (3) adds a new subsection (c) to clarify that notwithstanding subsection (b), which concerns acts that are not considered abuse and neglect in a school setting, allegations that otherwise meet the definition of abuse or neglect will be investigated by the department; (4) updates the rule to a question and answer format; and (5) updates a citation in subsection (a).

The amendment to §700.404: (1) updates the rule to a question and answer format; (2) updates a citation in subsection (a)(1); and (3) updates the name of the department to the Department of Family and Protective Services in subsection (a)(6).

The amendment to §700.405: (1) updates the rule to a question and answer format; and (2) clarifies that Child Protective Services is not the only division in the Department of Family and Protective Services that provides notice to law enforcement of a report of child abuse or neglect occurring in a school setting.

The amendment to §700.406: (1) updates the rule to a question and answer format; (2) clarifies that in addition to a CPS supervisor, an Investigation Screener may also review intake reports and approve or change the initial priority and action recommended for the report; and (3) changes Child Protective Services (CPS) to the Department of Family and Protective Services (DFPS) to clarify that CPS is not the only division of DFPS that assigns priorities for investigations.

The amendment to §700.407 updates the rule to a question and answer format.

The amendment to §700.408: (1) updates the rule to a question and answer format; (2) clarifies that investigative action and supervisor approval of an investigation must be completed within 30 *calendar* days and 10 *calendar* days respectively; (3) adds a citation from rule §700.507 of this title (relating to Response to Allegations of Abuse or Neglect.) in subsection (d) to clarify when an investigation may be closed administratively; and (4) updates an incorrect citation in subsection (d).

The amendment to §700.409: (1) clarifies that interviews and examinations conducted in a school investigation must follow all applicable standards; (2) clarifies that appropriate school personnel must be notified when the investigator interviews and examines a child on school premises; (3) updates the rule to a question and answer format; and (4) updates the name of the department to the Department of Family and Protective Services in subsection (a).

The amendment to §700.410 are non-substantive and include updating the rule to a question and answer format.

The amendment to §700.411: (1) updates the rule to clarify that DFPS is only mandated to send a copy of the completed report of the investigation to the Texas Education Agency (TEA) and that DFPS will send a copy of the report to State Board for Education Certification, the president of the local school board or local governing body for the school, the superintendent of the school district, and the school principal only upon request; (2) adds new subsection (b) to notify the entities other than TEA that they can find information on obtaining a redacted copy of the report from the DFPS public website; (3) new subsection (c) clarifies that when the overall investigation disposition is "reason-to-believe" in an investigation in a school under the jurisdiction of TEA, the report of the investigation must include information about the designated perpetrator's right to challenge the disposition through the Office of Consumer Affairs review process, in addition to an administrative review of the investigation findings; (4) new subsection (d) clarifies that after the completion

of an investigation of a school that is not under the jurisdiction of TEA, DFPS does not release the results of the investigation to persons having control over the designated perpetrator's access to children, but instead follows the provisions in Subchapter F of this chapter (relating to Release Hearings) prior to releasing the results of the investigation; (5) changes Child Protective Services (CPS) to Department of Family and Protective Services (DFPS) throughout the rule to clarify that CPS is not the only agency in DFPS that provides notification to school officials when a school investigation is closed; (6) updates the department's name to the Department of Family and Protective Services in subsection (e); and (7) updates the rule to a question and answer format.

The amendment to §700.412: (1) updates the rule to a question and answer format; (2) updates a citation within the rule; and (3) changes Child Protective Services to Department of Family and Protective Services (DFPS) to clarify that other divisions in DFPS are involved in notifying school and non-school entities when a school investigation is closed.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of enforcing the amendments will be that the public will have a better understanding of what constitutes abuse and neglect in a school setting and how DFPS investigates abuse and neglect in a school setting. In addition, the amendment to §700.411, which requires DFPS to send a copy of the completed investigation report in a school investigation to TEA only, rather than several other entities with the knowledge that the other entities already communicate with each other and still have the option of requesting the report, will allow caseworkers to spend more time on other pertinent issues. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed amendments.

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

Questions about the content of the proposal may be directed to Sophia Karimjee at (512) 438-4358 in DFPS's Legal Division. Electronic comments may be submitted to Sophia Karimjee@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-540, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment to §700.409 implements Texas Family Code §261.303. The amendment to §700.411 implements revised Texas Family Code §261.406(b).

§700.401. What is the purpose of Subchapter D of this chapter? [~~Purpose of Investigation in School Setting.~~]

The purpose of this subchapter is to define abuse and neglect of children by school personnel or volunteers in a school setting as defined by §700.402(a)(2) of this title (relating to What do the terms used in this subchapter mean when Child Protective Services investigates reports of child abuse and neglect in a school?); [~~public or private schools~~] and to describe procedures for its report, investigation, and review by the Child Protective Services division of the Texas Department of Family and Protective [~~and Regulatory~~] Services pursuant to [~~Chapter 261,~~] Texas Family Code, Chapter 261; and to describe related procedures.

§700.402. What do the terms used in this subchapter mean when Child Protective Services investigates reports of child abuse and neglect in a school? [~~Definitions.~~]

(a) The following terms and definitions apply only to school investigations:

(1) School personnel and volunteers--Persons who have access to children in a school setting and are providing services to or caring for the children. School personnel include but are not limited to school employees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.

(2) School setting--The physical location of a child's school or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services. This does not include:

(A) school settings involving only children in facilities of the Texas Department of Aging and Disability Services, and the Texas Department of State Health Services when the facility contracts with the local school district to provide education services; or

(B) school settings that are a part of childcare operations regulated by the Child Care Licensing division of the Texas Department of Family and Protective Services (DFPS).

(b) The following terms and definitions apply to all Child Protective Services (CPS) investigations: [~~The terms used in this subchapter shall have the meanings assigned to those terms in Texas Family Code, Chapter 261, and in Subchapter E of this chapter, unless the context clearly indicates otherwise or the term is otherwise defined below:~~]

(1) Alleged perpetrator--A person who is alleged or suspected of being responsible for the abuse or neglect of a child.

(2) Alleged victim--A child who is alleged to be the victim of abuse or neglect.

(3) [~~(2)~~] Child--A person under 18 years of age who is not and has not been married or who has not had the disabilities of minority removed for general purposes.

[~~(3) CPS--Child Protective Services, a program within the Texas Department of Family and Protective Services.~~]

[(4) Designated perpetrator--A person who has been determined by a preponderance of evidence to have been responsible for abuse or neglect of a child in a school setting.]

[(5) Designated victim--A child who has been determined, based on a preponderance of the evidence, to have been abused or neglected in a school setting.]

(4) [(6)] Preponderance of evidence--Evidence which is of greater weight or more convincing than the evidence which is offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not.

[(7) Reason-to-believe--A finding that an allegation of abuse or neglect against school personnel or volunteers in a school setting is supported by a preponderance of the evidence.]

(5) [(8)] Reporter--An individual who makes a[, on his own initiative, makes an unsolicited] report to DFPS [the Texas Department of Family and Protective Services (DFPS)] or to a duly constituted law enforcement agency[,] alleging the abuse or neglect of a child. If more than one individual makes a [an unsolicited] report alleging abuse or neglect of the same child, all such individuals shall have the designation of reporter.

[(9) Ruled-out--A finding by a preponderance of the evidence that an allegation of abuse or neglect did not occur or was not committed by the alleged perpetrator.]

[(10) School personnel and volunteers--Persons school employees, contractors, school volunteers, school bus drivers, school cafeteria staff, and school custodians.]

[(11) School setting--The physical location of a child's school, or of an event sponsored or approved by the child's school, or any other location where the child is in the care, custody, or control of school personnel in their official capacity, including transportation services, and excluding school settings involving only children in facilities of the Texas Department of Mental Health and Mental Retardation (MHMR) when the facility contracts with the local school district to provide educational services, and excluding school settings involving only children in facilities regulated by the Texas Department of Family and Protective Services.]

[(12) Unable to complete--A finding that CPS was not able to draw a conclusion regarding an investigation of an allegation of abuse or neglect against school personnel or volunteers in a school setting because the alleged victim:]

[(A) could not be located to begin the investigation, or moved and could not be located to finish the investigation; or]

[(B) was unwilling to cooperate with the investigation.]

[(13) Unable to determine--A finding that an allegation of abuse or neglect can neither be supported nor ruled-out by a preponderance of the available evidence.]

(c) Terms used in this subchapter that are not defined in this subchapter shall have the meanings assigned to those terms in Texas Family Code, Chapter 261, and in Subchapter E of this chapter (relating to Intake, Investigation, and Assessment Investigations), unless the context clearly indicates otherwise.

§700.403. How does the Texas Department of Family and Protective Services define child abuse and neglect for purposes of a school investigation? [Definition of Child Abuse and Neglect in School Investigations.]

(a) For purposes of an investigation in a school setting, the terms abuse and neglect shall have the meaning assigned to those terms in the Texas Family Code[,] §261.001(1) and (4), as those terms are further defined in Subchapter E of this chapter (relating to Intake, Investigation, and Assessment Investigations) [§700.501 of this title (relating to Terminology Used in Statutory Definitions of Child Abuse and Neglect and Person Responsible for a Child's Care, Custody, or Welfare)], unless the definition is clearly inapplicable to reports of abuse or neglect in school settings or as otherwise provided in this section.

(b) Abuse and neglect in this context do not include the following:

(1) (No change.)

(2) actions that school personnel or volunteers at the child's school reasonably believe to be immediately necessary to avoid imminent harm to the child [self] or other individuals, if the actions:

(A) are limited only to those actions reasonably believed to be necessary under the existing circumstances; and[. The actions]

(B) do not include acts of unnecessary force or the inappropriate use of restraints or seclusion, such as use of restraints or seclusion as a substitute for lack of staff; [or]

(3) reasonable [physical] discipline. [Reasonable physical discipline is appropriate to the child's age and development and the reason for which the discipline is being administered and is without physical injuries that result in substantial harm or without genuine threat of substantial harm from physical injury to the child.]

(c) Notwithstanding subsection (b) of this section, if there are allegations in the report that otherwise meet the definition of "abuse" or "neglect" by school personnel in a school setting, those allegations will be investigated in accordance with this subchapter.

§700.404. When does the Texas Department of Family and Protective Services investigate a report of alleged abuse or neglect occurring in a school setting? [Criteria for Accepting Reports and Conducting School Investigations.]

(a) A report of alleged abuse or neglect occurring in a school setting will be assigned for investigation by Child Protective Services (CPS) if the following criteria are met:

(1) the allegations must meet the definitions of abuse or neglect contained in §700.403 of this title (relating to How does the Texas Department of Family and Protective Services define child abuse and neglect for purposes of a school investigation? [Definition of Child Abuse or Neglect in School Investigations]);

(2) - (5) (No change.)

(6) the same allegations involving the school setting must not have already been investigated by the Texas Department of Family and Protective [and Regulatory] Services.

(b) A report of alleged abuse and neglect which does not meet the criteria for investigation specified in this section shall be referred to an appropriate law enforcement entity or other investigating agency in accordance with Texas Family Code[,] §261.105.

(c) (No change.)

§700.405. Who must the Texas Department of Family and Protective Services notify when the agency receives a report of child abuse or neglect in a school setting? [Notification to Law Enforcement Agencies of Reports of Abuse or Neglect in School Investigations.]

The Texas Department of Family and Protective Services (DFPS) [Child Protective Services (CPS)] must provide notification of all school-related reports of child abuse or neglect to the law enforcement

entity with jurisdiction for criminal investigations in the geographical area where the alleged incident occurred, within the time frames set out in §700.506(1) of this title (relating to Notification of Law Enforcement Agencies).

§700.406. What priorities and time frames for initiating school investigations apply? [~~Priorities and Time Frames for Initiating School Investigations.~~]

The Texas Department of Family and Protective Services [~~Child Protective Services (CPS)~~] shall assign a priority to all reports accepted for investigation, and shall initiate an investigation within the corresponding time frame, as specified in §700.505 of this title (relating to Priorities for Investigation and Assessment). Prior to initiating an investigation, a Child Protective Services [~~CPS~~] supervisor or an Investigation Screener must review the intake report and either approve or change the initial priority and the action recommended for the report.

§700.407. Which school personnel must be notified prior to initiating a school investigation? [~~Notification to School Principal of Impending School Investigation.~~]

Prior to conducting an investigation under this subchapter, Child Protective Services (CPS) must notify the school principal (or the principal's supervisor if the school principal is an alleged perpetrator) of the fact that a report has been assigned for investigation, the nature of the allegations contained in the report, and the date and time when the investigator plans to visit the school campus to begin the investigation. The CPS investigator must request that the school principal (or the principal's supervisor) not alert the alleged perpetrator or others regarding the report until the investigator has had an opportunity to interview the alleged perpetrator.

§700.408. How does Child Protective Services conduct a school investigation? [~~Conducting the School Investigation.~~]

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

(c) The CPS investigator must complete the investigation, reach a disposition as to each allegation made in the report, and submit the investigation report and findings to a supervisor for approval within 30 calendar days after initiating the investigation, unless an extension of time is approved by the worker's supervisor due to extenuating circumstances. The CPS supervisor must approve the investigation or return it to the investigator for further action, within 10 calendar [~~ten~~] days of receiving the investigative report. If the tenth day falls on a weekend or state holiday, the supervisor has until the next working day to complete the required review.

(d) Notwithstanding any other provision in this section, an investigation may be closed administratively as provided by §700.507 of this title (relating to Response to Allegations of Abuse or Neglect) or at any point during the investigation[~~,~~] if it becomes apparent after initiating the investigation that the allegations made in the report do not, in fact, meet one or more of the criteria for investigation specified in §700.404 of this title (relating to When does the Texas Department of Family and Protective Services investigate a report of alleged abuse or neglect occurring in a school setting?) [~~Criteria for Accepting Reports and Conducting School Investigations)~~]. If a case is closed administratively, all allegations in the case are given the disposition of "administrative closure."

§700.409. What procedures apply when Child Protective Services conducts an interview or examination during a school investigation? [~~Conducting Interviews or Examinations.~~]

(a) School officials or other persons related to the school setting may not interfere with an investigation of a report of child abuse or neglect conducted by the Texas Department of Family and Protective [~~and Regulatory~~] Services, pursuant to Texas Family Code §261.303, Interference with Investigation[~~:~~] Court Order. Interviews and examinations in a school investigation may take place on or off the school premises, as deemed appropriate by the Child Protective Services (CPS) investigator, pursuant to all applicable standards. The CPS [~~provided the~~] investigator must notify appropriate school personnel [~~notifies the school principal (or that individual's supervisor in the event that the principal is the alleged perpetrator)~~] prior to conducting an interview or examination on school premises. CPS may request that school personnel or volunteers not be present during the interview or examination of an alleged victim, an alleged perpetrator, an adult or child witness, or any other person who may have information relevant to the investigation if the investigator determines that:

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

(b) (No change.)

§700.410. How does Child Protective Services make dispositions and assign roles in a case after completing the investigation? [~~Dispositions in School Investigations.~~]

(a) [~~Dispositions.~~] At the conclusion of the investigation, Child Protective Services (CPS) must assign an individual disposition to each allegation of abuse or neglect, as well as an overall disposition to the investigation.

(b) [~~Assignment of allegation dispositions.~~] CPS uses the following allegation dispositions for investigations in school settings:

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

(c) [~~Overall disposition.~~] The overall investigation disposition is the summary finding about the abuse or neglect that was investigated. The overall disposition is determined in the following manner:

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

(d) [~~Overall role.~~] The overall role for the alleged perpetrator and alleged victim at the end of an investigation in the school setting is the summary finding about the person's involvement in the abuse or neglect that was investigated. An individual's overall role is determined as follows:

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

§700.411. How does the Texas Department of Family and Protective Services provide notice to school officials when a school investigation is closed? [~~Notification to School Officials of Findings in a School Investigation.~~]

(a) After the Texas Department of Family and Protective [~~and Regulatory~~] Services (DFPS) has closed an investigation in a [~~public or private~~] school under the jurisdiction of the Texas Education Agency (TEA), DFPS [~~Child Protective Services (CPS)~~] is statutorily required to provide a report of the investigation, redacted to remove the identity of the reporter, to TEA (Director of Education Investigations). On request, DFPS shall provide a redacted copy of the report to the following:

[~~(1) TEA (Division of Continuing Education, Services to Children, Youth and Families Unit);~~]

(1) [~~(2)~~] State Board for Educator Certification;

(2) [~~(3)~~] president of the local school board or local governing body for the school; [~~and~~]

(3) the superintendent of the school district; and

(4) (No change.)

(b) The four entities listed above can find information on obtaining a redacted copy of the report on the DFPS public website at https://www.dfps.state.tx.us/policies/caserecord.asp.

(c) [~~(b)~~] If the overall investigation disposition is "reason-to-believe[~~,~~]" in an investigation in a school under the jurisdiction of TEA, the report must include information about the designated perpetrator's right to challenge the disposition through an administrative review of the investigation findings (ARIF), and through the Office of Consumer Affairs (OCA) review process if the finding is upheld at the ARIF. The report must also state that DFPS [~~CPS~~] will notify TEA and any of the above entities that originally requested a copy of the report of the investigation in the event that the dispositions are changed as a result of an ARIF or other challenge.

(d) [~~(c)~~] After the completion of an investigation of a school not under the jurisdiction of TEA, DFPS [~~When the overall disposition in an investigation is "reason-to-believe" and the school is a private school not under the jurisdiction of TEA, CPS~~] does not [~~automatically~~] release the results of the investigation to the entities listed in subsection (a) of this section. DFPS follows[~~, but must follow~~] the provisions in Subchapter F of Chapter 700 of this title (relating to Release Hearings) prior to releasing the results of the investigation to persons having control over the designated perpetrator's access to children. [~~When the overall disposition in an investigation is other than "reason-to-believe," CPS may release the findings to the appropriate school officials when the investigation is complete.~~]

(e) [~~(d)~~] Notwithstanding any other provision in this section, notice need not be provided to a school official if a report of abuse or neglect is closed administratively prior to notification to any school official that a report was received by DFPS [~~the Texas Department of Protective and Regulatory Services~~].

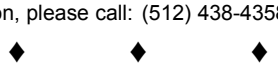
§700.412. How does the Texas Department of Family and Protective Services provide notice to non-school officials when a school investigation is closed? [~~Notification of Findings to Non-School Officials in a School Investigation.~~]

In addition to the notification of findings required under §700.411 of this title (relating to How does the Texas Department of Family and Protective Services provide notice to school officials when a school investigation is closed?), the Texas Department of Family and Protective Services [~~Notification to School Officials of Findings in a School Investigation, Child Protective Services (CPS)~~)] must comply with the notification requirements contained in Texas Family Code, Chapter 261, and in §700.513 of this title (relating to Notification about Results).

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 May 9, 2016.

TRD-201602244
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 438-4358



SUBCHAPTER Q. PURCHASED PROTECTIVE SERVICES

DIVISION 1. RESIDENTIAL CHILD-CARE CONTRACTS

40 TAC §700.1701

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.1701, in Chapter 700, concerning Child Protective Services. The new section is proposed in Subchapter Q, Purchased Protective Services, in a new Division 1, Residential Child-Care Contracts. All current rules in Subchapter Q are moved to a new Division 2, Post Adoption Services. The purpose of the new section is to comply with the mandates of Senate Bill 830 from the 84th Texas Legislature, Regular Session 2015, which amended Chapter 531 of the Texas Government Code by adding Subchapter Y and also amended §40.0041 of the Human Resources Code by adding Subsections (g) and (h) concerning the Ombudsman For Children and Youth in Foster Care.

Pursuant to the bill, the Health and Human Services Commission was tasked with appointing an ombudsman for children and youth in the conservatorship of DFPS to serve as a neutral party in assisting the children and youth with complaints regarding issues concerning any Health and Human Services (HHSC) agency, including DFPS.

The summary of the changes is as follows:

New §700.1701: (1) specifies in subsection (a) that residential child-care facilities that care for children in the conservatorship of DFPS must prominently display a sign produced by DFPS or the Ombudsman For Children and Youth in Foster Care related to the existence and contact information for the ombudsman office; and (2) specifies in subsection (b) that the residential child care facilities must implement procedures to allow children and youth in the conservatorship of DFPS to make complaints in private or in a space that is separate from facility staff, volunteers, or the foster family.

The Department discussed the rule proposal and collaborated with HHSC's Office of the Ombudsman prior to drafting the rules. Additional stakeholder input will be obtained during the public comment period for the rules.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed new section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Subia also has determined that for each year of the first five years the new section is in effect the public benefit anticipated as a result of enforcing the new section will be that children and youth in foster care will have an avenue to make complaints regarding any issues or concerns they have while in foster care to an entity that is independent of DFPS in order to ensure that their rights are protected. There should be no adverse effect on large, small, or micro-businesses as a result of the proposed rule change other than an extremely nominal cost to residential child-care facilities who care for children in the conservatorship of DFPS to print or copy signs that will be developed by DFPS and the Ombudsman For Children and Youth in Foster Care for posting in the facilities, as required by new rule §700.1701. There is no anticipated economic cost to persons who are required to comply with the proposed new section.

Ms. Subia has determined that the proposed new section 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jose A. Martinez at (512) 929-6739 in DFPS's Office of Consumer Affairs Division. Electronic comments may be submitted to Jose.Martinez@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-550, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The new section is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section implements Texas Human Resources Code §40.0041.

§700.1701. What are the posting requirements for residential child-care facilities who care for children in the conservatorship of the Department of Family and Protective Services related to the Ombudsman For Children and Youth in Foster Care?

(a) Residential child-care facilities who care for children in the conservatorship of the Department of Family and Protective Services must prominently display a sign produced by DFPS or the Ombudsman For Children and Youth in Foster Care related to the existence and contact information for the Ombudsman For Children and Youth in Foster Care.

(b) The residential child care facilities must implement procedures to allow children and youth to make complaints in private or in a space that is separate from facility staff, volunteers, or the foster family.

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 438-4358

CHAPTER 702. GENERAL ADMINISTRATION

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§702.801, 702.811, 702.813, 702.841, 702.843, 702.845, 702.847, and 702.849; repeal of §§702.815, 702.817, 702.819, 702.821, 702.823, and 702.825; and new §§702.815, 702.817, 702.819, 702.821, 702.823, 702.825, 702.827, and 702.829, in Chapter 702, concerning General Administration. The purpose of the amendments, repeals, and new sections is to comply with the mandates of Senate Bill 830 from the 84th Texas Legislature, Regular Session 2015, which amended Chapter 531 of the Texas Government Code by adding Subchapter Y and also amended Section 40.0041 of the Human Resources Code by adding Subsections (g) and (h) concerning the Ombudsman For Children and Youth in Foster Care.

Pursuant to the bill, the Health and Human Services Commission (HHSC) was tasked with appointing an ombudsman for children and youth in the conservatorship of DFPS to serve as a neutral party in assisting the children and youth with complaints regarding issues concerning any HHSC agency, including DFPS. Pursuant to the bill, the following new rules are being proposed:

(1) New rule §702.815 which clarifies that a current foster child or youth may file complaints with the Ombudsman For Children and Youth in Foster Care and explains the types of issues for which the foster children or youth may file a complaint and seek assistance from the office.

(2) New rule §702.817 which explains how DFPS will assist the Ombudsman for Children and Youth in Foster Care in reviewing and investigating complaints.

In addition to the above changes, the purpose of the amendments and repeals to Subchapter I of this chapter is also to update the rules where they are no longer accurate, as the rules were last updated in 2002. The updates seek to conform the rules to the Office of Consumer Affairs' (OCA's) current practice and policy concerning its process for receiving and reviewing complaints regarding case-specific activities of the DFPS program areas as well as reviewing substantiated findings of child abuse or neglect.

The summary of the changes is as follows:

The amendment to §702.801: (1) clarifies that OCA only reviews designated perpetrator findings for child abuse and neglect allegations; and (2) updates the name of the department and OCA.

The amendment to §702.811 updates the names of the department and OCA as well as the link to the DFPS public website.

The amendment to §702.813 clarifies that the following individuals may file complaints with OCA, in addition to the individuals already listed in the rule: (1) consumers, service recipients, and persons or entities regulated by DFPS who have a concern or complaint regarding a specific case; (2) individuals from the public who have a concern or complaint regarding a specific case, including but not limited to extend family, friends of the family, or foster parents; (3) other state agencies when the complaint is regarding a specific case; (4) government officials, including judges; and (5) former foster children or youth, including youth that are 18 years of age or older and are in extended foster care. The rule also updates the names of the department and OCA.

Section 702.815 is being repealed and incorporated into new §702.819.

New §702.815 explains (1) that children and youth under 18 years of age that are currently in the conservatorship of DFPS may file complaints with HHSC's Ombudsman For Children and Youth in Foster Care regarding any issues that are within the authority of any agency under HHSC, including DFPS, and further provides the various methods of contacting the office to file a complaint; (2) that current foster youth and children may also contact the office to seek assistance in reporting allegations of abuse or neglect to DFPS.

Section 702.817 is being repealed and incorporated into new §702.821.

New §702.817 explains that DFPS will assist the Ombudsman For Children and

Youth in Foster Care in reviewing and investigating complaints filed by current foster children and youth by: (1) collaborating with the office to develop and implement an annual outreach plan to promote awareness of the office among the youth and children; (2) providing the office with access to DFPS records relating to complaints, cooperating with the office in responding to questions that the office may have regarding complaints, and providing information requested by the office in order to assist in resolving complaints; and (3) cooperating with the office to create consequences, based on the circumstances of the complaint and the severity of the retaliation, for any person who is found to have retaliated against a child or youth in the conservatorship of DFPS because of a complaint made to the office.

Section 702.819 is being repealed and incorporated into new §702.823.

New §702.819 incorporates the contents of repealed §702.815 except for the following changes: (1) clarifies that the Review of Perpetrator Designation is only available for substantiated child abuse and neglect findings; (2) clarifies that the complaint process is not available for complaints related to civil rights issues and DFPS personnel issues, or when OCA determines that a review of the complaint would interfere with an ongoing litigation, investigation, or prosecution; (3) updates the title of the rule; and (4) updates the names of the department and OCA.

Section 702.821 is being repealed and incorporated into new §702.825.

New §702.821 incorporates the contents of repealed §702.817 except for the following changes: (1) updates OCA's toll-free number, fax number, email, and link to the DFPS public website for purposes of contacting OCA to file a complaint; and (2) updates the names of the department and OCA.

Section 702.823 is being repealed and incorporated into new §702.827.

New §702.823 incorporates the contents of repealed §702.819 except that the names of the department and OCA have been updated.

New §702.825 incorporates the contents of repealed §702.821 except for the following changes: (1) updates the rule to clarify that the Office of Consumer Affairs provides the complainant information by mail or telephone regarding the procedure for investigating and resolving a complaint; and (2) updates the names of the department and OCA.

Section 702.827 is being repealed and incorporated into new §702.823.

New §702.827 incorporates the contents of repealed §702.823 except for the following changes: (1) clarifies that OCA reviews complaints to determine whether applicable rule and statute were violated in addition to DFPS's policies and procedures; (2) clarifies that OCA adheres to confidentiality requirements specified in state and federal law in addition to the Texas Open Records Act; (3) deletes the part of subsection (a) that states that OCA does not investigate issues in ongoing or forthcoming litigation or when the complaint relates to a law enforcement investigation or criminal prosecution if OCA determines it would interfere with the litigation and investigation as it has been incorporated into new rule §702.819; (4) clarifies that OCA provides status information on a quarterly basis to *all* persons or entities who file a complaint regarding a specific case, if there is a pending complaint, unless the information would jeopardize an undercover investigation; (5) updates the rule to reflect that electronic and paper copies of OCA case files will be purged every two years after the complaint is closed; and (6) updates the names of the department and OCA.

New §702.829 incorporates the contents of repealed §702.825 except for the following changes: (1) clarifies that reports regarding the number, type, and resolution of complaints made against DFPS must be sent to the State Office Program Administrators, and not the executive director; (2) updates the rule to note that OCA also provides monthly reports to the HHSC's Office of the Ombudsman that is included in the written report to HHSC's executive director; and (3) updates the names of department and OCA.

The amendment to §702.841: (1) reflects that a Review of Perpetrator Designation is only available for substantiated findings of child abuse or neglect; (2) clarifies that a review is not available if the request for review is to challenge orders or findings made by the court in which the suit affecting the parent-child relationship has been filed, if there is pending litigation against DFPS that relates to the designation, or if the requestor does not otherwise qualify for a review regardless of if the requestor qualified for an Administrative Review of Investigation Findings (ARIF); and (3) updates the names of the department and OCA.

The amendment to §702.843: (1) updates OCA's toll-free number, fax number, email, and link to the DFPS public website for purposes of contacting OCA to request a Review of Perpetrator Designation; (2) clarifies that a designated perpetrator of child abuse or neglect has 45 days from the date of the ARIF to request a review; and (3) updates the names of the department and OCA.

The amendment to §702.845 updates the name of OCA and deletes the timeframe for acknowledgement of a request for a Review of Perpetrator Designation.

The amendment to §702.847 clarifies that a Review of Perpetrator Designation is conducted as a desk review and updates the names of the department and OCA.

The amendment to §702.849 reflects the current procedure OCA follows once a Review of Perpetrator Designation is complete, including clarifying that: (1) if OCA does not concur with the ARIF, the ARIF documents and OCA review material are forwarded to the CPS assistant commissioner or designee for consideration; (2) if OCA and the program assistant commissioner or designee do not agree on the disposition, the case is forwarded to the DFPS general counsel who reviews the case and makes the final decision as the DFPS commissioner's designee. It also updates the names of the department and OCA.

The Department discussed the rule proposals and collaborated with HHSC's Office of the Ombudsman prior to drafting the rules. Additional stakeholder input will be obtained during the public comment period for the rules.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments, repeals, and new sections will be in effect, there will not be any significant costs or revenues to state or local government as a result of enforcing or administering these sections.

Ms. Subia also has determined that for each year of the first five years the amendments, repeals, and new sections are in effect, the public benefit anticipated as a result of enforcing these rule

changes will be that children and youth in foster care will have an avenue to make complaints regarding any issues or concerns they have while in foster care to an entity that is independent of DFPS in order to ensure that their rights are protected. There is no anticipated economic cost to persons who are required to comply with the proposed amendments, repeals and new sections.

Ms. Subia has determined that the proposed amendments, repeals, and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jose A. Martinez at (512) 929-6739 in DFPS's Office of Consumer Affairs Division. Electronic comments may be submitted to *Jose.Martinez@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-550, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER I. OFFICE OF CONSUMER AFFAIRS SERVICES

DIVISION 1. OFFICE OF CONSUMER AFFAIRS

40 TAC §702.801

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment generally implements Human Resources Code §40.0041.

§702.801. What is the Office of Consumer Affairs [~~Ombudsman Office~~]?

(a) The Office of Consumer Affairs of the Texas Department of Family and Protective Services (DFPS) [~~Ombudsman Office PRS~~] is a neutral party that reviews complaints regarding case-specific activities of the DFPS [~~PRS~~] program areas to determine if DFPS's [~~PRS's~~] policies and procedures were followed. The complaint process is described in Division 2 of this subchapter (relating to Office of Consumer Affairs [~~Ombudsman Office~~] Complaint Process).

(b) The Office of Consumer Affairs [~~Ombudsman Office~~] also conducts reviews of case-specific findings that designate an individual as a [~~an alleged~~] perpetrator of abuse or[~~,~~] neglect[~~, or exploitation~~]. The review process is described in Division 3 of this subchapter (relating to Office of Consumer Affairs [~~Ombudsman Office~~] Review of [~~Alleged~~] Perpetrator Designation).

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 929-6739

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DIVISION 2. OFFICE OF CONSUMER AFFAIRS COMPLAINT PROCESS

40 TAC §§702.811, 702.813, 702.815, 702.817, 702.819, 702.821, 702.823, 702.825, 702.827, 702.829

The amendments and new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement Texas Government Code §§531.992; 531.993; 531.995 and Texas Human Resources Code §40.0041.

§702.811. How can a member of the public find out about the complaint process?

The Texas Department of Family and Protective Services (DFPS) [~~PRS~~] publicizes the availability of the complaint process and the mailing address and telephone number to which complaints should be sent through:

(1) signs displayed in DFPS [~~PRS~~] offices;

(2) DFPS [~~Ombudsman Office~~] brochures;

(3) the DFPS [~~PRS~~] public web site at http://www.dfps.state.tx.us[~~. The address is http://www.tdprs.state.tx.us~~]; and

(4) other methods determined by DFPS [~~PRS~~].

§702.813. Who may file complaints?

The Office of Consumer Affairs [~~Ombudsman Office~~] complaint process is available to:

(1) consumers, service recipients, and persons or entities regulated by the Department of Family and Protective Services (DFPS) who have a concern or complaint regarding a specific case [~~PRS~~];

(2) individuals from the public who have a concern or complaint regarding a specific case, including but not limited to extended family, friends of the family, or foster parents;

(3) [~~(2)~~] other state agencies when the complaint is regarding a specific case;

(4) [~~(3)~~] government officials, including judges and state and federal legislative and executive offices; [~~and~~]

(5) [~~(4)~~] DFPS [~~PRS~~] employees, if the complaint alleges a violation of DFPS [~~PRS~~] policy in a case-specific situation; and[~~.~~]

(6) former foster children or youth, including youth that are 18 years of age or older and are in extended foster care. A child

or youth who is currently in the conservatorship of DFPS, may still file a complaint through the process described in §702.815 of this title (relating to May current foster children and youth file complaints?).

§702.815. May current foster children and youth file complaints?

(a) Yes. If a child or youth who is under 18 years of age and currently in the conservatorship of the Department of Family and Protective Services (DFPS) seeks to file a complaint, the child or youth should be directed to the Health and Human Services Commission's Ombudsman For Children and Youth in Foster Care. To file the complaint, the current foster child or youth may contact the Ombudsman for Children and Youth in Foster Care through the following methods:

(1) Toll-free phone: 1-844-286-0769;

(2) Toll-free fax: 1-888-780-8099;

(3) Mail: Texas Health and Human Services Commission, Foster Care Ombudsman, MC H-700, P.O. Box 13247, Austin, Texas 78711-3247; or

(4) Email: fco@hhsc.state.tx.us

(b) A current foster child or youth may file a complaint regarding any issues that are within the authority of DFPS or another health and human services agency. This includes individual complaints that allege violations of agency procedures or policies or other violations.

(c) A current foster child or youth may also contact the Ombudsman For Children and Youth in Foster Care to seek assistance in reporting allegations of abuse or neglect to DFPS.

§702.817. How will the Department of Family and Protective Services (DFPS) assist the Health and Human Services Commission's Ombudsman For Children and Youth in Foster Care office in reviewing and investigating complaints filed by current foster children or youth?

(a) DFPS will collaborate with the Ombudsman For Children and Youth in Foster Care to develop and implement an annual outreach plan to promote awareness of the office among children and youth in the conservatorship of DFPS.

(b) DFPS will provide the Ombudsman For Children and Youth in Foster Care with access to DFPS records relating to the complaint, cooperate with the office in responding to questions that the Ombudsman may have regarding the complaint, and provide information requested by the office in order to assist in resolving complaints.

(c) DFPS will cooperate with the Ombudsman for Children and Youth in Foster Care to create consequences, based on the circumstances of the complaint and the severity of the retaliation, for any person who is found to have retaliated against a child or youth in the conservatorship of DFPS because of a complaint made to the Ombudsman.

§702.819. When does the Office of Consumer Affairs not accept complaints for review?

The complaint process is not available:

(1) to individuals who have been designated as perpetrators of abuse or neglect. Those individuals must use procedures specified in Division 3 of this subchapter (relating to Office of Consumer Affairs Review of Perpetrator Designation), unless the complaint relates to issues other than the case disposition;

(2) for complaints the Office of Consumer Affairs has reviewed multiple times and has made all reasonable efforts within agency policy and procedures to resolve;

(3) for complaints related to civil rights issues;

(4) for complaints regarding or from Department of Family and Protective Services staff relating to personnel issues; or

(5) if the Office of Consumer Affairs discovers that the subject of a complaint is an issue in ongoing or forthcoming litigation against DFPS, except for ongoing Child Protective Services conservatorship cases, or is the subject of a law enforcement investigation or criminal prosecution, and the Office of Consumer Affairs determines that the review would interfere with the litigation, investigation, or prosecution.

§702.821. How does a complainant file a complaint?

A complainant may contact the Office of Consumer Affairs for direct case-specific complaints concerning the Department of Family and Protective Services (DFPS) using one of the following methods:

(1) sending a correspondence via mail to the Office of Consumer Affairs, Texas Department of Family and Protective Services, Mail Code Y-946, P.O. Box 149030, Austin, Texas 78714-9030;

(2) calling the toll-free number: 1-800-720-7777;

(3) sending a facsimile to the Office of Consumer Affairs at (512) 339-5892;

(4) using the DFPS public web site at http://www.dfps.state.tx.us; or

(5) sending an email to oca@dfps.state.tx.us.

§702.823. Must a complainant go through another agency complaint process before contacting the Office of Consumer Affairs?

No. Although the Department of Family and Protective Services encourages complaint resolution at the local level, a complainant may file a complaint with the Office of Consumer Affairs at any time, without going through another agency process for complaint resolution.

§702.825. How does a complainant know if the Office of Consumer Affairs received the complaint?

(a) The Office of Consumer Affairs acknowledges receipt of each complaint, informs the complainant whether the complaint meets the criteria for an Office of Consumer Affairs complaint, and provides the complainant information by mail or telephone regarding the procedures for investigating and resolving a complaint.

(b) A complaint may be accepted initially and later refused if subsequent investigation or developments determine that the complaint is no longer appropriate for the Office of Consumer Affairs.

§702.827. How does the complaint process work?

(a) The Office of Consumer Affairs reviews complaints to determine whether applicable rule, statute, or the policies and procedures of the Department of Family and Protective Services (DFPS) were followed.

(b) The Office of Consumer Affairs provides status information at least quarterly to the complainant, if there is a pending complaint, unless the information would jeopardize an undercover investigation.

(c) The Office of Consumer Affairs notifies the complainant of the findings made by the Office of Consumer Affairs, within the limits of confidentiality required by the Texas Open Records Act and state and federal law.

(d) If the Office of Consumer Affairs determines that applicable rule, statute, or DFPS's policies and procedures were not followed, the Office of Consumer Affairs notifies appropriate agency staff so appropriate corrective measures can be taken.

(e) The Office of Consumer Affairs keeps a file for each complaint. The electronic file and paper copies of the records will be purged every two years after the complaint is closed.

§702.829. What are the reporting requirements of the Office of Consumer Affairs?

The Office of Consumer Affairs prepares and delivers a report annually to the Commissioner for the Department of Family and Protective Services (DFPS) and State Office Program Administrators regarding the number, type, and resolution of complaints made against DFPS. The Office of Consumer Affairs also provides a monthly report to the Health and Human Services Commission's Office of the Ombudsman that is included in the written report to the Health and Human Services Commission's executive director.

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

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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DIVISION 2. OMBUDSMAN COMPLAINT PROCESS

40 TAC §§702.815, 702.817, 702.819, 702.821, 702.823, 702.825

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals generally implement Human Resources Code §40.0041.

§702.815. Who may not file complaints with the Ombudsman Office?

§702.817. How does a complainant file a complaint?

§702.819. Must a complainant go through another agency complaint process before contacting the Ombudsman Office?

§702.821. How does a complainant know if the Ombudsman Office received the complaint?

§702.823. How does the complaint process work?

§702.825. What are the reporting requirements of the Ombudsman Office?

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

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DIVISION 3. OFFICE OF CONSUMER AFFAIRS REVIEW OF PERPETRATOR DESIGNATION

40 TAC §§702.841, 702.843, 702.845, 702.847, 702.849

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment generally implements Human Resources Code §40.0041.

§702.841. Who can request an Office of Consumer Affairs [~~Ombudsman Office~~] Review of [~~alleged~~] perpetrator designation?

(a) Anyone who has been determined to be a perpetrator of abuse or[,] neglect[, ~~or exploitation~~] as a result of an investigation conducted by the Child Protective Services (CPS) Program of the Department of Family and Protective Services (DFPS) [~~PRS~~] can request an Office of Consumer Affairs [~~Ombudsman Office~~] Review. The individual must use the Administrative Review of Investigative Findings (ARIF) process offered by the Child Protective Services Program before the individual is eligible for the Office of Consumer Affairs [~~Ombudsman Office~~] Review.

(b) An Office of Consumer Affairs [~~Ombudsman Office~~] Review is not available in the following situations:

(1) if DFPS [~~PRS~~] determines that a court of competent jurisdiction has issued an order that is legally consistent with the DFPS [~~PRS~~] finding on the allegation of abuse[,] or neglect[, ~~or exploitation~~] for which the Review was requested;[.]

(2) if the complaint is to challenge any other orders or findings made by the court in which the suit affecting the parent-child relationship has been filed, including removal orders;

(3) if there is pending litigation against DFPS related to the designation; or

(4) if the requester does not qualify for an Office of Consumer Affairs Review even if the requester qualified for the ARIF.

§702.843. Are there timeframes for requesting the Office of Consumer Affairs [~~Ombudsman Office~~] Review?

(a) Yes. Except for good cause determined by the Office of Consumer Affairs [~~Ombudsman Office~~] director, an individual must request an Office of Consumer Affairs [~~Ombudsman Office~~] Review in

writing within 45 calendar [~~30~~] days after the date the Administrative Review of Investigative Findings (ARIF) notification letter was sent.

(b) An individual may request the Office of Consumer Affairs Review using one of the following methods:

(1) mailing the [~~The Review~~] request [~~must be sent~~] to the Office of Consumer Affairs [~~Ombudsman Office~~], Texas Department of Family and Protective [~~and Regulatory~~] Services, Mail Code Y-946, P.O. Box 149030, Austin, Texas 78714-9030;[~~. The Review request may also be sent~~]

(2) sending a [~~by~~] facsimile to the Office of Consumer Affairs [~~Ombudsman Office~~] at (512) 339-5892; [~~512-834-3782, or by contacting the Ombudsman Office~~]

(3) using the Department of Family and Protective Services [~~PRS~~] public web site at http://www.dfps.state.tx.us; or[~~. The address is: http://www.tdprs.state.tx.us.~~]

(4) sending an email to oca@dfps.state.tx.us.

§702.845. How does a requester know if the Office of Consumer Affairs [~~Ombudsman Office~~] received the request?

The Office of Consumer Affairs [~~Ombudsman Office~~] acknowledges receipt of the request in writing [~~within 30 days from the date the request is received~~].

§702.847. How does the Office of Consumer Affairs [~~Ombudsman Office~~] Review work?

[~~(a)~~] The Office of Consumer Affairs [~~Ombudsman Office~~] reviews:

(1) the program case record;

(2) the Administrative Review of Investigation Findings documents; and

(3) additional information that was available during the original investigation and either was considered or should have been considered by staff performing the investigation. Only in extraordinary circumstances, at the discretion of the Office of Consumer Affairs [~~Ombudsman Office~~] director, will new information be considered in the Office of Consumer Affairs [~~Ombudsman Office~~] Review.

[~~(b) The Ombudsman Office determines whether an interview with the requester is needed to facilitate the Review process.~~]

§702.849. What happens when the Office of Consumer Affairs [~~Ombudsman Office~~] completes the Review?

After completing the Review, the Office of Consumer Affairs [~~Ombudsman Office~~] prepares written findings and recommendations.

(1) If the Office of Consumer Affairs [~~Ombudsman Office~~] findings sustain the Administrative Review of Investigation Findings (ARIF), the Office of Consumer Affairs [~~Ombudsman Office~~] director or designee notifies the requester of the final disposition of the case.

(2) If the Office of Consumer Affairs [~~Ombudsman Office~~] does not concur with the ARIF, the ARIF documents and Office of Consumer Affairs [~~Ombudsman Office~~] Review materials are forwarded to the program assistant commissioner [~~deputy director~~] or [~~his~~] designee for consideration. [~~The Ombudsman Office director and staff meet with the program deputy director or the director's designee to examine the evidence to reach concurrence on the case finding.~~]

(A) If concurrence is reached, the Office of Consumer Affairs [~~Ombudsman Office~~] forwards a notification letter to the requester advising the requester of the findings.

(B) If the Office of Consumer Affairs [~~Ombudsman Office~~] and the CPS assistant commissioner or designee [~~program deputy director~~] do not agree, the case is forwarded to Department of Family and Protective Services' [~~PRS's~~] general counsel, who reviews the case and makes the final decision as the DFPS commissioner's designee [~~recommendations to PRS's executive director for final disposition~~]. The Office of Consumer Affairs [~~executive director or the director's designee~~] then notifies the requester of the final case disposition.

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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Department of Family and Protective Services
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For further information, please call: (512) 929-6739

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CHAPTER 705. ADULT PROTECTIVE SERVICES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§705.1001, 705.2105, 705.2107, 705.3102, 705.4103, 705.4105, 705.4107, 705.6101, 705.7103, and 705.7105; new §705.2103; and the repeal of §705.2103 in Chapter 705, concerning Adult Protective Services. The purpose of the amendments, new rules and repeal is to implement Senate Bills 760 and 1880 (84th Legislature), the APS Scope and Jurisdiction Bills, which expanded the APS Provider (formally Facility) program's jurisdiction to investigate abuse, neglect, and exploitation. These bills ensured continued State of Texas compliance with the Center for Medicaid and Medicare Services (CMS) requirements for the health and welfare of recipients of home and community-based services (HCBS). The bills (1) expanded the authority of Adult Protective Services (APS) to investigate, inter alia, all home and community-based service providers whether providing services in a traditional or managed care service delivery model, (2) clarified and addressed the gaps and inconsistencies that resulted from evolving service delivery changes and changes in contracting arrangements, and (3) updated statutory language and requirements related to provider and agency responsibilities.

The proposed rules implement APS's expanded jurisdiction and modify existing DFPS rules, as applicable, to the expanded jurisdiction. These rules will take effect on September 1, 2016. The updates in Chapters 705 will implement statutory changes as required by the APS Scope and Jurisdiction Bills.

A summary of the changes are as follows:

The amendment to §705.1001 updates and adds definitions for emergency protective services, home and community support services agencies (HCSSA) agency, paid caretaker, protective services, and purchased client services, and removes definitions of terms not used in this subchapter.

Section 705.2103 is repealed and proposed new to update who is eligible for purchased client services and when purchased client services are available.

The amendment to §705.2105 and §705.2107 updates terms and establishes who is eligible for purchased client services and when purchased client services are available.

The amendment to §705.3102 clarifies when APS can apply for a protective order.

The amendment to §705.4103 clarifies the circumstances in which a designated perpetrator has the right to appeal a validated finding.

The amendment to §705.4105 clarifies to whom APS may release the findings of an investigation when the findings of the investigation are valid.

The amendment to §705.4107 updates language.

The amendment to §705.6101 clarifies when APS uses assessments in an in-home case and when a case worker must consult with a supervisor.

The amendment to §705.7103 deletes outdated language.

The amendment to §705.7105 updates terms to align with APS Scope and Jurisdiction bills. In particular the APS Provider program's expanded authority to investigate providers; make minor edits.

APS coordinated and held stakeholder meetings July 16, 2015, August 4, 2015, October 15, 2015, January 8, 2016, and February 8, 2016. These meetings discussed stakeholder concerns, recommendations, and rule proposals. Stakeholder feedback was incorporated into rule development.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the expanded authority of DFPS to investigate abuse, neglect, and exploitation of individuals receiving services from certain providers. Due to needed additional staffing and technology, the estimated impact on state government and appropriated funding levels is $1,603,723 for Fiscal Year (FY) 2016, $1,712,345 FY 2017, $1,712,345 FY 2018, $1,712,345 FY 2019, and $1,712,345 FY 2020. The impact on federal government will be $333,585 FY 2016, $370,716 FY 2017, $370,716 FY 2018, $370,716 FY 2019, and $370,716 FY2020. Upon implementation, actual experience has yielded higher caseloads than originally assumed resulting in additional costs to the state. The fiscal impact of these additional costs cannot be estimated at this time. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Lauren Villa at (512) 438-3803 in DFPS's Legal Division. Electronic comments may be submitted to Lauren.Villa@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-552, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. DEFINITIONS

40 TAC §705.1001

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.1001. How are the terms in this chapter defined?

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

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

(5) Alleged victim/perpetrator--An adult with a disability or aged 65 or older who has been reported to APS [~~adult protective services~~] to be in a state of or at risk of self-neglect.

(6) - (14) (No change).

(15) Emergency Protective Services-- Services provided to an alleged victim subject to an investigation conducted under Subchapter F, Chapter 48, Human Resources Code, to alleviate danger of serious harm or death.

(16) [~~(15)~~] Emotional harm--A highly unpleasant mental reaction with observable signs of distress, such as anguish, grief, fright, humiliation, or fury.

(17) Home and community support services agency (HCSSA)-- An agency licensed under Chapter 142, Health and Safety Code.

(18) [~~(16)~~] Intimidation--Behavior by actions or words creating fear of physical injury, death, or abandonment.

(19) [~~(17)~~] Ongoing relationship--A personal relationship that includes:

(A) frequent and regular interaction;

(B) a reasonable assumption that the interaction will continue; and

(C) an establishment of trust, beyond a commercial or contractual agreement.

(20) [~~(18)~~] Paid caretaker--

(A) An employee of a home and community support services agency (HCSSA) providing non-Medicaid services to an alleged victim; [~~licensed under Chapter 142, Health and Safety Code, to provide personal care services to an alleged victim,~~] or

(B) An [~~an~~] individual or family member privately hired and receiving monetary compensation to provide personal care

services, as defined in §142.001(22-a) of the Health and Safety Code, to an alleged victim. [~~"Personal care" is defined in §142.001(22-a) of the Health and Safety Code.~~]

(21) [~~(19)~~] Person with a disability--An adult with a physical, mental, or developmental disability that substantially impairs the adult's ability to adequately provide for his own care or protection.

(22) [~~(20)~~] Physical injury--Physical pain, harm, illness, or any impairment of physical condition.

(23) [~~(21)~~] Protective services--The services furnished by DFPS or by a protective services agency to an [a] alleged or designated victim (including a designated victim/perpetrator) or to the alleged or designated victim's relative or caretaker if DFPS determines the services are necessary to prevent the designated victim from being in or returning to a state of abuse, neglect, or financial exploitation. These services may include social casework, case management, and arranging for psychiatric and health evaluation, home care, day care, social services, health care, respite services, and other services consistent with Human Resources Code, Chapter 48. The term does not include the investigation of an allegation of [~~services of DFPS or another protective services agency in conducting an investigation regarding an allegation of~~] abuse, neglect, or financial exploitation. (Human Resources Code, §48.002)

(24) Purchased Client Services--A type of protective service provided in accordance with Human Resources Code §48.002(a)(5), including, but not limited to, emergency shelter, medical, and psychiatric assessments, in-home care, residential care, heavy housecleaning, minor home repairs, money management, transportation, emergency food, medication, and other supplies.

~~(22) Provider agency or entity (contractor)--An agency or entity that has contracted with DFPS to provide authorized protective services to clients.~~

(25) [~~(23)~~] Reporter--A person who makes a report to DFPS about a situation of alleged abuse, neglect, or financial exploitation of an alleged victim.

(26) [~~(24)~~] Serious harm--In danger of sustaining significant physical injury or death; or danger of imminent impoverishment or deprivation of basic needs.

(27) [~~(25)~~] Substantially impairs--When a disability grossly and chronically diminishes an adult's physical or mental ability to live independently or provide self-care as determined through observation, diagnosis, evaluation, or assessment.

(28) [~~(26)~~] Sustained perpetrator--A designated perpetrator whose validated finding of abuse, neglect, or financial exploitation of a designated victim has been sustained by an administrative law judge in a due process hearing, including a release hearing or Employee Misconduct Registry (EMR) hearing, or the designated perpetrator has waived the right to a hearing.

(29) [~~(27)~~] Unreasonable confinement--An act that results in a forced isolation from the people one would normally associate with, including friends, family, neighbors, and professionals; an inappropriate restriction of movement; or the use of any inappropriate restraint.

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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Department of Family and Protective Services
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For further information, please call: (512) 438-3803

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SUBCHAPTER D. ELIGIBILITY

40 TAC §705.2103

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.2103. What are emergency client 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.

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40 TAC §§705.2103, 705.2105, 705.2107

The new section and amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new section and amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.2103. Who is eligible for emergency protective services?

Emergency protective services may be offered to:

(1) An individual receiving services from a provider as defined by Human Resources Code §48.251(a)(9); or

(2) An adult who lives in a residence that is owned, operated, or controlled by a provider of home and community-based

services under the home and community-based services waiver program described by §534.001(11)(B), Government Code, regardless of whether the adult is receiving services under that waiver program from the provider.

§705.2105. Who is eligible for purchased [~~emergency~~] client services?

To be eligible for purchased [~~emergency~~] client services, an alleged victim must be receiving [~~adult~~] protective services in accordance with Human Resources Code, §48.002(a)(5) and §48.205. The alleged victim must have a service plan developed by DFPS under these sections indicating that [~~emergency~~] client services are needed to remedy abuse, neglect, or financial exploitation.

§705.2107. When are purchased [~~emergency~~] client services available?

(a) State and local resources must be used before purchased [~~emergency~~] client services are expended.

(b) Not all purchased [~~emergency~~] client services are available in all geographic areas of the state. DFPS may limit the units of service or length of time that clients can receive purchased [~~emergency~~] client services, based upon service plans, availability of funds, and availability of service providers.

(c) If the region does not have sufficient funds to provide purchased [~~emergency~~] client services to all eligible clients, the client will not be able to receive purchased [~~emergency~~] client services at the time the client is determined eligible. Clients who are still in need of purchased [~~emergency~~] client services when services are available will be given priority based upon the date of the service plan indicating the need for purchased [~~emergency~~] client 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.

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SUBCHAPTER G. FAMILY VIOLENCE

40 TAC §705.3102

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.3102. Can DFPS apply for protective orders?

When APS staff validate an allegation that an alleged victim is a victim of family violence as specified in the Texas Family Code, §71.004, DFPS may apply for a protective order to protect the victim. Before filing the protective order, the APS caseworker contacts the victim and a non-abusive [~~nonabusive~~] adult member of the household, if available:

(1) (No change.)

(2) to request assistance in developing a safety plan for the protection of the victim and any non-abusive [~~nonabusive~~] household members.

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. RELEASE HEARINGS

40 TAC §§705.4103, 705.4105, 705.4107

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.4103. Does the designated perpetrator have the right to appeal?

(a) When APS staff validates an allegation of abuse, neglect, or financial exploitation against a designated perpetrator and an entity or employer (such as a contracting agency or senior center) allows such designated perpetrator [~~of a designated victim and an entity such as a provider agency, home and community support services agency (HCSSA), senior center, or other employer allows the designated perpetrator~~] to have access to adults with disabilities, adults aged 65 or older, or children, then the APS caseworker may notify the entity of the findings by complying with this subchapter. If the findings are to be released to any [~~the~~] entity or employer, the designated perpetrator must be given prior written notification, except in emergencies, and an opportunity to request an Administrative Review of Investigative Findings and a hearing before the State Office of Administrative Hearings.

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

§705.4105. How is the designated perpetrator notified of the intent to release?

(a) The caseworker must give written notification to each designated perpetrator if:

(1) (No change.)

(2) the findings are to be released outside of DFPS to an entity or employer which allows the designated perpetrator access to adults with disabilities, adults aged 65 or older, or children; and

(3) (No change.)

(b) Written notification must include:

(1) (No change.)

(2) the entity or employer to which the findings will be released;

(3) - (8) (No change.)

§705.4107. What is the designated perpetrator's role during an administrative review?

(a) (No change.)

(b) The designated perpetrator is responsible for:

(1) any costs incurred [~~he incurs~~] for the review, except for interpreter services provided by DFPS.

(2) (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 L. RISK ASSESSMENT

40 TAC §705.6101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services DFPS Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.6101. What assessments does APS use in an in-home case?

(a) APS uses assessments to determine whether an elderly person or individual with a disability is in [~~at~~] imminent danger [~~risk~~] of abuse, neglect, or financial exploitation [~~and needs protective services~~] or is in a state of abuse, neglect, or financial exploitation and needs protective services.

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

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

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SUBCHAPTER M. CONFIDENTIALITY AND RELEASE OF RECORDS

40 TAC §705.7103, §705.7105

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the DFPS Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC Chapter 48, as amended by S.B. 1880 and S.B. 760, notably Subchapter F, §§48.251 - 48.258 and Family Code §261.404.

§705.7103. To which [~~Which~~] investigations does [~~do~~] this subchapter apply [~~to~~]?

These rules apply to investigations conducted by the Department of Family and Protective Services Adult Protective Services staff under Chapter 48 of the Human Resources Code and §261.404 of the Texas Family Code [~~(investigations of abuse, neglect, or exploitation of persons under age 18 years receiving services for mental health or mental retardation)~~].

§705.7105. Which [~~What~~] definitions apply to this subchapter?

The following words and terms have the following meanings unless the context clearly indicates otherwise:

(1) Adult Protective Services (APS) client--An elderly person or [~~disabled~~] person with a disability as defined in Human Resources Code, §48.002(1) and (8), or a person under age 18 years receiving services from certain providers as described [~~for mental health or mental retardation as described~~] in §261.404 of the Texas Family Code.

(2) Case records--All records described in §48.101 or §48.102 of the Human Resources Code, which were collected, developed, or used in an abuse, neglect, or exploitation investigation, or in providing services as a result of an investigation, and which are under the custody and control of DFPS. [~~Case records include investigation records, as well as service records.~~]

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

(5) Report--An allegation of abuse, neglect, or exploitation, as described in §48.002 of the Human Resources Code, this Chap-

ter, and [~~or~~] Chapter 711 of this title (relating to Investigations of Individuals Receiving Services from Certain Providers [~~in TDMHMR Facilities and Related Programs~~]) made to DFPS.

(6) (No change.)

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

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CHAPTER 711. INVESTIGATIONS IN DADS AND DSHS FACILITIES AND RELATED PROGRAMS

SUBCHAPTER O. EMPLOYEE MISCONDUCT REGISTRY

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendment to §§711.1402, 711.1404, 711.1408, 711.1413 - 711.1415, 711.1417, 711.1427, 711.1429, 711.1431, 711.1432, and 711.1434; the repeal of §711.1406 and §711.1411; and new §711.1406 in Chapter 711, concerning Investigations in Department of Aging and Disability Services (DADS) and Department of State Health Services (DSHS) Facilities and Related Programs. The purpose of the amendments and repeals is to update the terminology and process requirements regarding the due process rights of an employee prior to placement on the Emergency Misconduct Registry (EMR).

The EMR is a publicly available, searchable database maintained by the Department of Aging and Disability Services pursuant to Chapter 253 of the Texas Health and Safety Code. The EMR is a list of persons who are not permitted to work in certain settings because they have been found to have committed reportable conduct. A finding of reportable conduct is a finding that an employee has been found to have committed certain, more serious abuse, neglect, or exploitation of a person who is elderly or a person with a disability.

Under authority in Chapter 48 of the Texas Human Resources Code, Subchapter I, DFPS is required to submit the names of certain employees whom Adult Protective Services (APS) has determined committed reportable conduct to DADS for placement on the EMR. If APS determines an employee has committed reportable conduct, the employee is offered a due process hearing prior to placement on the EMR, and if the finding is upheld, the employee is given an opportunity to file for judicial review of the finding.

The changes make APS' requirements consistent with governing Texas law, the Administrative Procedures Act, found in Chapter 2001 of the Texas Government Code. In addition, they standardize terminology so that the employee's administrative remedies are more clearly explained. They also make modest updates to reflect changes enacted in the 84th Regular Session of the Texas legislature that expanded APS' investigative scope and jurisdiction in certain settings, including some settings in which employees are eligible for potential placement on the EMR. Finally, the changes streamline unnecessary provisions out of the subchapter so that it is easier to follow.

A summary of the changes follows:

Amendment to §711.1402 removes definitions of terms not used in the subchapter and updates definitions for changes made in 84th Regular Session, including changes in Senate Bill (SB) 1880 and SB 760: (1) makes definition of "agency" consistent with law; (2) updates terminology from "facility investigation" to "provider investigation" and clarifies meaning; (3) adds definition of "individual receiving services"; and (4) renumbers and makes minor edits.

Amendments to §711.1404: (1) updates section title so that it is comprehensive; and (2) modifies sections defining physical abuse, sexual abuse, emotional or verbal abuse, neglect, exploitation and financial exploitation for in-home and provider investigations by referring to the identical definitions already in rule. Specifically, for in-home investigations the operative terms are defined in 40 TAC Chapter 705, Subchapter A. For provider investigations the operative terms are defined in Subchapter A of Chapter 711. Rather than repeat the definitions in full, rules were modified to refer back to the definitions in other provisions of the rules.

The repeal of §711.1406 modifies definitions for provider investigations as described above and combines the remaining subsection into §711.1404 of this chapter.

New §711.1406 adds clarity regarding the meaning of the term "agency", the employees of which are potentially subject to the EMR.

Amendment to §711.1408 has minor rewording for clarity and consistency.

The repeal of §711.1411 deletes unnecessary provision as the substance of the rule is also covered in §711.1432 of this chapter.

Amendment to §711.1413: (1) clarifies terminology regarding the "appeal" of a finding of reportable conduct. Terminology was used inconsistently to refer both to the EMR hearing as well as a subsequent request for judicial review; and (2) adds a provision to the notice of finding letter for an employee who is found to have committed reportable conduct, requiring the employee to keep DFPS informed of the employee's current employment and residential contact information.

Amendment to §711.1414: (1) updates terminology; shortens and clarifies provision; and (2) adds requirement that the employee is responsible for providing DFPS with current telephone numbers in addition to the physical address the employee is already required to provide to DFPS.

Amendment to §711.1415 updates terminology regarding EMR hearings for consistency.

Amendment to §711.1417 updates terminology regarding EMR hearings for consistency.

Amendment to §711.1427 adds requirement that the costs of transcribing testimony from an EMR hearing be paid by the employee seeking judicial review unless the employee establishes indigence.

Amendment to §711.1429 updates terminology and cross-reference.

Amendment to §711.1431 makes timelines and requirements for requesting judicial review of a finding of reportable conduct consistent with the Texas Administrative Procedures Act. Specifically: (1) makes the filing of a timely motion for rehearing in accordance with Subchapters F and G of Government Code Chapter 2001 a prerequisite to judicial review; (2) updates the guidance regarding seeking judicial review by referring to the operative law on point, Subchapters F and G of Government Code Chapter 2001; and (3) clarifies the time frame for reporting a finding to the EMR after an order becomes final.

Amendment to §711.1432 provides clarity regarding the exhaustion of an employee's administrative remedies and DFPS' actions once those rights have been exhausted.

Amendment to §711.1434 updates terminology.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed amendments and repeals will be in effect there will not be costs or revenues to state or local government as a result of enforcing or administering the amendments and repeals.

Ms. Subia also has determined that for each of the first five years that the amendments and repeals will be in effect, the public benefit anticipated as a result of the rule change will be that employees who are potentially subject to the EMR will have a better understanding of the process for disputing a finding made against them that is eligible for the EMR. In addition, employers will have a greater understanding of the process that may lead to an employee's placement on the EMR. There is a very small economic cost anticipated to persons who are required to comply with the proposed sections. The amendment to §711.1427 conforms the rules to general civil practice by requiring a petitioner who is seeking judicial review to pay the costs of transcribing the hearing and preparing the record, unless the petitioner is indigent. However for the small number of EMR cases filed in district court each year (with 7 annually being a high number), the petitioner will bear the expense of the transcript of the hearing. Given the wide variety in transcription costs based on variations in hearing length and testimony, specific costs were not estimated at this time. There is no anticipated adverse impact on small or micro businesses as a result of the proposed rule change because the proposed rule change should not affect the cost of doing business; does not impose new requirements on any business; and does not require the purchase of any new equipment or any increased staff time in order to comply.

Ms. Subia has determined that the proposed amendments and repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Audrey Carmical at (512) 438-3854 in DFPS's Legal Services Division. Electronic comments may be submitted to *Audrey.Carmical@dfps.state.tx.us*. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-549, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*.

40 TAC §§711.1402, 711.1404, 711.1406, 711.1408, 711.1413 - 711.1415, 711.1417, 711.1427, 711.1429, 711.1431, 711.1432, 711.1434

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement Human Resources Code §§48.401 - 48.408.

§711.1402. How are the terms in this subchapter defined?

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

(1) (No change.)

(2) Agency--An entity, person, [~~or~~] facility, or provider, as defined in §711.1406 of this chapter;

(3) - (6) (No change.)

(7) Employee--A person who:

(A) (No change.)

(B) provides personal care services, active treatment, or any other [~~personal~~] services to an individual receiving agency services, an individual who is a child for whom an investigation is authorized under Family Code §261.404, or an individual receiving services through the consumer-directed service option, as defined by Government Code §531.051; and

(C) (No change.)

(8) - (9) (No change.)

(10) Individual Receiving Services: an individual receiving services as provided in §711.3 of this title (relating to How are the terms in this chapter defined?); [~~Facility investigation--An investigation conducted by APS under Chapter 48, Subchapters F and H, Human Resources Code, that involves an employee of one of the following agency types:~~]

[~~(A) a home and community-based services (HCS) provider;~~]

[~~(B) a community center as defined in §531.002, Health and Safety Code;~~]

[~~(C) a licensed intermediate care facility for persons with intellectual disabilities and related conditions (ICF-IID);~~]

[~~(D) a local authority as defined in this chapter;~~]

[~~(E) the Rio Grande State Center;~~]

[~~(F) a state-supported living center; or~~]

[~~(G) a state hospital;~~]

[~~(11) HCSSA--A home and community support services agency, sometimes referred to as a home health agency, licensed under Chapter 142, Health and Safety Code;~~]

[~~(12) HCS--A person or an agency exempt from licensure under §142.003(a)(19), Health and Safety Code, that provides home and community-based services to persons with intellectual disabilities and related conditions;~~]

[~~(13) ICF-IID--An intermediate care facility for individuals with an intellectual disability or related condition. A licensed ICF-IID is a privately owned and operated facility licensed by the Department of Aging and Disability Services under Chapter 252, Health and Safety Code. A state supported living center operated by DADS or DSHS is also an ICF-IID. A local authority may also operate an ICF-IID;~~]

(11) [~~(14)~~] In-home investigation--An investigation conducted by APS under Chapter 705 of this title (relating to Adult Protective Services);

(12) Provider investigation--An investigation conducted by APS under Chapter 48, Subchapter F, Human Resources Code, or §261.404, Texas Family Code, as applicable;

[~~(15) Person served--An adult or child receiving services from an agency as defined in this subchapter;~~]

(13) [~~(16)~~] Reportable conduct--A confirmed or validated finding of abuse, neglect or exploitation that meets the definition in §48.401(5), Human Resources Code, and as further defined in §711.1408 of this title (relating to What is reportable conduct?);

[~~(17) Rio Grande State Center--A facility operated by the Department of State Health Services that provides in-patient mental health services and services through an ICF-IID;~~]

[~~(18) State hospital--A hospital operated by the Department of State Health Services that provides in-patient mental health services; and~~]

[~~(19) State supported living center--An ICF-IID operated by the Department of Aging and Disability Services.~~]

§711.1404. How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, exploitation, and financial exploitation defined for the purpose of this subchapter [~~In-home investigations~~]?

(a) For In-home investigations, the definitions of physical abuse, sexual abuse, emotional or verbal abuse, neglect, and financial exploitation are adopted pursuant to §48.002(c), Human Resources Code, and are found [~~defined~~] in Subchapter A of Chapter 705 of this title (relating to Definitions) [~~(relating to Adult Protective Services)~~] in the rules adopted pursuant to §48.002(c) of the Human Resources Code. [~~Additional guidance for some of the terms used in these definitions can be found at §705.1001 of this title (relating to How are the terms in this chapter defined?). The following definitions apply:~~]

[~~(1) "Physical abuse."~~]

[~~(A) When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused physical injury, death, or emotional harm.~~]

[~~(B) When an alleged perpetrator is a paid caretaker, physical abuse is defined as any knowing, reckless, or intentional act or failure to act, including unreasonable confinement, corporal punishment, inappropriate or excessive force, or intimidation, which caused or may have caused physical injury, death, or emotional harm.~~]

[~~(2) "Sexual abuse."~~]

[~~(A) When an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, sexual abuse is defined as nonconsensual sexual activity, which may include, but is not limited to, any activity that would be a sexually-oriented offense per Texas Penal Code, Chapters 21, 22, or 43.~~]

[~~(B) There is no consent when:~~]

[~~*(i)* the alleged perpetrator knows or should know that the alleged victim is incapable of consenting because of impairment in judgment due to mental or emotional disease or defect;~~]

[~~*(ii)* consent is induced by force or threat against any person;~~]

[~~*(iii)* the alleged victim is unconscious or physically unable to resist;~~]

[~~*(iv)* the alleged perpetrator has intentionally impaired the alleged victim by administering any substance without the person's knowledge; or~~]

[~~*(v)* consent is coerced due to fear of retribution or hardship, or by exploiting the emotional dependency of the alleged victim on the alleged perpetrator.~~]

[~~(3) "Emotional or verbal abuse."~~]

[~~(A) When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, emotional or verbal abuse is defined as any act or use of verbal or other communication to threaten violence that makes a reasonable person fearful of imminent physical injury.~~]

[~~(B) When an alleged perpetrator is a paid caretaker, emotional or verbal abuse is defined as any act or communication that is:~~]

[~~*(i)* used to curse, vilify, humiliate, degrade, or threaten and that results in emotional harm; or~~]

[~~*(ii)* of such a serious nature that a reasonable person would consider it emotionally harmful.~~]

[~~(4) "Neglect."~~]

[~~(A) When the alleged perpetrator is an alleged victim/perpetrator, neglect is defined as the failure of one's self to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury.~~]

[~~(B) When an alleged perpetrator is a caretaker or paid caretaker, neglect is defined as:~~]

[~~*(i)* the failure to provide the protection, food, shelter, or care necessary to avoid emotional harm or physical injury; or~~]

[~~*(ii)* a negligent act or omission that caused or may have caused emotional harm, physical injury, or death.~~]

[~~(5) "Financial exploitation."~~]

[~~(A) When an alleged perpetrator is a caretaker or paid caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation is defined as the illegal or improper act or process of an alleged perpetrator using, or attempting to use, the resources of the alleged victim, including the alleged victim's social security number or other identifying information, for monetary or personal benefit, profit, or gain without the informed consent of the alleged victim. There is no informed consent when it is:~~]

[~~*(i)* not voluntary;~~]

[~~*(ii)* induced by deception or coercion; or~~]

[~~*(iii)* given by an alleged victim who the actor knows or should have known to be unable to make informed and rational decisions because of diminished capacity or mental disease or defect.~~]

[~~(B) When an alleged perpetrator is a caretaker, family member, or other individual who has an ongoing relationship with the alleged victim, financial exploitation excludes Theft in Chapter 31 of the Texas Penal Code.~~]

[~~(C) When an alleged perpetrator is a paid caretaker, financial exploitation includes, but is not limited to, Theft in Chapter 31 of the Texas Penal Code.~~]

(b) For provider investigations--the definitions of physical abuse, sexual abuse, verbal/emotional abuse, neglect, and exploitation are adopted pursuant to §48.002(b), Human Resources Code, and are found in Subchapter A of this chapter (relating to Introduction).

§711.1406. How is the term agency defined for the purpose of this subchapter?

(a) For the purpose of this chapter, the term "agency" has the meaning given by §48.401, Human Resources Code, as further clarified in this rule. Any terms used within the definition of "agency" have the meaning given by statute or elaborated upon by this chapter or chapter 705 of this title. The purpose of this rule is to provide a non-exhaustive list of agencies, the employees of which are subject to being listed on the EMR if they are found to have committed reportable conduct. The list is illustrative and not exclusionary. Employees of agencies not specifically enumerated that are within the meaning of §48.401 continue to be eligible for the EMR without regard to whether the agency is specifically enumerated below.

(b) The term "agency" means:

(1) a home and community support services agency licensed under Chapter 142, Health and Safety Code;

(2) a person exempt from licensure who provides home health, hospice, habilitation, or personal assistance services only to persons receiving benefits under:

(A) the home and community-based services (HCS) waiver program;

(B) the Texas home living (TxHmL) waiver program;

(C) the STAR + PLUS or other Medicaid managed care program under the program's HCS or TxHmL certification; or

(D) Section 534.152, Government Code;

(3) an intermediate care facility for individuals with an intellectual disability or related conditions (ICF-IID) licensed under Chapter 252, Health and Safety Code; or

(4) a provider investigated by DFPS under Subchapter F, Human Resources Code or §261.404, Family Code. Such providers include:

(A) a facility as defined in §711.3 of this chapter;

(B) a community center, local mental health authority, and local intellectual and developmental disability authority, as defined in §711.3 of this chapter;

(C) a person who contracts with a health and human services agency or managed care organization to provide home and community-based services (HCBS) as that term is defined in §48.251, Human Resources Code and which is the umbrella term for various long-term services and supports within the Medicaid program, whether delivered in a fee-for-service, managed care, or other service delivery model, and which includes but is not limited to:

(i) Waiver programs including:

(I) community living assistance and support services (CLASS);

(II) Deaf Blind Multiple Disabilities;

(III) HCS;

(IV) TxHmL;

(V) Medically Dependent Child Program (MDCP); and

(VI) Youth Empowerment Services (YES);

(ii) Community First Choice;

(iii) Texas Dual Eligible Integrated Care Project;

(iv) State plan services including:

(I) Community attendant services; and

(II) Personal attendant services;

(v) Managed Care Programs including:

(I) HCBS - Adult Mental Health;

(II) STAR + PLUS Managed Care program; and

(III) STAR Kid Managed Care program; and

(vi) any other program, project, waiver demonstration, or service providing long-term services and supports through the Medicaid program;

(D) a person who contracts with a Medicaid managed care organization to provide behavioral health services as that term is defined in §48.251 and which include but are not limited to:

(i) Targeted Case Management; and

(ii) Psychiatric Rehabilitation services;

(E) a managed care organization;

(F) an officer, employee, agent, contractor, or subcontractor of a person or entity listed in subsections (A) - (E) above; and

(G) an employee, fiscal agent, case manager, or service coordinator of an individual employer participating in the consumer directed service option, as defined by §531.051, Government Code.

§711.1408. What is reportable conduct?

(a) (No change.)

(b) For purposes of subsection (a) of this section, the terms abuse, neglect, sexual abuse, and financial exploitation have the meanings provided in Subchapter A of Chapter 705 (relating to Definitions) or Subchapter A of this Chapter and incorporated by reference in §711.1404 of this title (relating to How are the terms physical abuse, sexual abuse, emotional or verbal abuse, neglect, exploitation, and financial exploitation defined for the purpose of this subchapter?). [~~In-home investigations?) and §711.1406 of this title (relating to How are the terms abuse, neglect, and financial exploitation defined for Facility investigations?), depending upon the type of agency for which the employee worked.~~]

(c) - (d) (No change.)

§711.1413. What notice must DFPS give to an employee before the employee's name is submitted to the Employee Misconduct Registry?

When DFPS determines that an employee committed reportable conduct, DFPS must provide a written "Notice of Finding" to the employee. The notice must include:

(1) (No change.)

(2) a statement of the employee's right to dispute [~~appeal~~] the finding by filing a "Request for EMR Hearing" and the instructions for doing so;

(3) - (6) (No change.)

(7) a statement that DFPS reserves the right to make an emergency release of the findings to any subsequent employer of the employee if the employee has access to similar clients or persons served [~~while the appeal is pending~~];

(8) a statement that the employee is responsible for keeping DFPS timely informed of the employee's current employment and residential contact information, including addresses and phone numbers, [~~address~~] pending the outcome of any appeal filed by the employee; and

(9) a statement that if the employee fails, without good cause, to file a timely request for an EMR hearing [~~appeal of the Notice of Finding~~], the employee will be deemed to have waived the employee's rights to dispute the finding [~~appeal~~] and the employee's name will be submitted to the EMR.

§711.1414. How will the Notice of Finding be provided to an employee and who is responsible for ensuring that the department has a valid mailing address for an employee?

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

(c) It is the responsibility of the employee [~~who is investigated for alleged abuse, neglect, or exploitation of a client or person served by an agency subject to this subchapter~~] to provide the department with a valid address where notice can be mailed or, if no address is available, with valid contact information, including telephone numbers. It is also the responsibility of the employee to immediately notify DFPS of any change of address or contact information throughout the investigation and any period of time during which a dispute of the finding [~~an appeal~~] is pending.

§711.1415. How does an employee dispute [~~appeal~~] a finding of reportable conduct and what happens if the "Request for EMR Hearing" [~~appeal~~] is not filed or not filed properly?

(a) An employee may dispute [~~appeal~~] a finding of reportable conduct by submitting a Request for EMR Hearing. The Notice of Finding will contain instructions for filing the Request for EMR Hearing.

(b) The employee will be deemed to have accepted the finding of reportable conduct and DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry if the employee:

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

(3) files a Request for EMR Hearing, but fails to follow the filing instructions and, as a result, DFPS does not receive the Request for EMR Hearing in a timely manner or cannot determine the matter being disputed [~~appealed~~].

§711.1417. What is the deadline for filing the Request for EMR Hearing?

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

(d) If an employee files the Request for EMR Hearing after the deadline, DFPS will notify the employee that the request was not filed by the deadline, no EMR [~~appeal~~] hearing will be granted, and the employee's name will be submitted for inclusion in the Employee Misconduct Registry.

(e) (No change.)

§711.1427. How is the EMR hearing conducted?

(a) - (j) (No change.)

(k) The hearing will be recorded by audio or video tape in order to preserve a record of the hearing. A transcription of the hearing tape will not be made or provided unless an employee seeks judicial review, as provided in this subchapter. The costs of transcribing the testimony and preparing the record for judicial review shall be paid by the party who files for judicial review, unless the party establishes indigence as provided in Rule 20 of the Texas Rules of Appellate Procedure.

(l) (No change.)

§711.1429. How and when is the decision made after the EMR hearing?

(a) The administrative law judge will prepare a "Hearing Order" which will be mailed to the employee at the employee's last known mailing address. The Hearing Order must contain the following:

(1) separate statements of the findings of fact and conclusions of law that uphold, reverse, or modify the findings as to whether:

(A) the employee committed abuse, neglect, or financial exploitation [~~of a client or person served~~]; and

(B) (No change.)

(2) if reportable conduct is found to have occurred:

(A) (No change.)

(B) a statement that the finding of reportable conduct will be forwarded to the Department of Aging and Disability Services to be recorded in the Employee Misconduct Registry unless the employee [~~makes a~~] timely files a petition [~~request~~] for judicial review as provided in §711.1431 of this title (relating to How is judicial review requested?) [~~and the court reverses the finding of reportable conduct~~].

(b) (No change.)

§711.1431. How is judicial review requested and what is the deadline?

(a) A timely motion for rehearing is a prerequisite to judicial review and must be filed in accordance with Subchapters F and G, Chapter 2001, Government Code. The motion for rehearing must be served on the administrative law judge and on DFPS's attorney of record. [~~To request judicial review of a Hearing Order, the employee must file a petition for judicial review in a Travis County district court, as provided by Government Code, Chapter 2001, Subchapter G.~~]

(b) To seek judicial review of a Hearing Order, a party must file a petition for judicial review in a Travis County district court, in accordance with Subchapters F and G, Chapter 2001, Government Code. [~~The petition must be filed with the court no later than the 30th day after the date the Hearing Order becomes final, which is the date that the Hearing Order is received by the employee.~~]

(c) (No change.)

(d) Unless citation for a petition for judicial review is served on DFPS within 90 [~~45~~] days after the date on which the order under review becomes final [~~Hearing Order is mailed to the employee~~], DFPS will submit the employee's name for inclusion in the Employee Misconduct Registry. If valid service of citation is received after the employee's name has been recorded in the registry, DFPS will[~~determine whether the lawsuit was timely filed and, if so, immediately~~] request that the employee's name be removed from the registry pending the outcome of the judicial review in district court.

§711.1432. What action does DFPS take when an employee has exhausted the employee's administrative remedies [~~all appeal rights have been exhausted~~]?

(a) An employee has exhausted the employee's administrative remedies if the employee has been found to have committed reportable conduct and the employee has received or is no longer eligible for:

(1) an EMR hearing;

(2) a rehearing of the employee's case following an EMR hearing; or

(3) judicial review.

(b) DFPS takes the following actions once an employee has exhausted the employee's administrative remedies [~~In any case in which an employee filed a timely appeal, DFPS will take the following actions once the appeal has been finally resolved~~]:

(1) modifies [~~modify~~] DFPS's internal records to reflect the final outcome in the case [~~of the appeal~~];

(2) provides [~~provide~~] notice of the final outcome in the case [~~of the appeal~~] to any person or entity that was previously notified of DFPS's findings, if the finding is modified; and

(3) sends [~~send~~] the employee's name and required information to the Employee Misconduct Registry if the finding of reportable conduct was sustained [~~upheld~~].

§711.1434. What special considerations apply to employees of state-operated facilities?

(a) The sole way to dispute [~~appeal~~] a finding of reportable conduct and submission of the employee's name to the Employee Misconduct Registry is provided by the procedures in this subchapter. A Request for EMR hearing [~~An appeal~~] filed under this subchapter is not a request for a grievance on disciplinary action from an employer.

(b) (No change.)

(c) When an employee files both a Request of EMR hearing [~~an appeal of reportable conduct~~] under this subchapter and a grievance on disciplinary action based on DFPS's finding of reportable conduct, the EMR [~~appeal~~] hearing will take place prior to the grievance hearing.

(d) (No change.)

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602257
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

40 TAC §711.1406, §711.1411

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Human Resources Code §§48.401 - 48.408.

§711.1406. How are the terms abuse, neglect, and financial exploitation defined for Facility investigations?

§711.1411. Under what circumstances does DFPS submit an employee's name to the Employee Misconduct Registry?

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-201602258
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 438-3854

♦ ♦ ♦

CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§744.401, 744.403, 744.605, 744.901, 744.1303, 744.1305, 744.1307, 744.1309, 744.1311, 744.2301, 744.2401, 744.2507, 744.2523, 744.3551, 744.3553, 744.3559, 744.3561; new §744.2667 and §744.2669; and repeal of §744.3555, in Chapter 744, concerning Minimum Standards for School-Age and Before or After-School Programs. The purpose of the amendments, new rules and repeal are to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact Before-School and After-School Programs (BAPs and SAPs). The new health and safety training requirements mandated by the Act include the following topics for pre-service training and annual training: (1) food allergies; (2) handling, storing, and disposing of hazardous materials; (3) more robust emergency preparedness plans; (4) administering medication; and (5) building and physical premises safety.

There is also one topic required by the Act that is already required in annual training, but is not currently required in the pre-service training for BABs and SAPs. The additional health and safety training requirement that has been added to the pre-service training is training on precautions in transporting children if the operation transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for BAPs and SAPs. The health and safety requirements correlate to some of the training topics, including requiring operations to (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes are:

The amendments to §744.401: (1) adds a list of each child's food allergies (with a parent's permission) to the school-age and before and after-school program's posting requirements; (2) updates the name of the *Parent Notification Poster,* and (3) makes other wording changes for consistency.

The amendments to §744.403: (1) clarifies that the list of each child's food allergies must be posted (with a parent's permission) where food is prepared and in each room where the child may spend time; and (2) deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.

The amendment to §744.605 adds a requirement for programs to obtain a completed food allergy emergency plan before admitting a child into care, if applicable; and if a parent wants the information posted, permission from the parent to post the information.

The amendment to §744.901 updates a cite and makes the language consistent.

The amendments to §744.1303: (1) clarifies the wording to be consistent with the current wording of the operational policies rule; (2) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (3) requires programs to share the emergency preparedness plan with all employees.

The amendment to §744.1305 adds six topics that must be covered in the pre-service training of caregivers hired after September 1, 2016; and updates the existing language for a current training topic.

The amendment to §744.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §744.1309: (1) adds six topics that must be covered in the annual training of caregivers and site directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.

The amendments to §744.1311: (1) adds six topics that must be covered in the annual training of operation directors and program directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.

The amendment to §744.2301: adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips.

The amendments to §744.2401: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §744.2105.

The amendment to §744.2507 requires a program to use, store, and dispose of hazardous materials as recommended by the manufacturer to ensure a healthy environment for children.

The amendment to §744.2523 clarifies in more detail what the universal precautions as outlined by the Centers for Disease Control (CDC) entail, including placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately.

New §744.2667 defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction.

New §744.2669 requires: (1) a food allergy emergency plan for each child with a known food allergy; and (2) the plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.

The amendment to §744.3551 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering.

The amendments to §744.3553 adds to the requirements for an emergency preparedness plan to also include: (1) the staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the operation where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents at evacuation, relocation, or when sheltering is lifted.

The repeal of §744.3555 is because all of the information is already included in §744.1303(4) and §744.507.

The amendment to §744.3559 adds the "sheltering" language for clarification.

The amendment to §744.3561 clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be that: (1) DFPS will be in compliance with the Child Care and Development Block Grant Act of 2014; (2) there will be clarification regarding health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

There is an anticipated economic cost for persons required to comply with some of the proposed rule changes. The proposed changes are anticipated to have an adverse impact on businesses, including small and micro-businesses. The proposed changes will impact School Age Programs and Before and After School Programs. According to the Fiscal Year (FY) 2015 DFPS Annual Report and Data Book as of August 31, 2015, there were,

1,551 School Age Programs and Before and After School Programs.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. A 2010 survey conducted by CCL indicated that approximately 55% of Licensed Child Care Centers, including School Age Programs and Before and After School Programs, are for profit businesses, 70% are independently owned, 98% have fewer than 100 employees, and 68% have fewer than 20 employees.

The fiscal impact to these operations primarily results from additional staff time to develop or modify curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some programs.

For School Age Programs and Before and After School Programs, the staff time required to comply with the standards will impact Directors and caregivers. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2014 estimates: (1) for all Directors and Primary Caregivers, DFPS is using a $24.27 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center; and (2) for all caregivers (other than a Primary Caregiver) DFPS is using a $9.49 per hour mean wage from the Occupational Title of Childcare Workers.

Fiscal Impact for Proposed §744.1305(b). This section adds six additional topics that must be covered in the pre-service training for caregivers hired on or after September 1, 2016. One of the six topics is precautions in transporting children and is only required for operations that transport children whose chronological or developmental age is younger than nine years old. There is no increase in the number of pre-service training hours required; there is only a change in the content of the required training. Any costs associated with this rule change depends upon whether a program pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers. For programs that:

(1) Pay for outside training to obtain pre-service training for caregivers, there are no additional costs associated with this change in training content;

(2) Utilize free training in the community (for example AgriLife training modules) to obtain pre-service training for caregivers, the only additional costs with this change in training content relates to the new topic regarding precautions in transporting children. For example, the relevant AgriLife training modules that could be used to comply with five of the six additional topics are free. However, the AgriLife training module relating to transporting children has a $14.00 cost. Therefore, it is anticipated that each program that transports children whose chronological or developmental age is younger that nine year old will need to pay the $14.00 costs for the transportation module for each caregiver.

(3) Provide in-house pre-service training to caregivers, there are costs associated with modifying their current pre-service curriculum for these six topics. However, the time to modify the curriculum is not anticipated to be extensive, because the program will have already developed new curriculum for annual training on these six topics, see "Fiscal Impact for Proposed §744.1309(d)". It is anticipated that a director, or curriculum developer that is similarly paid, will spend approximately 20 hours to modify the pre-service training curriculum. Therefore, the approximate one-time cost to modify the pre-service training curriculum is $485.40 (20 X $24.27).

Fiscal Impact for Proposed §744.1309(d). This section adds six additional topics that must be covered in the annual training for caregivers and site directors. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. Any costs associated with this rule change depends on whether a program pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers and site directors. For programs that:

(1) Pay for outside training or utilize free training in the community to obtain annual training for caregivers and site directors, there are possible costs with employees that may take more than the mandated 15 hours of annual training to comply with the six additional topics. For example, the training modules with AgriLife are two hours each. It is anticipated that five AgriLife modules will be needed to comply with the six additional topics. These ten hours of AgriLife training plus the already mandated six hours of annual training (§744.1309(c)) would mean that a caregiver or site director would be taking 16 hours of annual training instead of the 15 hours of mandated annual training. It is anticipated that each program would need to pay each caregiver $9.49 per hour and site director $24.27 per hour for each additional training hour that is taken. It is anticipated that over time more training modules will be created that will have a shorter time frame for training on these six topics. When that happens, these costs would no longer be associated with this rule change; and

(2) Provide annual in-house training to caregivers and site directors, there are costs associated with developing new curriculum for these six topics. This section does not mandate a time frame for training on these six topics. However, for purposes of estimating a cost for developing training on these topics, it is assumed that training on these six topics will be two to three hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a director, or curriculum developer that is similarly paid, will spend an average of 80 to 120 hours to develop the two to three hour curriculum on these six topics. Therefore, the approximate one-time cost for the development of the annual curriculum is between $1,941.60 (80 X $24.27) and $2,912.40 (120 X $24.27).

Fiscal Impact for Proposed §744.1311(d). This section adds six additional topics that must be covered in the annual training for an operation or program director. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. For programs that pay for outside training or utilize free training in the community to obtain annual training for operation and program directors, there are no additional costs associated with this change in training content. For programs that actually provide annual in-house training to operation and program directors, there are costs associated with developing new curriculum for these six topics. However, the program will have already developed the same curriculum

for caregivers in response to §744.1309, see "Fiscal Impact for Proposed §744.1309(d)". Therefore, CCL assumes there will be no costs associated with this rule change.

Regulatory Flexibility Analysis: A regulatory flexibility analysis is not required for the proposed rules with fiscal implications because the proposed rules are specifically required by federal law (The Child Care and Development Block Grant of 2014). Therefore, the proposed rules are consistent with the health and safety of children, whom the law was intended to protect.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to *CCLRules@dfps.state.tx.us.* Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-551, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §744.401, §744.403

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.401. What items must I post at my operation at all times?

You must post the following items:

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

(4) Your emergency [~~Emergency and~~] evacuation and relocation diagram as specified in §744.3561 of this title (relating to Must I have an emergency evacuation and relocation diagram?) [~~plans~~];

(5) (No change.)

(6) The Licensing *Parent Notification Poster;* [~~*Notice of Availability for Review of:*~~]

[~~(A) The most recent fire inspection report, if applicable;~~]

[~~(B) The most recent sanitation inspection report, if applicable;~~]

[~~(C) The most recent gas inspection report, if applicable; and~~]

[~~(D) The applicable Licensing minimum standards;~~]

(7) Telephone numbers specified in §744.405 of this title (relating to What telephone numbers must I post and where must I post them?); [~~and~~]

(8) A list of each child's food allergies, with a parent's permission as specified in §744.605(16) of this title (relating to What admission information must I obtain for each child?); and

(9) [~~(8)~~] Any other Licensing notices with specific instructions to post the notice.

§744.403. When and where must these items be posted?

(a) (No change.)

(b) With the permission of the child's parent, you must post a list of each child's food allergies where you prepare or serve food and in each room where the child may spend time. The posting must be in a place where employees may easily view it. [~~Emergency and evacuation relocation plans must be posted in each room used by children.~~]

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §744.605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to the operation:

(1) - (13) (No change.)

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school; [~~and~~]

(15) Permission for a school-age child to ride a bus, [~~or~~] walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and[~~.~~]

(16) A completed food allergy emergency plan for the child, if applicable, and if a parent wants the information posted, permission from a parent to post the child's allergy information.

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

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DIVISION 4. PERSONNEL RECORDS

40 TAC §744.901

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.901. What information must I maintain in my personnel records?

You must have the following records at the operation and available for review during your hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

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

(10) A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview regarding the prevention, recognition, and reporting [~~of symptoms~~] of child abuse and[~~,~~] neglect, [~~and sexual abuse and the responsibility for reporting these~~] as outlined in §744.1303 of this title (relating to What must [~~should~~] orientation for employees at [~~to~~] my operation include?).

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Department of Family and Protective Services
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For further information, please call: (512) 438-5559

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SUBCHAPTER D. PERSONNEL
DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§744.1303, 744.1305, 744.1307, 744.1309, 744.1311

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.1303. What must [~~should~~] orientation for employees at [~~to~~] my operation include?

Your orientation for employees must include at least the following:

(1) (No change.)

(2) An overview of operational [~~Your operation's~~] policies, including discipline and[~~,~~] guidance practices[~~,~~] and procedures for the release of children;

(3) An overview regarding the prevention, recognition, and reporting [~~of symptoms~~] of child abuse and[~~,~~] neglect including:[~~, and sexual abuse and the responsibility for reporting these;~~]

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Internal procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care center staff members, children, and parents;

(4) An overview of the [~~The~~] procedures to follow in handling emergencies, which includes sharing the emergency preparedness plan with all employees. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The [~~use and~~] location and use of fire extinguishers and first-aid equipment.

§744.1305. What must be covered in the eight clock hours of pre-service training for caregivers?

(a) Before a caregiver can be counted in the child/caregiver ratio, the caregiver must complete eight clock hours of pre-service training that covers the following areas:

(1) Developmental stages of children;

(2) Age-appropriate activities for children;

(3) Positive guidance and discipline of children;

(4) Fostering children's self-esteem;

(5) Supervision and safety practices in the care of children;

(6) Positive interaction with children; and

(7) Preventing and controlling the spread of communicable diseases, including immunizations.

(b) Pre-service training for caregivers you hire on or after 9/1/2016 must also cover the following areas:

(1) The emergency preparedness plan for your operation;

(2) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(3) Preventing and responding to emergencies due to food or an allergic reaction;

(4) Understanding building and physical premises safety, including identification and protection from hazards, bodies of water, and vehicular traffic;

(5) Handling, storing, and disposing of hazardous materials; and

(6) Precautions in transporting children, if your operation transports a child whose chronological or developmental age is younger than nine years old.

§744.1307. Are any caregivers exempt from the pre-service training? Yes. A caregiver is exempt from the pre-service training requirements if the caregiver has:

(1) At [~~Caregivers with at~~] least six months prior experience in a regulated operation; or

(2) Documentation of at least eight clock hours of training in the areas specified in §744.1305 of this title (relating to What must be covered in the eight clock hours of pre-service training for caregivers?) at another regulated operation [~~with documentation of equivalent child-care training are exempt from the pre-service training requirements~~].

§744.1309. How many clock hours of annual training must be obtained by caregivers and site directors?

(a) Each caregiver and site director must obtain at least 15 clock hours of training each year relevant to the age of the children for whom the person provides care.

(b) The 15 clock hours of annual training are exclusive of requirements for orientation, pre-service training [~~requirements~~], CPR and first aid training, transportation safety training, and high school child-care work-study classes.

(c) [~~(b)~~] At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) [~~(c)~~] The remaining [~~clock hours of~~] annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition or physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and[~~,~~] time and stress management);

[~~(8) Preventing the spread of communicable diseases;~~]

(8) [~~(9)~~] Topics relevant to the particular age group the caregiver is assigned;

(9) [~~(10)~~] Planning developmentally appropriate learning activities; and

(10) [~~(11)~~] Minimum standards and how they apply to the caregiver.

[~~(d) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements as outlined in §744.1317 of this title (relating to What additional training must a person have in order to transport a child in care?).~~]

(f) [~~(e)~~] No [~~A caregiver or site director may obtain no~~] more than 80% [~~50%~~] of the annual training hours may be obtained through self-instructional training.

§744.1311. How many clock hours of training must an operation director or a program director obtain each year?

(a) An operation director and/or a program director must obtain at least 20 clock hours of training each year relevant to the age of the children for whom the operation provides care.

(b) The 20 clock hours of annual training are exclusive of any requirements for [~~CPR and first aid,~~] orientation, pre-service training, CPR and first aid training, and transportation safety training [~~requirements~~].

(c) [~~(b)~~] At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum;

(4) Teacher-child interaction; and

(5) Serving children with special care needs.

(d) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §744.2653 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §744.2523 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(e) [~~(c)~~] An operation director or program director with:

(1) Five [~~five~~] or fewer years of experience as a designated director of an operation or as a program director must [~~also~~] complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or[~~.~~]

(2) [~~(d)~~] More [~~A director with more~~] than five years of experience as a designated director of an operation or as a program director must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

(f) [~~(e)~~] The remainder of the 20 clock hours of annual training must be selected from the training topics specified in §744.1309(e) [~~§744.1309(e)~~] of this title (relating to How many clock hours of annual training must be obtained by caregivers and site directors?).

[~~(f) If the operation transports a child whose chronological or developmental age is younger than nine years old, the director must complete two hours of annual training on transportation safety, as outlined in §744.1317 of this title (relating to What additional training must a person have in order to transport a child in care?).~~]

(g) An operation [~~The~~] director or program director may obtain clock hours or CEUs from the same sources as caregivers.

(h) Training hours may not be earned for presenting training to others[~~, with the exception of up to two hours of training on transportation safety~~].

(i) No more than 80% [~~50%~~] of the annual training hours may be obtained through self-instructional training.

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER I. FIELD TRIPS

40 TAC §744.2301

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2301. May I take children away from my operation for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the operation. Anytime you take a child on [~~away from the operation for~~] a field trip, you must comply with each of the following requirements:

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

(5) Caregivers must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) [~~(5)~~] Each child must wear a shirt, nametag, or other identification listing the name of the operation and the operation's telephone number;

(7) [~~(6)~~] Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, operation tee-shirt, brightly-colored clothes, or other easily spotted identification;

(8) [~~(7)~~] Each caregiver supervising a field trip must have transportation available, [~~or~~] a communication device such as a cellular phone, message pager, or two-way radio available, or an alternate plan for transportation at the field-trip location in case of emergency; and

(9) [~~(8)~~] Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

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

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General Counsel
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SUBCHAPTER J. NUTRITION AND FOOD SERVICE

40 TAC §744.2401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2401. What are the basic requirements for snack and mealtimes?

(a) You must serve all children regular meals and morning and afternoon snacks as specified in this subchapter.

(b) [~~(1)~~] If breakfast is served, a morning snack is not required.

(c) [~~(2)~~] A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(d) [~~(3)~~] If your operation is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section [~~subsection~~].

(e) [~~(b)~~] You must ensure a supply of drinking water is readily available to each child and is served at every snack, mealtime, and after active play in a safe and sanitary manner.

(f) [~~(c)~~] You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk.

(g) [~~(d)~~] You must not use food as a reward [~~or punishment~~].

(h) You must not serve a child a food identified on the child's food allergy emergency plan as specified in §744.2667 of this title (relating to What is a food allergy emergency plan?).

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General Counsel
Department of Family and Protective Services
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SUBCHAPTER K. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §744.2507, §744.2523

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2507. What steps must I take to ensure a healthy environment for children at my operation?

You must clean, repair, and maintain the building, grounds, and equipment to protect the health of the children. This includes, but is not limited to:

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

(9) Sanitizing table tops, furniture, and other similar equipment used by children when soiled or contaminated with matter such as food or bodily [~~body~~] secretions; [~~and~~]

(10) Clearly marking cleaning supplies and other toxic materials and keeping them separate from food and inaccessible to children; and[~~.~~]

(11) Using, storing, and disposing of hazardous materials as recommended by the manufacturer.

§744.2523. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

(1) Using [~~Use of~~] disposable, nonporous gloves;

(2) Placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately;

(3) [~~(2)~~] Discarding all other [~~the~~] gloves immediately after one use; and

(4) [~~(3)~~] Washing hands after using and disposing of the gloves.

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER L. SAFETY PRACTICES
DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §744.2667, §744.2669

The new sections proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.2667. What is a food allergy emergency plan?

A food allergy emergency plan is an individualized plan prepared by the child's health care professional that includes:

(1) a list of each food the child is allergic to;

(2) possible symptoms if exposed to a food on the list; and

(3) the steps to take if the child has an allergic reaction.

§744.2669. When must I have a food allergy emergency plan for a child?

You must have a food allergy emergency plan for each child with a known food allergy. The child's heath care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file, post it as specified in §744.403(b) of this title (relating to When and where must these items be posted?), and take it on any field trip that the child is on.

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SUBCHAPTER P. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§744.3551, 744.3553, 744.3559, 744.3561

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.3551. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation, [~~and~~] relocation, and sheltering. The plan addresses the types of responses to emergencies most likely to occur in your area including: [~~but not limited to natural events such as tornadoes, floods or hurricanes, health events such as medical emergencies, communicable disease outbreak, and human-caused events such as intruder with weapon, explosion, or chemical spill.~~]

(1) An evacuation of the children and caregivers to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering of children and caregivers within the operation to temporarily shelter them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§744.3553. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering of children including:

(A) The [~~That in an emergency, the~~] first responsibility of staff in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including but not limited to specific procedures for evacuating and relocating children with limited mobility or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) (No change.)

(D) The staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the operation where children should gather;

(E) [~~(D)~~] Name and address of the alternate shelter away from the operation you will use as needed; and

(F) [~~(E)~~] How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter;[~~.~~]

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents, and us; and

(3) How your staff will evacuate and relocate with the essential documentation including:

(A) Parent and emergency contact telephone numbers for each child in care;

(B) Authorization for emergency care for each child in care; and

(C) The child tracking system information for children in care;[.]

(4) How your staff will continue to care for children until each child has been released; and

(5) How you will reunify the children with their parents at evacuation, relocation, or when sheltering is lifted.

§744.3559. Must I practice my emergency preparedness plan [plans]?

The following components of your operation's emergency preparedness plan [plans] must be practiced as specified below:

(1) (No change.)

(2) You must practice a severe weather or sheltering drill at least once every three months; and

(3) You must document these drills, including the date of the drill, time of the drill, and length of time for the evacuation, [or] relocation, or sheltering to take place.

§744.3561. Must I have an emergency evacuation and relocation diagram?

(a) (No change.)

(b) You must post an emergency evacuation and relocation diagram [plan] in each room the children use. You must post the plan [in a prominent place] near the entrance and/or exit of the room and where children and employees may easily view the diagram.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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40 TAC §744.3555

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§744.3555. With whom must I share this plan?

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General Counsel
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For further information, please call: (512) 438-5559

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CHAPTER 745. LICENSING

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §745.505 and §745.615 and new §745.616 in Chapter 745, concerning Licensing. The purpose of the amendments and new section is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014 and Senate Bill (S.B) 1496, 84th Regular Legislative Session.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to background checks. Finally, there will be additional requirements of the Act addressed in future rulemaking.

In regards to background checks, Senate Bill (S.B.) 1496, 84th Regular Legislative Session, amended HRC §42.0523 and §42.056 in order to comply with the Act's requirements. A summary of the background check changes in response to the Act and S.B. 1496 include: (1) requiring Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person; and (2) requiring Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children to obtain fingerprint-based criminal history checks (these homes were previously only required to have name-based criminal history checks). There is also a transitional rule which clarifies which persons are required to have a fingerprint-based criminal history check and when the checks are due.

The summary of the changes are:

The amendment to §745.505 requires Listed Family Homes that provide care to unrelated children to pay biennial background check fees of $2.00 per person.

The amendment to §745.615 requires Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes that provide care to unrelated children, to request fingerprint-based criminal history checks.

New §745.616 clarifies which persons in these homes are required to have a fingerprint-based criminal history check and when the request for checks are due.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections. According to the DFPS Centralized Background Check Unit (CBCU), implementation of the legislation requiring fingerprint-based criminal history checks for additional persons will increase the CBCU's workload; however, the Legislature provided an FTE to cover the increase in the workload.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) DFPS will be in compliance with the Child Care and Development Block Grant Act of 2014; (2) DFPS will be in compliance with HRC §42.056 (S.B. 1496); (3) there will be clarification regarding background checks; and (4) there will be a reduced risk to children.

There is an anticipated economic cost for persons required to comply with some of the proposed rule changes. The proposed changes are anticipated to have an adverse impact on businesses, including small and micro-businesses. The proposed changes will impact Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes. According to the FY 2015 DFPS Annual Report and Data Book as of August 31, 2015 there were: (1) 1,720 Licensed Child-Care Homes; (2) 4,678 Registered Child-Care Homes; and (3) 5,026 Listed Family Homes.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. CCL is assuming virtually all Homes (Licensed Child-Care Homes, Registered Child-Care Homes, and Listed Family Homes) meet the definitions of a small and micro-business.

The fiscal impact to these operations results from (1) background check fees for Listed Family Homes; and (2) costs for fingerprint-based criminal history checks for all three types of Homes.

The size of Licensed Child-Care Homes and Registered Child-Care Homes and the number of their employees vary. Also, for all Homes, the number of household members varies. Given these variations, it is not possible to project the fiscal impact to each home; however, it is possible to project an average "unit cost" for background checks that are newly required by the rules proposed.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that is projected to have a fiscal impact on at least some operations.

Fiscal Impact for Proposed §745.505. This section requires a listed family home that provides care to unrelated children to pay a background check fee of $2.00 per person biennially. The total impact will depend upon how many household members a listed family home has that are required to receive a background check.

Fiscal Impact for Proposed §745.615. This section requires licensed child-care homes, registered child-care homes, and listed family homes to request fingerprint-based criminal history checks on certain persons at a cost of $41.25 per person. This is generally a one-time cost. Once a person has undergone an initial fingerprint-based criminal history check, the person is not required to re-request fingerprints in the future provided the person does not move out-of-state after the initial check and the person undergoes name-based background checks at least every two years. The total impact will depend upon how many employees a Licensed Child-Care Home or Registered Child-Care Home has and how many household members each home (Licensed Child-Care Home, Registered Child-Care Home, or Listed Family Home) has that are required to have a fingerprint-based criminal history check.

Regulatory Flexibility Analysis: A regulatory flexibility analysis is not required for the proposed rules with fiscal implications because the proposed rules are specifically required by state law (S.B. 1496) and federal law (The Child Care and Development Block Grant of 2014). Therefore, the proposed rules are consistent with the health and safety of children, whom the laws were intended to protect.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-551, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER E. FEES

40 TAC §745.505

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§745.505. What fees must I pay to list my family home and maintain the listing?

(a) The following chart contains the fees required for listed family homes, when the fees are due, and the consequences for failure to pay the fees on time:[~~. Note that for listed family homes the fees for background checks are included in the $20 application and annual fees.~~]

Figure: 40 TAC §745.505(a)

[~~Figure: 40 TAC §745.505(a)~~]

(b) The fees listed in subsection (a) of this section are waived for a person with a listing who only provides child care to a related child in the child's own home as approved by the Texas Workforce Commission's Listed Family Home Fee Waiver Authorization form. [~~A listed family home in which a relative child-care provider cares for the child(ren) in the child(ren)'s own home is exempt from paying 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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General Counsel
Department of Family and Protective Services
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SUBCHAPTER F. BACKGROUND CHECKS
DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.615, §745.616

The amendment and new section are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment and new section implement HRC §§42.042, 42.0421, 42.0523, and 42.056 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§745.615. On whom must I request background checks?

(a) (No change.)

(b) In addition to any other background check required by this section, you must request fingerprint-based criminal history checks on the following:

(1) If you are a permit holder, or applicant for a permit, for a child-placing agency, general residential operation, independent foster home, child-care center, before or after-school program, [~~or~~] school-age program, licensed child-care home, registered child-care home, or listed family home providing care to unrelated children, then you must request a fingerprint-based criminal history check for each person who is required to have a name-based background check under subsection (a)(1) - (6) of this section; and

(2) (No change.)

(c) - (d) (No change.)

§745.616. Transitional rule for requesting fingerprint-based criminal history checks for listed family homes, registered child-care homes, and licensed child-care homes as required by the 84th Texas Legislature.

(a) The 84th Texas Legislature enacted changes to Human Resources Code (HRC) §42.056, imposing new fingerprint-based criminal history check (fingerprint-based check) requirements on certain persons affiliated with listed family homes that provide care to unrelated children, registered child-care homes, and licensed child-care homes who had not previously been required to undergo these checks. See S.B. 1496, 84th Regular Legislative Session. The purpose of this transitional rule is to provide guidance on when a fingerprint-based check should be requested and when Licensing will begin to cite a home for a violation of minimum standards for failing to request a required fingerprint-based check. This rule applies only to listed family homes, registered child-care homes, or licensed child-care homes, and only with respect to persons who were not previously required to undergo a fingerprint-based check under HRC §42.056, as that statute existed before the changes from S.B. 1496 became effective on September 1, 2016.

(b) Beginning September 1, 2016, before we issue you a permit to operate a listed family home, registered child-care home, or licensed child-care home you must:

(1) Request fingerprint-based checks for all persons listed in §745.615(a)(1) - (6) of this title (relating to On whom must I request background checks?); and

(2) Request these fingerprint-based checks when you request the initial background checks that you must request according to §745.625(a) of this title (relating to When must I submit a request for an initial or renewal background check?).

(c) For listed family homes, registered child-care homes, or licensed child-care homes that have been issued a permit to operate a home before September 1, 2016, you must request fingerprint-based checks for all persons listed in §745.615(a)(1) - (6) who do not already have a valid fingerprint-based check on file, in accordance with the timeframes listed below:
Figure: 40 TAC §745.616(c)

(d) For persons described in subsection (b) of this section, Licensing will begin citing new homes for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2016.

(e) For persons described in subsection (c) of this section, Licensing will provide technical assistance to listed family homes, registered child-care homes, or licensed child-care homes until September 1, 2017, and will begin citing operations for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2017.

(f) This rule expires on December 31, 2017.

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

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§746.401, 746.403, 746.605, 746.901, 746.1303, 746.1305, 746.1307, 746.1309, 746.1311, 746.3001, 746.3301, 746.3407, 746.3425, 746.3505, 746.5201, 746.5202, 746.5205, and 746.5207; new §746.3817 and §746.3819; and repeal of §746.5203, in Chapter 746, concerning Minimum Standards for Child-Care Centers. The purpose of the amendments, new and repeal is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact Licensed Child Care Centers. The new health and safety training requirements mandated by the Act include the following topics for pre-service training and annual training: (1) food allergies; (2) handling, storing, and disposing of hazardous materials; (3) more robust emergency preparedness plans; (4) administering medication; and (5) building and physical premises safety.

There is also one topic required by the Act that is already required in annual training, but is not currently required in the pre-service training for Licensed Child-Care Centers. The additional health and safety training requirement that has been added to the pre-service training is training on precautions in transporting children if the operation transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for Licensed Child-Care Centers. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, including requiring operations to (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the operation, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes are:

The amendments to §746.401: (1) adds a list of each child's food allergies (with a parent's permission) to a licensed child-care center's posting requirements; (2) updates the name of the *Parent Notification Poster,* and (3) makes other wording changes for consistency.

The amendment to §746.403: (1) clarifies that the list of each child's food allergies must be posted (with a parent's permission) where food is prepared and in each room where the child may spend time; and (2) deletes the posting information about an emergency evacuation and relocation plan because it is duplicative.

The amendment to §746.605 adds a requirement for centers to obtain a completed food allergy emergency plan before admitting a child into care, if applicable; and if a parent wants the information posted, permission from the parent to post the information.

The amendment to §746.901 updates a cite and makes the language consistent.

The amendments to §746.1303: (1) clarifies the wording to be consistent with the current wording of the operational policies rule; (2) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (3) requires centers to share the emergency preparedness plan with all employees.

The amendment to §746.1305 adds six topics that must be covered in the pre-service training of caregivers hired after September 1, 2016; and updates the existing language for a current training topic.

The amendment to §746.1307 clarifies when a caregiver is exempt from pre-service training.

The amendments to §746.1309: (1) adds six topics that must be covered in the annual training of caregivers; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.

The amendments to §746.1311: (1) adds six topics that must be covered in the annual training for child-care center directors; (2) deletes a redundant paragraph about transportation safety training; and (3) increases from 50% to 80% the amount of annual training hours that may be obtained through self-instructional training.

The amendment to §746.3001 adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips.

The amendments to §746.3301: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §746.2805.

The amendment to §746.3407 requires a child-care center to use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §746.3425 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately.

The amendment to §746.3505 clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child.

New §746.3817 defines a food allergy emergency plan, including a list of foods a child is allergic to, possible symptoms, and what steps to take if there is an allergic reaction.

New §746.3819 requires: (1) a food allergy emergency plan for each child with a known food allergy; and (2) the plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.

The amendment to §746.5201 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering.

The amendments to §746.5202 adds to the requirements for an emergency preparedness plan to also include: (1) the staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the center where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents at evacuation, relocation, or when sheltering is lifted.

The repeal of §746.5203 is because all of the information is already included in §746.1303(4) and §746.507.

The amendment to §746.5205 adds the "sheltering" language for clarification.

The amendment to §746.5207 clarifies the wording of an emergency evacuation and relocation diagram and where the diagram should be posted.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) DFPS will be in compliance with the Child Care and Development Block Grant Act of 2014; (2) there will be clarification regarding the health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

There is an anticipated economic cost for persons required to comply with some of the proposed rule changes. The proposed changes are anticipated to have an adverse impact on businesses, including small and micro-businesses. The proposed changes will impact Licensed Child-Care Centers. According to the FY 2015 DFPS Annual Report and Data Book as of August 31, 2015 there were 7,888 Licensed Child-Care Centers.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. A 2010 survey conducted by CCL indicated that approximately 55% of Licensed Child Care Centers are for profit businesses, 70% are independently owned, 98% have fewer than 100 employees, and 68% have fewer than 20 employees.

The fiscal impact to these centers primarily results from additional staff time to develop or modify curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some centers.

For Licensed Child-Care Centers, the staff time required to comply with the standards will impact Directors. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2014 estimates: For all Directors, DFPS is using a $24.27 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center.

Fiscal Impact for Proposed §746.1305(c). This section adds six additional topics that must be covered in the pre-service training for caregivers hired on or after September 1, 2016. One of the six topics is precautions in transporting children and is only required for centers that transport children whose chronological or developmental age is younger than nine years old. There is no increase in the number of pre-service training hours required; there is only a change in the content of the required training. Any costs associated with the rule change depends on whether a center pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers. For centers that:

(1) Pay for outside training to obtain pre-service training for caregivers, there are no additional costs associated with this change in training content;

(2) Utilize free training in the community (for example AgriLife training modules) to obtain pre-service training for caregivers, the only additional costs with this change in training content relates to the new topic regarding precautions in transporting children. For example, the relevant AgriLife training modules that could be used to comply with five of the six additional topics are free. However, the AgriLife training module relating to transporting children has a $14.00 cost. Therefore, it is anticipated that each center that transports children whose chronological or developmental age is younger that nine years old will need to pay the $14.00 costs for the transportation module for each caregiver; and

(3) Provide in-house pre-service training to caregivers, there are costs associated with modifying their current pre-service curriculum for these six topics. However, the time to modify the curriculum is not anticipated to be extensive, because the center will have already developed new curriculum for annual training on these six topics, see "Fiscal Impact for Proposed §746.1309(f)". It is anticipated that a director, or curriculum developer that is similarly paid, will spend approximately 20 hours to modify the pre-service training curriculum. Therefore, the approximate one-time cost to modify the pre-service training curriculum is $485.40 (20 X $24.27).

Fiscal Impact for Proposed §746.1309(f). This section adds six additional topics that must be covered in the annual training for caregivers. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. Any costs associated with the rule change depends on whether a center pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers. For centers that:

(1) Pay for outside training or utilize free training in the community to obtain annual training for caregivers, there are no additional costs associated with this change in training content; and

(2) Provide annual in-house training to caregivers, there are costs associated with centers developing new curriculum for these six topics. This section does not mandate a time frame for training on these six topics. However, for purposes of estimating a cost for developing training on these topics, it is assumed that training on these six topics will be two to three hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a director, or curriculum developer that is similarly paid, will spend an average of 80 to 120 hours to develop the two to three hour curriculum on these six topics. Therefore, the approximate one-time cost for the development of the annual curriculum is between $1,941.60 (80 X $24.27) and $2,912.40 (120 X $24.27).

Fiscal Impact for Proposed §746.1311(f). This section adds six additional topics that must be covered in the annual training for a child-care center director. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. For centers that pay for outside training or utilize free training in the community to obtain annual training for a director, there are no additional costs associated with this change in training content. For centers that provide annual in-house training to directors, there are costs associated with centers developing new curriculum for these six topics. However, the center will have already developed the same curriculum for caregivers in response to §746.1309, see "Fiscal Impact for Proposed §746.1309(f)". Therefore, CCL assumes there will be no additional costs associated with this rule change.

Regulatory Flexibility Analysis: A regulatory flexibility analysis is not required for the proposed rules with fiscal implications because the proposed rules are specifically required by federal law (The Child Care and Development Block Grant of 2014). Therefore, the proposed rules are consistent with the health and safety of children, whom the law was intended to protect.

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

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-551, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §746.401, §746.403

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.401. What items must I post at my child-care center at all times?

You must post the following items:

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

(4) Your emergency [~~Emergency and~~] evacuation and relocation diagram as specified in §746.5207 of this title (relating to Must I have an emergency evacuation and relocation diagram?) [~~plans~~];

(5) - (6) (No change.)

(7) The Licensing *Parent Notification Poster;* [~~Notice of Availability for Review of~~]:

[~~(A) The most recent fire inspection report;~~]

[~~(B) The most recent sanitation inspection report;~~]

[~~(C) The most recent gas inspection report, if applicable; and~~]

[~~(D) The Licensing minimum standards applicable for child-care centers;~~]

(8) (No change.)

(9) A list entitled "Current Employees." The list must be at least 8 1/2 inches by 11 inches in size, printed legibly, and must include each employee's first and last name; [~~and~~]

(10) A list of each child's food allergies, with a parent's permission as specified in §746.605(16) of this title (relating to What admission information must I obtain for each child?); and

(11) [~~(10)~~] Any other Licensing notices with specific instructions to post the notice.

§746.403. When and where must these items be posted?

(a) (No change.)

(b) With the permission of the child's parent, you must post a list of each child's food allergies where you prepare or serve food and in each room where the child may spend time. The posting must be in a place where employees may easily view it. [~~Emergency and evacuation relocation plans must be posted in each room used by children.~~]

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER C. RECORD KEEPING

DIVISION 1. RECORDS OF CHILDREN

40 TAC §746.605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.605. What admission information must I obtain for each child?

You must obtain at least the following information before admitting a child to care:

(1) - (13) (No change.)

(14) The name and telephone number of the school that a school-age child attends, unless the operation is located at the child's school; [~~and~~]

(15) Permission for a school-age child to ride a bus, [~~or~~] walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and[~~.~~]

(16) A completed food allergy emergency plan for the child, if applicable, and if a parent wants the information posted, permission from a parent to post the child's allergy information.

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

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General Counsel
Department of Family and Protective Services
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DIVISION 4. PERSONNEL RECORDS

40 TAC §746.901

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.901. What information must I maintain in my personnel records?

You must have the following records at the child-care center and available for review during hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

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

(10) A statement signed and dated by the employee verifying the date the employee attended training during orientation that includes an overview of your policy on the prevention, recognition, and reporting of child [~~preventing and responding to~~] abuse and neglect [~~of children as~~] outlined in §746.1303 of this title (relating to What must [~~should~~] orientation for employees at [~~to~~] my child-care center include?).

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

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SUBCHAPTER D. PERSONNEL
DIVISION 4 PROFESSIONAL DEVELOPMENT

40 TAC §§746.1303, 746.1305, 746.1307, 746.1309, 746.1311

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.1303. What must [~~should~~] orientation for employees at [~~to~~] my child-care center include?

Your orientation for employees must include at least the following:

(1) (No change.)

(2) An overview of your [~~Your center's~~] operational policies, including discipline[~~,~~] and guidance practices[~~,~~] and procedures for the release of children;

(3) An overview of your policy on the prevention, recognition, and reporting of child [~~preventing and responding to~~] abuse and neglect, including: [~~of children;~~]

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Internal procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care center staff members, children, and parents;

(4) An overview of the [~~The~~] procedures to follow in handling emergencies, which includes sharing the emergency preparedness plan with all employees. Emergencies may include, but are not limited to, fire, explosion, tornado, toxic fumes, volatile persons, and severe injury or illness of a child or adult; and

(5) The [~~use and~~] location and use of fire extinguishers and first-aid equipment.

§746.1305. What must be covered in pre-service training for caregivers?

(a) Pre-service training for caregivers must cover the following areas:

(1) - (6) (No change.)

(7) Preventing and controlling the spread of communicable diseases, including immunizations.

(b) If a caregiver provides care for children younger than 24 months of age, one hour of that caregiver's pre-service training must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing [~~Preventing~~] sudden infant death syndrome (SIDS); and

(3) (No change.)

(c) Pre-service training for caregivers you hire on or after September 1, 2016, must also cover the following areas:

(1) The emergency preparedness plan for your center;

(2) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(3) Preventing and responding to emergencies due to food or an allergic reaction;

(4) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(5) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(6) Precautions in transporting children if your center transports a child whose chronological or developmental age is younger than nine years old.

§746.1307. Are any caregivers exempt from the pre-service training?

Yes. A caregiver is exempt from the pre-service training requirements if the caregiver [~~he~~] has:

(1) (No change.)

(2) Documentation of at least 24 clock hours of training in the areas specified in §746.1305 of this title (relating to What must be covered in pre-service training for caregivers?) at another regulated child-care center.

§746.1309. How many clock hours of annual training must be obtained by caregivers?

(a) Each caregiver must obtain at least 24 clock hours of training each year relevant to the age of the children for whom the caregiver provides care.

(b) The 24 clock hours of annual training are exclusive of any requirements for orientation, pre-service training [~~requirements~~], CPR and first aid training, transportation safety training, and high school child-care work-study classes.

(c) [~~(b)~~] At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) [~~(c)~~] At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child abuse and neglect, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Internal procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(e) If a caregiver provides care for children younger than 24 months of age, one clock hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(f) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and controlling and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must

caregivers wear gloves when handling blood or bodily fluids containing blood?).

(g) [~~(d)~~] The remaining [~~clock hours of~~] annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition and activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity for children and families;

(7) Professional development (for example, effective communication with families and[~~,~~] time and stress management);

[~~(8) Preventing the spread of communicable diseases;~~]

(8) [~~(9)~~] Topics relevant to the particular age group the caregiver is assigned (for example, caregivers assigned to an infant or toddler group should receive training on biting and toilet training);

(9) [~~(10)~~] Planning developmentally appropriate learning activities;

(10) [~~(11)~~] Observation and assessment;

(11) [~~(12)~~] Attachment and responsive care giving; and

(12) [~~(13)~~] Minimum standards and how they apply to the caregiver.

[~~(e) If a caregiver provides care for children younger than 24 months of age, one hour of that caregiver's annual training must cover the following topics:~~]

[~~(1) Recognizing and preventing shaken baby syndrome;~~]

[~~(2) Preventing sudden infant death syndrome; and~~]

[~~(3) Understanding early childhood brain development.~~]

[~~(f) A caregiver who transports a child whose chronological or developmental age is younger than nine years old must meet additional training requirements, as outlined in §746.1316 of this title (relating to What additional training must a person have in order to transport a child in care?).~~]

(h) [~~(g)~~] No [~~A caregiver may obtain no~~] more than 80% [~~50%~~] of the annual training hours may be obtained through self-instructional training.

§746.1311. How many clock hours of training must my child-care center director obtain each year?

(a) The child-care center director must obtain at least 30 clock hours of training each year relevant to the age of the children for whom the child-care center provides care.

(b) The 30 clock hours of annual training are exclusive of any requirements for [~~CPR and first aid,~~] orientation, pre-service training, CPR and first aid training [~~requirements~~], and transportation safety training.

(c) [~~(b)~~] At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum;

(4) Teacher-child interaction; and

(5) Serving children with special care needs.

(d) [~~(c)~~] At least one clock hour of the annual training hours must focus on prevention, recognition, and reporting of child abuse and neglect, including:

(1) Factors indicating a child is at risk for abuse or neglect;

(2) Warning signs indicating a child may be a victim of abuse or neglect;

(3) Internal procedures for reporting child abuse or neglect; and

(4) Community organizations that have training programs available to child-care center staff members, children, and parents.

(e) If the center provides care for children younger than 24 months of age, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(f) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §746.3803 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §746.3425 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(g) [~~(d)~~] A director with:

(1) Five [~~five~~] or fewer years of experience as a designated director of a child-care center must [~~also~~] complete at least six clock hours of the annual training hours in management techniques, leadership, or staff supervision; or[~~.~~]

(2) [~~(e)~~] More [~~A director with more~~] than five years of experience as a designated director of a child-care center must complete at least three clock hours of the annual training hours in management techniques, leadership, or staff supervision.

[~~(f) If the center provides care for children younger than 24 months of age, one hour of the annual training must cover the following topics:~~]

[~~(1) Recognizing and preventing shaken baby syndrome;~~]

[~~(2) Preventing sudden infant death syndrome; and~~]

[~~(3) Understanding early childhood brain development.~~]

(h) [~~(g)~~] The remainder of the 30 clock hours of annual training must be selected from the training topics specified in §746.1309(g) [~~§746.1309(d)~~] of this title (relating to How many clock hours of annual training must be obtained by caregivers?).

[~~(h) If the center transports a child younger than nine years old, the director must complete two hours of annual training on transportation safety in addition to the other training requirements.~~]

(i) The director may obtain clock hours or CEUs from the same sources as caregivers.

(j) Training hours may not be earned for presenting training to others[~~, with the exception of up to two hours of training on transportation safety~~].

(k) No more than 80% [~~50%~~] of the annual training hours may be obtained through self-instructional training.

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER N. FIELD TRIPS

40 TAC §746.3001

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3001. May I take children away from my child-care center for field trips?

Yes. You must ensure the safety of all children on field trips or excursions and during any transportation provided by the child-care center. Anytime you take a child on [~~away from the child-care center for~~] a field trip, you must comply with each of the following requirements:

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

(5) Caregivers must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) [~~(5)~~] Each child must wear a shirt, nametag, or other identification listing the name of the child-care center and the child-care center's telephone number;

(7) [~~(6)~~] Each caregiver must be easily identifiable by all children on the field trip by wearing a hat, child-care center tee-shirt, brightly-colored clothes, or other easily spotted identification;

(8) [~~(7)~~] Each caregiver supervising a field trip must have transportation available, [~~or~~] a communication device such as a cellular phone, message pager, or two-way radio available, or an alternate plan for transportation at the field-trip location in case of emergency; and

(9) [~~(8)~~] Caregivers with training in CPR and first aid with rescue breathing and choking must be present on the field trip.

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §746.3301

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3301. What are the basic requirements for snack and mealtimes?

(a) You must serve all children ready for table food regular meals and morning and afternoon snacks as specified in this subchapter.

(b) [~~(1)~~] If breakfast is served, a morning snack is not required.

(c) [~~(2)~~] A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(d) [~~(3)~~] If your child-care center is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section [~~subsection~~].

(e) [~~(b)~~] You must ensure a supply of drinking water is always available to each child and is served at every snack, mealtime, and after active play in a safe and sanitary manner.

(f) [~~(c)~~] You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration.

(g) [~~(d)~~] You must not use food as a reward [~~or punishment~~].

(h) You must not serve a child a food identified on the child's food allergy emergency plan as specified in §746.3817 of this title (relating to What is a food allergy emergency plan?).

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER R. HEALTH PRACTICES

DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §746.3407, §746.3425

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3407. What steps must I take to ensure a healthy environment for children at my child-care center?

You must clean, repair, and maintain the building, grounds, and equipment to protect the health of the children. This includes, but is not limited to:

(1) - (10) (No change.)

(11) Sanitizing table tops, furniture, and other similar equipment used by children when soiled or contaminated with matter such as food, body secretions, or excrement; [~~and~~]

(12) Clearly marking cleaning supplies and other toxic materials and keeping them separate from food and inaccessible to children; and[~~.~~]

(13) Using, storing, and disposing of hazardous materials as recommended by the manufacturer.

§746.3425. Must caregivers wear gloves when handling blood or bodily fluids containing blood?

Yes. Caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

(1) Using [~~Use~~] disposable, nonporous gloves [~~when handling blood, vomit, or other bodily fluids that may contain blood~~];

(2) Placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately;

(3) [~~(2)~~] Discarding all other [~~Discard the~~] gloves immediately after one use; and

(4) [~~(3)~~] Washing [~~Wash~~] hands after using and disposing of the gloves.

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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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DIVISION 2. DIAPER CHANGING

40 TAC §746.3505

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3505. What must I do to prevent the spread of germs when diapering children?

(a) You must wash your hands as specified in[~~. Refer to~~] §746.3419 of this title (relating to How must children and employees wash their hands?).

(b) You must wash the infant's hands or see that the child's hands are washed after each diaper change as specified in[~~. See~~] §746.3421 of this title (relating to How must I wash an infant's hands?).

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

(g) You must place soiled clothing in a sealed plastic bag to be sent home with the child.

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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Trevor Woodruff
General Counsel
Department of Family and Protective Services
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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 2. MEDICATIONS AND MEDICAL ASSISTANCE

40 TAC §746.3817, §746.3819

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.3817. What is a food allergy emergency plan?

A food allergy emergency plan is an individualized plan prepared by the child's health care professional that includes:

(1) a list of each food the child is allergic to;

(2) possible symptoms if exposed to a food on the list; and

(3) the steps to take if the child has an allergic reaction.

§746.3819. When must I have a food allergy emergency plan for a child?

You must have a food allergy emergency plan for each child with a known food allergy. The child's heath care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file, post it as specified in §746.403(b) of this title (relating to When and where must these items be posted?), and take it on any field trip that the child is on.

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SUBCHAPTER W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§746.5201, 746.5202, 746.5205, 746.5207

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.5201. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and facility readiness with respect to emergency evacuation, relocation, and sheltering. The plan addresses the types of responses to emergencies most likely to occur in your area, including: [~~and relocation. The plan addresses the types of emergencies most likely to occur in your area including but not limited to natural events such as tornadoes, floods or hurricanes, health events such as medical emergencies, communicable disease outbreak, and human-caused events such as intruder with weapon, explosion, or chemical spill.~~]

(1) An evacuation of the children and caregivers to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering of children and caregivers within the center to temporarily shelter them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§746.5202. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering of children including:

(A) The [~~That in an emergency, the~~] first responsibility of staff in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all employees, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including specific procedures for evacuating and relocating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) The staff responsibility in a sheltering emergency for the orderly movement of children to a designated location within the center where children should gather;

(D) [~~(C)~~] An emergency evacuation and relocation diagram as outlined in §746.5207 of this title (relating to Must I have an emergency evacuation and relocation diagram?);

(E) [~~(D)~~] Name and address of the alternate shelter away from the center you will use as needed; and

(F) [~~(E)~~] How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter.

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) (No change.)

(3) How your staff will evacuate and relocate with the essential documentation including:

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

(C) The child tracking system information for children in care;[~~.~~]

(4) How your staff will continue to care for the children until each child has been released; and

(5) How you will reunify the children with their parents at evacuation, relocation, or when sheltering is lifted.

§746.5205. Must I practice my emergency preparedness plan [~~plans~~]?

Yes, the following components of your center's emergency preparedness plan [~~plans~~] must be practiced as specified below:

(1) (No change.)

(2) You must practice a severe weather or sheltering drill at least once every three months; and

(3) You must document these drills, including the date of the drill, time of the drill, and length of the time for the evacuation, [~~or~~] relocation, or sheltering to take place.

§746.5207. Must I have an emergency evacuation and relocation diagram?

(a) (No change.)

(b) You must post an emergency evacuation and relocation diagram [~~plan~~] in each room the children use. You must post the diagram [~~plan in a prominent place~~] near the entrance and/or exit of the room and where children and employees may easily view the diagram.

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40 TAC §746.5203

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§746.5203. With whom must I share this plan?

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 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§747.401, 747.605, 747.901, 747.1007, 747.1107, 747.1119, 747.1309, 747.1401, 747.1403, 747.2901, 747.3101, 747.3203, 747.3221, 747.3307, 747.5001, 747.5003, and 747.5005; new §§747.1301, 747.1303, 747.1305, 747.1307, 747.3617, and 747.3619; and repeal of §§747.1109, 747.1301, 747.1303, 747.1305, 747.1307, and 747.2713 in Chapter 747, concerning Minimum Standards for Child-Care Homes. The purpose of the amendments, new sections and repeals is to implement needed changes to comply with the Child Care and Development Block Grant Act of 2014.

The Child Care and Development Block Grant (CCDBG) Act of 2014 (the "Act") is the first comprehensive revision of the Child Care and Development Fund (CCDF) program since 1998. (The CCDF is codified in 42 USC §9857 et seq.) The Texas Workforce Commission (TWC) administers the CCDF, which is the primary federal funding source devoted to providing low-income families with access to child care. The Act makes significant reforms to the CCDF programs to raise the health, safety, and quality of child care. The Act does this by mandating that states comply with a multitude of additional requirements in order to continue receiving CCDF funding. Although TWC is the lead agency for determining eligibility and distributing the subsidy monies, DFPS is the agency responsible for licensing child care operations, establishing health and safety regulations, and monitoring eligible operations for compliance. Many of the Act's additional requirements relate to the responsibilities of DFPS. The provisions of the Act that have a significant impact on Child Care Licensing (CCL) and this chapter relate to the following topics: health and safety requirements and training on those requirements.

The changes related to training will impact Licensed Child-Care Homes (LCCHs) and Registered Child-Car Homes (RCCHs). The new health and safety training requirements mandated by the Act include the following topics for pre-service training and annual training: (1) food allergies; (2) handling, storing, and disposing of hazardous materials; (3) more robust emergency preparedness plans; (4) administering medication; and (5) building and physical premises safety.

There are also some topics required by the Act that are already required in annual training, but are not currently required in the orientation for LCCHs and RCCHs. These additional health and safety training requirements that have been added for orientation are as follows: (1) recognizing and preventing shaken baby syndrome; (2) understanding safe sleep practices; (3) understanding early childhood brain development; and (4) precautions in transporting children if the home transports a child whose chronological or developmental age is younger than nine years old.

In addition to the training requirements the Act increases health and safety requirements for LCCHs and RCCHs. The health and safety requirements correlate to some of the training topics. The changes to the minimum standards support the health and safety requirements, including requiring homes to: (1) obtain food allergy emergency plans for children with known food allergies, post a list of food allergies at the home, and carry the child's emergency plan on field trips; and (2) use, store, and dispose of hazardous materials as recommended by the manufacturer.

The summary of the changes are:

The amendment to §747.401 adds a list of each child's food allergies (with a parent's permission) to a home's posting requirements, and requires it to be posted where food is prepared and served and in a prominent place where caregivers may easily view it.

The amendment to §747.605 adds a requirement for homes to obtain a completed food allergy emergency plan before admitting a child into care, if applicable, and if a parent wants the information posted, permission from a parent to post the information.

The amendment to §747.901 updates a cite and makes the language consistent.

The amendment to §747.1007 requires an additional qualification for a primary caregiver of a RCCH to include proof of training on ten new topics.

The amendment to §747.1107 requires an additional qualification for a primary caregiver of a LCCH to include proof of training on ten new topics.

The repeal of §747.1109 deletes an outdated grandfather rule.

The amendment to §747.1119 corrects a cite.

The repeal of §747.1301 moves the content of this rule to new §747.1303.

New §747.1301: (1) includes the content of previous §747.1305; (2) clarifies the wording to be consistent with the current wording of the operational policies rule; (3) adds components that must be addressed in the overview of prevention, recognition, and reporting of child abuse and neglect; and (4) adds nine new orientation topics for caregivers.

The repeal of §747.1303 moves the content of this rule to new §747.1307.

New §747.1303 includes the content of previous §747.1301.

The repeal of §747.1305 moves the content of this rule to new §747.1301.

New §747.1305: (1) includes the content of previous §747.1307; (2) adds six topics that must be covered in the annual training of caregivers; and (3) deletes a redundant paragraph about transportation safety training.

The repeal of §747.1307 moves the content of this rule to new §747.1305, with one minor modification.

New §747.1307: (1) includes most of the content of previous §747.1303 with one minor modification; (2) deletes the pre-application course content from previous §747.1303 because it is already required at §747.1007; and (3) adds a reference to the transportation safety training requirement.

The amendment to §747.1309: (1) adds six topics that must be covered in the annual training of primary caregivers; and (2) deletes a redundant paragraph about transportation safety training.

The amendment to §747.1401 updates some cites and clarifies the language in the rule.

The amendment to §747.1403 deletes a reference to a rule and spells out all but one of the requirements of the deleted reference to include: (1) an overview of the home's policies; (2) an overview of child abuse and neglect, including reporting; (3) the procedures to follow in an emergency; and (4) the location and use of fire extinguishers and first-aid equipment. The deleted requirement for an overview of the minimum standards is no longer needed, because this new rule only applies to household members.

The repeal of §747.2713 because the information is already included in §747.503, §747.1301(2), and §747.1403(1).

The amendment to §747.2901: (1) adds the requirement that caregivers must have a copy of a child's food allergy emergency plan and medications, if applicable, when going on field trips; and (2) makes the language consistent.

The amendment to §747.3101: (1) adds that children must not be served foods identified on their food allergy emergency plan; and (2) deletes the requirement "you must not use food as . . . punishment", because this requirement is already noted in §747.2705.

The amendment to §747.3203 clarifies that a child-care home must use, store, and dispose of hazardous materials as recommended by the manufacturer.

The amendment to §747.3221 clarifies that caregivers must follow universal precautions as outlined by the CDC when handling bodily fluids that may contain blood, including placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately.

The amendment to §747.3307 clarifies that a child's soiled clothing must be placed in a sealed plastic bag and be sent home with the child.

New §747.3617 defines a food allergy emergency plan, including a list of foods a child is allergic too, possible symptoms, and what steps to take if there is an allergic reaction.

New §747.3619 requires: (1) a food allergy emergency plan for each child with a known food allergy; and (2) the plan to be signed by the child's health care professional and a parent, posted if the parent consents, and taken on field trips.

The amendment to §747.5001 clarifies in more detail what an emergency preparedness plan is by distinguishing between an evacuation, relocation, and sheltering.

The amendment to §747.5003 adds to the requirements for the emergency prepared plan to also include: (1) staff's responsibility in a sheltering emergency for the orderly movement of chil-

dren to a designated location within the home where children should gather; (2) how staff will continue to care for children until each child has been released; and (3) how children will be reunified with their parents at evacuation, relocation, or when sheltering is lifted.

The amendment to §747.5005 adds the "sheltering" language for clarification.

Lisa Subia, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Subia also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that: (1) DFPS will be in compliance with the Child Care and Development Block Grant Act of 2014; (2) there will be clarification of the health and safety requirements and training on those requirements; and (3) there will be a reduced risk to children.

There is an anticipated economic cost for persons required to comply with some of the proposed rule changes. The proposed changes are anticipated to have an adverse impact on businesses, including small and micro-businesses. The proposed changes will impact LCCHs and RCCHs. According to the FY 2015 DFPS Annual Report and Data Book as of August 31, 2015 there were 1,720 LCCHs and 4,678 RCCHs.

Chapter 2006 of the Government Code defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than six million dollars in annual gross receipts. A small business that has no more than 20 employees is also defined as a micro-business. CCL is assuming virtually all of the homes (both LLCHs and RCCHs) meet the definition of a small and micro-business.

The fiscal impact to these homes primarily results from (1) additional staff time to attend trainings; and (2) additional Primary Caregiver time to develop or modify curriculum.

Licensing staff developed the methodologies used to calculate the fiscal impact of these rules. The impacts were calculated using cost research conducted by staff and assumptions regarding child-care practices. The key assumptions and methodologies are described in detail below, as these underlie the individual impact calculations for each rule that are projected to have a fiscal impact on at least some homes.

For LCCHs and RCCHs, the staff time required to comply with the standards will impact Primary Caregivers and other caregivers. For use in this impact analysis, DFPS will use the following mean wages that were obtained from the Texas Workforce Commission's website for Occupational Wages based on 2014 estimates: (1) for Primary Caregivers DFPS is using a $24.27 per hour mean wage from the Occupational Title of Education Administrator, Preschool and Childcare Center; and (2) for all caregivers (other than a Primary Caregiver) DFPS is using a $9.49 mean wage from the Occupational Title of Childcare Workers.

Fiscal Impact for Proposed §747.1007. This section adds to the qualification requirements for primary caregivers in a RCCH (the primary caregiver is also the person that obtains the registration for the home) to include proof of training in ten different topics. One of the ten topics is precautions in transporting children and is only required for homes that transport children whose chronological or developmental age is younger than nine years old. These qualifications will be needed before the primary caregiver will be able to obtain the registration. There are two possible costs associated with the trainings: the costs for the time it takes a primary caregiver to participate in the trainings, and the costs for the actual training. While attending or participating in these trainings will take some time, it is not assumed that the primary caregiver as the applicant will pay oneself for this time. These costs associated with paying for the trainings are minimal, as well. There are free training modules available from AgriLife to cover all of the trainings except for the topic related to precautions in transporting children. This particular topic will cost the primary caregiver $14.00 to enroll in the training.

Fiscal Impact for Proposed §747.1107. This section adds to the qualification requirements for primary caregivers in a LCCH (the primary caregiver is also the person that obtains the license for the home) to include proof of training in ten different topics. One of the ten topics is precautions in transporting children and is only required for homes that transport children whose chronological or developmental age is younger than nine years old. These qualifications will be needed before the primary caregiver will be able to obtain the license. There are two possible costs associated with the trainings: the costs for the time it takes a primary caregiver to participate in the trainings, and the costs for the actual training. While attending or participating in these trainings will take some time, it is not assumed that the primary caregiver as the applicant will pay oneself for this time. These cost associated with paying for the trainings are minimal, as well. There are free training modules available from AgriLife to cover all of the trainings except for the topic related to precautions in transporting children. This particular topic will cost the primary caregiver $14.00 to enroll in the training.

Fiscal Impact for Proposed §747.1301. This section adds nine topics that must be covered in the orientation for caregivers of homes. There are costs associated with modifying the current orientation to include these nine additional topics. This section does not mandate a time frame for training on these nine topics. However, for purposes of estimating a cost for developing orientation on these topics, it is assumed that orientation on these six topics will be for three to four hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. This same standard is being used to modify the orientation. It is anticipated that a primary caregiver, or curriculum developer that is similarly paid, will spend an average of 120 to 160 hours to develop the three to four hour orientation on these nine topics. Therefore, the approximate one-time cost for the development of the orientation is between $2,912.40 (120 X $24.27) and $3,883.20 (160 X $24.27). (Note: It was not assumed that homes had already developed annual trainings on any of these topics, because in most homes it is assumed that annual trainings are obtained from outside sources.)

Fiscal Impact for Proposed §747.1305(e). This section adds six additional topics that must be covered in the annual training for caregivers. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. Any costs associated with this rule change depends on the type of home (licensed or registered) and whether a home pays for outside training, utilizes free training in the community, or provides in-house training to the caregivers.

(1) For LCCHs that pay for outside training or utilize free training in the community to obtain the mandated 24 hours of annual training for caregivers, there are no additional costs associated with this change in training content.

(2) For RCCHs that pay for outside training or utilize free training in the community to obtain the mandated 15 hours of annual training for caregivers, there are possible costs with employees that may take more than the mandated 15 hours to comply with the six additional topics. For example, the training modules with AgriLife are two hours each. It is anticipated that five AgriLife modules will be needed to comply with the six additional topics. These ten hours (five modules X two hours each) of AgriLife training plus the already mandated six hours of annual training at §744.1309(c) and mandated one hour of training for caregivers of homes that provide care to children younger than 24 months at §744.1309(d), would mean that a caregiver would be taking 16 or 17 hours of annual training instead of the 15 hours of mandated annual training. It is anticipated that each program would need to pay each caregiver $9.49 per hour for each additional training hour that is taken. It is anticipated that over time more training modules will be created that will have a shorter time frame for training on these six topics. When that happens, these costs would no longer be associated with this rule change; and

(3) It is not assumed that many LCCHs and RCCHs provide direct training to caregivers. However, if they do, there are costs associated with developing new curriculum for these six topics. This section does not mandate a time frame for training on these six topics. However, for purposes of estimating a cost for developing training on these topics, it is assumed that training on these six topics will be for two to three hours. A common industry standard is 40 hours to develop one hour of curriculum for face-to-face training. It is anticipated that a primary caregiver, or curriculum developer that is similarly paid, will spend an average of 80 to 120 hours to develop the two to three hour curriculum on these six topics. Therefore, the approximate one-time cost for the development of the annual curriculum is between $1,941.60 (80 X $24.27) and $2,912.40 (120 X $24.27).

Fiscal Impact for Proposed §747.1309(e). This section adds six additional topics that must be covered in the annual training hours for a primary caregiver. There is no increase in the number of annual training hours required; there is only a change in the content of the required training. For homes that pay for outside training or utilize free training in the community to obtain annual training for a primary caregiver, there are no additional costs associated with this change in training content. It is not assumed that many LCCHs and RCCHs provide direct training to caregivers. However, for homes that provide annual in-house training to primary caregivers, there are costs associated with developing new curriculum for these six topics. However, the home will have already developed the same curriculum for caregivers in response to §747.1305, see "Fiscal Impact for Proposed §747.1305(e)". Therefore, CCL assumes there will be no additional costs associated with this rule change.

Regulatory Flexibility Analysis: A regulatory flexibility analysis is not required for the proposed rules with fiscal implications because the proposed rules are specifically required by state law (S.B. 1496) and federal law (The Child Care and Development Block Grant of 2014). Therefore, the proposed rules are consistent with the health and safety of children, whom the laws were intended to protect.

The proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the sections.

Ms. Subia has determined that the proposed sections 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, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gerry Williams at (512) 438-5559 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to CCLRules@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-551, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

SUBCHAPTER B. ADMINISTRATION AND COMMUNICATION

DIVISION 3. REQUIRED POSTINGS

40 TAC §747.401

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.401. What items must I post at my child-care home during hours of operation?

(a) You must post the following in a prominent and publicly accessible place where parents and others may easily view them during all hours of operation:

(1) The child-care home's license or registration certificate;

(2) The letter or form from the most recent Licensing inspection or investigation;

(3) The Licensing notice *Keeping Children Safe;*

(4) Telephone numbers specified in this division;

(5) A list of your employees, as defined in §745.21[~~(16)~~] of this title (relating to What do the following word and terms mean when used in this chapter?). The list must be printed on paper at least 8 1/2 inches by 11 inches in size and must include each employee's first and last name; and

(6) Any other Licensing notices requiring posting.

(b) You must post a list of each child's food allergies, with a parent's permission as specified in §747.605(16) of this title (relating to What admission information must I obtain for each child?), where you prepare and serve food and in a prominent place where caregivers may easily view the list.

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 May 9, 2016.

TRD-201602225
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 438-5559

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SUBCHAPTER C. RECORD KEEPING
DIVISION 1. RECORDS OF CHILDREN

40 TAC §747.605

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.605. What admission information must I obtain for [~~on~~] each child?

You must obtain at least the following information before admitting a child to care:

(1) - (13) (No change.)

(14) The name and telephone number of the school a school-age child attends; [~~and~~]

(15) Permission for a school-age child to ride a bus, [~~or~~] walk to or from school or home, or to be released to the care of a sibling under 18 years old, if applicable; and[~~.~~]

(16) A completed food allergy emergency plan for the child, if applicable, and if a parent wants the information posted, permission from a parent to post the child's allergy information.

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

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General Counsel
Department of Family and Protective Services
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DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.901

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.901. What information must I maintain in my personnel records?

You must keep at least the following at the child-care home for each assistant caregiver and substitute caregiver, as specified in this chapter:

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

(9) A statement signed and dated by the caregiver in a licensed child-care home verifying the date the caregiver attended training during orientation that includes an overview regarding the prevention, recognition, and reporting [~~of symptoms~~] of child abuse[~~,~~] and neglect, as specified in §747.1301 of this title (relating to What must orientation for caregivers at my child-care home include? [~~and sexual abuse and the responsibility of reporting these as outlined in §747.1305 of this title (relating to What should orientation to my child-care home include?)~~].

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

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SUBCHAPTER D. PERSONNEL
DIVISION 1. PRIMARY CAREGIVER OF A REGISTERED CHILD-CARE HOME

40 TAC §747.1007

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1007. What qualifications must I meet to be the primary caregiver of a registered child-care home?

Except as otherwise provided in this division, you must:

(1) (No change.)

(2) Have a[~~:~~]

[~~(A)~~] high [~~High~~] school diploma[~~;~~] or equivalent;

[~~(B) High school equivalent;~~]

(3) Have a certificate of completion of the Licensing pre-application course [~~orientation~~] within one year prior to your application date;

(4) Have current certification in CPR and first aid with rescue breathing and choking; [~~and~~]

(5) Be free of active tuberculosis, if required by the regional Texas Department of State Health Services [~~TB program~~] or local health authority; and[~~.~~]

(6) Have proof of training in the following:

(A) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(B) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(C) Understanding early childhood brain development;

(D) Emergency preparedness;

(E) Preventing and controlling the spread of communicable diseases, including immunizations;

(F) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(G) Preventing and responding to emergencies due to food and allergic reaction;

(H) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(I) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(J) Precautions in transporting children if your child-care home plans to transport a child whose chronological or developmental age is younger than nine years old.

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

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DIVISION 2. PRIMARY CAREGIVER OF A LICENSED CHILD-CARE HOME

40 TAC §747.1107, §747.1119

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1107. What qualifications must I meet to be the primary caregiver of a licensed child-care home?

(a) Except as otherwise provided in this division, a primary caregiver for a licensed child-care home must:

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

(3) Have a certificate of completion of the Licensing pre-application course [~~orientation~~] within one year prior to your application date;

(4) Have current certification in CPR and first aid with rescue breathing and choking; [~~and~~]

(5) Have proof of training in the following:

(A) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(B) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(C) Understanding early childhood brain development;

(D) Emergency preparedness;

(E) Preventing the spread of communicable diseases, including immunizations;

(F) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(G) Preventing and responding to emergencies due to food and allergic reaction;

(H) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(I) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must

caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(J) Precautions in transporting children if your child-care home plans to transport a child whose chronological or developmental age is younger than nine years old; and

(6) [~~(5)~~] Have one of the following combinations of education and experience in a licensed child-care center, or in a licensed or registered child-care home, as defined in §747.1113 of this title (relating to What constitutes experience in a licensed child-care center, or in a licensed or registered child-care home?):
Figure: 40 TAC §747.1107(a)(6)
[~~Figure: 40 TAC §747.1107(a)(5)~~]

(b) Options (D) and (F) of subsection (a)(6) of this section require periodic renewal.

§747.1119. What credit courses does Licensing recognize as child development?

Due to a large variation in credit course titles and content, it is impossible to list all courses that may be counted toward the child development requirement. Courses in early childhood education, child growth and development, psychology, sociology, classroom management, child psychology, health and safety of children, elementary education related to pre-kindergarten through third grade, youth development and other similar courses may be counted if they are related to child development or the topics specified in §747.1305 [~~§747.1307~~] of this title (relating to What topics must the [~~15 clock hours of~~] annual training for caregivers include?). Abnormal psychology and secondary education courses are not recognized as child development.

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 §747.1109

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1109. Are there exemptions from the qualifications listed in this 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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General Counsel
Department of Family and Protective Services
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DIVISION 4. PROFESSIONAL DEVELOPMENT

40 TAC §§747.1301, 747.1303, 747.1305, 747.1307

The repeals are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1301. What training must I ensure that my caregivers have?

§747.1303. What training must I have?

§747.1305. What should orientation to my child-care home include?

§747.1307. What topics must the annual training for caregivers include?

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 §§747.1301, 747.1303, 747.1305, 747.1307, 747.1309

The new sections and amendment are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development

Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1301. What must orientation for caregivers at my child-care home include?

Orientation for caregivers at your child-care home must include at least the following:

(1) An overview of the minimum standards found in this chapter;

(2) An overview of your operational policies, including discipline and guidance practices and procedures for the release of children, and the provision of copies of these practices and procedures;

(3) An overview regarding the prevention, recognition, and reporting of child abuse and neglect, including:

(A) Factors indicating a child is at risk of abuse or neglect;

(B) Warning signs indicating a child may be a victim of abuse or neglect;

(C) Internal procedures for reporting child abuse or neglect; and

(D) Community organizations that have training programs available to child-care staff, children, and parents;

(4) An overview of your home's Emergency Preparedness Plan;

(5) Locating and using fire extinguishers and first-aid equipment;

(6) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(7) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS);

(8) Understanding early childhood brain development;

(9) Preventing and controlling the spread of communicable diseases, including immunizations;

(10) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(11) Preventing and responding to emergencies due to food or an allergic reaction;

(12) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic;

(13) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?); and

(14) Precautions in transporting children if your child-care home transports a child whose chronological or developmental age is younger than nine years old.

§747.1303. What training must I ensure that my caregivers have?

You must make sure that each caregiver has the following training:

(1) Orientation to your child-care home as specified in §747.1301 of this title (relating to What must orientation for caregivers at my child-care home include?) within seven days of employment;

(2) 15 clock hours of annual training for a caregiver in a registered child-care home as specified in §747.1305 of this title (relating to What topics must the annual training for caregivers include?);

(3) 24 clock hours of annual training for a caregiver in a licensed child-care home as specified in §747.1305 of this title;

(4) Current first-aid and CPR training as specified in §747.1313 of this title (relating to Who must have first-aid and CPR training?); and

(5) If a caregiver transports children whose chronological or developmental age is younger than nine years old, transportation safety training as specified in §747.1314 of this title (relating to What additional training must a person have in order to transport a child in care?).

§747.1305. What topics must the annual training for caregivers include?

(a) Each caregiver counted in the child/caregiver ratio on more than ten separate occasions in one training year, as specified in §747.1311 of this title (relating to When must the annual training be obtained?) must obtain annual training relevant to the age of the children for whom the caregiver provides care.

(b) Annual training is exclusive of any requirements for orientation, first aid and CPR training, transportation safety training, and any training received through a high school child-care work-study program.

(c) At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) If your home provides care for a child younger than 24 months, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome and abusive head trauma;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(e) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(f) The remaining annual training hours must be in one or more of the following topics:

(1) Care of children with special needs;

(2) Child health (for example, nutrition and physical activity);

(3) Safety;

(4) Risk management;

(5) Identification and care of ill children;

(6) Cultural diversity of children and families;

(7) Professional development (for example, effective communication with families and time and stress management);

(8) Topics relevant to the particular ages of children in care (for example, caregivers working with infants or toddlers should receive training on biting and toilet training);

(9) Planning developmentally appropriate learning activities;

(10) Observation and assessment;

(11) Attachment and responsive care giving; and

(12) Minimum standards and how they apply to the caregiver.

(g) No more than 80% of the annual training hours may be obtained from self-instructional training.

§747.1307. What training must I have?

You must have the following training:

(1) 30 clock hours of annual training as specified in §747.1309 of this title (relating to (What topics must my annual training include?);

(2) Current first-aid and CPR training as specified in §747.1313 of this title (relating to Who must have first-aid and CPR training; and

(3) If you transport children whose chronological or developmental age is younger that nine years old, transportation safety training as specified in §747.1314 of this title (relating to What additional training must a person have in order to transport a child in care?).

§747.1309. What [~~training~~] topics must [~~be included in~~] my annual training include [~~as the primary caregiver~~]?

(a) You must obtain at least 30 clock hours of training [~~annually that is:~~]

[~~(1)~~] each year relevant [~~Relevant~~] to the age of the children for whom you provide care.[~~;~~]

(b) [~~(2)~~] The 30 clock hours of annual training are exclusive of any requirements for [~~Exclusive of~~] the Licensing pre-application course, [~~interview, CPR and~~] first-aid and CPR training, and transportation safety training.[~~; and~~]

[~~(3) Not earned for presenting training to others.~~]

(c) [~~(b)~~] At least six clock hours of the annual training hours must be in one or more of the following topics:

(1) Child growth and development;

(2) Guidance and discipline;

(3) Age-appropriate curriculum; and

(4) Teacher-child interaction.

(d) If your home provides care for children younger than 24 months, one hour of the annual training hours must cover the following topics:

(1) Recognizing and preventing shaken baby syndrome;

(2) Understanding and using safe sleep practices and preventing sudden infant death syndrome (SIDS); and

(3) Understanding early childhood brain development.

(e) While there are no clock hour requirements for the topics in this subsection, the annual training hours must also include training on the following topics:

(1) Emergency preparedness;

(2) Preventing and controlling the spread of communicable diseases, including immunizations;

(3) Administering medication, if applicable, including compliance with §747.3603 of this title (relating to What authorization must I obtain before administering a medication to a child in my care?);

(4) Preventing and responding to emergencies due to food or an allergic reaction;

(5) Understanding building and physical premises safety, including identification and protection from hazards that can cause bodily injury such as electric hazards, bodies of water, and vehicular traffic; and

(6) Handling, storing, and disposing of hazardous materials including compliance with §747.3221 of this title (relating to Must caregivers wear gloves when handling blood or bodily fluids containing blood?).

(f) If you have:

(1) [~~(c)~~] Five [~~A primary caregiver with five~~] or fewer years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least six of the annual training [~~30 clock~~] hours in management techniques, leadership, or staff supervision; or[~~.~~]

(2) [~~(d)~~] More [~~A primary caregiver with more~~] than five years of experience as a primary caregiver in a licensed or registered child-care home, you must complete at least three of the annual training [~~30 clock~~] hours in management techniques, leadership, or staff supervision.

[~~(e) If the home provides care for children younger than 24 months, one hour of annual training must cover the following topics:~~]

[~~(1) Recognizing and preventing shaken baby syndrome;~~]

[~~(2) Preventing sudden infant death syndrome; and~~]

[~~(3) Understanding early childhood brain development.~~]

(g) [~~(f)~~] The remainder of annual training hours must be selected from the training topics specified in §747.1305(f) [~~§747.1307(d)~~] of this title (relating to What topics must the annual training for caregivers include?).

(h) You may obtain clock hours or CEUs from the same sources as other caregivers.

(i) Training hours may not be earned for presenting training to other caregivers.

[~~(g) If the home transports children whose chronological or developmental age is younger than nine years old, the primary caregiver must complete two hours of annual training on transportation safety in addition to the other training hours.~~]

(j) [~~(h)~~] No [~~A primary caregiver may obtain no~~] more than 80% of annual training may be obtained from self-instructional training [~~materials~~].

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Trevor Woodruff
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DIVISION 5. HOUSEHOLD MEMBERS, VOLUNTEERS, AND PEOPLE WHO OFFER CONTRACTED SERVICES

40 TAC §747.1401, §747.1403

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.1401. Must members of my household meet specific qualifications?

(a) For each household member that you are required to request a background check on, as specified in, Subchapter F of Chapter 745 of this title (relating to Background Checks), the member must:

(1) Provide a copy of a health card or physician's statement verifying they are free of active tuberculosis if required by the regional Texas Department of State Health Services [~~TB program~~] or local health authority; and

(2) Complete orientation to your child-care home as specified in §747.1403 of this title (relating to What must orientation for household members at my child-care home include?).

(b) Any household member who is counted in the child/caregiver ratio on more than ten separate occasions in one training year, whether paid or unpaid, must meet the minimum qualifications for assistant caregivers and training requirements for [~~assistant~~] caregivers as specified in this subchapter.

(c) Any household member who is left in charge of the child-care home in the absence of the primary caregiver, whether paid or unpaid, must meet the minimum qualifications for a substitute caregiver and training requirements for [~~substitute~~] caregivers specified in this subchapter.

(d) (No change.)

§747.1403. What must orientation [~~to my child-care home~~] for household members at my child-care home include?

The orientation for household members at your child-care home must include at least the following: [~~topics specified in §747.1305 of this title (relating to What should orientation to my child-care home include?).~~]

(1) An overview of your home's child-care policies, including discipline and guidance practices and the procedures for the release of children, and the provision of copies of these practices and procedures;

(2) An overview of symptoms of child abuse and neglect and the responsibility for reporting these;

(3) The procedures to follow in handling emergencies. Emergencies include fire, explosion, tornado, toxic fumes, volatile individuals, and severe injury or illness of a child or adult; and

(4) The location and use of fire extinguishers and first-aid equipment.

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

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General Counsel
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SUBCHAPTER L. DISCIPLINE

40 TAC §747.2713

The repeal is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeal implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.2713. Must I give a copy of my written discipline and guidance policy to parents, my caregivers, and household members?

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

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General Counsel
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SUBCHAPTER N. FIELD TRIPS

40 TAC §747.2901

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.2901. May I take children away from my child-care home for field trips?

(a) Yes. You must ensure the children's safety on field trips and excursions and during any transportation provided by the child-care home. Anytime you take a child on [~~away from the child-care home for~~] a field trip you must comply with each of the following requirements:

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

(5) You must have a copy of a child's food allergy emergency plan and allergy medications, if applicable;

(6) [~~(5)~~] Each child must wear a shirt, name tag, or other identification listing the name and telephone number of the child-care home;

(7) [~~(6)~~] Each caregiver must be easily identifiable by all children on the field trip, by wearing a hat, specialized tee-shirt, brightly colored clothes, or other easily spotted identification;

(8) [~~(7)~~] Each caregiver supervising a field trip must have transportation available, [~~or~~] a communication device such as a cellular phone, message pager, or two-way radio available, or an alternate plan for transportation at the field trip location in case of emergency; and

(9) [~~(8)~~] You must ensure that a caregiver trained in CPR and first aid with rescue breathing and choking is present on the field trip.

(b) A walk around the caregiver's neighborhood must comply only with paragraphs (2), (5) and (9) [~~(8)~~] of subsection (a) of this section.

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SUBCHAPTER Q. NUTRITION AND FOOD SERVICE

40 TAC §747.3101

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3101. What are the basic requirements for snack and mealtimes?

(a) You must serve all children ready for table food regular meals and morning and afternoon snacks as specified in this subchapter.

(b) [~~(1)~~] If breakfast is served, a morning snack is not required.

(c) [~~(2)~~] A child must not go more than three hours without a meal or snack being offered, unless the child is sleeping.

(d) [~~(3)~~] If your child-care home is participating in the Child and Adult Care Food Program (CACFP) administered by the Texas Department of Agriculture, you may elect to meet those requirements rather than those specified in this section [~~subsection~~].

(e) [~~(b)~~] You must ensure a supply of drinking water is always available to each child and is served at every snack, mealtime, and after active play in a safe and sanitary manner.

(f) [~~(c)~~] You must not serve beverages with added sugars, such as carbonated beverages, fruit punch, or sweetened milk except for a special occasion such as a holiday or birthday celebration.

(g) [~~(d)~~] You must not use food as a reward [~~or punishment~~].

(h) You must not serve a child a food identified on the child's food allergy emergency plan as specified in §747.3617 of this title (relating to What is a food allergy emergency plan?).

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General Counsel
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SUBCHAPTER R. HEALTH PRACTICES
DIVISION 1. ENVIRONMENTAL HEALTH

40 TAC §747.3203, §747.3221

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3203. What steps must I take to ensure a healthy environment for children at my child-care home?

You must clean, repair, and maintain your child-care home, grounds, and equipment to protect the health of the children. This includes, but is not limited to:

(1) - (10) (No change.)

(11) Sanitizing table tops, furniture, and other similar equipment used by children when soiled or contaminated with matter such as food, body secretions, or excrement; [~~and~~]

(12) Clearly marking cleaning supplies and other toxic materials and keeping them separate from food and inaccessible to children; and[~~.~~]

(13) Using, storing and disposing of hazardous materials as recommended by the manufacturer.

§747.3221. Must caregivers [I] wear gloves when handling blood or bodily [~~body~~] fluids containing blood?

Yes, caregivers must follow universal precautions outlined by the Centers for Disease Control (CDC) when handling blood, vomit, or other bodily fluids that may contain blood including:

(1) Using [~~Use~~] disposable, nonporous gloves [~~when handling blood or blood-containing body fluids or discharge from injured tissue~~];

(2) Placing gloves contaminated with blood in a sealed plastic bag and discarding them immediately;

(3) [~~(2)~~] Discarding all other [~~Discard the~~] gloves immediately after one use; and

(4) [~~(3)~~] Washing [~~Wash~~] your hands with soap and running water after using and disposing of the gloves.

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

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DIVISION 2. DIAPER CHANGING

40 TAC §747.3307

The amendment is proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3307. What must I do to prevent the spread of germs when diapering children?

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

(f) You must place soiled clothing in a sealed plastic bag to be sent home with the child.

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SUBCHAPTER S. SAFETY PRACTICES
DIVISION 2. MEDICATION AND MEDICAL ASSISTANCE

40 TAC §747.3617, §747.3619

The new sections are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.3617. What is a food allergy emergency plan?

A food allergy emergency plan is an individualized plan prepared by the child's health care professional that includes:

(1) a list of each food the child is allergic to;

(2) possible symptoms if exposed to a food on the list; and

(3) the steps to take if the child has an allergic reaction.

§747.3619. When is this plan required?

A food allergy emergency plan is required for each child with a known food allergy. The child's health care professional and parent must sign and date the plan. You must keep a copy of the plan in the child's file, post it as specified in §747.401 of this title (relating to What items must I post at my child-care home during hours of operation?), and take it on any field trip that the child is on.

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 W. FIRE SAFETY AND EMERGENCY PRACTICES
DIVISION 2. EMERGENCY PREPAREDNESS

40 TAC §§747.5001, 747.5003, 747.5005

The amendments are proposed under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement HRC §42.042 and §42.0421 and portions of the Child Care and Development Block Grant Act of 2014, which is codified in 42 USC §9857 et seq.

§747.5001. What is an emergency preparedness plan?

An emergency preparedness plan is designed to ensure the safety of children during an emergency by addressing staff responsibility and your home's [~~facility~~] readiness with respect to emergency evacuation, [~~and~~] relocation, and sheltering. The plan addresses the types of responses to emergencies most likely to occur in your area including:[~~, but not limited to, natural events such as tornadoes, floods or hurricanes, health events such as medical emergencies, communicable disease outbreak, and human-caused events such as intruder with weapon, explosion, or chemical spill.~~]

(1) An evacuation of your home to a designated safe area in an emergency such as a fire or gas leak;

(2) A relocation of the children and caregivers to a designated, alternate shelter in an emergency such as a flood, a hurricane, medical emergency, or communicable disease outbreak; and

(3) The sheltering of children and caregivers within your home to temporarily shelter them from situations such as a tornado, volatile person on the premises, or an endangering person in the area.

§747.5003. What must my emergency preparedness plan include?

Your emergency preparedness plan must include written procedures for:

(1) Evacuation, relocation, and sheltering of children, including:

(A) Your [~~That in an emergency, your~~] first responsibility in an emergency evacuation or relocation is to move the children to a designated safe area or alternate shelter known to all household members, caregivers, parents, and volunteers;

(B) How children will be evacuated or relocated to the designated safe area or alternate shelter, including specific procedures for evacuating or relocating children who are under 24 months of age, who have limited mobility, or who otherwise may need assistance in an emergency, such as children who have mental, visual, or hearing impairments;

(C) (No change.)

(D) The caregivers' responsibility in a sheltering emergency for the orderly movement of children to a designated location in your home where children should gather;

(E) [~~(D)~~] Name and address of the alternate shelter away from your home you will use as needed; and

(F) [~~(E)~~] How children in attendance at the time of the emergency will be accounted for at the designated safe area or alternate shelter;[~~.~~]

(2) Communication, including:

(A) The emergency telephone number that is on file with us; and

(B) How you will communicate with local authorities (such as fire, law enforcement, emergency medical services, health department), parents, and us; [~~and~~]

(3) How you will evacuate and relocate with the essential documentation including:

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

(C) The attendance record information for children in care at the time of the emergency;[~~.~~]

(4) How you will continue to care for the children until each child has been released; and

(5) How you will reunify the children with their parents at evacuation, relocation, or when sheltering is lifted.

§747.5005. Must I practice my emergency preparedness plan [~~plans~~]?

Yes, the following components of your home's emergency preparedness plan [~~plans~~] must be practiced as follows:

(1) (No change.)

(2) You must practice a severe weather or sheltering drill at least once every three months.

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 May 9, 2016.

TRD-201602240

Trevor Woodruff
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: June 19, 2016
For further information, please call: (512) 438-5559

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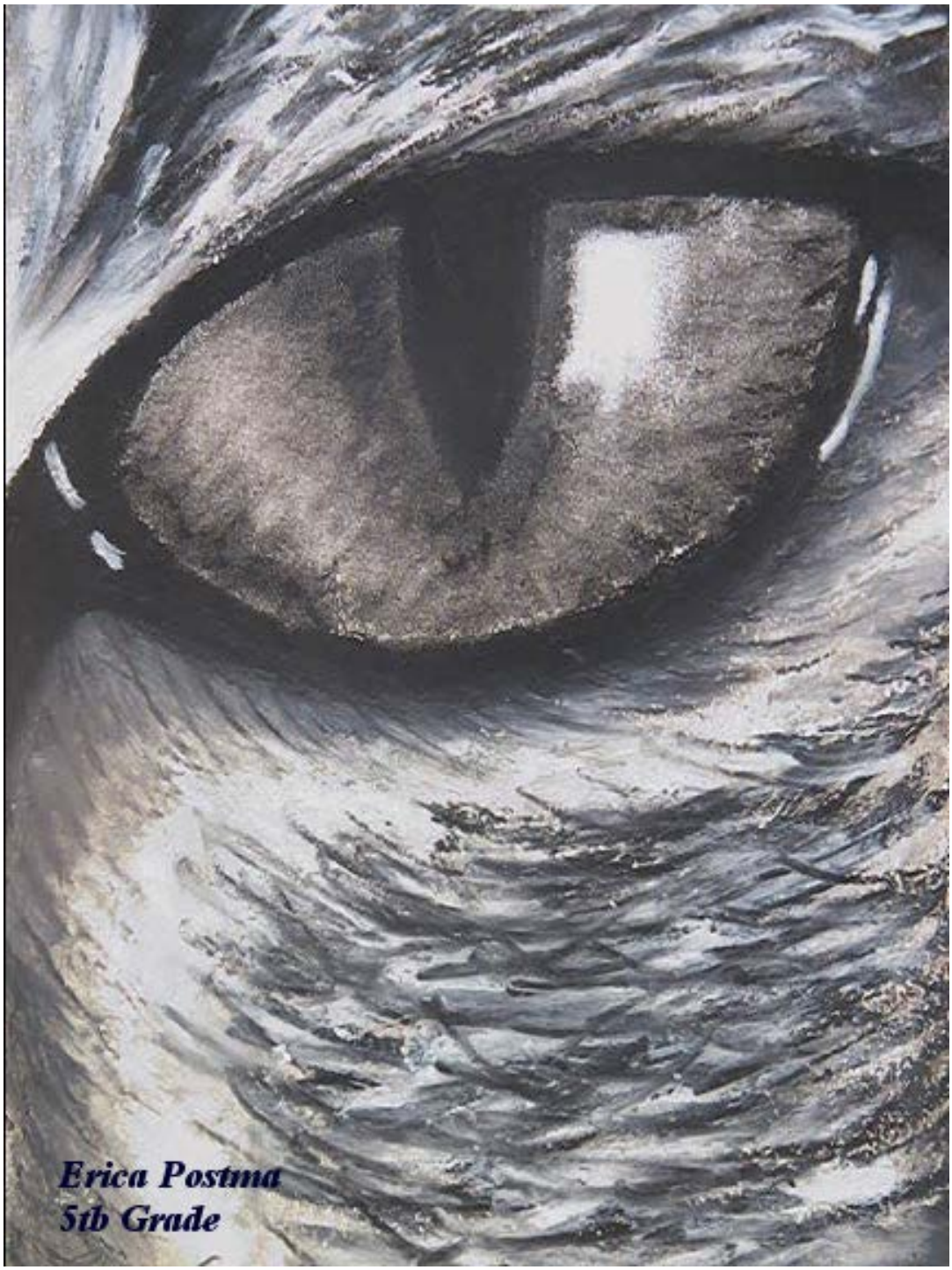
Erica Postma
5th Grade

WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 7. BANKING AND SECURITIES

PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5005

Proposed new §83.5005, published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7525), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602122

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 214. VOCATIONAL NURSING EDUCATION

22 TAC §214.6

The Texas Board of Nursing withdraws proposed amendments to §214.6 which appeared in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1326).

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

TRD-201602165
Jena Abel
Assistant General Counsel
Texas Board of Nursing
Effective date: May 4, 2016
For further information, please call: (512) 305-6822

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PART 31. TEXAS STATE BOARD OF EXAMINERS OF DIETITIANS

CHAPTER 711. DIETITIANS

SUBCHAPTER A. LICENSED DIETITIANS

22 TAC §711.6

Proposed repeal of §711.6, published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7558), is withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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

TRD-201602150

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22 TAC §§711.7, 711.8, 711.10, 711.12, 711.13

Proposed amended §§711.7, 711.8, 711.10, 711.12, and 711.13, published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7558), are withdrawn. The agency failed to adopt the proposal within six months of publication. (See Government Code, §2001.027, and 1 TAC §91.38(d).)

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

TRD-201602151

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Ava Robichau
Kindergarten

ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 355. REIMBURSEMENT RATES

SUBCHAPTER D. REIMBURSEMENT METHODOLOGY FOR INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS (ICF/IID)

1 TAC §355.456

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.456, concerning Reimbursement Methodology, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 359). The rule text will not be republished.

BACKGROUND AND JUSTIFICATION

This rule establishes the reimbursement methodology for the Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) program, administered by the Department of Aging and Disability Services (DADS).

Article II of House Bill 1, 84th Legislature, Regular Session, 2015, appropriated funds for an add-on payment to ICF/IID facilities that are providing services to individuals with high medical needs to reside in a non-state operated facility. Currently, eligibility for the high medical needs beds and add-on payment is limited to individuals who have lived in a State Supported Living Center (SSLC) for at least six months prior to referral to a non-state operated facility; have a level of need (LON) that includes a medical LON increase but not a LON of pervasive plus; and have a Resource Utilization Group (RUG-III) classification in the major RUG-III classification groups of Extensive Services, Rehabilitation, Special Care, or Clinically Complex. DADS began this initiative with 24 ICF/IID beds and four providers in January 2015. As of this date, one six-bed provider is no longer participating, leaving 18 ICF/IID beds approved in this initiative for Fiscal Year 2015. The appropriations funded add-on payments for 150 ICF/IID beds, including the original 18 ICF/IID beds, for the 2016-17 biennium. It was anticipated the ICF/IID beds for FY 2016 would be filled due to the SSLC closures, but no SSLCs closed. Consequently, the demand for moving these SSLC residents has decreased. At the same time, the option of an ICF/IID add-on rate might be useful for similar individuals with IDD residing in nursing facilities who are wanting to move to a community setting. This amended rule expands the eligibility criteria to include not only individuals from a SSLC but also individuals who are living in a Medicaid-certified nursing facility prior to referral to a non-state operated facility. This additional criterion allows more flexibility to utilize the appropriated funds while also serving individuals identified through the PASRR process.

HHSC, under its authority and responsibility to administer and implement rates, is amending this rule to add this new eligibility criterion for the high medical needs beds and add-on payment.

COMMENTS

The 30-day comment period ended February 8, 2016. During this period, HHSC did not receive any comments regarding the proposed amendment to this rule.

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements.

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

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

TRD-201602164
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 24, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 424-6900

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

SUBCHAPTER A. REQUIRED CURRICULUM

19 TAC §74.5

The State Board of Education (SBOE) adopts an amendment to §74.5, concerning curriculum requirements. The amendment

is adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1635) and will not be republished. The section clarifies requirements relating to the academic achievement record and high school diploma. The adopted amendment updates the rule to align with recent legislative changes.

REASONED JUSTIFICATION. The 83rd Texas Legislature, Regular Session, 2013, passed House Bill (HB) 5, amending the Texas Education Code (TEC), §28.025, to change the high school graduation programs from the minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. In April 2014, the SBOE gave final approval for proposed revisions to 19 TAC Chapter 74, Subchapter A, to align with the requirements of HB 5, including changes to the required content for the academic achievement records/transcripts and diplomas.

The 84th Texas Legislature, Regular Session, 2015, passed HB 181, amending the TEC, §28.025(c-1), (c-5), and (e-1), to remove the requirement that school districts and charter schools identify endorsements and performance acknowledgments on high school diplomas. Districts must still include this information on high school academic achievement records/transcripts.

The adopted amendment to 19 TAC Chapter 74, Curriculum Requirements, Subchapter A, Required Curriculum, §74.5, Academic Achievement Record (Transcript) and High School Diploma, aligns the rule for the academic achievement records with the requirements of HB 181. The adopted amendment includes a change to the section title to remove reference to the high school diploma.

The amendment to 19 TAC §74.5 was approved by the SBOE for first reading and filing authorization at its January 29, 2016 meeting and for second reading and final adoption at its April 8, 2016 meeting.

In accordance with the TEC, §7.102(f), the SBOE approved the amendment for adoption by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2016-2017 school year. The earlier effective date will align rules for the academic achievement records with the requirements of HB 181.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the SBOE to establish curriculum and graduation requirements, and the TEC, §28.025(e-1), as amended by HB 181, 84th Texas Legislature, Regular Session, 2015, which requires the SBOE to adopt rules as necessary to administer the requirement that a school district clearly indicate a distinguished level of achievement, an endorsement, and a performance acknowledgment on the transcript of a student who satisfies the applicable requirements.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §7.102(c)(4) and §28.025, as amended by HB 181, 84th Texas Legislature, Regular Session, 2015.

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

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

TRD-201602170
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 24, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 475-1497

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CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS

SUBCHAPTER D. OTHER TECHNOLOGY APPLICATIONS COURSES

19 TAC §126.65

The State Board of Education (SBOE) adopts new §126.65, concerning Texas essential knowledge and skills (TEKS) for technology applications. The new section is adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1636) and will not be republished. The adopted rule action adds a new Advanced Placement (AP) computer science course as an option for a student to use to earn credit toward high school graduation requirements. The effective date of the new section is August 22, 2016.

REASONED JUSTIFICATION. A member of the SBOE requested consideration of this rule action in anticipation of the launch of the new AP Computer Science Principles course in the 2016-2017 school year.

The text of adopted new 19 TAC §126.65 aligns with the SBOE's authority to by rule determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002 and is modeled after other rules adopted for AP courses.

New 19 TAC §126.65 was approved by the SBOE for first reading and filing authorization at its January 29, 2016 meeting and for second reading and final adoption at its April 8, 2016 meeting.

SUMMARY OF COMMENTS AND RESPONSES. Following is a summary of the public comments received and the corresponding responses regarding proposed new 19 TAC §126.65.

Comment. One administrator expressed disagreement with the classification of AP Computer Science Principles and AP Computer Science A as technology applications courses. The commenter stated that because of the existing alignment to other Project Lead the Way career and technical education (CTE) innovative courses such as Computer Science and Software Engineering it seems that the proposed new AP Computer Science Principles course would be better classified as a CTE course in the Science, Technology, Engineering, and Math Career Cluster.

Response. The SBOE disagrees and has determined that the course is appropriately included as a technology applications course with the other computer science courses.

Comment. One administrator stated that the proposed AP Computer Science Principles course will have a positive impact on students pursuing computer science as a career or a major in post-secondary education.

Response. The SBOE agrees and took action to adopt the proposed new course with an effective date of August 22, 2016.

Comment. One community member asked if the proposed AP Computer Science Principles course could be used to satisfy a languages other than English graduation requirement.

Response. This comment is outside the scope of the proposed rulemaking.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025.

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

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

TRD-201602171
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 22, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 475-1497

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CHAPTER 127. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR CAREER DEVELOPMENT

SUBCHAPTER B. HIGH SCHOOL

19 TAC §127.16

The State Board of Education (SBOE) adopts new §127.16, concerning Texas essential knowledge and skills (TEKS) for career development. The new section is adopted without changes to the proposed text as published in the March 4, 2016 issue of the *Texas Register* (41 TexReg 1637) and will not be republished. The adoption adds TEKS for a new career preparation course to allow students to earn up to a total of three credits each in Career Preparation I and Career Preparation II. The effective date of the new section is August 28, 2017.

REASONED JUSTIFICATION. In April 2015, the SBOE requested that staff prepare TEKS for a new, second-level practicum course for each proposed practicum in 19 TAC Chapter 130. The one-credit extended practicum courses may be combined with the associated practicum course in order to allow a student to master additional knowledge and skills and earn up to three credits.

The extended practicum courses were given final approval at the September 2015 SBOE meeting. During the public comment period, a comment was received expressing concern that the two career preparation courses in 19 TAC Chapter 127 did not have a similar third-credit option. As a result, the SBOE requested that staff prepare TEKS for an extended Career Preparation course for action at a future meeting. This extended career preparation course will provide districts with added flexibility to offer a capstone course in career development that will best prepare students for postsecondary success.

New 19 TAC §127.16 was approved by the SBOE for first reading and filing authorization at its January 29, 2016 meeting and for second reading and final adoption at its April 8, 2016 meeting.

SUMMARY OF COMMENTS AND RESPONSES. No public comments were received on the proposal.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §7.102(c)(4), which requires the State Board of Education (SBOE) to establish curriculum and graduation requirements; TEC, §28.002, which identifies the subjects of the required curriculum and requires the SBOE to by rule identify the essential knowledge and skills of each subject in the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials and addressed on the state assessment instruments; and TEC, §28.025, which requires the SBOE by rule to determine the curriculum requirements for the foundation high school graduation program that are consistent with the required curriculum under §28.002.

CROSS REFERENCE TO STATUTE. The new section implements the Texas Education Code, §§7.102, 28.002, and 28.025.

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

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

TRD-201602172
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 28, 2017
Proposal publication date: March 4, 2016
For further information, please call: (512) 475-1497

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CHAPTER 129. STUDENT ATTENDANCE

SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1025

The Texas Education Agency (TEA) adopts an amendment to §129.1025, concerning student attendance. The amendment is adopted with changes to the proposed text as published in the February 5, 2016 issue of the *Texas Register* (41 TexReg 907). The section adopts by reference the annual student attendance accounting handbook. The handbook provides student attendance accounting rules for school districts and charter schools.

The amendment adopts by reference the *2015-2016 Student Attendance Accounting Handbook,* dated May 2016.

REASONED JUSTIFICATION. The TEA has adopted its student attendance accounting handbook in rule since 2000. Attendance accounting evolves from year to year, so the intention is to annually update 19 TAC §129.1025 to refer to the most recently published student attendance accounting handbook.

Each annual student attendance accounting handbook provides school districts and charter schools with the Foundation School Program (FSP) eligibility requirements of all students, prescribes the minimum requirements of all student attendance accounting systems, lists the documentation requirements for attendance audit purposes, and details the responsibilities of all district personnel involved in student attendance accounting. The TEA distributes FSP resources under the procedures specified in each current student attendance accounting handbook. The final version of the student attendance accounting handbook is published on the TEA website. A supplement, if necessary, is also published on the TEA website.

The adopted amendment to 19 TAC §129.1025 adopts by reference the student attendance accounting handbook dated May 2016 for the 2015-2016 school year.

Significant changes to the *2015-2016 Student Attendance Accounting Handbook* from the *2014-2015 Student Attendance Accounting Handbook,* and additional changes made since publication of the proposed handbook are addressed as applicable in the following.

Section 3

The term "district students" was replaced with "early college high school students and students taking dual credit courses" in the section on waivers related to students taking dual credit courses at institutions of higher education with calendars beginning before the fourth Monday in August.

An update was made to the section regarding a student's entitlement to attend school in a particular school district while in the Department of Family and Protective Services conservatorship.

The age for allowing a district to withdraw a student was updated from 18 to 19. Additionally, updates were made to the age for compulsory attendance because of changes to the compulsory attendance age.

In the section relating to requirements for a student to be considered present for FSP purposes, updates were made regarding activities under a service plan under the Texas Family Code, Chapter 263, Subchapter B.

A recommendation was added for districts and charter schools to consider building into the calendar an additional 840 minutes, which is equivalent to two days, in the event of school closures due to bad weather or safety issues to allow flexibility, in accordance with HB 2610.

In response to public comment, the *2015-2016 Student Attendance Accounting Handbook,* dated May 2016, was modified at adoption in §3.8.1, which refers to the length of the school day for open-enrollment charter schools, to remove the requirement that an open-enrollment charter school's school day be at least 420 minutes each day, including intermission and recesses.

Also in response to public comment, §3.8 of the *2015-2016 Student Attendance Accounting Handbook,* dated May 2016, that refers to calendars for open-enrollment charter schools was modified at adoption to remove the requirement that an open-enrollment charter school's calendar offer at least 75,600 minutes of instruction, including intermissions and recesses. Corresponding changes were made at adoption in §3.8.2, relating to makeup days and waivers.

Section 5

The requirement for a practicum course to include classroom instruction to average one class period each day for every school week was removed.

The title of the career and technical education (CTE) Problems and Solutions subsection was updated to remove the phrase "Formerly CTE Independent Study."

Section 7

The subsection on prekindergarten eligibility based on a student being limited English proficient was updated to allow districts to begin the preregistration process after April 1 of each year.

Section 11

The eligibility requirements, document requirements, and limitations for dual credit courses were updated in the subsection regarding student eligibility for dual credit courses because HB 505 required the restriction to be removed for high school juniors and seniors.

Updates were made to the requirements for students in the Optional Flexible School Day Program to generate full-day funding for attendance. Based on HB 2660, full-day is now considered four hours instead of six hours for funding purposes.

Throughout the Handbook

References to school days were converted to minutes in accordance with HB 2610, 84th Texas Legislature, 2015.

References to the Prekindergarten Early Start Grant Program were removed.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began February 5, 2016, and ended March 7, 2016. Following is a summary of public comments received on the proposal and corresponding agency responses.

LENGTH OF SCHOOL DAY

Comment: The Texas Association of School Boards, the Texas Charter Schools Association (TCSA), Pasadena Independent School District (ISD), Slidell ISD, Spring Branch ISD, and Responsive Education Solutions commented on §3.8.1 in the 2015-2016 proposed Student Attendance Accounting Handbook (SAAH) that states that, "A school day must be at least 420 minutes each day, including intermissions and recesses. School districts and open-enrollment charter schools are subject to this requirement." The commenters stated that there is no provision in the TEC related to the requirement in the SAAH that specifically applies to open-enrollment charter schools. Since open-enrollment charter schools are subject to the TEC requirements only when specifically stated, the commenters requested that the statement referring to open-enrollment charter schools in §3.8.1 of the 2015-2016 proposed SAAH and other documented sources be removed before final adoption.

Agency Response: The agency agrees that there is no provision in the TEC related to the length of school day that specifically applies to open-enrollment charter schools. Section 3.8.1 in the 2015-2016 SAAH, which refers to the length of the school day for

open-enrollment charter schools, has been modified to remove the requirement that an open-enrollment charter school's school day be at least 420 minutes each day, including intermission and recesses. However, any school district or open-enrollment charter school that fails to provide at least 75,600 minutes of instruction, including approved waivers, will experience a reduction in its Foundation School Program (FSP) funding because the computation of average daily attendance (ADA) is based on the 75,600-minute school year.

Comment: San Antonio ISD commented on the length of the school day being seven hours (420 minutes) and recommended a proposal for a school day to be at least 240 minutes each day, including intermissions and recesses.

Agency Response: The agency disagrees that the length of the school day be at least 240 minutes each day, including intermissions and recesses for school districts. The TEC, §25.082(a), applies specifically to school districts and states that, "A school day shall be at least seven hours each day, including intermissions and recesses." Therefore, the requirement that a school district's length of the school day be at least 420 minutes (or seven hours) will remain in place.

SCHOOL CALENDAR

Comment: The TCSA commented that the requirement for an open-enrollment charter school's calendar to provide for at least 75,600 minutes of instruction, including intermissions and recesses, inappropriately attached the TEC, §25.081, calendar requirements to open-enrollment charter schools and should be removed. The TCSA also requested that the proposed §3.8 of the SAAH be revised to clarify that a charter school is free to create a school calendar with less than 75,600 minutes without requesting a waiver.

Comment: Responsive Education Solutions recommended that references made to open-enrollment charter schools in §3.8 of the SAAH be amended to remove any application of the TEC, §25.081, to open-enrollment charter schools. Responsive Education Solutions stated that, "the proposed rule in §3.8 of the SAAH is not directly supported by law and therefore, the calendar requirements in TEC, §25.081, of the TEC should not apply to an open-enrollment charter school." Responsive Education Solutions also stated that, "according to TEC Section 12.103(b), an open-enrollment charter school is subject to TEC provisions and rules adopted under the TEC only to the extent the applicability of a provision or rule is specifically provided for in statute."

Agency Response: The agency agrees that there is no provision in the TEC that requires that a charter school create a calendar that offers at least 75,600 minutes of instruction, including intermission and recess. Therefore, §3.8 of the 2015-2016 SAAH that refers to calendars for open-enrollment charter schools has been modified to remove the requirement that an open-enrollment charter school's calendar offer at least 75,600 minutes of instruction, including intermissions and recesses. The section will also clarify that any school district or open-enrollment charter school that fails to provide at least 75,600 minutes of instruction, including approved waivers, will experience a reduction in its FSP funding because the computation of ADA is based on the 75,600-minute school year. In addition, though the TEA does not require districts or charter schools to apply for waivers, the TEA encourages districts or charter schools to apply for available waivers to assist with calendar planning.

EARLY RELEASE DAY WAIVERS

Comment: Comal ISD recommended that the TEA offer eight early-release day waivers instead of six to provide more flexibility to districts and to support collaboration, professional development, and communication. Comal ISD also commented that early-release days are an integral part of instructional planning for teacher training and an investment in students' success.

Agency Response: The agency disagrees that early release day waivers should be increased in number from six to eight. In addition to the six early release day waivers, the agency also offers waivers for staff development and other general waivers to assist districts and charter schools with professional development and instructional planning.

OTHER COMMENTS

Comment: A district representative from Leander ISD requested clarification regarding whether or not §3.8.2.6 and §11.3.1.2 in the SAAH that pertain to a district's application for a waiver for students taking dual credit courses at an institution of higher education (IHE) with a calendar of fewer than 75,600 minutes, including intermissions and recesses, and reporting dual credit attendance. The commenter asked whether an application for these students is still a requirement, and if so, when should this type of waiver be requested.

The commenter also requested that rules be adopted to allow a campus that has been approved for a low attendance waiver to receive minutes equal to the schedule for the day applied. The commenter suggested that, "For example, if an elementary campus has received a low attendance waiver by the TEA and would have been providing daily instruction for 435 minutes on such day the campus shall earn 435 minutes for the approved low attendance waiver."

Further, the commenter requested clarification on §3.6.2 in the SAAH that refers to the district selecting an official attendance-taking time. The commenter recommended that the section be revised to clearly define the official snapshot time and a determination of what circumstances allow for the snapshot time to be changed.

Lastly, the commenter requested specifics on how the proportionate deduction in state funding will be calculated based on the response to a question in the HB 2610 FAQ posted on the TEA website.

Agency Response: The agency provides the following clarification: §3.8.2.6, Waivers Related to Students Taking Dual Credit Courses at Institutions of Higher Education (IHEs) with Calendars of Fewer than 75,600 Minutes, and §11.3.1.2, Reporting Dual Credit Attendance in the Public Education Management System (PEIMS) when the Higher Education Calendar is Shorter than the School District Calendar, are still applicable. The waiver request should be submitted for students taking dual credit courses through an institution of higher education whose calendar is shorter than the district's calendar. The students' attendance should be reported in PEIMS with a different track to reflect the shorter calendar. Reporting the student with a separate track will prevent a reduction in state funding.

The agency disagrees with comments regarding low attendance waivers and maintains language as published as proposed. In accordance with SAAH, §3.8.2.3, if a district requests a low attendance waiver, the low attendance waiver granted by TEA will exclude the day(s) from the ADA and FSP funding calculations. Also, any days for which a district or charter school was granted

a low attendance waiver will be included in the calculation of whether the district met the requirement of 75,600 minutes.

The agency disagrees with the comment on the official snapshot time and maintains language as published as proposed. The SAAH, §3.6.2, provides a definition and an example of an official snapshot time. This section also states that a campus may select an official attendance-taking time that is not during the second or fifth hour of the day if the local school board has adopted a district policy allowing for recording absences in an alternative hour, or if the superintendent has established documented procedures allowing for recording absences in an alternative hour after having been delegated authority to do so by the board.

The comment regarding funding is outside of the scope of proposed rulemaking. However, the TEA will provide specifics on how the proportionate deduction in state funding will be calculated in the next revised HB 2610 FAQ.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015, which authorizes that each school year each school district and charter school provides for at least 75,600 minutes of instruction, including intermissions and recesses, for students. In addition, the commissioner may approve the instruction of students for fewer than 75,600 minutes if a calamity causes the school closing; TEC, §25.0812, as added by HB 2610, 84th Texas Legislature, 2015, which requires that school districts and charter schools may not schedule the last day of school for students before May 15; TEC, §30A.153, which requires the commissioner to adopt rules for the implementation of Foundation School Program (FSP) funding for the state virtual school network, including rules regarding attendance accounting; and TEC, §42.004, which authorizes the commissioner of education, in accordance with rules of the State Board of Education, to take such action and require such reports consistent with TEC, Chapter 42, as may be necessary to implement and administer the FSP.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§25.081, as amended by House Bill (HB) 2610, 84th Texas Legislature, 2015; 25.0812, as added by HB 2610, 84th Texas Legislature, 2015; 30A.153; and 42.004.

§129.1025. Adoption by Reference: Student Attendance Accounting Handbook.

(a) The student attendance accounting guidelines and procedures established by the commissioner of education under §129.21 of this title (relating to Requirements for Student Attendance Accounting for State Funding Purposes) and the Texas Education Code, §42.004, to be used by school districts and charter schools to maintain records and make reports on student attendance and student participation in special programs will be published annually.

(b) The standard procedures that school districts and charter schools must use to maintain records and make reports on student attendance and student participation in special programs for school year 2015-2016 are described in the official Texas Education Agency (TEA) publication *2015-2016 Student Attendance Accounting Handbook,* dated May 2016, which is adopted by this reference as the agency's official rule. A copy of the *2015-2016 Student Attendance Accounting Handbook,* dated May 2016, is available for examination during regular office hours, 8:00 a.m. to 5:00 p.m., except holidays, Saturdays, and Sundays, at the Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701. In addition, the publication can be accessed from the TEA official website. The commissioner will amend the *2015-2016 Student Attendance Accounting Handbook,* dated May 2016, and this subsection adopting it by reference, as needed.

(c) Data from previous school years will continue to be subject to the student attendance accounting handbook as the handbook existed in those years.

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

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

TRD-201602166
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 24, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 475-1497

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19 TAC §129.1031

The Texas Education Agency (TEA) adopts new §129.1031, concerning reporting off-campus programs. The new section is adopted without changes to the proposed text as published in the February 5, 2016 issue of the *Texas Register* (41 TexReg 908) and will not be republished. The adopted new section reflects changes in statute made by House Bill (HB) 2812, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. HB 2812, 84th Texas Legislature, 2015, amended the Texas Education Code (TEC), §42.005, and added the TEC, §42.0052, to allow time spent in an approved off-campus instructional program to count toward minutes required to determine average daily attendance.

The attendance accounting rules allow students who are participating in a dual credit program to count time spent in the dual credit course toward average daily attendance. Adopted new 19 TAC §129.1031, Reporting Off-Campus Programs, allows time spent in an off-campus instructional program offered by an accredited institution of higher education to count toward average daily attendance, even if the student is not earning dual credit for participation in the program. The intent of the law, as expressed when the bill was amended on the senate floor, was to allow students to earn state funding if they are taking a college course similar to a dual credit course even if that course is not earning high school credit. Consequently, the requirements of the adopted new section are similar to those for dual credit courses, except that students do not have to earn high school credit to be counted for state funding purposes.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began February 5, 2016, and ended March 7, 2016. No public comments were received.

STATUTORY AUTHORITY. The new section is adopted under the Texas Education Code (TEC), §42.005(h), which states that the time students spend in an off-campus instructional program approved under the TEC, §42.0052, shall be counted as part of the minimum number of instructional hours needed for a student to be considered a full-time student in average daily attendance under the TEC, Chapter 42; the TEC, §42.0052(a), which grants the commissioner the authority to approve off-campus instruc-

tional programs provided by an entity other than a school district or open-enrollment charter school as a program in which participation by a student of a school district or charter school may be counted for the purpose of determining average daily attendance under the TEC, §42.005(h); the TEC, §42.0052(b), which grants the commissioner the authority to adopt rules regarding verification and reporting procedures concerning time spent by students participating in these off-campus instructional arrangements; and the TEC, §12.106(c), which provides for open-enrollment charter schools to receive funding and authorizes the commissioner to adopt rules to provide and account for state funding of open-enrollment charter schools under certain conditions through the TEC, Chapter 42.

CROSS REFERENCE TO STATUTE. The new section implements the TEC, §42.005(h) and §42.0052, as added by HB 2812, 84th Texas Legislature, 2015, and §12.106(c).

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

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

TRD-201602167
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: May 24, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.2

The Texas Board of Physical Therapy Examiners adopts amendments to §329.2, Licensure by Examination, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2082).

The amendment to 22 TAC §329.2 will enable an applicant for licensure by examination who has reached the 6-time lifetime limit or has 2 very low scores on the National Physical Therapy Examination (NPTE) a means of requesting that the Board appeal on their behalf to the Federation of State Boards of Physical Therapy (FSBPT).

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602108
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: May 23, 2016
Proposal publication date: March 18, 2016
For further information, please call: (512) 305-6900

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER F. REQUIREMENTS FOR EDUCATION PROVIDERS, COURSES AND INSTRUCTORS FOR QUALIFYING EDUCATION

22 TAC §535.63

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.63, Approval of Instructors of Qualifying Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1335).

The amendments clarify qualifications needed to become an approved instructor of a TREC approved adult instructor training course. This amendment was recommended by the Commission's Education Standards Advisory Committee.

The reasoned justification for the amendments is increased standards for instructors to improve quality of education of applicants for real estate licenses.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602092
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: May 23, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 936-3092

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22 TAC §535.64

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.64, Content Requirements for Qualifying Real Estate Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1336).

The amendments provide consistency and better quality in Property Management qualifying courses and are recommended by the Commission's Education Standards Advisory Committee.

The reason justification for the amendments is greater clarity in course requirements to improve the quality of education for applicants for real estate licenses.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602093
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: May 23, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 936-3092

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SUBCHAPTER G. REQUIREMENTS FOR CONTINUING EDUCATION PROVIDERS, COURSES AND INSTRUCTORS

22 TAC §535.73

The Texas Real Estate Commission (TREC) adopts amendments to 22 TAC §535.73, Approval of Continuing Education Courses, in Chapter 535, General Provisions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1337).

The amendments are adopted to correct the language so that it will not be misinterpreted. The statute and the intention of the Commission was to limit the daily presentation to 10 hours, not limit the length of the entire course.

The reason justification for the amendments is greater clarity in the rule.

No comments were received on the amendments as published.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its license holders to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by this amendment are Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendments.

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602095
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: May 23, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 936-3092

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4906, §5.4907

The Texas Department of Insurance adopts the repeal of 28 TAC §5.4906 and §5.4907, which concern the certificate of compliance approval program and the certificate of compliance transition program for the Texas Windstorm Insurance Association (association), respectively. Subsequent legislation has rendered these sections obsolete. The repeal is adopted without changes to the proposal published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 916).

REASONED JUSTIFICATION. The repeal is necessary to remove outdated sections from the TAC.

The association is the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, or repaired or to which additions are made after January 1, 1988, be inspected and approved by TDI for compliance with the association's plan of operation to be eligible for coverage through the association. The commissioner of insurance has adopted various windstorm building codes for the association's plan of operation.

Repealed 28 TAC §5.4906 and §5.4907 referred to programs through which structures could gain TDI approval without being inspected or complying with the applicable windstorm building code, under certain statutory exceptions. At the time §5.4906 was adopted, Insurance Code §2210.251(f) and §2210.258 provided that a residential structure insured by the association as

of September 1, 2009, could continue coverage through the association, provided that any construction, alteration, remodeling, enlargements, repairs, or additions begun on or after June 19, 2009, complied with the applicable windstorm building code. Section 5.4906 applies to residential structures insured by the association under policies issued in accordance with approval process regulations that TDI initiated on April 12, 2006, and that continued to be eligible for that coverage on September 1, 2009. The section stated that the declination and flood insurance requirements in the Insurance Code and the association's underwriting requirements apply to structures in the certificate of compliance approval program.

Section 5.4907 was also adopted under the authority of Insurance Code §2210.251 and §2210.258. Section 5.4907 described the certificate of compliance transition program, which provided that between September 1, 2009, and August 31, 2011, residential structures could be covered through the association without complying with the applicable windstorm building code. Under the program, the association could provide coverage to noncompliant residential structures for which private market windstorm and hail insurance coverage had been discontinued within the 12 months before the date of the application to the association; that had not been constructed, altered, remodeled, enlarged, repaired, or added to since June 19, 2009; and that met other requirements.

HB 3, 82nd Legislature, First Called Session (2011) and SB 1702, 83rd Legislature, Regular Session (2013) rendered §5.4906 and §5.4907 obsolete. HB 3 established the alternative certification program, which made noncompliant residential structures eligible for association coverage as long as at least one qualifying structural building component had been inspected and that it complied with the applicable building code standards. SB 1702 repealed the alternative certification program but enabled noncompliant residential structures insured in the private market on or after June 19, 2009, to obtain insurance through the association, even if they had been constructed, altered, remodeled, enlarged, repaired, or added to on or after that date. The provisions of SB 1702 would have expired on December 31, 2015, but SB 498, 84th Legislature, Regular Session (2015) extended the provisions indefinitely.

In the absence of §5.4906 and §5.4907, noncompliant residential structures that became eligible for association coverage under former versions of Insurance Code §2210.251(f) and §2210.258 are still eligible. Policyholders will continue to pay a premium surcharge of 15 percent for each noncompliant residential structure under Insurance Code §2210.259(a).

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal is adopted under Insurance Code §2210.008 and §36.001. 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 of insurance may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602241
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: May 29, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 676-6584

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 326. MEDICAL WASTE MANAGEMENT

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts new §§326.1, 326.3, 326.5, 326.7, 326.17, 326.19, 326.21, 326.23, 326.31, 326.37, 326.39, 326.41, 326.43, 326.53, 326.55, 326.61, 326.63, 326.65, 326.67, 326.69, 326.71, 326.73, 326.75, 326.77, 326.85, 326.87, and 326.89.

Sections 326.1, 326.3, 326.5, 326.19, 326.21, 326.37, 326.39, 326.41, 326.43, 326.53, 326.55, 326.61, 326.63, 326.69, 326.71, 326.73 and 326.75 are adopted *with changes* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9507), and therefore will be republished. Sections 326.7, 326.17, 326.23, 326.31, 326.65, 326.67, 326.77, 326.85, 326.87, and 326.89 are adopted *without changes* to the proposed text and, therefore, will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding THSC, §361.0905 (Regulation of Medical Waste) requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking primarily involves extracting or replicating the rules related to medical waste from 30 TAC Chapter 330 (Municipal Solid Waste), and moving them to adopted new Chapter 326. HB 2244 was effective immediately on June 10, 2015. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 330 and 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste).

Section by Section Discussion

Subchapter A: General Information

§326.1, Purpose and Applicability

Adopted new Chapter 326 addresses the handling, storage, disposal, and transportation of medical waste. Adopted new §326.1 establishes that the adopted regulations in Chapter 326 are based primarily on the stated purpose of THSC, Chapter 361 and are under the authority of the commission. Permits and registrations issued by the commission and its predecessors, that existed before Chapter 326 becomes effective remain valid

for the later of two years from the effective date of this chapter, or until a final decision is made on a timely application for an existing authorization to comply with Chapter 326. The adopted rule is revised to clarify that permits and registrations would remain effective until the later of two years or until a timely decision is made on a timely application. The adopted rule is revised to clarify that registrations by rule would remain effective until they are renewed under this chapter. The existing Chapter 330 rules governing medical waste, which are repealed in a corresponding rulemaking, remain in effect and applicable to existing and pending permits, registrations, and registrations by rule, obtained under those rules. Applications received within two years of the effective date of Chapter 326 for an existing permit or registration to comply with or transition to Chapter 326 will not be subject to the standard procedures for processing applications, including any requirements for notice and public participation. Authorizations, other than permits, registrations, and registrations by rule, that existed before Chapter 326 became effective, remain valid and are subject to these rules when they become effective. These authorizations include exemptions and notifications.

Applications pending before the effective date of Chapter 326 are subject to review under the existing Chapter 330 rules. Permits and registrations issued under the existing Chapter 330 rules must be updated by filing a new application, which is not subject to public notice, within two years of the effective date of Chapter 326 to comply with the provisions of Chapter 326. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. Existing permits or registrations terminate if a timely application to update is not filed. Existing permits or registrations remain in effect until a final determination is made on a timely filed application.

Adopted §326.1(a)(3) is revised to clarify that requests to modify buffer zones or operating hours under this chapter will be processed as modifications that do not require notice.

The sealed and signed pages of the existing application can be incorporated into the new submittal as long as the owner and/or operator provides a statement that the application is revised to only replace references to Chapter 330 with Chapter 326 along with minor corrections. However, the commission continues to require new engineering seals and signatures for submittals for substantive changes to a facility design or operation.

§326.3, Definitions

Adopted new §326.3 defines terms in Chapter 326. Additionally, this section provides that in addition to defined terms, the undefined words, terms, and abbreviations, when used in this chapter, are defined in Texas Department of State Health Services (DSHS) rules in 25 TAC §1.132 and §133.2 (Definitions). When the definitions found in 25 TAC §1.132 are changed, such changes will prevail over the definitions found in §326.3. On-site is defined to include medical waste managed on property that is owned or effectively controlled by one entity and that is within 75 miles of the point of generation or generated at an affiliated facility. The proposed definitions for non-hazardous pharmaceutical and trace chemotherapy waste are not adopted, and the remaining definitions are renumbered accordingly.

In response to comments, §326.3(42), "Putrescible waste" definition was modified to be specific to regulated medical waste.

In response to comments, §326.3(53)(B), "Storage" definition for post-collection transporter was modified to extend the storage time to 72 hours to accommodate long distance routes and multiple pickup locations prior to treatment or disposal.

§326.5, General Prohibitions

Adopted new §326.5 establishes that a person may not cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal of medical waste, or the use or operation of a solid waste facility to store, process, or dispose of solid waste in violation of the THSC, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes the discharge or imminent threat of discharge, the creation and maintenance of a nuisance, or the endangerment of the human health and welfare or the environment. The proposed clause referencing THSC, §361.092 has been deleted because it is addressed under the provisions Chapter 330 for landfills.

§326.7, Other Authorizations

Adopted new §326.7 specifies that owners or operators of medical waste facilities should obtain appropriate authorizations for the prevention or abatement of air or water pollution, and all other permits or approvals that may be required by local, state, and federal agencies.

Subchapter B: Packaging, Labeling and Shipping Requirements

§326.17, Identification

Adopted new §326.17 establishes that prior to packaging, labeling and shipping, health care-related facilities must identify and segregate medical waste from ordinary rubbish and garbage produced within or by the facilities. Should other municipal solid waste be combined with medical waste, the combined waste will be considered to be medical waste.

§326.19, Packaging

Adopted new §326.19 specifies that the generator is responsible for ensuring that medical waste is packaged in accordance with applicable requirements under the United States Department of Transportation, 49 CFR §173.134 and 49 CFR §173.196 which address infectious substances. 49 CFR Subtitle B, Chapter 1, Subchapter C specifically regulates infectious substances to abate future outbreaks of infectious disease. The reference 49 CFR §173.196 was added to further clarify infectious substances packaging.

§326.21, Labeling Containers Excluding Sharps

Adopted new §326.21 requires that medical waste packages must be labeled appropriately and in accordance with applicable requirements under 49 CFR §173.134. This section also establishes that the generator is primarily responsible for labeling, but may receive transporter assistance.

Due to response to comments, the title for this section was modified from "Labeling" to "Labeling Containers Excluding Sharps." Sharps containers requirements for marking (labeling) sharps is addressed under §326.19(b).

§326.23, Shipping

Adopted new §326.23 provides general requirements and provisions for both generators and transporters to follow, such as recordkeeping and explains that shipments of untreated medical waste must be delivered only to facilities authorized to accept untreated medical waste. This section establishes maintenance of electronic waste shipping (manifest) documentation by generators and transporters in addition to hard copies. This section explains that treated medical waste shipments including sharps

or residuals of sharps must include a statement to the landfill that the shipment has been treated by an approved method in accordance with 25 TAC §1.136 (Approved Methods of Treatment and Disposition). This section also establishes that persons who transport untreated medical waste from Texas to other states or countries or from other states or countries to Texas, or persons that collect or transport waste in Texas but have their place of business in another state, must comply with all of the requirements for transporters.

Subchapter C: Exempt Medical Waste Operations

§326.31, Exempt Medical Waste Operations

Adopted new §326.31 establishes that facilities that generate and store on-site medical waste are exempt from medical waste authorizations under this chapter. These facilities are identified as small quantity generators (SQGs) and large quantity generators (LQGs). SQGs are facilities that generate up to 50 pounds of medical waste per month and LQG are facilities that generate more than 50 pounds per month. Exempt SQG Transporters generate and transport less than 50 pounds per month to an authorized medical waste storage or processing facility. In response to comments "of regulated medical waste" was added to distinguish small quantity and large quantity generators as it relates to medical waste management since similar terminology is used for hazardous waste generators as well.

Persons who transport medical waste within Texas when the transportation neither originates nor terminates in Texas will be exempt. Medical waste transported by the United States Postal Service in accordance with the Mailing Standards of the United States Postal Service, Domestic Mail Manual, as incorporated by reference in 39 CFR Part 111, will be considered exempt from medical waste authorizations under Chapter 326.

Subchapter D: Operations Requiring a Notification

§326.37, General Requirements

Adopted new §326.37 establishes the process for medical waste operations to notify the agency of certain operations. Adopted new §326.37(a) - (c) explains the requirements that are applicable to all notifiers and how to submit the written notification. There are three types of notifications that are adopted in this section.

In response to comments, §326.37(a) is revised to provide an electronic submittal option.

In making the previous revision, the commission recognized a potential ambiguity in the rule language. In an effort to address the potential ambiguity, the commission revised the rule language to clarify that the notification required by generators is to be made in writing, and that the request to be notified that may be submitted by local agencies must also be made in writing. These clarifying changes were made in §326.37(a) and (c).

The commission also revised the language in §326.37(a) and (c) to clarify that the notifications must be submitted 90 days prior to commencing the regulated activity.

§326.39, On-Site Treatment by Small Quantity Generators

Adopted new §326.39 requires that an SQG notify the executive director of the operation of an approved processing unit used only for the treatment of on-site generated medical waste, as defined in adopted §326.3(23). The adopted rule is revised to clarify that this is a one-time notification and that the notice is not required to include the name and initials of the person performing treatment.

In response to comments, the name and initials of the person(s) performing the treatment in §326.39(a)(1) was replaced with contact information for the facility. The name and initials of the person(s) performing the treatment is needed for on-site recordkeeping. The commission has made the suggested change and also revised §326.39(b) and §326.41(b) to add the name and initials of the persons performing the treatment to those sections.

The commission also revised the rule language in §326.39(a) to clarify that notifications must be made in writing.

§326.41, On-Site Treatment by Large Quantity Generators

Adopted new §326.41(a) establishes that an LQG may treat their medical waste on-site. The adopted rule is revised to clarify that this is a one-time notification and that the notice is not required to include the name and initials of the person performing treatment. The commission also revised the rule language in §326.41(a) to clarify that notification must be made in writing. However, the notification requirements for LQGs are adopted to be more stringent than for SQGs; LQGs will need to maintain a written procedure for the operation and testing of any equipment used and for the preparation of any chemicals used in treatment. Adopted new §326.41(b)(3)(A) requires the owner or operator to demonstrate a minimum reduction of microorganisms by a four log ten reduction as defined by reference in 25 TAC §1.132. The adopted frequency of testing is based on the number of pounds generated per month for a facility.

In response to comments, the individual's name and initials performing the treatment is needed for on-site recordkeeping. Section 326.41(b) is also revised to add the individual's name and initials performing the treatment. Adopted new §326.41(b)(3)(B) allows an owner or operator to substitute the biological monitoring under §326.41(b)(3)(A) based on manufacturer compliance with the performance standards prescribed under 25 TAC §1.135 (Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

Adopted new §326.41(b)(3)(C) establishes that the owner or operator is responsible for following the manufacturer's instructions and maintaining quality control for single-use, disposable treatment units.

Adopted new §326.41(b)(3)(D) requires an owner or operator of a medical waste incinerator to comply with the requirements prescribed in 30 TAC §111.123 (Medical Waste Incinerators) in lieu of biological or parametric monitoring.

Adopted new §326.41(c)(1) and (2) establish that treated medical waste such as microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be managed as routine municipal solid waste for the purposes of disposal in accordance with Chapter 330. The owner or operator will follow disposal requirements applicable to incinerator ash and label the waste as treated medical waste.

Adopted new §326.41(c)(3) establishes that treated carcasses and animal body parts designated as medical waste may be managed as routine municipal solid waste and be disposed of in a permitted landfill in accordance with Chapter 330.

Adopted new §326.41(c)(4) establishes that treated recognizable human body parts, tissues, fetuses, organs, and the product of human abortions, spontaneous or induced, will not be disposed of in a municipal solid waste landfill and must be managed in accordance with 25 TAC §1.136(a)(4).

Adopted new §326.41(c)(5) establishes how treated and unused sharps will be disposed of in a permitted landfill in accordance with Chapter 330.

§326.43, Medical Waste Collection and Transfer by Licensed Hospitals

Adopted new §326.43(a) establishes that a licensed hospital may provide a notification to the commission if the facility intends to function as a medical waste collection and transfer facility. Under this notification, the hospital may accept untreated medical waste from SQGs that transport medical waste they generated. The hospital must be located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population of more than 25,000 or within a county with a population of more than one million.

Adopted new §326.43(b)(1) - (5) establish the items that the notification must address; such as the packaging, storage, transporting, and treatment requirements. Adopted §326.43(b)(2) is revised to remove the requirement to maintain refrigeration of waste that was refrigerated before collection.

At adoption, the commission revised the rule language in §326.41(b) to clarify that notification must be made in writing, and to clarify that the acknowledgments contemplated by this subsection are to be made in the hospital's written notification.

Subchapter E: Operations Requiring a Registration by Rule

§326.53, Transporters

Adopted new §326.53(a) establishes that a registration by rule is available to transporters and that they will provide information to the commission 60 days prior to beginning transportation operations. A form will be provided by the commission and adopted new §326.53(a)(1) - (5) details the contents of the form, such as the identification information for the applicant, and annual fees required for the commission as referenced under Chapter 326, Subchapter G (Fees and Reporting).

Adopted new §326.53(b)(1) - (5) establish that registrations by rule will expire after one year and specify that an operator should apply for a renewal in a timely fashion to ensure continuous authorization.

Adopted new §326.53(b)(6)(A) - (B) provide for the design requirements of the transportation unit and the cargo compartment of the transportation vehicle, including temperature and post-collection storage time. The identification markings for the cargo compartment(s) applies to the use of compartment while it contains medical waste. Adopted §326.53(b)(6)(B)(vi) is revised to remove the requirement to maintain refrigeration of waste that was refrigerated before collection. In response to the comments, whether sealed wood floors are impervious and nonporous, the commission considers that wood floors are not impervious and nonporous. In cases where wood floors have been modified, the applicant must demonstrate that the modification of the wood floor renders it impervious and nonporous.

Adopted new §326.53(b)(7) establishes that transportation units used to transport untreated medical waste will not be used to transport any other material until the transportation unit has been cleaned and the cargo compartment disinfected. Recordkeeping will be required to document the date and the process used to clean and disinfect the transportation unit and records will be maintained for three years. The record will identify the transportation unit by motor vehicle identification number or license tag number. The owner of the transportation unit, if not the operator, will be notified in writing by the transporter that the transportation unit has been used to transport medical waste and when and how the transportation unit was disinfected.

Adopted new §326.53(b)(8) establishes that a transporter will be responsible for initiating and maintaining shipment records for each type of waste collected and deposited. This paragraph also details the information that must be documented on the shipping document. In response to comments, §326.53(b)(8)(G) is revised to add language to provide for future electronic documents.

Adopted new §326.53(b)(9) requires the transporter to provide the generator a signed manifest for each shipment at the time of collection of the waste and include information such as the name, address, telephone number, and registration number of the transporter, identify the generator, and list the total volume or weight of waste collected and date of collection. The transporter will also provide the generator with a written or electronic statement of the total weight or volume of the containers within 45 days.

Adopted new §326.53(b)(10) establishes that the transporter will provide documentation of each medical waste shipment from the point of collection through and including the unloading of the waste at a facility authorized to accept the waste. The original shipping document will accompany each shipment of untreated medical waste to its final destination and the transporter will be responsible for the proper collection and deposition of untreated medical waste accepted for transport. In response to comments, §326.53(b)(10) is revised to add language to provide for future electronic documents.

Adopted new §326.53(b)(11) - (13) establish that shipments of untreated medical waste will be deposited only at a facility that has been authorized by the commission to accept untreated medical waste. Untreated medical waste that is transported out of the state will be deposited at a facility that is authorized by the appropriate agency having jurisdiction over such waste. In response to comments, §326.53(b)(12) and (13) were revised to add "regulated garbage" since the "Animal and Plant Health Inspection Service (APHIS) regulated garbage" is the term used by APHIS to identify APHIS waste.

Adopted new §326.53(b)(14) establishes that the storage of medical waste will be in a secure manner and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste will be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

Adopted new §326.53(b)(15) establishes the items that the notification will address; such as the packaging, storage, and transporting requirements.

Adopted new §326.53(b)(16) allows for an exemption from some transportation requirements to persons who will transport medical waste within Texas when the transportation neither originates nor terminates in Texas.

Adopted new §326.53(b)(17) establishes that packages of untreated medical waste will not be transferred between transporta-

tion units unless the transfer occurs at and on the premises of a facility authorized as a transfer station, or as a treatment/processing facility that has been approved to function as a transfer station except as provided in §326.43.

Adopted new §326.53(b)(18) establishes that a medical waste shipment may be transferred to an operational transportation unit in the event of a transportation unit malfunction, and that the transporter will notify the executive director in writing, along with any local pollution control agency with jurisdiction that has requested to be notified, within five working days of the incident. When transferring to a unit not registered, the transporter will comply with §326.53(b)(6) and (7).

Adopted new §326.53(b)(19) establishes that a waste shipment may be transferred to an operating transportation unit in case of a traffic accident. Containers of waste that are damaged in the accident will be repackaged as soon as possible and the nearest regional office, along with any local pollution control agency with jurisdiction that have requested to be notified, will be notified of the incident no later than the end of the next working day after the accident.

Adopted new §326.53(b)(20) establishes that a copy of the registration by rule be maintained, as annotated by the executive director with an assigned registration by rule number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

Adopted new §326.53(c) establishes that changes to the transporter registration be provided by letter to the executive director, and with any local pollution control agency with jurisdiction that have requested to be notified within 30 days of any change.

§326.55, Mobile Treatment Unit

Adopted new §326.55(a) establishes that a registration by rule is available for persons that treat medical waste in mobile treatment units on the site of generation, but that are not the generator of the waste. The mobile on-site treatment unit owner or operator will complete a registration by rule form provided by the commission and provide the required information at least 60 days before commencing operations.

Adopted new §326.55(a)(1) - (3) require the operator to provide identification information such as the applicant's name, address, and telephone number, and pay an annual registration fee based on the total weight of medical waste treated on-site under each registration by rule.

Adopted new §326.55(a)(4) and (5) require the owner or operator to describe the approved treatment method to be used, chemical preparations, the procedure to be utilized for routine performance testing/parameter monitoring, and routine performance testing conducted in accordance with §326.41(b)(3).

Adopted new §326.55(a)(6) - (9) establish that the owner or operator provide evidence of competency in the form of training certificates or description of work experience, a description of the management and disposal of process waters generated during treatment events, and a contingency plan to manage waste in the event of treatment failure or equipment breakdown. A cost estimate to remove, dispose, and disinfect equipment will be submitted to the commission and the corresponding financial assurance must be established in accordance with 30 TAC Chapter 37, Subchapter R (Financial Assurance for Municipal Solid Waste Facilities).

Adopted new §326.55(a)(10) requires the owner or operator to provide a description of each mobile on-site treatment unit. Adopted new §326.55(a)(11) explains how a registrant by rule submits the annual fee.

Adopted new §326.55(b)(1) - (5) establish other requirements, such as renewal, annual reporting and annual fee requirements.

Adopted new §326.55(b)(6) - (8) establish the requirements for the mobile on-site treatment units and associated cargo compartments and will prohibit the use of mobile treatment units to transport non-medical waste until the unit has been cleaned and disinfected. Records will be kept to document cleaning and disinfection dates, identification for each unit by motor vehicle identification number or license tag, and waste treatment information.

Adopted new §326.55(b)(9) - (14) require persons that apply for a registration by rule to maintain copies at their place of business and in each mobile on-site treatment unit. An owner or operator will provide the generator the documentation required in §326.55(b)(6)(A) and (B) and a statement that the medical waste was treated in accordance with 25 TAC §1.136 for the generator's record. Owners or operators of mobile treatment units will not transport medical waste unless they are a registered medical waste transporter.

Adopted new §326.55(c) requires the owner or operator to notify the executive director, by letter, of any changes to their registration within 30 days.

Subchapter F: Operations Requiring a Registration

§326.61, Applicability and General Information

Adopted new §326.61(a) and (b) establish that registrations will be required for facilities that store or process untreated medical waste that are received from off-site sources, and that no person may begin physical construction of a new medical waste management facility subject to this registration requirement without first having received a registration from the commission.

The terms "non-hazardous pharmaceutical waste" and "trace chemotherapy waste" were removed. A new sentence is added to indicate that the executive director may authorize these facilities to store and process other related waste.

Adopted new §326.61(c) establishes that a registration application is not subject to the opportunity for a contested case hearing.

Adopted new §326.61(d) - (g) establish that all aspects of the application and design requirements will be addressed even if only to show why requirements are not applicable to a particular site. The owner or operator will provide the executive director the information requested to address the application with sufficient completeness, accuracy, and clarity; and the executive director may return the application if the owner or operator fails to provide complete information as required by this chapter and the executive director.

Adopted new §326.61(h) establishes that municipal solid waste, which would be classified as medical waste if it were generated by health care-related facilities, will be managed as medical waste after it is accepted at a processing facility, excluding facilities operating as a transfer station only. This municipal solid waste will be subject to the same requirements as medical waste when it is accepted by a facility that is only a registered medical waste facility.

§326.63, Property Rights

Adopted new §326.63(a) and (b) require the owner or operator to acquire sufficient property interest to use the surface estate of the property including access routes and retain right of entry to the facility until the facility is properly closed. In response to comments, §326.63(b) is revised to replace the term "closure care period" with "closure activities" to clarify that reference to the closure was to address the period that would require closure activities not the post closure care period.

§326.65, Relationships with Other Governmental Entities

Adopted new §326.65(a) - (c) establish that municipalities and county governments may enforce and exercise the authority to require and issue licenses authorizing and governing the operation and maintenance of medical waste facilities under the conditions afforded by THSC, Chapters 361, 363, and 364.

§326.67, Relationship with County Licensing System

Adopted new §326.67(a) - (b) establish the licensing procedures for counties that may choose to exercise their licensing authority. Counties with regulations may promulgate regulations that are consistent with those established and approved by the commission. A county may not make regulations or issue licenses for medical waste management within the extraterritorial or territorial jurisdiction of incorporated areas. The commission will not require a registration for medical waste facilities that have obtained a license issued by a county. A county will offer an opportunity to request a public meeting and issue appropriate notifications in accordance with the procedures established in adopted §326.73.

Adopted new §326.67(c) and (d) provide for the contents of a license and the licensee's responsibilities. The license contents will include owner identification information, legal description of the land on which the facility is located, the terms of the license, and volume of waste to be managed. The licensee will need to operate in compliance with regulations of the commission and the county.

§326.69, Registration Application Formatting, Posting, Appointment and Fees

Adopted new §326.69(a) - (d) require that the owner or operator submit three copies of the application. In response to comments, §326.69(a) is revised to provide for electronic submittal option. The application will be prepared in accordance with the Texas Occupations Code, Chapter 1001, Texas Engineering Practice Act or returned if the application documents are not sealed properly. The subsections also describe the adopted formatting and drawing requirements.

Adopted new §326.69(e) requires that the owner or operator post an application that requires public notice, subsequent revisions, and supplements to the application on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. The commission will post on its website the Web address link to the application and identify all owners and operators filing the application.

Adopted new §326.69(f) requires the owner or operator provide documentation that the person signing the application meets the requirements of 30 TAC §305.44(a) and (b) (Signatories to Applications).

Adopted new §326.69(g) requires a fee of $150 for a registration, modification, or temporary authorization application.

§326.71, Registration Application Contents

Adopted new §326.71(a) requires the owner or operator to submit maps and drawings of the facility and surrounding areas with the required information for each map and drawing. The maps and drawings will include: a general location map, facility access and facility layout map or drawing, land-use map, published zoning map if available, land ownership map, and a metes and bounds drawing and description of the facility (registration) boundary. Information regarding likely impacts of the facility on cities, communities, property owners, or individuals by analyzing land use, zoning, and community-growth patterns will be included. Land ownership information will be provided for property owner(s) within 1/4 mile of the facility. Mineral interest ownership will not be required.

Adopted new §326.71(b) requires the applicant to provide a property owner affidavit that is signed by the owner. Property owner affidavit must include acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure of the facility and that the facility owner or operator and the State of Texas must have access to the property during the active life and after closure for the purpose of inspection and maintenance.

Adopted new §326.71(c) and (d) require the owner or operator to acknowledge that they will employ a licensed solid waste facility supervisor and to verify the owner's or operator's legal status as required by 30 TAC §281.5 (Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits).

Adopted new §326.71(e) requires transportation data on the availability and adequacy of roads that the owner or operator will use to access the site; the volume of vehicular traffic on access roads within one mile of the proposed facility during the expected life of the proposed facility; and the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility. The owner or operator will also submit documentation of coordination of all designs of adopted public roadway improvements and documentation of coordination with the Texas Department of Transportation for traffic and location restrictions.

Adopted new §326.71(f) establishes that the owner or operator include a certification statement to verify that the facility will be constructed, maintained, and operated to manage run-on and run-off during the peak discharge of a 25-year rainfall event and will obtain the appropriate Texas Pollutant Discharge Elimination System storm water permit or an individual wastewater permit if applicable. This subsection also establishes that the facility will be located outside of the 100-year floodplain unless the owner or operator demonstrates that the facility is designed and operated to prevent washout during a 100-year storm event. The facility also will not be allowed to locate in wetlands unless the owner or operator provides documentation to the extent required under federal Clean Water Act, §404 or applicable state wetlands laws.

Adopted new §326.71(g) requires the owner or operator submit documentation that the application was submitted for review to the applicable council of governments for compliance with regional solid waste plans and documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans.

Adopted new §326.71(h) requires a general description of the facility location and design. The owner or operator will provide

a description for access control including the use of fences or other means to protect the public from exposure to health and safety hazards, and to discourage unauthorized entry. This subsection establishes that the unloading, storage, or processing of solid waste may not occur within any easement or buffer zone and a minimum separating distance of 25 feet between the facility boundary and processing equipment, loading, unloading and storage areas. Transport vehicles that store medical waste in refrigerated units with temperatures below 45 degrees Fahrenheit will not be subject to this requirement.

Adopted new §326.71(i) requires generalized construction information or manufacturer specifications of all medical waste storage and processing units. Adopted §326.71(i) is revised to clarify that the number of waste management units be provided. Additionally, the owner or operator will provide design information for secondary containment structures for storage and processing areas that are designed to control and contain spills and contaminated water from leaving the facility. The owner or operator will acknowledge that the storage of medical waste be secure and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind and managed so as not to provide a breeding place or food for insects or rodents, and not to generate noxious odors. Putrescible or biohazardous untreated medical waste stored for longer than 72 hours during post-collection storage period will need to be maintained at a temperature of 45 degrees Fahrenheit or less. Adopted §326.71(i)(5) is revised to remove the requirement to maintain refrigeration of waste that was refrigerated before collection.

Adopted new §326.71(j) requires that medical waste be treated in accordance with the provisions of 25 TAC §1.136. Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135. The owner or operator will provide a written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. The owner or operator will conduct weekly testing and demonstrate a minimum reduction of microorganisms to a four log ten reduction as defined by reference in 25 TAC §1.132. Owner or operator may substitute the biological monitoring based on manufacturer compliance with the performance standards prescribed under 25 TAC §1.135. The owner or operator will be responsible for following the manufacturer's instructions and maintaining quality control for single-use, disposable treatment units. Owner or operator of medical waste incinerators will comply with the requirements prescribed in §111.123 in lieu of biological or parametric monitoring. In response to comments, adopted §326.71(j)(7) is added to clearly indicate that alternative treatment technologies must be approved by DSHS by moving the second sentence of §326.71(j) to adopted §326.71(j)(7).

Adopted new §326.71(k) and (l) establish the preparation of the closure plan and the certification for a final closure. The owner or operator will remove all waste to an authorized facility. All units will be dismantled and removed off site or decontaminated and closure will be completed within 180 days following the most recent acceptance of materials unless otherwise approved in writing by the executive director.

Adopted new §326.71(m) and (n) establish the criteria for owners or operators to prepare closure cost estimates to address the disposition of the maximum inventories of all processed and unprocessed waste. The estimate will be based on the costs of hiring a third party that is not affiliated with the owner or operator; and be based on a per cubic yard and/or short-ton measure for collection and disposition costs. Revisions to the closure cost estimate may be made once the changes are approved by the commission. Documentation will be required to demonstrate financial assurance as specified in Chapter 37, Subchapter R and be submitted 60 days prior to the initial receipt of waste. Continuous financial assurance coverage for closure will be provided until all requirements of the final closure plan have been completed and the site is determined to be closed in writing by the executive director.

Adopted new §326.71(o) and (p) establish that a site operating plan be prepared to address and implement all the provisions in §326.75. The site operating plan and all other pertinent documents and plans are considered to be a part of the operating record and are operational requirements of the facility.

§326.73, Registration Application Processing

Adopted new §326.73(a)(1) - (5) discuss registration application processing and require that the owner or operator and the commission provide the opportunity for a public meeting in accordance with the criteria under 30 TAC §55.154(c) (Public Meetings). Notice of a public meeting will be provided as specified in 30 TAC §39.501(e) (Application for Municipal Solid Waste Permit). Response to comments by the commission will not be required and there will be no opportunity for a contested case hearing. The owner, operator, or their authorized representative will attend the public meeting. The owner or operator will post a sign or signs at the site of the adopted facility declaring that an application has been filed with the commission and that the owner or operator may be contacted for further information under requirements listed in §326.73(a)(5)(A) - (I).

Adopted new §326.73(a)(6) - (8) establish that posted signs at the facility indicating that a proposed medical waste facility application has been filed and the signs must be located within ten feet of every property line bordering a public highway, street, or road and visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, will be required along any property line paralleling a public highway, street, or road. The owner or operator will also post signs at the facility in an alternative language when the alternative language requirements in 30 TAC §39.405(h)(2) (General Notice Provisions) are met. Variances from sign posting requirements may be approved by the executive director.

Adopted new §326.73(b) and (c) establish that the executive director determine if the application be approved or denied and in accordance with 30 TAC §50.133(b) (Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk will mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under 30 TAC §50.139 (Motion to Overturn Executive Director's Decision). The chief clerk will mail this notice to the owner and operator, the public interest counsel, and to other persons who timely filed public comment in response to public notice. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139. The criteria regarding motions to overturn will be explained in public notices given under 30 TAC Chapter 39 (Public Notice) and §50.133.

§326.75, Site Operating Plan

Adopted new §326.75 defines the contents of a site operating plan required under adopted new §326.71(o). Adopted new §326.75(a)(1) - (3) require owners or operators to provide the

functions and minimum qualifications for key personnel; general instructions that operating personnel will follow; and procedures for detection and prevention of the receipt of prohibited waste. In response to comments, proposed §326.75(a)(3) requiring information about equipment has been deleted. In response to comments that employees would be required to open containers for random inspections, the commission did not intend to require the opening of containers for random inspections. Section 326.75(a)(3)(A) is revised to clarify this requirement.

Adopted new §326.75(b) requires the owner or operator to identify the sources and characteristics of medical waste that they will receive for storage, processing or disposal. The information will include the maximum amount of medical waste to be received daily, the maximum amount of medical waste to be stored, the maximum allowable period of time that all medical waste (unprocessed and processed) are to remain on-site, and the intended destination of the medical waste received at the facility. The rule makes clear that medical waste facilities may not receive regulated hazardous waste as defined in 40 CFR §261.3 unless the waste is excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or was generated by a conditionally exempt SQG. In regards to the appropriate method of disposition (e.g., incineration, landfilling or transfer) required by the phrase ". . . the application must include the intended destination of the medical waste received" is not intended to require that a particular facility name and location be identified. Facility may have dual authorizations to accept hazardous and medical waste. However hazardous waste authorization is separate from medical waste registration authorization and cannot be accepted under medical waste registrations. This includes accepting, storing and/or processing of hazardous waste. All of these activities can only be authorized by an industrial hazardous waste authorization separately. The commission has processed dual authorization facilities in the past and they are required to have physically separated waste management areas and units and the authorization boundaries for each should be depicted on a site layout drawing. There may be other requirements that must be addressed on a case-by-case basis.

The commission currently allows the recycling of source separated materials. The commission also understands there may be situations on a case-by-case basis. In such cases, the recycling of the material may be appropriate however it should be addressed in the application clearly.

Adopted new §326.75(c) establishes how all wastes generated and resulting from the facility operations be processed or disposed. In response to comments, §326.75(c)(5) is revised from requiring a copy of the authorization to discharge wastewater to a treatment facility permitted under Texas Water Code (TWC), Chapter 26 along with the application submittal to requiring making it available prior to beginning of facility's operations and for all inspections.

Adopted new §326.75(d) establishes how recyclable materials be stored and kept separate from solid waste processing areas. All areas used for storage will not constitute a fire, safety, or health hazard or provide food or harborage for animals and vectors, and recyclable materials will be contained or bundled so as not to result in litter. Containers will be maintained in a clean condition so that they do not constitute a nuisance and to prevent the harborage, feeding, and propagation of vectors.

Adopted new §326.75(e) establishes recordkeeping requirements. The owner or operator will be required to maintain on site, hard copies of their registration, registration application, correspondence, and all other documents related to the management of medical waste at the facility. For treatment facilities, the owner or operator may send written or electronic copies of the shipping document to the generator that includes a statement that the medical waste was treated in accordance with 25 TAC §1.136. All documents submitted by the owner or operator to the executive director will be signed and certified by the owner or operator or by a duly authorized representative of the owner or operator in accordance with §305.44(a) and (b).

Adopted new §326.75(f) requires the owner or operator to have an adequate supply of water under pressure for firefighting purposes, firefighting equipment, and a fire protection plan that describes the procedures for employee training, safety procedures, and compliance with local fire codes.

Adopted new §326.75(g) establishes how access to the facility will be controlled at the perimeter of the facility boundary and at all entrances to the facility. The means may be artificial and/or natural barriers, and entrances have lockable gates with an attendant on-site during operating hours. The operating area and transport unit storage area will be enclosed by walls or fencing. The facility access road from a publicly owned roadway must be designed for the expected traffic flow and safe on-site access for commercial collection vehicles and for residents. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns.

Adopted new §326.75(h) establishes that unloading areas be confined to as small an area as practical, and that an attendant monitor all incoming loads of waste. Signage must be provided to indicate where vehicles are to unload their waste. Signs and other means, such as forced lanes must also be used to direct traffic to unloading areas and to prevent unloading in unauthorized areas. The owner or operator will ensure that the unloading of prohibited waste does not occur and all prohibited waste is returned to the transporter or generator if it is unloaded. Access from publicly owned roadways will be at least a two-lane gravel or paved road.

Adopted new §326.75(i) addresses the hours a facility will be open to conduct business. A site operating plan will specify operating hours. The operating hours may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission.

Adopted new §326.75(i)(1) establishes that the owner or operator has the option to request alternative operating hours of up to five additional days in a calendar year to accommodate special occasions, special purpose events, holidays, or other special occurrences.

Adopted new §326.75(i)(2) establishes that the agency regional offices may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

Adopted new §326.75(j) establishes the required information and design for the facility sign. The sign will measure at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; the registration number or facility number, if applicable; and facility rules. All entrances to the facility will have this sign conspicuously displayed and the posting of erroneous or misleading information will constitute a violation of this section.

Adopted new §326.75(k) establishes the requirements to address windblown litter. The owner or operator will be required to collect litter within the registered boundary to minimize unhealthy, unsafe, or unsightly conditions as necessary.

Adopted new §326.75(l) requires that facility access roads be all-weather and provide for wet-weather operation. The tracking of mud and debris onto public roadways from the facility will be minimized. A water source and necessary equipment or other means of dust control will be provided, all on-site and other access roadways will be maintained on a regular basis, and regraded as necessary to minimize depressions, ruts, and potholes.

Adopted new §326.75(m) requires the owner or operator to provide screening or other measures to minimize noise pollution and adverse visual impacts.

Adopted new §326.75(n) addresses overloading and breakdown and requires that the design capacity of the facility not be exceeded during operations. The owner or operator will not be allowed to accumulate medical waste in quantities that cannot be processed within such time that it will cause the creation of odors, insect breeding, or harborage of other vectors. Additionally, if a mechanical breakdown or other event causes a significant work stoppage, the owner or operator will be required to restrict waste acceptance and divert all waste to an approved processing or disposal facility. The owner or operator will need to have alternative processing or disposal procedures for waste in the event the facility is inoperable longer than 24 hours.

Adopted new §326.75(o) requires the owner or operator to have sanitary facilities for all employees and visitors, and to wash down all working surfaces that come into contact with wastes, wash waters used to wash down surfaces that come into contact with waste will be collected and disposed in an authorized manner and may not be accumulated onsite without proper treatment to prevent odors or an attraction to vectors.

Adopted new §326.75(p) requires that all facilities and air pollution abatement devices obtain authorization, under THSC, Chapter 382 (Texas Clean Air Act) and 30 TAC Chapter 106 or 116 (Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification), from the Air Permits Division prior to the commencement of construction, except as authorized in THSC, §382.004. Additionally, the adopted rule will have all facilities and air pollution abatement devices operate in compliance with all applicable air-related rules including 30 TAC Chapter 101 (General Air Quality Rules) related to prevention of nuisance odors, minimizing maintenance, startup and shutdown emissions, and emission event reporting and recordkeeping.

Adopted new §326.75(q) establishes that the facility have a health and safety plan and that facility personnel are trained in the appropriate sections of the plan.

Adopted new §326.75(r) establishes that medical waste addressed in this section be treated in accordance with 25 TAC §1.136 and disposed and labeled appropriately.

Adopted new §326.75(r)(1) and (2) establish that treated medical waste such as microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be managed as routine municipal solid waste for the purposes of disposal in accordance with Chapter 330. The owner or operator will be required to follow disposal requirements applicable to incinerator ash. Any markings that identify the waste as a medical waste will be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with 25 TAC §1.136.

Adopted new §326.75(r)(3) establishes that treated carcasses and animal body parts designated as medical waste may be managed as routine municipal solid waste and be disposed of in a permitted landfill in accordance with Chapter 330. Transport and disposal will also conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than §326.75(r).

Adopted new §326.75(r)(4) establishes that treated recognizable human body parts, tissues, fetuses, organs, and the product of human abortions, spontaneous or induced, be managed in accordance with 25 TAC §1.136(a)(4).

Adopted new §326.75(r)(5) establishes how treated and unused sharps will be disposed of in a permitted landfill in accordance with Chapter 330.

§326.77, Duration, Limits and Additional Registration Conditions

Adopted new §326.77(a) - (g) establish how the executive director will approve or deny a registration application based on whether the application meets the requirements of Chapter 326. A registration is issued for the life of the facility but may be revoked or modified at any time if the operating conditions do not meet the minimum standards in Chapter 326. A registration may be transferred from one person to another. Except for transporters and mobile treatment units, a registration is attached to realty and may not be transferred from one facility location to another. For revocations and denials, the registration will be considered to be a permit for the purposes of revocation and denial in accordance with 30 TAC Chapter 305 (Consolidated Permits). The owner or operator may file a motion to overturn the executive director's denial of a registration under §50.139. Once a registration is issued, if the owner or operator does not commence physical construction within two years of issuance of a registration or within two years of the conclusion of the appeals process, whichever is longer, the registration will automatically terminate and will be no longer be effective.

Adopted new §326.77(h) - (k) establish that changes to the issued registration may be processed as a permit modification in accordance with §305.70 (Municipal Solid Waste Permit and Registration Modifications) and need to be approved prior to their implementation. The owner or operator will obtain and submit certification by a Texas-licensed professional engineer that the facility has been constructed as designed in accordance with the issued registration and in general compliance with the regulations prior to initial operation. Prior to accepting medical waste, the owner or operator will contact the executive director and region office in writing and request a pre-opening inspection. A pre-opening inspection will be conducted by the executive director within 14 days of notification by the owner or operator. Once the pre-opening inspection is complete, the executive director will provide a written or verbal response within 14 days of completion of the pre-opening inspection. The facility will be considered approved for the acceptance of medical waste if the executive director has not provided a response within the 14 days.

Subchapter G: Fees and Reporting

§326.85, Purpose and Applicability

Adopted new §326.85(a) establishes that fees are mandated by THSC, §361.013, to collect a fee for solid waste disposed of within the state, and from transporters of solid waste who are required to register with the state. Reports will be required to enable equitable assessment and collection of fees.

Adopted new §326.85(b) establishes that the owner or operator of a medical waste processing facility, with the exception of facilities authorized as transfer stations only, to pay a fee to the agency based upon the amount of waste received as described in this rule. All registered facility operators are required to submit reports to the executive director covering the types and amounts of waste processed at the facility or process location and the amount of processing capacity of facilities in Texas. The information requested on forms provided is not considered to be confidential or classified unless specifically authorized by law, and refusal to submit the form complete with accurate information by the applicable deadline will be considered a violation of this section and subject to appropriate enforcement action and penalty. An owner or operator failing to make payment of the fees imposed under this subchapter when due will be assessed penalties and interest in accordance with 30 TAC Chapter 12 (Payment of Fees).

§326.87, Fees

Adopted new §326.87(a) establishes that the owner or operator of a medical waste processing facility, with the exception of facilities authorized as transfer station only, will need to comply with the measurement options described in this rule to calculate the correct fees due and to provide accurate reports. Exemptions from a fee are provided for solid waste processing resulting from a public entity's effort to protect the public health and safety of the community from the effects of a natural or man-made disaster, or from structures that have been contributing to drug trafficking or other crimes if the disposal facility at which that solid waste is offered for disposal has donated to a municipality, county, or other political subdivision the cost of disposing of that waste.

Adopted new §326.87(b) establishes that all transporters, with the exception of self-transporters, and mobile on-site treatment unit operators will be required to comply with fees determined by the criteria described in this section.

§326.89, Reports

Adopted new §326.89(a) establishes that all medical waste facilities with the exception of transfer stations to provide quarterly reports on forms provided by the executive director with the information in this rule such as the reporting units, and weight/volume conversion factors. This section also establishes that failure to submit reports by the due date shall be sufficient cause for the commission to revoke the authorization to process waste. The commission may assess interest penalties for late payment of fees and may also assess penalties (fines) in accordance with Texas Water Code, §7.051 or take any other action authorized by law to secure compliance.

Adopted new §326.89(b) requires medical waste process facilities to report. Each operator of a medical waste process facility will be required to comply with §326.89(b)(1) - (7) such as annual reporting, report form required, reporting units, and weight/volume conversion factors.

Adopted new §326.89(c) establishes the reporting requirements for mobile on-site treatment unit operators.

Adopted new §326.89(d) establishes the reporting requirements for transporters.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rules do not meet the definition of a "major environmental rule". Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by consolidating and revising the rules governing medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on industry or the public.

Furthermore, the adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, 1§2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rules do not meet any of these applicability requirements. First, there are no standards set for authorizing these types of facilities by federal law. The adopted rules included revisions to reconcile any conflict with federal laws governing the transportation of medical waste. Second, the adopted rules do not exceed an express requirement of state law. There are no specific statutory requirements for authorizing these types of facilities. Third, the rules do not exceed an express requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rule solely under the general powers of the agency, but rather under the authority of: THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.0905 (HB 2244), which governs the regulation of medical waste. Therefore, the commission does not adopt the rules solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. No comments were received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rulemaking is to implement HB 2244 by consolidating and revising the rules governing

medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on the industry or the public.

The adopted rulemaking does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that will otherwise exist in the absence of this rulemaking; nor will it reduce its value by 25% or more beyond that value which will exist in the absence of the adopted rules. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission received comments from the Honorable John Zerwas, M.D., District 28, Texas House of Representatives, Biomedical Waste Solutions LLC. (BWS), Cook-Joyce, Inc. (CJI), Gulfwest Solutions (GS), Sharps Compliance, Inc. (SCI), Stericycle, Inc. (SI), Titanium Environmental Services (TES), and The University of Texas System Environmental Health & Safety Advisory Committee (UT System). The commission received written comment from seven entities, and one person provided verbal comment at the public hearing. All seven commenters suggested changes. CJI supported the change from a 50-foot buffer to a 25-foot buffer for medical waste facilities as well as the allowance of storage units being allowed in the buffer zone.

Chapter 326, Medical Waste Management

Comment

Representative Zerwas provided guidance stating that one of the goals of HB 2244 is to consolidate rules relating to medical waste into a separate, standalone chapter of the TCEQ administrative code in order to reduce confusion regarding the applicability of many of the rules that relate to municipal solid waste facilities. The other objective was to give the agency, industry and stakeholders the opportunity to review these regulations, which were inherited by TCEQ from the former Texas Department of Health, so that regulations deemed unnecessary or without reasoned justification can be eliminated or revised.

Response

The TCEQ appreciates Representative Zerwas' comments and has made changes throughout this rulemaking to address his concerns.

Comment

TES commented that it is unclear and requested clarification whether proposed Chapter 326 and amended Chapter 335 require a Class 2 Texas Waste Code for the Solid Waste Registration of an exempt medical waste operator for on-site medical waste generation and storage.

Response

Exempt medical waste facilities for on-site medical waste generation and storage are not industrial facilities, and therefore, are not required to obtain a Class 2 Texas Waste Code for the Solid Waste Registration. The commission has made no changes.

§326.1(a)(1) and (2), Purpose and Applicability

Comment

SI stated that reapplying for permits, registrations and other authorizations would be overly burdensome, if there is no substantive change to the documents. SI requested that there should not be a requirement to do a full refiling of all documents with engineering approvals if there are not changes made to the submittals other than to change the regulatory citation in the application. SI indicated that a full application including an engineering design review would be a requirement if the applicant proposes additional amendments. BWS stated that the proposed rule to file for a new registration application would result in unnecessary costs for the medical waste industry and for the agency with no added environmental benefit. SCI requested a revision to the rule to allow entities operating under a valid existing TCEQ authorization to continue to operate for the remaining term of any existing authorizations instead of a two-year deadline. According to SCI, under this approach, transition to authorization under the new Chapter 326 requirements would occur at the renewal of the entity's permit.

Response

The commission agrees with the comments to the extent that it may not be necessary to submit a new registration application with new engineering seals and signatures. Therefore, the commission will accept a one-time submittal of a new permit or registration application without updated engineering seals and signatures for the purposes of complying with Chapter 326. The sealed and signed pages of the existing application can be incorporated into the new submittal as long as the owner and/or operator provides a statement that the application is revised to only replace references to Chapter 330 with Chapter 326 along with minor corrections. However, the commission continues to require new engineering seals and signatures for submittals for substantive changes to a facility design or operation.

The commission has provided a two-year deadline to comply with updating existing permits and registrations with the option of allowing an extension to the two-year deadline for requests supported by good cause. Existing permits and registrations include many references to the existing Chapter 330 rules. It is necessary for these permits and registrations to be revised to correct these references to new Chapter 326 in order to avoid any future confusion about the applicable requirements for these facilities. The commission amended §326.1(a)(1) to explain that the existing processing facility registrations and permits which have no expiration date are the only authorization tiers that would be subject to this two-year time frame; existing notification tier authorizations are not required to renew their notification; and registration by rule tier authorizations are subject to an annual re-

newal schedule. Therefore, no changes have been made to the two-year deadline for a permit or registration.

§326.1(a)(3), Purpose and Applicability and §326.77(h), Duration, Limits and Additional Registration Conditions

Comment

SI commented that it is not clear what sections of the provisions under §305.70 would be required in addition to Chapter 326. SI indicated that Chapter 326 was intended to be substantively inclusive of all that would be necessary for regulated medical waste operations. SI recommended that the agency either be more specific as to the provisions it intends to be applicable here or add them to Chapter 326 directly. SI also requested that certain operating activities that are administrative should not require a full modification or re-registration as well as certification by a Texas licensed professional engineer. Examples of this are stated as change in operating hours, replacement of type of operating equipment, landscaping and pavement changes and non-production area changes (offices/breakrooms).

Response

The provisions of Chapter 305 set the standards and requirements for applications, permits, and actions by the commission to carry out the responsibilities for management of waste disposal activities under TWC, Chapters 26 - 28 and 32, and THSC, Chapters 361 and 401. Specifically, §305.70 includes provisions that establish the types of changes that may be made to permits and registrations by either a modification with or without notice, new registration, or amendment to a permit. Even though, the commission references §305.70 for medical waste registration application modification requests, the commission has revised §326.1(a)(3) to provide that changes to operating hours and buffer zones (increases or decreases) will be processed as non-notice modifications under §305.70(l) to implement THSC, §361.0905(e)(2) (HB 2244). For all other changes, the commission establishes the criteria (e.g., modification, amendment, etc.) for changing an authorization under §305.70. HB 2244 requires rulemaking for primarily extracting the rules related to medical waste from Chapter 330 and moving them to adopted new Chapter 326.

§326.3, Definitions, §326.71(a)(2)(i), Maps and Drawings and §326.71(i), Waste Management Unit Design

Comment

SI suggested to add a definition for "Waste Unit" since SI stated that medical waste facilities do not have waste management units as typically identified in landfill operations. In relation to the same comment, SI agreed with the sections under §326.71(i) regarding "Waste Management Unit Design" but suggested retitling the section as "Waste Management Operations Design."

Response

Waste management unit design is described with examples specifically for medical waste facilities under §326.71(i)(1) as all storage and processing units (autoclaves, incinerators, etc.) and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc. Therefore, it is unnecessary to provide a separate definition for waste unit. The commission has made no changes.

§326.3(23), "Medical Waste" Definition

Comment

SI commented that it is unclear why treated waste is still medical waste. SI suggested to add a separate definition for "Treated medical waste" under §326.3.

Response

The definition for medical waste under §326.3 includes "treated medical waste" and is based on THSC, §361.003(18-a) as amended by HB 2244. It is unnecessary to add a definition for "treated medical waste" because it is understood to be medical waste that is treated by an approved method in accordance with 25 TAC §1.136. Therefore, the commission has made no changes in response to this comment.

§326.3(27), "Non-hazardous pharmaceutical waste" and §326.3(57), "Trace chemotherapy waste" Definitions

Comment

SI expressed agreement with added new definitions for non-hazardous pharmaceutical and trace chemotherapy wastes.

Response

The commission acknowledges EPA's proposed rules regarding the Management Standards for Hazardous Waste Pharmaceuticals which include a definition for "non-hazardous waste pharmaceuticals." The commission is hesitant to adopt a definition at this time since EPA has not adopted the proposed rule and the proposed definition may change. Therefore, the proposed definitions for both terms are not adopted.

§326.3(27), "Non-hazardous pharmaceutical waste" Definition

Comment

BWS commented that the definition of non-hazardous pharmaceutical waste seems to be specific to incineration, although other treatment technologies, such as autoclaves are allowed. CJI commented that medical waste facility owners and operators will be able to manage non-hazardous pharmaceutical wastes but not be allowed to treat the waste. However, the definition seems to be specific to incineration for the treatment technology followed by disposal only. CJI indicated that no evidence has been presented to show that current treatment technologies are not effective and that incineration facilities are limited in Texas and as such this regulatory requirement places an economic hardship on generators to have this waste stream segregated from other medical wastes and incinerated. Additionally, CJI indicated that by requiring only incineration of this waste is in essence providing exclusivity to incinerators when prior to the proposed Chapter 326 rules other treatment technologies were allowed to receive and treat the material and no deficiencies in those treatment technologies have been demonstrated as it relates to the effective management of these wastes. Both CJI and BWS requested review of this definition to enable facilities to use other treatment technologies to treat this waste stream and provided the following language: ". . . Non-hazardous pharmaceutical waste shall be treated by autoclave technology, approved alternate treatment technology as identified in 25 TAC §1.133 and §1.135) or incineration prior to or disposal at a facility authorized to accept this waste."

GWS commented that the United States Environmental Protection Agency (EPA) is currently working on proposed rules for the management of hazardous pharmaceuticals. EPA's proposed rules can be found in the September 25, 2015, issue of the *Federal Register* (80 FR 58029). This proposal has been de-

veloped to assist the healthcare industry in the proper management of pharmaceuticals. While the proposed rules pertain to hazardous pharmaceuticals there is a discussion on the management of non-hazardous pharmaceuticals. In the September 25, 2015, issue of the *Federal Register* (80 FR 58029) it states that non-hazardous wastes or non-pharmaceutical hazardous waste were not included in the scope of the rulemaking, however, EPA recognizes that these non-hazardous pharmaceuticals may pose some risks to public health and the environment. EPA also recognizes that a large portion of the pharmaceutical wastes generated at healthcare facilities will not meet the definition of Resource Conservation Recovery Act (RCRA) hazardous waste under RCRA, Subtitle C. Nonetheless, EPA provides guidance or Best Management Practices (BMP) for the disposal of these wastes because they understand that while these wastes will not be regulated under federal regulations they will be considered a solid waste, and must be managed in accordance with applicable federal, state and/or local regulatory requirements. The EPA also makes the statement that they endorse the recommendation made by Practice Greenhealth in their 2008 Blueprint for Healthcare Facilities in the United States which recommends incineration for any non-hazardous waste pharmaceuticals, even when they do not possess hazardous waste like quantities. This method of treatment/destruction ensures that the pharmaceuticals will be completely destroyed for the protection of human health and the environment. Additionally, GWS commented that, in 2014, the United States Drug Enforcement Administration (DEA) finalized rules for the disposal of controlled substances (21 CFR Parts 1300, 1301, 1304, 1305, 1307 and 1317). The DEA does not specify a specific standard on how controlled substances must be destroyed as long as the destruction provides the desired result of being non-retrievable.

Recent federal rulemaking regarding the proper treatment/disposal of non-hazardous pharmaceutical and/or controlled substances identify that full destruction needs to be achieved and the waste needs to be rendered non-retrievable. The best option to achieve these end results is to require the incineration of these items. GWS suggested the following revision: "Nonhazardous pharmaceutical waste and controlled substances shall be incinerated prior to disposal."

Response

The commission acknowledges that incineration may not be the only method of treatment for non-hazardous pharmaceutical waste and that there are a limited number of incinerators available to process the waste which could result in an economic hardship on generators of the waste. The commission also acknowledges that there are recommendations from EPA related to treatment of non-hazardous pharmaceutical waste, but that no federal rules have been adopted to address management of this waste at this time. As far as the definition, the commission acknowledges EPA's proposed rules regarding the Management Standards for Hazardous Waste Pharmaceuticals which include a definition for "non-hazardous waste pharmaceuticals." The commission is hesitant to adopt a definition at this time since EPA has not adopted the proposed rule and the proposed definition may change. Therefore, the definition of non-hazardous pharmaceutical waste and the requirement to incinerate are not adopted. For clarification, the commission is not changing the requirements for managing and disposing drugs as special waste under Chapter 330.

§326.3(42), "Putrescible Waste" Definition

Comment

SI requested amending the definition of "Putrescible waste" to be specific to regulated medical waste. SI proposed the definition to read "Regulated medical waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to cause obnoxious odors and to be capable of attracting or providing food for birds or animals."

Response

The commission agrees that "Putrescible waste" definition should be more specific to medical waste related content. Therefore, the definition is amended as suggested with the exception of the word "Regulated."

§326.3(53), "Storage" Definition

Comment

BWS and CJI commented that the inclusion of a 24-hour storage time frame creates a problem for those transporters that are providing collection services to communities that may be located several hundred miles away where routes may be conducted on Friday and Monday, with collection vehicles being parked for over 24 hours during the weekend, prior to transporting the waste to an authorized transfer or treatment facility. BWS recommends extending the storage time to 72 hours to accommodate long distance routes and multiple pickup locations prior to treatment and disposal. CJI commented that the inclusion of a 24-hour storage time frame is more restrictive than current regulations and no evidence has been provided to require an added regulatory burden to industry for no apparent benefit to the public or for environmental protection. CJI recommends a storage time of 96 hours with refrigeration required after 72 hours. CJI also provided suggested language to facilitate their recommendation as follows: "Any vehicle inactivity such as not continuing a collection route for a period less than 96 hours is considered a temporary storage period. Exceeding 96 hours of temporary storage will require the operator to obtain a medical waste registration per Subchapter F of this title (relating to Operations Requiring a Registration). If storage exceeds 72 hours, a storage temperature of 45 degrees Fahrenheit or less for putrescible waste will be maintained. Exceeding 96 hours of temporary storage will require the operator to obtain a medical waste registration per Subchapter F of this title (relating to Operations Requiring a Registration)."

Response

The commission acknowledges and agrees with the concern for those transporters that are providing collection services to communities that may be located several hundred miles away where routes may be conducted on Friday and continue on Monday prior to transporting the waste to an authorized transfer or treatment facility. The commission considers providing additional storage time for up to 72 hours is sufficient in order to cover the need for weekend temporary storage without a storage registration. In addition, 72 hours coincides with the maximum storage time allowed without refrigeration. Therefore, the commission revised this section to extend the temporary storage time to 72 hours to accommodate long distance routes and multiple pickup locations prior to treatment or disposal.

§326.3(53), "Storage" Definition

Comment

SI suggested a grammatical correction to the definition of storage to remove "that" from the beginning of each sub-definition.

Response

The commission agrees. The definition is amended as suggested.

§326.3(57), "Trace chemotherapy waste" Definition

Comment

CJI commented that trace chemotherapy waste stream has historically been treated using various treatment technologies other than incineration and no evidence has been presented that current management standards are ineffective or in any way not protective of human health and the environment. CJI indicated that incineration facilities are limited in Texas and as such this regulatory requirement places a financial burden on generators to segregate and separately manage these waste streams to be incinerated. CJI agreed that even though this new term is appropriate with the creation of the new medical waste rules as this is a waste stream that can be managed in the same manner as medical waste, CJI believes that those treatment technologies currently approved in the state of Texas are appropriate treatment. CJI recommended that if the commission proceeds with this proposed requirement for incineration of this newly defined waste stream, State of Texas Environmental Electronic Reporting System (STEERS) should be updated to allow medical waste generators to identify which of the special categories of medical waste are generated at their facilities so the agency, transporters, and processors can be aware of wastes that may be present at the site that will require special handling and/or be prohibited from being processed in their specific treatment units. CJI suggested replacing "incinerated" with ". . .and treated by approved DSHS treatment technologies. . . ."

GWS agreed with the proposed rule and supported the definition that trace chemotherapy waste shall be managed as medical waste and incinerated.

Response

The commission acknowledges that incineration may not be the only method of treatment for trace chemotherapy waste and that there are a limited number of incinerators available to process the waste which could result in an economic hardship on generators of the waste. The commission also acknowledges that there are discussions from EPA related to treatment of trace chemotherapy waste, but that no federal rules have been adopted to address management of this waste at this time. Therefore, the definition of trace chemotherapy waste and the requirement to incinerate are not adopted.

§326.19(b), Packaging and §326.21(b), Labeling

Comment

SI commented that they would like to have a clarification for the applicability of §326.19(b) to sharps containers. SI also requested clarification if the lettering on sharps containers would be required to be 0.24 inches as referenced under 49 CFR §173.197. SI suggested the following clarification: "For shipments of sharps containers on racks meeting Federal Department of Transportation (DOT) requirements, each rack must be appropriately marked to identify the name and address of the generator and the date of shipment."

Response

The commission acknowledges that sharps containers must be packaged to comply with applicable requirements referenced or cross-referenced under 49 CFR §173.134. The commission acknowledges that §326.21(b) does not apply to sharps containers since the requirements for marking (labeling) sharps is addressed under §326.19(b). The commission recognizes that the title and the contents of §326.21(b) does not specifically exclude sharps from those requirements. Therefore, the title for §326.21 is amended from "Labeling" to "Labeling Containers Excluding Sharps" to clarify any ambiguity. Since marking/labeling for sharps containers are specifically referenced to appropriate federal requirements, additional language suggested by SI has not been added to the rule.

§326.31, Exempt Medical Waste Operations

Comment

CJI and GS commented that current and proposed rules have regulations pertaining to generators (generator status, packaging medical waste, storing medical waste) but the agency has not enforced these rules with generators by performing inspections to determine compliance of generators with these requirements. Since the commission is including new language to identify generator status, the commission should update the STEERS to provide a means for medical waste generators that use STEERS to provide this information electronically. The self-certification can also be done through STEERS reporting (for those facilities that have a STEERS account) and would assist generators in understanding their waste management obligations regarding the proper identification, packaging and labeling of medical waste. This reporting would add negligible regulatory burden and would not cause an economic hardship for those generator's that are already reporting through STEERS to the agency. By requiring those facilities that are already reporting to the commission to identify their generator status, the commission will have a greater opportunity to enforce packaging and specific management requirements for medical wastes and ensure proper management by waste transporters and management facilities. CJI and GS understand that while there are generators that are not currently reporting activities to the agency through STEERS, most generators that are large quantity generators of medical waste are doing so now. CJI and GS stated that it would also be easy for the generators to identify if they generate any medical wastes that require special management or treatment technologies (as required in this rulemaking) to enable transporters and treatment facilities to assist generators in ensuring proper management of the medical wastes they generate. CJI and GS encouraged and requested that the commission provide a means for generators to easily document their status and the special classes of medical waste they generate in the adopted rules.

Response

The commission disagrees. Requiring generators to submit self-certification information to comply with identification, packaging and labeling medical waste through STEERS or any other mechanism is beyond the scope of the proposed rules and HB 2244. Additionally, the new terminology (SQG and LQG) is intended to classify the generators using existing rule language which distinguishes between those generators with less than 50 pounds per month of medical waste generation versus more than 50 pounds per month. The commission has made no change.

§326.31(a), Small Quantity Generator (SQG) and Large Quantity Generator (LQG) On-site Storage Facility

Comment

SI recommended a clarification edit to distinguish small quantity and large quantity generators as it relates to medical waste management since similar terminology is used for hazardous waste

generators as well. SI suggested using "of regulated medical waste" for those terms.

Response

The commission understands that there is a reference to SQGs and LQGs in hazardous waste rules, however the commission intends that the terms listed under §326.3(14) define that these terms are for medical waste generators for the purposes of proposed Chapter 326. Therefore, the commission has made the change as suggested.

§326.37(a), General Requirements, §326.69(a), Registration Application Formatting, Posting, Appointment and Fees

Comment

SI commented that notifications should be made available to the agency in one hard copy stamped and otherwise submitted electronically. SI states that this makes it easier for both the agency and the regulated entity in providing appropriate documentation. SI also commented that registration applications should also have the option to be submitted in one hard copy and electronically.

Response

The commission agrees that providing a notification and a registration application electronically is a possible option. Currently, the agency has e-permitting and e-reporting systems established for municipal solid waste notifications for recycling facilities and for quarterly and annual reporting for municipal solid waste facilities. At this time, the agency does not have the resources to accept electronic submittals for notifications and registration applications for medical waste management facilities. However, the commission recognizes that there should be an option for future use of these systems for medical waste facilities. Therefore, the commission is adding language to authorize the executive director to allow for future electronic submittals as its filing systems develop.

§326.39(a), On-Site Treatment by Small Quantity Generators and §326.41(a), On-Site Treatment by Large Quantity Generators

Comment

UT Systems commented that non-exempt generators who intend to store and process waste must notify the TCEQ and the intent is a one-time notification, but the proposed language is not specific and has been interpreted as requiring ongoing notification to the agency when personnel changes. UT Systems suggested a change in rule language to reflect one-time notification clarification.

Response

The commission agrees with the comment and has revised rule to include "one-time" notification.

§326.39(a)(1), On-Site Treatment by Small Quantity Generators and §326.41(a)(1), On-Site Treatment by Large Quantity Generators

Comment

UT Systems commented that the name (printed) and initials of the person(s) performing the treatment are not relevant to facility notifications and advised the following language:

"Names and contact information for the responsible party or institutional department overseeing the treatment of waste."

Response

The commission acknowledges that contact information for the facility must be provided instead of name and initials of the person(s) performing the treatment. The name and initials of the person(s) are needed for on-site recordkeeping. The commission has made the suggested change and also revised §326.39(b) and §326.41(b) to add the name and initials of the person(s) performing the treatment to those sections.

§326.43(b)(2), Medical Waste Collection and Transfer by Licensed Hospitals, §326.53(b)(6)(B)(vi), Transporters-Other Requirements, and §326.71(i)(5), Waste Management Unit Design

Comment

SI, CJI, and GS commented that these rule provisions are burdensome and potentially unenforceable due to the inability of the agency or transporters to know if a medical waste box has been previously refrigerated and if the boxes contained putrescible wastes.

Commenters also stated that most route trucks are not refrigerated and routes are not currently established based on this type of waste. This regulatory requirement favors those companies that can easily absorb the cost of maintaining a fleet of refrigerated trucks. This inability to allow for the 72-hour delay will also cause increase cost for transporters and healthcare. Finally, CJI and GS commented that a review of the regulations leading up to the currently approved medical waste regulations (Chapter 330, Subchapter Y) could only identify that the primary concern for refrigeration is to prevent those organisms of concern from creating a public nuisance in the form of putrescence (Adopted Rules, December 6, 1994 (19 TexReg 9617)). The preamble for the 1991 rule adoption (May 7, 1991 (16 TexReg 2529)), provides a discussion as to why the health department chose to only require refrigeration of waste for transporters and storage facilities that hold waste longer than 72 hours. In this proposed rule making process, the agency has not presented any technically justifiable basis for requiring this increased regulatory burden. All commenters indicated that there is nothing in the federal regulations that require refrigeration today. This leaves this option to the generator based on the potential waste they generate and commenters are not aware of any instances where this has caused any public harm or environmental threat where once refrigerated material is unrefrigerated and then refrigerated again. Therefore, all commenters strongly recommended that the agency remove this requirement and not place a restriction that would require refrigeration from the time of pick up.

The suggested change by CJI and GS is also to add "or if objectionable odors are detected when transported and/or held for longer than 72 hours during the post-collection transporter storage period." to the end of §326.53(b)(6)(B)(vi) and to remove "The 72-hour delay is not allowed for putrescible or biohazardous untreated medical waste that has been elected to be refrigerated during pre-collection storage. In that case, the putrescible or biohazardous untreated medical waste must remain refrigerated during post-collection storage as well."

Additionally, CJI and GS stated that the rule requires refrigeration for "biohazardous waste" yet the proposed rules do not provide a definition for biohazardous waste. They indicated that they could not find a definition for "biohazardous waste" under U.S. DOT, Occupational Safety and Health Administration (OSHA), and EPA. The only reference to this term is in OSHA's Blood-

borne Pathogen Standard as it relates to a "biohazardous symbol."

All commenters requested the agency review this proposed rule and consider adopting the current storage time frames for medical waste that have proven to be effective as identified in 30 TAC §330.1209(b) and §330.1211(c)(2)(F). CJI and GS also requested the agency to remove the undefined term "biohazardous" waste.

Response

The commission recognizes the concerns for the 72-hour refrigeration requirement initiated at the time of pickup if the waste has already been refrigerated. The commission agrees to allow transporters to begin the 72-hour time limit for refrigeration at the time of collection whether or not the waste has been refrigerated during pre-collection storage. Therefore, the commission has made the suggested change to the rules citations included in the comment's heading.

In regards to the "biohazardous" definition, the commission acknowledges that the term biohazard has been brought over from Chapter 330, Subchapter Y as it existed. The commission agrees that the term "biohazardous" waste has not been defined under federal regulations. However, the commission finds that the "biohazardous" term and the label is universally accepted in the health care and medical waste management industry because of biohazard labeling references to OSHA standards in various federal and state regulations. Therefore, the commission will provide clarification for the "biohazard" terminology by referencing the OSHA standards for labeling. The commission considers that the healthcare industry and OSHA are better suited to classify biohazardous material. Therefore, the commission has made a change to §326.21(a) to add a reference to OSHA labeling standards for "biohazardous" materials.

§326.53(b)(6), Other Requirements

Comment

SI suggested a punctuation correction to the end of the sentence for this rule.

Response

The commission agrees and has made the correction to replace the period "." with a colon ":" at the end of the sentence.

§326.53(b)(6)(A), Other Requirements

Comment

SI questioned whether the identification requirement for the cargo-carrying compartments should be continued to be displayed regardless of waste being in the unit or not.

Response

The intention of the rule for identification requirement for the cargo-compartment applies to the use of the compartment while it contains medical waste. The commission considers that a clarification should be added to the preamble since the rule has been brought over from Chapter 330, Subchapter Y as it existed. The commission has not made any changes in response to this comment.

§326.53(b)(6)(B), Other Requirements

Comment

SI requested clarification as to whether sealed wood floors would be acceptable as an impervious, non-porous material since it has been causing inconsistencies for enforcement.

CJI commented that during stakeholder meetings the agency indicated that "The impervious flooring is needed for the protection of human health and the environment" without providing any evidence as to the basis for this statement. CJI stated that while this requirement is not a new requirement being proposed during this rulemaking, the basis for requiring impervious flooring, which is not defined in the rule, for the transportation of wastes which do not contain free liquids and/or are packed with sorbent materials is excessive. According to CJI, this requirement exceeds even the requirement for the transportation of hazardous wastes which can be shipped in drums and bulk containers of free liquids. CJI does not believe that the cargo compartment, with respect to the flooring, should be regulated more stringently for medical wastes than the cargo compartments used to transport hazardous wastes. CJI believes the need for impervious flooring was originally identified as a requirement at a time when the management of medical waste was just beginning to be regulated and federal and state agencies did not have enough information regarding the environmental impact of medical waste. Any impact to human health and the environment is minimized by the packaging requirements for medical wastes. Additionally, proposed §326.53(b)(6)(A)(iii) requires transporters to carry a spill kit to address any spills that may occur.

CJI also indicated that this requirement will be burdensome to smaller transport companies especially in the event of a transportation unit malfunction. In the event of a malfunction transporters will typically need to rent an additional vehicle. Obtaining rental vehicles with impervious flooring is difficult and is not always available. Therefore, CJI requested the requirement be revised to read that the cargo compartment must be constructed and maintained to prevent loss of waste material and minimize health and safety hazards to solid waste management personnel, the public, and the environment.

Response

The commission considers that human health and safety would be lessened by removing the criteria for an impervious and nonporous surface since waste may leak during transportation even if the packaging requirements are met; specifically if the transporter is involved in an accident. Sealed floors and sides would serve as an additional layer of protection from environmental contamination and exposure to contaminants. In addition, this rule has been brought over from Chapter 330, Subchapter Y as it existed and revising the requirement to reduce this criteria from "impervious and nonporous floor and sides" to generic requirement to "prevent loss of waste material" is excessively broad. The commission has made no changes. In regards to SI's request to clarify whether sealed wood floors are impervious and nonporous, the commission considers that wood floors are not impervious and nonporous. In cases where wood floors have been modified, the applicant must demonstrate that the modification of the wood floor renders it impervious and nonporous.

§326.53(b)(8)(B), Other Requirements

Comment

SI commented that the requirement for listing the names of the persons collecting, transporting and unloading the waste on a manifest is an unreasonable burden and enforcement issue. SI indicated that the main concern for the agency should be the company. The names of the persons collecting, transporting

and unloading the waste could all be different and ultimately the owner/operator of the facility is responsible for compliance therefore the employee names should be irrelevant. SI also requested clarification that whether the facility would be the ultimate responsible party and not the individual.

Response

The commission disagrees with the comment because the person collecting, transporting and unloading medical waste is responsible to ensure that medical waste has been packaged by the generator in accordance with the provisions of §§326.17, 326.19, and 326.21. Transporters must not accept containers of waste that are leaking or damaged unless or until the shipment has been repackaged. In addition the rule has been brought over from Chapter 330, Subchapter Y as it existed. SI also commented that providing the individual names is burdensome and causes unreasonable enforcement issues for the facility/transporter. The commission has made no changes.

§326.53(b)(8)(G) and (b)(10), Other Requirements

Comment

SI requested that "or electronic record" option for name and signature of facility representative acknowledging receipt of the untreated medical waste and the weight or volume of containers of waste received be added to the rule. SI also requested to add "or electronic copies" as an option to the original manifest.

Response

At this time, the agency does not have the resources to accept electronic records of names and signatures on manifests or as an option for original manifests. However, the commission recognizes that there should be an option for future use of these systems for medical waste facilities. Therefore, the commission is adding language to authorize the executive director to allow for future electronic submittals if the commission implements such a system.

§326.53(b)(12) and (13), Other Requirements

Comment

SI requested addition of the term "or Regulated Garbage" after the term "Animal and Plant Health Inspection Service (APHIS)" waste to ensure that it is clear for inspections by the agency since according to SI, they are required to include the term "Regulated Garbage" on shipping documents and containers.

Response

The commission agrees with the comment and has revised the language to reference "APHIS Regulated Garbage" instead of "APHIS waste."

§326.53(b)(17), Other Requirements

Comment

SI suggested a punctuation correction to replace the word "as" with "at" before "a treatment/processing facility."

Response

The commission agrees and has made the correction.

§326.61(a), Applicability and General Information

Comment

UT Systems commented that the proposed language in this section is intended to require registration by commercial medical waste treatment facilities. This subchapter could easily be misconstrued to include institutions, such as teaching hospitals, that store or process untreated medical waste. UT Systems recommended the addition of "This excludes small and large quantity generators that may store or process untreated medical waste." to §326.21(a) to prevent misunderstanding and inclusion of hospitals.

Response

The commission agrees that licensed hospitals are not required to obtain a registration under Chapter 326, Subchapter F. The levels of authorizations clearly identify the types of entities that must apply for notification, registration by rule and registrations. Registration applications are not inclusive of licensed hospitals since they are referenced under the notification requirements of this chapter. The commission has made no changes in response to this comment.

§326.61(d) and (e), Applicability and General Information

Comment

SI commented that these rule provisions are vague, subjective and difficult to enforce and it could create public perception concern. SI also stated that if there are other requirements, they should be included or at least specifically referenced so that the applicant is clear on the expectation.

Response

The rule provides flexibility for the agency to request any additional information specific to a facility to assure compliance with applicable statutory and regulatory requirements. Specific information would be listed in the facility's authorization under standard or special provisions which would address public and compliance concerns, and any requirements associated with those concerns. No changes have been made in response to this comment.

§326.61(h), Applicability and General Information

Comment

SI requested clarification whether this rule addresses home generated regulated medical wastes and pharmaceutical wastes or if it means that waste generated from a household will be processed as medical waste if it ends up at a medical waste facility.

Response

The commission's intention is to allow medical waste facilities to accept municipal solid waste from homes and workplaces where the municipal solid waste would be classified as medical waste if it were generated by health care-related facilities. Examples might be sharps used by individuals who self-medicate at home or at workplaces and would like to deliver them to an authorized treatment facility. This provision provides the processing facility with an option to accept this type of waste from the public. Therefore, no changes have been made.

§326.63(b), Property Rights

Comment

SI and CJI commented that medical waste facilities do not have post closure care. These facilities do not "dispose" of waste on site. SI indicated that it is not clear how or why the owner or operator would retain rights of entry to the facility especially if it were a leased property. SI stated that this may have been a carry-over from the solid waste regulations that should be removed. CJI also commented that only an unforeseen circumstance at the

time of closure that caused waste constituents to be left in place would require post closure care and this circumstance would require an amendment to the approved closure which could require post closure care. CJI suggested the insertion of "if required" after "the end of closure care period."

Response

The commission acknowledges that the terminology requires clarification. The rule referencing the closure care period was to address closure activities not a post closure care period. Medical waste facilities similar to other municipal solid waste facilities do not require post closure care unless unforeseen circumstances occur that would require extended care. The commission does not agree with the insertion of "if required" since the rule is not intended for post closure care period but rather for closure activities. Therefore, the commission has only replaced the term "closure care period" with "closure activities."

§326.71(a)(2)(D), Facility access and facility layout and §326.75(m), Noise Pollution and Visual Screening

Comment

SI commented that the provisions for visual screening are more specific to municipal solid waste landfill operations. SI also indicated that medical waste operations are typically operated within enclosed facilities, would not have these same risks and, most often, regulated medical waste operations are within industrial areas.

Response

The commission disagrees, noise pollution and visual screening is specifically required by THSC, §361.0905(e)(18), HB 2244 as it applies to medical waste facilities. This information must be described in the site operating plan. In addition, reduced buffer zone distance may lead to close proximity to residents and/or landowners of adjacent properties. Even though the majority of activities are conducted in an enclosed building, most medical waste facilities would have trucks parked outdoors and there would be truck traffic which may require visual screening from surrounding neighbors. Therefore, the commission has made no changes in response to this comment.

§326.71(a)(2)(G), Facility access and facility layout

Comment

SI commented that a facility should identify the main roadways, but these facilities will not be the same type of operations as a landfill requiring heavy equipment. Therefore, SI requested to leave this section to address only the general location of roadways.

Response

The commission understands that medical waste facilities are not the same types of operations as the landfills, however, medical waste facilities utilize public roadways for incoming and outgoing waste that is transported in varying truck sizes designed for medical waste. The impact of a facility's expected volume of traffic in the area warrants the information including surface types of those roads to be depicted on a map for affected landowners, interested persons and the general public. Therefore, the commission has made no change in response to this comment.

§326.71(a)(2)(J) and (K), Facility Access and Facility Layout

Comment

SI commented that the requirements listed under §326.71(a)(2)(J) and (K) are typically needed for landfill operations and that there would not be any need to have construction phases that would mandate the extensive representations as would be needed for a landfill that would continue to grow or develop in phases. SI also commented that initial utilities should be identified as part of general construction process.

Response

The commission considers phased construction to provide flexibility to business owners to grow their operations in phases instead of establishing all at once and providing financial assurance as needed for each phase. Additionally drainage, pipeline and utility easements may need to be addressed for each phase of development. Therefore, the commission has made no change in response to this comment.

§326.71(a)(3), Land-use map and §326.71(a)(5), Impact on Surrounding Area

Comment

SI commented that surrounding property should be identified but that one mile is not necessary because of the way most medical waste facilities would be built. SI recommended the identification of owners in the immediate property line.

SI also commented that §326.71(a)(5) is too vague and subjective. SI believes that if a facility has met the criteria laid out in the regulations then it should be sufficient to be protective of the environment and that it would be difficult to enforce this section of the rule and could create a public perception concern. SI recommended this section be removed or revised to be more specific to regulated medical waste.

Response

The commission considers this information important to evaluate the impact of the facility and to assess the compatibility with the surrounding area. Additionally, this information allows the commission to ensure that the use of land for a medical waste facility would not adversely impact human health or the environment. Therefore, the commission has made no change in response to this comment.

§326.71(e)(1) - (4), Transportation

Comment

SI commented that this section would be more appropriate for a solid waste transfer station that would have larger impact on the environment, such as larger equipment, frequent truck traffic, different types of truck traffic, etc. SI requested a modification to the section to make it more specific to regulated medical waste and minimize the amount of information requested such as the estimated number of trucks for the operation. SI also indicated that medical waste operations are even less impactful than a general common carrier operation and that evaluation of traffic within a one-mile radius is excessive.

Response

The commission disagrees. Transportation information is a component for development and design of a facility that would have incoming and outgoing trucks loaded with waste. It is necessary to evaluate the current and future impact of truck traffic expected to be generated by the facility within one mile of its intended location and coordination with the entity exercising maintenance responsibility of any and all public roadway improvements that may be needed. Additionally, site development information is a re-

quirement listed in THSC, §361.0905(e)(1)(B), HB 2244. Therefore, the commission has made no change in response to this comment.

§326.71(j), Treatment Criteria

Comment

SI requested clarification if these additional requirements for procedures are related to those alternative technology options as identified under 25 TAC §1.135.

Response

The written procedure for the operation and testing of any approved equipment used and for the preparation of any chemicals used in medical waste treatment must be maintained on site. Alternative treatment technologies are not related to the procedures listed in this rule. The listed procedures are required for approved treatment methods at authorized medical waste facilities. Alternative treatment technologies must be approved by DSHS prior to the commission allowing its use at a medical waste facility. The commission has made a change to the rule to clearly indicate that alternative treatment technologies must be approved by DSHS by moving the second sentence in §326.71(j) to adopted §326.71(j)(7).

§326.75(a), Personnel and Equipment

Comment

SI commented that all the information required under §326.75(a) is new and is already covered by regulations identified by other regulations (OSHA). SI indicated that the need to have this information in the site operating plan (size and type of equipment) can be very restrictive to a facility. With the advancement in personal protective equipment and changing regulations, facilities should have the freedom to provide the correct equipment to their employees with the need for a site operating plan modification. SI requested this section to be removed and replaced with something that states that the facility is required to provide adequate and appropriate equipment for employees for their operations and under all other applicable regulatory requirements. SI indicated concern that by putting something in the application it would require modifications any time there is a change to this equipment. If there was a concern based on the recent events (Ebola and other potential emerging diseases) then the regulation should point the operations to Center for Disease Prevention and Control requirements. Specifically, SI requested removal of §326.75(a)(3) since it will be specific to the functions of the operations and if there are minor modifications then each time something changes then it will require some type of modification.

SI also requested a revision to §326.75(a)(4) to the procedures for the detection and prevention of the receipt of prohibited wastes since SI believes that employees required to open containers for random inspections. The suggested language is as follows: "Employees should be trained on identification of improper waste; If waste is identified the generator will be notified to ensure proper management of that waste; Records of unacceptable loads shall be maintained on site (sic) as part of operating record."

Response

The commission's intent is not to require operators to provide information on personal protective equipment. Equipment is referenced in other parts of the rules such as processing, storage equipment or ancillary equipment. Therefore, the commission has removed the "and Equipment" from the title of this section and replaced it with "Functions." In addition, the commission has also removed §326.75(a)(2) which required duplicate information for equipment used at the facility. To require the number of processing and storage equipment that will be utilized at the facility, the commission has added "number of units" to §326.71(i). The key personnel functions and their titles are needed for the site operating plan to identify responsibilities for waste management activities such as but not limited to waste receipt, loading/unloading, processing of waste properly, inspections and recordkeeping. The commission is concerned with information regarding key personnel functions and not with individual's names occupying each position.

The commission does not intend to require the opening of containers for random inspections. Even though the commission does not accept the suggested language, the commission has provided clarification to this requirement by adding "packaging for" after "random inspections of" to §326.75(a)(4)(A).

§326.75(b), Waste Acceptance

Comment

SI agreed that the medical waste operations should have waste acceptance protocols to reduce the potential of unacceptable waste being managed. SI stated that asking for "the sources and characteristics of medical wastes proposed to be received for storage and processing . . ." could be unrealistic depending on what the agency is asking. SI believes that the general definition of regulated medical waste identifies the types of things that a facility expects to be brought to the facility for treatment.

SI requested clarification if the commission is referring to identification of the landfill that the medical waste will go after treatment of if the waste is going to be transferred to another site with the phrase ". . . and the intended destination of the medical waste received."

SI also requested clarification if medical waste facilities could receive hazardous waste but not for treatment. SI considers a scenario at the same site where medical and hazardous waste may be stored together since many healthcare facilities are generating more hazardous waste. SI asked if the commission would consider a situation where a facility would be requested to permit a dual waste location.

Additionally, SI asked whether recyclable materials that are comingled with medical waste such as used medical devices can be segregated and sent back to generator or the manufacturer.

Response

Facilities may process different types of medical waste that would be subject to different types of handling, processing and final disposition. The commission requires the operator to identify sources and characteristics of the waste so the commission can determine if the waste management operations would be in compliance with the waste streams that are identified. Additionally, waste acceptance and analysis is specifically required by THSC, §361.0905(e)(4), HB 2244 as it applies to medical waste facilities.

The agency is referring to the appropriate method of disposition (e.g., incineration, landfilling or transfer) with the phrase ". . . and the intended destination of the medical waste received" not a particular facility name and location.

The commission agrees that a facility may have dual authorizations to accept hazardous and medical waste. However, haz-

ardous waste authorization is separate from medical waste registration authorization and cannot be authorized or accepted under medical waste registrations. This includes accepting, storing and/or processing of hazardous waste. All of these activities can only be authorized by an industrial hazardous waste authorization separately. The commission has processed dual authorization facilities in the past and they are required to have physically separated waste management areas and units and the authorization boundaries for each should be depicted on a site layout drawing. There may be other requirements that must be addressed on a case-by-case basis.

The commission currently allows the recycling of source separated materials. The commission also understands there may be situations on a case-by-case basis where it may be acceptable to allow the separation of recyclable material from medical waste. In such cases, the commission may consider the recycling of the material to be appropriate however it should be addressed in the application clearly and be evaluated by the commission on an application specific basis. The commission has made no changes in response to these comments.

§326.75(c)(4) and (5), Facility Generated Waste

Comment

SI commented that this section seems to be unnecessary as non-waste management rule is already covered under the Texas Pollution Discharge Elimination System Authority. SI recommended that it simply states that the facility must maintain compliance with these provisions without further specification.

Response

The commission did not accept the suggested language, however, it agrees with the comment to the extent that a copy of the permit to discharge wastewater to a treatment facility permitted under TWC, Chapter 26 would be available for all inspections and it must be obtained prior to beginning of facility's operations. The commission therefore revised the language under §326.75(c)(5) from "The owner or operator shall provide a copy of the authorization to discharge wastewater to a treatment facility permitted under TWC, Chapter 26." to "The owner or operator shall make available the authorization to discharge wastewater to a treatment facility permitted under TWC, Chapter 26 prior to beginning of facility's operations and for all inspections."

§326.75(g)(2), Access Control, §326.75(l), Facility Access Roads

Comment

SI commented that the access control is a requirement more suitable for a municipal solid waste facility especially for those which would be accepting waste from the public. Most if not all regulated medical waste facilities are not generally open to the public. SI agrees that there should be safe access but it would be authorized access only for those employees that are fully aware and trained for the proper management of equipment on site. SI requested removal of §326.75(g)(2).

SI also commented that requirements listed under §326.75(l) are more associated with heavy equipment, large and high volume of trucks and more occasions for there to be dust present. SI recommended §326.75(l)(1) to be modified further to be more specific to medical waste facilities. More specifically, SI requested removal of §326.75(l)(2) and (3).

Response

The commission provided an option for medical waste facilities to accept waste from the public as explained in a previous comment regarding §326.61(h). Therefore, the commission does not agree that the safe access would be required in all cases only for employees that are fully aware and trained for the proper management of equipment on site. The commission has neither removed nor made changes to §326.75(g)(2).

In regards to §326.75(l), the commission agrees that dust may be present more often with heavy equipment and higher truck volumes but the possibility of dust becoming a nuisance still exists with any volume of truck traffic or lack of dust controls. Access roads owned by the facility must be maintained so as not to create safety issues such as depressions, ruts and potholes and that is the responsibility of the facility owner as part of the site operating plan. In addition, the commission considers that it is the responsibility of the facility owner to coordinate with the maintenance authority for other access roads to ensure public safety and safe transportation of waste to and from the facility. Therefore, the commission has made no changes.

§326.75(i) and (i)(1), Operating Hours

Comment

SI requested that the facility provide site operating hours instead of the specific hours and days provided by the commission and alternative operating hours of up to five days in a calendar year to accommodate special occasions, special purposed events, holidays, or other special occurrences. SI requested deleting those hours and days specified by the commission.

Response

The commission considers that it has a reasonable basis to restrict operating hours to limit impacts on the public as appropriate. Therefore, no change has been made.

§326.75(k), Control of Windblown Material and Litter

Comment

SI commented that this rule is more of a municipal waste facility requirement and recommended removal of it.

Response

The commission disagrees, control of litter including windblown material applies to medical waste facilities and is specifically required by THSC, §361.0905(e)(17), HB 2244.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§326.1, 326.3, 326.5, 326.7

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.1. Purpose and Applicability.

(a) The regulations promulgated in this chapter cover aspects of medical waste management from medical waste facilities under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code (THSC), Chapter 361. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of medical waste as defined in THSC, §361.003(18-a) and medical waste facilities and activities including storage, collection, handling, transportation, and processing. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, medical waste owned or possessed by the person, or by any other person or entity.

(1) Permits and registrations issued by the commission and its predecessors, that existed before this chapter became effective remain valid for the later of two years from the effective date of this chapter or until a final decision is made on a timely filed application for an existing authorization to comply with this chapter. Authorizations under the existing Chapter 330 rules must be updated by filing a new application within two years of the effective date of this chapter to comply with the provisions of this chapter. Registrations by rule, subject to annual renewal, remain in effect and must renew under this chapter. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. Applications for an existing permit or registration to comply with this chapter will not be subject to the standard procedures for processing applications, including any requirements for notice and public participation. Authorizations, other than permits, registrations, or registrations by rule, that existed before the adoption of this chapter became effective, remain valid and are subject to these rules when they become effective.

(2) A person that has a pending application for the management of medical waste as of the effective date of this chapter shall be considered under the former rules of Chapter 330 of this title (relating to Municipal Solid Waste) unless the applicant elects otherwise. Permits or Registrations issued under the former rules remain in effect for the later of two years from the effective date of this chapter or until the commission makes a final decision on an application to comply with this chapter.

(3) Modification requests submitted after the effective date of this chapter shall be prepared and submitted in accordance with the provisions of §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications) and in accordance with this chapter. Requests to modify buffer zones or operating hours under this chapter will be processed as modifications that do not require notice. Modification requests pending on the effective date of this chapter may be prepared and submitted in accordance with the provisions of §305.70 of this title and in accordance with the former rules in Chapter 330 of this title unless the applicant elects otherwise.

(4) The requirement in §326.23(e) of this title (relating to Shipping) to provide notice to landfills that waste shipments include treated medical waste applies to existing authorizations regardless of any conflicting language in those authorizations or rules in Chapter 330 of this title.

(b) This chapter does not apply to waste that is subject to 25 TAC Chapter 289 (relating to Radiation Control).

§326.3. Definitions.

Unless otherwise defined in this chapter, those definitions of words, terms, and abbreviations used in this chapter which are defined in 25 TAC §1.132 and §133.2 (relating to Definitions) apply. Should the definitions found in 25 TAC §1.132 change, such changes shall prevail over the definitions found in this section. Unless otherwise noted, all terms contained in this section shall be defined by their plain meaning. This section contains definitions for terms that appear throughout this chapter. Additional definitions may appear in the specific section to which they apply. The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise.

(1) Active life--The period of operation beginning with the initial receipt of medical waste and ending at certification/completion of closure activities in accordance with §326.71 of this title (relating to Registration Application Contents).

(2) Affiliated facility--A health care-related facility that generates a medical waste that is routinely stored, processed, or disposed of on a shared basis in an integrated medical waste management unit owned, operated by a hospital, and located within a contiguous health care complex.

(3) Affiliated with--A person, "A," is affiliated with another person, "B," if either of the following two conditions applies:

(A) "A" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "B;" or

(B) "B" owns or controls more than 20% of the voting interest, fair market value, profits, proceeds, or capital gains of "A."

(4) Buffer zone--A zone free of medical waste processing and storage activities within and adjacent to a facility boundary (registration boundary) on property owned or controlled by the owner or operator of the facility.

(5) Collection--The act of removing waste (or materials that have been separated for the purpose of recycling) for transport elsewhere.

(6) Commence physical construction--The initiation of physical on-site construction on a site for which an application to authorize a medical waste management facility is pending, the construction of which requires approval of the commission. Construction of actual facility and necessary appurtenances requires approval of the commission, but other features not specific to medical waste management are allowed without commission approval.

(7) Compacted waste--Waste that has been reduced in volume by a collection vehicle or other means with the exception of waste that has been reduced in volume by a small, in-house compactor device owned and/or operated by the generator of the waste.

(8) Conditionally exempt small quantity generator--A person that generates no more than 220 pounds of hazardous waste in a calendar month.

(9) Container--Any portable device in which a material is stored, transported, or processed.

(10) Contaminated water--Water that has come into contact with waste.

(11) Discharge--Includes deposit, conduct, drain, emit, throw, run, allow to seep, or otherwise release, or to allow, permit, or suffer any of these acts or omissions.

(12) Facility--All contiguous land and structures, other appurtenances, and improvements on the land used for the storage or processing of medical waste.

(13) Garbage--Solid waste consisting of putrescible animal and vegetable waste materials resulting from the handling, preparation, cooking, and consumption of food, including waste materials from markets, storage facilities, handling, and sale of produce and other food products.

(14) Generator--Any person, by site or location, that produces medical waste to be shipped to any other person, or whose act or process produces a medical waste or first causes it to become regulated.

(A) Small quantity generator (SQG)--A medical waste generator that produces 50 pounds or less per month of medical waste.

(B) Large quantity generator (LQG)--A medical waste generator that produces more than 50 pounds per month of medical waste.

(15) Hazardous waste--Any solid waste identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act of 1976, 42 United States Code, §§6901 *et seq.,* as amended.

(16) Incinerator of Hospital/medical/infectious waste--Any device that combusts any amount of hospital waste and/or medical/infectious waste as defined under §113.2070(15) of this title (relating to Definitions).

(17) Incineration--The process of burning special waste from health care-related facilities in an incinerator as defined in Chapter 101 of this title (relating to General Air Quality Rules) under conditions in conformance with standards prescribed in Chapter 111 of this title (relating to Control of Air Pollution from Visible Emissions and Particulate Matter).

(18) Industrial solid waste--Solid waste resulting from or incidental to any process of industry or manufacturing, or mining or agricultural operations.

(19) Inert material--A natural or man-made non-putrescible, non-hazardous material that is essentially insoluble, usually including, but not limited to, soil, dirt, clay, sand, gravel, brick, glass, concrete with reinforcing steel, and rock.

(20) License--

(A) A document issued by an approved county authorizing and governing the operation and maintenance of a medical waste facility used to process or store medical waste, other than hazardous waste, in an area not in the territorial limits or extraterritorial jurisdiction of a municipality.

(B) An occupational license as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations).

(21) Liquid waste--Any waste material that is determined to contain "free liquids" as defined by United States Environmental Protection Agency (EPA) Method 9095 (Paint Filter Test), as described in "Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods" (EPA Publication Number SW-846).

(22) Manifest--The waste shipping document originated and signed by the generator or offeror in accordance with §326.53(b)(8) and (9) of this title (relating to Transporters) and any other applicable requirements under 49 Code of Federal Regulations §172.202.

(23) Medical waste--Treated and untreated special waste from health care-related facilities that is comprised of animal waste, bulk blood, bulk human blood, bulk human body fluids, microbiological waste, pathological waste, and sharps as those terms are defined in 25 TAC §1.132 (relating to Definitions) from the sources specified in 25 TAC §1.134 (relating to Application), as well as regulated medical waste as defined in 49 Code of Federal Regulations §173.134(a)(5), except that the term does not include medical waste produced on a farm or ranch as defined in 34 TAC §3.296(f) (relating to Agriculture, Animal Life, Feed, Seed, Plants, and Fertilizer), nor does the term include artificial, nonhuman materials removed from a patient and requested by the patient, including, but not limited to, orthopedic devices and breast implants. Health care-related facilities do not include:

(A) single or multi-family dwellings; and

(B) hotels, motels, or other establishments that provide lodging and related services for the public.

(24) Municipal hazardous waste--Any municipal solid waste or mixture of municipal solid wastes that has been identified or listed as a hazardous waste by the administrator of the United States Environmental Protection Agency.

(25) Municipal solid waste--Solid waste resulting from or incidental to municipal, community, commercial, institutional, and recreational activities, including garbage, rubbish, ashes, street cleanings, dead animals, abandoned automobiles, and all other solid waste other than industrial solid waste.

(26) New medical waste management facility--A medical waste facility that has not begun construction.

(27) Notification--The act of filing information with the commission for specific solid waste management activities that do not require a permit or a registration, as determined by this chapter.

(28) Nuisance--Waste that is stored, processed, or disposed of in a manner that causes the pollution of the surrounding land, the contamination of groundwater or surface water, the breeding of insects or rodents, or the creation of odors adverse to human health, safety, or welfare. A nuisance is further set forth in Texas Health and Safety Code, Chapters 341 and 382; Texas Water Code, Chapter 26; and any other applicable regulation or statute.

(29) On-site--Medical waste managed on property that is owned or effectively controlled by one entity and that is within 75 miles of the point of generation or generated at an affiliated facility shall be considered to be managed on-site.

(30) Operate--To conduct, work, run, manage, or control.

(31) Operating hours--Those hours which the facility is open to receive waste, process, and transport waste or material.

(32) Operating record--All plans, submittals, and correspondence for a medical waste facility required under this chapter; required to be maintained at the facility or at a nearby site acceptable to the executive director.

(33) Operation--A medical waste site or facility is considered to be in operation from the date that waste is first received or deposited at the medical waste site or facility until the date that the site or facility is properly closed in accordance with this chapter.

(34) Operator--The person(s) responsible for operating the facility or part of a facility.

(35) Owner--The person that owns a facility or part of a facility.

(36) Permit--See the definition of permit contained in §3.2 of this title (relating to Definitions).

(37) Physical construction--The first placement of permanent construction on a site, such as the pouring of slab or footings, the installation of piles, the construction of columns, the laying of underground pipework, or any work beyond the stage of excavation. Physical construction does not include land preparation, such as clearing, grading, excavating, and filling; nor does it include the installation of roads and/or walkways. Physical construction includes issuance of a building or other construction permit, provided that permanent con-

struction commences within 180 days of the date that the building permit was issued.

(38) Pollutant--Contaminated dredged spoil, solid waste, contaminated incinerator residue, sewage, sewage sludge, munitions, chemical wastes, or biological materials discharged into water.

(39) Pollution--The man-made or man-induced alteration of the chemical, physical, biological, or radiological integrity of an aquatic ecosystem.

(40) Processing--Activities including, but not limited to, the extraction of materials, transfer, volume reduction, conversion to energy, or other separation and preparation of solid waste for reuse or disposal, including the treatment or neutralization of waste, designed to change the physical, chemical, or biological character or composition of any waste to neutralize such waste, or to recover energy or material from the waste, or render the waste safer to transport, store, dispose of, or make it amenable for recovery, amenable for storage, or reduced in volume.

(41) Public highway--The entire width between property lines of any road, street, way, thoroughfare, bridge, public beach, or park in this state, not privately owned or controlled, if any part of the road, street, way, thoroughfare, bridge, public beach, or park is opened to the public for vehicular traffic, is used as a public recreational area, or is under the state's legislative jurisdiction through its police power.

(42) Putrescible medical waste--Medical waste that contains organic matter capable of being decomposed by microorganisms and of such a character and proportion as to cause odors or gases or are capable of providing food for or attracting birds, animals, and disease vectors.

(43) Recycling--A process by which materials that have served their intended use or are scrapped, discarded, used, surplus, or obsolete are collected, separated, or processed and returned to use in the form of raw materials in the production of new products.

(44) Registration--The act of filing information with the commission for review and approval for specific solid waste management activities that do not require a permit, as determined by this chapter.

(45) Regulated hazardous waste--A solid waste that is a hazardous waste as defined in 40 Code of Federal Regulations (CFR) §261.3 and that is not excluded from regulation as a hazardous waste under 40 CFR §261.4(b), or that was not generated by a conditionally exempt small quantity generator.

(46) Rubbish--Non-putrescible solid waste (excluding ashes), consisting of both combustible and noncombustible waste materials. Combustible rubbish includes paper, rags, cartons, wood, excelsior, furniture, rubber, plastics, brush, or similar materials; noncombustible rubbish includes glass, crockery, tin cans, aluminum cans, and similar materials that will not burn at ordinary incinerator temperatures (1,600 degrees Fahrenheit to 1,800 degrees Fahrenheit).

(47) Run-off--Any rainwater or other liquid that drains over land from any part of a facility.

(48) Run-on--Any rainwater or other liquid that drains over land onto any part of a facility.

(49) Site--Same as facility.

(50) Site operating plan--A document that provides general instruction for facility management and operating personnel throughout the operating life of the facility in a manner consistent with the engineer's design and the commission's regulations to protect human health and the environment and prevent nuisances.

(51) Solid waste--Garbage, rubbish, refuse, sludge from a wastewater treatment plant, water supply treatment plant, or air pollution control facility, and other discarded material, including solid, liquid, semi-solid, or contained gaseous material resulting from industrial, municipal, commercial, mining, and agricultural operations and from community and institutional activities. The term does not include:

(A) solid or dissolved material in domestic sewage, or solid or dissolved material in irrigation return flows, or industrial discharges subject to regulation by permit issued under Texas Water Code, Chapter 26;

(B) soil, dirt, rock, sand, and other natural or man-made inert solid materials used to fill land if the object of the fill is to make the land suitable for the construction of surface improvements; or

(C) waste materials that result from activities associated with the exploration, development, or production of oil or gas or geothermal resources and other substance or material regulated by the Railroad Commission of Texas under Texas Natural Resources Code, §91.101, unless the waste, substance, or material results from activities associated with gasoline plants, natural gas liquids processing plants, pressure maintenance plants, or repressurizing plants and is hazardous waste as defined by the administrator of the United States Environmental Protection Agency under the federal Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act, as amended (42 United States Code, §§6901 *et seq.).*

(52) Source-separated recyclable material--Recyclable material from those health care-related facilities as listed in 25 TAC §1.134 (relating to Application), that at the point of generation has been separated, collected, and transported separately from medical waste, or transported in the same vehicle as medical waste, but in separate containers or compartments.

(53) Storage--The keeping, holding, accumulating, or aggregating of medical waste at the end of which the medical waste is processed, disposed, or stored elsewhere.

(A) Pre-collection--that storage by the generator, normally on the generator's premises, prior to initial collection;

(B) Post-collection transporter--that storage by a transporter while the medical waste is in transit. Any vehicle inactivity such as not continuing a collection route for a period less than 72 hours is considered a temporary storage period. Exceeding 72 hours of temporary storage will require the operator to obtain a medical waste registration per Subchapter F of this chapter (relating to Operations Requiring a Registration);

(C) Post-collection processor--that storage by a processor at a processing facility while the waste is awaiting processing or transfer to another storage, disposal, or recovery facility.

(54) Surface water--Surface water as included in water in the state.

(55) Tank--A stationary device, designed to contain an accumulation of waste, which is constructed primarily of non-earthen materials (e.g., wood, concrete, steel, and plastic) that provide structural support.

(56) Transfer station--A facility used for transferring medical waste from collection vehicles to long-haul vehicles (one transportation unit to another transportation unit). It is not a storage facility such as one where individual residents can dispose of their wastes in bulk storage containers that are serviced by collection vehicles.

(57) Transportation unit--A truck, trailer, open-top box, enclosed container, rail car, piggy-back trailer, ship, barge, or other trans-

portation vehicle used to contain medical waste being transported from one geographical area to another.

(58) Transporter--A person that collects, conveys, or transports medical waste; does not include a person transporting his or her household waste.

(59) Trash--Same as "Rubbish."

(60) Treatment--Same as "Processing."

(61) Uncompacted waste--Any waste that is not a liquid or a sludge, has not been mechanically compacted by a collection vehicle, has not been driven over by heavy equipment prior to collection, or has not been compacted prior to collection by any type of mechanical device other than small, in-house compactor devices owned and/or operated by the generator of the waste.

(62) Unloading areas--Areas designated for unloading, including all storage areas, and other processing areas.

(63) Vector--An agent, such as an insect, snake, rodent, bird, or animal capable of mechanically or biologically transferring a pathogen from one organism to another.

(64) Water in the state--Groundwater, percolating or otherwise, lakes, bays, ponds, impounding reservoirs, springs, rivers, streams, creeks, estuaries, marshes, inlets, canals, the Gulf of Mexico inside the territorial limits of the state, and all other bodies of surface water, natural or artificial, inland or coastal, fresh or salt, navigable or non-navigable, and including the beds and banks of all watercourses and bodies of surface water, that are wholly or partially inside or bordering the state or inside the jurisdiction of the state.

(65) Waters of the United States--All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide, with their tributaries and adjacent wetlands, interstate waters and their tributaries, including interstate wetlands; all other waters such as intrastate lakes, rivers, streams (including intermittent streams), mudflats, sandflats, and wetlands, the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters that are or could be used by interstate or foreign travelers for recreational or other purposes; from which fish or shellfish are or could be taken and sold in interstate or foreign commerce; that are used or could be used for industrial purposes by industries in interstate commerce; and all impoundments of waters otherwise considered as navigable waters; including tributaries of and wetlands adjacent to waters identified in this paragraph.

(66) Wetlands--As defined in Chapter 307 of this title (relating to Texas Surface Water Quality Standards).

§326.5. General Prohibitions.

No person may cause, suffer, allow, or permit the collection, storage, transportation, processing, or disposal, or the use or operation of a solid waste facility to store, process, or dispose of solid waste in violation of the THSC, or any regulations, rules, permit, license, order of the commission, or in such a manner that causes:

(1) the discharge or imminent threat of discharge of medical waste into or adjacent to the waters in the state without obtaining specific authorization for the discharge from the commission;

(2) the creation and maintenance of a nuisance; or

(3) the endangerment of the human health and welfare or the environment.

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

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SUBCHAPTER B. PACKAGING, LABELING AND SHIPPING REQUIREMENTS

30 TAC §§326.17, 326.19, 326.21, 326.23

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.19. Packaging.

(a) The generator shall place the container which contains medical waste in an outer container that is rigid, leak resistant, impervious to moisture, of sufficient strength to prevent tearing and bursting under normal conditions of use and handling, and sealed to prevent leakage or as otherwise required by the United States Department of Transportation under regulations set forth in 49 Code of Federal Regulations (CFR) §173.134 and 49 CFR §173.196 which include infectious substances.

(b) The generator shall place sharps in a rigid, marked, and puncture-resistant container designed for sharps as described in 49 CFR §173.134.

§326.21. Labeling Containers Excluding Sharps.

(a) The generator shall conspicuously mark the outer container with a warning legend in English and in Spanish, along with the international symbol for biohazardous material as referenced under 29 Code of Federal Regulations (CFR) §1910.1030(g)(1)(i)(A). The warning must appear on the sides of the container, twice in English and twice in Spanish. The wording of the warning legend shall be: "CAUTION, contains medical waste which may be biohazardous" and "PRECAUCIÓN, contiene desechos medicos que pueden ser peligro biológico" or as otherwise required by the United States Department of Transportation under regulations set forth in CFR §173.134 and 49 CFR §173.196 which include infectious substances.

(b) The generator shall affix to each container a label that contains at the minimum the name and address of the generator, and the date of shipment.

(c) If the transporter assists with weighing containers and label preparation, the generator shall ensure that the container labels meet the requirements of this section before releasing them to the transporter.

(d) The generator shall record the weight or volume on the manifest for reporting and fee purposes. If the generator chooses to use weight, the generator may have the transporter weigh each container for the generator and note the weight on the container label prior to offsite transport. Applicable fees are provided in Subchapter G of this chapter (relating to Fees and Reporting) for each recording method.

(e) The generator shall ensure that the transporter affixes to each container a label that contains the name, address, telephone number, and state registration number of the transporter. This information may be printed on the container.

(f) The generator shall ensure that the printing on required labels is done in indelible ink with letters at least 0.25 inch in height.

(g) If a single label is used to identify the generator and the transporter, the transporter shall ensure the label is affixed to or printed on the container.

(h) The requirements of subsections (b) and (e) of this section shall not apply to shipments where the United States Postal Service or an equivalent delivery service is the transporter in accordance with the Mailing Standards of the United States Postal Service, Domestic Mail Manual, incorporated by reference in 39 CFR Part 111.

(i) The executive director may waive any or all of the requirements of this section if required to protect the public health and safety from the effects of a natural or man-made disaster.

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

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SUBCHAPTER C. EXEMPT MEDICAL WASTE OPERATIONS

30 TAC §326.31

Statutory Authority

The rule is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rule implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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SUBCHAPTER D. OPERATIONS REQUIRING A NOTIFICATION

30 TAC §§326.37, 326.39, 326.41, 326.43

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.37. General Requirements.

(a) Generators that are not exempt and that intend to store or process medical waste authorized under this subchapter shall provide written notification to the executive director, and any local pollution agency with jurisdiction that has requested in writing to the commission to be notified that storage or processing activities are planned. The required notifications must be submitted at least 90 days prior to a generator engaging in these activities, except for recycling and other activities as may be specifically exempted. Additional information may be requested to enable the executive director to determine whether such storage or processing is in compliance with the terms of this chapter. This information may include, but is not limited to, type of waste, waste management methods, and facility design. Any information provided under this subsection shall be submitted to the executive director in duplicate with one copy sent directly to the appropriate regional office. A person shall include a statement justifying the facility's eligibility for a notification as established under this section. The executive director is authorized to approve requests to submit this information electronically if the commission develops electronic systems to manage the data.

(b) Any person that stores or processes medical waste authorized under this subchapter shall have the continuing obligation to provide prompt written notice to the executive director of any changes or additional information concerning type of waste, waste management methods, facility design plans additional to that reported in subsection (a) of this section authorized in any notification filed with the executive director. Any information provided under this subsection shall be submitted to the executive director in duplicate form with copies sent directly to the appropriate regional office and any local pollution agency with jurisdiction that has requested to be notified.

(c) Any person that stores or processes medical waste authorized under this subchapter shall provide written notification to the executive director, and any local pollution agency with jurisdiction that has requested in writing to the commission to be notified of any closure activity or activity of facility expansion not authorized by any notification. The required notifications must be submitted at least 90 days prior to a person conducting this activity. The executive director may request additional information to determine whether such activity is in compliance with this chapter. Any information provided under this subsection shall be submitted to the executive director in duplicate form.

§326.39. On-Site Treatment by Small Quantity Generators.

(a) A small quantity generator (SQG) is required to provide written notification to the executive director of the operation of an approved treatment process unit used only for the treatment of medical waste generated on-site in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities). This one-time notification shall include:

(1) contact information for the generator;

(2) if applicable, name, address, telephone number, and the Texas Commission on Environmental Quality authorization number of the mobile treatment operator providing treatment; and

(3) the method/conditions of treatment.

(b) An SQG shall maintain on-site a written record that contains the information listed in subsection (a) of this section and the following:

(1) the name (printed) and initials of the person(s) performing treatment;

(2) the dates of treatment; and

(3) the amounts of waste treated.

(c) A SQG shall follow the requirements listed in §326.41(c) of this title (relating to On-site Treatment by Large Quantity Generators) for disposal of medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136.

§326.41. On-Site Treatment by Large Quantity Generators.

(a) A large quantity generator (LQG) that treats all or part of the medical waste generated on-site shall provide written notification to the executive director of the operation of an approved treatment process unit used only for the treatment of medical waste generated on-site in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities). This one-time notification shall include:

(1) the contact information for the generator;

(2) if applicable, the name, address, telephone number, and the Texas Commission on Environmental Quality authorization number of the mobile treatment operator providing treatment; and

(3) the method/conditions of treatment.

(b) A LQG shall maintain on-site a written record that contains the information listed in subsection (a) of this section and the following:

(1) the name (printed) and initials of the person(s) performing treatment;

(2) the dates of treatment;

(3) the amounts of waste treated; and

(4) written procedure for the operation and testing of any equipment used and written procedure for the preparation of any chemicals used in the treatment.

(A) The operator shall demonstrate a minimum four log ten reduction (as defined in 25 TAC §1.132 (relating to Definitions)) on routine performance testing using appropriate Bacillus species biological indicators (as defined in 25 TAC §1.132). The operator shall conduct testing at the following intervals:

(i) for generators of more than 50 pounds but less than or equal to 100 pounds per month, testing shall be conducted at least once per month;

(ii) for generators of more than 100 pounds but less than or equal to 200 pounds per month, testing shall be conducted at least every two weeks; and

(iii) for generators of more than 200 pounds per month testing shall be conducted at least weekly.

(B) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135, based on specified parameters (for example, pH, temperature, pressure), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength, if applicable, for three years.

(C) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer's instructions.

(D) Owners or operators of medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(c) Disposal of treated medical waste. Medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 may be managed as routine municipal solid waste unless otherwise specified in paragraphs (1) - (5) of this subsection.

(1) Incinerator ash shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title (relating to Municipal Solid Waste).

(2) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill. Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(3) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in accordance with Chapter 330 of this title. The collection

and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than this subsection.

(4) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4).

(5) Sharps treated and containerized with one of the approved methods as described under 25 TAC §1.136(a)(5) shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title. Unused sharps shall be disposed of as treated sharps.

§326.43. Medical Waste Collection and Transfer by Licensed Hospitals.

(a) A licensed hospital may function as a medical waste collection and transfer facility and may accept untreated medical waste from generators that generate less than 50 pounds of untreated medical waste per month and that transport their own waste if:

(1) the hospital is located in an incorporated area with a population of less than 25,000 and in a county with a population of less than one million; or

(2) the hospital is located in an unincorporated area that is not within the extraterritorial jurisdiction of a city with a population of more than 25,000 or within a county with a population of more than one million.

(b) The hospital shall provide written notification to the executive director of the operation as a medical waste collection station. The hospital's notice shall acknowledge the following:

(1) Waste delivered to a medical waste collection station must be packaged in accordance with the provisions of §§326.17, 326.19, and 326.21 of this title (relating to Identification; Packaging; and Labeling Containers Excluding Sharps, respectively) by the generator.

(2) For putrescible or biohazardous untreated medical waste, maintaining a temperature of 45 degrees Fahrenheit or less during pre-collection storage is optional. Such medical waste stored for longer than 72 hours during post-collection storage period shall be maintained at a temperature of 45 degrees Fahrenheit or less.

(3) The storage of medical waste shall be in a secure manner and location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste shall be managed so as not to create a nuisance.

(4) Medical waste must be released only to a registered medical waste transporter. A list of the waste collected at the medical waste collection station including the identity of the generator of medical waste must be provided to the transporter.

(5) Waste collected at a medical waste collection station may not be treated at the facility unless it is authorized as a treatment facility.

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SUBCHAPTER E. OPERATIONS REQUIRING A REGISTRATION BY RULE

30 TAC §326.53, §326.55

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.53. Transporters.

(a) A registration by rule is granted for persons that plan to transport medical waste. The transporter shall complete registration forms provided by the commission and submit the following information to the executive director at least 60 days prior to commencing operations:

(1) Applicant information. Name, address, and telephone number of registrant.

(2) Partner, corporate officer and director information. Name, address, and telephone number of partners, corporate officers, and directors, if applicable.

(3) Fee information. Transporters shall pay an annual registration fee to the commission based upon the total weight or volume of untreated medical waste transported. Transporter fees are located in Subchapter G of this chapter (relating to Fees and Reporting).

(4) Transportation unit information. Description of each transportation unit, including:

(A) make, model, and year;

(B) motor vehicle identification number, if applicable;

(C) license plate (tag) number, including state and year; and

(D) name of transportation unit owner or operator.

(5) Instructions for mailing fees. Fees assessed in §326.87(b) of this title (relating to Fees) by the executive director shall be paid by the registrant within 30 days of the date of the invoice and shall be submitted in the form of a check, money order, or a copy of an electronic payment confirmation made payable to the agency cashier.

(b) Other requirements.

(1) Registrations by rule expire annually on September 30th of each year for all transporters. Registrations by rule shall not be

renewed unless the owner or operator has submitted to the executive director:

(A) an annual report in accordance with §326.89(d) of this title (relating to Reports);

(B) an annual fee in accordance with §326.87(b) of this title; and

(C) a renewal form to the executive director prior to the expiration of the registration by rule, but no later than August 1st.

(2) When an owner or operator has made timely application for the renewal of a registration by rule, the existing registration by rule will not be renewed until the application has been determined administratively complete by the executive director.

(3) The executive director shall, after review of any application for registration by rule, approve or deny the application. This action shall be based on whether the application meets the requirements of this chapter.

(4) Failure to timely pay the annual fee eliminates the option to manage wastes.

(5) The executive director will send a copy of the registration by rule issued with an assigned registration number, to the owner or operator.

(6) Requirements for a transportation unit and associated cargo compartment used to collect or transport untreated medical waste that is packaged and labeled as described in Subchapter B of this chapter (relating to Packaging, Labeling and Shipping Requirements) are as follows:

(A) The transportation unit used to collect and or transport medical waste shall:

(i) have a fully enclosed, leak-proof, cargo-carrying body, such as a cargo compartment, box trailer, or roll-off box;

(ii) protect the waste from mechanical stress or compaction;

(iii) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment such as gloves, coveralls, and eye protection, and leak-proof containers or packaging materials; and

(iv) have the following identification on the two sides and back of the cargo-carrying compartment in letters at least three inches high: (the name of the transporter); TCEQ; (registration by rule number); and Caution: Medical Waste.

(B) The cargo compartment of the vehicle or trailer shall:

(i) be maintained in a sanitary condition;

(ii) be locked when the vehicle or trailer is in motion;

(iii) be locked or secured when waste is present in the compartment except during loading or unloading of waste;

(iv) have a floor and sides made of an impervious, nonporous material;

(v) have all discharge openings securely closed during operation of the vehicle or trailer; and

(vi) maintain a temperature of 45 degrees Fahrenheit or less for putrescible or biohazardous untreated medical waste transported for longer than 72 hours during post-collection storage period.

(7) Transportation units used to transport untreated medical waste shall not be used to transport any other material until the transportation unit has been cleaned and the cargo compartment disinfected. A written record of the date and the process used to clean and disinfect the transportation unit shall be maintained for three years unless the commission directs a longer holding period. The record must identify the transportation unit by motor vehicle identification number or license tag number. The owner or operator of the transportation unit, if not the registered transporter, shall be notified in writing by the transporter that the transportation unit has been used to transport medical waste and when and how the transportation unit was disinfected.

(8) The transporter shall maintain a record of each waste shipment collection and deposition. The record shall be in the form of a manifest or other similar documentation and copies may be maintained in electronic media as described in §326.23(d) of this title (relating to Shipping). The transporter shall retain a copy of all manifests showing the collection and disposition of the medical waste. Copies of manifests shall be retained by the transporters for a minimum of three years in the transporter's main office and made available to the commission upon request. The manifest or other similar documentation shall include:

(A) transporter's name, address, telephone number, and assigned transporter registration number;

(B) name and address of the person that generated the untreated medical waste and the date collected;

(C) total volume or the total weight of the containers from each generator of untreated medical waste collected for transportation;

(D) name of persons collecting, transporting, and unloading the waste;

(E) date and place where the untreated medical waste was deposited or unloaded;

(F) identification (authorization number, location, and operator) of the facility where the untreated medical waste was deposited; and

(G) name and signature in writing or through an electronic record as allowed by the executive director of facility representative acknowledging receipt of the untreated medical waste and the weight or volume of containers of waste received.

(9) The transporter shall furnish the generator a signed manifest for each shipment at the time of collection of the waste. The manifest shall include the name, address, telephone number, and registration number of the transporter. The document shall also identify the generator by name and address, and shall list the weight of waste or volume of containers collected and date of collection. The transporter must provide the generator with a written or electronic statement of the total weight or volume of the containers collected within 45 days.

(10) The transporter must be able to provide a manifest for each shipment from the point of collection through and including the unloading of the waste at a facility authorized to accept the waste. The original manifest or an electronic record as allowed by the executive director must accompany each shipment of untreated waste to its final destination. The transporter shall ensure the proper collection and deposition of untreated medical waste accepted for transport.

(11) Shipments of untreated medical waste shall be stored or deposited only at a facility that has been authorized by the commission to accept untreated medical waste. Untreated medical waste that is transported out of the state shall be deposited at a facility that is authorized by the appropriate agency having jurisdiction over such waste.

(12) Shipments of untreated medical waste, properly containerized Animal and Plant Health Inspection Service (APHIS) regulated garbage, and non-hazardous pharmaceutical waste may be commingled during transport or storage. Authorizations for the acceptance of APHIS regulated garbage shall be obtained from United Stated Department of Agriculture, Animal and Plant Health Inspection Service.

(13) Shipments of untreated medical waste, properly containerized APHIS regulated garbage, and non-hazardous pharmaceutical waste that are commingled with any other waste (such as rubbish, garbage, hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control)), shall be delivered to the same treatment facility.

(14) The post-collection storage of medical waste by a transporter shall be in a secure manner and location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste shall be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

(15) Transporters shall not accept untreated medical waste unless the generator has packaged the waste in accordance with the provisions of §§326.17, 326.19, and 326.21 of this title (relating to Identification; Packaging; and Labeling Containers Excluding Sharps, respectively). Transporters shall not accept containers of waste that are leaking or damaged unless or until the shipment has been repackaged. All transporters described in this subsection must obtain any additional transportation authorizations to comply with local, state and federal rules.

(16) Persons who engage in the transportation of waste within Texas when the transportation neither originates nor terminates in Texas are exempt from these regulations, except for paragraph (6)(A)(i) - (iii) and (B) of this subsection.

(17) Packages of untreated medical waste shall not be transferred between transportation units unless the transfer occurs at and on the premises of a facility authorized as a transfer station, or at a treatment/processing facility that has been approved to function as a transfer station except as provided in §326.43 of this title (relating to Medical Waste Collection and Transfer by Licensed Hospitals).

(18) In case of transportation unit malfunction, the waste shipment may be transferred to an operational transportation unit and the executive director, and any local pollution agency with jurisdiction that has requested to be notified, shall be notified of the incident in writing within five working days. The incident report shall list all transportation units involved in transporting the waste and the cause, if known, of the transportation unit malfunction. Update to the transporter's registration by rule is required when the new unit or units are placed in medical waste transport service for a period of time exceeding five days. When using a unit not registered, the transporter shall comply with paragraphs (6) and (7) of this subsection.

(19) In case of a traffic accident, the waste shipment may be transferred to an operating transportation unit if necessary. Any containers of waste that were damaged in the accident shall be repackaged as soon as possible. The nearest regional office, and any local pollution agency with jurisdiction that has requested to be notified, shall be notified of the incident no later than the end of the next working day. The incident report shall list all vehicles involved in transporting the waste.

(20) Persons that apply for the registration by rule must maintain a copy of the registration by rule issued by the executive director with an assigned registration by rule number, at their designated place of business and with each transportation unit used to transport untreated medical waste.

(c) Changes to the registration by rule. Transporters shall notify the executive director, and any local pollution agency with jurisdiction that has requested to be notified, by letter, within 30 days of any changes to their registration if:

(1) the office or place of business is moved;

(2) the name of owner or operator of the operation is changed;

(3) the name of the partners, corporate directors, or corporate officers change; or

(4) the unit information has changed.

§326.55. Mobile Treatment Unit.

(a) A registration by rule is granted for an owner or operator of mobile treatment units conducting on-site treatment of medical waste but is not the generator of the waste. The mobile on-site treatment unit owner or operator completes registration by rule forms provided by the commission and submits the following information at least 60 days prior to commencing operations:

(1) Applicant information. Name, address, and telephone number of registrant.

(2) Partner, corporate officer and director information. Name, address, and telephone number of partners, corporate officers, and directors, if applicable.

(3) Fee information. The owner or operator of a mobile treatment unit shall pay an annual registration fee to the commission based upon the total weight of medical waste treated on-site under each registration by rule. Fees to be assessed of owners or operators of an on-site treatment unit are located in Subchapter G of this chapter (relating to Fees and Reporting).

(4) Approved treatment method. Description of approved treatment method to be employed and chemical preparations, as well as the procedure to be utilized for routine performance testing/parameter monitoring.

(5) Performance testing. A written procedure for the operation and testing of any equipment used and a written procedure for the preparation of any chemicals used in treatment. Routine performance testing using biological indicators and/or monitoring of parametric controls shall be conducted in accordance with §326.41(b)(4) of this title (relating to On-Site Treatment by Large Quantity Generators); and identification of performance test failures including date of occurrence, corrective action procedures, and retest dates.

(6) Evidence of competency. Documentation in the form of a relevant training certificate and/or description of work experience.

(7) Wastewater disposal. A description of the management and disposal of process waters generated during treatment events.

(8) Contingency plan. A written contingency plan that describes the handling and disposal of waste in the event of treatment failure or equipment breakdown. If there is any question as to the adequacy of treatment of any load, that load shall be run again utilizing biological indicators to test for microbial reduction before the material is released for landfill disposal. If the waste must be removed from the facility before treatment is accomplished, a registered transporter shall remove the waste and all other applicable sections of this chapter shall be in effect.

(9) Cost estimate and financial assurance. An estimate of the cost to remove and dispose of waste and disinfect the waste treatment equipment and evidence of financial assurance using procedures specified in §326.71(k) - (n) of this title (relating to Registration Ap-

plication Contents) and Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities).

(10) Mobile on-site treatment unit information. Description of each mobile treatment unit, including:

(A) make, model, and year;

(B) motor vehicle identification number, if applicable;

(C) license plate (tag) number, including state and year; and

(D) name of mobile treatment unit owner or operator.

(11) Instructions for mailing fees. Fees assessed in §326.87(b) of this title (relating to Fees) by the executive director shall be paid by the registrant within 30 days of the date of the invoice and shall be submitted in the form of a check or money order or copy of the confirmation of an electronic payment made payable to the agency cashier.

(b) Other requirements.

(1) Registrations by rule expire annually on September 30th of each year. Registrations by rule shall not be renewed unless the owner or operator has submitted to the executive director:

(A) an annual report in accordance with §326.89(d) of this title (relating to Reports);

(B) an annual fee in accordance with §326.87(b) of this title;

(C) evidence of financial assurance as of September 30th of the current year; and

(D) a registration by rule renewal form to the executive director by August 1st.

(2) When an owner or operator has made timely application for the renewal of a registration by rule, the existing registration by rule will not be renewed until the application has been determined administratively complete by the executive director.

(3) The executive director shall, after review of any application for registration by rule, approve or deny the application. This action shall be based on whether the application meets the requirements of this chapter.

(4) Failure to timely pay the annual fee eliminates the option to manage wastes.

(5) The executive director will send a copy of the registration by rule issued with an assigned registration number, to the owner or operator.

(6) Requirements for mobile treatment unit and associated cargo compartment used in the treatment of medical waste are as follows.

(A) The mobile treatment unit used to treat medical waste shall:

(i) have a fully enclosed, leak-proof, cargo-carrying body, such as a cargo compartment, box trailer, or roll-off box; and

(ii) carry spill cleanup equipment including, but not limited to, disinfectants, absorbent materials, personal protective equipment, such as gloves, coveralls, and eye protection, and leak-proof containers or packaging materials.

(B) The cargo compartment of the vehicle and any self-contained treatment unit(s) shall:

(i) be maintained in a sanitary condition;

(ii) be secured when the vehicle is in motion;

(iii) be made of such impervious, non-porous materials as to allow adequate disinfection/cleaning of the compartment or unit(s); and

(iv) have all discharge openings securely closed during operation of the vehicle.

(7) Mobile treatment units used in the treatment of medical waste shall not be used to transport any other material until the unit has been cleaned and disinfected. A written record of the date and the process used to clean and disinfect the unit shall be maintained for three years unless the executive director requires a longer holding period. The record must identify the unit by motor vehicle identification number or license tag number. The owner of the unit, if not the operator, shall be notified in writing that the unit has been used in the treatment of medical waste and when and how the unit was disinfected.

(8) Owners or operators of mobile on-site treatment units shall maintain records of all waste treatment, which includes the following information:

(A) the name, address, and phone number of each generator;

(B) the date of treatment;

(C) the amount of waste treated;

(D) the method/conditions of treatment; and

(E) the name (printed) and initials of the person(s) performing the treatment.

(9) Persons receiving a registration by rule shall maintain a copy of the registration by rule issued by the executive director with an assigned registration by rule number, at their designated place of business and in each mobile treatment unit used in treating medical waste.

(10) Owners or operators of mobile on-site treatment unit shall furnish the generator the documentation required in paragraph (6)(A) and (B) of this subsection and a statement that the medical waste was treated in accordance with 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition) for the generator's records.

(11) Untreated medical waste shall not be commingled or mixed with hazardous waste, asbestos, or radioactive waste regulated under 25 TAC Chapter 289 (relating to Radiation Control) either before or after treatment.

(12) Owners or operators of mobile on-site treatment unit shall not transport untreated waste unless they are registered as a transporter of medical waste.

(13) Owners or operators of mobile on-site treatment unit shall ensure adequate training of all operators in the use of any equipment used in treatment.

(14) Owners or operators shall maintain the treatment equipment so as to not result in the creation of nuisance conditions.

(c) Changes to the Registration by Rule. Owners or operators of mobile on-site treatment unit shall notify the executive director, by letter, within 30 days of any changes to their registration if:

(1) the method employed to treat medical waste changes;

(2) the office or place of business is moved;

(3) the name of owner or operator of the operation is changed;

(4) the name of the partners, corporate directors, or corporate officers change; or

(5) the unit information changes.

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

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
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SUBCHAPTER F OPERATIONS REQUIRING A REGISTRATION

30 TAC §§326.61, 326.63, 326.65, 326.67, 326.69, 326.71, 326.73, 326.75, 326.77

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§326.61. Applicability and General Information.

(a) A registration is required for facilities that store or process untreated medical waste that is received from off-site sources. The executive director may authorize these facilities to store and process other related waste. For the purposes of this subsection, off-site shall be any location that does not meet the definition of on-site found in §326.3 of this title (relating to Definitions). No person may cause, suffer, allow, or permit any activity of storage, processing, removal, or disposal of any medical waste unless that activity is authorized by a registration or other authorization from the commission. In the event this prohibition is violated, the executive director may seek recourse against not only the person that stored, processed, or disposed of the waste but also against the generator, transporter, owner or operator, or other person who caused, suffered, allowed, or permitted waste to be stored, processed, or disposed.

(b) No person may commence physical construction of a new medical waste management facility subject to this registration requirement without having received a registration from the commission.

(c) Registration application. A registration application for a medical waste facility is not subject to an opportunity for a contested case hearing.

(d) The information required by this subchapter defines the basic elements for an application. All aspects of the application and design requirements must be addressed by the owner or operator, even if only to show why they are not applicable for that particular site.

(e) The applicant for a medical waste facility registration shall provide the executive director data of sufficient completeness, accuracy, and clarity to provide assurance that operation of the site will pose no endangerment of the human health and welfare or the environment.

(f) Failure of the owner or operator to provide complete information as required by this chapter may provide cause for the executive director to return the application without further action.

(g) Submission of false information shall constitute grounds for denial of the registration application.

(h) Processing facilities registered under subsection (a) of this section, excluding facilities operating as transfer station only, may store or process municipal solid waste that would be classified as medical waste if it were generated by health care-related facilities. This municipal solid waste shall be subject to the same requirements as medical waste when it is accepted by a facility that is only a registered medical waste facility.

§326.63. Property Rights.

(a) It is the responsibility of an owner or operator to possess or acquire a sufficient interest in or right to the use of the surface estate of the property for which an authorization is issued, including the access route if access is not provided by public right of way. The granting of an authorization neither conveys any property rights or interest in either real or personal property nor authorizes any injury to private property, invasion of personal rights, impairment of previous contract rights, or any infringement of federal, state, or local laws or regulations outside the scope of the authority under which an authorization is issued.

(b) The owner or operator shall retain the right of entry to the facility until the end of the closure activities for inspection and maintenance of the facility.

§326.69. Registration Application Formatting, Posting, Appointment and Fees.

(a) Registration applications for medical waste must be initially submitted in three copies. The owner or operator shall furnish additional copies of the application for use by required reviewing agencies, upon request of the executive director. The executive director is authorized to approve requests to submit this information electronically if the commission develops electronic systems to manage the data.

(b) Preparation. Preparation of the application must conform with the Texas Occupations Code, Chapter 1001, Texas Engineering Practice Act.

(1) The responsible engineer shall provide the firm number and seal, sign, and date the title page of each bound engineering report or individual engineering plan, table of contents and each engineering drawing in the application as required by Texas Engineering Practice Act, §1001.401, and in accordance with 22 TAC §137.33 (relating to Sealing Procedures).

(2) Applications that have not been sealed shall be considered incomplete for the intended purpose and shall be returned to the owner or operator.

(c) Application format.

(1) Applications shall be submitted in three-ring binders.

(2) The title page shall include:

(A) name of the facility;

(B) medical waste registration application number, if assigned;

(C) name of owner and operator;

(D) location by city and county;

(E) date the application was prepared;

(F) the seal and signature of the engineer preparing the application; and the firm number; and

(G) when applicable, the number and date of the revision.

(3) The table of contents shall contain the main sections and the corresponding page numbers of the application.

(4) The narrative of the application shall be printed on 8-1/2 by 11 inches white paper. Drawings or other sheets shall be no larger than 11 by 17 inches so that they can be reproduced by standard office copy machines.

(5) All pages shall contain a page number and date.

(6) Revisions to text shall be tracked to document insertions, deletions and formatting changes. Revised pages shall have the revision date and indicate "Revised" in the footer of each revised page. A minimum of three clean copies of all revised pages shall also be provided.

(7) Dividers and tabs are recommended.

(d) Application drawings.

(1) All information contained on a drawing shall be legible, even if it has been reduced. The drawings shall be 8-1/2 by 11 inches or 11 by 17 inches. Standard-sized drawings (24 by 36 inches) folded to 8-1/2 by 11 inches may be submitted or required if reduction would render them illegible or difficult to interpret.

(2) If color coding is used, it should be distinct when reproduced on black and white photocopy machines.

(3) Drawings shall be submitted at a standard engineering scale.

(4) Each drawing, plan drawing or map shall have a:

(A) dated title block;

(B) bar scale at least one-inch long;

(C) revision block;

(D) responsible engineer's or geoscientist's seal, if required; and

(E) drawing number and a page number.

(5) Each plan drawing or map shall also have:

(A) a north arrow. Preferred orientation is to have the north arrow pointing toward the top of the page;

(B) a reference to the base map source and date, if the map is based upon another map. The latest published edition of the base map should be used; and

(C) a legible legend.

(6) Match lines and section lines shall reference the drawing where the match or section is shown. Section drawings should note from where the section was taken.

(e) Posting application information.

(1) Upon submittal of an application that requires public notice, the owner or operator shall provide a complete copy of the application, including all revisions and supplements to the application, on a publicly accessible internet website, and provide the commission with the Web address link for the application materials. This internet posting is for informational purposes only.

(2) The commission shall post on its website the identity of all owners and operators filing an application and the Web address link required by this subsection.

(f) Appointments. The owner or operator shall provide documentation that the person signing the application meets the requirements of §305.44(a) and (b) of this title (relating to Signatories to Applications). If the authority has been delegated, provide a copy of the document issued by the governing body of the owner or operator authorizing the person that signed the application to act as agent for the owner or operator.

(g) Application fees. In accordance with §305.53 of this title (relating to Application Fee), the application fee for a registration, modification, or temporary authorization is $150.

§326.71. Registration Application Contents.

(a) Maps and Drawings.

(1) General location map. The owner or operator shall submit a general location map of the facility at a scale of one inch equals 2,000 feet by using a United States Geological Survey 7 1/2-minute quadrangle sheet or equivalent as the base map.

(2) Facility access and facility layout. A set of maps or drawings showing:

(A) public access roads serving the facility;

(B) longitudinal and latitudinal geographic coordinates for the point of beginning of the facility boundary's metes and bounds description;

(C) facility boundary;

(D) provisions for the maintenance of any natural windbreaks, such as greenbelts, where they will improve the appearance and operation of the facility and, where appropriate, plans for screening the facility from public view;

(E) all site entrance roads from public access roads;

(F) fencing;

(G) general locations of main interior facility roadways; the location and surface type of all roads within one mile of the facility that will normally be used by the owner or operator for entering or leaving the facility;

(H) locations of buildings and a descriptive title of their purpose;

(I) outline of the waste management units and ancillary equipment for loading/unloading, storage and processing areas;

(J) drainage, pipeline, and utility easements within the facility; and

(K) any other graphic representations or marginal explanatory notes necessary to communicate the proposed construction phases of the facility, if applicable.

(3) Land-use map. This is a constructed map of the facility showing the facility boundary (registration boundary) of the facility and any existing zoning on or surrounding the property and actual uses (e.g., agricultural, industrial, residential) both within the facility and

within one mile of the facility. The owner or operator shall make every effort to show the location of residences, commercial establishments, schools, licensed day-care facilities, churches, cemeteries, ponds or lakes, and recreational areas within one mile of the facility boundary.

(4) Published zoning map. If available, a published zoning map for the facility and within one mile of the facility for the county or counties in which the facility is or will be located. If the facility requires approval as a nonconforming use or a special permit from the local government having jurisdiction, a copy of such approval shall be submitted.

(5) Impact on surrounding area. The use of any land for a medical waste facility shall not adversely impact human health or the environment. The owner or operator shall provide information regarding the likely impacts of the facility on cities, communities, groups of property owners, or individuals by analyzing the compatibility of land use, zoning in the vicinity, community growth patterns, and any other factors associated with the public interest. To assist the commission in evaluating the impact of the facility on the surrounding area, the owner or operator shall provide the following:

(A) information about the character of surrounding land uses within one mile of the proposed facility;

(B) information about growth trends within five miles of the facility with directions of major development; and

(C) the proximity to residences and other uses (e.g., schools, churches, cemeteries, historic structures and sites, archaeologically significant sites, sites having exceptional aesthetic quality, etc.) within one mile of the facility. The owner or operator shall provide the approximate number of residences and commercial establishments within one mile of the proposed facility including the distances and directions to the nearest residences and commercial establishments. Population density and proximity to residences and other uses described in this paragraph may be considered for assessment of compatibility.

(6) Land ownership map with accompanying landowners list. The applicant shall include a list of landowners within 1/4 mile of the facility and their addresses along with an appropriately scaled map locating the property owned by these persons. The landowners' list shall be keyed to the land ownership map and shall give each property owner's name and mailing address. Notice of an application is not defective if property owners did not receive notice because they were not listed in the real property appraisal records. The list shall also be provided in electronic form.

(7) Metes and bounds. The applicant shall include a drawing and a description of the facility boundary signed and sealed by a registered professional land surveyor.

(b) Property owner affidavit. The applicant shall provide a property owner affidavit that is signed by the owner and includes:

(1) acknowledgment that the State of Texas may hold the property owner of record either jointly or severally responsible for the operation, maintenance, and closure of the facility; and

(2) acknowledgment that the facility owner or operator and the State of Texas shall have access to the property during the active life and after closure for the purpose of inspection and maintenance.

(c) Licensed operator. The owner or operator shall acknowledge that a licensed solid waste facility supervisor, as defined in Chapter 30 of this title (relating to Occupational Licenses and Registrations), be employed before commencing facility operation.

(d) Legal authority. The owner and operator shall provide verification of their legal status as required by §281.5 of this title (relating to Application for Wastewater Discharge, Underground Injection, Municipal Solid Waste, Radioactive Material, Hazardous Waste, and Industrial Solid Waste Management Permits). This shall be a one-page certificate of incorporation issued by the secretary of state.

(e) Transportation. The owner or operator shall:

(1) provide data on the availability and adequacy of roads that the owner or operator will use to access the site;

(2) provide data on the volume of vehicular traffic on access roads within one mile of the proposed facility, both existing and expected, during the expected life of the proposed facility;

(3) project the volume of traffic expected to be generated by the facility on the access roads within one mile of the proposed facility; and

(4) submit documentation of coordination of all designs of proposed public roadway improvements such as turning lanes, storage lanes, etc., associated with site entrances with the entity exercising maintenance responsibility of the public roadway involved. In addition, the owner or operator shall submit documentation of coordination with the Texas Department of Transportation for traffic and location restrictions.

(f) Facility surface water drainage report. The owner or operator of a medical waste facility shall include a certification statement that:

(1) The facility will be constructed, maintained, and operated to manage run-on and run-off during the peak discharge of a 25-year rainfall event and must prevent the off-site discharge of waste and feedstock material, including, but not limited to, in-process and/or processed materials.

(2) Surface water drainage in and around a facility will be controlled to minimize surface water running onto, into, and off the treatment area.

(3) The owner or operator will obtain the appropriate Texas Pollutant Discharge Elimination System storm water permit coverage when required; or shall provide the permit number for coverage under an individual wastewater permit.

(4) The facility will be located outside of the 100-year floodplain unless the owner or operator can demonstrate that the facility is designed and will be operated in a manner to prevent washout of waste during a 100-year storm event, or the facility obtains a conditional letter of map amendment from the Federal Emergency Management Administration administrator.

(5) The facility will not be located in wetlands unless the owner or operator provides documentation to the extent required under Clean Water Act, §404 or applicable state wetlands laws, that steps have been taken to attempt to achieve no net loss of wetlands.

(g) Council of governments and local government review request. The owner or operator shall submit documentation that the application was submitted for review to the applicable council of governments for compliance with regional solid waste plans. The owner or operator shall also submit documentation that a review letter was requested from any local governments as appropriate for compliance with local solid waste plans. Review letters from the aforementioned entities are not a prerequisite to a final determination on a registration application.

(h) General description of the facility location and design.

(1) Facility location. The owner or operator shall provide:

(A) a description of the location of the facility with respect to known or easily identifiable landmarks;

(B) the access routes from the nearest United States or state highway to the facility; and

(C) longitudinal and latitudinal geographic coordinates for the point of beginning of the facility boundary's metes and bounds description.

(2) Facility access. The owner or operator shall describe how access will be controlled for the facility such as the type and location of fences or other suitable means of access control to protect the public from exposure to potential health and safety hazards, and to discourage unauthorized entry.

(3) Buffer zones and easement protection. No solid waste unloading, storage, or processing operations shall occur within any easement, buffer zone, or right-of-way that crosses the facility. Processing equipment and storage areas shall maintain a minimum separating distance of 25 feet between the facility boundary and processing equipment, loading, unloading and storage areas. Storage units in transport vehicles are not subject to this subsection provided that the waste is stored in refrigerated units with temperatures below 45 degrees Fahrenheit. The executive director may consider alternatives to the buffer zone requirements of this subsection where the owner or operator demonstrates that the buffer zone is not feasible and affords ready access for emergency response and maintenance. The buffer zone shall not be narrower than that necessary to provide for safe passage for firefighting and other emergency vehicles. The executive director may consider alternatives to buffer zone requirements for authorized medical waste storage and processing facilities.

(4) Flow diagrams and narrative. The owner or operator shall provide flow diagrams showing the various phases of collection, separation, processing, and disposal as applicable for the types of wastes received at the facility along with a narrative describing each phase;

(i) Waste management unit design.

(1) The owner or operator shall provide generalized construction information or manufacturer specifications of all storage and processing units (autoclaves, incinerators, etc.) and ancillary equipment (i.e., tanks, foundations, sumps, etc.) with regard to number of units, approximate dimensions and capacities, construction materials, vents, covers, enclosures, protective coatings of surfaces, etc.

(2) The owner or operator shall provide generalized description of construction materials for slab and subsurface supports of all storage and processing components.

(3) The owner or operator shall provide storage and processing areas designed to control and contain spills and contaminated water from leaving the facility. The design shall be sufficient to control and contain a worst case spill or release. Unenclosed containment areas shall also account for precipitation from a 25-year, 24-hour storm.

(4) The owner or operator shall acknowledge that the storage of medical waste must be in a secure manner and in a location that affords protection from theft, vandalism, inadvertent human or animal exposure, rain, water, and wind. The waste must be managed so as not to provide a breeding place or food for insects or rodents, and not generate noxious odors.

(5) For putrescible or biohazardous untreated medical waste, maintaining a temperature of 45 degrees Fahrenheit or less during pre-collection storage is optional. Such medical waste stored for longer than 72 hours during post-collection storage period shall be maintained at a temperature of 45 degrees Fahrenheit or less.

(j) Treatment requirements. Medical waste shall be treated in accordance with the provisions of 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition). The owner or operator shall provide a written procedure for the operation and testing of any equipment used and for the preparation of any chemicals used in treatment and comply with the following:

(1) The operator shall demonstrate a minimum four log ten reduction as defined in 25 TAC §1.132 (relating to Definitions) on routine performance testing using appropriate Bacillus species biological indicators (as defined in 25 TAC §1.132).

(2) The operator shall conduct testing weekly.

(3) For those processes that the manufacturer has documented compliance with the performance standard prescribed in 25 TAC §1.135 based on specified parameters (for example, pH, temperature, pressure, etc.), and for previously approved treatment processes that a continuous readout and record of operating parameters is available, the operator may substitute routine parameter monitoring for biological monitoring. The operator shall confirm that any chemicals or reagents used as part of the treatment process are at the effective treatment strength. The operator will maintain records of operating parameters and reagent strength for three years.

(4) The manufacturer of single-use, disposable treatment units shall be responsible for maintaining adequate quality control for each lot of single-use products. The treating facility or entity shall be responsible for following the manufacturer's instructions.

(5) Operators of medical waste treatment equipment shall use backflow preventers on any potable water connections to prevent contamination of potable water supplies.

(6) Owners or operators of medical waste incinerators shall comply with the requirements in §111.123 of this title (relating to Medical Waste Incinerators) in lieu of biological or parametric monitoring.

(7) Alternative treatment technologies may be approved in accordance with requirements found in 25 TAC §1.135 (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(k) Closure plan. The facility closure plan shall be prepared in accordance with the following criteria.

(1) Facility units shall be dismantled and removed off-site or decontaminated.

(2) The owner or operator shall remove all waste and material on-site (unprocessed, in process, and processed), transport them to an authorized facility and disinfect all contaminated water handling units and all processing areas.

(3) Closure of the facility must be completed within 180 days following the last acceptance of processed or unprocessed materials unless otherwise directed or approved in writing by the executive director.

(l) Certification of final closure.

(1) No later than 90 days prior to the initiation of a final facility closure, the owner or operator shall, through a published notice in the newspaper(s) of largest circulation in the vicinity of the facility, provide public notice for final facility closure. This notice shall provide the name, address, and physical location of the facility; the registration number, as appropriate; and the last date of intended receipt of waste. The owner or operator shall also make available an adequate number

of copies of the approved final closure plan for public access and review. The owner or operator shall also provide written notification to the executive director of the intent to close the facility and place this notice of intent in the operating record.

(2) Upon notification to the executive director as specified in paragraph (1) of this subsection, the owner or operator of a medical waste management facility shall post a minimum of one sign at the main entrance and all other frequently used points of access for the facility notifying all persons who may utilize the facility of the date of closing for the entire facility and the prohibition against further receipt of waste materials after the stated date. Further, suitable barriers shall be installed at all gates or access points to adequately prevent the unauthorized dumping of solid waste at the closed facility.

(3) Within ten days after completion of final closure activities of a facility, the owner and operator shall submit to the executive director by registered mail:

(A) a certification, signed by an independent licensed professional engineer, verifying that final facility closure has been completed in accordance with the approved closure plan. The submittal to the executive director shall include all applicable documentation necessary for certification of final facility closure; and

(B) a request for voluntary revocation of the facility registration.

(m) Cost estimate for closure.

(1) The cost estimate must:

(A) equal the costs for closure of the facility, including disposition of the maximum inventories of all processed and unprocessed waste;

(B) be based on the costs of hiring a third party that is not affiliated with the owner or operator; and

(C) be based on a volume (cubic yard) and/or weight (pound, ton) measure for collection and disposition costs.

(2) An increase in the closure cost estimate and the amount of financial assurance provided under subsection (n) of this section must be made if changes to the facility conditions increase the maximum cost of closure at any time during the active life of the facility.

(3) A reduction in the closure cost estimate and the amount of financial assurance provided under subsection (n) of this section may be approved if the cost estimate exceeds the maximum cost of closure at any time during the operation of the facility. A reduction in the cost estimate and the financial assurance must be considered a modification and the owner or operator shall provide a detailed justification for the reduction of the closure cost estimate and the amount of financial assurance.

(n) Financial assurance. A copy of the documentation required to demonstrate financial assurance as specified in Chapter 37, Subchapter R of this title (relating to Financial Assurance for Municipal Solid Waste Facilities) shall be submitted 60 days prior to the initial receipt of waste. Continuous financial assurance coverage for closure must be provided until all requirements of the final closure plan have been completed and the facility is determined to be closed in writing by the executive director.

(o) Site operating plan. This plan will provide general operating procedures for facility management for day-to-day operations at the facility. At a minimum, the site operating plan must include a description for how the items in §326.75 of this title (relating to Site Operating Plan) will be implemented. A facility that has an environmental management system that meets the minimum standards described in §90.30 of this title (relating to Minimum Standards for Environmental Management Systems) and is approved to operate under an environmental management system in accordance with §90.31 of this title (relating to Review of Incentive Applications for Environmental Management System), is not subject to site operating plan requirements while the authorization to operate under the environmental management system remains in place. In the event the executive director terminates authorization to operate under an environmental management system, the facility must comply with the site operating plan requirements within 90 days.

(p) The approved site operating plan, the final closure plan, and all other documents and plans required by this chapter shall become operational requirements and shall be considered a part of the operating record of the facility. Any deviation from the registration, the incorporated plans, or any other documents associated with the registration is a violation of this chapter.

§326.73. Registration Application Processing.

(a) Opportunity for public meeting and posting notice signs.

(1) The owner or operator shall provide notice of the opportunity to request a public meeting and post notice signs for all registration applications not later than 45 days after the executive director's receipt of the application in accordance with the procedures contained in §39.501(c) of this title (relating to Application for Municipal Solid Waste Permit) and by posting signs at the proposed site.

(2) The owner or operator and the commission shall hold a public meeting in the local area, prior to facility authorization, if a public meeting is required based on the criteria contained in §55.154(c) of this title (relating to Public Meetings).

(3) Notice of a public meeting shall be provided as specified in §39.501(e)(3) and (4) of this title. This section does not require the commission to respond to comments, and it does not create an opportunity for a contested case hearing.

(4) The owner, operator, or a representative authorized to make decisions and act on behalf of the owner or operator shall attend the public meeting. A public meeting conducted under this section is not a contested case hearing under the Texas Government Code, Chapter 2001 (Texas Administrative Procedure Act).

(5) At the owner's or operator's expense, a sign or signs must be posted at the site of the proposed facility declaring that the application has been filed and stating the manner in which the commission and owner or operator may be contacted for further information. Such signs must be provided by the owner or operator and must substantially meet the following requirements. Signs must:

(A) consist of dark lettering on a white background and must be no smaller than four feet by four feet with letters at least three inches in height and block printed capital lettering;

(B) be headed by the words "PROPOSED MEDICAL WASTE FACILITY;"

(C) include the words "REGISTRATION NO." and the number of the registration;

(D) include the words "for further information contact;"

(E) include the words "Texas Commission on Environmental Quality" and the address and telephone number of the appropriate permitting office;

(F) include the name of the owner or operator, and the address of the appropriate responsible official;

(G) include the telephone number of the owner or operator;

(H) remain in place and legible until the period for filing a motion to overturn has expired; and

(I) describe how persons affected may request that the executive director and applicant conduct a public meeting.

(6) Signs must be located within ten feet of every property line bordering a public highway, street, or road. Signs must be visible from the street and spaced at not more than 1,500-foot intervals. A minimum of one sign, but no more than three signs, shall be required along any property line paralleling a public highway, street, or road. This paragraph's sign requirements do not apply to properties under the same ownership that are noncontiguous or separated by intervening public highway, street, or road, unless the property is part of the registered facility.

(7) The owner or operator shall also post signs at the facility in an alternative language when the alternative language requirements in §39.405(h)(2) of this title (relating to General Notice Provisions) are met. These signs must meet the location and frequency requirements of paragraph (6) of this subsection.

(8) The owner or operator shall provide a certification to the executive director that the sign posting was conducted according to the requirements of this section.

(9) The executive director may approve variances from the requirements of paragraphs (5) and (6) of this subsection if the owner or operator has demonstrated that it is not practical to comply with the specific requirements of those paragraphs and alternative sign posting plans proposed by the owner or operator are at least as effective in providing notice to the public. Approval from the executive director under this paragraph must be received before posting alternative signs for purposes of satisfying the requirements of this paragraph.

(b) Notice of final determination. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. In accordance with §50.133(b) of this title (relating to Executive Director Action on Application or WQMP Update), if the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion under §50.139 of this title (relating to Motion to Overturn Executive Director's Decision). The chief clerk shall mail this notice to the owner and operator, the public interest counsel and to other persons who timely filed public comment in response to public notice.

(c) Motion to overturn. The owner or operator, or a person affected may file with the chief clerk a motion to overturn the executive director's action on a registration application, under §50.139 of this title. The criteria regarding motions to overturn shall be explained in the public notices provided in accordance with Chapter 39 of this title (relating to Public Notice) and §50.133 of this title.

§326.75. Site Operating Plan.

(a) Personnel functions.

(1) A description of functions and minimum qualifications for each category of key personnel to be employed at the facility and for the supervisory personnel in the chain of command;

(2) A description of the general instructions that the operating personnel shall follow concerning the operational requirements of this subchapter; and

(3) Procedures for the detection and prevention of the receipt of prohibited wastes; which must include:

(A) random inspections of packaging for incoming loads;

(B) records of all inspections; and

(C) training for appropriate facility personnel responsible for inspecting or observing loads to recognize prohibited waste.

(b) Waste acceptance. The applicant shall identify the sources and characteristics of medical wastes proposed to be received for storage and processing or disposal, the maximum amount of medical waste to be received daily, the maximum amount of medical waste to be stored, the maximum lengths of time that medical waste is to remain at the facility (specify the maximum allowable period of time that unprocessed and processed wastes are to remain on-site), and the intended destination of the medical waste received at this facility. Medical waste facilities may not receive regulated hazardous waste as defined in §326.3(45) of this title (relating to Definitions). Materials accepted for recycling may only be accepted from health care-related facilities as long as the recyclable materials have not been mixed or come into contact with medical waste. Materials mixed or contacting medical waste shall be managed as medical waste.

(c) Facility-generated waste.

(1) All liquids resulting from the facility operations shall be disposed of in a manner that will not cause surface water or groundwater pollution. The owner or operator may send wastewater off-site to an authorized facility or shall provide for the treatment of wastewaters resulting from managing the waste or from cleaning and washing. Except as provided in subsection (b) of this section, the owner or operator shall provide a connection into a public sewer system, a septic system, or a small wastewater treatment plant. On-site wastewater treatment systems shall comply with Chapter 285 of this title (relating to On-site Sewage Facilities). The owner or operator shall obtain any permit or other approval required by state or local code for the system installed.

(2) Contaminated water shall be collected and contained until properly managed.

(3) Wastes generated by a facility must be processed or disposed at an authorized solid waste management facility.

(4) Off-site discharge of contaminated waters shall be made only after approval under the Texas Pollutant Discharge Elimination System authority.

(5) The owner or operator shall provide a copy of the authorization to discharge wastewater to a treatment facility permitted under Texas Water Code, Chapter 26.

(d) Storage requirements.

(1) All solid waste shall be stored in such a manner that it does not create a nuisance.

(2) Storage area(s) for source-separated or recyclable materials from medical waste facilities must be provided that are separate from solid waste processing areas. Control of odors, vectors, and windblown waste from the storage area shall be maintained.

(3) Containers must be maintained in a clean condition so that they do not constitute a nuisance. Containers to be mechanically handled must be designed to prevent spillage or leakage during storage, handling, or transport.

(4) If a stationary compactor is utilized, it shall be operated and maintained in such a way as not to create a public nuisance through material loss or spillage, odor, vector breeding or harborage, or other condition.

(e) Recordkeeping and reporting requirements.

(1) A copy of the registration, the approved registration application, and any other required plan or other related document shall be maintained at the medical waste facility at all times. These plans shall be made available for inspection by agency representatives or other interested parties. These documents shall be considered a part of the operating record for the facility.

(2) The owner or operator shall promptly record and retain in an operating record:

(A) all location-restriction demonstrations;

(B) inspection records and training procedures;

(C) closure plans, cost estimates, and financial assurance documentation relating to financial assurance for closure;

(D) copies of all correspondence and responses relating to the operation of the facility, modifications to the registration, approvals, and other matters pertaining to technical assistance; and

(E) all documents, manifests and any other document(s) as specified by the approved authorization or by the executive director.

(3) For signatories to reports, the following conditions apply.

(A) The owner or operator shall sign all reports and other information requested by the executive director as described in §305.128 of this title (relating to Signatories to Reports) and §305.44(a) of this title (relating to Signatories to Applications) or by a duly authorized representative of the owner or operator. A person is a duly authorized representative only if:

(i) the authorization is made in writing by the owner or operator as described in §305.44(a) of this title;

(ii) the authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity or for environmental matters for the owner or operator, such as the position of plant manager, environmental manager, or a position of equivalent responsibility. A duly authorized representative may thus be either a named individual or any individual occupying a named position; and

(iii) the authorization is submitted to the executive director.

(B) If an authorization under this section is no longer accurate because of a change in individuals or position, a new authorization satisfying the requirements of this section must be submitted to the executive director prior to, or together with, any reports, information, or applications to be signed by an authorized representative.

(C) Any person signing a report shall make the certification in §305.44(b) of this title.

(4) All information contained in the operating record shall be furnished upon request to the executive director and shall be made available for inspection by the executive director.

(5) The owner or operator shall retain all information contained within the operating record and the different plans required for the facility for the life of the facility.

(6) The executive director may set alternative schedules for recordkeeping and notification requirements as specified in paragraphs (1) - (5) of this subsection.

(7) Owners or operators of a medical waste processing facility accepting delivery of untreated medical waste for which a shipping document is required for processing shall ensure each of the following requirements are met:

(A) a shipping document accompanies the shipment, which designates the facility to receive the waste;

(B) the owner or operator signs the shipping document and immediately gives at least one copy of the signed shipping document to the transporter;

(C) the owner or operator retains one copy of the shipping document;

(D) within 45 days after the delivery, the treatment facility owner or operator sends a written or electronic copy of the shipping document to the generator that includes the total weight of waste received and a statement that the medical waste was treated in accordance with 25 TAC §1.136 (relating to Approved Methods of Treatment and Disposition).

(f) Fire protection.

(1) An adequate supply of water under pressure must be available for firefighting purposes.

(2) Firefighting equipment must be readily available.

(3) A fire protection plan shall be established, and all employees shall be trained in its contents and use. This fire protection plan shall describe the source of fire protection (a local fire department, fire hydrants, fire extinguishers, water tanks, water well, etc.), procedures for using the fire protection source, and employee training and safety procedures. The fire protection plan shall comply with local fire codes.

(g) Access control.

(1) Public access to all medical waste facilities shall be controlled by means of artificial barriers, natural barriers, or a combination of both, appropriate to protect human health and safety and the environment. Uncontrolled access to other operations located at a medical waste facility shall be prevented.

(2) The facility access road from a publicly owned roadway must be at least a two-lane gravel or paved road, designed for the expected traffic flow. Safe on-site access for all vehicles must be provided. The access road design must include adequate turning radii according to the vehicles that will utilize the facility and avoid disruption of normal traffic patterns. Vehicle parking must be provided for equipment, employees, and visitors. Safety bumpers at hoppers must be provided for vehicles. A positive means to control dust and mud must be provided.

(3) Access to the facility shall be controlled by a perimeter fence, consisting of a four-foot barbed wire fence or a six-foot chain-link fence or equivalent, and have lockable gates. An attendant shall be on-site during operating hours. The operating area and transport unit storage area shall be enclosed by walls or fencing.

(h) Unloading of waste.

(1) The unloading of solid waste shall be confined to as small an area as practical. An attendant shall be provided at all facilities to monitor all incoming loads of waste. Appropriate signs shall also be used to indicate where vehicles are to unload. The owner or operator is not required to accept any solid waste that he/she determines will cause or may cause problems in maintaining full and continuous compliance with these sections.

(2) The unloading of waste in unauthorized areas is prohibited. The owner or operator shall ensure that any waste deposited in an unauthorized area will be removed immediately and managed properly.

(3) The unloading of prohibited wastes at the medical waste facility shall not be allowed. The owner or operator shall

ensure that any prohibited waste will be returned immediately to the transporter or generator of the waste.

(i) Operating hours. A site operating plan must specify operating hours. The operating hours may be any time between the hours of 7:00 a.m. and 7:00 p.m., Monday through Friday, unless otherwise approved by the executive director or commission for a registration.

(1) In addition to the requirements of this subsection, the authorization may include alternative operating hours of up to five days in a calendar-year period to accommodate special occasions, special purpose events, holidays, or other special occurrences.

(2) The agency regional office may allow additional temporary operating hours to address disaster or other emergency situations, or other unforeseen circumstances that could result in the disruption of waste management services in the area.

(3) The facility must record, in the site operating record, the dates, times, and duration when any alternative operating hours are utilized.

(j) Facility sign. Each facility shall conspicuously display at all entrances to the facility through which wastes are received, a sign measuring at least four feet by four feet with letters at least three inches in height stating the facility name; type of facility; the hours and days of operation; the authorization number of the facility; and facility rules. The posting of erroneous or misleading information shall constitute a violation of this section.

(k) Control of windblown material and litter. Windblown material and litter within the registration boundary shall be collected as necessary to minimize unhealthy, unsafe, or unsightly conditions.

(l) Facility access roads.

(1) All-weather roads shall be provided within the facility to the unloading area(s) designated for wet-weather operation. The tracking of mud and debris onto public roadways from the facility shall be minimized.

(2) Dust from on-site and other access roadways shall not become a nuisance to surrounding areas. A water source and necessary equipment or other means of dust control shall be provided.

(3) All on-site access roads owned or controlled by the owner or operator shall be maintained to minimize depressions, ruts, and potholes on a regular basis. For the maintenance of other access roadways not owned or controlled by the owner or operator, the owner or operator shall coordinate with the Texas Department of Transportation, county, and/or local governments with maintenance authority over the roads.

(m) Noise pollution and visual screening. The owner or operator of a transfer station shall provide screening or other measures to minimize noise pollution and adverse visual impacts.

(n) Overloading and breakdown.

(1) The design capacity of the facility shall not be exceeded during operation. The facility shall not accumulate solid waste in quantities that cannot be processed within such time as will preclude the creation of odors, insect breeding, or harborage of other vectors. If such accumulations occur, additional solid waste shall not be received until the adverse conditions are abated.

(2) If a significant work stoppage should occur at a solid waste processing facility due to a mechanical breakdown or other causes, the facility shall accordingly restrict the receiving of solid waste. Under such circumstances, incoming solid waste shall be diverted to an approved backup processing or disposal facility. If the work stoppage is anticipated to last long enough to create objectionable odors, insect breeding, or harborage of vectors, steps shall be taken to remove the accumulated solid waste from the facility to an approved backup processing or disposal facility.

(3) The owner or operator shall have alternative processing or disposal procedures for the solid waste in the event that the facility becomes inoperable for periods longer than 24 hours.

(o) Sanitation.

(1) The owner or operator shall provide potable water and sanitary facilities for all employees and visitors.

(2) At processing facilities, all working surfaces that come in contact with wastes shall be washed down on a weekly basis at the completion of processing. Processing facilities that operate on a continuous basis shall be swept daily and washed down at least twice per week.

(3) Wash waters shall not be accumulated on site without proper treatment to prevent the creation of odors or an attraction to vectors.

(4) All wash waters shall be collected and disposed of in an authorized manner.

(p) Ventilation and air pollution control. All facilities and air pollution abatement devices must obtain authorization, under Texas Health and Safety Code (THSC), Chapter 382 (Texas Clean Air Act) and Chapter 106 or 116 of this title (relating to Permits by Rule; and Control of Air Pollution by Permits for New Construction or Modification), from the Air Permits Division prior to the commencement of construction, except as authorized in THSC, §382.004. Additionally, all facilities and air pollution abatement devices must operate in compliance with all applicable air related rules including Chapter 101 of this title (relating to General Air Quality Rules) related to prevention of nuisance odors, minimizing maintenance, startup and shutdown emissions, and emission event reporting and recordkeeping.

(q) Health and safety. Facility personnel shall be trained in the appropriate sections of the facility's health and safety plan.

(r) Disposal of treated medical waste. Medical wastes that have been treated in accordance with the provisions of 25 TAC §1.136 may be managed as routine municipal solid waste unless otherwise specified in paragraphs (1) - (5) of this subsection.

(1) Incinerator ash shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title (relating to Municipal Solid Waste).

(2) Treated microbiological waste, blood, blood products, body fluids, laboratory specimens of blood and tissue, and animal bedding may be disposed of in a permitted landfill. Any markings that identify the waste as a medical waste shall be covered with a label that identifies the waste as treated medical waste. The identification of the waste as treated may be accomplished by the use of color-coded, disposable containers for the treated waste or by a label that states that the contents of the disposable container have been treated in accordance with the provisions of 25 TAC §1.136.

(3) Treated carcasses and body parts of animals designated as a medical waste may, after treatment, be disposed of in a permitted landfill in accordance with Chapter 330 of this title. The collection and transportation of these wastes shall conform to the applicable local ordinance or rule, if such ordinance or rule is more stringent than this subsection.

(4) Treated recognizable human body parts, tissues, fetuses, organs, and the products of human abortions, spontaneous or

induced, shall not be disposed of in a municipal solid waste landfill. These items shall be disposed of in accordance with the provisions of 25 TAC §1.136(a)(4).

(5) Sharps treated and containerized with one of the approved methods as described under 25 TAC §1.136(a)(5) shall be disposed of in a permitted landfill in accordance with Chapter 330 of this title. Unused sharps shall be disposed of as treated sharps.

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

Filed with the Office of the Secretary of State on May 5, 2016.

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Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: May 26, 2016
Proposal publication date: December 25, 2015
For further information, please call: (512) 239-2613

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SUBCHAPTER G. FEES AND REPORTING

30 TAC §§326.85, 326.87, 326.89

Statutory Authority

The rules are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted rules implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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

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CHAPTER 330. MUNICIPAL SOLID WASTE

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amendments to §§330.1, 330.9, 330.11, 330.13, 330.103, 330.171, and 330.219; and adopts the repeal of §§330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, and 330.1221.

The amendment to §330.1 is adopted *with change* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9540) and will be republished The amendments to §§330.9, 330.11, 330.13, 330.103, 330.171, and 330.210; and the repeal of §§330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, and 330.1221 are adopted *without changes* and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rules

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding THSC, §361.0905 (Regulation of Medical Waste) requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking moves the rules related to medical waste from Chapter 330 to adopted new TAC Chapter 326 (Medical Waste Management). HB 2244 was effective immediately on June 10, 2015, upon the Governor signing it into law. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapter 326 and 30 TAC Chapter 335 (Industrial Solid Waste and Municipal Hazardous Waste).

Section by Section Discussion

Subchapter A: General Information

§330.1, Purpose and Applicability

Section 330.1(a)(6), requiring medical waste mobile treatment units to transition to a different authorization level in accordance with the rules that went into effect on March 27, 2006, is adopted to be removed.

Section 330.1(e) is added to provide the transition for relocating the medical waste management rules from this chapter to adopted new Chapter 326. The requirement for existing authorizations to apply to transition to new Chapter 326 has been narrowed from proposal to only require permit and registration tier authorizations to apply under Chapter 326. Registrations by rule, subject to annual renewal under Chapters 330 and 326, will transition to new Chapter 326 upon renewal. Other lower tier authorizations will be subject to Chapter 326 automatically without any additional filing.

§330.9, Registration Required

Section 330.9(e), concerning hospitals acting as medical waste collections and transfer facilities, is adopted to be removed and relocated to adopted new §326.43, Medical Waste Collection and Transfer by Licensed Hospitals. Subsequent subsections are adopted to be re-lettered.

Section 330.9(l), concerning registration by rule for transporters of untreated medical waste, is adopted to be removed and relocated to adopted new §326.53, Transporters.

Section 330.9(m), concerning registration by rule for mobile treatment units, is adopted to be removed and relocated to adopted new §326.55, Mobile Treatment Unit.

Section 330.9(n), concerning registration for facilities that store or process untreated medical waste from offsite sources, is adopted to be removed and relocated to adopted new §326.61, Applicability and General Information. Subsequent subsections are adopted to be re-lettered.

§330.11, Notification Required

Section 330.11(f), concerning notification of treatment process unit for on-site generated medical waste, is adopted to be removed and relocated to adopted new §326.39, Small Quantity Generator On-Site Treatment Facility. Subsequent subsections are adopted to be re-lettered.

Section 330.11(h), concerning notification as self-transporters, is adopted to be removed and relocated to adopted new §326.53.

§330.13, Waste Management Activities Exempt from Permitting, Registration, or Notification

Section 330.13(d) and (e), concerning on-site storage of medical waste generated on-site, and self-transport of medical waste, are adopted to be removed and relocated to adopted new §326.31, Exempt Medical Waste Operations. Subsequent subsections are adopted to be re-lettered.

Subchapter C: Municipal Solid Waste Collection and Transportation

§330.103, Collection and Transportation Requirements

Section 330.103(f), concerning transporters of untreated medical waste, is adopted to be removed, revised and relocated to adopted new §326.53.

Subchapter D: Operational Standards for Municipal Solid Waste Landfill Facilities

§330.171, Disposal of Special Wastes

Section 330.171(c)(1), concerning untreated medical waste received at landfills, is adopted to be amended to update the reference to treatment procedures from Chapter 330, Subchapter Y, to adopted new Chapter 326.

Subchapter E: Operational Standards for Municipal Solid Waste Storage and Processing Units

§330.219, Recordkeeping and Reporting Requirements

Section 330.219(h), concerning operators of Type V processing facility accepting untreated medical waste, is adopted to be removed and relocated to adopted new §326.75, Site Operating Plan.

Subchapter Y: Medical Waste Management

§330.1201, Purpose

This section is adopted to be repealed and relocated to adopted new §326.1, Purpose and Applicability.

§330.1203, Applicability

This section is adopted to be repealed and relocated to adopted new §326.1.

§330.1205, Definitions

This section is adopted to be repealed and relocated to adopted new §326.3, Definitions.

§330.1207, Generators of Medical Waste

This section is adopted to be repealed and relocated to adopted new §§326.17, 326.19, 326.21, 326.23, 326.31, 326.37, 326.43, and 326.53.

§330.1209, Storage of Medical Waste

This section is adopted to be repealed and relocated to adopted new §326.43.

§330.1211, Transporters of Untreated Medical Waste

This section is adopted to be repealed and relocated to adopted new §§326.23, 326.31, 326.53, 326.87, and 326.89.

§330.1213, Transfer of Shipments of Medical Waste

This section is adopted to be repealed and relocated to adopted new §326.53.

§330.1215, Interstate Transportation

This section is adopted to be repealed and relocated to adopted new §326.53.

§330.1217, Medical Waste Collection Stations

This section is adopted to be repealed and relocated to adopted new §326.43.

§330.1219, Treatment and Disposal of Medical Waste

This section is adopted to be repealed and relocated to adopted new §§326.39, 326.41, 326.61, and 326.75.

§330.1221, On-Site Treatment Services on Mobile Treatment Units

This section is adopted to be repealed and relocated to adopted new §§326.39, 326.41, 326.55, and 326.87.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rulemaking does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by consolidating and revising the rules governing medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on industry or the public.

Furthermore, the adoption does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, 1§2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking does not meet any of these applicability requirements. First, there are no standards set for authorizing these types of facilities by federal law. The adopted rulemaking includes revisions to reconcile any conflict with federal laws governing the transportation of medical waste. Second, the adopted rulemaking does not exceed an express requirement of state law. There are no specific statutory requirements for authorizing these types of facilities. Third, the adopted rulemaking does not exceed an express requirement of a dele-

gation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. Fourth, the commission does not adopt the rulemaking solely under the general powers of the agency, but rather under the authority of THSC, §361.011, which establishes the commission's jurisdiction over all aspects of the management of municipal solid waste; THSC, §361.024, which provides the commission with rulemaking authority; THSC, §361.061, which authorizes the commission to require and issue permits governing the construction, operation, and maintenance of solid waste facilities used to store, process, or dispose of solid waste; and, THSC, §361.0905 (HB 2244), which governs the regulation of medical waste. Therefore, the commission does not adopt the rulemaking solely under the commission's general powers.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Comments were not received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted rulemaking is to implement HB 2244 by consolidating and revising the rules governing medical waste into one new chapter. In addition to implementing HB 2244, the new Chapter 326 includes other updates and revisions which are not expected to have a significant impact on industry or the public.

The rulemaking does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rules. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rulemaking is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. Comments were not received on the CMP.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission did not receive comments.

SUBCHAPTER A. GENERAL INFORMATION

30 TAC §§330.1, 330.9, 330.11, 330.13

Statutory Authority

The amendments are adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendments implement THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

§330.1. Purpose and Applicability.

(a) The regulations promulgated in this chapter cover aspects of municipal solid waste (MSW) management and air emissions from MSW landfills and transfer stations under the authority of the commission and are based primarily on the stated purpose of Texas Health and Safety Code, Chapter 361 and Chapter 382. The provisions of this chapter apply to any person as defined in §3.2 of this title (relating to Definitions) involved in any aspect of the management and control of MSW and MSW facilities including, but not limited to, storage, collection, handling, transportation, processing, and disposal. Furthermore, these regulations apply to any person that by contract, agreement, or otherwise arranges to process, store, or dispose of, or arranges with a transporter for transport to process, store, or dispose of, solid waste owned or possessed by the person, or by any other person or entity. The comprehensive rule revisions in this chapter as adopted in 2006 (2006 Revisions) are effective 20 days after they are filed with the Office of the Secretary of State.

(1) Permits and registrations, issued by the commission and it predecessors, that existed before the 2006 Revisions became effective, remain valid until suspended or revoked except as expressly provided otherwise in this chapter. Facilities may operate under existing permits and registrations subject to: requirements in the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require revisions to existing authorizations; and those requirements mandated by the United States Environmental Protection Agency in 40 Code of Federal Regulations (CFR) Parts 257 and 258, as amended, which implement certain requirements of Resource Conservation and Recovery Act, Subtitle D. For those federally mandated requirements and the equivalent state requirements, the effective dates listed in 40 CFR Parts 257 and 258, as amended, shall apply. For those federally mandated requirements, the permittee is under an obligation to apply for a permit change in accordance with §305.62 of this title (relating to Amendments) or §305.70 of this title (relating to Municipal Solid Waste Permit and Registration Modifications), as applicable, to incorporate the required standard. The application shall be submitted no later than six months from the effective date of the required standard.

(2) Applications for new permits and major amendments to existing permits that are administratively complete and registration applications for which the executive director has completed a technical review, as of the effective date of the 2006 Revisions, shall be considered under the former rules of this chapter unless the applicant elects otherwise. Existing authorizations are subject to the 2006 Revisions, which expressly supersede provisions contained in existing authorizations or require modifications of existing authorizations regardless of whether a major amendment is being considered for the same facility under the former rules. For new permits and major amendments to increase solid waste disposal capacity, only complete applications (Parts

I - IV), which are submitted and declared administratively complete before the effective date of the 2006 Revisions, may be considered under existing Chapter 330 rules. Such applications are not subject to §305.127(4)(B) of this title (relating to Conditions to be Determined for Individual Permits) and the owner or operator must submit the modifications required by the 2006 Revisions within one year after the commission's decision on the application has become final and appealable, unless a longer period of time is specified in the rules.

(3) Authorizations, other than permits and registrations, that existed before the 2006 Revisions became effective shall comply with the 2006 Revisions within 120 days of the 2006 Revisions becoming effective unless expressly provided otherwise in this chapter. These authorizations include notifications, exemptions, permits by rule, and registrations by rule.

(4) Authorizations, other than permits and registrations, that had not been claimed or did not exist before the 2006 Revisions became effective shall comply with the 2006 Revisions.

(5) Applications for modifications or for amendments that do not increase solid waste disposal capacity that are filed before the 2006 Revisions become effective, or filed within 180 days after the 2006 Revisions become effective, are subject to the former rules. Such applications are not subject to §305.127(4)(B) of this title, and the owner or operator must submit the modifications required by the 2006 Revisions within 180 days after the effective date of the 2006 Revisions, unless a longer period of time is specified in the rules.

(b) The commission at its discretion, may include one or more different types of units in a single permit if the units are located at the same facility with the exception of a facility authorized by an MSW permit by rule. Persons shall seek separate authorizations at a facility that qualifies for an MSW permit by rule.

(c) This chapter does not apply to any person that prepares sewage sludge or domestic septage, fires sewage sludge in a sewage sludge incinerator, applies sewage sludge or domestic septage to the land, or to the owner/operator of a surface disposal site as applicable under Chapter 312 of this title (relating to Sludge Use, Disposal, and Transportation); to sewage sludge or domestic septage applied to the land or placed on a surface disposal site, to sewage sludge fired in a sewage sludge incinerator, to land where sewage sludge or domestic septage is applied to a surface disposal site or to a sewage sludge incinerator as applicable under Chapter 312 of this title; any person that transports sewage sludge, water treatment sludge, domestic septage, chemical toilet waste, grit trap waste, or grease trap waste; to any person that applies water treatment sludge for disposal in a land application unit, as defined in §312.121 of this title (relating to Purpose, Scope, and Standards) to water treatment sludge that is disposed of in a land application unit, as defined in §312.121 of this title. Persons managing such wastes shall comply with the requirements of Chapter 312 of this title.

(d) This chapter does not apply to any person that composts MSW in accordance with the requirements of Chapter 332 of this title (relating to Composting), except for those persons that must apply for a permit in accordance with §332.3(a) of this title (relating to Applicability). Those persons that must submit a permit application for a compost operation shall follow the applicable requirements of Subchapter B of this chapter (relating to Permit and Registration Application Procedures).

(e) This chapter does not apply to any person that manages medical waste in accordance with the requirements of Chapter 326 of this title (relating to Medical Waste Management). Persons disposing of medical waste at municipal solid waste landfills shall comply with applicable provisions of this chapter. The medical waste provisions being relocated from this chapter to Chapter 326 of this title will remain in effect and continue to apply to permits, registrations, and registrations by rule issued under this chapter until the later of two years from the effective date of Chapter 326 of this title or until a final decision is made on a timely request for an authorization to be updated to comply with Chapter 326 of this title. Permits, registrations, and registrations by rule issued under the existing Chapter 330 rules must be updated by filing a new application within two years or upon renewal to comply with Chapter 326 of this title. The executive director is authorized to extend this deadline based on an authorized entity making a request supported by good cause. A person who has an application for the management of medical waste pending before the effective date of Chapter 326 of this title shall be considered under the former Chapter 330 rules unless the applicant elects otherwise.

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

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Robert Martinez
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SUBCHAPTER C. MUNICIPAL SOLID WASTE COLLECTION AND TRANSPORTATION

30 TAC §330.103

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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

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SUBCHAPTER D. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE LANDFILL FACILITIES

30 TAC §330.171

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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

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SUBCHAPTER E. OPERATIONAL STANDARDS FOR MUNICIPAL SOLID WASTE STORAGE AND PROCESSING UNITS

30 TAC §330.219

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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

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SUBCHAPTER Y. MEDICAL WASTE MANAGEMENT

30 TAC §§330.1201, 330.1203, 330.1205, 330.1207, 330.1209, 330.1211, 330.1213, 330.1215, 330.1217, 330.1219, 330.1221

Statutory Authority

The repeal is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017, and 361.024, which provide the commission the authority to adopt rules necessary to carry out its powers and duties under the Texas Solid Waste Disposal Act.

The repeal of these sections implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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

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CHAPTER 335. INDUSTRIAL SOLID WASTE AND MUNICIPAL HAZARDOUS WASTE SUBCHAPTER R. WASTE CLASSIFICATION

30 TAC §335.508

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) adopts amended §335.508.

Section 335.508 is adopted *without changes* to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9601) and will not be republished.

Background and Summary of the Factual Basis for the Adopted Rule

House Bill (HB) 2244, passed by the 84th Texas Legislature, 2015, amended Texas Health and Safety Code (THSC), Chapter 361 by adding new §361.0905 (Regulation of Medical Waste)

requiring the commission to adopt regulations under a new chapter specific for the handling, transportation, storage, and disposal of medical waste. The adopted rulemaking moves the rules related to medical waste from 30 TAC Chapter 330 (Municipal Solid Waste) to new 30 TAC Chapter 326 (Medical Waste Management). HB 2244 was effective immediately on June 10, 2015, upon the Governor signing it into law. The legislation also states that the commission must adopt any rules required to implement HB 2244 by June 1, 2016.

Corresponding rulemaking is published in this issue of the *Texas Register* concerning Chapters 326 and 330.

Section Discussion

Subchapter R: Waste Classification

§335.508, Classification of Specific Industrial Solid Wastes

Section 335.508(4), concerning classification of medical waste as type 2 waste, is amended to update a reference to the medical waste provisions from Chapter 330, Subchapter Y to adopted new Chapter 326.

Final Regulatory Impact Determination

The commission reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined the rule does not meet the definition of a "major environmental rule." Under Texas Government Code, §2001.0225, "major environmental rule" means a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is intended to implement HB 2244 by updating a cross-reference to the medical waste rules which are being relocated into a new chapter in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on industry or the public.

Furthermore, the rule does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopts a rule solely under the general powers of the agency instead of under a specific state law.

In this case, the adopted rulemaking is only updating a cross-reference and does not meet any of these applicability requirements.

The commission invited public comment regarding the Draft Regulatory Impact Analysis Determination during the public comment period. Comments were not received on the regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated the adopted rulemaking and performed an assessment of whether the adopted rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The specific intent of the adopted amendment is to implement HB 2244 by updating a cross-reference to the medical waste rules which are being moved to a new Chapter 326 in a corresponding rulemaking. The updated cross-reference is not expected to have a significant impact on industry or the public.

The amendment does not impose a burden on a recognized real property interest and therefore does not constitute a taking. The promulgation of the adopted rulemaking is neither a statutory nor a constitutional taking of private real property by the commission. Specifically, the adopted rulemaking does not affect a landowner's rights in a recognized private real property interest because this rulemaking neither: burdens (constitutionally) or restricts or limits the owner's right to the property that would otherwise exist in the absence of this rulemaking; nor would it reduce its value by 25% or more beyond that value which would exist in the absence of the adopted rule. Therefore, the adopted rulemaking will not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rule and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor would it affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the adopted rule is not subject to the Texas Coastal Management Program (CMP).

The commission invited public comment regarding the consistency with the CMP during the public comment period. Comments were not received on the CMP.

Public Comment

The commission held a public hearing on January 25, 2016. The comment period closed on February 8, 2016. The commission received a comment from Titanium Environmental.

Response to Comments

Comment

Titanium Environmental Commented that it is unclear in proposed Chapter 326 and amended Chapter 335 if a Class 2 Texas Waste Code is required on the Solid Waste Registration of an exempt medical waste operator for on-site medical waste generation and storage, and to please clarify.

Response

Chapter 335 amendment updates references to the medical waste provisions from Chapter 330, Subchapter Y to Chapter 326, in the classification of medical waste as type 2 waste. Exempt medical waste facilities for on-site medical waste generation and storage are not industrial facilities, and therefore, are not required to obtain a Class 2 Texas Waste Code for the Solid Waste Registration. No changes will be made in this chapter in regards to this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, which authorizes the commission to adopt any rules necessary to carry out its powers and duties; TWC, §26.011, which provides the commission with the authority to adopt any rules necessary to carry out its powers, duties, and policies and to protect water quality in the state; and Texas Health and Safety Code (THSC), §§361.011, 361.017 and 361.024, which provide the commission the authority to adopt rules necessary to carry

out its powers and duties under the Texas Solid Waste Disposal Act.

The adopted amendment implements THSC, §361.0905, which requires the commission to adopt rules in a new chapter to regulate medical waste.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 1. GENERAL LAND OFFICE

CHAPTER 15. COASTAL AREA PLANNING

SUBCHAPTER A. MANAGEMENT OF THE BEACH/DUNE SYSTEM

31 TAC §15.34

The General Land Office (GLO) adopts amendments to §15.34 (relating to Certification Status of Village of Surfside Beach Dune Protection and Beach Access Plan) without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1342). Section 15.34 will not be republished.

BACKGROUND AND JUSTIFICATION

The Village of Surfside Beach's (Village) Dune Protection and Beach Access Plan (Plan) was first adopted on December 12, 2000 and was most recently amended to adopt an increase to their existing Beach User Fee (BUF), which was certified by the GLO as consistent with state law and became effective on March 2, 2015. The Village City Council adopted amendments to its Plan on September 28, 2015 and submitted the amended Plan to the GLO with a request for certification that the Plan is consistent with state law.

The amendments to the Village Plan establish standards for avoiding impacts to dunes and dune vegetation, off-site compensation requirements, notice of proposed dune mitigation activities, the use of fibercrete within the beachfront construction area, and modifies its Beach User Fee (BUF) plan and restricts vehicular beach access to a section of beach.

The amendments to Sections 2 and 3 of the Plan adopt provisions for clarity or requirements and make grammatical corrections. Specifically, the Plan adopts standards for giving notice to adjacent landowners of proposed dune mitigation plans, establishes standards to employ methods that will have no adverse effects to dunes and dune vegetation and clarifies conditions for off-site compensation and the eligibility of off-site compensation for affected dunes and dune vegetation.

The GLO has reviewed the amendments related to Sections 2 and 3 of the Plan and determined that the amendments provide greater protection for the beach and dune system by providing clear, reasonable and practicable standards to avoid impacts to dunes and dune vegetation and provide parties directly impacted by damage to the dune system with an opportunity to comment on activities that may adversely affect dunes and dune vegetation adjacent to their property. The amendments clarifying off-site compensation eligibility ensure that a local procedure is in place to allow for off-site compensation should there be no practicable alternatives to compensate on-site.

The coastal environment is an interdependent system wherein adverse impacts to the dunes or dune vegetation in one location can have impacts that affect the areas immediately adjacent to impacted areas. It is important to provide landowners adjacent to an area where dunes and dune vegetation will be adversely affected an opportunity to review and comment on impacts to the integrity of the dune system, and therefore, their own property, and comment on the impacts of construction, the proposed mitigation plan, and the issuance of a permit. The proposed amendments to Sections 2 and 3 of the Plan are consistent with requirements in 31 TAC §15.3 and §15.4.

The amendments to Section 5 of the Plan adopt provisions to allow paving or altering the ground within the footprint of a habitable structure located landward of 200 feet from the line of vegetation or landward of an eroding area boundary in eroding areas. The amendments allow the placement of unreinforced fibercrete in four-foot by four-foot sections if construction is located at least 25 feet landward of the landward toe of the dune, or 100 feet landward of the line of vegetation if no dunes exist, and are located beneath the footprint of a habitable structure. The amendments adopt the requirements in 31 TAC §15.6(f)(3) and (5).

The amendments include a variance from 31 TAC §15.5(b)(3) and §15.6(f)(3), which prohibits paving or altering the ground outside the footprint of a habitable structure in eroding areas, except for the stabilization of driveways using pervious materials. The Village will allow the construction of driveways constructed with unreinforced fibercrete in four-foot by four-foot sections, four-inches thick and separated by expansion joints, provided that the size of driveways is restricted to no greater than twenty (20) feet wide, not to exceed ten (10) percent of the lot square footage, and the driveway is located more than 100 feet from the line of vegetation.

The commitment from the Village to establish a limit on the size of the driveway and to limit impervious materials to the use of unreinforced fibercrete to the Dune Protection Line eases the burden of clean-up in a post-storm environment. It is consistent with the requirements of the Brazoria County Erosion Response Plan, which provides for measures to reduce the amount of public expenditures spent after a storm. It also allows for construction that minimizes hydrological impacts. The GLO has determined that the Village has provided reasoned justification for the variance from 31 TAC §15.5(b)(3) and §15.6(f)(3) and provided adequate measures to ensure the variance is as protective as the existing standards. The variance allows for flexible and balanced economic development with neighboring uses while minimizing damage to neighboring properties and the public beach following a storm, resulting in construction that is protective of the public beach and the dune system.

The amendment to Section 6 of the Plan prohibits on-beach vehicular access from Thunder Road to Jettyview Park, which is approximately 810 linear feet of beach. The Village identifies that tidal influences and high erosion rates of seven to eight feet per year, as identified by the Bureau of Economic Geology, have significantly narrowed the width of the beach in this area. The Village also identifies that it can cause a public safety concern to vehicular access at high tides. To ensure public access to this beach and to comply with the requirements for vehicular restrictions, the Village and Brazoria County entered into an inter-local agreement to dedicate 54 parking spaces at Jettyview Park to be available specifically for beach access. Signage will be conspicuously posted in the area explaining the nature and extent of vehicular controls, parking and the access point, including access for disabled persons.

The GLO has reviewed the Village's amendments to restrict vehicular access and has determined that the presumptive criteria for parking spaces on or adjacent to the beach and allowing for ingress and egress ways no farther apart than 1/2 mile as set forth in 31 TAC §15.7(h)(1)(A) and (B) have been met. Although, the GLO believes the Plan preserves public access to and use of the beach, this determination is subject to the GLO's long-term monitoring of the site for compliance with the Plan. If the Village fails to implement its Plan, including the commitments made therein, the GLO can require the Village to lift the restriction or withdraw certification of all or a portion of the Plan under 31 TAC §15.10(f) and (g).

The amendment to Section 8 of the Plan allows the Village to expand the geographic scope of the BUF Plan to charge an annual BUF rate to $12 for parking motor vehicles along the beach-facing side of Beach Drive, immediately adjacent to the beach. This area has been a free parking area for beach goers. In the short term, the Village indicates that additional revenue generated by the additional BUF will enable the Village to provide beach goers with additional portable restrooms spaced 300 feet apart, garbage cans every 100 feet, daily trash pick-up, and additional shade structures for public use. The Village will also use the BUF to construct two additional dune walkovers at Crab Street and Texas Street to allow access over the revetment to the beach, as well as construct rinse-off stations for public use.

In the long term, the Village committed to using increased BUF revenues as match for future and on-going beach nourishment projects in areas prone to high erosion rates.

The GLO has reviewed the Village's amendments related to the BUF Plan and determined that it does not exceed the necessary and actual cost of providing reasonable beach-related facilities and services and is consistent with §15.8 of the Beach/Dune rules and the Open Beaches Act. The additional BUF revenue will provide the Village with additional resources so that it can provide beach related services within its jurisdiction. This determination is based on the Village's commitments outlined in the short and long-term goals that justify the expanded geographic range of the BUF. The GLO will monitor the Village's compliance with the Plan and its commitments. If the Village fails to comply with its Plan, the GLO can withdraw certification of all or a portion of the Plan under 31 TAC §15.10(f) and (g).

The GLO received no public comments on the proposed amendments.

CONSISTENCY WITH COASTAL MANAGEMENT PROGRAM

The amendments are subject to the Coastal Management Program as provided for in the Texas Natural Resources Code §33.2053 and 31 TAC §505.11(a)(1)(J) and (c), relating to the Actions and Rules Subject to the CMP. GLO has reviewed this proposed action for consistency with the Coastal Management Program (CMP) goals and policies in accordance with the regulations and has determined that the proposed action is consistent with 31 TAC §501.12 (relating to Goals) and §501.26 (relating to Policies for Construction in the Beach/Dune System).

The amendments are consistent with 31 TAC §501.12(1), (2), and (3) which provides for the protection and preservation and enhancement of the coastal zone, sound management of coastal resources, and compatible economic development and multiple uses of the coastal zone, and the minimization of loss of life and property due to impairment and loss of protective features of coastal resources; and 31 TAC §501.12(4) and (5) which provides for the enhancement of public access and enjoyment of the coastal zone in a manner compatible with private property and other uses, and balances other uses of the coastal zone.

The amendments clarifying avoidance and off-site compensation to adverse effects to dunes and dune vegetation are consistent with 31 TAC §501.12(1) and (2) because they allow for the protection, preservation, restoration, and enhancement of the diversity, quality, quantity, functions, and value of coastal natural resource areas (CNRAs). Assurances of individuals applying for beachfront construction permits employing reasonable and practicable standards to avoid impacts to dunes and dune vegetation and ensures the sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

The amendment authorizing fibercrete is consistent with 31 TAC §501.12(2) and (3) because it provides for sound management of coastal resources and compatible development, allows multiple uses of the coastal zone, balances economic development with neighboring uses, and minimizes damage to neighboring properties and the public beach following a storm. The amendment requiring notice to adjacent landowners of proposed dune mitigation activities is consistent with 31 TAC §501.12(1), (2) and (3) because it enhances protection for and preservation of critical dunes, balances economic development with neighboring uses, and minimizes loss of human life and property by protecting critical dunes.

The amendment that modifies the Village's BUF Plan is consistent with 31 TAC §501.12(4) and (5), because it ensures and enhances planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. It also balances the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing Coastal Natural Resource Areas (CNRAs), the benefits minimizing loss of human life and property, and the benefits from access to and enjoyment of the coastal zone.

The amendment related to the location of beach access at Thunder Road to Jettyview Park is consistent with 31 TAC §501.12(2), (4) and (5), because it preserves access to and use of the public beach by allowing the public to utilize dedicated beach parking with adequate pedestrian pathways to access a section of beach that has narrowed significantly over time. The amendment ensures planned public access to and enjoyment of the coastal zone in a manner that is compatible with private property rights and other uses of the coastal zone. It also balances the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring,

and enhancing Coastal Natural Resource Areas (CNRAs), and the benefits from access to and enjoyment of the coastal zone.

The amendments are also consistent with CMP policies in §501.26(a)(2) and (4) (relating to Policies for Construction in the Beach/Dune System) by establishing standards that protect dunes and enhance and preserve the ability of the public, individually and collectively, to exercise its rights of use of and access to and from public beaches. The fibercrete, notice to adjacent landowner, and dune avoidance and compensation amendments ensure that construction within critical dune areas do not materially weaken dunes or materially damage dune vegetation, impacts to dunes are adequately compensated for, and construction is sited, designed, maintained, and operated so that adverse effects to the dunes and the public beach easement are avoided to the greatest extent practicable. The amendment related to the location of beach access at Thunder Road to Jettyview Park ensures that the ability of the public to exercise its rights and use of and access to and from public beaches is preserved.

The GLO received no public comments on the proposed amendment.

STATUTORY AUTHORITY

The amendments are adopted under Texas Natural Resources Code §§61.011, 61.015(b), and 61.022(c), which provides the GLO with the authority to adopt rules governing restriction on vehicular traffic on public beaches, the imposition or increase of beach user fees, construction on land adjacent to and landward of public beaches, and the certification of local government beach access and use plans and public beach vehicular traffic plans as consistent with state law. The amendments are also adopted under Texas Natural Resources Code §63.121 and §63.054(c) which provides the GLO with the authority to adopt rules governing certification of local government procedures and requirements governing the review and approval of dune permits and for certification of those procedures and requirements as consistent with state law.

Texas Natural Resources Code §§61.011, 61.015, 61.022, 63.121 and 63.054 are affected by the proposed amendments.

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

Filed with the Office of the Secretary of State on May 5, 2016.

TRD-201602176
Anne L. Idsal
Chief Clerk, Deputy Land Commissioner
General Land Office
Effective date: May 25, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 475-1859

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PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board (TWDB) adopts amendments to Chapter 358, State Water Planning Guidelines, §358.6, relating to Water Loss Audits. The amendments are adopted without changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 944).

DISCUSSION OF THE ADOPTED AMENDMENTS.

In 2013, the 83rd Texas Legislature passed House Bill (H.B.) 3605 amending Texas Water Code §16.0121 regarding the water loss audit that is required of all retail public utilities providing potable water. H.B. 3605 required a retail public utility providing potable water that receives financial assistance from the TWDB to use a portion of that, or any additional, financial assistance to mitigate the utility's system water loss if the utility's system water loss met or exceeded a threshold established by agency rule.

In late 2014, the TWDB adopted 31 TAC §358.6 (relating to Water Loss Audits), which establishes water loss thresholds for retail public utilities providing potable water that apply for financial assistance from the TWDB. The thresholds were developed based on industry performance indicators for both apparent loss (including meter inaccuracies, billing adjustments, and theft) and for real loss (actual loss of water from leaks and breaks and also loss from unknown and unreported sources).

In 2015, the 84th Texas Legislature passed H.B. 949, amending §16.0121(g) of the Water Code allowing the TWDB, on the request of a retail public utility, to waive the requirement that the utility use the financial assistance to mitigate water loss if the TWDB finds that the utility is satisfactorily addressing its water loss.

The adopted amendment to 31 TAC §358.6(f) requires a utility that is identified as meeting or exceeding the thresholds, and which requests a waiver, to provide the Executive Administrator of the TWDB with information regarding the activities or programs it has, or is planning to have, and the source of funding for their water loss program.

The adopted amendment also deletes 31 TAC §358.6(g) because it is no longer applicable.

SECTION BY SECTION DISCUSSION OF ADOPTED AMENDMENTS.

Section 358.6(f) is revised for consistency with §16.0121(g) of the Texas Water Code, as amended.

Section 358.6(g) has been deleted because it is unnecessary and is no longer applicable.

REGULATORY IMPACT ANALYSIS

The TWDB has reviewed the adopted rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same.

Even if the adopted rule were a major environmental rule, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather §16.0121 of the Texas Water Code. Therefore, this rulemaking does not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

TAKINGS IMPACT ASSESSMENT

The TWDB evaluated this adopted rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of the rulemaking is to more closely align the TWDB's rules related to water loss audits to the Texas Water Code related to the same. The rulemaking would substantially advance this stated purpose by incorporating applicable language from the Texas Water Code.

The TWDB's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this adopted rulemaking because this is an action that is reasonably taken to fulfill an obligation imposed by state law under Chapter 16 of the Texas Water Code, which is exempt under Texas Government Code, §2007.003(b)(4). The TWDB is an agency that must coordinate the submission of the required water loss audit, and must compile information included in the water loss audit and determine the utility's use of financial assistance from the TWDB to mitigate system water loss in accordance with §16.0121 of the Texas Water Code.

Nevertheless, the TWDB further evaluated this adopted rulemaking and performed an assessment of whether it constitutes a taking under Texas Government Code, Chapter 2007.

Promulgation and enforcement of this rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, this rule requires compliance with the submission of a water loss as required by state law unless a waiver is appropriately requested by a retail public utility. This will not burden, restrict, or limit an owner's right to property. Therefore, the adopted rulemaking does not constitute a taking under Texas Government Code, Chapter 2007.

PUBLIC COMMENT

One written comment from the Lone Star Chapter of the Sierra Club was received.

RESPONSE TO COMMENTS

Comment

The Lone Star Chapter of the Sierra Club expressed their agreement with the TWDB's basic approach concerning the amendments to Chapter 358. However, they stated that the amendments needed further specificity and should be complemented by TWDB guidance, with input from stakeholders and perhaps the Water Conservation Advisory Council, to assist retail public utilities applying for financial assistance, the general public, and TWDB staff in evaluating what constitutes a demonstration that a utility is satisfactorily addressing its water loss.

They also recommended the following language on items to be included by a utility in its request for waiver be added:

its water loss reduction targets, the timetable for meeting those targets, and the schedule for reporting to the board on the utility's progress in meeting those targets,

Response

As defined by 31 TAC §358.6(a)(7), mitigation includes action taken by the utility, not necessarily a volume of water. Information provided by the utility about its activities to mitigate its water loss could be considered its target. The information provided by a utility, as well as the anticipated completion date of the funded project, serve as a timetable for implementation. Finally, every utility with an active financial obligation with TWDB is required to submit a water loss audit annually. This information will be used by TWDB to track the utility's progress in mitigating its water loss. TWDB Conservation staff plans to prepare guidance to assist in evaluating whether a utility is satisfactorily addressing its water loss as part of the application for financial assistance process. No changes to the proposed rule were made in response to this comment.

STATUTORY AUTHORITY

The amendments are adopted under the authority of Texas Water Code §6.101, which provides the TWDB with the authority to adopt rules necessary to carry out the powers and duties in the Texas Water Code and other laws of the State, and also under the authority of Texas Water Code §16.0121, which authorizes the TWDB to waive the water loss mitigation requirements under specified conditions.

This rulemaking affects Texas Water Code, Chapter 16.

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

Filed with the Office of the Secretary of State on May 5, 2016.

TRD-201602197
Les Trobman
General Counsel
Texas Water Development Board
Effective date: May 25, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 463-7686

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER D. CLAIMS PROCESSING--PAYROLL

34 TAC §5.49

The Comptroller of Public Accounts adopts new §5.49, concerning longevity pay, without changes to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2131). The new section clarifies longevity pay provisions for state agencies and their employees.

Subsection (a) provides applicable definitions.

Subsection (b) sets forth the legal authority that governs longevity pay.

Subsection (c) requires state agencies to verify the amount of lifetime service credit that their current employees have accrued in previous employments.

Subsection (d) sets forth the process for establishing a state employee's "effective service date," which is used to determine the amount of the employee's lifetime service credit.

Subsections (e) - (l) address certain longevity pay issues that arise when a state employee works part of a workday; terminates employment after the first workday of the calendar month; returns to work as a state employee after retiring from state employment; retires under a public retirement system; receives hazardous duty pay; works for a state agency under a contract for less than 12 calendar months each year; and leaves a position that accrues lifetime service credit to serve in the military and is later reemployed with the state.

No comments were received regarding adoption of the new section.

The section is adopted under Government Code, §659.047, which requires the comptroller to adopt rules to administer longevity pay.

This section implements Government Code, Chapter 659, Subchapter D, regarding longevity pay.

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

Filed with the Office of the Secretary of State on May 5, 2016.

TRD-201602175
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: May 25, 2016
Proposal publication date: March 18, 2016
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 431. FIRE INVESTIGATION

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 431, Fire Investigation, Subchapter A, Minimum Standards for Arson Investigator Certification, concerning §431.9, Minimum Standards for Master Arson Investigator Certification, and Subchapter B, Minimum Standards for Fire Investigator Certification, concerning §431.209, Minimum Standards for Master Fire Investigator Certification. The amendments are adopted without changes to the proposed text as published in the February 26, 2016, *Texas Register* (41 TexReg 1365) and will not be republished.

The amendments are adopted to address current requirements only allowing criminal justice courses related to fire and arson investigation to be used to obtain Master level certification for both Arson and Fire Investigators.

The adopted amendments will allow all criminal justice courses to be used to satisfy the 18-semester hour requirement toward the Master levels of Fire or Arson Investigator certifications.

No comments were received from the public regarding adoption of the amendments.

SUBCHAPTER A. MINIMUM STANDARDS FOR ARSON INVESTIGATOR CERTIFICATION

37 TAC §431.9

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602131
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: May 23, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 936-3812

SUBCHAPTER B. MINIMUM STANDARDS FOR FIRE INVESTIGATOR CERTIFICATION

37 TAC §431.209

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

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

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3812

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CHAPTER 437. FEES

37 TAC §437.5

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, concerning §437.5, Renewal Fees. The amendments are adopted without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1366) and will not be republished.

The amendments are adopted to reduce the renewal fees for certification of fire protection personnel pursuant to a reduction in agency costs.

The adopted amendments will reduce the cost to cities for the annual renewal of their fire protection personnel.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set certain fees collected for each initial fire protection personnel certification issued and the annual renewal of those certifications.

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

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Tim Rutland
Executive Director
Texas Commission on Fire Protection
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For further information, please call: (512) 936-3812

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 44. CONSUMER MANAGED PERSONAL ATTENDANT SERVICES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§44.102, 44.202, and 44.301, in Chapter 44, Consumer Managed Personal Attendant Services. The amendments to §44.102 and §44.202 are adopted with changes to the proposed text published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 453). The amendment to §44.301 is adopted without changes to the proposed text. Section 44.301 will not be republished.

The adoption amends rules related to interest lists for consumer managed personal attendant services (CMPAS), which is provided under Title XX, Subtitle A of the Social Security Act. These amendments implement §531.0931 of the Texas Government Code, as added by Senate Bill 169, 84th Legislature, 2015, and make the rules consistent with other DADS rules.

The adopted rules describe how a person's name is added to a CMPAS interest list and how CMPAS interest lists are maintained. The adopted rules require DADS to keep the name of a military family member who resides out of state on an interest list while a military member is on active duty or for up to one year after a former military member's active duty ends. The adopted rules describe when an applicant's name may be reinstated on an interest list after being removed and how an interest list request date is assigned, including when DADS reinstates an applicant's name to the interest list with the original request date. The adopted rules also describe the notification the applicant receives from DADS regarding the reinstatement.

The adopted rules require a provider, if a person requests that the provider add an applicant's name to a CMPAS interest list, to request specified information about the applicant and send the information and the date and time of the person's request to DADS. The adopted rules, for clarity, add a reference to the requirements a provider must comply with after DADS refers an applicant to the provider. The adopted rules also clarify when a provider must begin providing services to an eligible individual. The adoption also updates terminology used in the subchapter.

DADS received written comments from the Coalition for Nurses in Advanced Practice and one individual. A summary of the comments and the responses follows.

Comment: A commenter suggested changes in §44.102(22) to the definition of "practitioner" to reflect changes in the title and licensing for advanced practice registered nurses (APRNs).

Response: The agency agrees and made the suggested changes in §44.102(22) to update the title and licensing for APRNs.

Comment: A commenter stated that according to §44.202, individuals who want to be placed on the CMPAS interest list must furnish the personally identifiable information (PII) listed in §44.202(c)(1) - (9). The commenter stated that an agency contracting with DADS and a managed care organization (MCO) to deliver authorized services to individuals will be put in a position of screening the individual for services and requesting PII the provider does not need to provide services. The commenter stated that many potential problems exist with the provision of this information to a provider agency and that putting a person on the interest list would require the person's signature to access and use the PII required to place the individual on an interest list and those inquiries are made by phone. The

commenter also stated that the process now requires an agency to refer the individual to the 2-1-1 Texas Program, citing 45 CFR §164.502(b) and §164.514(d).

Response: The provider requirements in §44.202(c) and (d) do not apply to an agency contracted with an MCO; do not require an agency to screen an applicant for services; do not require a signature from the applicant or person contacting the provider; and do not require the provider to refer the individual to the 2-1-1 Texas Program. To clarify the requirements in §44.202(c) for a provider to request information, the agency made changes to require the provider to follow DADS instructions in the CMPAS Provider Manual to request the applicant's information listed in (c)(1) - (9). The agency also made a change in §44.202(d)(1) to require the provider to send DADS information obtained in accordance with subsection (c) rather than (c)(1) - (9). The instructions in the CMPAS Provider Manual, revised effective February 1, 2016, require a provider to obtain only the information listed in §44.202(c)(1) - (3) for DADS to add an applicant's name to the interest list. Obtaining the information listed in §44.202(c)(4) - (9) will prevent duplicate records on the CMPAS interest list and avoid follow-up calls to obtain additional information.

SUBCHAPTER A. INTRODUCTION

40 TAC §44.102

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

§44.102. Definitions.

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

(1) §1915(c)--A section of the Social Security Act that allows states to establish, by waiver of certain Medicaid requirements, alternative community-based services for individuals who qualify for institutional services.

(2) Applicant--A Texas resident who requests services under the CMPAS Program.

(3) Assessor of need--A provider employee responsible for determining an applicant's or individual's need for CMPAS.

(4) Attendant--A person who provides direct care to an individual.

(5) Block grant option--One of three CMPAS Program service delivery and payment options. In the block grant option, the individual is the employer of record of an attendant and the provider is the employer of record of a substitute attendant.

(6) Consumer directed services (CDS) option--One of three CMPAS Program service delivery and payment options. In the CDS option, the individual is the employer of record of the attendant and substitute attendant.

(7) CMPAS Program--Consumer Managed Personal Attendant Services Program. A DADS program for personal attendant services in which individuals manage their attendant services to varying degrees.

(8) Contract--The written agreement between DADS and a provider to provide services to individuals eligible under this chapter in exchange for payment.

(9) Contract manager--A DADS employee who is responsible for the overall management of a contract.

(10) DADS--The Department of Aging and Disability Services.

(11) DADS region--A region of Texas designated by DADS in which the CMPAS Program is available.

(12) DADS regional designee--A DADS employee appointed by the DADS regional director of a DADS region.

(13) Day--A calendar day, including weekends and holidays.

(14) Family member--A person for whom an individual has a duty under state law to care for.

(15) Financial management services agency--An entity that contracts with DADS to provide financial management services, as defined in §41.103 of this title (relating to Definitions).

(16) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(17) Health-related task--An activity of daily living, a health maintenance task, or a nursing task, as described in 22 TAC Chapter 225.

(18) IDT--Interdisciplinary team. A designated group of persons that meets to discuss service delivery issues of an individual, as described in §44.502(a) of this chapter (relating to Convening an Interdisciplinary Team).

(19) Individual--A person enrolled in the CMPAS Program.

(20) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(21) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(22) Practitioner--A physician currently licensed in Texas, Louisiana, Arkansas, Oklahoma, or New Mexico; a physician assistant currently licensed in Texas; or an advanced practice registered nurse licensed by the Texas Board of Nursing.

(23) Practitioner's statement--The DADS Practitioner's Statement of Medical Need form (DADS Form 3052).

(24) Provider--A home and community support services agency that contracts with DADS to provide services under the CMPAS Program.

(25) Representative--A person designated by an individual, such as the individual's spouse, relative, or friend; or the individual's legal representative.

(26) Service plan--A document that lists the service tasks and states the hours of services agreed to by the individual and assessor of need.

(27) State mental health facility--A state hospital or a state center with an inpatient psychiatric component operated by the Texas Department of State Health Services.

(28) Substitute attendant--A person who, on a temporary basis and in place of an attendant, provides services to an individual.

(29) Traditional service option--One of three CMPAS Program service delivery and payment options. In the traditional service option, the provider is the employer of record of the attendant and substitute attendant.

(30) Working day--Any day except a Saturday, Sunday, or national or state holiday listed in Texas Government Code §662.003(a) or (b).

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

Filed with the Office of the Secretary of State on May 3, 2016.

TRD-201602113
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3501

SUBCHAPTER B. ELIGIBILITY AND SERVICE PLANS

40 TAC §44.202

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

§44.202. CMPAS Interest Lists.

(a) DADS maintains a CMPAS interest list for each DADS region. An interest list contains the names of applicants who are interested in receiving services through the CMPAS Program.

(b) A person may request that an applicant's name be added to a CMPAS interest list in a DADS region by contacting:

(1) a provider;

(2) a DADS regional office, or

(3) the 2-1-1 Texas Program.

(c) If a person contacts a provider, as described in subsection (b) of this section, the provider must follow DADS instructions in the CMPAS Provider Manual available at www.dads.state.tx.us, to request the applicant's:

(1) name;

(2) a physical address in Texas and a mailing address;

(3) birth date;

(4) phone number;

(5) social security number;

(6) current living arrangements;

(7) employment status;

(8) DADS individual number; and

(9) status regarding receipt of Supplemental Security Income.

(d) Within five working days after the contact described in subsection (b)(1) of this section, a provider must send to a DADS regional office:

(1) the applicant information obtained in accordance with subsection (c) of this section; and

(2) the date and time the person contacted the provider.

(e) DADS adds an applicant's name to a CMPAS interest list if:

(1) a request is made in accordance with subsection (b) of this section; or

(2) an applicant's name is on the interest list for a DADS region and the applicant or a representative notifies DADS that the applicant has moved to another DADS region and requests that the applicant's name be added to the interest list for the DADS region to which the applicant has moved.

(f) DADS adds an applicant's name to an interest list with an interest list request date as follows:

(1) for a request to add an applicant's name to the interest list made in accordance with subsection (b) of this section, the date of the request; or

(2) for a request to add an applicant's name to the interest list made in accordance with subsection (e)(2) of this section, the date of the original request made in accordance with subsection (b) of this section.

(g) DADS removes an applicant's name from a CMPAS interest list if:

(1) the applicant or representative requests that the applicant's name be removed from the interest list;

(2) the applicant moves out of Texas, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(3) the applicant or representative declines an offer of CMPAS Program services, unless the applicant is a military family member living outside of Texas:

(A) while the military member is on active duty; or

(B) for less than one year after the former military member's active duty ends;

(4) the applicant is a military family member living outside of Texas for more than one year after the former military member's active duty ends;

(5) the applicant is deceased; or

(6) DADS denies an applicant's eligibility for the CMPAS Program and the applicant has had an opportunity to exercise the applicant's right to request a fair hearing in accordance with §44.503 of this chapter (relating to Fair Hearing) and did not request a fair hearing, or requested a fair hearing and did not prevail.

(h) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(1) - (4) of this section and, within 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) reinstates the applicant's name to the interest list with an interest list request date described in subsection (f)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been reinstated to the interest list in accordance with paragraph (1) of this subsection.

(i) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(1) - (4) of this section and, more than 90 calendar days after the name was removed, DADS receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of:

(A) the date DADS receives the oral or written request; or

(B) because of extenuating circumstances as determined by DADS, the original request date described in subsection (f)(1) or (2) of this section; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

(j) If DADS removes an applicant's name from a CMPAS interest list in accordance with subsection (g)(6) of this section and DADS subsequently receives an oral or written request from a person to reinstate the applicant's name on the interest list, DADS:

(1) adds the applicant's name to the interest list with an interest list request date of the date DADS receives the oral or written request; and

(2) notifies the applicant in writing that the applicant's name has been added to the interest list in accordance with paragraph (1) of this subsection.

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

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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SUBCHAPTER C. SERVICE DELIVERY IN ALL CMPAS OPTIONS

40 TAC §44.301

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

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

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CHAPTER 48. COMMUNITY CARE FOR AGED AND DISABLED

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), new Subchapter B, Interest Lists, consisting of §§48.1301 - 48.1303, and §48.2702 in Subchapter F, In Home and Family Support Program; amendments to §48.2701, in Subchapter F, In Home and Family Support Program, §§48.2907, 48.2910, and 48.2915 in Subchapter H, Eligibility; and the repeal of Subchapter D, Pilot Project for Persons with AIDS, consisting of §§48.2301 - 48.2305; §48.2702 in Subchapter F, In-Home and Family Support Program; §48.2931 in Subchapter H, Eligibility; and Subchapter J, Community Based Alternatives (CBA) Program, consisting of §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084, 48.6085, 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108, 48.6109, 48.6110, 48.6112, 48.6114, in Chapter 48, Community Care for Aged and Disabled. New §48.1301 is adopted with changes to the proposed text published in the January 8, 2016, issue of the

Texas Register (41 TexReg 457). New §48.1302, §48.1303, and 48.2702; amendments to §48.2701, §48.2907, §48.2910, and §48.2915; and the repeal of §§48.2301 - 48.2305; §48.2702, 48.2931, 48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084, 48.6085, 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108, 48.6109, 48.6110, 48.6112, and 48.6114 are adopted without changes to the proposed text.

The purpose of the adoption, in part, is to describe how DADS maintains the interest lists in the DADS community care services and programs of adult foster care (AFC), day activity and health services (DAHS), emergency response services (ERS), family care (FC) services, the Home Delivered Meals (HDM) Program, the In-Home and Family Support Program (IH/FSP), the Residential Care (RC) Program, and the Special Services to Persons with Disabilities (SSPD) Program.

The adopted rules implement §531.0931, Texas Government Code, as added by Senate Bill 169, 84th Legislature, 2015, and align the rules with other DADS rules addressing interest lists. The adopted rules require DADS to keep the name of a military family member who resides out of state on an interest list while a military member is on active duty or for up to one year after a former military member's active duty ends. The adopted rules describe the conditions under which an applicant's name may be reinstated on an interest list after being removed and how an interest list request date is assigned, including when DADS reinstates an applicant's name to the interest list with the original request date. The adopted rules also describe the notification the applicant receives from DADS regarding the reinstatement.

The adopted rules update terminology and describe how DADS contacts an applicant to offer IH/FSP services, conducts the eligibility determination process, and provides notice regarding IH/FSP eligibility. A DADS case manager may conduct an initial interview by telephone to determine eligibility and more quickly complete an applicant's enrollment in the IH/FSP.

The adopted rules change the eligibility criteria for DADS Title XIX and XX DAHS to make them consistent with the criteria used by managed care organizations contracting with HHSC to provide DAHS in the Medicaid STAR PLUS waiver program.

The adoption also repeals rules governing a pilot program for persons with AIDS, respite care services, and the Community Based Alternatives (CBA) Program, two programs and a service that have been terminated.

Additional changes were made to update terminology and remove obsolete rules.

The repeal of Subchapter J deletes rules regarding the CBA Program. Conduct governed by Subchapter J that occurred before the effective date of its repeal is governed by the rules in effect on the date of the conduct and Subchapter J continues in effect for that purpose.

A change was made in §48.1301(8) to change "adult day care facility" to "day activity and health services facility." The change implements Senate Bill 1999, 84th Legislature, Regular Session, 2015, that amended the Texas Human Resources Code, Chapter 103, to rename these facilities.

DADS received written comments from the Adult Day Health Care Association of Texas and the Coalition for Nurses in Advanced Practice. A summary of the comments and the responses follows.

Comment: A commenter is concerned that the language stricken in §48.2915(4) could cause confusion regarding whether licensed nursing is a component of DAHS. The commenter stated the state plan clearly indicates that DAHS must be provided under the supervision of a nurse licensed by the state of Texas. The commenter asked that all of the language stricken in §48.2915(4) be added back into this rule.

Response: As described in §48.2915(4), a physician's orders for DAHS do not need to require nursing services for an applicant or client to be eligible for DADS Title XIX and XX DAHS. The Medicaid state plan does require the prescribed DAHS be provided under the supervision of a nurse licensed in the state of Texas, and a licensed DAHS facility is required in Title 40, Part 1, Texas Administrative Code, §98.62(a)(2), to have a facility nurse who must be a registered nurse or a licensed vocational nurse. In addition, a DAHS facility that contracts with DADS to provide DAHS is required in §98.206(1) to provide nursing services as required by an individual receiving services. The agency did not make a change in response to the comment.

Comment: A commenter stated that §48.2915(4) should be changed to allow for "practitioner's orders," instead of "physician's orders," because an advanced practice registered nurse who is an individual's primary care provider should be permitted to write and sign the individual's orders.

Response: The request to change "physician's order" to "practitioner's order" is outside the scope of these amendments. Making this change requires additional research and may be considered at a later time. No changes were made in response to the comment.

SUBCHAPTER B. INTEREST LISTS

40 TAC §§48.1301 - 48.1303

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

§48.1301. Definitions.

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

(1) AFC--Adult foster care. Services provided in a 24-hour living arrangement in an adult foster care home for persons who, because of physical, mental or emotional limitations, are unable to continue to function independently in their own homes.

(2) Applicant--A Texas resident interested in receiving a community care service or program.

(3) Case manager--A DADS employee who is responsible for case management activities.

(4) Community care service or program--Any of the following services and programs:

(A) AFC;

(B) DAHS;

(C) ERS;

(D) FC;

(E) the HDM Program;

(F) the IH/FSP;

(G) the RC Program; and

(H) the SSPD Program.

(5) Community care interest list--A list containing the names of applicants who are interested in receiving a community care service or program.

(6) DADS--The Department of Aging and Disability Services.

(7) DADS region--One of eleven regions of Texas that provide access to and support for DADS services.

(8) DAHS--Day activity and health services. Services described in Chapter 98, Subchapter H of this title (relating to Day Activity and Health Services (DAHS) Contractual Requirements) that are designed to meet the needs of an adult in a day activity and health services facility licensed in accordance with Texas Human Resources Code, Chapter 103.

(9) ERS--Emergency response services. Services described in Chapter 52 of this title (relating to Contracting to Provide Emergency Response Services) that provide electronic monitoring for functionally impaired adults who live alone or who are functionally isolated in the community.

(10) FC services--Family care services. In-home attendant services described in Chapter 47 of this title (relating to Contracting to Provide Primary Home Care Services) provided to adults.

(11) Former military member--A person who served in the United States Army, Navy, Air Force, Marine Corps, or Coast Guard:

(A) who declared and maintained Texas as the person's state of legal residence in the manner provided by the applicable military branch while on active duty; and

(B) who was killed in action or died while in service, or whose active duty otherwise ended.

(12) HDM Program--Home Delivered Meals Program. The program described in Chapter 55 of this title (relating to Contracting to Provide Home-Delivered Meals) in which a provider agency delivers meals to an individual.

(13) IH/FSP--In-Home and Family Support Program. The program described in Subchapter F of this chapter (relating to In-Home and Family Support Program) that provides direct grant benefits to an individual with physical disabilities who is four years of age or older and the individual's family to purchase disability-related services that help the individual remain living at home.

(14) Military member--A member of the United States military serving in the Army, Navy, Air Force, Marine Corps, or Coast Guard on active duty who has declared and maintains Texas as the member's state of legal residence in the manner provided by the applicable military branch.

(15) Military family member--A person who is the spouse or child (regardless of age) of:

(A) a military member; or

(B) a former military member.

(16) RC Program--Residential Care Program. A program that provides the services described in §46.41 of this title (relating to Required Services) in a licensed assisted living facility.

(17) Responsible party--A person who is:

(A) an applicant's parent or legal guardian; or

(B) anyone an adult applicant designates as the applicant's representative with regard to a matter described in this subchapter.

(18) SSPD Program--Special Services to Persons with Disabilities Program. The program described in Chapter 58 of this title (relating to Contracting to Provide Special Services to Persons with Disabilities) designed to assist a person:

(A) develop the skills needed to remain in the community, living as independently as possible; and

(B) achieve habilitative or re-habilitative goals.

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

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Lawrence Hornsby
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SUBCHAPTER D. PILOT PROJECT FOR PERSONS WITH AIDS

40 TAC §§48.2301 - 48.2305

The repeals are adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

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SUBCHAPTER F. IN-HOME AND FAMILY SUPPORT PROGRAM

40 TAC §48.2701, §48.2702

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

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40 TAC §48.2702

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

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SUBCHAPTER H. ELIGIBILITY

40 TAC §§48.2907, 48.2910, 48.2915

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

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

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40 TAC §48.2931

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

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

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SUBCHAPTER J. COMMUNITY BASED ALTERNATIVES (CBA) PROGRAM

40 TAC §§48.6001 - 48.6003, 48.6005 - 48.6011, 48.6015, 48.6020 - 48.6024, 48.6026, 48.6028, 48.6030 - 48.6032, 48.6040, 48.6050, 48.6052, 48.6054, 48.6056, 48.6058, 48.6060, 48.6062, 48.6066, 48.6068, 48.6070, 48.6072, 48.6074, 48.6076, 48.6078, 48.6080, 48.6082, 48.6084 - 48.6086, 48.6088, 48.6090, 48.6092, 48.6094, 48.6096, 48.6098, 48.6100, 48.6102, 48.6104, 48.6106, 48.6108 - 48.6110, 48.6112, 48.6114

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

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

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Lawrence Hornsby
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PART 15. TEXAS VETERANS COMMISSION

CHAPTER 461. VETERANS EDUCATION

SUBCHAPTER A. EXEMPTION PROGRAM FOR VETERANS AND THEIR DEPENDENTS (THE HAZLEWOOD ACT)

40 TAC §§461.20, 461.30, 461.40, 461.50, 461.60, 461.70, 461.80, 461.90, 461.100, 461.120, 461.130

The Texas Veterans Commission (Commission) adopts amendments to 40 TAC Chapter 461, Subchapter A, §461.20, concerning Definitions; §461.30, concerning Hazlewood Act Exemption; §461.40, concerning Veteran Eligibility; §461.50, concerning Spouse's Eligibility; §461.60, concerning Children's Eligibility, §461.70, concerning Hazlewood Legacy Act Eligibility; §461.80, concerning the Application; §461.90, concerning Supporting Documentation for the Hazelwood Act Exemption Application; §461.100, concerning Subsequent Hazlewood Exemption Award; and §461.120, concerning Reporting; and adopts new §461.130, concerning Records Retention by Institutions, without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1367). The amendments and new section will not be republished.

The rules are adopted following a comprehensive review of the rules and collaboration with the Texas Higher Education Coordinating Board, the Legislative Budget Board, university systems, independent universities, select community colleges and community college systems, and the Texas Coalition of Veterans Organizations. The amendments and new rule reflect the current practices regarding administration of the Hazlewood Act Exemption and provide clarification where needed.

No comments were received regarding the proposed amendments and new rule.

The amendments and new rules are adopted under Texas Government Code §434.010, which provides the Texas Veterans Commission with the authority to establish rules that it considers necessary for the effective administration of the agency; Texas Government Code §434.0079 relating to the Commission's duties regarding certain tuition and fee exemptions for veterans and family members; and Texas Education Code §54.341, authorizing the Commission to adopt rules for the administration of an exemption program for Texas veterans and their dependents at public institutions of higher education in the state (The Hazlewood Act).

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

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TRD-201602198
Rufus Coburn
Director, Veterans Education
Texas Veterans Commission
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PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES
SUBCHAPTER M. SUBSTITUTE-CARE SERVICES
DIVISION 2. NOTICE OF SIGNIFICANT EVENTS

40 TAC §§700.1351, 700.1353, 700.1355, 700.1357, 700.1359

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§700.1351, 700.1353, 700.1355, 700.1357, and 700.1359 without changes to the proposed text published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1372).

The justification for the new sections is to implement §264.018, Texas Family Code, and describe what should be considered a "significant event" for which notice must be provided by DFPS to a child's parent and other parties, including matters required by the statute, as well as some additional events agreed to by the negotiated rulemaking committee discussed below. The rules also describe the categories of individuals and entities who must receive notice of significant events under new Division 2, and the rules outline the time periods by which certain notices must be given when a significant event occurs in the life of a child in DFPS conservatorship.

Texas Family Code requirements regarding when and to whom DFPS must give notice when a significant event occurs in the life of a child in DFPS managing conservatorship were modified during the 84th Legislative Session in the Department's "Sunset" legislation, Senate Bill 206. The revised Texas Family Code, §264.018, *Required Notifications,* consolidates similar notification requirements in one section of the law and creates consistencies where former law left gaps. During the course of the 84th Session, the agency and multiple stakeholder groups came to consensus on some of the core concepts surrounding notification. However, to further refine specifics and time frames and to ensure that all stakeholder input was addressed, in §264.018(l) Texas Family Code, the Legislature directed HHSC to adopt rules necessary to implement the section using a negotiated rulemaking process under Chapter 2008, Government Code.

In October 2015, a convener contacted key stakeholders, obtained recommendations on additional committee participants, and sought input on the substance of the proposed rules. On October 30, 2015, DFPS conducted a negotiated rulemaking meeting in accordance with the law. Stakeholders representing parents, attorneys, Court Appointed Special Advocates (CASA), residential child-care providers, the judiciary, advocates, and others participated in the full-day meeting. With the assistance of a neutral, third-party facilitator, the negotiated rulemaking committee arrived at a consensus on proposed rule language regarding required notifications. The discussion was robust and overall feedback on the conduct of the meeting and the product resulting from the discussion was positive, with stakeholders indicating they thought the format was useful.

In addition to the rule provisions, there were several critical issues identified by the group, which would not necessarily be reflected in the rule but that DFPS agreed to continue work on. Some of those issues include: the need for a child in care to have more of an active role and voice in the child's case, and in particular in identification of which events are significant and who should receive notice thereof; the need to address issues with continuity of medical and mental health treatment for a child in foster care who changes placement, as well as the need for additional notification to the medical community of certain events in the life of a foster child; the need for revisiting issues raised during the 84th Session that pertain to a child's attendance at court hearings; and the importance of including many concepts in the practice and policy guidance that will inform the day-to-day work of DFPS caseworkers related to notice, such as how best to reach biological parents and ensure they receive the communication, the importance of notifying biological parents and others in the case of positive events in a foster child's life, and connecting a child who returns to foster care with key individuals such as the child's former attorney ad litem.

Additionally, after DFPS circulated a draft of proposed rules at the beginning of November 2015, some participants raised concerns about notice of "emergency behavior intervention" (EBI), suggesting that the threshold for triggered review set too high a bar. DFPS shares the commenters' view that restraints, seclusions and related interventions are critical issues, and that the associated notification requirements warrant further clarification. DFPS is thus undertaking an immediate review of Minimum Standards related to EBI.

A summary of the changes follows:

New §700.1351 establishes which laws govern the provision of significant events for a child in DFPS' managing conservatorship and clarifies that DFPS must continue to follow other law restricting the release of information, such as situations in which the agency determines the release of investigative information could endanger a child's safety or interfere with an ongoing criminal investigation.

New §700.1353 outlines the purpose and scope of the rule, and reiterates that other laws pertaining to the provision of notice remain in effect, and that the provisions seek to clarify only §264.018 of the Texas Family Code.

New §700.1355 describes what is a "significant event" for which notice must be provided to a child's parent and other parties. Significant events include all of the events listed in §264.018 of the Texas Family Code, with some additional clarifications and requirements agreed upon in the negotiated rulemaking meeting: (1) a placement change, including failure by DFPS to locate an appropriate placement for at least one night; (2) a significant change in medical condition, including mental or behavioral health conditions; (3) an initial prescription of a psychotropic medication or a change in dosage of a psychotropic medication, which includes titration or discontinuation of the medication; (4) significant events in school including a major change in performance, serious disciplinary event and any of the significant events for which the school district is required by the Texas Education Code to notify DFPS; and (5) additional important events, including: (a) a decision by the person authorized to provide medical consent on behalf of the child not to follow a medical recommendation, including ones related to medication; (b) an investigation into alleged abuse or neglect by Residential Child-Care Licensing or Child Protective Services, regardless of whether the subject child is alleged to have been the victim or perpetrator; (c) the use of emergency behavior intervention if DFPS receives notice about its use; and (d) the involvement of the child with law enforcement or juvenile justice.

New §700.1357 describes the categories of individuals who must receive notice of significant events under new Division 2. Categories include: (1) the child's parent; (2) an attorney ad litem appointed for the child; (3) a guardian ad litem appointed for the child; (4) a volunteer advocate appointed for the child; (5) the parent's attorney, if applicable; (6) the licensed administrator of the child-placing agency responsible for placing the child or the administrator's designee; (7) a foster parent, prospective adoptive parent, relative of the child providing care to the child, or director of the group home or general residential operation where the child is residing; and (8) any other person determined by a court to have an interest in the child's welfare.

New §700.1359 outlines the time periods by which certain notices must be given when a significant event occurs in the life of a child in DFPS conservatorship.

The new sections will function so that parents, caregivers, attorneys and other individuals involved in a child welfare case will be notified when a significant event occurs in the life of a child in DFPS conservatorship, allowing the interested individual(s) to remain engaged in the life of the child and to take action, if appropriate, in relation to the event.

There was a DFPS Council meeting held on February 4, 2016, at which the rule changes were presented. DFPS received one written comment and three oral comments. In addition, one of the DFPS Advisory Council members remarked that rule §700.1355(a)(5)(A) was overly broad as drafted, as it required the caseworker to provide notice of any deviation from a medical recommendation, rather than deviation from a major medical recommendation. DFPS thinks the Council member's point is well made, but intends to address the substance in policy and practice. The negotiating parties and entities discussed this issue and agreed that broad language was appropriate for the rule, but that some of the specifics should be addressed in policy and practice guidance. A summary of the formal comments and DFPS's responses follows:

The comments received were about the rules generally.

Comment: The first commenter testified in person and submitted formal public comment in writing on behalf of the Citizens Commission on Human Rights-Texas. The commenter indicated that while the negotiated rulemaking process and resulting rules were positive overall, there is work remaining to be done in the arena of Emergency Behavior Intervention (EBI), including restraints. The commenter felt that the negotiated rulemaking process revealed how little all in the community know regarding restraints, and indicated that restraints are some of the most dangerous procedures that can happen in a mental health setting. The commenter described EBI as the use of force on children, and stated that the threshold for a review by the child's treatment team is too low. Further, the commenter expressed alarm that even if a review of the use of EBI is triggered, DFPS' interpretation of existing rules is that there is no set deadline for DFPS to receive notice of the triggered review. The commenter disagrees with DFPS' interpretation and urges further investigation. The commenter thinks that the current review of Minimum Standards could afford an opportunity for the regulations to be clarified so that DFPS receives notice of triggered reviews. Finally, the commenter opined that 48 hours would be a better time frame for notifying parents, in this case, DFPS.

DFPS response: No change to the rules. However, DFPS is undertaking an immediate review of the standards governing EBI to make any necessary changes to ensure EBI use is limited and appropriate and that adequate notice is given to parents and others.

Comment: The second commenter testified in the council meeting on behalf of the Parent Guidance Center. The commenter stated that the legislature has historically treated EBI as a parents' rights issue. Per the commenter, it is critical that DFPS as the parent gets notice, and the commenter was horrified DFPS would not be notified. The commenter opined that if a parent engaged in a restraint it would be abuse or neglect, but that if the incident occurs in a facility it is not treated as such. The commenter felt it is also important that CASAs, attorneys, and others in the case receive notice, in addition to DFPS. Finally, the commenter noted that DFPS can clarify in policy the broad language in rule, including language about not following a medical recommendation.

DFPS response: No change to the rules. However, DFPS is undertaking an immediate review of the standards governing EBI to make any necessary changes to ensure EBI use is limited and appropriate and that adequate notice is given to parents and others. In addition, DFPS agrees with the premise that DFPS can utilize policy to clarify broad rule language.

Comment: The commenter spoke on behalf of the National Association of Social Workers-Texas chapter. The commenter had participated in the negotiated rulemaking process and valued it overall. However, the commenter expressed concern that there needs to be more empowerment for the child and the child's voice. Per the commenter, a child or youth needs to be able to decide what a significant event is, consistent with the principle of "nothing about me, without me." Finally, the commenter indicated that increased empowerment for children and youth strengthens the system overall.

DFPS response: No change to the rules. However, DFPS is undertaking an immediate review of the standards governing EBI to make any necessary changes to ensure EBI use is limited and appropriate and that adequate notice is given to parents and others.

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement Texas Family Code §264.018.

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602248
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2016
Proposal publication date: February 26, 2016
For further information, please call: (512) 438-3854

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR OPERATIONS THAT PROVIDE TRAFFICKING VICTIM SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.4551, 748.4759, and 748.4763 without changes to the proposed text published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1665).

The justification of the amendments is to implement House Bill (HB) 418 that was passed by the 84th Texas Legislature in 2015.

This bill created Human Resources Code (HRC) §42.0531, which allows a commissioners court of a county or a governing body of a municipality to contract with a child-placing agency (CPA) that is licensed by Child Care Licensing (CCL) to verify a "secure" foster home that provides trafficking victim services. Although CCL does not use the term "secure" foster home, CCL already has in place rules with additional requirements for CPAs and the foster homes that provide trafficking victim services. While the current requirements cover many of the requirements set forth in this new statute, the statute includes a few additional mandates for foster homes that provide trafficking victim services. These amendments will make the current CPA/foster home rules consistent with the "secure" foster homes as mandated by HRC §42.0531.

In addition, even though HB 418 only applies to CPA foster homes that provide trafficking victim services, CCL is also amending the General Residential Operation (GRO) rules related to operations that provide trafficking victim services to be consistent with the similar CPA rules. HRC §42.042(g-2) requires the Executive Commissioner to adopt standards that address the needs of trafficking victims at GROs. These proposed changes to Chapter 748 are consistent with that mandate.

The amendment to §748.4551 makes the rule consistent with CPA rules related to trafficking victim services, and requires an operation to develop policies that address how an operation will: (1) provide life skills training for children over 14 years old; (2) tailor education to the child's needs; and (3) provide mentoring services.

The amendment to §748.4759 changes the word "therapy" to "counseling" to be consistent with the rest of the chapter. More substantively, the amendment makes the rule consistent with the CPA rules related to trafficking victim services, and requires: (1) that the individual counseling that must be provided to children must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; and (2) family counseling, as appropriate.

The amendment to §748.4763 makes the rule consistent with the CPA rules related to trafficking victim services, and requires that a child's initial service plan include updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it.

The amendments will function so that the quality of care for trafficking victims will be improved by strengthening minimum standards related to GROs when trafficking victim services are provided to a base number of children.

No comments were received regarding the adoption of the sections.

DIVISION 2. POLICIES AND PROCEDURES

40 TAC §748.4551

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.0531, which was added by HB 418, and HRC §42.042(g-2).

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602245
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 438-5559

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DIVISION 6. ADMISSION AND SERVICE PLANNING

40 TAC §748.4759, §748.4763

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the HRC §42.0531, which was added by HB 418, and HRC §42.042(g-2).

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602246

Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 438-5559

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

SUBCHAPTER V. ADDITIONAL REQUIREMENTS FOR CHILD-PLACING AGENCIES THAT PROVIDE TRAFFICKING VICTIM SERVICES

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.4051, 749.4259, and 749.4263 without changes to the proposed text published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1668).

The justification of the amendments is to implement House Bill (HB) 418 that was passed by the 84th Texas Legislature in 2015.

This bill created Human Resources Code (HRC) §42.0531, which allows a commissioners court of a county or a governing body of a municipality to contract with a child-placing agency (CPA) that is licensed by Child Care Licensing (CCL) to verify a "secure" foster home that provides trafficking victim services. Although CCL does not use the term "secure" foster home, CCL already has in place rules with additional requirements for CPAs and the foster homes that provide trafficking victim services. While the current requirements cover many of the requirements set forth in this new statute, the statute includes a few additional mandates for foster homes that provide trafficking victim services. These amendments will make the current CPA/foster home rules consistent with the "secure" foster homes as mandated by HRC §42.0531.

The amendment to §749.4051 requires a CPA that provides trafficking victim services to develop policies that address how a foster home will: (1) provide life skills training for children over 14 years old; (2) tailor education to the child's needs; and (3) provide mentoring services.

The amendment to §749.4259 changes the word "therapy" to "counseling" to be consistent with the rest of the chapter. More substantively, the amendment requires: (1) that individual counseling provided to children must address any issues noted in the behavioral health assessment and whether intervention and additional treatment is needed for sexual assault; and (2) family counseling, as appropriate.

The amendment to §749.4263 requires that a child's initial service plan must include updated plans for behavioral health treatment, including intervention and treatment services for sexual assault, for children who require it.

The amendments will function so that the quality of care for trafficking victims will be improved by strengthening minimum standards related to CPAs when trafficking victim services are provided to a base number of children.

No comments were received regarding the adoption of the sections.

DIVISION 2. POLICIES AND PROCEDURES

40 TAC §749.4051

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements the HRC §42.0531, which was added by HB 418.

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602242
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 438-5559

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DIVISION 5. ADMISSION AND SERVICE PLANNING

40 TAC §749.4259, §749.4263

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments implement the HRC §42.0531, which was added by HB 418.

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

Filed with the Office of the Secretary of State on May 9, 2016.

TRD-201602243
Trevor Woodruff
General Counsel
Department of Family and Protective Services
Effective date: June 1, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 438-5559

Julianne Faccone
Kindergarten

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Historical Commission

Title 13, Part 2

The Texas Historical Commission files this notice of intent to review and re-adopt 13 TAC Chapter 19, Texas Main Street Program, in accordance with Texas Government Code, §2001.039. The agency's reason for adopting this chapter continues to exist. In a separate, concurrent rulemaking, the Commission proposes some non-substantive amendments to various rules in Chapter 19.

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.* Comments as to whether the reasons for re-adopting these rules continue to exist may be submitted to Brad Patterson, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711; or by electronic mail to *brad.patterson@thc.state.tx.us.*

For further information, call Brad Patterson at (512) 936-2315.

TRD-201602158
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: May 4, 2016

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The Texas Historical Commission files this notice of intent to review and re-adopt 13 TAC Chapter 21, History Programs, in accordance with Texas Government Code, §2001.039. The agency's reason for adopting this chapter continues to exist.

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.* Comments as to whether the reasons for re-adopting these rules continue to exist may be submitted to Brad Patterson, Texas Historical Commission, P.O. Box 12276, Austin, Texas 78711; or by electronic mail to *brad.patterson@thc.state.tx.us.*

For further information, call Brad Patterson at (512) 936-2315.

TRD-201602159
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: May 4, 2016

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The Texas Historical Commission files this notice of intent to review and re-adopt Chapter 24 in accordance with Texas Government Code, §2001.039. The agency's reason for adopting this chapter continues to exist. In a separate, concurrent rulemaking, the Commission proposes non-substantive amendments to Chapter 24.

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.* Comments on the proposal may be submitted to Pat Mercado-Allinger, THC, P.O. Box 12276, Austin, Texas 78711; or by electronic mail to pat.mercado-allinger@thc.state.tx.us. For further information, please contact Pat Mercado-Allinger at (512) 463-8882.

TRD-201602153
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: May 4, 2016

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The Texas Historical Commission files this notice of intent to review and re-adopt Chapter 28 in accordance with Texas Government Code, §2001.039. The agency's reason for adopting this chapter continues to exist. In a separate, concurrent rulemaking, the Commission proposes non-substantive amendments to Chapter 28.

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.* Comments on the proposal may be submitted to Pat Mercado-Allinger, THC, P.O. Box 12276, Austin, Texas 78711; or by electronic mail to pat.mercado-allinger@thc.state.tx.us. For further information, please contact Pat Mercado-Allinger at (512) 463-8882.

TRD-201602154
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: May 4, 2016

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The Texas Historical Commission files this notice of intent to review and re-adopt Chapter 29 in accordance with Texas Government Code, §2001.039. The agency's reason for adopting this chapter continues to exist. In a separate, concurrent rulemaking, the Commission proposes non-substantive amendments to Chapter 29.

The Commission will accept written comments received on or before 5:00 p.m. central time on the 31st day after the date this notice is published in the *Texas Register.* Comments on the proposal may be submitted to Pat Mercado-Allinger, THC, P.O. Box 12276, Austin, Texas

78711; or by electronic mail to pat.mercado-allinger@thc.state.tx.us. For further information, please contact Pat Mercado-Allinger at (512) 463-8882.

TRD-201602156
Mark Wolfe
Executive Director
Texas Historical Commission
Filed: May 4, 2016

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TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 40 TAC §745.505(a)

Type and Amount of Fee	When the Fee is Due	Consequences for Failure to Pay Fee on Time
(1) Application/request processing fee: $20	Before we accept your application/request for a listing	We will return your application/request as incomplete.
(2) Annual listing fee: $20	On the anniversary date of your listing	If you do not pay your fee when it is due, your listing is automatically suspended until you pay your fee. If you do not pay your fee within six months of when your suspension begins, your license is automatically revoked.
(3) Background Check fee: $2 per person	At the time you request a background check or on a monthly or quarterly basis	We may suspend or revoke your listing.

Figure: 40 TAC §745.616(c)

Persons Requiring a Fingerprint-Based Check:	When the Request for a Fingerprint-Based Check is Due:
(1) Persons whose initial or last name-based background check renewal was run (or was due to be run) between September 1, 2014 and August 31, 2015	At the time the person's name-based background check is due for renewal.
(2) Persons whose initial or last name-based background check renewal was run (or was due to be run) between September 1, 2015 and August 31, 2016	If your last name begins with: (A) A through F, December 1, 2016; (B) G through L, March 1, 2017; (C) M through R, June 1, 2017; and (D) S through Z, August 1, 2017.
(3) Any person who will be turning 14 years of age and: • Is counted in the child/caregiver ratio; • Has unsupervised access to children in care; or • Resides at the home	Within 90 days before or after the child's 14th birthday.
(4) Anyone for whom: • You have requested a risk evaluation; and • A risk evaluation is pending	Before the risk evaluation decision may be issued.

Figure: 40 TAC §747.1107(a)

Education	Experience
(A) A bachelor's degree with 12 college credit hours in child development and three college credit hours in business management,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(B) An associate's of applied science degree in child development or a closely related field with six college credit hours in child development and three college credit hours in business management. A "closely related field" is any educational instruction pertaining to the growth, development, physical or mental care, or education of children ages birth through 13 years,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(C) Sixty college credit hours with six college credit hours in child development and three college credit hours in business management,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(D) A Child Development Associate credential or Certified Child-Care Professional credential with three college credit hours in business management,	and at least one year of experience in a licensed child-care center or licensed or registered child-care home;
(E) A child-care administrator's certificate from a community college with at least 15 college credit hours in child development and three college credit hours in business management,	and at least two years of experience in a licensed child-care center or licensed or registered child-care home;
(F) A day-care administrator's credential issued by a professional organization or an educational institution and approved by Licensing based on criteria specified in Subchapter P of Chapter 745 of this title (relating to Day-Care Administrator's Credential Program),	and at least two years of experience in a licensed child-care center or licensed or registered child-care home; or
(G) Seventy-two clock hours of training in child development and 30 clock hours in business management,	and at least three years of experience in a licensed child-care center or licensed or registered child-care home.

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Notice of Contract Award

RFP No. 302-16-LBC001

Pursuant to Texas Government Code, Chapter 2254, Subchapter B, the Office of the Attorney General (OAG) has awarded OAG Contract #1666676-00 for RFP No. 302-16-LBC001, Indirect Cost Allocation Plan and Legal Billing Rates Consultant services which has been posted on the following Electronic State Business Daily (ESBD) website:

http://esbd.cpa.state.tx.us/award_show.cfm?proc_id=302-16-LBC001%20&ag_num=302

Pursuant to Texas Government Code §2254.030, the following information is hereby provided:

Contract #1666676-00 was awarded to MGT of America, Inc. in the amount of $80,000.00 for the period of April 21, 2016 through August 31, 2017. The Consultant will prepare an Indirect Cost Allocation Plan based upon actual expenditures as presented in the OAG's Annual Financial Report (AFR) for FY 2015 and resulting in federally approved fixed FY 2017 Indirect Cost Allocation Rates. Consultant will prepare an Indirect Cost Allocation Plan based upon actual expenditures as presented in the OAG's Annual Financial Report (AFR) for FY 2016 and resulting in federally approved fixed FY 2018 Indirect Cost Allocation Rates. Consultant will prepare FY 2017 billing rates for legal services and reconcile FY 2015 legal billing rates with actual costs of legal services. Consultant will prepare FY 2018 billing rates for legal services and reconcile FY 2016 legal billing rates with actual costs of legal services. The FY 2017 and the FY 2018 billing rates for legal services will be used to directly bill state agencies and other users of the legal services of the OAG.

The schedule for performance of services and deliverables by the contractor is as follows:

Deliverable	Completion Date
Providing a draft ICRP to the OAG for review and comment	June 17, 2016
Providing a final JCRP to the OAG	July 15, 2016
Submitting the ICRP to DHHS for negotiation and approval	July 15, 2016
Negotiating approval or the ICAP and FY 2017 indirect cost rates with the DHHS	August 31, 2016 (or as quickly thereafter as DHHS schedule allows.)
Providing support on indirect cost recovery	through August 31, 2017 or the term of the contract, whichever is longer.
Providing the OAG with draft legal services billing rate schedules based on FY 2015 actual costs and FY 2017 budgeted costs	July 15, 2016
Providing a final, formalized legal services rate schedule with billing rates for use in billing agencies for services during FY 2017 to the OAG.	August 31, 2016
Providing support to the OAG and other state agencies on the methodology and the application of billing rates	through August 31, 2017 or the term of the contract, whichever is longer.
Providing a draft JCRP to the OAG for review and comment	To Be Determined
Providing a final ICRP to the OAG	To Be Determined
Submitting the ICRP to DHHS for negotiation and approval	To Be Determined
Negotiating approval of the ICAP and FY 2018 indirect cost rates with the OHHS	August 31, 2017 (or as quickly thereafter as DHHS' schedule allows.)
Providing support on indirect cost recovery	through August 31, 2018 or the term of the contract, whichever is longer.
Providing the OAG with draft legal services billing rate schedules based on FY 2016 actual costs and FY 2018 budgeted costs	To Be Determined
Providing a final, formalized legal services rate schedule with billing rates for use in billing agencies for services during FY 2018 to the OAG	August 31, 2017
Providing support to the OAG and other state agencies on the methodology and the application of billing rates/	through August 31, 2018 or the term of the contract, whichever is longer.

TRD-201602307
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: May 11, 2016

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - April 2016

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required by Tax Code, §202.058, that the average taxable price of crude oil for reporting period April 2016 is $24.13 per barrel for the three-month period beginning on January 1, 2016, and ending March 31, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the

month of April 2016, from a qualified low-producing oil lease, is eligible for a 50% credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period April 2016 is $1.14 per mcf for the three-month period beginning on January 1, 2016, and ending March 31, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of April 2016, from a qualified low-producing well, is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of April 2016 is $41.12 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of April 2016, from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of April 2016 is $2.01 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of April 2016, from a qualified low-producing gas well.

Inquiries should be submitted to Teresa G. Bostick, Director, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201602293
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Filed: May 10, 2016

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Notice of Amendment

Pursuant to Chapter 403 and Chapter 2254, Subchapter B, Texas Government Code, and Chapter 54, Texas Education Code, the Texas Comptroller of Public Accounts ("Comptroller"), on behalf of the Texas Prepaid Higher Education Tuition Board ("Board"), announces this notice of amendment of an existing major consulting services contract with Aon Hewitt Investment Consulting, Inc., formerly known as Hewitt Ennis Knupp, Inc., located at 10 South Riverside Drive, Suite 1600, Chicago, Illinois 60606.

The contract was awarded under Request for Proposals No. 203a, published in the January 13, 2012, issue of *Texas Register* (37 TexReg 132), for the provision of consulting and technical advice and assistance to the Comptroller and the Board in the ongoing administration of the Texas Guaranteed Tuition Plan, the Texas Tuition Promise Fund®, the Texas College Savings Plan®, and the LoanStar 529 Plan®. The term of the contract is September 1, 2012 through August 31, 2016. The amendment adds consulting services related to the Texas Achieving a Better Life Experience ("ABLE") Program and adds $12,500.00 to the total amount of the contract for a new total maximum amount of $312,500.00 per annum.

TRD-201602173
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 5, 2016

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Notice of Contract Award

The Texas Comptroller of Public Accounts announces this notice of award for public finance legal counsel services under Request for Proposals No. 213b ("RFP"). The RFP was published in the October 30, 2016, issue of the *Texas Register* (40 TexReg 7712).

Three (3) contracts were awarded to the following:

1. Andrews Kurth LLP, 111 Congress Avenue, Suite 1700, Austin, Texas 78701. The total amount of the contract is not to exceed $25,000.00. The term of the contract is March 9, 2016 through March 31, 2017, with option to renew for one (1) additional one-year period.

2. Locke Lord LLP, 2200 Ross Avenue, Suite 2800, Dallas, Texas 75201. The total amount of the contract is not to exceed $25,000.00. The term of the contract is March 23, 2016 through March 31, 2017, with option to renew for one (1) additional one-year period.

3. Norton Rose Fulbright US LLP, 1301 McKinney, Suite 5100, Houston, Texas 77010. The total amount of the contract is not to exceed $25,000.00. The term of the contract is April 22, 2016 through March 31, 2017, with option to renew for one (1) additional one-year period.

TRD-201602174
Jason C. Frizzell
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: May 5, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/16/16 - 05/22/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 05/16/16 - 05/22/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201602298
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: May 10, 2016

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Wa-

ter Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is June 20, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on June 20, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: City of Baird; DOCKET NUMBER: 2016-0258-PWS-E; IDENTIFIER: RN101387462; LOCATION: Baird, Callahan County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(2) and (6) and §290.111(h)(2)(B) and (9), by failing to submit a Surface Water Monthly Operating Report with the required turbidity and disinfectant residual data to the executive director (ED) by the tenth day of the month following the end of the reporting period for October and November 2015; and 30 TAC §290.117(c)(2)(B), (h), and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites, have the samples analyzed, and report the results to the ED for the 2015 monitoring period; PENALTY: $690; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(2) COMPANY: City of Houston; DOCKET NUMBER: 2016-0205-AIR-E; IDENTIFIER: RN100217603; LOCATION: Houston, Harris County; TYPE OF FACILITY: municipal waste water treatment plant; RULES VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1586, General Terms and Conditions, by failing to submit a permit compliance certification within 30 days after the end of the certification period; 30 TAC §§106.454(1), 115.412(1)(C), and 122.143(4), THSC, §382.085(b), and FOP Number O1586, Special Terms and Conditions Number 8, by failing to post a permanent label summarizing the operating requirements for the degreaser located in the maintenance building; PENALTY: $8,888; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: City of Katy; DOCKET NUMBER: 2015-1786-WQ-E; IDENTIFIER: RN105475503; LOCATION: Katy, Fort Bend, Harris and Waller Counties; TYPE OF FACILITY: small municipal separate storm sewer system; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollution Discharge Elimination System General Permit Number TXR040009, Part IV.B.2, by failing to submit a concise annual report to the executive director within 90 days of the end of the reporting year; PENALTY: $813; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Krum; DOCKET NUMBER: 2016-0014-WQ-E; IDENTIFIER: RN105484729; LOCATION: Krum, Denton County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §305.125(1), 40 Code of Federal Regulations (CFR) §122.34(g)(3), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXR040061, Part IV.B.2., by failing to submit a concise annual report to the executive director by March 31, 2015; and 30 TAC §305.125(1), 40 CFR §122.34(g)(3), and TPDES General Permit Number TXR040061, Part II.E.5., by failing to submit a Notice of Change for the revisions to the established timetable for the Best Management Practices identified in the Stormwater Management Program; PENALTY: $2,500; ENFORCEMENT COORDINATOR: James Boyle, (512) 239-2527; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Parker; DOCKET NUMBER: 2015-1815-WQ-E; IDENTIFIER: RN105474654; LOCATION: Parker, Collin County; TYPE OF FACILITY: small municipal separate storm sewer system; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations (CFR) §122.26(a)(9)(i)(A), by failing to maintain authorization to discharge stormwater associated with Texas Pollutant Discharge Elimination System (TPDES) General Permit for small municipal separate storm sewer systems; 30 TAC §281.25(b)(5), 40 CFR §122.34(g)(3), and TPDES General Permit Number TXR040580 Part IV, Section B.2., by failing to submit a concise annual report to the executive director (ED) within 90 days of the end of the reporting year; and TPDES General Permit Number TXR040580 Part II, Section E.5. Notice of Change (NOC), by failing to submit a NOC to the ED within 30 days from the time the permittee becomes aware of any change; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(6) COMPANY: City of Pearland; DOCKET NUMBER: 2015-0915-MWD-E; IDENTIFIER: RN101613446; LOCATION: Pearland, Brazoria County; TYPE OF FACILITY: wastewater treatment facility; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010134002, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $10,500; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: City of Poteet; DOCKET NUMBER: 2016-0103-MWD-E; IDENTIFIER: RN102078417; LOCATION: Poteet, Atascosa County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0013630001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment and disposal; 30 TAC §305.125(1) and TPDES Permit Number WQ0013630001, Monitoring and Reporting Requirements Number 7.c, by failing to submit written notification to the San Antonio Regional Office and the Enforcement Division within five working days of becoming aware of an effluent violation which deviates from the permitted effluent limitation by more than 40; 30 TAC §305.125(1) and §319.9(c) and TPDES Permit Number

WQ0013630001, Effluent Limitations and Monitoring Requirements Number 1, by failing to properly collect effluent samples; TWC, §26.121(a)(1), 30 TAC §305.125(1) and (4), and TPDES Permit Number WQ0013630001, Permit Conditions Number 2.g, by failing to prevent the unauthorized discharge of wastewater into or adjacent to any water in the state; and 30 TAC §305.125(1) and TPDES Permit Number WQ0013630001, Monitoring and Reporting Requirements Number 7.b.i, by failing to submit written notification to the San Antonio Regional Office and the Enforcement Division within five working days of becoming aware of an unauthorized discharge; PENALTY: $10,063; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(8) COMPANY: Dustin Martinez dba Martinez Ranch Subdivision; DOCKET NUMBER: 2015-1480-MLM-E; IDENTIFIER: RN106539547; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(j), by failing to provide a completed customer service inspection certificate prior to providing continuous water service to new construction, or to any existing service either when the water purveyor has reason to believe that cross-connections or other potential contaminant hazards exist; 30 TAC §290.42(l), by failing to provide a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), and (B)(iii), by failing to maintain water works operation and maintenance records and make them available for review by the executive director; 30 TAC §290.46(s)(2)(C)(i), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days using chlorine solutions of known concentrations; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(m)(1)(A), by failing to conduct an annual inspection of the facility's ground storage tank; 30 TAC §290.45(b)(1)(C)(iv) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; 30 TAC §290.45(b)(1)(C)(ii) and THSC, §341.0315(c), by failing to provide a total storage capacity of 200 gallons per connection; 30 TAC §290.46(e)(4)(A) and THSC, §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a Class D or higher license; 30 TAC §290.46(d)(2)(A) and §290.110(b)(2) and (4) and THSC, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine in the water entering the distribution system and throughout the distribution system at all times; and 30 TAC §288.20(a) and §288.30(5)(B) and TWC, §11.1272(c), by failing to adopt a Drought Contingency Plan which includes all elements for municipal use by a retail public water supplier; PENALTY: $1,360; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(9) COMPANY: Harris County Fresh Water Supply District Number 61; DOCKET NUMBER: 2016-0053-MWD-E; IDENTIFIER: RN102183530; LOCATION: Houston, Harris County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0010876002, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $34,125; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: HEART O' TEXAS COUNCIL OF THE BOY SCOUTS OF AMERICA; DOCKET NUMBER: 2016-0257-PWS-E; IDENTIFIER: RN101285245; LOCATION: Runaway Bay, Wise County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.122(c)(2)(A) and (f), by failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to submit Surface Water Monthly Operating Reports for the months of August 2014 - May 2015; PENALTY: $725; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(11) COMPANY: LAMESA ENTERPRISES, INCORPORATED; DOCKET NUMBER: 2016-0023-PWS-E; IDENTIFIER: RN104580758; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $660; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: Llano West Mobile Home Park and Golf Course, Limited; DOCKET NUMBER: 2016-0171-PWS-E; IDENTIFIER: RN102692456; LOCATION: Mercedes, Hidalgo County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $172; ENFORCEMENT COORDINATOR: Ryan Byer, (512) 239-2571; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(13) COMPANY: Lucite International, Incorporated; DOCKET NUMBER: 2016-0270-AIR-E; IDENTIFIER: RN102736089; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: chemical manufacturing plant; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Federal Operating Permit Number O1959, Special Terms and Conditions Number 14, New Source Review Permit Numbers 19005 and PSDTX753, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions; PENALTY: $6,563; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: MF and JR Investments, LLC; DOCKET NUMBER: 2016-0254-PWS-E; IDENTIFIER: RN108806217; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; 30 TAC §290.39(m), by failing to provide written notification of the startup of a new PWS system; 30 TAC §290.39(e)(1) and (h)(1) and THSC, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new PWS; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing the facility's three public drinking water wells into service; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; PENALTY: $518; ENFORCEMENT

COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(15) COMPANY: One Stop Restoration LLC dba Iron Horse Ranch Yorktown Lodge; DOCKET NUMBER: 2016-0060-PWS-E; IDENTIFIER: RN106507957; LOCATION: Yorktown, DeWitt County; TYPE OF FACILITY: public water supply (PWS); RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; and 30 TAC §290.39(e)(1), (h)(1), and (m) and THSC, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new PWS and failed to provide written notification of the startup of a new PWS system; PENALTY: $500; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(16) COMPANY: Owens Corning Roofing and Asphalt, LLC; DOCKET NUMBER: 2015-0742-AIR-E; IDENTIFIER: RN100225291; LOCATION: Irving, Dallas County; TYPE OF FACILITY: shingle and roofing material manufacturer; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c), New Source Review Permit Number 81011, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emissions rate of 0.04 pound per hour of particulate matter from the Lam Line Regenerative Thermal Oxidizer Stack, Emissions Point Number 325, for the time period of November 19, 2013 - December 31, 2013; PENALTY: $3,000; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: Patrick Mireles, Arnold Mireles, and Total Commitment Construction Company, LLC; DOCKET NUMBER: 2016-0365-MSW-E; IDENTIFIER: RN108955626; LOCATION: Falfurrias, Brooks County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) site; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: $1,875; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(18) COMPANY: Pedro A. Noboa; DOCKET NUMBER: 2016-0118-LII-E; IDENTIFIER: RN105089411; LOCATION: Katy, Fort Bend County and Victoria, Victoria County; TYPE OF FACILITY: landscaping business; RULES VIOLATED: 30 TAC §344.63(1)-(2), and (4), by failing to comply with the requirements for a completed installation of an irrigation system; 30 TAC §344.52(c), by failing to ensure backflow prevention devices are tested prior to being put into service; and 30 TAC §344.38, by failing to make all records of landscape irrigation services available within 10 business days of request; PENALTY: $3,440; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: PEVETO COMPANIES, LIMITED; DOCKET NUMBER: 2016-0278-EAQ-E; IDENTIFIER: RN109030825; LOCATION: Cedar Park, Williamson County; TYPE OF FACILITY: auto repair facility; RULES VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a Contributing Zone Plan prior to commencing a regulated activity over the Edwards Aquifer; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Claudia Corrales, (512) 239-4935; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(20) COMPANY: Phillips 66 Company; DOCKET NUMBER: 2016-0090-AIR-E; IDENTIFIER: RN100229319; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas liquids fractionation plant; RULES VIOLATED: 30 TAC §116.115(c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O831, Special Terms and Conditions (STC) Number 8, and New Source Review (NSR) Permit Number 21593, Special Conditions (SC) Number 8.B., by failing to comply with the nitrogen oxide (NOx) and carbon monoxide (CO) emissions limits of 0.01 pound per million British thermal units (lb/MMBtu) and 0.08 lb/MMBtu, respectively, on an hourly average; and 30 TAC §116.115(c) and §122.143(4), THSC, §382.085(b), FOP Number O831, STC Number 8, and NSR Permit Number 21593, SC Number 8.G., by failing to comply with the NOx emissions limit of 0.01 lb/MMBtu and CO concentration limit of 50 parts per million by volume, dry at 3% oxygen on an hourly average; PENALTY: $26,250; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2016-0087-PWS-E; IDENTIFIER: RN101189736; LOCATION: Pineland, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f) and Texas Health and Safety Code (THSC), §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.060 milligrams per liter (mg/L) for haloacetic acids (HAA5), based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to comply with the MCL for HAA5; 30 TAC §290.115(f)(1) and §290.122(b)(3)(A) and (f) and THSC, §341.0315(c), by failing to comply with the MCL of 0.080 mg/L for total trihalomethanes (TTHM), based on the locational running annual average, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to comply with the MCL for TTHM; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to collect lead and copper samples for the January 1, 2014 - December 31, 2014 and January 1, 2015 - June 30, 2015, monitoring periods; 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Account Number 92030006 for Fiscal Year 2015; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11707 for the calendar years 2012 and 2014; PENALTY: $1,260; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Suncot Gin, LLC; DOCKET NUMBER: 2016-0010-AIR-E; IDENTIFIER: RN102213063; LOCATION: Denver City, Yoakum County; TYPE OF FACILITY: cotton gin; RULES VIOLATED: 30 TAC §101.4 and Texas Health and Safety Code, §382.085(a) and (b), by failing to prevent nuisance dust conditions from impacting off property receptors; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(23) COMPANY: TPC Group LLC; DOCKET NUMBER: 2016-0298-AIR-E; IDENTIFIER: RN104964267; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Op-

erating Permit Number O1327, Special Terms and Conditions Number 19, and New Source Review Permit Number 20485, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,125; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(24) COMPANY: Trinity Tank Car, Incorporated; DOCKET NUMBER: 2016-0355-AIR-E; IDENTIFIER: RN100224435; LOCATION: Longview, Harrison County; TYPE OF FACILITY: railroad tank car manufacturing plant; RULES VIOLATED: 30 TAC §122.145(2)(C) and §122.143(4), Federal Operating Permit Number O1648, General Terms and Conditions, and Texas Health and Safety Code, §382.085(b), by failing to submit a deviation report no later than 30 days after the end of the reporting period; PENALTY: $4,125; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(25) COMPANY: UTILITIES INVESTMENT COMPANY, INCORPORATED; DOCKET NUMBER: 2016-0150-PWS-E; IDENTIFIER: RN101257590; LOCATION: Riverside, Walker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(i)(5) and (k), by failing to deliver the public education materials in the event of an exceedance of the lead action level and to continue the delivery of the public education materials at least quarterly for as long as the lead action level was not met; PENALTY: $526; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

TRD-201602294
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 10, 2016

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Enforcement Orders

An agreed order was adopted regarding City of Sonora, Docket No. 2014-1438-MWD-E on May 11, 2016 assessing $18,203 in administrative penalties with $3,640 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Gordon R. Morris dba Space Estates Mobile Home Park and Leslie Morris dba Space Estates Mobile Home Park, Docket No. 2014-1847-PWS-E on May 11, 2016 assessing $2,229 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting J. Amber Ahmed, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Kenneth Patrick Whittlesey and WKP ENTERPRISES, INC., Docket No. 2015-0095-EAQ-E on May 11, 2016 assessing $45,900 in administrative penalties with $9,180 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Cleburne, Docket No. 2015-0284-MWD-E on May 11, 2016 assessing $5,625 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Had Darling, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Hernandez Rock, Inc., Docket No. 2015-0582-WQ-E on May 11, 2016 assessing $8,750 in administrative penalties with $1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Earth Haulers, Inc., Docket No. 2015-0583-WQ-E on May 11, 2016 assessing $8,750 in administrative penalties with $1,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding Binh Pham, Docket No. 2015-0660-WQ-E on May 11, 2016 assessing $8,263 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jim Sallans, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding D. TRAN, INC. dba Manns Chevron 2, Docket No. 2015-0700-PST-E on May 11, 2016 assessing $13,628 in administrative penalties with $2,725 deferred.

Information concerning any aspect of this order may be obtained by contacting John Duncan, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding SCHMIDT LAND SERVICES, INC., Docket No. 2015-0784-WQ-E on May 11, 2016 assessing $1,312 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Lieberknecht, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding DCP Midstream, LP, Docket No. 2015-0874-AIR-E on May 11, 2016 assessing $20,017 in administrative penalties with $4,003 deferred.

Information concerning any aspect of this order may be obtained by contacting Carol McGrath, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Miramont Management Company, LLC, Docket No. 2015-0937-WQ-E on May 11, 2016 assessing $6,105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Selma, Docket No. 2015-1049-WQ-E on May 11, 2016 assessing $14,625 in administrative penalties with $2,925 deferred.

Information concerning any aspect of this order may be obtained by contacting Ronica Rodriguez, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding D.R. Horton - Texas, Ltd., Docket No. 2015-1180-WQ-E on May 11, 2016 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Upper Padre Partners, LP dba Schlitterbahn NP Water Resort, Docket No. 2015-1238-MLM-E on May 11, 2016 assessing $12,105 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David A. Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Phillips 66 Company, Docket No. 2015-1243-AIR-E on May 11, 2016 assessing $14,250 in administrative penalties with $2,850 deferred.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Nash, Docket No. 2015-1255-WQ-E on May 11, 2016 assessing $18,750 in administrative penalties with $3,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Ross Luedtke, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding TexRock Industries, LLC, Docket No. 2015-1270-WQ-E on May 11, 2016 assessing $10,000 in administrative penalties with $2,000 deferred.

Information concerning any aspect of this order may be obtained by contacting Farhaud Abbaszadeh, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Alcomat, LLC dba Allied Concrete Plant No Three, Docket No. 2015-1291-PWS-E on May 11, 2016 assessing $1,871 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Yuliya Dunaway, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding At the Tower RV & Boat Storage LLC, Docket No. 2015-1323-MLM-E on May 11, 2016 assessing $15,875 in administrative penalties with $3,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Austin Henck, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding Shell Oil Company, Docket No. 2015-1367-AIR-E on May 11, 2016 assessing $13,125 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rajesh Acharya, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

A default order was adopted regarding KENNARD'S THOMAS CORNER, LLC dba Thomas Corner Fine Fina, Docket No. 2015-1405-PST-E on May 11, 2016 assessing $5,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Clayton Smith, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding KBR INVESTMENT INC. dba Super Stop 22, Docket No. 2015-1539-PST-E on May 11, 2016 assessing $9,000 in administrative penalties with $1,800 deferred.

Information concerning any aspect of this order may be obtained by contacting Tiffany Maurer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding City of Robinson, Docket No. 2015-1620-WQ-E on May 11, 2016 assessing $21,250 in administrative penalties with $4,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Alejandro Laje, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was adopted regarding SAHAR ENTERPRISES, INC. dba Amber Food Mart, Docket No. 2015-1622-PST-E on May 11, 2016 assessing $24,330 in administrative penalties with $4,866 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201602313
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 11, 2016

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Notice of District Petition

Notices issued March 24, 2016 through April 28, 2016

TCEQ Internal Control No. D-01122016-015; Big Sky Trails Ltd., (Petitioner) filed a petition for creation of Big Sky Municipal Utility District of Denton County (District) with the Texas Commission on Environmental Quality (TCEQ). The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be

included in the proposed District; (2) there are two lienholders, First National Bank of Weatherford and Lone Star Land Bank, FLCA, on the property to be included in the proposed District; (3) the proposed District will contain approximately 417.1 acres located within Denton County, Texas; and (4) all of the land within the proposed District is within Denton County, Texas, and no portion of the land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial and commercial purposes; (2) collect, transport, process, dispose of and control domestic, industrial and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; and (4) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from such information available at this time, that the cost of said project will be approximately $34,080,000.

TCEQ Internal Control No. D-02082016-004; Dianne Elizabeth Doggett, Martha L. Burt and Reynolds Reserve, Ltd., (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 108 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 107.715 acres located within Denton County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Magnolia (City), Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. Prior to the creation, the District will be annexed into the corporate boundaries of the City. By Ordinance No. 2016-003, effective January 12, 2016, the City of Magnolia, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate an adequate and efficient waterworks and sanitary sewer system primarily for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) to control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition; (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises as shall be consonant with any or all of the purposes for which the proposed District is created, including roads, park and recreational facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from such information available at this time, that the cost of said project will be approximately $8,900,000 ($6,500,000 for utility, plus $1,400,000 for recreational, plus $1,000,000 for road).

REVISED; TCEQ Internal Control No. D-02082016-004; Dianne Elizabeth Doggett, Martha L. Burt and Reynolds Reserve, Ltd., (Petitioners) filed a petition for creation of Montgomery County Municipal Utility District No. 108 (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 107.715 acres located within Montgomery County, Texas; and (4) all of the land within the proposed District is within the corporate limits of the City of Magnolia (City), Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. Prior to the creation, the District will be annexed into the corporate boundaries of the City. By Ordinance No. O-2016-003, effective January 12, 2016, the City of Magnolia, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain, and operate an adequate and efficient waterworks and sanitary sewer system primarily for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment, and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) to control, abate, and amend local storm waters or other harmful excesses of water, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition; (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises as shall be consonant with any or all of the purposes for which the proposed District is created, including roads, park and recreational facilities. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from such information available at this time, that the cost of said project will be approximately $8,900,000 ($6,500,000 for utility, plus $1,400,000 for recreational, plus $1,000,000 for road).

TCEQ Internal Control No. D-03112016-012; Mountain City 150, LP, (Petitioner) filed a petition for creation of Anthem Municipal Utility District of Hays County (District) with the TCEQ. The petition was filed pursuant to Article XVI, Section 59 of the Texas Constitution; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioner is the owner of a majority in value of the land to be included in the proposed District; (2) there is only one lienholder, PlainsCapital Bank, on the property to be included in the proposed District and the before mentioned entity has consented to the petition; (3) the proposed District will contain approximately 673.272 acres located within Hays County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Mountain City, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 121514C, passed and approved December 15, 2014, the City of Mountain City gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016.

The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial and commercial purposes; (2) collect, transport, process, dispose of and

control domestic, industrial and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the District; (4) construct, maintain, improve and operate graveled or paved road or turnpikes that serve or are intended to serve as an arterial or main feeder roads, or works, facilitates, or improvement in aid of those road or turnpikes inside or outside the boundaries of the District to the extend authorized by Article III, Section 52 of the Texas Constitution; and (5) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries additional facilities, systems, plants and enterprises as shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this Petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioner, from the information available at this time, that the cost of said project will be approximately $70,940,000 ($63,140,000 for utilities plus $7,800,000 for roads).

TCEQ Internal Control No. D-02292016-046; McAlister Opportunity Fund 2012, L.P. and McAlister Opportunity Fund 2014, L.P. (Petitioners) filed a petition for creation of Harris County Municipal Utility District No. 547 (District) with the TCEQ. The petition was filed pursuant to Article XVI, §59 of the Constitution of the state of Texas; Chapters 49 and 54 of the Texas Water Code; Title 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners are the owners of a majority in value of the land to be included in the proposed District; (2) There are no lienholders on the property in the proposed District; (3) the proposed District will contain approximately 634.84 acres located within Harris County, Texas; and (4) the proposed District is within the extraterritorial jurisdiction of the City of Houston, Texas, and no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. By Ordinance No. 2015-876, passed and adopted on September 16, 2015, the City of Houston, Texas, gave its consent to the creation of the proposed District, pursuant to Texas Water Code §54.016 and authorized the Petitioners to initiate proceedings to create this political subdivision within its jurisdiction. The petition further states that the proposed District will: (1) purchase, construct, acquire, maintain and operate a waterworks and sanitary sewer system for residential and commercial purposes; (2) construct, acquire, improve, extend, maintain, and operate works, improvements, facilities, plants, equipment and appliances helpful or necessary to provide more adequate drainage for the proposed District; (3) control, abate, and amend local storm waters or other harmful excesses of water, road facilities and parks and recreational facilities, all as more particularly described in an engineer's report filed simultaneously with the filing of the petition; and (4) purchase, construct, acquire, improve, maintain, and operate such additional facilities, systems, plants, and enterprises, as shall be consistent with all of the purposes for which the District is created.

According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $89,490,000 ($76,430,000 for utilities plus $9,230,000 for roads plus $3,830,000 for park and recreational facilities).

TCEQ Internal Control No. D-11122015-056; Franklin Meyer, Deloris Meyer, Terry Meyer, and Vicky Lynn Meyer Graves (Petitioners) filed a petition for creation of Meyer Ranch Municipal Utility District of Comal County (District) with the TCEQ. The petition was filed pursuant to Article XVI, §59 of the Constitution of the State of Texas; Chapters 49 and 54 of the Texas Water Code; 30 Texas Administrative Code Chapter 293; and the procedural rules of the TCEQ. The petition states that: (1) the Petitioners holds title to all of the land to be included in the proposed District; (2) there are no lienholders on the property to be included in the proposed District; (3) the proposed District will contain approximately 691.451 acres located within Comal County, Texas; and (4) no portion of land within the proposed District is within the corporate limits or extraterritorial jurisdiction of any other city, town or village in Texas. The petition further states that the proposed District will: (1) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries any and all works, improvements, facilities, plants, equipment, and appliances necessary or helpful to supply and distribute water for municipal, domestic, industrial and commercial purposes; (2) collect, transport, process, dispose of and control domestic, industrial and commercial wastes; (3) gather, conduct, divert, abate, amend and control local storm water or other local harmful excesses of water in the proposed District; (4) construct, maintain, improve and operate graveled or paved roads or turnpikes that serve or are intended to serve as an arterial or main feeder roads, or works, facilitates, or improvements in aid of those roads or turnpikes inside or outside the boundaries of the proposed District to the extent authorized by Article III, §52 of the Texas Constitution; and (5) purchase, construct, acquire, provide, operate, maintain, repair, improve, or extend inside or outside of its boundaries such additional facilities, systems, plants, and enterprises shall be consonant with the purposes for which the District is created, all as more particularly described in an engineer's report filed simultaneously with the filing of this petition. According to the petition, a preliminary investigation has been made to determine the cost of the project, and it is estimated by the Petitioners, from the information available at this time, that the cost of said project will be approximately $54,100,000 ($52,050,000 for utilities plus $2,050,000 for roads).

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.texas.gov/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

The TCEQ may grant a contested case hearing on the petition if a written hearing request is filed within 30 days after the newspaper publication of the notice. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) the name of the Petitioner and the TCEQ Internal Control Number; (3) the statement "I/we request a contested case hearing"; (4) a brief description of how you would be affected by the petition in a way not common to the general public; and (5) the location of your property relative to the proposed District's boundaries. You may also submit your proposed adjustments to the petition. Requests for a contested case hearing must be submitted in writing to the Office of the Chief Clerk at the address provided in the information section below. The Executive Director may approve the petition unless a written request for a contested case hearing is filed within 30 days after the newspaper publication of this notice. If a hearing request is filed, the Executive Director will not approve the petition and will forward the petition and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. If a contested case hearing is held, it will be a legal proceeding similar to a civil trial in state district court. Written hearing requests should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Districts Review Team, at (512) 239-4691. Si desea información en español, puede llamar al

(512) 239-0200. General information regarding TCEQ can be found at our web site at www.tceq.texas.gov.

TRD-201602309
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 10, 2016

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2016.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 20, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Blue Flamingo IV, d/b/a Montana Vista Mobile Home Park; DOCKET NUMBER: 2014-1595-MWD-E; TCEQ ID NUMBER: RN107149056; LOCATION: 13999 Montana Avenue, El Paso, El Paso County; TYPE OF FACILITY: mobile home park; RULES VIOLATED: TWC, §26.121(a) and 30 TAC §305.42(a), by failing to obtain proper authorization for the treatment and disposal of domestic wastewater; PENALTY: $1,312; STAFF ATTORNEY: David A. Terry, Litigation Division, MC 175, (512) 239-0619; REGIONAL OFFICE: El Paso Regional Office, 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(2) COMPANY: Charanjit S Khattra d/b/a Food Fast 1006; DOCKET NUMBER: 2015-1389-PST-E; TCEQ ID NUMBER: RN101840601; LOCATION: 503 East End Boulevard South, Marshall, Harrison County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and TWC, §26.3475(a) and 30 TAC §334.50(b)(2), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,504; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: Complete Lube N Repair Inc. d/b/a Econo Lube N Tune and Brakes; DOCKET NUMBER: 2015-0776-PST-E; TCEQ ID NUMBER: RN102041910; LOCATION: 9003 Huebner Road, San Antonio, Bexar County; TYPE OF FACILITY: underground storage tank (UST) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum UST; and 30 TAC §334.602(a), by failing to designate, train, and certify at least one individual for each class of operator - Class A, B, and C at the facility; PENALTY: $3,506; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(4) COMPANY: Darrell Hall; DOCKET NUMBER: 2015-1155-PWS-E; TCEQ ID NUMBER: RN103018818; LOCATION: County Road 227, west of Farm-to-Market Road 2620, eight miles south of Bedias, Grimes County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.0315(c) and 30 TAC §290.45(b)(1)(A)(i), by failing to provide a well capacity of 1.5 gallons per minute per connection; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(f)(2) and (3)(A)(ii)(III), by failing to provide facility records to commission personnel at the time of an investigation; and 30 TAC §290.42(e)(3)(D), by failing to provide facilities for determining the amount of disinfectant used daily as well as the amount of disinfectant remaining for use; PENALTY: $890; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(5) COMPANY: Hub City Convenience Stores, Inc. dba Chisum 35; DOCKET NUMBER: 2015-0904-PST-E; TCEQ ID NUMBER: RN103154621; LOCATION: 110 Arnett Street, Ropesville, Hockley County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(c)(2) and 30 TAC §334.51(a)(6), by failing to ensure that all spill and overfill prevention devices are maintained in good operating condition; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74(3), by failing to file a release determination report with the commission within 45 days after a suspected release has occurred; PENALTY: $10,420; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: Legacy Metals LLC; DOCKET NUMBER: 2015-0298-IHW-E; TCEQ ID NUMBER: RN101618031; LOCATION: 1491 Farm-to-Market Road 1011, Liberty, Liberty County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §335.4, by causing, suffering, allowing, or permitting the unauthorized disposal of industrial hazardous waste; PENALTY: $7,875; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE:

Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: Margarito Mendez; DOCKET NUMBER: 2015-1161-MSW-E; TCEQ ID NUMBER: RN106668684; LOCATIONS: 1911 and 1913 Goldsberry Street, Nacogdoches, Nacogdoches County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: 30 TAC §330.15(c) and TCEQ AO Docket Number 2013-1064-MSW-E, Ordering Provision Number 2.b., by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: $6,000; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Beaumont Regional Office, 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(8) COMPANY: RANGER UTILITY COMPANY; DOCKET NUMBER: 2015-0820-PWS-E; TCEQ ID NUMBER: RN101249910; LOCATION: 0.25 mile south of the intersection of Brookway and Bauer Hockley road near Houston, Harris County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.109(c)(4)(B), by failing to collect raw groundwater source *Escherichia coli* samples from all active sources within 24 hours of notification of a distribution total coliform-positive result on a routine sample during the month of April 2011; Texas Health and Safety Code, §341.031(a) and 30 TAC §290.109(f)(3), by failing to comply with the maximum containment level for total coliform during the month of April 2015; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the executive director regarding the failure to submit the Disinfection Level Quarterly Operating Reports for the first and second quarters of 2014; PENALTY: $659; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(9) COMPANY: Servando Rivera; DOCKET NUMBER: 2015-0150-MLM-E; TCEQ ID NUMBER: RN106177249; LOCATION: 4918 North Terry Road, Edinburg, Hidalgo County; TYPE OF FACILITY: unauthorized disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting outdoor burning within the State of Texas; and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: $34,071; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Harlingen Regional Office, 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

TRD-201602297
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 10, 2016

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 20, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: Devine Convenience LLC dba Super Mart; DOCKET NUMBER: 2015-0803-PST-E; TCEQ ID NUMBER: RN101856219; LOCATION: 500 West Hondo Avenue, Devine, Medina County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(a)(2), by failing to ensure the corrosion protection system was operated and maintained in a manner that will ensure corrosion protection is continuously provided to the UST system; 30 TAC §334.48(c) and §334.50(d)(1)(B), by failing to conduct effective inventory control procedures for the UST system; and 30 TAC §334.602(a), by failing to identify and designate for the UST system at least one named individual for each class of operator- Class A, B, and C; PENALTY: $8,750; STAFF ATTORNEY: Meaghan M. Bailey, Litigation Division, MC 175, (512) 239-0205; REGIONAL OFFICE: San Antonio Regional Office, 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Eddie Douglas; DOCKET NUMBER: 2015-1551-PWS-E; TCEQ ID NUMBER: RN108091729; LOCATION: 7420 82nd Street, Lubbock, Lubbock County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code (THSC), §341.035(a) and 30 TAC §290.39(e)(1) and (h)(1), by failing to submit plans and specifications to the executive director for review and approval prior to the construction of a new public water supply; 30 TAC §290.41(c)(3)(N), by failing to provide a flow measuring device for the well to measure production yields and provide for the accumulation of water production data; 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions for the purpose of microbiological control throughout the distribution system; THSC, §341.0315(c) and 30 TAC §290.45(d)(2)(A)(ii), by failing to provide a minimum pressure tank capacity of 220 gallons; and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; PENALTY: $2,202; STAFF ATTORNEY: Ryan Rutledge, Litigation Division,

MC 175, (512) 239-0630; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(3) COMPANY: James L. Oxford, Trustee of Country Villa Trust dba Country Villa Mobile Home Park; DOCKET NUMBER: 2015-0666-PWS-E; TCEQ ID NUMBER: RN101441764; LOCATION: north side of State Highway 202, three east miles of Beeville, Bee County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement for all land within 150 feet of the well; 30 TAC §290.46(s)(1), by failing to calibrate the facility's well meter at least once every three years; 30 TAC §290.46(f)(2), (3)(A)(i)(III), and (D)(ii), by failing to make water works operation and maintenance records available for review by commission personnel during the investigation; 30 TAC §290.43(c)(3), by failing to provide a ground storage tank which is designed, fabricated, erected, tested, and disinfected in strict accordance with current American Water Works Association standards; 30 TAC §290.43(c)(4), by failing to equip all water storage tanks with an appropriate liquid level indicator located at the tank site; Texas Health and Safety Code (THSC), §341.0315(c) and 30 TAC §290.45(b)(1)(F)(iii), by failing to provide two or more service pumps with a total capacity of 2.0 gallons per minute per connection; THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(F)(iv), by failing to provide a minimum pressure tank capacity of 20 gallons per connection; and 30 TAC §290.44(d) and §290.46(r), by failing to operate the facility to maintain a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as fire fighting; PENALTY: $794; STAFF ATTORNEY: Elizabeth Carroll Harkrider, Litigation Division, MC 175, (512) 239-2008; REGIONAL OFFICE: Corpus Christi Regional Office, NRC Building, Suite 1200, 6300 Ocean Drive, Unit 5839, Corpus Christi, Texas 78412-5839, (361) 825-3100.

(4) COMPANY: LASS WATER COMPANY INC; DOCKET NUMBER: 2015-1450-MLM-E; TCEQ ID NUMBER: RN104487335; LOCATION: approximately 0.25 miles west southwest of 238 Preston Club Drive, Grayson County; TYPE OF FACILITY: public water system; RULES VIOLATED: TWC, §11.1272(c) and 30 TAC §288.20(a) and §288.30(5)(B), by failing to adopt a drought contingency plan which includes all elements for municipal use by a retail public water supplier; Texas Health and Safety Code (THSC), §341.033(a) and 30 TAC §290.46(e)(4)(A), by failing to operate the facility under the direct supervision of a licensed water works operator who holds a Class D or higher license; 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low pressure event or water outage using the prescribed format in 30 TAC §290.47(c); THSC, §341.0315(c) and 30 TAC §290.45(b)(1)(C)(i), by failing to provide a well capacity of 0.6 gallons per minute per connection; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.46(q)(1) and §290.122(f), by failing to provide a copy of a boil water notification to the executive director within ten days of its distribution; 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of the facility's active well; 30 TAC §290.41(c)(3)(O), by failing to ensure the wellhouse is locked during periods of darkness and when the facility is unattended; 30 TAC §290.41(c)(3)(P), by failing to provide an all-weather access road to the facility's active well site; 30 TAC §290.42(a)(3), by failing to ensure that the facility's water treatment plant is located at a site that is accessible by an all-weather access road; 30 TAC §290.42(e)(4)(A), by failing to provide a full-face self-contained breathing apparatus or supplied air respirator that meets Occupational Safety and Health Administration standards for construction and operation, and a small bottle of fresh ammonia solution (or approved equal) for testing for chlorine leakage readily accessible outside the chlorinator room and immediately available to the operator in the event of an emergency; 30 TAC §290.42(e)(4)(B), by failing to maintain housing for gas chlorination equipment and cylinders of chlorine in separate buildings or separate rooms with impervious walls or partitions separating all mechanical and electrical equipment from the chlorine; 30 TAC §290.42(e)(4)(C), by failing to provide adequate ventilation which includes high level and floor level screened vents for all enclosures in which chlorine gas is being stored or fed; 30 TAC §290.42(l), by failing to compile and maintain a thorough and up-to-date plant operations manual for operator review and reference; 30 TAC §290.43(d)(1), by failing to provide a pressure tank of 1,000 gallons or larger that meets American Society of Mechanical Engineers (ASME) Section VIII, Division 1 Codes and Construction Regulations, and which is provided with the required ASME name plate; 30 TAC §290.43(d)(3), by failing to provide a device to readily determine air-water-volume for the pressure tank; 30 TAC §290.42(m) and §290.43(e), by failing to ensure the water treatment plant and all appurtenances thereof are enclosed by an intruder-resistant fence and by failing to ensure that the pressure tank is installed in a lockable building that is designed to prevent intruder access or enclosed by an intruder-resistant fence with lockable gates; 30 TAC §290.46(f)(2), (3)(A)(i)(III), (ii)(III), (iii), (vi), (B)(iii), (iv), (D)(i), (ii), (vii), (E)(ii), (iv), and (F), by failing to maintain water works operation and maintenance records and make them readily available for review by the executive director upon request; 30 TAC §290.46(h), by failing to maintain a supply of calcium hypochlorite on hand for use when making repairs; 30 TAC §290.46(i), by failing to adopt an adequate plumbing ordinance, regulations, or service agreement with provisions for proper enforcement to ensure that neither cross-connections nor other unacceptable plumbing practices are permitted; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units, and all related appurtenances in a watertight condition; 30 TAC §290.46(m)(6), by failing to maintain all pumps, motors, valves, and other mechanical devices in good working condition; 30 TAC §290.46(n)(1), by failing to provide accurate and up-to-date detailed as-built plans or record drawings and specifications for the storage tank, pressure tank, and service pumps; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results, and a chemical analysis report of a representative sample of water from the well for as long as the well remains in service; 30 TAC §290.44(d) and §290.46(r), by failing twice to provide a minimum pressure of 35 pounds per square inch (psi) throughout the distribution system under normal operating conditions and 20 psi during emergencies such as fire fighting; 30 TAC §290.46(t), by failing to post a legible sign at the facility's production, treatment, and storage facilities that contains the name of the facility and emergency telephone numbers where a responsible official can be contacted; 30 TAC §290.46(u), by failing to plug an abandoned public water supply well owned by the system with cement according to 16 TAC Chapter 76; 30 TAC §290.46(v), by failing to ensure that the electrical wiring is securely installed in compliance with a local or national electrical code; and 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals; PENALTY: $8,884; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL

OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: Randall & Spencer, LLC dba 2 Cousins Gas & Grocery; DOCKET NUMBER: 2015-1383-PWS-E; TCEQ ID NUMBER: RN106852346; LOCATION: 7700 Farm-to-Market Road 2210 East near Perrin, Jack County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.42(b)(1) and (e)(3), by failing to provide disinfection facilities for the groundwater supply to ensure that continuous and effective disinfection can be secured under all conditions for the purpose of microbiological control throughout the distribution system; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a public drinking water well into service; 30 TAC §290.46(n)(1), by failing to provide accurate and up-to-date detailed as-built plans or record drawings and specifications for the storage tanks, pressure tank, and service pump; 30 TAC §290.41(c)(3)(N), by failing to provide the well with a flow measuring device to measure production yields and provide for the accumulation of water production data; 30 TAC §290.121(a) and (b), by failing to develop and maintain an up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.41(c)(3)(K), by failing to provide the well with a casing vent that has an opening that is covered with 16-mesh or finer corrosion-resistant screen, facing downward, elevated and located so as to minimize the drawing of contaminants into the well; and 30 TAC §290.46(f)(2) and (3)(E)(ii), by failing to maintain water works operation and maintenance records and make them readily available for review by commission personnel upon request; PENALTY: $550; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(6) COMPANY: SUPERIOR LUBRICANTS TRANSPORT, INC. dba Superior Transport; DOCKET NUMBER: 2015-1056-PST-E; TCEQ ID NUMBER: RN103026993; LOCATION: 3312 Dooling Street, Fort Worth, Tarrant County; TYPE OF FACILITY: common carrier; RULES VIOLATED: TWC, §26.3467(d) and 30 TAC §334.5(b)(1)(A), by depositing a regulated substance into a regulated underground storage tank system located at 1330 Woodhaven Boulevard in Fort Worth, Tarrant County, that was not covered by a valid, current TCEQ delivery certificate; PENALTY: $3,607; STAFF ATTORNEY: Tracy Chandler, Litigation Division, MC 175, (512) 239-0629; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201602295
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 10, 2016

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Notice of Opportunity to Comment on Shutdown/Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Shutdown/Default Order (S/DO). Texas Water Code (TWC), §26.3475 authorizes the commission to order the shutdown of any underground storage tank (UST) system found to be noncompliant with release detection, spill and overfill prevention, and/or, after December 22, 1998, cathodic protection regulations of the commission, until such time as the owner/operator brings the UST system into compliance with those regulations. The commission proposes a Shutdown Order after the owner or operator of a UST facility fails to perform required corrective actions within 30 days after receiving notice of the release detection, spill and overfill prevention, and/or after, December 22, 1998, cathodic protection violations documented at the facility. The commission proposes a Default Order when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations, the proposed penalty, the proposed technical requirements necessary to bring the entity back into compliance, and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. In accordance with TWC, §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **June 20, 2016.** The commission will consider any written comments received and the commission may withdraw or withhold approval of an S/DO if a comment discloses facts or considerations that indicate that consent to the proposed S/DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed S/DO is not required to be published if those changes are made in response to written comments.

A copy of the proposed S/DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the S/DO shall be sent to the attorney designated for the S/DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on June 20, 2016.** Written comments may also be sent by facsimile machine to the attorney at (512) 239 3434. The commission attorneys are available to discuss the S/DO and/or the comment procedure at the listed phone numbers; however, comments on the S/DO shall be submitted to the commission in **writing.**

(1) COMPANY: D & D INTERNATIONAL, INC. dba Handi Stop 72; DOCKET NUMBER: 2015-1374-PST-E; TCEQ ID NUMBER: RN102471661; LOCATION: 331 South Avenue A, Freeport, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: Texas Health and Safety Code (THSC), §382.085(b) and 30 TAC §115.241(b)(3)(H) and (K), by failing to perform and complete all Stage II vapor recovery system decommissioning activities; 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the agency of any change or additional information regarding the USTs within 30 days of the occurrence of the change or addition; TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A)(i)(III), by failing to provide release detection for the pressurized piping associated with the UST system; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(ii), by failing to conduct reconciliation of detailed inventory control records at least once each month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons; TWC, §26.3475(c)(1) and 30 TAC §334.50(d)(1)(B)(iii)(I), by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.54(b)(2), by failing to maintain all piping, pumps, manways, tank access points and ancillary equipment in a capped, plugged, locked, and/or otherwise secured manner to prevent access, tampering, or vandalism by unauthorized persons; 30 TAC §334.72, by

failing to report a suspected release to the TCEQ within 24 hours of discovery; 30 TAC §334.74, by failing to investigate a suspected release of a regulated substance within 30 days of discovery; 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; THSC, §382.085(b) and 30 TAC §115.241(b)(4), by failing to submit the Stage II decommissioning completion notice no later than ten calendar days after completion of all Stage II decommissioning activities; 30 TAC §334.45(c)(3)(A), by failing to properly install/secure emergency shutoff valves (also called shear or impact valves) at the base of all dispensers; and 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight and free of any liquid or debris; PENALTY: $23,585; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201602296
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: May 10, 2016

♦ ♦ ♦

Notice of Public Hearing

on Assessment of Administrative Penalties and Requiring Certain Actions of Beechnut Food Stores, Inc.

SOAH Docket No. 582-16-3915

TCEQ Docket No. 2015-1267-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - June 9, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's First Amended Report and Petition mailed February 12, 2016 concerning assessing administrative penalties against and requiring certain actions of Beechnut Food Stores, Inc., for violations in Harris County, Texas, of: Tex. Water Code §26.3475(a) and (d), Tex. Health and Safety Code §382.085(b), and 30 Tex. Admin. Code §§115.245(2), 334.49(a)(1), and 334.50(b)(2).

The hearing will allow Beechnut Food Stores, Inc., the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford Beechnut Food Stores, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. **Upon failure of Beechnut Food Stores, Inc. to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's First Amended Report and Petition, attached hereto and incorporated herein for all purposes.** Beechnut Food Stores, Inc., the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. R. Civ. P. 190; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §70.108 and §70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Amanda Patel, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P. O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at http://www.tceq.texas.gov/goto/eFilings or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: May 9, 2016

TRD-201602314
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 11, 2016

♦ ♦ ♦

Notice of Public Meeting for TPDES Permit for Municipal Wastewater Renewal Permit Number WQ0013633001

APPLICATION. City of Alamo, 420 North Tower Road, Alamo, Texas 78516, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0013633001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 2,000,000 gallons per day.

The facility is located approximately 14,000 feet south along South Tower Road from the intersection of Tower Road and U.S. 83 Business Highway or approximately 17,000 feet south from the intersection of South Tower Road with U.S. 83 Expressway in Hidalgo County, Texas 78516. The treated effluent is discharged to Hidalgo County Drainage Ditch #2; thence to the Arroyo Colorado Above Tidal in Segment No. 2202 of the Nueces-Rio Grande Basin. The unclassified receiving water use is minimal aquatic life use for Hidalgo County Drainage #2. The designated uses for Segment No. 2202 are intermediate aquatic life use and primary contact recreation. This link to an electronic map

of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=26.147222&lng=-98.116388&zoom=13&type=r

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application.

The Public Meeting is to be held: Thursday, June 16, 2016, at 7:00 p.m., City of Alamo City Hall, 420 North Tower Road, Alamo, Texas 78516

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the City of Alamo City Hall, City Hall Building, 420 North Tower Road, Alamo, Texas. Further information may also be obtained from City of Alamo at the address stated above or by calling Mr. Luciano Ozuna, Jr., City Manager, City of Alamo, at (956) 787-0006.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Issued: May 3, 2016

TRD-201602315
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 11, 2016

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Notice of Public Meeting for TPDES Permit for Municipal Wastewater Permit Number WQ0011404002

APPLICATION. Dowdell Public Utility District, c/o Smith Murdaugh, Little & Bonham, L.L.P., 2727 Allen Parkway, Suite 1100, Houston, Texas 77019, has applied to the Texas Commission on Environmental Quality (TCEQ) for new Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0011404002, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 900,000 gallons per day.

The facility will be located west of Lozar Drive, approximately 750 feet northwest of the intersection of Lozar Drive and Avalon Aqua Way, in Harris County, Texas 77379. The treated effluent will be discharged to a detention pond system; thence to a 48-inch storm sewer pipe; thence to Harris County Flood Control District (HCFCD) ditch M114-00-00; thence to Willow Creek; thence to Spring Creek in Segment No. 1008 of the San Jacinto River Basin. The unclassified receiving water uses are minimal aquatic life use for the detention pond system, limited aquatic life use for HCFCD ditch M114-00-00, and high aquatic life use for Willow Creek. The designated uses for Segment No. 1008 are high aquatic life use, public water supply, and primary contact recreation. In accordance with 30 Texas Administrative Code §307.5 and the TCEQ implementation procedures (June 2010) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. A Tier 2 review has preliminarily determined that no significant degradation of water quality is expected in Willow Creek, which has been identified as having high aquatic life use. Existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received. This link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice. For the exact location, refer to the application. http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.0796&lng=- 95.5377&zoom=13&type=r.

The TCEQ Executive Director has completed the technical review of the application and prepared a draft permit. The draft permit, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements.

PUBLIC COMMENT/PUBLIC MEETING. A public meeting will be held and will consist of two parts, an Informal Discussion Period and a Formal Comment Period. A public meeting is not a contested case hearing under the Administrative Procedure Act. During the Informal

Discussion Period, the public will be encouraged to ask questions of the applicant and TCEQ staff concerning the permit application. The comments and questions submitted orally during the Informal Discussion Period will not be considered before a decision is reached on the permit application and no formal response will be made. Responses will be provided orally during the Informal Discussion Period. During the Formal Comment Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all timely, relevant and material, or significant comments will be prepared by the Executive Director. All formal comments will be considered before a decision is reached on the permit application. A copy of the written response will be sent to each person who submits a formal comment or who requested to be on the mailing list for this permit application and provides a mailing address. Only relevant and material issues raised during the Formal Comment Period can be considered if a contested case hearing is granted on this permit application. The Public Meeting is to be held: Tuesday, June 14, 2016,

at 7:00 PM Klein Multipurpose Center, 7500 FM 2920, Klein, Texas 77379

INFORMATION. Citizens are encouraged to submit written comments anytime during the meeting or by mail before the close of the public comment period to the Office of the Chief Clerk, TCEQ, Mail Code MC-105, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at www.tceq.texas.gov/about/comments.html. If you need more information about the permit application or the permitting process, please call the TCEQ Public Education Program, Toll Free, at (800) 687-4040. *Si desea información en español, puede llamar (800) 687-4040.* General information about the TCEQ can be found at our web site at www.tceq.texas.gov.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Harris County Public Library, Barbara Bush Branch Library at Cypress Creek Branch, 6817 Cypresswood Drive, Spring, Texas. Further information may also be obtained from Dowdell Public Utility District at the address stated above or by calling Mr. Jeffrey W. Vogler, P.E., Van De Wiele & Vogler, Inc., at (713) 782-0042.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or 1-800-RELAY-TX (TDD) at least one week prior to the meeting.

Issued: May 3, 2016

TRD-201602316
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 11, 2016

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Notice of Water Rights Application

Notices issued May 4, 2016 through May 6, 2016

APPLICATION NO. 12995; SUGARTREE, INC., 251 Sugar Tree Drive, Lipan, Texas 76462, Applicant, seeks authorization to maintain eight existing dams and reservoirs on unnamed tributaries and Rocky Run Creek, Brazos River Basin, and to maintain four existing off-channel reservoirs for recreational purposes. Applicant also seeks authorization to use the bed and banks of the unnamed tributaries and Rocky Run Creek to convey contract water for storage and subsequent diversion and use for agricultural purposes to irrigate land in Parker County. The application does not request a new appropriation of water. The application and partial fees were received on February 27, 2013. Additional information and fees were received on September 30, 2015, January 27, and April 4, 2016. The application was declared administratively complete and filed with the Office of the Chief Clerk on April 5, 2016. The Executive Director completed the technical review of the application and prepared a draft permit. The draft permit, if granted, would contain special conditions including, but not limited to, the maintenance of the System Water Availability Agreement between the Applicant and the Brazos River Authority. The application, technical memoranda, and Executive Director's draft permit are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Bldg. F, Austin, TX 78753. Written public comments and requests for a public meeting should be submitted to the Office of Chief Clerk, at the address provided in the information section below, within 30 days of the date of newspaper publication of the notice.

APPLICATION NO. 14-1767A; DLH Family LLC, 301 W. Beauregard, Suite 203, San Angelo, Texas 76903, Applicant, has applied to amend Certificate of Adjudication No. 14-1767 to change the diversion point to a point on the San Saba River, Colorado River Basin, in Menard County. Notice is being given pursuant to 30 TAC §295.158(b)(6) to the interjacent and upstream water right holders of record from new proposed diversion point. The application and a portion of the fees were received on October 15, 2013. Additional information and partial fees were received on July 23, 25, and August 26, 2014. The application was declared administratively complete and filed with the Office of the Chief Clerk on September 11, 2014. The TCEQ Executive Director has completed the technical review of the application and prepared a draft amendment. The draft amendment, if granted, would contain special conditions including, but not limited to, recommendation to install screens on diversion structures. The application and Executive Director's draft amendment are available for viewing and copying at the Office of the Chief Clerk, 12100 Park 35 Circle, Building F, Austin, Texas 78753. Written public comments and requests for a public meeting should be submitted to the Office of the Chief Clerk, at the address provided in the information section below by May 20, 2016.

INFORMATION SECTION

To view the complete issued notice, view the notice on our web site at www.tceq.state.tx.us/comm_exec/cc/pub_notice.html or call the Office of the Chief Clerk at (512) 239-3300 to obtain a copy of the complete notice. When searching the web site, type in the issued date range shown at the top of this document to obtain search results.

A public meeting is intended for the taking of public comment, and is not a contested case hearing.

The Executive Director can consider approval of an application unless a written request for a contested case hearing is filed. To request a contested case hearing, you must submit the following: (1) your name (or for a group or association, an official representative), mailing address, daytime phone number, and fax number, if any; (2) applicant's name and permit number; (3) the statement (I/we) request a contested case hearing; and (4) a brief and specific description of how you would be affected by the application in a way not common to the general public. You may also submit any proposed conditions to the requested application which would satisfy your concerns. Requests for a contested case hearing must be submitted in writing to the Texas Commission on Environmental Quality (TCEQ) Office of the Chief Clerk at the address provided in the information section below.

If a hearing request is filed, the Executive Director will not issue the requested permit and may forward the application and hearing request to the TCEQ Commissioners for their consideration at a scheduled Commission meeting.

Written hearing requests, public comments or requests for a public meeting should be submitted to the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. For information concerning the hearing process, please contact the Public Interest Counsel, MC 103, at the same address. For additional information, individual members of the general public may contact the Public Education Program at (800) 687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

Issued in Austin, Texas on May 10, 2016

TRD-201602310
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: May 11, 2016

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Request for Nominations for Appointment to Serve on the Irrigator Advisory Council

The Texas Commission on Environmental Quality (TCEQ) is requesting nominations for four individuals to serve on the Irrigator Advisory Council (council). Two of the individuals must be an irrigator licensed to work in Texas, and two individuals represent the public. To be eligible to be a "public member", the person or person's spouse may not be licensed by an occupational regulatory agency in the field of irrigation. The person or the person's spouse may not be employed by, participate in the management of, or have, other than as a consumer, a financial interest in a business entity or other organization related to the field of irrigation. Council members will be asked to serve a six-year term beginning in 2017.

The Texas Occupations Code, Chapter 1903, Subchapter D (see also 30 TAC §344.80) provides the structure of the nine-member council appointed by the TCEQ. The council is comprised of nine members appointed by the TCEQ: six licensed irrigators, who are residents of Texas, experienced in the irrigation business, and familiar with irrigation methods and techniques; and three public members.

The council provides advice to the TCEQ and TCEQ Staff concerning matters relating to irrigation. It is grounds for removal from the council if a council member misses three consecutive regularly scheduled meetings or more than half of all the regularly scheduled meetings in a one-year period. The council members generally meet for one day in Austin in February, May, August, and November of each year. Council members are not paid for their services, but are eligible for reimbursement of travel expenses at state rates as appropriated by the legislature.

To nominate an individual: 1) ensure that the individual is qualified for the position for which he/she is being considered; 2) submit a brief résumé which includes relevant work experience; and 3) provide the nominee a copy of the nomination. The nominee must submit a letter indicating his/her agreement to serve, if appointed. A person may nominate themselves by: 1) ensuring that he/she is qualified for the position; 2) submitting a brief résumé which includes relevant work experience; and 3) submitting a letter indicating his/her agreement to serve, if appointed.

Written nominations and letters from nominees must be received by 5:00 p.m. on July 8, 2016. The appointment will be considered by the TCEQ at a future agenda. Please mail all correspondence to Melissa Keller, Texas Commission on Environmental Quality, Program Support Section, MC-235, P.O. Box 13087, Austin, Texas 78711-3087 or fax to (512) 239-2249. Questions regarding the council may be directed to Ms. Keller at (512) 239-1768 or e-mail: melissa.keller@tceq.texas.gov. Additional information regarding the council is available on the Web site: https://www.tceq.texas.gov/licensing/irrigation/irr_advisory.html.

TRD-201602299
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: May 10, 2016

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Texas Health and Human Services Commission

Public Notice: Amendment to Reimbursement Methodology for Program for All-Inclusive Care for the Elderly (PACE)

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0006 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to align State Plan language with the shift from a fee-for-service payment system to a managed care payment system by adjusting the underlying methodology and data sources for determining PACE reimbursement. The proposed amendment also implements new requirements for reimbursement methodology set out in House Bill 3823, 84th Texas Legislature, Regular Session, which is codified at Texas Human Resources Code §§32.0532 through 32.0534. The requested effective date for the proposed amendment is October 1, 2016.

The proposed amendment is estimated to have no fiscal impact.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us*. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201602308
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 10, 2016

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Public Notice: State Plan Attachment Administrative Correction

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0014 to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act.

The purpose of this amendment is to correct the Texas Medicaid State Plan Attachments to show current Texas Medicaid administration. The proposed amendment is effective June 1, 2016.

The proposed amendment is estimated to have no fiscal impact. The amendment does not change or modify allowable coverage or benefits.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, PO Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us*. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201602317
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: May 11, 2016

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Texas Department of Housing and Community Affairs

Notice of Public Hearing - Multifamily Housing Revenue Bonds (Mercantile Apartments)

Notice is hereby given of a public hearing to be held by the Texas Department of Housing and Community Affairs (the "Issuer") at the Haltom City Public Library, 4809 Haltom Road, Haltom City, Texas 76117 at 6:00 p.m. on June 7, 2016. The hearing is regarding an issue of tax-exempt multifamily residential rental development revenue bonds in an aggregate principal amount not to exceed $30,225,000 and taxable bonds, if necessary, in an amount to be determined, to be issued in one or more series (the "Bonds"), by the Issuer. The proceeds of the Bonds will be loaned to Mercantile Apartments Ltd., a Texas limited

partnership, or a related person or affiliate thereof (the "Borrower"), to finance a portion of the costs of acquiring and constructing a multifamily housing development. The housing development is described as follows: an approximately 324-unit multifamily housing development to be located at the northwest quadrant of Northern Cross Boulevard and Endicott Avenue, Fort Worth, Tarrant County, Texas 76137 (the "Development"). Upon the issuance of the Bonds, the Development will be owned by the Borrower.

All interested parties are invited to attend such public hearing to express their views with respect to the Development and the issuance of the Bonds. Questions or requests for additional information may be directed to Shannon Roth at the Texas Department of Housing and Community Affairs, P.O. Box 13941, Austin, Texas 78711-3941; (512) 475-3929; and/or *shannon.roth@tdhca.state.tx.us*.

Persons who intend to appear at the hearing and express their views are invited to contact Shannon Roth in writing in advance of the hearing. Any interested persons unable to attend the hearing may submit their views in writing to Shannon Roth prior to the date scheduled for the hearing. Individuals who require a language interpreter for the public hearing should contact Elena Peinado at (512) 475-3814 at least five days prior to the hearing date so that appropriate arrangements can be made. Personas que hablan español y requieren un intérprete, favor de llamar a Elena Peinado al siguiente número (512) 475-3814 por lo menos cinco días antes de la junta para hacer los preparativos apropiados.

Individuals who require auxiliary aids in order to attend this hearing should contact Gina Esteves, ADA Responsible Employee, at (512) 475-3943 or Relay Texas at (800) 735-2989 at least five days before the hearing so that appropriate arrangements can be made.

This notice is published and the hearing is to be held in satisfaction of the requirements of Section 147(f) of the Internal Revenue Code of 1986, as amended.

http://www.tdhca.state.tx.us/multifamily/communities.htm

TRD-201602312
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: May 11, 2016

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University of Houston System

Notice of Request for Proposal

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP783-16007, Advancing Federal Initiatives

Purpose:

The UH University of Houston System ("UHS") is seeking competitive responses to a Request for Proposal ("RFP") for Advancing Federal Initiatives for UHS. UHS is seeking the services of a federal representative to advise and advocate on legislative, regulatory, research and policy issues under consideration by the U.S. Congress and federal agencies. The selected representative will assist the System in monitoring and advocating on legislative and regulatory measures that have potential impact on all System interests.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

- Firms that have expertise with issues of importance to UHS, including higher education, energy, health, technology, and aerospace.

- Has existing relationships with members of the Texas congressional delegation and congressional committees of importance to a research university.

- Has experience assisting public entities with securing federal funding.

- Can provide potential collaborative opportunities between their existing client base and UHS.

Services to be performed:

UHS invites proposals from qualified firms to assist the System in advancing its federal research initiatives. This proposal should identify how the vendor would (1) work with UHS faculty and staff to identify UHS's federal priorities; (2) develop and implement a plan for assisting UHS with obtaining federal funding for research activities; (3) advise UHS regarding federal requirements and compliance related to grants; (4) monitor and report on grant opportunities and developments regarding laws and policies that may impact UHS; and (5) raise the visibility of UHS in Washington with lawmakers and federal departments and agencies. (6) UHS also will require 10 hours of pro bono legal services annually at the direction of UHS General Counsel.

Finding by Chief Executive Officer, Renu Khator:

After reviewing the current status and discussing this matter with the staff, the evaluation of these services can only be conducted by a firm considered expert in federal legislative matters, the holistic expertise for this service is not part of the competencies of employees at the University. Thus, it is necessary for the University to engage a consultant to advise on federal legislative matters, and make recommendations, as appropriate.

Review and Award Criteria:

All proposals will be evaluated by appointed representatives of the University in accordance with the following procedures:

1. Purchasing will receive and review each RFP proposal to ensure it meets the requirements of the RFP. Qualified proposals will be given to the selection committee.

2. Each member of the selection committee will independently evaluate the qualified proposals according to the criteria in section IX of the RFP, except for price, and send their evaluations to Purchasing. Price will be evaluated by Purchasing.

3. Purchasing will combine the committee's scores to determine which proposal received the highest combined score.

4. Purchasing will notify the respondent with the highest score that the University intends to contract with them.

Deadlines: UH must receive proposals according to instructions in the RFP package on or before Monday, June 20, 2016 at 1:00 p.m. CDT.

Obtaining a copy of the RFP: Copies will be available on the Electronic State Business Daily (ESBD) at *http://esbd.cpa.state.tx.us/*.

The sole point of contact for inquiries concerning RFP is:

Jack Tenner (Director of Purchasing)

UH Purchasing

5000 Gulf Freeway, ERP 1, Room 204

Houston, Texas 77204-5015

Phone: (713) 743-5671

Email: jdtenner@central.uh.edu

TRD-201602318
Dr. Renu Khator
President
University of Houston System
Filed: May 11, 2016

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission in the State of Texas by NORMANDY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Deerfield Beach, Florida.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201602311
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: May 11, 2016

♦ ♦ ♦

Notice of Application by a Small Employer Issuer to be a Risk-Assuming Issuer

Notice is given to the public of the application of the listed small employer health benefit plan issuer to be a risk-assuming health benefit plan issuer under Insurance Code §1501.312. A small employer health benefit plan issuer is defined by Insurance Code §1501.002(16) as a health benefit plan issuer offering, delivering, issuing for delivery, or renewing health benefit plans subject to Insurance Code Chapter 1501, Subchapters C - H. A risk-assuming health benefit plan issuer is defined by Insurance Code §1501.301(4) as a small employer health benefit plan issuer that does not participate in the Texas Health Reinsurance System. The following small employer health benefit plan issuer has applied to be a risk-assuming health benefit plan issuer:

The Scott and White Health Plan

The issuer's application is available for public inspection at the Texas Department of Insurance, Legal Services, Office of Policy Development Counsel. To inspect the application, contact Jennifer Soldano, Staff Attorney, William P. Hobby Jr. Building, 333 Guadalupe, Tower I, Room 920B, Austin, Texas.

If you wish to comment on the application from the Scott and White Health Plan to be a risk-assuming issuer, you must submit your written comments within 60 days after publication of this notice in the *Texas Register* to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. On consideration of the application, if the commissioner is satisfied that all requirements of law have been met, the commissioner or the commissioner's designee may take action to approve the Scott and White Health Plan's application to be a risk-assuming issuer.

TRD-201602194
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: May 5, 2016

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on May 4, 2016, for a state-issued certificate of franchise authority (SICFA), pursuant to Public Utility Regulatory Act (PURA) §§66.001 - 66.016.

Project Title and Number: Application of Accordant Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 45924.

The requested SICFA service area consists of Johnson, Hill, Ellis and Galveston Counties.

Information on the application may be obtained by contacting the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45924.

TRD-201602196
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2016

♦ ♦ ♦

Notice of Application for a Name Change Amendment to a Certificate of Convenience and Necessity

Notice is given to the public of an application filed on May 5, 2016, with the Public Utility Commission of Texas (commission) for a name change amendment to a certificate of convenience and necessity (CCN).

Docket Style and Number: Application of Frontier Southwest Incorporated d/b/a Frontier Communications of Texas for an Amendment to its Certificate of Convenience and Necessity, Docket Number 45932.

The Application: Frontier Southwest Incorporated d/b/a Frontier Communications of Texas (Frontier) filed an application for a name change amendment to CCN No. 40037 held in the name of Verizon Southwest. Ownership and control of CCN No. 40037 was transferred to Frontier on April 1, 2016 from Verizon Communications Inc. The company would like to change the name to its assumed name Frontier Southwest Incorporated d/b/a Frontier Communications of Texas, under which it prefers to transact business.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45932.

TRD-201602254
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2016

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas on May 9, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Swea Gardens Estate Utility, Inc. and Municipal Operations, LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Harris County, Docket Number 45942.

The Application: Swea Gardens Estate Utility, Inc. and Municipal Operations, LLC (applicants) filed an application for sale, transfer, or merger of facilities and certificate rights in Harris County. Municipal Operations, LLC seeks approval to acquire all of the water assets and certificate rights of Swea Gardens. The application requests transfer of Swea Gardens' water certificate of convenience and necessity (CCN) No. 11872 to Municipal Operations. This application affects approximately 2 acres and 495 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 45942.

TRD-201602305
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2016

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Notice of Application to Amend a Certificate of Operating Authority

On May 5, 2016, Frontier Southwest Incorporated d/b/a Frontier Communications of Texas filed an application with the Public Utility Commission of Texas for a name change amendment to certificate of operating authority number 50028.

Docket Style and Number: Application of Frontier Southwest Incorporated d/b/a Frontier Communications of Texas for an Amendment to a Certificate of Operating Authority, Docket Number 45933.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas, 78711-3326 or by phone at (512) 936-7120 or toll-free at 1-888-782-8477 no later than May 20, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45933.

TRD-201602290
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 9, 2016

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Notice of Application to Amend a Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application to amend a sewer certificate of convenience and necessity (CCN) No. 21057.

Docket Style and Number: Application of City of Princeton to Amend a Sewer Certificate of Convenience and Necessity, Docket Number 45919.

The Application: The City of Princeton filed an application to amend its sewer CCN No. 21057 to include the city limits and extra territorial jurisdiction of the City of Lowry Crossing. The citizens of Lowry Crossing have proposed this amendment in order to open up their city to new developments requiring sewer service. Currently residents are served via individual private septic systems.

Persons wishing to intervene or comment on the action sought should contact the commission by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45919.

TRD-201602193
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on May 2, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of La Ward Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45931.

The Application: La Ward Telephone Company, Inc. (La Ward) filed an application with the commission for revisions to its General Exchange Tariff. The estimated revenue increase to be recognized by La Ward is $13,192.00 in gross annual intrastate revenues. La Ward has 689 access lines in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 27, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 27, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45931.

TRD-201602195

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 5, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 6, 2016, to implement a minor rate change pursuant to 16 Tex. Admin. Code §26.171.

Tariff Control Title and Number: Notice of Central Texas Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45938.

The Application: Central Texas Telephone Cooperative, Inc. (CTTC) filed an application with the Commission for revisions to its General Exchange Tariff to increase local exchange access line rates for residential and business customers in the San Saba, Richland Springs, Bend, Big Valley, Cherokee, Doole/Millersview, Eola, Evant, Locker, Lohn, Melvin, Mercury, Mullin, Priddy, Rochelle, Star and Voca Exchanges. CTTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $138,600.48 in gross annual intrastate revenues. The Applicant has 5,628 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2016. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326, or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45938.

TRD-201602300
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Wes-Tex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45939.

The Application: Wes-Tex Telephone Cooperative, Inc. (Wes-Tex) filed an application with the Commission for revisions to its Member Services Tariff to increase basic local exchange access line rates for residential and business customers; include Expanded Local Calling Service (ELCS) fees in the base rate for residential and business customers in the Garden City, Lenorah, Lomax, Saint Lawrence, Vincent and West Stanton Exchanges; and introduce mandatory two-way toll-free extended local calling between all customers throughout its exchanges. Wes-Tex proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $32,043 in gross annual intrastate revenues. The Applicant has 2,001 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 28, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 28, 2016. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45939.

TRD-201602301
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Taylor Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45940.

The Application: Taylor Telephone Cooperative, Inc. (Taylor) filed an application with the Commission for revisions to its Member Services Tariff to increase the single-line residential and business access line rates, as well as Key/PBX rates by $0.50 - $2.00. Taylor also seeks approval to include its current Expanded Local Calling Service fees in the base rate for both residential and business customers. Taylor proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $82,098 in gross annual intrastate revenues. The Applicant has 5,786 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2016. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-im-

paired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45940.

TRD-201602302
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of South Plains Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45941.

The Application: South Plains Telephone Cooperative, Inc. (South Plains) filed an application with the Commission for revisions to its Member Services Tariff to increase its single-line residential and business access line rates. South Plains proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $86,668 in gross annual intrastate revenues. The Applicant has 3,810 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 31, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 31, 2016. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45941.

TRD-201602303
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on May 9, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of E.N.M.R. Telephone Cooperative for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45946.

The Application: E.N.M.R. Telephone Cooperative (E.N.M.R.) filed an application with the Commission for revisions to its Local Exchange Tariff to increase its Residence Monthly Exchange Service rates from $16.00 to $18.00 in all exchanges. E.N.M.R. also proposed to increase its Business Monthly Local Exchange Service rates from $16.50 to $19.50 in the Bell View Exchange and from $17.50 to $19.50 in the East Glen Frio, Farwell and Pleasant Hill Exchanges. E.N.M.R. proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $11,856 in gross annual intrastate revenues. The Applicant has 494 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by June 3, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by June 3, 2016. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45946.

TRD-201602304
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: May 10, 2016

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Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

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Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

How to Use the Texas Register

Information Available: The sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Review of Agency Rules - notices of state agency rules review.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is $382 annually for first-class mail delivery and $259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis®
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