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THE ATTORNEY GENERAL

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Requests for Opinions, Opinions, Open Records Decisions.

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

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

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

Opinions

Opinion No. KP-0098

The Honorable Carlos Omar Garcia

79th Judicial District Attorney

Jim Wells and Brooks Counties

Post Office Drawer 3157

Alice, Texas 78333

Re: Requirements for a municipality's posting of notice regarding the carrying of handguns (RQ-0087-KP)

S U M M A R Y

Subsection 46.035(c) of the Penal Code makes it an offense to carry a handgun "in the room or rooms where a meeting of a governmental entity is held and if the meeting is an open meeting subject to Chapter 551, Government Code" and the entity provided the requisite notice. By specifically limiting the offense to carrying a handgun in "the room or rooms," the Legislature made it clear that it did not intend to prohibit the carrying of handguns throughout an entire building but instead only in the specific room or rooms where an open meeting of a governmental entity is held.

Governmental entities should place their notices that entry with a handgun is prohibited at the entrance to the room or rooms where an open meeting is held. A governmental entity may not provide notice that excludes the carrying of handguns when the room or rooms are used for purposes other than an open meeting.

Opinion No. KP-0099

Mr. Mike Morath

Commissioner of Education

Texas Education Agency

1701 North Congress Avenue

Austin, Texas 78701-1494

Re: Whether a school district board of trustees may enter into a contract for legal services under a flat fee arrangement (RQ-0088-KP)

S U M M A R Y

Under the test articulated by the Texas Supreme Court, a school district's contract for legal services would violate article III, section 52(a) of the Texas Constitution if (1) the expenditure's predominant purpose does not accomplish a public purpose, but instead benefits private par-

ties; (2) sufficient control over the expenditure is not retained to ensure that the public purpose is accomplished; (3) the school district does not receive a return benefit; and (4) the expenditure fails to provide a clear public benefit in return. Whether a public purpose is served by a particular expenditure raises fact questions that cannot be answered in an attorney general opinion and would be a decision for the school district in the first instance, subject to judicial review.

In utilizing this test to evaluate public expenditures, Texas courts have suggested that (1) an incidental benefit to individual trustees does not invalidate the expenditure if the contract is predominantly for the direct accomplishment of a legitimate public purpose of the school district; (2) the principal constitutional concern regarding control measures is not who is implementing them but whether such controls are put into place to begin with; and (3) what constitutes an adequate return benefit depends on a variety of specific circumstances but is called into doubt if there is such a gross disparity in the relative values exchanged as to show unconscionability, bad faith, or fraud.

To the extent that circumstances forming the basis for an alleged violation of the Texas Disciplinary Rules for Professional Conduct suggest that an expenditure does not comport with the requirements of article III, section 52(a), a court would rely on the test articulated by the Texas Supreme Court to make that determination. However, it is unlikely that a court would consider conduct subsequent to a contract's execution in determining whether the contract itself violates article III, section 52(a).

Opinion No. KP-0100

The Honorable Dan Patrick

Lieutenant Governor of Texas

Post Office Box 12068

Austin, Texas 78711-2068

Re: Whether the Fort Worth Independent School District transgender guidelines violate chapter 26 of the Education Code and whether the superintendent had authority to adopt the guidelines without a vote by the school board or public comment (RQ-0107-KP)

S U M M A R Y

Chapter 26 of the Education Code provides that parents must have access to all written records of a school district concerning their child, as well as full information regarding the child's school activities. Attempts to encourage a child to withhold information from his or her parents may be grounds for discipline. To the extent that the Transgender Student Guidelines adopted by the Fort Worth Independent School

District superintendent limit parental access to information about their child and operate to encourage students to withhold information from parents contrary to the provisions in chapter 26, they violate state law.

Chapter 11 of the Education Code requires that boards of trustees adopt policies for the district, while superintendents implement those policies by developing administrative regulations. While a superintendent is authorized to recommend policies to be adopted by the board, chapter 11 requires that policy decisions, like those addressing parental involvement with students' gender identity choices, be addressed by the board of trustees prior to the development of any related administrative regulations.

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

TRD-201603292

Amanda Crawford

General Counsel

Office of the Attorney General

Filed: June 29, 2016



EMERGENCY RULES

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER Z. EMERALD ASH BORER QUARANTINE

4 TAC §§19.700 - 19.703

The Texas Department of Agriculture (the Department) adopts on an emergency basis new Title 4, Part 1, Chapter 19, Subchapter Z, titled Emerald Ash Borer Quarantine, §§19.700 - 19.703, concerning a quarantine for a dangerous plant pest, the emerald ash borer (EAB), *Agrilus planipennis*, that can lethally infest all species of ash (*Fraxinus* spp.). EAB is an invasive wood-boring beetle native to China and other areas of East Asia. On April 29, 2016, four adult males of EAB were discovered 1.5 miles north of Leigh on Route 134 in Harrison County, Texas (Lat. 32.61619, Long. -94.14606), in a green prism trap baited with (3Z)-hexenol and (3Z)-lactone pheromone by the U.S. Forest Service.

Since the 2002 initial North American discovery of EAB in Michigan and Ontario, Canada, the pest has killed at least 50 million ash trees and threatens an estimated 7.5 billion ash trees. The United States Department of Agriculture (USDA) has quarantined all or parts of Arkansas, Colorado, Connecticut, District of Columbia, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Missouri, New Hampshire, New Jersey, New York, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia and Wisconsin for EAB.

Intrastate or interstate movement into uninfested areas of ash nursery trees, hardwood firewood and other ash products from quarantined areas presents a risk for further spread of this invasive pest into uninfested areas. If introduced in the state, EAB could infest and kill Texas ash trees, *Fraxinus* spp., such as *F. albicans* (= *F. texensis*) (Texas ash), *F. americana* (American ash or white ash), *F. berlandieriana* (Berlandier ash, Mexican ash, or fresno), *F. caroliniana* (Carolina ash, Florida ash, pop ash, swamp ash, or water ash), *F. cuspidata* (flowering ash or fragrant ash), *F. greggii* (Gregg ash), *F. papillosa* (Chihuahua ash), *F. pennsylvanica* (downy ash, green ash or red ash), *F. smallii* (Small's white ash) and *F. velutina* (Arizona ash, desert ash, velvet ash or fresno). There are 41 nurseries, including four nursery plant growers, in Harrison County, Texas.

The incipient infestation of Texas by EAB, which was discovered through trapping, puts ash trees in Texas woodlands, landscapes, and nurseries in peril requiring immediate quarantine restrictions and requirements. These emergency regulations mit-

igate risk of the establishment and spread of this pest insect, thus protecting the important forest, landscape, and nursery resources and firewood industries of the state. The rules which are being adopted on an emergency basis are both necessary and appropriate in order to effectively combat and prevent the spread of EAB into Texas. The Department may propose adoption of this rule on a permanent basis in a separate submission.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.001 and §71.002, which authorize the Department to establish quarantines against in-state and out-of-state diseases and pests; §71.004, which authorizes the Department to establish emergency quarantines; §71.007, which authorizes the Department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of quarantined articles; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis without notice and comment.

The code affected by the emergency adoption is the Texas Agriculture Code, Chapter 71.

§19.700. Quarantined Pest.

The quarantined pest is emerald ash borer (EAB), *Agrilus planipennis*, in any life stage.

§19.701. Quarantined Areas.

Quarantined areas are described on the Texas Department of Agriculture's website at www.TexasAgriculture.gov. A map of the quarantined area is also available on the Department's website.

(1) On the basis of new or revised information, the Department may declare, augment, diminish, fuse, eliminate, rename or otherwise modify quarantined areas.

(2) Designation or modification of a quarantined area is effective upon the posting of the notification of the quarantined area on the department's webpage on Emerald Ash Borer Quarantine.

§19.702. Regulated Articles.

The following are regulated articles:

(1) The emerald ash borer; firewood of all hardwood (non-coniferous) species; nursery stock, green lumber, and other material living, dead, cut, or fallen, including logs, stumps, roots, branches, and composted and uncomposted chips of the genus *Fraxinus*.

(2) Any other article, product, or means of conveyance not listed in paragraph (1) of this section may be designated as a regulated article if an inspector determines that it presents a risk of spreading emerald ash borer and the inspector notifies the person in possession of the article, product, or means of conveyance that it is subject to this subchapter.

(3) For purposes of this subchapter, regulated articles are quarantined articles under Texas Agriculture Code, §71.0092.

§19.703. Restrictions.

(a) Interstate movement of a regulated article from a quarantined area is subject to 7 CFR Part 301--Domestic Quarantine Notices, Subpart--Emerald Ash Borer.

(b) Intrastate movement of regulated articles from a quarantined area shall be done only under the following conditions:

(1) Under a certificate, special permit or compliance agreement issued by the Department or USDA; or

(2) Without a phytosanitary certificate, permit or compliance agreement if:

(A) The regulated article is moved by the Department or USDA for regulatory, experimental or scientific purposes; or

(B) The regulated article originates outside the quarantined area and is moved intrastate through the quarantined area under the following conditions:

(i) The points of origin and destination are indicated on a waybill accompanying the regulated article; and

(ii) The regulated article, if moved through the quarantined area during the period May 1 through August 31, or when the ambient air temperature is 40° F or higher, is moved in an enclosed vehicle or is completely covered to prevent access by EAB; and

(iii) The regulated article is moved directly through the quarantined area without stopping (except for refueling or for traf-

fic conditions, such as traffic lights or stop signs), or has been stored, packed, or handled at locations approved by an inspector as not posing a risk of infestation by EAB; and

(iv) The regulated article has not been combined or commingled with other articles so as to lose its individual identity.

(c) A regulated article moved in violation of a requirement or restriction in this subchapter shall be seized and may be destroyed, with all associated costs being the responsibility of the owner of the regulated article pursuant to §71.009 of the Texas Agriculture Code.

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

Filed with the Office of the Secretary of State on June 30, 2016.

TRD-201603309

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Effective date: June 30, 2016

Expiration date: October 27, 2016

For further information, please call: (512) 463-4075



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 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §§30.50, 30.55, 30.58

The Texas Department of Agriculture (Department) proposes amendments to Title 4, Chapter 30, Subchapter A, Division 3, §§30.50, 30.55, and 30.58, relating to the Texas Community Development Block Grant (CDBG) Program. The Department proposes the amendments to CDBG programs to permit flexibility in the application and eligibility process, and enable maximum benefit to those communities in need.

The Department proposes amendments to §30.50 to revise state scoring criteria of the Community Development Fund and to allow flexibility in Regional Review Committee membership. Amendments to §30.55 allow counties to submit more than one application for the Colonia Fund Construction program. Amendments to §30.58, relating to the Colonia Economically Distressed Areas Program (CEDAP) Set-Aside, will allow flexibility in identifying the funding program partner for CEDAP applications, should the legislature allow CEDAP to partner with programs other than the Texas Water Development Board - Economically Distressed Areas Program.

Suzanne Barnard, Director for CDBG Programs at the Department, 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 rule changes.

Ms. Barnard has also determined that for each year of the first five years these sections are in effect, the public benefit anticipated as a result of administering the sections will be the timely expenditure of federal funding in accordance with federal requirements and the opportunity to apply for additional projects through the modification of program application and eligibility requirements. There will be no adverse economic effect on micro-businesses, small businesses or individuals who are required to comply with the sections.

Written comments on the proposal may be submitted for 30 days following publication of this proposal to Suzanne Barnard, Office of Rural Affairs, Texas Department of Agri-

culture, P.O. Box 12847, Austin, Texas 78711, or by email at Suzanne.Barnard@TexasAgriculture.gov.

The amendments are proposed under Texas Government Code §487.051, which provides the Department the authority to administer the state's CDBG non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

The code affected by the proposal is Texas Government Code Chapter 487.

§30.50. *Community Development (CD) Fund.*

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

(c) Regional allocations.

(1) Regional review committees (RRC). There is a RRC in each of the 24 state planning regions. Each RRC is comprised of up to [at least] 12 members appointed by the Commissioner, who serve until replaced at the discretion of the Commissioner.

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

(d) (No change.)

(e) Scoring criteria.

(1) Department scoring criteria. The following factors are considered by the department when scoring CD Fund applications (detailed application and scoring information are available in the application guidelines):

~~[(A) past awards--whether a community has received Tx CDBG fund awards in the past two application cycles before the application deadline;]~~

(A) [(B)] past performance--the department will consider a community's performance on previously awarded Tx CDBG contracts within the past 4 years preceding the application deadline. (Adjustments may be made for contracts that are engaged in appropriately pursuing due diligence such as bonding remedies or litigation to ensure adequate performance under the Tx CDBG contract.) Evaluation of a community's past performance will include the following:

(i) (No change.)

(ii) submission of environmental review [all contract reporting] requirements within prescribed deadlines; and

(iii) submission of the required close-out documents within the period prescribed for such submission.[;]

~~[(iv) timely response to monitoring findings on previous Tx CDBG contracts; especially any instances when the monitoring findings included disallowed costs;]~~

~~[(v) timely response to audit findings on previous Tx CDBG contracts; and]~~

~~[(vi) expenditure timeframes on the applicable Tx-CDBG contracts.]~~

~~(B) [(C)] proposed project--whether all activities proposed in the application involve basic infrastructure (water, sewage, roads, and flood drainage) or housing activities.~~

~~[(D) national objective--whether each proposed project activity will benefit at least 51% LMI persons.]~~

(2) RRC scoring criteria. Each RRC is responsible for determining local project priorities and objective scoring factors for its region in accordance with the requirements of this section and the current Tx-CDBG Action Plan. Each RRC must establish the numerical value of the points assigned to each scoring factor as described in the current Regional Review Committee Guidelines ~~[and determine the total combined points for all RRC scoring factors].~~

(A) Procedures for selecting scoring criteria. The public must be given an opportunity to comment on the priorities and the scoring criteria considered. RRCs are responsible for convening public hearings to discuss and select the objective scoring criteria that will be used to score and rank applications at the regional level.

(i) (No change.)

(ii) Attendance at meetings. ~~[A quorum is required for all public meetings.]~~

(I) A quorum is required for all public meetings.

(II) A RRC member may designate a proxy to attend the meeting. Proxies are counted for purposes of determining the presence of a quorum and may vote on all matters before the RRC.

(iii) (No change.)

(B) (No change.)

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

§30.55. *Colonia Funds (CF)--General Provisions.*

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

~~(c) A community may submit two applications [one application] for Colonia Fund Construction for separate colonia areas, and one application for Colonia Fund Planning (either Area Planning or Comprehensive Planning).~~

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

§30.58. *Colonia Economically Distressed Areas Program Set-Aside (CEDAP).*

(a) Eligibility.

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

(4) Eligible activities. Eligible CEDAP activities are limited to those that provide assistance to low and moderate income persons residing in colonias who cannot afford the costs of residential service lines, hookups, and minor plumbing improvements associated with connection to a water supply or sewer system, any part of which is financed through the TWDB EDAP or similar federal or state funding as permitted by statute and the current application guide (funding program partner).

(b) Application cycle.

(1) (No change.)

(2) An application may not be submitted until after construction begins on the water or sewer system financed through the funding program partner [TWDB EDAP].

(3) (No change.)

(c) Selection procedures. Applications will be evaluated by the department based on the following factors (detailed application and evaluation information are available in the application guidelines):

(1) the proposed use of the Tx-CDBG funds including the eligibility of the proposed activities and the effective use of the funds to provide water or sewer connections/yard lines to water/sewer systems funded through the funding program partner [TWDB EDAP program];

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

[(d) Eligible activities. Eligible CEDAP activities are limited to those that provide assistance to low and moderate income persons residing in colonias who cannot afford the costs of residential service lines, hookups, and minor plumbing improvements associated with connection to a water supply or sewer system, any part of which is financed through the TWDB EDAP.]

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 June 29, 2016.

TRD-201603296

Jessica Escobar

Assistant General Counsel

Texas Department of Agriculture

Earliest possible date of adoption: August 14, 2016

For further information, please call: (512) 463-4075



TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER B. ELIGIBILITY FOR REGISTRATION

22 TAC §1.22

The Texas Board of Architectural Examiners (Board) proposes the amendment of 22 TAC §1.22, pertaining to registration of architects by reciprocal transfer.

Under Texas law, an applicant for registration as an architect in Texas must qualify either by examination under Occupations Code §1051.705, or through reciprocity based on registration issued by another jurisdiction, under Occupations Code §1051.305.

Section 1051.305 states that a person may apply for reciprocal registration if the person holds an architectural registration that is active and in good standing in another jurisdiction, and the other jurisdiction has licensing or registration requirements substantially equivalent to Texas registration requirements. The Board has adopted §1.22 to define this requirement. Subsection (a)(1) of the rule repeats the statutory requirement that an applicant must hold an active registration in good standing from another jurisdiction with licensing or registration requirements substantially equivalent to Texas registration requirements. Subsection (b)(1) provides more specific requirements, stating that a reciprocity applicant may demonstrate eligibility by either becoming certified by the National Council of Architectural Registration Boards

(NCARB), or by demonstrating completion of the intern development program (IDP) and the architect registration exam (ARE). The rule does not address any specific education requirement, which, along with examination and experience, is the "third leg" of Texas architect registration requirements by examination, as discussed below.

The eligibility requirements for Texas registration by examination, are defined under Occupations Code §1051.705, which states that an applicant for registration by examination must be a graduate of a university or college of architecture approved by the Board and have satisfactory experience in architecture as defined under Board rule. Section 1.21, which further defines the requirements for eligibility by examination, requires applicants to have graduated with a professional degree from an educational program accredited by the National Architectural Accreditation Board (NAAB), in addition to completing IDP and the ARE. Since §1.22(b) does not specifically address educational requirements, it is unclear what level of education a reciprocity applicant must attain in order to demonstrate that he or she holds "a license or certificate of registration issued by another jurisdiction...that has licensing or registration requirements substantially equivalent to those of this state," as required for reciprocity under §1051.305 and §1.22(a).

The purpose of the proposed amendment is to reconcile the Board's reciprocity eligibility rule with the statutory requirements for reciprocity eligibility and, by reference, examination eligibility. The proposed amendment would implement a two-stage adoption of educational requirements for reciprocity eligibility. An Applicant who applies for architectural registration by reciprocity on or before December 31, 2020 would be required to successfully complete a pre-professional bachelor's degree in architecture by a U.S. regionally-accredited institution. An applicant who applies for architectural registration by reciprocity on January 1, 2021 or later would be required to successfully complete a NAAB-accredited professional degree in architecture as described by §1.21(a)(1). Alternatively, the proposed rule would retain the provision that would allow a reciprocity applicant who does not meet the educational requirement to demonstrate eligibility through NCARB certification. NCARB certification is a process by which educational deficiencies resulting from the lack of a NAAB-accredited degree may be supplemented through demonstration of experience in relevant practice areas. This process allows an applicant to demonstrate substantial equivalence with the Board's eligibility requirements, as required by Tex. Occ. Code §1051.305(a)(1) and §1.22(a)(1).

Fiscal Note Guidelines

Lance Brenton, General Counsel, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant adverse fiscal impact upon state government, local government, or the Texas Board of Architectural Examiners.

Public Benefit/Cost Note Guidelines

For the first five-year period the amended rule is in effect, the expected public benefit is the removal of ambiguity in the Board's reciprocal registration requirements, the promotion of the public health and safety by requiring an appropriate educational background for applicants for architectural registration, and consistency within the Board's rules relating to eligibility requirements for registration by examination and reciprocity, resulting in a substantially equivalent standard for both registration methods.

The cost of compliance with this rule depends on the educational background of the applicant for registration by reciprocity. An individual who applies for reciprocity with a bachelor's degree in architecture prior to December 31, 2020 will not face any additional costs of compliance. An individual with such a degree who applies on January 1, 2021 or later would be eligible for registration by obtaining NCARB certification. The Board is unable to state with certainty what the cost of NCARB certification will be at that time. However, the Board notes that the current cost of NCARB certification for an individual with a bachelor's degree in architecture is \$1,100, provided that the applicant has been registered as an architect in another jurisdiction for at least three years and has completed two times the required hours in the IDP program. Alternatively, such an individual could qualify for NCARB certification without doubling the IDP requirements by undergoing an educational portfolio review, as discussed below.

An individual who seeks reciprocity eligibility without a professional degree or four-year bachelor's degree in architecture will be subject to increased costs of compliance when the proposed rule takes effect. Such an individual would be required to demonstrate eligibility for registration through NCARB certification. An individual without a four-year bachelor's degree in architecture is required to undergo an educational portfolio review by NCARB. During this process, NAAB compares the applicant's educational background with the course of study for an accredited professional degree. If this review identifies educational deficiencies, an experience dossier must be prepared by the applicant that will allow NCARB's committee to review the applicant's work experience to demonstrate learning through experience. An evaluation by NAAB costs \$2,138. The cost of a dossier review by NCARB ranges from \$500 to \$5,000, depending on the extent of an applicant's educational deficiency. It should be noted that the costs of NCARB certification are only necessary for applicants with a four-year degree or less. As such, it is likely that these individuals, who do not meet the standard requirement for a five-year professional degree in architecture, bear a decreased financial cost compared to the cost of an additional year or more of tuition. The amendment to the rule will have no negative fiscal impact on small or micro-business, as current registrants and currently occurring small business activity will be unaffected by the prospective changes to reciprocity eligibility requirements. Therefore, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

Public Comment

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337. Comments must be received by May 10, 2016.

Statutory Authority

The amendment is proposed pursuant to Texas Occupations Code §1051.202, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code, Texas Occupations Code §1051.705, which grants the Board authority to recognize and approve architecture educational programs, and §1051.305, which grants the Board authority to issue registration by reciprocity for an applicant who holds a license or certificate of registration issued by another jurisdiction that has licensing or registration requirements substantially equivalent to those of Texas.

Cross Reference to Statute

The proposed amendments to this rule do not affect any other statutes.

§1.22. *Registration by Reciprocal Transfer.*

(a) A person may apply for architectural registration by reciprocal transfer if the person holds an architectural registration that is active and in good standing in another jurisdiction and the other jurisdiction:

(1) has licensing or registration requirements substantially equivalent to Texas registration requirements; or

(2) has entered into a reciprocity agreement with the Board that has been approved by the Governor of Texas.

(b) In order to obtain architectural registration by reciprocal transfer, an Applicant must demonstrate the following:

(1) the Applicant has:

(A) successfully completed a professional degree in architecture as described by §1.21(a)(1) of this Subchapter;

(B) [(A)] successfully completed the Architect Registration Examination (ARE) or another architectural registration examination which the National Council of Architectural Registration Boards (NCARB) has approved as conforming to NCARB's examination standards; and

(C) [(B)] successfully completed the requirements of the Intern Development Program (IDP) or acquired at least three years of acceptable architectural experience following registration in another jurisdiction; or

(2) the Applicant has been given Council Certification by NCARB and such Council Certification is not currently in an expired or revoked status.

(c) An Applicant who applies for architectural registration by reciprocity on or before December 31, 2020, and otherwise demonstrates satisfaction of all requirements for registration at that time, is not required to complete a professional degree in architecture, as described by §1.21(a)(1) of this Subchapter, provided that the applicant has successfully completed a pre-professional bachelor's degree in architecture by a U.S. regionally accredited institution. This subsection is repealed effective December 31, 2020.

(d) [(e)] An Applicant for architectural registration by reciprocal transfer must remit the required registration fee to the Board within 60 days after the date of the tentative approval letter sent to the Applicant by the Board.

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

Filed with the Office of the Secretary of State on June 28, 2016.

TRD-201603261

Lance Brenton

General Counsel

Texas Board of Architectural Examiners

Earliest possible date of adoption: August 14, 2016

For further information, please call: (512) 305-8519



TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.583

The Comptroller of Public Accounts proposes amendments to §3.583, concerning margin: exemptions. The amendments implement House Bill 500, 83rd Legislature, 2013; House Bill 2358, 84th Legislature, 2015; and Senate Bill 1563, 84th Legislature, 2015.

Throughout the section, titles are added to statutory citations.

Subsection (b)(2), regarding application for exemption, is amended to add new subsection (n), related to out-of-state entities performing disaster- or emergency-related work, to the list of subsections providing an exemption that does not require application under subsection (b). Paragraph (2)(B) is amended for clarity and no substantive change is intended.

Subsection (c)(1) is amended to correct a grammatical error. Paragraph (2)(C) is amended to correctly include a jeopardy determination as a reason for which an entity may request a re-determination hearing when an exemption has been denied or revoked.

The title and contents of subsection (d)(1) are amended to the singular form for consistency with the other paragraphs in this section. The information provided in paragraph (1) is reorganized into subparagraphs (A) - (C) and amended to implement House Bill 500. Subparagraph (A), which provides information on the exemption for insurance organizations authorized to do business in this state, is amended to implement House Bill 500 by deleting the reference to Insurance Code, Chapters 221-224, and inserting instead "authorized to engage in insurance business in this state that are required to pay an annual tax measured by their gross premiums receipts" to identify authorized insurance organizations that are exempt from franchise tax. Subparagraph (B), which provides information on the exemption for insurance organizations not authorized to do business in this state (non-admitted insurance organizations), is also amended to implement House Bill 500, which provides an exemption for a non-admitted insurance organization that pays a gross premiums tax in another state or foreign jurisdiction. A title is added to subparagraph (C), which provides information on the period covered by the exemption, previously provided in subsection (d)(1) without changes. Titles are added to paragraphs (2) - (6) and paragraph (2) is amended for clarity with no substantive change intended.

The title and purpose of subsection (g) are amended to be consistent with other subsections in this section by providing the exemption for an entity with business interest in solar energy devices rather than providing only the definition of "solar energy device." The definition of "solar energy device" remains in the subsection for reference.

The title of subsection (h), exemption for recycling operation, is amended to be consistent with other titles in the section. Also, the definition of "sludge" from Health and Safety Code, §361.003 (Definitions), is added without change.

Subsection (i)(2) and (4) are amended to refer to paragraph (6) of the subsection for information on the meaning of "timely man-

ner." Paragraphs (3), (4), (5) and (6)(B) are amended to correct grammatical errors.

Subsection (j)(2)(A) and (B) are amended to add "for example" to clarify that the information provided in the subparagraphs apply also to other periods, not just the periods specified.

Subsection (k) is amended to add a title and also to include a cooperative credit association, previously omitted in error in this subsection but eligible for exemption under Tax Code §171.076 (Exemption--Cooperative Credit Association).

New subsection (m) is added to implement Senate Bill 1563, which exempts from franchise tax nonprofit corporations created by the TexAmericas Center.

New subsection (n) is added to implement House Bill 2358, which provides a franchise tax exemption for out-of-state business entities performing disaster- or emergency-related work in Texas during a disaster response period. The reference to "transaction of business" in Texas from House Bill 2358 is replaced with a form of "doing business in Texas" to be consistent with Tax Code, §171.001 (Tax Imposed), related to the imposition of the franchise tax. Paragraph (1) provides information regarding notification requirements and paragraph (2) provides definitions for "affiliate," "critical infrastructure," "declared state disaster or emergency," "disaster- or emergency-related work," "disaster response period," "in-state business entity," "mutual assistance agreement," and "out-of-state business entity," taken directly from Business & Commerce Code, §112.003 (Definitions), without change and included as subparagraphs (A) - (H), respectively.

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 statutes and clarifying agency 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*.

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

The amendments implement Tax Code, §171.052 (Certain Corporations), and §171.086 (Exemption: Political Subdivision Corporation); Business & Commerce Code, §112 (Facilitating Business Rapid Response to State Declared Disasters Act); Special District Local Laws Code, §3503.111 (Nonprofit Corporations); and Local Government Code, §304.001 (Aggregation by Political Subdivisions).

§3.583. *Margin: Exemptions.*

(a) Effective date. This section applies to franchise tax reports originally due on or after January 1, 2008, except as otherwise noted.

(b) Application for exemption. An entity that has not previously established an exemption from franchise tax with the comptroller must apply for an exemption. An entity that is not a corporation, but whose activities would qualify it for a specific exemption under Tax Code, Chapter 171, Subchapter B, if it were a corporation, may qualify for the exemption from the tax in the same manner and under the same conditions as a corporation. See Tax Code, §171.088 (Exemption--Noncorporate Entity Eligible for Certain Exemptions). For provisional exemptions for certain entities, see subsection (i) of this section; for trade show exemptions, see subsection (j) of this section.

(1) An entity that believes it is exempt from [payment of] franchise tax must furnish to the comptroller sufficient evidence to establish its exempt status. The entity claiming the exemption bears the burden to establish its entitlement to exempt status and any doubts will result in a denial of the application for exemption.

(2) Except as otherwise provided in subsections (f), (i), [~~and~~] (j), and (n) of this section, each entity must submit to the comptroller:

(A) a request for exemption in writing, which may require using forms developed by the comptroller for requesting exemptions, indicating the particular provision of Tax Code, Chapter 171, under which exemption is claimed;

(B) a detailed statement of both the entity's past and current activities, if any, and its future plan of activities, each [~~both~~] in relation to the manner in which the entity proposes [~~adopts~~] to implement the purposes clause in its certificate of formation or application for registration;

(C) an entity formed or created under Texas law whose articles of organization or formation is on file with the Texas Secretary of State need not submit copies of those documents with its request for exemption. A Texas entity that is not required to file organizational documents with the Texas Secretary of State must furnish a signed and dated copy of its organizational documents with its exemption request. If a non-Texas entity is required to file articles of organization or formation with its home jurisdiction Secretary of State, or other designated agency or officer, the entity must provide file-stamped copies of those filed organizational or formation documents. If a non-Texas entity is not required to file its articles of organization with the Secretary of State or other authority of its home jurisdiction, it must furnish a signed and dated copy of its organizational or formation documents with its exemption request; and

(D) any additional information the comptroller may require to make a determination whether the entity is eligible for a franchise tax exemption.

(c) Actions by comptroller. Upon receipt of an application for exemption, the comptroller's representative will review the application and send the applicant a notification either granting the exemption or denying the exemption, or requesting additional information.

(1) If the exemption is granted, the exemption will be effective from the first date the entity was eligible for exemption. If the entity paid any franchise taxes prior to the comptroller's notification granting the exemption for a privilege period after the effective date of the exemption, the entity may request a refund, subject to the applicable statute of limitations. If the effective date of the exemption occurs after the beginning of a privilege period, the entity must pay through the end of such privilege period. An entity that has been subject to the tax and

becomes eligible for exemption is liable for the [Tax Code, §171.0014,] additional tax under Tax Code, §171.0011 (Additional Tax).

(2) If the exemption is denied or revoked, the entity may contest the denial or revocation by filing all reports due as required by the comptroller; and

(A) paying all amounts of tax, penalty, and interest due and requesting a refund hearing pursuant to the provisions of Tax Code, Chapter 111 (Collection Procedures);

(B) paying all amounts of tax, penalty, and interest due, accompanying the payment with a written protest, and filing suit for the recovery of amounts paid pursuant to the provisions of Tax Code, Chapter 112 (Taxpayers' Suits); or

(C) requesting a redetermination hearing pursuant to Tax Code, §111.009 (Redetermination), if the comptroller issues a deficiency or jeopardy determination.

(d) Qualification for exemption.

(1) Entity [Entities] subject to insurance premium taxes.

(A) Insurance organization authorized to do business in this state. An [AH] insurance, surety, guaranty, fidelity or [and] title insurance company [companies], title insurance agent [agents], or [and] other insurance organization authorized to engage in insurance business in this state, that is required to pay an annual tax measured by its gross premium receipts is [organizations that are subject to the annual gross premiums tax levied by Insurance Code, Chapters 221 - 224, are] exempt from payment of the franchise tax, regardless of whether any gross premiums taxes are actually paid in any given year.

(B) Insurance organization not authorized to do business in this state (non-admitted insurance organization). A non-admitted insurance [company or] organization [that is] required to pay a gross premium receipts tax during a tax year is exempted from the franchise tax for the same tax year. A non-admitted insurance organization that is subject to an occupation tax or any other tax that is imposed for the privilege of doing business in another state or foreign jurisdiction, including a tax on gross premium receipts, is exempted from the franchise tax.

(C) Period covered. The exemption in this paragraph covers the periods upon which the franchise tax is based, provided the gross premium receipts tax is required to be paid on premiums received or written, as applicable, during the same period. For example, an insurance organization's gross premium receipts tax is due and payable on March 1, 2009, for premiums received during calendar year 2008. The entity would be exempt from franchise tax for the 2009 annual report covering the January 1, 2009 - December 31, 2009, privilege period, for margin attributable to calendar year 2008. An entity is subject to the franchise tax, however, for a tax year in any portion of which it is in violation of an order issued by the Texas Department of Insurance under Insurance Code, §2254.003(b) (Refund or Discount Based on Excessive or Unfairly Discriminatory Premium Rates), that is final after appeal or that is no longer subject to appeal.

(2) Nonprofit entity organized to promote county, city, or another area. A nonprofit entity [These entities] organized for the exclusive purpose of promoting the public interest of any county, city, town, or other area within the state, must show that promotion of the public interest is the exclusive purpose of the entity and not merely an incidental result. An entity will not be considered to be promoting the public interest if it engages in activities to promote or protect the private, business, or professional interests of its members or patronage.

(3) Nonprofit entity organized for religious purposes. A nonprofit entity seeking franchise tax exemption as a religious organi-

zation must be an organized group of people regularly meeting for the primary purpose of holding, conducting, and sponsoring religious worship services according to the rites of their sect. The entity must be able to provide evidence of an established congregation showing that there is an organized group of people regularly attending these services. An entity that supports and encourages religion as an incidental part of its overall purpose, or one whose general purpose is furthering religious work or instilling its membership with a religious understanding, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of entities that do not meet the requirements for exemption under this definition are conventions or associations of churches, evangelistic associations, churches with membership consisting of family members only, missionary organizations, and groups that meet for the purpose of holding prayer meetings, Bible study or revivals. Although these organizations do not qualify for exemption under this category of exemption as religious organizations, they may qualify for the exemption under Tax Code, §171.063 (Exemption-Nonprofit Corporation Exempt from Federal Income Tax), if they obtain an exemption from the Internal Revenue Service (IRS) under Internal Revenue Code (IRC), §501(c).

(4) Nonprofit entity organized for public charity. A nonprofit entity seeking a franchise tax exemption as organized for purely public charity must devote all or substantially all of its activities to the alleviation of poverty, disease, pain, and suffering by providing food, clothing, drugs, treatment, shelter, or psychological counseling directly to indigent or similarly deserving members of society with its funds derived primarily from sources other than fees or charges for its services. If an entity engages in any substantial activity other than the activities that are described in this paragraph, it will not be considered as having been organized for purely public charity, and therefore, will not qualify for exemption under this provision. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are fraternal organizations, lodges, fraternities, sororities, service clubs, veterans groups, mutual benefit or social groups, professional groups, trade or business groups, trade associations, medical associations, chambers of commerce, and similar organizations. Even though not organized for profit and performing services that are often charitable in nature, these types of organizations do not meet the requirements for exemption under this provision. Although these organizations do not qualify for exemption under this category of exemption as charitable organizations, they may qualify for the exemption under Tax Code, §171.063, if they obtain an exemption from the IRS under IRC, §501(c).

(5) Nonprofit entity organized for educational purposes. A nonprofit entity seeking a franchise tax exemption as an educational organization must show that its activities are devoted solely to systematic instruction, particularly in the commonly accepted arts, sciences, and vocations, and has a regularly scheduled curriculum, using the commonly accepted methods of teaching, a faculty of qualified instructors, and an enrolled student body or students in attendance at a place where the educational activities are regularly conducted. An entity that has activities consisting solely of presenting public discussion groups, forums, panels, lectures, or other similar programs, may qualify for exemption under this provision, if the presentations provide instruction in the commonly accepted arts, sciences, and vocations. The entity will not be considered for exemption under this provision if the systematic instruction or educational classes are incidental to some other facet of the organization's activities. No part of the net earnings of the organization may inure to the benefit of any private party or individual other than

as reasonable compensation for services rendered to the organization. Some examples of organizations that do not meet the requirements for exemption under this definition are professional associations, business leagues, information resource groups, research organizations, support groups, home schools, and organizations that merely disseminate information via tangible or electronic media. Although these organizations do not qualify for exemption under this category of exemption as educational organizations, they may qualify for the exemption under Tax Code, §171.063, if they obtain an exemption from the IRS under IRC, §501(c).

(6) Certain homeowners' associations. A nonprofit entity requesting franchise tax exemption as a homeowners' association must prove that it meets all requirements to qualify for the exemption. The entity must show that it is organized and operated to obtain, manage, construct, and maintain the property in or of a residential condominium or residential real estate development. The entity also must prove that the condominium project, or, for a real estate development, the related property, is legally restricted for use as residences. Furthermore, the entity must establish that the collective resident owners of individual lots, residences or units control at least 51% of the votes of the entity and that voting control, however acquired, is not held by: a single individual or family; one or more developers, declarants, banks, investors, or other similar parties. For example, an association is formed for a residential condominium consisting of 12 units with each unit being entitled to one vote. Each of five individuals separately owns and occupies one unit, a total of five units. A sixth individual owns two units, living in one unit and leasing the other. A seventh individual owns and leases the remaining five units. None of the owners are related. In determining whether the collective resident owners control at least 51% of the votes of the organization, the sixth owner is a resident owner regarding the one unit in which the owner lives and an investor regarding the other. The collective resident owners, therefore, have a total of six votes. Consequently, since the collective resident owners only have 50% of the votes of the entity, the association does not meet the requirement that the resident owners must control at least 51% of the votes of the organization. Accordingly, the entity does not qualify for the franchise tax exemption as a homeowners' association.

(e) Revocation, withdrawal, or loss of exemptions.

(1) An entity that no longer qualifies for the franchise tax exemption is required to notify the comptroller in writing of its change in status. Except as provided in paragraph (2) of this subsection, if at any time the comptroller has reason to believe that an exempt entity no longer qualifies for exemption, the comptroller's representative will notify the entity that its exempt status is under review. The comptroller's representative may request additional information necessary to ascertain the continued validity of the entity's exempt status. If the comptroller determines that an entity is no longer entitled to its exemption, notification to that effect will be sent to the entity. The effective date of revocation is the date the entity no longer qualified for the exemption. The day immediately following the date of withdrawal, loss, or revocation shall be the beginning date for determining the entity's privilege period and for all other purposes related to franchise tax.

(2) For nonprofit entities granted an exemption under Tax Code, §171.063, the revocation, withdrawal, or loss of the federal income tax exemption automatically terminates the franchise tax exemption. A nonprofit entity that no longer qualifies for the federal income tax exemption which was the basis for obtaining the franchise tax exemption must notify the comptroller in writing within 30 days of its change in status and must provide a copy of the notice of such revocation, withdrawal, or loss. The effective date of withdrawal or loss is the date of withdrawal or loss of the federal tax exemption. The effective date of a revocation is the date the IRS serves written notice of

the revocation to the non-profit entity or the date the IRS serves written notice of revocation to the comptroller, whichever is earlier. The day immediately following the date of withdrawal, loss, or revocation shall be the entity's beginning date for determining its privilege periods and for all other purposes of the franchise tax.

(3) An electric cooperative entity previously exempted from franchise tax under Tax Code, §171.079 (Exemption--Electric Cooperative Corporation), that subsequently participates in a joint powers agency thereby loses its franchise tax exemption. The commencing date of participation in the joint powers agency shall be considered the entity's beginning date for purposes of determining the entity's privilege periods and for all other purposes of the franchise tax. The electric cooperative must notify the comptroller in writing that it is a participant in a joint powers agency within 30 days after the commencing date of its participation.

(f) Federal exemption. An entity meeting the requirements of any paragraph of this subsection establishes its exempt status by furnishing to the comptroller a copy of a current exemption letter from the IRS.

(1) A nonprofit entity that has been exempted from federal income tax under the provisions of IRC, §501(c)(3) - (8), (10), (19); or

(2) any entity that has been exempted from federal income tax under the provisions of IRC, §501(c)(2) or (25), if the entity or entities for which it holds title to property are either exempt from or not subject to the franchise tax; and

(3) any entity that has been exempted from federal income tax under IRC, §501(c)(16).

(g) Solar energy devices exemption. An entity engaged solely in the business of manufacturing, selling, or installing solar energy devices is exempted from the franchise tax. [Solar energy device.] For purposes of this section [Tax Code, §171.056], the term "solar energy device" includes, but is not limited to:

(1) devices used in the conversion of solar thermal energy into electrical or mechanical power;

(2) devices used in the photovoltaic (solar cell) generation of electricity;

(3) systems used in the heating of water and the heating and cooling of structures by use of solar collectors to gather the sun's energy; and

(4) heat pumps used as an integral part of a system designed to make the best combined use of solar energy and conventional heating.

(h) Recycling [Exemption for recycling] operation exemption. An entity engaged solely in the business of recycling sludge [as defined by Health and Safety Code, Chapter 361, Solid Waste Disposal Act, §361.003,] is exempt from franchise tax. For purposes of this subsection, "sludge" means solid, semisolid, or liquid waste generated from a municipal, commercial, or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, excluding the treated effluent from a wastewater treatment plant, as provided under Health and Safety Code, Chapter 361 (Solid Waste Disposal Act), §361.003 (Definitions).

(i) Provisional exemptions.

(1) If established with the comptroller, the following entities may be granted a temporary exemption from franchise tax:

(A) a nonprofit entity that has applied for exemption from federal income tax under IRC, §501(c)(3) - (8), (10), (19); or

(B) an entity that has applied for exemption from federal income tax under IRC, §501(c)(2) or (25), if the entity or entities for which it holds title to property is either exempt from or not subject to the franchise tax; and

(C) an entity that has applied for exemption from federal income tax under IRC, §501(c)(16).

(2) To obtain a temporary franchise tax exemption with the comptroller, an entity that has applied for but has not yet received a letter of exemption from the IRS must timely file, as provided in paragraph (6) of this subsection, with the comptroller:

(A) a copy of the application for recognition of exemption that has been filed with the IRS; and

(B) a copy of:

(i) a written notice from the IRS stating that the application for recognition of exemption has been received; or

(ii) a receipt as proof that the application has been sent to the IRS by means of the United States Postal Service, other carrier, or hand delivery to the IRS.

(3) Paragraph [Paragraphs] (2)(A) and [(2)] (B)(ii) of this subsection, applies [apply] only if the organization has filed its application for recognition of exemption during the 14th or 15th month after its beginning date. Beginning date means:

(A) for an entity organized under the laws of this state, the date on which the entity's certificate of formation or other similar document takes effect; and

(B) for a foreign entity, the date on which the entity begins doing business in this state.

(4) If the information required in paragraph [paragraphs] (2)(A) and (B)(i) of this subsection is provided in a timely manner, as provided in paragraph (6) of this subsection, a 90-day provisional franchise tax exemption will be granted.

(5) An entity qualifying under paragraph [paragraphs] (2)(A) and (B)(ii) of this subsection, will be granted a 90-day provisional exemption with the condition that a copy of the notice required in paragraph (2)(B)(i) of this subsection be provided to the comptroller within 30 days from the date of the letter notifying the entity of the provisional exemption. If the IRS notification is not provided within the 30-day period, the provisional exemption will be canceled. An entity whose provisional exemption is canceled will be subject to all tax, penalty, and interest that has accrued since the entity's beginning date.

(6) The information necessary for obtaining a temporary franchise tax exemption will be considered to be provided to the comptroller in a timely manner if:

(A) the application for recognition of exemption is provided to the IRS within their timely filing guidelines; and

(B) the information required in paragraph [paragraphs] (2)(A) and (B)(i) or (B)(ii) of this subsection, is postmarked within 15 months after the day that is the last day of a calendar month and that is nearest to the entity's beginning date.

(7) Before the expiration of the 90-day provisional exemption, the entity must provide the comptroller a copy of the letter from the IRS showing that the decision on the federal exemption is still pending or stating that the federal exemption is either granted or denied.

(8) If the comptroller is notified as required in paragraph (7) of this subsection, that the decision on the federal exemption is still pending, an extension of the provisional exemption may be considered.

(9) If the information in paragraph (7) of this subsection, is not provided as required, the provisional exemption may be canceled. If the provisional exemption is canceled, the entity will be responsible for all franchise tax reports and payments that have become due since its beginning date, and penalty and interest will be based on the original due date of each report.

(10) An entity that provides the comptroller a copy of the letter from the IRS stating that the federal exemption has been granted will be considered for franchise tax exemption under subsection (f) of this section.

(11) If the federal exemption is denied by the IRS, the entity is responsible for all franchise tax reports and payments that have become due since its beginning date and interest will be based on the original due date of each report. Late filing and payment penalties will be waived for any reports and payments postmarked within 90 days after the date of the final denial of the federal exemption. The penalty waiver process will begin when the entity submits a written request for penalty waiver and a copy of the letter denying the federal exemption when filing reports and payment.

(j) Trade show exemption. See Tax Code, §171.084 (Exemption--Certain Trade Show Participants), for the requirements for exemption for certain foreign entities that participate in trade shows in Texas.

(1) Notification to comptroller. Entities need not apply for an exemption under Tax Code, §171.084.

(A) If a foreign entity has obtained a registration or has already notified the comptroller that it is doing business in Texas, the entity must notify the comptroller in writing by the due date of the first report for which the entity is exempt that the report and payment are not due because the entity is exempt under Tax Code, §171.084. After such notification, the entity must notify the comptroller in writing only when the organization no longer qualifies for exemption.

(B) If a foreign entity has not obtained a registration or otherwise qualified to do business in the state, if applicable, and if the entity has not notified the comptroller that it is doing business in Texas, the entity must notify the comptroller in writing only when the entity no longer qualifies for exemption under Tax Code, §171.084. There is no need to apply for exemption as long as the entity qualifies for the exemption.

(2) Solicitation periods. If the solicitation of orders is conducted during more than five periods during the business period upon which tax is based as set out in Tax Code, §171.1532 (Business on Which Tax on Net Taxable Margin is Based), the entity does not qualify for exemption.

(A) For example, an [An] entity with its fiscal year ending December 31, 2008, that filed a 2008 annual report, will not have to file and pay a 2009 annual report if it did not solicit orders for more than five periods during 2008.

(B) For example, assume [Assume] a foreign entity participated in its first trade show in Texas on April 1, 2008. It also participated in trade shows in 2009 on January 1, March 1, May 1, June 1, August 1, and October 1. The entity's fiscal year ends are December 31, 2008, and 2009. The entity would be exempt for its initial report and payment (covering the privilege periods from April 1, 2008 - December 31, 2009) because it only solicited for one period from April 1, 2008 - December 31, 2008 (i.e., the business upon which the initial

report is based). The entity would be required to file a 2010 annual report and pay tax, however, because it solicited for six periods from January 1, 2009 - December 31, 2009 (i.e., the period upon which the 2010 annual report is based).

(3) One hundred twenty hours. A solicitation period may not exceed 120 consecutive hours. If the solicitation of orders is conducted during a single period of more than 120 consecutive hours, the entity does not qualify for exemption. For example, an entity that meets the other requirements of Tax Code, §171.084, will meet the 120 hours requirement if the solicitation occurs Monday - Friday, but will not meet the 120 hours requirement if the solicitation occurs Monday - Saturday. If none of the solicitation limits prescribed in this subsection are exceeded, an entity may qualify for the exemption even if it leases space at a wholesale center for the entire period upon which the tax is based.

(k) Credit association exemption. A cooperative credit association incorporated under Agriculture Code, Chapter 55 (Cooperative Credit Associations), an [An] entity organized under 12 U.S.C. §2071, or an agricultural credit association regulated by the Farm Credit Administration is exempt from franchise tax.

(l) Bingo unit exemption. For reports originally due on or after October 1, 2009, a bingo unit formed under Occupations Code, Chapter 2001, Subchapter I-1 (Unit Accounting), is exempt from franchise tax. "Unit" means two or more licensed authorized organizations that conduct bingo at the same location joining together to share revenues, authorized expenses, and inventory related to bingo operation.

(m) TexAmericas Center nonprofit corporation exemption. Effective June 16, 2015, a nonprofit entity created by the TexAmericas Center under Special District Local Laws Code, §3503.111 (Nonprofit Corporations), is exempt from franchise tax.

(n) Disaster response exemption for an out-of-state business entity. Effective June 16, 2015, an out-of-state business entity is not required to file a franchise tax report with or pay franchise tax to this state if the performance of disaster- and emergency-related work during a disaster response period is the only business the entity does in Texas. An out-of-state business entity that remains in Texas after a disaster response period is not entitled to this exemption.

(1) Notification to comptroller. An entity need not apply for an exemption from franchise tax under Business & Commerce Code, §112.004 (Exemption of Out-of-State Business Entity From Certain Obligations During Disaster Response Period). An entity must notify the comptroller in writing only when the entity no longer qualifies for the exemption.

(2) Definitions. For the purpose of this subsection, the terms defined in subparagraphs (B) - (H) of this paragraph have the meanings given in Business & Commerce Code, §112.003 (Definitions).

(A) Affiliate--A member of a combined group as that term is described by Tax Code §171.1014 (Combined Reporting; Affiliated Group Engaged in Unitary Business).

(B) Critical infrastructure--Equipment and property that is owned or used by a telecommunications provider or cable operator or for communications networks, electric generation, electric transmission and distribution systems, natural gas and natural gas liquids gathering, processing, and storage, transmission and distributions systems, and water pipelines and related support facilities, equipment, and property that serve multiple persons, including buildings, offices, structures, lines, poles, and pipes.

(C) Declared state disaster or emergency--A disaster or emergency event that occurs in this state and:

(i) in response to which the governor issues an executive order or proclamation declaring a state of disaster or a state of emergency; or

(ii) that the president of the United States declares a major disaster or emergency.

(D) Disaster- or emergency-related work--Repairing, renovating, installing, building, rendering services, or performing other business activities relating to the repair or replacement of critical infrastructure that has been damaged, impaired, or destroyed by a declared state disaster or emergency.

(E) Disaster response period--

(i) the period that:

(I) begins on the 10th day before the date of the earliest event establishing a declared state disaster or emergency by the issuance of an executive order or proclamation by the governor or a declaration of the president of the United States; and

(II) ends on the earlier of the 120th day after the start date or the 60th day after the ending date of the disaster or emergency period established by the executive order or proclamation or declaration, or on a later date as determined by an executive order or proclamation by the governor; or

(ii) the period that, with respect to an out-of-state business entity:

(I) begins on the date that the out-of-state business entity enters this state in good faith under a mutual assistance agreement and in anticipation of a state disaster or emergency, regardless of whether a state disaster or emergency is actually declared; and

(II) ends on the earlier of the date that the work is concluded or the seventh day after the out-of-state business entity enters this state.

(F) In-state business entity--A domestic entity or foreign entity that is authorized to transact business in this state immediately before a disaster response period.

(G) Mutual assistance agreement--An agreement to which one or more business entities are parties and under which a public utility, municipally owned utility, or joint agency owning, operating, or owning and operating critical infrastructure used for electric generation, transmission, or distribution in this state may request that an out-of-state business entity perform work in this state in anticipation of a state disaster or emergency.

(H) Out-of-state business entity--A foreign entity that enters this state at the request of an in-state business entity under a mutual assistance agreement or is an affiliate of an in-state business entity and;

(i) that:

(I) except with respect to the performance of a disaster- or emergency-related work:

(-a-) has no physical presence in this state and is not authorized to transact business in this state immediately before a disaster response period; and

(-b-) is not registered with the secretary of state to transact business in this state, does not file a tax report with this state or a political subdivision of this state, and does not have nexus with this state for the purpose of taxation during the year immediately preceding the disaster response period; and

(II) enters this state at the request of an in-state business entity, the state, or a political subdivision of this state to perform disaster- or emergency-related work in this state during the disaster response period; or

(ii) that performs work in this state under a mutual assistance agreement.

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

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Lita Gonzalez

General Counsel

Comptroller of Public Accounts

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



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §§16.1 - 16.7

The Texas Department of Public Safety (the department) proposes new §§16.1 - 16.7, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. This proposal is necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

In the May 6, 2016, issue of the *Texas Register* (41 TexReg 3254), the department published proposed new §§16.1 - 16.7. The department received comments on the May 6th proposal from numerous members of the commercial driving community. In response to their written comments, the department withdrew the May 6th proposal and is republishing this proposal.

Several of the comments received pertained to §16.1(2)(G) which excepted from adoption 49 CFR §383.75, regarding third party commercial driver license skill testing. These commenters expressed the desire to have the flexibility to provide third party commercial skills testing to commercial driver license applicants in Texas. In response to their written comments, the department deleted the exception noted in §16.1(2)(G). While this change will not allow the department to immediately establish a third party commercial driver license skills testing program, the incorporation and adoption by reference of 49 CFR §383.75 will provide the department with the flexibility to adopt rules regarding third party commercial skills testing at a later date if the department chooses to take such action and will avoid confusion among the commercial driving community since that

provision is referenced in §522.023 of the Texas Transportation Code

Additionally, the department received one comment related to the inclusion of the word "only" in §16.2(5) concerning the definition of recreational vehicle. The department included "only" in error so the word has been deleted from §16.2(5) in order to conform the language to §522.004(a)(4) and §522.004(b) of the Texas Transportation Code.

No changes have been made to §§16.3 - 16.7 from the original May 6th proposal.

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

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

In addition, Ms. Whittenton has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be the alignment of both state and federal commercial driver license laws, thereby increasing effective enforcement and compliance of commercial laws.

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

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

Comments on this proposal may be submitted to Ron Coleman, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This proposal is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §522.005, which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

Texas Government Code, §411.004(3) and Texas Transportation Code, §522.005 are affected by this proposal.

§16.1. General Requirements.

All rules and regulations adopted in this chapter apply to every person, including employers of such persons, who holds a Texas commercial

driver license (CDL) or operates a commercial motor vehicle (CMV) in this state, regardless if they are operating in interstate, foreign, or intrastate commerce.

(1) The department incorporates by reference and adopts:

(A) The Federal Motor Carrier Safety Regulations, Title 49, Code of Federal Regulations (CFR) Part 383 including all interpretations thereto, as amended through March 1, 2016. Where there is conflict between 49 CFR Part 383 and Texas Transportation Code, Chapter 522, Texas Transportation Code, Chapter 522 controls.

(B) 49 CFR §390.5.

(2) The CFRs detailed in this paragraph are excepted from adoption:

(A) 49 CFR §383.3(d)(3).

(B) 49 CFR §383.3(e).

(C) 49 CFR §383.3(g).

(D) 49 CFR §383.31(a).

(E) 49 CFR §383.31(b).

(F) 49 CFR §383.51(c)(9).

(G) 49 CFR §383.153(10).

§16.2. Chapter Definitions.

The terms in this section have the following meanings when used in this chapter unless the context clearly indicates otherwise.

(1) Act--Texas Transportation Code, Chapter 522.

(2) Disqualifying offense--Has the meaning assigned by Texas Transportation Code, §522.081.

(3) Knowledge exam--Written, computerized, or automated exam.

(4) Out-of-service order--Has the meaning assigned by 49 CFR §383.5 or Texas Transportation Code, §522.003(23).

(5) Recreational vehicle--A vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own mode of power or is mounted on or towed by another vehicle and is driven for personal use.

(6) Serious traffic conviction--Has the meaning assigned by Texas Transportation Code, §522.003.

(7) Serious traffic violation--Has the meaning assigned by Texas Transportation Code, §522.003(25) and §16.62 of this title (relating to Serious Traffic Violations and Habitual Violators).

(8) Skills exam--Driver or road exam.

§16.3. Persons Exempted.

Persons exempted from commercial driver license (CDL) requirements are:

(1) A person operating a vehicle that is controlled and operated by a farmer which is used to transport agricultural products, farm machinery, or farm supplies to or from a farm and which is not used in the operations of a common or contract carrier and used within 150 miles of the person's farm.

(A) Under this exemption, a rancher is considered a farmer.

(B) A farmer and his farmhands are equally exempt when the farmhands are in the employ of the farmer.

(C) One who purchases a crop in a field and only harvests and transports the produce, but takes no part in the planting and cultivating of the product, is not considered a farmer.

(D) One who purchases acres of growing timber and cultivates and harvests it over a period of months or years is considered a farmer.

(2) A person operating a fire fighting or emergency vehicle necessary to the preservation of life or property or the execution of emergency governmental functions, whether operated by an employee of a political subdivision or by a volunteer fire fighter, or a fire fighter employed by a private company, for example, a refinery. This would not exempt operators of vehicles used by utility companies.

(A) Drivers of industrial emergency response vehicles, including an industrial ambulance are exempt only if the vehicle is operated in compliance with criteria established by the Texas Industrial Fire Training Board or the State Firemen's and Fire Marshall's Association of Texas.

(B) Drivers of public or private ambulances are exempt only if they have been issued a license by the Department of State Health Services.

(C) Electric company employees repairing downed power lines are not exempt.

(3) A person operating a military vehicle or a commercial motor vehicle, when operated for military purposes by military personnel, members of the reserves and national guard on active duty (including personnel on full-time national guard duty), personnel on part-time training duty, and national guard military technicians. This exemption includes the operation of vehicles leased by the United States government for use by the military branches of government.

(4) A person operating a vehicle that is a recreational vehicle that is driven for personal use.

(A) For purposes of this exemption recreational vehicle means a vehicular type unit primarily designed as temporary living quarters for recreational camping or travel use that either has its own motive power or is mounted on or towed by another vehicle.

(B) This exemption includes travel trailers, camping trailers, truck campers, and motor homes.

(5) A person operating a vehicle that is owned, leased, or controlled by an air carrier, as defined by Texas Transportation Code, §21.155(d), and that is driven or operated exclusively by an employee of the air carrier only on the premises of an airport, as defined by Texas Transportation Code, §22.001(2), on service roads to which the public does not have access.

(6) A person operating a vehicle used exclusively to transport seed cotton modules or cotton burrs.

§16.4. Manufactured Housing.

Drivers who transport manufactured housing on highways must have the proper commercial driver license (CDL) if the vehicle meets the weight criteria for a commercial motor vehicle (CMV) as defined in 49 CFR §390.5. In determining whether the towed unit exceeds 10,000 pounds and whether the gross combination weight rating (GCWR) totals 26,001 or more pounds, the manufactured housing being drawn and trailers carrying the manufactured housing are motor vehicles for purposes of the Act.

§16.5. Qualifications to Drive in Intrastate Commerce.

A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in intrastate

commerce must meet the same requirements as those for interstate driving (49 CFR § 391.41), except for:

(1) The applicant must be at least 18 years of age.

(2) The applicant must have held a driver license for a minimum of 3 years.

(3) An applicant may present the department's vision or limb waiver certificate instead of meeting the vision or physical requirements of 49 CFR §391.41. Waivers may only be renewed through the Texas Department of Public Safety, Driver License Division/Enforcement and Compliance Service, P.O. Box 4087, Austin, Texas 78773-0310.

(4) A driver who operates a motor vehicle in intrastate commerce only, and does not transport property requiring a hazardous material placard, and was regularly employed operating a CMV in Texas prior to August 28, 1989, is not required to meet the federal physical and vision standards.

(5) A driver who operates a CMV in intrastate commerce only may obtain a vision or limb waiver from the department provided the qualifications detailed in this section are met: (Only one waiver can be used to obtain a CDL.)

(A) Vision waiver requirements:

(i) The applicant has 20/40 (Snellen) or better distant visual acuity with corrective lenses in the better eye; or

(ii) The applicant's vision is uncorrectable in one eye and the applicant does not wear corrective lenses, then uncorrected vision must be at least 20/25 (Snellen) in the better eye;

(iii) The applicant has the ability to recognize the colors of traffic signals and devices showing standard red, green, and amber, and

(iv) The applicant must present a medical certificate as required under 49 CFR §391.43.

(v) Applicants may be referred to a vision specialist in cases involving a failure on the vision examination:

(I) When the applicant protests the results of the vision examination; or

(II) When other conditions necessitate verification by a medical professional.

(B) Limb waiver requirements:

(i) Medical certificate required under 49 CFR §391.43; and

(ii) Pass a comprehensive driving examination in the appropriate class vehicle (equipped with all necessary vehicle modifications) for the CDL for which the applicant is applying.

(6) Applications for a Texas intrastate vision or limb waiver will include a review of the applicant's driving record for the three-year period immediately preceding the date of the application. An applicant may obtain a waiver from the department only if their driving record:

(A) contains no suspensions, revocations, disqualifications or cancellations of the driver license based on an alcohol, drug or driving related conviction or an administrative action resulting from the operation of any motor vehicle, including a personal vehicle;

(B) contains no involvement in a crash for which a citation was issued resulting in a conviction for a moving violation;

(C) contains no convictions for a disqualifying offense or more than one serious traffic conviction during the three-year period, which disqualified or should have disqualified the applicant in accordance with the driver disqualification provisions of Texas Transportation Code, §522.081; or

(D) contains no more than two convictions for moving violations in a CMV.

(7) If the driving record shows either convictions for moving violations or crash involvement but does not indicate the type of vehicle operated or the number of miles per hour above the posted speed limit, the department may request additional official documentation (e.g., a copy of the citation or crash report, or copies of court records) from the applicant.

(8) If the applicant is arrested, cited for, or convicted of any disqualifying offense or other moving violations during the period an application is pending, the applicant must immediately report such arrests, citations, or convictions to the Texas Department of Public Safety, Driver License Division/Enforcement and Compliance Service, P.O. Box 4087, Austin, Texas 78773-0310. No waiver determination will be completed while any charge against the applicant, for what would be a disqualifying offense, is still pending. Convictions occurring during the processing of an application will be considered in the overall driving record. The applicant must also report any conviction that is not listed on the driving record because of processing delays. If a subsequent review of the applicant's driving record identifies incidents that should have been reported, any waiver issued may be revoked.

(9) Applicants for a Texas intrastate vision or limb waiver must be able to meet all other physical requirements specified in 49 CFR §391.41 without the benefit of any other waiver.

(10) Applicants for a CDL must present a valid vision or limb waiver certificate obtained from the department's Enforcement and Compliance Service in Austin. A vision waiver may be used to obtain a Hazardous Materials Endorsement; however, a limb waiver cannot be used to obtain this endorsement.

(11) All recipients of a Texas intrastate vision/limb waiver will be required to have a license with the appropriate restrictions as they apply. Waiver recipients will be notified in writing by means of the most recent address on file of the requirement to add the restrictions and will be given 60 days to comply. Failure to comply within the specified period may result in the revocation of any waiver and their disqualification as a CMV driver.

(12) Applications for the renewal of the vision or limb waiver certificates will be granted provided the applicant's driving history continues to meet the requirements as detailed in paragraph (5) of this subsection and the applicant for:

(A) a vision waiver continues to meet the vision standards listed in paragraph (5)(A) of this subsection and all other requirements of 49 CFR §391.41; or

(B) a limb waiver certificate continues to meet all other requirements of 49 CFR §391.41.

(13) Applicants denied a vision/limb waiver may appeal the decision of the department by contacting the department's designee, in writing, within 20 days after receiving notification of the denial. The request for an appeal must contain the name, address, and driver license number of the applicant, the reasons why the waiver should be granted, and include all pertinent documents which support the reasons why the waiver should be granted. The denial is stayed pending the review of the director or his designee. The decision of the department's designee is final.

(14) Waiver certificates will be approved by department's designee and are valid for a period not to exceed 2 years after the date of the applicant's medical examiner's physical examination.

(15) If the vision or limb waiver application is approved, the applicant must obtain a CDL with the appropriate restrictions within 60 days of the approval. Failure to obtain the CDL with the appropriate restrictions within the 60 day period may result in the cancellation of the waiver certificate. Any cancellations will require the applicant to reapply for the waiver.

(16) If the vision or limb waiver application is denied and the applicant currently holds a CDL, the CDL privilege will be cancelled and a demand for the surrender of the CDL will be made.

(17) If the holder of a Texas vision/limb waiver fails to renew the waiver, the driver will be notified in writing by the department of this requirement via the most recent address on file. Proper notification is presumed if the notification is mailed by first-class mail to the applicant or licensee at the last mailing address on file with the department. Failure to comply within a 60 day period may result in the cancellation of their CDL and the demand for the surrender of the CDL currently held.

(18) Prior to the renewal of their CDL those applicants who were previously issued a vision waiver with an indefinite expiration date must comply with this section in order to retain their CDL. Notice of this requirement will be sent to the mailing address on record. Failure to comply with this section will result in the denial of their renewal application and the cancellation of their CDL operating privilege.

§16.6. Farm-Related Service Industry Waiver.

(a) The department must waive the commercial driver license (CDL) knowledge and skill exams required by Texas Transportation Code, §522.022, and provide for the issuance of a restricted CDL to an employee of a farm-related service industry (FRSI) in accordance to 49 CFR 383. The department is subject to any condition or requirement established for the waiver by the Federal Highway Administration. In addition to any restriction or limitation imposed by this section, a restricted CDL issued under this regulation is subject to any restriction or limitation imposed by the secretary of the highway administration.

(b) Fees for an FRSI CDL are the same as for a regular CDL and will be calculated the same way. A \$10 duplicate fee must be charged each time an applicant revalidates the waiver period.

(c) The FRSI CDL must have a P restriction. The validity period must be continuous, for a minimum period of 30 days, and cannot exceed 180 days in any 12 month period. The FRSI CDL cannot be renewed more than 30 days prior to the expiration date of the existing FRSI CDL issuance period and cannot exceed the expiration date of the CDL.

§16.7. Proof of Domicile.

(a) A person applying for a commercial driver license (CDL) which authorizes operation of a commercial motor vehicle (CMV) in interstate commerce must be domiciled in Texas. For purposes of this requirement, the state of domicile means the state where a person has the person's true, fixed, and permanent home and principal residence and to which the person intends to return whenever absent. A person may have only one state of domicile.

(b) In order to prove domicile, all original applicants for a CDL must present two acceptable documents verifying the applicant's domicile address in Texas.

(c) The department may require individuals renewing or obtaining a duplicate CDL to present proof of domicile prior to issuance.

(d) In order to satisfy the requirements of this section the individual must provide two documents, which contain the applicant's name and domicile address, from the acceptable proof of domicile list in subsection (e) of this section.

(e) Acceptable proof of domicile documents are:

(1) A deed, mortgage, monthly mortgage statement, current mortgage payment booklet, or a current residential rental/lease agreement.

(2) A valid, unexpired Texas voter registration card.

(3) A valid, unexpired Texas motor vehicle registration or title.

(4) A valid, unexpired Texas boat registration or title.

(5) A valid, unexpired Texas license to carry a handgun.

(6) An electric, water, natural gas, satellite television, cable television, or non-cellular telephone statement dated within 90 days of the date of application.

(7) A Selective Service card.

(8) A medical or health card.

(9) A current homeowners' or renters' insurance policy or homeowners' or renters' insurance statement.

(10) A current automobile insurance policy or an automobile insurance statement.

(11) A Texas high school, college, or university report card or transcript for the current school year.

(12) A W-2 or 1099 tax form from the current tax year.

(13) Mail from financial institutions; including checking, savings, investment account, and credit card statements dated within 90 days of the date of application.

(14) Mail from a federal, state, county, or city government agency dated within 90 days of the date of application.

(15) A current automobile payment booklet.

(16) A pre-printed paycheck or payment stub dated within 90 days of the date of application.

(17) Current documents issued by the U.S. military indicating residence address.

(18) A document from the Texas Department of Criminal Justice indicating the applicant's recent release or parole.

(f) Both documents may not be from the same source. For example, an individual may not use vehicle registration and vehicle title for the same or different vehicles from the same registration office or a water and gas bill from the same utility. Mail addressed with a forwarding label or address label affixed to the envelope or contents are not acceptable.

(g) If the individual cannot provide two documents from the acceptable proof of domicile list, the individual may submit a Texas residency affidavit submitted by:

(1) An individual who resides at the same residence address as the applicant.

(A) For related individuals, the applicant must present a document acceptable to the department indicating a family relationship to the person who completed the Texas residency affidavit and present two acceptable proof of domicile documents with the name of the person who completed the Texas residency affidavit. Acceptable

documents demonstrating family relationship may include but are not limited to:

- (i) marriage license;
- (ii) military dependent identification card;
- (iii) birth certificate; and
- (iv) adoption records.

(B) For unrelated individuals, the individual must accompany the applicant, present a valid Texas driver license or identification card, and present two acceptable proof of domicile documents from the acceptable proof of domicile list in subsection (d) of this section.

(2) A representative of a governmental entity, not-for-profit organization, assisted care facility/home, adult assisted living facility/home, homeless shelter, transitional service provider, or group/half way house certifying to the address where the applicant resides or receives services. The organization must provide a notarized letter verifying that they receive mail for the individual.

(h) An individual is not required to comply with this section if the applicant is subject to the address confidentiality program administered by the Office of the Attorney General, judicial address confidentiality under Texas Transportation Code, §521.121, or currently incarcerated in a Texas Department of Criminal Justice facility.

(i) All documents submitted by an individual must be acceptable to the department. The department has the discretion to reject or require additional evidence to verify domicile address.

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

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D. Phillip Adkins

General Counsel

Texas Department of Public Safety

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For further information, please call: (512) 424-5848



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 95. MEDICATION AIDES--PROGRAM REQUIREMENTS

40 TAC §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127 - 95.129

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§95.101, 95.103, 95.105, 95.107, 95.109, 95.113, 95.115, 95.117, 95.119, 95.121, 95.123, 95.125, 95.127, and 95.128; and new §95.129, in Chapter 95, Medication Aides--Program Requirements.

BACKGROUND AND PURPOSE

The proposed amendments and new section in Chapter 95 provide that DADS does not issue or renew a permit if an applicant or a medication aide is listed as unemployable on the Employee Misconduct Registry (EMR), listed as revoked on the Nurse Aide Registry (NAR), or has been convicted of certain offenses. The proposed amendments specify criteria used to determine if a renewal application is late and allow DADS to use an applicant's email address of record as contact information. Certain practices, currently described as exceptions to prohibited practices, are listed as permissible practices. The rule clarifies that any practice not listed in the rule is prohibited. Throughout the chapter, the amendments change the term "permit holder" to "medication aide" to be consistent and to use a defined term.

The proposed amendments and new section also implement Senate Bill (S.B.) 807 and S.B. 1307, 84th Legislature, Regular Session, 2015, which amended Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses. The proposed amendments add definitions of terms related to these provisions and the new section addresses several areas that relate to issuing medication aide permits to military service members, military veterans, and military spouses.

Throughout the chapter, grammatical and editorial changes were made for clarity and consistency, and to correct formatting structure.

SECTION-BY-SECTION SUMMARY

The proposed amendment in §95.101 adds definitions for "active duty," "armed forces of the United States," "military service member," "military spouse," and "military veteran," because those terms are used in proposed new §95.129. The proposed amendment adds definitions for "EMR" (employee misconduct registry) and "NAR" (nurse aide registry) because provisions are added related to those registries. The proposed amendment adds definitions for "HCSSA" (home and community support services agency), "client," "day," and "PRN medication" (pro re nata medication) and amends the definition of "facility" to clarify the meaning of those terms. The proposed amendment uses the acronyms for several terms that are currently defined and puts the terms in alphabetical order based on the acronyms. The proposed amendment also includes editorial and grammatical changes for consistency.

The proposed amendment in §95.103 deletes references to the statutes under which medication aides practice because it duplicates information in §95.101(a), explaining the purpose of the chapter. The proposed amendment clarifies that a medication aide who works in a Medicare skilled nursing facility or a Medicaid nursing facility must also be a nurse aide in accordance with Chapter 94 of Title 40. The proposed amendment also makes minor editorial changes to use terminology that is consistent throughout the chapter.

The proposed amendment in §95.105(a)(3) clarifies that a medication aide may administer regularly prescribed medication if the aide personally sets up the medication from a unit dose pack. Currently, the rule requires an aide to "personally prepare" medication and the amendment clarifies how that requirement applies to dose packs. The proposed amendment moves the requirements that a medication aide must meet to administer previously ordered PRN medication, crush medication, and electronically order refills, from subsection (b)(3), (6), and (9) to subsection (a)(6), (9), and (10). The requirements are more appro-

priately listed in subsection (a), which describes actions that a medication aide may perform, rather than subsection (b), which describes prohibited actions. Similarly, examples of actions that a medication aide may perform in subsection (b)(5)(A) and (B), which are currently provided as exceptions to the prohibition on calculating a dosage, are moved to subsection (a)(7) and (8). In subsection (b)(8), the phrase "physician, dentist, or podiatrist" is replaced with "healthcare professional" because the prohibition on a medication aide receiving or reducing an order to writing applies to an order from any healthcare professional, not just the three professionals identified in the current rule. The proposed amendment states that any practice not listed in §95.105(a) is a prohibited practice for a medication aide. This provision is added to clarify permissible practices of a medication aide. The proposed amendment makes editorial changes for clarity and to correctly format the section.

The proposed amendment in §95.107 adds a new requirement that an applicant must not have been convicted of a criminal offense listed in Texas Health and Safety Code (THSC), §250.006(a) and not have been convicted of a criminal offense listed in §250.006(b) within the preceding five years. The proposed amendment also states that an applicant must not be listed as unemployable on the EMR or listed with a revoked or suspended status on the NAR. These additional requirements are designed to protect the health and safety of persons to whom medication aides administer medication. Additional editorial changes are made for clarity and to correctly format the section.

The proposed amendment in §95.109 changes the time period allowed for an applicant to submit a permit application and other required documentation from 30 days to 20 days after enrollment in a training program. This shorter time period is designed to give DADS adequate time to review a permit applicant and address any deficiencies, which increases the likelihood that an applicant will meet the application requirements before the exam date. The proposed amendment also allows, in addition to cashier's check and money order, payment of fees by methods approved by DADS. This provision allows DADS to authorize other forms of payment in the future without amending the rule. The proposed amendment identifies other sections in Chapter 95 that include fee schedules for correctional medication aides and home health medication aides. This information is included for clarification. The proposed amendment states that DADS verifies the accreditation of the high school that issues a diploma or testing service or program that certifies the general educational development (GED) test. The proposed amendment also states that if DADS is unable to verify the accreditation status of the school, testing service, or program, the applicant must provide documentation to DADS verifying the accreditation status of the school, testing service, or program. Additional editorial changes are made for clarity and to correctly format the section.

The proposed amendment in §95.113 states that DADS denies an application for a permit if the applicant is listed on the NAR in revoked or suspended status; if the applicant has a conviction of a criminal offense listed on THSC §250.006(a), or a conviction of a criminal offense in §250.006(b) within five years before DADS receives the application or if the applicant is listed on the EMR. These changes are consistent with the proposed amendment to §95.107 and are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment makes grammatical and editorial changes for clarity and consistency.

The proposed amendment in §95.115 states that DADS denies renewal of a permit to a medication aide who has a criminal conviction of an offense listed in THSC §250.006(a), or a criminal conviction of an offense listed in THSC §250.006(b) within five years before the date DADS receives the renewal application; is listed as unemployable on the EMR; or is listed with a revoked or suspended status on the NAR. The changes are consistent with the proposed amendments to §95.107 and §95.113 and are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment also states that DADS denies renewal of a permit if the medication aide is in default on a guaranteed student loan as described in Texas Education Code §57.491. This change reflects DADS current practice. The proposed amendment also addresses how DADS determines if an application is late and when DADS denies the late renewal of a permit. The proposed amendment makes grammatical and editorial changes for clarity and consistency.

The proposed amendment in §95.117 specifies that a medication aide must notify DADS within 30 days after changing any contact information, including name, preferred mailing address, and email address.

The proposed amendment in §95.119 adds requirements that a training program must comply with before a student begins the program. These requirements include ensuring the student meets training requirements in §95.107, performing a criminal history check, checking the EMR and NAR, and documenting the program's findings. The proposed amendment allows a pharmacist instructor in a training program to have a minimum of one year of experience as a pharmacist in a correctional facility setting and be employed as a pharmacist in a correctional facility. The rule currently requires the experience to be in a facility, so the proposed amendment also allows pharmacists with experience in a correctional facility to qualify to be training instructors. The proposed amendment allows a continuing education training program to consist of online instruction. This change will allow continuing education to be provided more conveniently and increase access to it. The proposed amendment also changes the time period for a training program to notify DADS that a medication aide has completed a continuing education course from 15 days to 10 days. This change will provide DADS with information about an aide's continuing education status sooner, which allows the medication aide to get appropriate credit for the continuing education program in a more timely manner. The proposed amendment makes editorial and grammatical changes for clarity and consistency.

The proposed amendment in §95.121 contains editorial changes to correct references and the formatting of the section.

The proposed amendment in §95.123 clarifies that DADS may suspend a permit in an emergency or rescind approval for a training program if requirements of Chapter 95 are not met. Additional grammatical and editorial changes are made for clarity and consistency.

The proposed amendment in §95.125 deletes subsection (m) which was used for implementation of the correctional medication aide program. The program is now operating and, therefore, the implementation requirements are no longer needed. Examples of actions that a correctional medication aide may perform in subsection (c)(2)(C)(i) and (ii), which are currently provided as exceptions to the prohibition on calculating a dosage, are moved to subsection (c)(1)(I) and (J). The actions are more appropriately listed in subsection (c)(1), which describes actions

that a correctional medication aide may perform, rather than subsection (c)(2), which describes prohibited actions. Similarly, the amendment moves the requirements that a correctional medication aide must meet to crush medication from subsection (c)(2)(D) to subsection (c)(1)(K). Additional grammatical and editorial changes were made for clarity and consistency and to correct the formatting of the section.

The proposed amendment in §95.127 deletes the term "work-days" and replaces it with "days" throughout the section for consistency. The time periods are also modified to accommodate the change from workdays to days. Additional editorial and grammatical changes are made throughout the section for clarity and consistency.

The proposed amendment in §95.128 moves the examples of actions that a home health medication aide may perform in subsection (d)(5)(A) and (B), which are currently provided as exceptions to the prohibition on calculating a dosage, to subsection (c)(8) and (9). The actions are more appropriately listed in subsection (c), which describes actions that a home health medication aide may perform, rather than subsection (d), which describes prohibited actions. Similarly, the amendment moves the requirements that a home health medication aide must meet to crush medication from subsection (d)(6) to subsection (c)(10). The proposed amendment adds to the list of applicant qualifications that the applicant must not have been convicted of a criminal offense listed in THSC §250.006(a) and not have been convicted of a criminal offense listed in §250.006(b) within the preceding five years. The proposed amendment also states that an applicant must not be listed as unemployable on the EMR or listed with a revoked or suspended status on the NAR. The proposed amendment also states that DADS denies renewal of the permit of a medication aide if the medication aide has been convicted of those offenses, listed as unemployable on the EMR, or listed with a revoked or suspended status on the NAR. These new requirements are designed to protect the health and safety of persons to whom medication aides administer medication. The proposed amendment adds the address to which an applicant sends a request for reimbursement. The proposed amendment also updates references and includes grammatical and editorial changes for clarity and consistency and to correct the formatting structure of the section.

Proposed new §95.129 describes the process that an applicant who is a military service member or a military veteran must follow to request a waiver of the combined permit application and examination fee based on military service, training, or education. The proposed new rule also describes the process that an applicant who is a military service member, a military veteran, or a military spouse, and who holds a permit in good standing in another jurisdiction must follow to request a waiver of the combined permit application and examination fee. In addition, the proposal describes the process that a medication aide who is a military service member must follow to request two additional years to complete permit renewal requirements. Finally, the proposal describes the process that a former medication aide who is a military service member, a military veteran, or a military spouse must follow to request renewal of an expired permit. This section has been added to comply with Texas Occupations Code, Chapter 55, as recently amended by S.B. 807 and S.B. 1307.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments

and new section does not have foreseeable implications relating to costs or revenues of state or local governments. The new section allows certain fees to be waived, which will decrease revenue to the state, but DADS does not anticipate a large number of fee waivers, so the decrease will likely be minimal.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses because the proposed amendments and new section do not impose new requirements on any persons regulated by the rules.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public will benefit from rules that prohibit applicants with a history of particular convictions or misconduct from obtaining a medication aide permit. The public will also benefit from having rules that reduce financial and administrative barriers for military service members, military veterans, and military spouses to receive and renew a medication aide permit.

Ms. Henderson anticipates that there will not be an economic cost to persons who are required to comply with the amendments and new section. The amendments and new section will not affect a local economy.

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Laura Bagheri at (512) 438-4836 in DADS Regulatory Services Division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R04, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to rulescomments@dads.state.tx.us. To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register*. The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R04" in the subject line.

STATUTORY AUTHORITY

The amendments and new rule are proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Health and Safety Code, §142.023, which authorizes the HHSC executive commissioner to establish standards for home health medication aides, and §242.608, which authorizes the HHSC executive commissioner to adopt rules regulating medication aides in nursing facilities; Texas Human Re-

sources Code, §161.083, which authorizes the executive commissioner to establish minimum standards and requirements for the issuance of corrections medication aide permits; and Texas Occupations Code, Chapter 55, which requires a state agency to adopt rules related to licensure of military service members, military veterans, and military spouses.

The amendments and new rule implement Texas Government Code, §531.0055; Texas Health and Safety Code, §142.023 and §242.608; Texas Human Resources Code, §161.083; and Texas Occupations Code, Chapter 55.

§95.101. *Introduction.*

(a) Purpose. The purpose of this chapter is to implement the provisions of the:

(1) Texas Health and Safety Code, Chapter 242, Subchapter N, concerning the administration of medications to facility residents;

(2) Texas Health and Safety Code, Chapter 142, Subchapter B, concerning the administration of medication by a home and community support services agency; and

(3) Texas Human Resource Code, §161.083, concerning the administration of medication to an inmate in a correctional facility.

(b) Corrections medication aide permit requirements. Section 95.125 of this chapter (relating to Requirements for Corrections Medication Aides) applies to a corrections medication aide or an applicant for a corrections medication aide permit.

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

(1) Abuse--The willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical harm, pain, or mental anguish.

(2) Active duty--Current full-time military service in the armed forces of the United States or as a member of the Texas military forces, as defined in Texas Government Code §437.001, or similar military service of another state.

(3) Armed forces of the United States--The Army, Navy, Air Force, Coast Guard, or Marine Corps of the United States, including reserve units of those military branches.

(4) [(2)] BON--Texas Board of Nursing.

(5) Client--An individual receiving home health, hospice, or personal assistance services from a HCSSA.

(6) [(3)] Correctional facility--A facility operated by or under contract with the Texas Department of Criminal Justice.

(7) [(4)] DADS--Department of Aging and Disability Services.

(8) Day--Any day, including a Saturday, a Sunday, and a holiday.

(9) EMR--Employee misconduct registry. The registry maintained by DADS in accordance with Texas Health and Safety Code, Chapter 253, to record findings of reportable conduct by certain unlicensed employees.

(10) [(5)] Examination--A written competency evaluation for medication aides administered by DADS.

(11) [(6)] Facility--An institution licensed under Texas [the] Health and Safety Code, Chapter 242; a state supported living center as defined in Texas [the] Health and Safety Code, §531.002(19) [§531.002(17)]; a licensed [an] intermediate care facility for an individual [persons] with an intellectual disability or related condition as defined in the Texas Health and Safety Code Chapter 252; an intermediate care facility for an individual with an intellectual disability or related condition operated by a community center as described in Texas [established under] Health and Safety Code, Chapter 534; or an assisted living facility licensed under Texas [the] Health and Safety Code, Chapter 247.

(12) HCSSA--A home and community support services agency licensed under Texas Health and Safety Code Chapter 142, and Chapter 97 of this title.

(13) [(7)] Licensed nurse--A licensed vocational nurse or an RN [a licensed registered nurse].

(14) [(8)] LVN--Licensed vocational nurse.[--]A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice vocational nursing in Texas.

(15) [(9)] Medication aide--A person who is issued a permit by DADS under Texas Health and Safety Code Chapter 242, Subchapter N, Texas Human Resources Code, Chapter 161, Subchapter D, and Texas Health and Safety Code, Chapter 142, Subchapter B [permitted by DADS] to administer medications to facility residents, correctional facility inmates, or to persons served by home and community support services agencies.

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

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

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

(20) NAR--Nurse aide registry. A state listing of nurse aides maintained by DADS in accordance with Texas Health and Safety Code, Chapter 250 that indicates if a nurse aide has active status, revoked status, or is unemployable based on a finding of having committed an act of abuse, neglect or misappropriation of resident property.

(19) [(10)] Misappropriation of resident property--The deliberate misplacement, exploitation, or wrongful temporary or permanent use of a resident's belongings or money without the resident's consent.

(21) [(11)] Neglect--The failure to provide goods and services necessary to avoid physical harm, mental anguish, or mental illness.

(22) [(12)] Non-licensed direct care staff--Employees of facilities other than Medicare-skilled nursing facilities or Medicaid nursing facilities who are primarily involved in the delivery of services to assist with residents' activities of daily living or active treatment programs.

(23) [(13)] Nurse aide--An individual who has completed a nurse aide training and competency evaluation program (NATCEP) approved by DADS [the state] as meeting the requirements of 42 Code of Federal Regulations (CFR), §§483.15 - 483.154, or has been determined competent as provided in 42 CFR, §483.150(a) and (b), and is listed as certified on DADS nurse aide registry.

(24) PRN medication--Pro re nata medication. Medication administered as the occasion arises or as needed.

~~[(14) Registered nurse (RN)--A person licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.]~~

~~(25) [(45)] Registered pharmacist--An individual currently licensed by the Texas Board of Pharmacy to practice pharmacy.~~

~~(26) RN--Registered nurse. A person who is licensed by the BON, or who holds a license from another state recognized by the BON, to practice professional nursing in Texas.~~

~~(27) [(46)] TDCJ--Texas Department of Criminal Justice.~~

~~(28) [(47)] Training program--A program approved by DADS to instruct individuals to act as medication aides.~~

§95.103. Requirements for Administering Medications.

(a) General. A person may not administer medication to a resident in a facility or a correctional facility unless the person:

(1) holds a current license under state law which authorizes the licensee to administer medication; or

(2) if administering medication in a facility, holds a current permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, or if administering medication in a correctional facility, holds a current permit issued under Texas Human Resources Code, §161.083 or Texas Health and Safety Code, Chapter 242, Subchapter N and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(b) Supervision and applicable law and rules. A medication aide [permit holder] must function under the direct supervision of a licensed nurse on duty or on call by the facility or correctional facility using the medication aide [permit holder]. A medication aide [permit holder] must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a facility or a correctional facility; and

(2) comply with DADS rules applicable to personnel used in a facility or TDCJ rules applicable to personnel in a correctional facility.

(c) Governmental employees. Governmental employees may receive a permit to administer medications under this chapter as authorized by Texas Health and Safety Code, §242.610(f) or Texas Human Resources Code, §161.083:

(1) State supported living center employees and employees of an intermediate care facility for persons with an intellectual disability operated by a community center established under Texas Health and Safety Code, Chapter 534 must comply with subsection (b) of this section and §§95.105, 95.107, 95.109, 95.111, 95.113, 95.115, 95.117, 95.119, 95.121, and 95.123 of this chapter (relating to Allowable and Prohibited Practices of a Medication Aide [Permit Holder]; Training Requirements; Nursing Graduates; Reciprocity; Application Procedures; Examination; Determination of Eligibility; Permit Renewal; Changes; Training Program Requirements; Permitting of Persons with Criminal Backgrounds; and Violations, Complaints, and Disciplinary Actions).

(2) Correctional facility employees and employees of medical services contractors for a correctional facility who administer medication as medication aides must comply with §95.125 of this chapter (relating to Requirements for Corrections Medication Aides).

(d) Medication aides in nursing facilities. Persons employed as medication aides in a Medicare skilled nursing facility or a Medicaid nursing facility must comply with the requirements relating to

nurse aides as set forth in United States Code, Part 42, §1396r(b)(5) [the Omnibus Budget Reconciliation Act of 1987, Public Law 100-203, §4201-4214, December 22, 1987, as amended,] and Chapter 94 of this title (relating to Nurse Aides).

(e) Exemptions.

(1) A person may administer medication to a resident in a facility without the license or permit as required in subsection (a) of this section, if the person is:

(A) a graduate nurse holding a temporary permit issued by the BON;

(B) a student enrolled in an accredited school of nursing or program for the education of registered nurses who is administering medications as part of the student's clinical experience;

(C) a graduate vocational nurse holding a temporary permit issued by the BON;

(D) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(E) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(2) A student described in paragraph (1)(B), (D), or (E) of this subsection may administer medication only as part of the student's clinical experience.

(3) A person described in paragraph (1) of this subsection must act under the supervision of an individual as set forth in applicable law and rules.

§95.105. Allowable and Prohibited Practices of a Medication Aide [Permit Holder].

(a) A medication aide [permit holder] under Texas Health and Safety Code, Chapter 242, Subchapter N, may:

(1) observe and report to the facility's charge licensed nurse reactions and side effects to medication shown by a resident;

(2) take and record vital signs before [prior to] the administration of medication that [which] could affect or change the vital signs;

(3) administer regularly prescribed medication to a resident if the medication aide: [which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the resident's clinical record;]

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered from a unit dose pack; and

(C) documents the administration of the medication in the resident's clinical record;

(4) administer oxygen per nasal canula or a non-sealing mask only in an emergency, [- Immediately] after which [the emergency,] the medication aide [permit holder] must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification; [and]

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication; [-]

(6) administer previously ordered PRN medication, if:

(A) the facility's licensed nurse on duty or on call authorizes the medication;

(B) the medication aide documents in the resident's records the symptoms indicating the need for the medication and the time the symptoms occurred;

(C) the medication aide documents in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and the licensed nurse granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication from the facility's licensed nurse on duty or on call each time the symptoms occur; and

(E) the medication aide ensures that the resident's record is co-signed by the licensed nurse who gave authorization by the end of the nurse's shift or, if the nurse was on call, by the end of the nurse's next shift;

(7) measure a prescribed amount of a liquid medication to be administered to a resident;

(8) break a tablet to be administered to a resident, if:

(A) the resident's medication card or its equivalent accurately documents how the tablet must be broken before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(9) crush medication, if the medication aide:

(A) obtains authorization to crush the medication from the licensed nurse on duty or on call; and

(B) documents the authorization on the resident's medication card or its equivalent; and

(10) electronically order a refill of medication from a pharmacy, if the refill request is signed by the licensed nurse on duty or on call.

(b) A medication aide [permit holder] under Texas Health and Safety Code, Chapter 242, Subchapter N, may not:

(1) administer medication by the injection route including:

- (A) intramuscular route;
- (B) intravenous route;
- (C) subcutaneous route;
- (D) intradermal route; and
- (E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing [(IPPB)] treatments or any form of medication inhalation treatments;

(3) administer previously ordered PRN [p̄r̄ō r̄ē n̄a (PRN)] medication, except in accordance with subsection (a)(6) of this section; [unless authorization is obtained from the facility's licensed nurse on duty or on call. If authorization is obtained, permit holders must:]

[(A) document, in the resident's records, symptoms indicating the need for the medication and the time the symptoms occurred;]

[(B) document in the resident's records that the facility's licensed nurse was contacted, symptoms were described, and permis-

sion was granted to administer the medication, including the time of contact;]

[(C) obtain permission to administer the medication each time the symptoms occur in the resident; and]

[(D) ensure that the resident's record is co-signed by the licensed nurse who gave permission by the end of the nurse's shift, or if the nurse was on call, by the end of the nurse's next tour of duty;]

(4) administer [the initial dose of a] medication that, according to the resident's clinical records, has not been previously administered to the [a] resident[-. Whether a medication has been previously administered must be determined by the resident's current clinical records];

(5) calculate a resident's medication doses for administration;[-, except that the permit holder may:]

[(A) measure a prescribed amount of a liquid medication to be administered; and]

[(B) break a tablet for administration to a resident, provided the licensed nurse on duty or on call has calculated the dosage. The resident's medication card or its equivalent must accurately document how the tablet must be altered prior to administration;]

(6) crush medication, except in accordance with subsection (a)(9) of this section [unless authorization is obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication must be documented on the resident's medication card or its equivalent];

(7) administer medications or feedings by way of a tube inserted in a cavity of the body;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a healthcare professional [physician, dentist, or podiatrist];

(9) order a resident's medications from a pharmacy, except in accordance with subsection (a)(10) of this section;

(10) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending physician;

(11) steal, divert, or otherwise misuse medication;

(12) violate any provision of the Texas Health and Safety Code or this chapter;

(13) fraudulently procure or attempt to procure a permit;

(14) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(15) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or [and/or] excessive use of drugs, narcotics, chemicals, or any other type of material.

(c) If a practice is not described in subsection (a) of this section the practice is prohibited for a medication aide under Texas Health and Safety Code, Chapter 242, Subchapter N.

§95.107. Training Requirements; Nursing Graduates; Reciprocity.

(a) Each applicant for a permit issued under Texas Health and Safety Code, Chapter 242, Subchapter N, must complete a training program unless the applicant meets the requirements of subsection (c) or (e) [(e) or (d)] of this section.

(b) Before submitting an [Prior to] application for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, an applicant must:

- (1) be able to read, write, speak, and understand English;
- (2) be at least 18 years of age;
- (3) be free of communicable diseases and in suitable physical and emotional health to safely administer medications;
- (4) be a graduate of an accredited [a] high school or have proof of successfully passing a general educational development test [equivalency diploma];
- (5) be [currently] employed in a facility as a nurse aide or nonlicensed direct care staff person on the first official day of an applicant's medication aide training program; and

(6) have been employed: [in a facility for 90 days as a nonlicensed direct care staff person. This employment must have been completed within the 12-month period preceding the first official day of the applicant's medication aide training program. An applicant employed as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility is exempt from the 90-day requirement.]

(A) as a nurse aide in a Medicare-skilled nursing facility or a Medicaid nursing facility; or

(B) in a facility for 90 days as a nonlicensed direct care staff person during the 12-month period before the first official day of the applicant's medication aide training program;

(7) not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), and not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the permit application;

(8) not be listed as unemployable on the EMR; and

(9) not be listed with a revoked or suspended status on the NAR.

(c) A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, if the person:

(1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter;

(2) successfully completed courses at the nursing school that cover DADS curriculum for a medication aide training program;

(3) submits a statement, with the application for a permit and combined permit application and examination fee as provided in §95.109 of this chapter (relating to Application Procedures), on the form provided by DADS, [that is] signed by the nursing school's administrator or other authorized individual, certifying [and certifies] that the person completed the courses specified in paragraph (2) of this subsection[: The administrator is responsible for determining that the courses he certifies cover DADS curriculum. The statement must be submitted with the person's application for a permit and permit application fee as provided in §95.109 of this chapter (relating to Application Procedures)]; and

(4) complies with subsection (e)(5) [(d)(5)] and (6) of this section.

(d) The administrator or other authorized individual referred to in subsection (c)(3) of this section is responsible for determining that the nursing school courses cover DADS curriculum.

(e) [(d)] A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirement for issuance of a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, provided the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this chapter.

(1) The graduate must submit an official application form to DADS. The applicant must meet the requirements of subsection (b)(1) - (4) and (7) - (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee as set out in §95.109(c) of this chapter.

(3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.

(6) The applicant must complete DADS written examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open-book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(f) [(e)] A person who holds a valid license, registration, certificate, or permit as a medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, in effect at the time of application, may request a waiver of the training program requirement as follows:

(1) The applicant must submit an official application form to DADS. The applicant must meet the requirements of subsection (b)(1) - (4) and (7) - (8) of this section.

(2) The application must be accompanied by the combined permit application and examination fee required in §95.109(c) of this chapter.

(3) The application must include a current copy of the rules of the other state governing its licensing and regulation of medication aides, a copy of the legal authority (law, act, code, or other) for the state's licensing program, and a certified copy of the license or certificate for which the reciprocal permit is requested.

(4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.

(5) DADS may contact the issuing agency to verify the applicant's status with the agency.

(6) The applicant must complete DADS open-book examination and return it to DADS by the date given in the examination notice.

(7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open-book or written examination may not be retaken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

§95.109. Application Procedures.

(a) An applicant for a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, who complies with §95.107(a) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity) must submit to DADS, no later than 20 [30] days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(b) DADS considers an application under subsection (a) of this section as officially submitted when DADS receives the permit application and examination fee.

(c) An applicant must pay the combined permit and examination [Payment of] fees [must be] by cashier's check or money order made payable to the Department of Aging and Disability Services, or by other DADS-approved payment methods. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(1) The fee schedule is as follows:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15;

(C) late renewal fees for permit renewals made after the permit expires:

(i) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(ii) \$30 for an expired permit renewed from 91 days to one year after expiration;

(iii) \$30 for a former medication aide [permit holder] who meets the criteria in §95.115(c)(5) of this chapter (relating to Permit Renewal); and

(D) permit replacement fee--\$5.

(2) An initial or a renewal application is considered incomplete until the fee has been received and cleared through the appropriate financial institution.

(3) The fee schedule that applies to the correctional medication aide is in §95.125 of this chapter (relating to Requirements for Corrections Medication Aides), and the fee schedule that applies to the home health medication aide is in §95.128 of this chapter (relating to Home Health Medication Aides).

(d) An applicant [All applicants] must submit the following application materials:[-]

(1) the [The] general statement enrollment form, which must contain:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in §95.107(b) of this chapter were met before [prior to] the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands materials submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature, which has been dated and notarized; and[-]

(2) a [A] certified copy or a notarized photocopy of an unaltered, original, high school diploma or transcript [~~which has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript~~] or the written results of a general educational development (GED) test demonstrating that the applicant passed the GED test [equivalency diploma], unless the applicant is applying under §95.107(e) [~~§95.107(d)~~] of this chapter.

(e) DADS verifies the accreditation of the high school that issued the diploma or transcript, or the testing service or program that certified the GED test required by subsection (d)(2) of this section. If DADS is unable to verify the accreditation status of the school, testing service, or program, and DADS requests additional documentation from the applicant to verify the accreditation status, the applicant must provide the documentation to DADS.

(f) [~~(e)~~] DADS sends a notice listing the additional materials required to an applicant who does not submit a complete [the] application. An applicant must submit a complete application by the date of DADS final exam. [An application not completed by the day of the medication aide final exam must be voided.]

(g) [~~(f)~~] DADS sends notice of DADS application approval [acceptance or ineligibility, disapproval,] or deficiency to an applicant in accordance with §95.127 of this chapter (relating to Application Processing).

§95.113. Determination of Eligibility.

(a) DADS approves or denies each application for a permit.

(b) Notices of application approval, denial, or deficiency must be in accordance with §95.127 of this chapter (relating to Application Processing).

(c) DADS denies an application for a permit if the person [has]:

(1) does not meet [met] the requirements in §95.107 of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity), or §95.125 of this chapter (relating to Requirements for Corrections Medication Aides);

(2) fails [failed] to pass the examination prescribed by DADS, as referenced in §95.111 of this chapter (relating to Examination), or developed by TDCJ, as referenced in §95.125(g) of this chapter;

(3) fails [failed to] or refuses [refused] to properly complete or deliberately submit an [any] application form or fee, or submits [presented] false information on any form or document required by DADS;

(4) ~~violates [violated] or conspires [conspired]~~ to violate the Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or any provision of this chapter; ~~[or]~~

(5) ~~has a felony or misdemeanor conviction of a [been convicted of a felony or misdemeanor if the] crime that~~ directly relates to the duties and responsibilities of a medication aide [permit holder] as described ~~[set out]~~ in §95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds);~~[-]~~

(6) is listed with a revoked or suspended status on the DADS NAR;

(7) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the permit application; or

(8) is listed as unemployable on the EMR.

(d) If, after review, DADS determines that the application should be ~~denied [not be approved]~~, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with §95.123(c)(3) of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

§95.115. Permit Renewal.

(a) General.

(1) When issued, an initial permit is valid for 12 months from the date of issue.

(2) A medication aide [permit holder] must renew the permit annually.

(3) Each medication aide [permit holder] is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before [prior to] the expiration date of the permit does not excuse the medication aide's [permit holder's] failure to file for timely renewal.

(4) A medication aide [permit holder] must complete a seven hour [seven-clock-hour] continuing education program approved by DADS before [prior to] expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide [permit holder] must earn approved continuing education hours to have the permit renewed again.

(5) DADS denies renewal of the permit of a medication aide [permit holder] who: [is in violation of Health and Safety Code, Chapter 242, Subchapter N, Human Resources Code, §161.083, or this chapter at the time of application for renewal.]

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or this chapter at the time of application for renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the renewal application;

(C) is listed as unemployable on the EMR;

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code, §57.491.

(6) A person whose permit has expired may not engage in activities that require a permit until the permit has been renewed.

(b) Permit renewal procedures.

(1) After receiving proof of the successful completion of the seven hour [seven-clock-hour] continuing education requirement, DADS sends ~~[to the permit holder, at the address listed in DADS records;]~~ notice of the expiration date of the permit, ~~[and]~~ the amount of the renewal fee due, and a renewal form to the medication aide physical or email address listed in DADS records ~~[that the permit holder must complete and return with the required renewal fee. If DADS does not receive proof of the successful completion of the continuing education requirement, DADS sends the permit holder a reminder notice about the required continuing education hours].~~

(2) The renewal form, which includes the contact information and preferred mailing address of the medication aide [permit holder] and information on certain misdemeanor and felony convictions, ~~[It]~~ must be completed and signed by the medication aide and returned to DADS with the required renewal fee [permit holder].

(3) DADS issues a renewal permit to a medication aide [permit holder] who meets [has met] all requirements for renewal, including payment of the renewal fee.

~~[(4)]~~ A person who is otherwise eligible to renew a permit may renew an unexpired permit by paying the required renewal fee to DADS before the expiration date of the permit.~~]~~

(c) Late renewal procedures.

(1) If a medication aide submits a renewal application to DADS that is late or incomplete, DADS assesses the appropriate late fee described in §95.109(c)(1)(C) of this chapter (relating to Application Procedures). DADS uses the postmark date to determine if a renewal application is late. If there is no postmark or the postmark is not legible, DADS uses the date the renewal application was received and recorded by the DADS Medication Aide Program to determine if the renewal application is late.

(2) ~~[(+)]~~ A person whose permit has been expired for less than one year may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year, or part of a year, since the permit expired; and

(D) proof of having earned, before [prior to] expiration of the permit, seven hours in an approved continuing education program as required by [in] subsection (a)(4) of this section.

(3) ~~[(2)]~~ A person whose permit has been expired for 90 days or less must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(i) of this chapter (relating to Application Procedures) or §95.125(f)(3)(A) of this chapter (relating to Requirements for Corrections Medication Aides).

(4) ~~[(3)]~~ A person whose permit has been expired for more than 90 days but less than one year must pay DADS the late renewal fee stated in §95.109(c)(1)(C)(ii) or §95.125(f)(3)(B) of this chapter.

~~[(4)]~~ A person whose permit has been expired for one year or more may not renew the permit. The person may obtain a new permit by complying with the requirements and procedures, including the examination requirements, for obtaining an original permit.~~]~~

(5) A person who previously held a permit in Texas issued under Texas Health and Safety Code, Chapter 242, Subchapter N, may obtain a new permit without reexamination if the person holds a facility medication aide permit from another state, practiced in that state for at least the two years preceding the application date, and pays to DADS the late renewal fee stated in §95.109(c)(1)(C)(iii) of this chapter.

(6) DADS denies late renewal of the permit if a permit holder:

(A) is in violation of Texas Health and Safety Code, Chapter 242, Subchapter N, Texas Human Resources Code, §161.083, or this chapter on the date DADS receives the application for late renewal;

(B) has a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code §250.006(b) within five years before the date DADS receives the application for late renewal;

(C) is listed as unemployable on the EMR; or

(D) is listed with a revoked or suspended status on the NAR; or

(E) is in default on a guaranteed student loan as described in Texas Education Code, §57.491.

(d) A person whose permit has been expired for one year or more may not renew the permit. To obtain a new permit, the person must apply for a permit in accordance with §95.109 of this chapter (relating to Application Procedures) and in §95.111 of this chapter (relating to Examination).

§95.117. Changes.

(a) A medication aide [permit holder] must notify DADS within 30 days after changing the medication aide's required contact information, including name, preferred mailing address, or email [his or her] address [or name].

(b) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee as set out in §95.109(c) of this chapter (relating to Application Procedures) and §95.125(f) of this chapter (relating to Requirements for Corrections Medication Aides).

§95.119. Training Program Requirements.

(a) Application. An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of their own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(1) All signatures on DADS forms and supporting documentation must be originals.

(2) The application must include:

(A) the anticipated dates of the program;

(B) the location(s) of the classroom course(s);

(C) the name of the coordinator of the program;

(D) a list that includes the address and telephone number of each instructor [instructors] and any other persons responsible for the conduct of the program[-]. The list must include addresses and telephone numbers for each instructor; and

(E) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(3) DADS may conduct an inspection of the classroom site.

(4) DADS sends notice of approval or proposed denial of the application to the program within 30 days after receiving [of the receipt of] a complete application. If DADS proposes to deny the application due to noncompliance with the requirements of Texas Health and Safety Code, Chapter 242, Subchapter N, or this chapter, the reasons for denial are given in the notice.

(5) An applicant may request in writing a hearing on a proposed denial. The applicant must submit a request within 15 [10] days after the applicant receives [of receipt of the] notice of the proposed denial. The hearing is governed by Texas Administrative Code, Title 1, [conducted in accordance with 1 FAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act);[2] Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act);[3] and Texas Government Code, Chapter 2001. If no request is made, the applicant has waived the opportunity for a hearing, and the proposed action may be taken.

(b) Basic training program.

(1) A training [The] program must include[; but is not limited to,] the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in resident's clinical records, including PRN [prø re nata (PRN)] medications;

(E) minimum licensing standards for facilities covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under Title XVIII (Medicare) and Title XIX (Medicaid) of the Social Security Act pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the facility, including facility personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of medication aides [permit holders] in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to facility residents; and

(K) rules covering the medication aide program.

(2) The program must consist of 140 hours in the following sequence: 100 hours of classroom instruction and training;[2] 20 hours of return skills demonstration laboratory;[3] 10 hours of clinical experience, including clinical observation and skills demonstration under the direct supervision of a licensed nurse in a facility;[4] and 10 [more] hours of [in the] return skills demonstration laboratory. A classroom or laboratory hour must include 50 [eløek] minutes of actual classroom or laboratory time.

(A) Class time must not exceed:

(i) four hours in a 24-hour period for a facility training program; or

(ii) eight hours in a 24-hour period for a correctional facility training program.

(B) The completion date of the program must be:

(i) a minimum of 60 days and a maximum of 180 days ~~after~~ ~~from~~ the starting date of the facility training program; or

(ii) a minimum of 30 days and a maximum of 180 days ~~after~~ ~~from~~ the starting date of a correctional facility training program.

(3) Each program must follow the curricula established by DADS.

(4) Before a student begins a training program, the program must:

(A) ensure the student meets training requirements in §95.107(b)(1) - (9) of this chapter (relating to Training Requirements; Nursing Graduates; Reciprocity);

(B) perform a criminal history check with the Texas Department of Public Safety to verify that the student does not have a conviction of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or a conviction of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date the student begins the training program;

(C) check the EMR to verify that the student is not listed as unemployable;

(D) check the NAR to verify if the student is listed in revoked or suspended status; and

(E) document the findings of the criminal history check and employability check in its records.

(5) [(4)] At least seven days before ~~prior to~~ the beginning of a training ~~each~~ program, the coordinator must notify DADS in writing of the dates and daily hours of the program, and the projected number of students.

(6) [(5)] A change in any information presented by the program in an approved application, including ~~but not limited to,~~ location, instructors ~~instructorship~~, and content must be approved by DADS before ~~prior to~~ the change is implemented ~~program's effective date of the change~~.

(7) [(6)] The program instructors of the classroom hours must be a registered nurse and registered pharmacist.

(A) The nurse instructor must have:

(i) a minimum of two years of experience in caring for individuals in a long-term care setting or be an instructor in a school of nursing, for a facility training program; or

(ii) a minimum of two years of experience employed in a correctional setting or be an instructor in a school of nursing, for a correctional facility program.

(B) The pharmacist instructor must have: ~~[a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility.]~~

(i) a minimum of one year of experience and be currently employed as a consultant pharmacist in a facility; or

(ii) a minimum of one year of experience employed as a pharmacist in a correctional setting.

(8) [(7)] The program coordinator must provide clearly defined and written policies regarding each student's clinical experience

to the student, the administrator, and the director of nursing in the facility used for the clinical experience.

(A) The clinical experience must be counted only when the student is performing functions involving medication administration and under the ~~direct~~ ~~contact~~ supervision of a licensed nurse.

(B) The program coordinator must be responsible for final evaluation of the student's clinical experience.

(9) [(8)] Each program must issue to each student, upon successful completion of the program, a certificate of completion, which must include the program's name, the student's name, the date of completion, and the signature of the program coordinator or administrative official.

(10) [(9)] Each program must inform DADS on the DADS class roster form of the final grade results for each student within 15 days after the student's completion of the course.

(c) Continuing education training program.

(1) The program must consist of at least seven ~~to~~ hours of classroom or online instruction.

(2) The instructors must meet the requirements in subsection (b)(7) ~~[(b)(6)]~~ of this section.

(3) Each program must follow the curricula established by DADS or the curriculum established by TDCJ for corrections medication aides, as applicable.

(4) Within 10 ~~[15]~~ days after a medication aide's completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide ~~permit holder~~ who has completed the course.

~~[(d) TDCJ must file with DADS an application for approval for a training program and curriculum for corrections medication aides that complies with Government Code, §501.1485 (relating to Corrections Medication Aides).]~~

(d) [(e)] In developing a training program for corrections medication aides that complies with Texas Government Code §501.1485, TDCJ may modify, as appropriate, the content of the training program curriculum originally developed under Texas Health and Safety Code, Chapter 242, to produce content suitable for administering medication in a correctional facility. The training program curriculum must be approved by DADS.

(e) Subsection (c) of this section applies to a training program for medication aides and correction medication aides.

~~[(f) Subsection (e) of this section applies to a training program developed by the TDCJ.]~~

§95.121. *Permitting of Persons with Criminal Backgrounds.*

(a) DADS may suspend or revoke an existing permit, deny ~~[disqualify a person from receiving]~~ a permit, or deny ~~[to]~~ a person the opportunity to take the examination ~~[be examined]~~ for a permit if a person has been convicted ~~[because of a person's conviction]~~ of a felony or misdemeanor offense that ~~[if]~~ the crime directly relates to the duties and responsibilities of a medication aide.

(b) [(4)] When ~~[is]~~ considering whether a criminal conviction directly relates to the duties and responsibilities ~~[occupation]~~ of a medication aide, DADS considers:

(1) [(A)] the nature and seriousness of the offense ~~[crime]~~;

(2) [(B)] that the following offenses may reflect [the relationship of the crime to the purposes for requiring a permit to be a medication aide. The following felonies and misdemeanors relate to the permit of a medication aide because these criminal offenses indicate] an actual or potential inability [or a tendency to be unable] to perform as a medication aide:

(A) [(+)] the misdemeanor of knowingly or intentionally acting as a medication aide without a permit issued under the Texas Health and Safety Code, Chapter 242;

(B) [(+)] any conviction for an offense listed in §250.006 of the Texas Health and Safety Code;

(C) [(+)] any conviction, other than a Class C Misdemeanor, for an offense defined under Texas Penal Code, Chapter 22, as assault; sexual assault; intentional exposure of another to AIDS or HIV; aggravated assault or sexual assault; injury to a child, elderly person, or person with disabilities; or aiding suicide;

(D) [(+)] any conviction, except Class C Misdemeanors, with a final disposition within the last ten years, for an offense defined in the Texas Penal Code as burglary under Chapter 30; theft under §31.03; sale or display of harmful material to minors; sexual performance by a child; and possession or promotion of child pornography;

(E) [(+)] any conviction for an offense defined in the Texas Penal Code as an attempt, solicitation, conspiracy, or organized criminal activity for any offense listed in subparagraphs (B) - (D) of this paragraph [clauses (ii) - (iv) of this subparagraph]; and [and/or]

(F) [(+)] any conviction under United States statutes or jurisdiction other than Texas for any offense equivalent to those listed in subparagraphs (B) - (E) of this paragraph [clauses (ii) - (v) of this subparagraph];

(3) [(C)] the extent to which a permit might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; [and]

(4) [(D)] the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of a medication aide; and[- In determining the present fitness of a person, DADS considers the evidence described in the Occupations Code, §53.023.]

(5) other factors related to the fitness of a person to perform the duties and discharge the responsibilities of a medication aide, as described in Texas Occupations Code §53.023.

(c) [(2)] DADS gives written notice to the person that DADS proposes to deny the application or suspend or revoke the permit after a hearing, in accordance with the provisions of §95.123(c)(3) of this chapter [title] (relating to Violations, Complaints, and Disciplinary Actions). If DADS denies, suspends, or revokes an application or permit under this chapter, DADS gives the person written notice:

(1) [(A)] of the reasons for the decision;

(2) [(B)] that the person, after exhausting administrative appeals, may file an action in a district court of Travis County for review of the evidence presented to DADS and DADS final action [its decision]; and

(3) [(C)] that the person must begin the judicial review by filing a petition with the court within 30 days after DADS [DADS] action is final and appealable.

§95.123. *Violations, Complaints, and Disciplinary Actions.*

(a) Filing of complaints. Any person may complain to DADS alleging that a person or program has violated the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter.

(1) Persons who want to file a complaint against a medication aide [permit holder], training program, or another person, must notify DADS by calling 1-800-458-9858 or by writing the Medication Aide Permit Program, Department of Aging and Disability Services, P.O. Box 149030, Mail Code E-416, Austin, Texas 78714-9030.

(2) Anonymous complaints may be investigated by DADS if the complainant provides sufficient information.

(b) Investigation of complaints. If DADS initial investigation determines:

(1) the complaint does not come within DADS jurisdiction, DADS advises the complainant and, if possible, refers the complainant to the appropriate governmental agency for handling the complaint;

(2) there are insufficient grounds to support the complaint, DADS dismisses the complaint and gives written notice of the dismissal to the medication aide [permit holder] or person against whom the complaint has been filed and the complainant; or

(3) there are sufficient grounds to support the complaint, DADS may propose to deny, suspend, emergency suspend, revoke, or not renew a permit or to rescind program approval.

(c) Disciplinary actions. DADS may revoke, suspend, or refuse [revokes, suspends, or refuses] to renew a permit, or reprimand [reprimands] a medication aide [permit holder] for a violation of Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter. [In addition,] DADS may suspend a permit in an emergency or rescind DADS approval for an educational institution to offer a training program if the medication aide or educational institution fails to comply with the requirements in this chapter [approval].

(1) DADS may place on probation a person whose permit is suspended. DADS may require the person on probation:

(A) to report regularly to DADS on matters that are the basis of the probation;

(B) to limit practice to the areas prescribed by DADS; or

(C) to continue or pursue professional education until the person attains a degree of skill satisfactory to DADS in those areas that are the basis of the probation.

(2) Before [Prior to] institution of formal proceedings to revoke or suspend a permit or rescind program approval, DADS gives written notice to the medication aide [permit holder] or program of the facts or conduct alleged to warrant revocation, suspension, or rescission, and the medication aide [permit holder] or program must be given an opportunity, as described in the notice, to show compliance with all requirements of the Texas Health and Safety Code, Chapter 242, Subchapter N; Texas Human Resources Code, §161.083; or this chapter. When there is a finding of an alleged act of abuse, neglect, or misappropriation of resident property by a medication aide [permit holder] employed at a Medicaid-certified nursing facility or a Medicare-certified skilled nursing facility, DADS complies with the hearings process as provided in 42 Code of Federal Regulations §488.335.

(3) If denial, revocation, or suspension of a permit or rescission of program approval is proposed, DADS gives written notice that the medication aide [permit holder] or program must request,

in writing, a [formal] hearing within 30 days after [of] receipt of the notice, or the right to a hearing is waived and the permit is denied, revoked, or suspended or the program approval is rescinded.

(4) A [The formal] hearing is governed by Texas Administrative Code, Title 1, [conducted according to formal hearing procedures at 1 FAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act).

(5) If an alleged act of abuse, neglect, or misappropriation by a medication aide who also is a certified nurse aide under the provisions of Chapter 94 of this title (relating to Nurse Aides) violates the rules in this chapter and Chapter 94, DADS complies with the [formal] hearing process described in paragraph (4) of this subsection. Through the [formal] hearing, determinations will be made on both the permit for medication aide practice and the certification [certificate] for nurse aide practice.

(d) Suspension, revocation, or nonrenewal. If DADS suspends a permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists or DADS revokes or determines not to renew the permit. DADS investigates before [prior to] making a determination, and:

(1) during the time of suspension, the suspended medication aide [permit holder] must return his permit to DADS;

(2) if a suspension overlaps a permit renewal date, the suspended medication aide [permit holder] may comply with the renewal procedures in §95.115 of this chapter (relating to Permit Renewal); however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists;

(3) if DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication. DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist; and

(4) if a permit is revoked or not renewed, a medication aide [permit holder] must immediately return the permit to DADS.

(e) Complaints of abuse and neglect by medication aides who are issued a permit under Texas Health and Safety Code, Chapter 242, Subchapter N, and employed in a correctional facility, are investigated as described in §95.125(k) of this chapter (relating to Requirements for Corrections Medication Aides).

§95.125. Requirements for Corrections Medication Aides.

(a) Purpose. The purpose of this section is to provide the qualifications, conduct, and practice activities of a medication aide employed in a correctional facility or employed by a medical services contractor for a correctional facility.

(b) Supervision and applicable law and rules. A medication aide [permit holder] must function under the direct supervision of a licensed nurse on duty or on call by the correctional facility using the medication aide [permit holder]. A medication aide [permit holder] must:

(1) function in accordance with applicable law and rules relating to administration of medication and operation of a correctional facility; and

(2) comply with TDCJ rules applicable to personnel used in a correctional institution.

(c) Allowable and prohibited practices of a medication aide [permit holder].

(1) A medication aide [permit holder] may:

(A) observe and report to the correctional facility's charge nurse reactions and side effects to medication shown by an inmate;

(B) take and record vital signs before [prior to] the administration of medication which could affect or change the vital signs;

(C) administer regularly prescribed medication to an inmate if the medication aide: [which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the inmate's clinical record;]

(i) is trained to administer the medication;

(ii) personally prepares the medication or sets up the medication to be administered; and

(iii) documents the administration of the medication in the inmate's clinical record;

(D) administer oxygen per nasal cannula or a non-sealing mask only in an emergency,[-: immediately] after which [the emergency,] the medication aide [permit holder] must verbally notify the licensed nurse on duty or on call and appropriately document the action and notification;

(E) apply specifically ordered ophthalmic, otic, nasal, vaginal, and rectal medication;

(F) administer previously ordered PRN [pro re nata (PRN)] medication. A medication aide [permit holder] must document in the inmate's records, symptoms indicating the need for the medication, and the time the symptoms occurred;

(G) administer the initial dose of a medication; [and]

(H) order an inmate's medications from the correctional institution's pharmacy;[-]

(I) measure a prescribed amount of a liquid medication to be administered;

(J) break a tablet for administration to an inmate if:

(i) the licensed nurse on duty or on call has calculated the dosage; and

(ii) the inmate's medication card or its equivalent accurately documents how the tablet must be altered before administration; and

(K) crush medication if:

(i) authorization is obtained from the licensed nurse on duty or on call; and

(ii) the authorization is documented on the inmate's medication card or its equivalent.

(2) A medication aide [permit holder] may not:

(A) administer medication by the injection route including:

(i) intramuscular;

(ii) intravenous;

(iii) subcutaneous;

(iv) intradermal; and

(v) hypodermoclysis;

(B) administer medication used for intermittent positive pressure breathing [(HPPB)] treatments or any form of medication inhalation treatments;

(C) calculate an inmate's medication dose for administration; ~~[except that the permit holder may:]~~

~~[(i) measure a prescribed amount of a liquid medication to be administered; and]~~

~~[(ii) break a tablet for administration to an inmate provided the licensed nurse on duty or on call has calculated the dosage. The inmate's medication card or its equivalent must accurately document how the tablet must be altered prior to administration;]~~

(D) crush medication, ~~except in accordance with subsection (c)(1)(K) of this section [unless authorization is obtained from the licensed nurse on duty or on call. The authorization to crush the specific medication must be documented on the inmate's medication card or its equivalent];~~

(E) administer medications or feedings by way of a tube inserted in a cavity of the body;

(F) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, or podiatrist;

(G) apply topical medications that involve the treatment of skin that is broken or blistered or when a specified aseptic technique is ordered by the attending licensed practitioner;

(H) steal, divert, or otherwise misuse medications;

(I) violate any provision of Texas Human Resources Code, §161.083, or this chapter;

(J) fraudulently procure or attempt to procure a permit;

(K) neglect to administer appropriate medications, as prescribed, in a responsible manner; or

(L) administer medications if the person is unable to do so with reasonable skill and safety to residents by reason of drunkenness or ~~[and/or]~~ excessive use of drugs, narcotics, chemicals, or any other type of material.

(d) Background and education requirements. ~~Before [Prior to]~~ applying for a corrections medication aide permit under Texas Human Resources Code, §161.083, an applicant must be:

(1) able to read, write, speak, and understand English;

(2) at least 18 years of age;

(3) free of communicable diseases and in suitable physical and emotional health to safely administer medications;

(4) a graduate of a high school or successfully passed [have] a general educational development test [equivalency diploma]; and

(5) employed in a correctional facility or by a medical service contractor for a correctional facility on the first day of an applicant's medication aide training program.

(e) Application. An applicant for a corrections medication aide permit under Texas Human Resources Code, §161.083 must submit an official Corrections Medication Aide application form to DADS.

(1) An applicant must submit the general statement enrollment form that contains:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all the requirements in subsection (d) of this section were met before [prior to] the start of the program;

(C) a statement that the applicant understands that application fees submitted in the permit process are nonrefundable;

(D) a statement that the applicant understands material submitted in the application process are nonreturnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's dated and notarized signature.

(2) An applicant must submit a certified copy or a photocopy that has been notarized as a true and exact copy of an unaltered original of the applicant's high school graduation diploma or transcript.

(3) DADS considers a corrections medication aide permit application as officially submitted when DADS receives the permit application.

(4) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed by the day of the TDCJ [medication aide] final exam is void.

(5) DADS sends notice of application approval [acceptance or ineligibility, disapproval] or deficiency in accordance with §95.127 of this chapter (relating to Application Processing).

(f) Fees. An applicant must pay [The permit] application and permit renewal fees for a corrections medication aide permit ~~[must be submitted]~~ by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005. The fee schedule is as follows:

(1) permit application fee--\$15;

(2) renewal fee--\$15;

(3) late renewal fees for permit renewals made after the permit expires:

(A) \$22.50 for an expired permit renewed from one to 90 days after expiration;

(B) \$30 for an expired permit renewed from 91 days to one year after expiration; and

(4) permit replacement fee--\$5.

(g) Examination procedures. TDCJ gives a written examination to each applicant at a site determined by TDCJ. An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code, §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(1) The applicant must meet the requirements of the TDCJ training program described in §95.119(d) of this chapter (relating to Training Program Requirements) before taking the written examination.

(2) The applicant must be tested on the subjects taught in the TDCJ training program curriculum and correctional facility clinical experience. The examination must test an applicant's knowledge of

accurate and safe drug therapy administered to a correctional facility inmate.

~~[(3) The examination must be taken after the applicant has successfully completed the TDCJ training program.]~~

~~(3) [(4)] TDCJ administers the examination and determines the passing grade.~~

~~(4) [(5)] TDCJ must inform DADS, on the DADS class roster form, of the final exam results for each applicant within 15 days after completion of the exam.~~

~~(5) [(6)] An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances must contact TDCJ to reschedule.~~

~~(6) [(7)] If an applicant fails the examination, TDCJ notifies DADS and the applicant in writing of the failure to pass the examination. The applicant may take one subsequent examination without having to re-enroll in the training program described in §95.119 of this chapter.~~

~~(7) [(8)] An applicant whose application for a permit is denied under §95.113 of this chapter (relating to Determination of Eligibility) is ineligible to take the examination.~~

(h) Determination of eligibility. DADS determines eligibility for a corrections medication aide permit applicant according to §95.113 of this chapter and subsections (d), (e), (f), and (g) of this section.

(i) Renewal. A permit must be renewed in accordance with §95.115 of this chapter (relating to Permit Renewal).

(j) Changes. Medication aides ~~[Permit holders]~~ must report changes in accordance with §95.117 of this chapter (relating to Changes).

(k) Violations, complaints, and disciplinary actions.

(1) Complaints. Any person may complain to DADS alleging that a person or program has violated Texas Human Resources Code, §161.083, or this chapter. DADS handles complaints in the manner set forth in §95.123 of this chapter (relating to Violations, Complaints, and Disciplinary Actions).

(2) Investigations of abuse and neglect complaints. Allegations of abuse and neglect of inmates by corrections medication aides are investigated by the TDCJ Office of Inspector General. After an investigation, the TDCJ Office of Inspector General issues a report to DADS with findings of abuse or neglect against the corrections medication aide. After reviewing the report and findings, DADS determines whether to initiate a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit. If DADS determines a formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, §95.123(c) and (d) of this chapter apply. If DADS determines that no formal proceeding to revoke, suspend, or refuse to renew a corrections medication aide permit should be initiated, DADS dismisses the complaint against the corrections medication aide and gives written notice of the dismissal to the corrections medication aide.

(l) Section 95.121 of this chapter (relating to Permitting of Persons with Criminal Backgrounds) applies to corrections medication aides ~~[aide permit holders]~~ under this chapter.

~~[(m) Verification of corrections medication aide training.]~~

~~[(1) A person employed as a medication aide in a correctional facility under a permit issued by DADS under Health and Safety Code, Chapter 242, Subchapter N, must submit to DADS a verification document issued by TDCJ. The verification document must certify that~~

~~the person is employed as a medication aide in a correctional facility in good standing and received training equivalent to the TDCJ training described in §95.119 of this chapter. If the person fails to submit the verification by the person's first permit renewal date after January 1, 2012, the person must:]~~

~~[(A) comply with subsections (e), (f), and (g) of this section to obtain a corrections medication aide permit; or]~~

~~[(B) comply with this chapter to obtain a nursing facility permit under Health and Safety Code, Chapter 242, Subchapter N.]~~

~~[(2) A medication aide who submits the verification described in paragraph (1) of this subsection must comply with the permit renewal procedures of §95.115 of this chapter and report any changes to his name and address as required by §95.117 of this chapter.]~~

§95.127. Application Processing.

(a) Time periods. DADS complies with the following procedures in processing applications for a facility and corrections medication aide permit and renewal.

(1) The following periods of time ~~[must]~~ apply from the date DADS receives ~~[of receipt of]~~ an application until the date DADS issues ~~[of issuance of]~~ a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. DADS may issue a ~~[A]~~ written notice stating that the application has been approved instead ~~[may be sent in lieu]~~ of a ~~[the]~~ notice that the application is complete ~~[of acceptance of a complete application]~~. The time periods are as follows:

(A) letter of acceptance of application for a permit--21 days ~~[14 workdays]~~;

(B) letter of application deficiency or ~~[and/or]~~ ineligibility--21 days ~~[14 workdays]~~;

(C) acceptance of renewal permit--21 days ~~[20 workdays]~~; and

(D) letter of renewal of permit deficiency--21 days ~~[20 workdays]~~.

(2) The following periods of time ~~[must]~~ apply from the date DADS receives ~~[receipt of]~~ the last item necessary to complete the application until the date DADS issues ~~[of issuance of]~~ written notice approving or denying the application. For the purpose of this section, an application is not considered complete until any required examination has been successfully completed by the applicant. The time periods for denial include notification of a ~~[the]~~ proposed decision and an ~~[of the]~~ opportunity, if required, for the applicant to show compliance with law, and an ~~[of the]~~ opportunity to request ~~[for]~~ a ~~[formal]~~ hearing. The time periods are as follows:

(A) issuance of initial permit--60 days ~~[90 workdays]~~;

(B) letter of denial for a permit or renewal permit--60 days ~~[90 workdays]~~; and

(C) issuance of renewal permit after receipt of documentation of the completion of all renewal requirements--20 days ~~[workdays]~~.

(b) Reimbursement of fees.

(1) ~~If~~ ~~[In the event]~~ an application is not processed in the time periods stated in subsection (a) of this section, the applicant has the right to request reimbursement of all fees paid in that particular application process. Application for reimbursement must be made to the program administrator for DADS Medication Aide Permit Program. If the program administrator does not agree that the time period has been

violated or finds that good cause existed for exceeding the time period, the request must be denied.

(2) Good cause for exceeding the time period exists if the number of applications for a permit and permit renewal exceeds by 15 percent [~~±5%~~] or more the number of applications processed in the same calendar quarter the preceding year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(c) Appeal. If a request for reimbursement under subsection (b) of this section is denied by the program administrator, the applicant may appeal in writing to the Texas Health and Human Services Commission's hearings section to request a hearing on the reimbursement denial. ~~A [The] hearing is governed by Texas Administrative Code, Title 1, [will be held pursuant to applicable provisions of the procedures at 1 TAC] Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act), and Chapter 91 of this title (relating to Hearings under the Administrative Procedure Act).~~

§95.128. *Home Health Medication Aides.*

(a) General.

(1) A person may not administer medication to a client unless the person:

(A) holds a current license under state law that [which] authorizes the licensee to administer medication;

(B) holds a current permit issued under this section and acts under the delegated authority of an RN [a registered nurse (RN)] licensed by the Texas Board of Nursing which authorizes the licensee to administer medication;

(C) administers a medication to a client ~~[of an agency]~~ in accordance with rules of the BON [Texas Board of Nursing] that permit delegation of the administration of medication to a person not holding a permit under this section; or

(D) administers noninjectable medication under circumstances authorized by the memorandum of understanding between the BON [Texas Board of Nursing] and DADS.

(2) A HCSSA that provides [An agency providing] licensed and certified home health services, licensed home health services, hospice services, or personal assistance services may use a home health medication aide. If there is a direct conflict between the requirements of this chapter and federal regulations, the requirements that are more stringent apply to the licensed and certified HCSSA [home health services agency].

(3) Exemptions are as follows.

(A) A person may administer medication to a client ~~[of an agency]~~ without the license or permit as required in paragraph (1) of this subsection if the person is:

(i) a graduate nurse holding a temporary permit issued by the BON [Texas Board of Nursing];

(ii) a student enrolled in an accredited school of nursing or program for the education of RNs who is administering medications as part of the student's clinical experience;

(iii) a graduate vocational nurse holding a temporary permit issued by the BON [Texas Board of Nursing];

(iv) a student enrolled in an accredited school of vocational nursing or program for the education of vocational nurses who is administering medications as part of the student's clinical experience; or

(v) a trainee in a medication aide training program approved by DADS under this chapter who is administering medications as part of the trainee's clinical experience.

(B) Supervision of an exempt person described in subparagraph (A) of this paragraph is as follows.

(i) A person described in:

(I) subparagraph (A)(i) of this paragraph shall be supervised by an RN;

(II) subparagraph (A)(ii) or (iv) of this paragraph shall be supervised by the student's instructor; or

(III) subparagraph (A)(iii) of this paragraph shall be supervised by an RN or licensed vocational nurse.

(ii) Supervision must be on-site.

(C) An exempt person described in this subsection may not be used in a supervisory or charge position.

(b) Required actions.

(1) If a HCSSA provides home health medication aide services the HCSSA must employ [are provided, an agency employs] a home health medication aide to provide the home health medication aide services. The HCSSA must employ or contract with[, and] an RN [shall be employed by or under contract with the agency] to perform the initial health assessment, [;] prepare the client care plan, [;] establish the medication list, medication administration record, and medication aide assignment sheet, [;] and supervise the home health medication aide. The RN must be available to supervise the home health medication aide when home health medication aide services are provided.

(2) The clinical records of a client [patient] using a home health medication aide must include a statement signed by the client or family acknowledging receipt of the list of permitted and prohibited acts of a home health medication aide.

(3) The RN must be knowledgeable of ~~[the rules of]~~ DADS rules governing home health medication aides and must ensure [assure] that the home health medication aide is in compliance with the Texas Health and Safety Code, Chapter 142, Subchapter B.

(4) A home health medication aide [permit holder] must:

(A) function under the supervision of an RN;

(B) comply with [function in accordance with] applicable law and this chapter relating to administration of medication and operation of the HCSSA [agency];

(C) comply with DADS rules applicable to personnel used in a HCSSA [an agency]; and

(D) comply with this section and §97.701 of this title (relating to Home Health Aides) if the person will be used as a home health aide and a home health medication aide.

(5) The RN must make a supervisory visit while the medication aide is in the client's residence in accordance with §97.298 of this title (relating to Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed Personnel and Tasks Not Requiring Delegation).

(c) Permitted actions. A home health medication aide [permit holder] is permitted to:

(1) observe and report to the HCSSA [agency's] RN and document in the clinical record any [note] reactions and side effects to medication shown by a client;

(2) take and record vital signs of a client before administering [prior to the administration of] medication that that [which] could affect or change the vital signs;

(3) administer regularly prescribed medication to a client if the medication aide: [which the permit holder has been trained to administer only after personally preparing (setting up) the medication to be administered. The medication aide must document the administered medication in the client's clinical note;]

(A) is trained to administer the medication;

(B) personally prepares the medication or sets up the medication to be administered; and

(C) documents the administration of the medication in the client's clinical record;

(4) administer oxygen per nasal cannula or a non-sealing face mask only in an emergency; ~~immediately~~ after which ~~[the emergency;]~~ the medication aide ~~[permit holder]~~ must verbally notify the supervising RN and appropriately document the action and notification;

(5) apply specifically ordered ophthalmic, otic, nasal, vaginal, topical, and rectal medication unless prohibited by subsection (d)(10) of this section; ~~[and]~~

(6) administer medications only from the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy; ~~and~~;

(7) administer previously ordered PRN medication if:

(A) the HCSSA's RN authorizes the medication;

(B) the medication aide documents in the client's clinical notes the symptoms indicating the need for medication and the time the symptoms occurred;

(C) the medication aide documents in the client's clinical notes that the HCSSA's RN was contacted, symptoms were described, and the HCSSA's RN granted permission to administer the medication, including the time of contact;

(D) the medication aide obtains authorization to administer the medication each time the symptoms occur; and

(E) the medication aide ensures that the client's clinical record is co-signed by the RN who gave permission within seven days after the notes are incorporated into the clinical record;

(8) measure a prescribed amount of a liquid medication to be administered;

(9) break a tablet for administration to a client if:

(A) the client's medication administration record accurately documents how the tablet must be altered before administration; and

(B) the licensed nurse on duty or on call has calculated the dosage;

(10) crush medication, if:

(A) authorization has been given in the original physician's order or the medication aide obtains authorization from the HCSSA's RN; and

(B) the medication aide documents the authorization on the client's medication administration record.

(d) Prohibited actions. A home health medication aide [Permit holders] must not:

(1) administer a medication by any injectable route, including:

(A) intramuscular route;

(B) intravenous route;

(C) subcutaneous route;

(D) intra dermal route; and

(E) hypodermoclysis route;

(2) administer medication used for intermittent positive pressure breathing [(IPPB)] treatment or any form of medication inhalation treatments;

(3) administer previously ordered PRN [pro re nata (PRN)] medication except in accordance with subsection (c)(7) of this section; [unless authorization is obtained from the agency's RN. If authorization is obtained, the permit holder must;]

[(A) document in the client's clinical notes symptoms indicating the need for medication and the time the symptoms occurred;

[(B) document in the client's clinical notes that the agency's RN was contacted, symptoms were described, and permission was granted to administer the medication and the time of contact;

[(C) obtain permission to administer the medication each time the symptoms occur in the client; and]

[(D) insure that the client's clinical record is co-signed by the RN who gave permission within seven calendar days of incorporation of the notes into the clinical record;

(4) administer [the initial dose of a] medication that, according to the client's clinical records, has not been previously administered to the [a] client; [Whether a medication has been previously administered must be determined by the client's current clinical records;]

(5) calculate a client's medication doses for administration; [except that the permit holder may measure a prescribed amount of a liquid medication to be administered or break a scored tablet for administration to a client provided the RN has calculated the dosage. The client's medication administration record must accurately document how the tablet must be altered prior to administration;]

(6) crush medication, except in accordance with subsection (c)(10) of this section [unless authorization has been given in the original physician's order or obtained from the agency's RN. The authorization to crush the specific medication must be documented on the client's medication administration record];

(7) administer medications or feedings by way of a tube inserted in a cavity of the body except as specified §97.404(h) [§97.298] of this title;

(8) receive or assume responsibility for reducing to writing a verbal or telephone order from a physician, dentist, [or] podiatrist or advanced practice nurse;

(9) order a client's medication from a pharmacy;

(10) apply topical medications that involve the treatment of skin that is broken or blistered when a specified aseptic technique is ordered by the attending physician;

(11) administer medications from any container other than the manufacturer's original container or the original container in which the medication had been dispensed and labeled by the pharmacy with all information mandated by the Texas State Board of Pharmacy;

- (12) steal, divert, or otherwise misuse medications;
- (13) violate any provision of the statute or of this chapter;
- (14) fraudulently procure or attempt to procure a permit;
- (15) neglect to administer appropriate medications, as prescribed, in a responsible manner; or
- (16) administer medications if the person is unable to do so with reasonable skill and safety to clients by reasons of drunkenness, inappropriate [~~excessive~~] use of drugs, narcotics, chemicals, or any other type of material.

(e) Applicant qualifications. Each applicant for a permit issued under Texas Health and Safety Code, Chapter 142, Subchapter B must complete a training program. Before enrolling [~~Prior to enrollment~~] in a training program and applying [~~prior to application~~] for a permit under this section, all applicants [~~persons~~]:

- (1) must be able to read, write, speak, and understand English;
- (2) must be at least 18 years of age;
- (3) must be free of communicable diseases and in suitable physical and emotional health to safely administer medications;
- (4) must be a graduate of an accredited [a] high school or have proof of successfully passing a general educational development test; [~~an equivalent diploma or higher degree; and~~]
- (5) must have satisfactorily completed a home health aide training and competency evaluation program or a competency evaluation program under §97.701 of this title;[-]

(6) must not have been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives a permit application;

- (7) must not be listed as unemployable on the EMR; and
- (8) must not be listed with a revoked or suspended status on the NAR.

(f) Nursing graduates. A person who is a graduate of an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the date of graduation from the nursing school was no earlier than January 1 of the year immediately preceding the year of application for a permit under this section.

- (1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (6) [(e)(1) - (4)] of this section.
- (2) The application must be accompanied by the combined permit application and examination fee.
- (3) The applicant must include an official transcript documenting graduation from an accredited school of nursing.
- (4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and DADS open book examination.
- (5) The applicant must complete the open book examination and return it to DADS by the date given in the examination notice.
- (6) The applicant must complete DADS written examination. DADS determines the site of the examination. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(7) An open book or written examination may not be retaken if the applicant fails.

(8) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(9) DADS notifies the applicant in writing of the examination results.

(g) Nursing students. A person who is attending or has attended an accredited school of nursing and who does not hold a license to practice professional or vocational nursing meets the training requirements for issuance of a permit under this section if the person:

- (1) attended the nursing school no earlier than January 1 of the year immediately preceding the year of application for a permit under this section;
- (2) successfully completed courses at the nursing school that cover DADS curriculum for a home health medication aide training program;
- (3) submits a statement with the person's application for a permit under this section, that is signed by the nursing school's administrator or other authorized individual who is responsible for determining that the courses that he or she certifies cover DADS curriculum and certifies that the person completed the courses specified under paragraph (2) of this subsection[-: ~~The administrator is responsible for determining that the courses that he or she certifies cover DADS curriculum. The statement must be submitted with the person's application for a permit under this section~~]; and
- (4) complies with subsection (f)(1) - (2) and (4) - (9) of this section.

(h) Reciprocity. A person who holds a valid license, registration, certificate, or permit as a home health medication aide issued by another state whose minimum standards or requirements are substantially equivalent to or exceed the requirements of this section in effect at the time of application may request a waiver of the training program requirement as follows:

- (1) The applicant must submit a DADS application form to DADS. The applicant must meet the requirements of subsection (e)(1) - (4) of this section.
- (2) The application must be accompanied by the combined permit application and exam fee.
- (3) The application must include a current copy of the rules of the other state governing its licensing and regulation of home health medication aides, a copy of the legal authority, including the law, act, code, or section, [~~law, act, code, section, or otherwise~~] for the state's licensing program, and a certified copy of the license or certificate by which the reciprocal permit is requested.
- (4) DADS acknowledges receipt of the application by sending the applicant a copy of this chapter and of DADS open book examination.
- (5) DADS may contact the issuing agency to verify the applicant's status with the agency.
- (6) The applicant must complete DADS open book examination and return it to DADS by the date given in the examination notice.
- (7) The applicant must complete DADS written examination. The site of the examination is determined by DADS. DADS denies the application of an applicant failing to schedule and take the examination by the date given in the examination notice.

(8) An open book or written examination may not be taken if the applicant fails.

(9) Upon successful completion of the two examinations, DADS evaluates all application documents submitted by the applicant.

(10) DADS notifies the applicant in writing of the examination results.

(i) Application by trainees. An applicant under subsection (e) of this section must submit to DADS, no later than 30 ~~calendar~~ days after enrollment in a training program, an application, including all required information and documentation on DADS forms.

(1) DADS considers an application as officially submitted when DADS receives the nonrefundable combined permit application and examination fee payable to the Department of Aging and Disability Services. The fee required by subsection (n) of this section must accompany the application form.

(2) The general statement enrollment form must contain the following application material that is required of all applicants:

(A) specific information regarding personal data, certain misdemeanor and felony convictions, work experience, education, and training;

(B) a statement that all of the requirements in subsection (e) of this section were met before ~~prior to~~ the start of the program;

(C) a statement that the applicant understands that the application fee submitted in the permit process is nonrefundable;

(D) a statement that the applicant understands that materials submitted in the application process are not returnable;

(E) a statement that the applicant understands that it is a misdemeanor to falsify any information submitted to DADS; and

(F) the applicant's signature that has been dated and notarized.

(3) The applicant must submit a certified copy or notarized ~~[a] photocopy [that has been notarized as a true and exact copy]~~ of an unaltered original of the applicant's high school graduation diploma or transcript, or an equivalent document demonstrating that the applicant successfully passed a general educational development test, [GED diploma or higher degree] unless the applicant is applying under subsection (f) of this section.

(4) DADS sends a notice listing the additional materials required to an applicant who does not complete the application. An application not completed within 30 ~~calendar~~ days after the date of the notice will be void.

(5) DADS sends notice of application acceptance, disapproval, or deficiency in accordance with subsection (q) of this section.

(j) Examination. DADS gives a written examination to each applicant at a site DADS determines.

(1) No final examination may be given to an applicant until the applicant has met the requirements of subsections (e) and (i) of this section, and if applicable, subsections (f), (g), or (h) of this section.

(2) An applicant with a disability, including an applicant with dyslexia as defined in Texas Education Code §51.970 (relating to Instructional Material for Blind and Visually Impaired Students and Students with Dyslexia), may request a reasonable accommodation for the examination under the Americans with Disabilities Act.

(3) The applicant must be tested on the subjects taught in the training program curricula and clinical experience. The examination covers an applicant's knowledge of accurate and safe drug therapy to ~~[an agency's]~~ clients.

(4) A training program must notify DADS at least four weeks before ~~prior to~~ its requested examination date.

(5) DADS determines the passing grade on the examination.

(6) DADS notifies in writing an applicant who fails the examination.

(A) DADS may give an applicant under subsection (e) of this section one subsequent examination, without additional payment of a fee, upon the applicant's written request to DADS.

(B) A subsequent examination must be completed by the date given on the failure notification. DADS determines the site of the examination.

(C) Another examination will not be permitted if the student fails the subsequent examination unless the student enrolls and successfully completes another training program.

(7) An applicant who is unable to attend the applicant's scheduled examination due to unforeseen circumstances may be given an examination at another time without payment of an additional fee upon the applicant's written request to DADS. The examination must be completed within 45 ~~calendar~~ days from the date of the originally scheduled examination. DADS determines the site for the rescheduled examination.

(8) An applicant whose application for a permit will be disapproved under subsection (k) of this section is ineligible to take the examination.

(k) Determination of eligibility. DADS approves or disapproves all applications. DADS sends notices of application approval, disapproval, or deficiency in accordance with subsection (q) of this section.

(1) DADS denies an application for a permit if the person has:

(A) not met the requirements of subsections (e) - (i) of this section, if applicable;

(B) failed to pass the examination prescribed by DADS as set out in subsection (j) of this section;

(C) failed to or refused to properly complete or submit any application form, endorsement, or fee, or deliberately presented false information on any form or document required by DADS;

(D) violated or conspired to violate the Texas Health and Safety Code, Chapter 142, Subchapter B, or any provision of this chapter; or

(E) been convicted of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a medication aide ~~[permit holder]~~ as set out in subsection (r) of this section.

(2) If, after review, DADS determines that the application should not be approved, DADS gives the applicant written notice of the reason for the proposed decision and of the opportunity for a formal hearing in accordance with subsection (r) of this section.

(l) Medication aide ~~[Permit renewal]~~. Home health medication aides must comply with the following permit renewal requirements.

- (1) When issued, a permit is valid for one year.
- (2) A medication aide [permit holder] must renew the permit annually.
- (3) The renewal date of a permit is the last day of the current permit.

(4) Each medication aide [permit holder] is responsible for renewing the permit before the expiration date. Failure to receive notification from DADS before the expiration date of the permit does not excuse the medication aide's [permit holder's] failure to file for timely renewal.

(5) A medication aide [permit holder] must complete a seven hour [se~~ven~~-hour] continuing education program approved by DADS before [pri~~or~~ to] expiration of the permit in order to renew the permit. Continuing education hours are not required for the first renewal. After a permit is renewed for the first time, the medication aide [permit holder] must earn approved continuing education hours to have the permit renewed again.

(6) DADS denies renewal of the permit of a medication aide [permit holder] who is in violation of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter at the time of application for renewal.

(7) DADS denies renewal of the permit of a medication aide who has been convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(a), or convicted of a criminal offense listed in Texas Health and Safety Code, §250.006(b) within five years before the date DADS receives the renewal application.

(8) DADS denies renewal of the permit of a medication aide who is listed as unemployable on the EMR.

(9) [(7)] Home health medication aide permit renewal procedures are as follows.

(A) At least 30 [ea~~lendar~~] days before the expiration date of a permit, DADS sends to the medication aide [permit holder] at the address in DADS records notice of the expiration date of the permit and the amount of the renewal fee due and a renewal form that the medication aide [permit holder] must complete and return with the required renewal fee.

(B) The renewal form must include the preferred mailing address of the medication aide [permit holder] and information on certain misdemeanor and felony convictions. It must be signed by the medication aide [permit holder].

(C) DADS issues a renewal permit to a medication aide [permit holder] who has met all requirements for renewal.

(D) DADS does not renew a permit if the medication aide [permit holder] does not complete the required seven-hour continuing education requirement. Successful completion is determined by the student's instructor. An individual who does not meet the continuing education requirement must complete a new program, application, and examination in accordance with the requirements of this section.

(E) DADS does not renew a permit if renewal is prohibited by the Texas Education Code, §57.491, concerning defaults on guaranteed student loans.

(F) If a medication aide [permit holder] fails to timely renew his or her permit because the medication aide [permit holder] is or was on active duty with the armed forces of the United States of America serving outside the State of Texas, the medication aide [permit holder] may renew the permit pursuant to this subparagraph.

(i) Renewal of the permit may be requested by the medication aide [permit holder], the medication aide's [permit holder's] spouse, or an individual having power of attorney from the medication aide [permit holder]. The renewal form must include a current address and telephone number for the individual requesting the renewal.

(ii) Renewal may be requested before or after the expiration of the permit.

(iii) A copy of the official orders or other official military documentation showing that the medication aide [permit holder] is or was on active military duty serving outside the State of Texas must be filed with DADS along with the renewal form.

(iv) A copy of the power of attorney from the medication aide [permit holder] must be filed with DADS along with the renewal form if the individual having the power of attorney executes any of the documents required in this subparagraph.

(v) A medication aide [permit holder] renewing under this subparagraph must pay the applicable renewal fee.

(vi) A medication aide [permit holder] is not authorized to act as a home health medication aide after the expiration of the permit unless and until the medication aide [permit holder] actually renews the permit.

(vii) A medication aide [permit holder] renewing under this subparagraph is not required to submit any continuing education hours.

(10) [(8)] A person whose permit has expired for not more than two years may renew the permit by submitting to DADS:

(A) the permit renewal form;

(B) all accrued renewal fees;

(C) proof of having earned, during the expired period, seven hours in an approved continuing education program for each year or part of a year that the permit has been expired; and

(D) proof of having earned, before [pri~~or~~ to] expiration of the permit, seven hours in an approved continuing education program as required in paragraph (5) of this subsection.

(11) [(9)] A permit that is not renewed during the two years after expiration may not be renewed.

(12) [(10)] DADS issues notices [Notices] of permit renewal approval, disapproval, or deficiency must be in accordance with subsection (q) of this section [(relating to Processing Procedures)].

(m) Changes.

(1) A medication aide [permit holder] must notify DADS within 30 [ea~~lendar~~] days after changing his or her address or name.

(2) DADS replaces a lost, damaged, or destroyed permit upon receipt of a completed duplicate permit request form and permit replacement fee.

(n) Fees.

(1) The schedule of fees is:

(A) combined permit application and examination fee--\$25;

(B) renewal fee--\$15; and

(C) permit replacement fee--\$5.00.

(2) All fees are nonrefundable.

(3) An applicant or home health medication aide [~~permit holder~~] must pay the required fee by cashier's check or money order made payable to the Department of Aging and Disability Services. All fees are nonrefundable, except as provided by Texas Government Code, Chapter 2005.

(o) Training program requirements.

(1) An educational institution accredited by the Texas Workforce Commission or Texas Higher Education Coordinating Board that desires to offer a training program must file an application for approval on a DADS form. Programs sponsored by state agencies for the training and preparation of its own employees are exempt from the accreditation requirement. An approved institution may offer the training program and a continuing education program.

(A) All signatures on DADS forms and supporting documentation must be originals.

(B) The application includes:

(i) the anticipated dates of the program;

(ii) the location(s) of the classroom course(s);

(iii) the name of the coordinator of the program;

(iv) a list that includes the address and telephone number of each instructor [~~instructors~~] and any other person responsible for the conduct of the program[- ~~The list must include addresses and telephone numbers for each instructor~~]; and

(v) an outline of the program content and curriculum if the curriculum covers more than DADS established curricula.

(C) DADS may conduct an inspection of the classroom site.

(D) DADS sends notice of approval or proposed disapproval of the application to the program within 30 [~~calendar~~] days of the receipt of a complete application. If the application is proposed to be disapproved due to noncompliance with the requirements of the Texas Health and Safety Code, Chapter 142, Subchapter B, or of this chapter, the reasons for disapproval are given in the notice.

(E) An applicant may request a hearing on a proposed disapproval in writing within ten [~~calendar~~] days of receipt of the notice of the proposed disapproval. The hearing must be in accordance with subsection (r) of this section and the Administrative Procedure Act, Texas Government Code, Chapter 2001. If no request is made, the applicant is deemed to have waived the opportunity for a hearing, and the proposed action may be taken.

(2) The program includes, but is not limited to, the following instruction and training:

(A) procedures for preparation and administration of medications;

(B) responsibility, control, accountability, storage, and safeguarding of medications;

(C) use of reference material;

(D) documentation of medications in the client's clinical records, including PRN medications;

(E) minimum licensing standards for agencies covering pharmaceutical service, nursing service, and clinical records;

(F) federal and state certification standards for participation under the Social Security Act, Title XVIII (Medicare), pertaining to pharmaceutical service, nursing service, and clinical records;

(G) lines of authority in the agency, including agency personnel who are immediate supervisors;

(H) responsibilities and liabilities associated with the administration and safeguarding of medications;

(I) allowable and prohibited practices of a medication aide [~~permit holders~~] in the administration of medication;

(J) drug reactions and side effects of medications commonly administered to home health clients;

(K) instruction on universal precautions; and

(L) the provisions of this chapter.

(3) The program consists of 140 hours in the following order: 100 hours of classroom instruction and training, 20 hours of return skills demonstration laboratory, ten hours of clinical experience including clinical observation and skills demonstration under the supervision of an RN in an agency, and ten more hours in the return skills demonstration laboratory. A classroom or laboratory hour is 50 [~~60~~] minutes [~~of actual classroom or laboratory time~~].

(A) Class time will not exceed four hours in a 24-hour period.

(B) The completion date of the program must be a minimum of 60 [~~calendar~~] days and a maximum of 180 [~~calendar~~] days from the starting date of the program.

(C) Each program must follow the curricula established by DADS.

(4) At least seven [~~calendar~~] days before [~~prior to~~] the commencement of each program, the coordinator must notify DADS in writing of the starting date, the ending date, the daily hours of the program, and the projected number of students.

(5) A change in any information presented by the program in an approved application including, but not limited to, location, instructorship, and content must be approved by DADS before [~~prior to~~] the program's effective date of the change.

(6) The program instructors of the classroom hours must be an RN and registered pharmacist.

(A) The nurse instructor must have a minimum of two years of full-time experience in caring for the elderly, chronically ill, or pediatric clients or been employed full time for a minimum of two years as an RN with a home and community support services agency. An instructor in a school of nursing may request a waiver of the experience requirement.

(B) The pharmacist instructor must have a minimum of one year of experience and be currently employed as a practicing pharmacist.

(7) The coordinator must provide clearly defined and written policies regarding each student's clinical experience to the student, the administrator, and the supervising nurse of the agency used for the clinical experience.

(A) The clinical experience must be counted only when the student is observing or involved in functions involving medication administration and under the direct, contact supervision of an RN.

(B) The coordinator is responsible for final evaluation of the student's clinical experience.

(8) Upon successful completion of the program, each program issues to each student a certificate of completion, including the

program's name, the student's name, the date of completion, and the signature of the program coordinator.

(9) Within 15 ~~calendar~~ days after completion of the course, each program must inform DADS on the DADS class roster form of the satisfactory completion for each student.

(p) Continuing education. The continuing education training program is as follows.

(1) The program must consist of at least seven clock hours of classroom instruction.

(2) The instructor must meet the requirements in subsection (o)(6) of this section.

(3) Each program must follow the curricula established by DADS.

(4) Within 15 days after completion of the course, each program must inform DADS on the DADS class roster form of the name of each medication aide ~~[permit holder]~~ who has completed the course.

(q) Processing procedures. DADS complies with the following procedures in processing applications of home health medication aide permits and renewal of permits.

(1) The following periods of time apply from the date of receipt of an application until the date of issuance of a written notice that the application is complete and accepted for filing or that the application is deficient and additional specific information is required. A written notice stating that the application has been approved may be sent in lieu of the notice of acceptance of a complete application. The time periods are:

(A) letter of acceptance of an application for a home health medication aide permit--14 ~~working~~ days; and

(B) letter of application or renewal deficiency--14 ~~working~~ days.

(2) The following periods of time shall apply from the receipt of the last item necessary to complete the application until the date of issuance of written notice approving or denying the application. The time periods for denial include notification of proposed decision and of the opportunity, if required, to show compliance with the law and of the opportunity for a formal hearing. An application is not considered complete until the required documentation and fee have been submitted by the applicant. The time periods are as follows:

(A) the issuance of an initial permit--90 ~~calendar~~ days;

(B) the letter of denial for a permit--90 ~~calendar~~ days; and

(C) the issuance of a renewal permit--20 ~~calendar~~ days.

(3) In the event an application is not processed in the time period stated in paragraphs (1) and (2) of this subsection, the applicant has the right to request reimbursement of all fees paid in that particular application process. Request for reimbursement is made to the ~~[director of the]~~ Home Health Medication Aide Permit Program. If the director of the Home Health Medication Aide Permit Program does not agree that the time period has been violated or finds that good cause existed for exceeding the time period, the request will be denied.

(4) Good cause for exceeding the time period exists if the number of applications for initial home health medication aide permits and renewal permits exceeds by 15 percent ~~[15%]~~ or more the number of applications processed in the same calendar quarter of the preceding

year; another public or private entity relied upon by DADS in the application process caused the delay; or any other condition exists giving DADS good cause for exceeding the time period.

(5) If a request for reimbursement under paragraph (3) of this subsection is denied by the director of the Home Health Medication Aide Permit Program, the applicant may appeal to the DADS commissioner ~~[of DADS]~~ for a timely resolution of any dispute arising from a violation of the time periods. The applicant must give written notice to the DADS commissioner ~~[at the address of DADS]~~ that the applicant ~~[he or she]~~ requests full reimbursement of all fees paid because the ~~[his or her]~~ application was not processed within the applicable time period. The applicant must mail the reimbursement request to Texas Department of Aging and Disability Services, John H. Winters Human Services Complex, 701 W. 51st St., P.O. Box 149030, Austin, Texas 78714-9030. The director of the Home Health Medication Aide Permit Program must submit a written report of the facts related to the processing of the application and of any good cause for exceeding the applicable time period to the DADS commissioner. The DADS commissioner provides written notice of the commissioner's decision to the applicant and the director of the Home Health Medication Aide Permit Program. An appeal is decided in the applicant's favor if the applicable time period was exceeded and good cause was not established. If the appeal is decided in favor of the applicant, DADS reimburses in full, ~~[reimbursement of]~~ all fees paid in that particular application process ~~[are made]~~.

(r) Denial, suspension, or revocation.

(1) DADS may deny, suspend, emergency suspend, or revoke a permit or program approval if the medication aide ~~[permit holder]~~ or program fails to comply with any provision of the Texas Health and Safety Code, Chapter 142, Subchapter B, or this chapter.

(2) DADS may also take action under paragraph (1) of this subsection for fraud, misrepresentation, or concealment of material fact on any documents required to be submitted to DADS or required to be maintained or complied by the medication aide ~~[permit holder]~~ or program pursuant to this chapter.

(3) DADS may suspend or revoke an existing permit or program approval or disqualify a person from receiving a permit or program approval because of a person's conviction of a felony or misdemeanor if the crime directly relates to the duties and responsibilities of a home health medication aide or training program. In determining whether a conviction directly relates, DADS considers the elements set forth in Texas Occupations Code §55.022 and §55.023 ~~[§97.601 of this title (relating to Enforcement Actions)]~~.

(4) If DADS proposes to deny, suspend, or revoke a home health medication aide permit or to rescind a home health medication aide program approval, DADS notifies the medication aide ~~[permit holder]~~ or home health medication aide program by certified mail, return receipt requested, of the reasons for the proposed action and offers the medication aide ~~[permit holder]~~ or home health medication aide program an opportunity for a hearing.

(A) The medication aide ~~[permit holder]~~ or home health medication aide program must request a hearing within 15 ~~calendar~~ days after ~~[of]~~ receipt of the notice. Receipt of notice is presumed to occur on the tenth ~~calendar~~ day after the notice is mailed to the last address known to DADS unless another date is reflected on a United States Postal Service return receipt.

(B) The request must be in writing and submitted to the Department of Aging and Disability Services, Medication Aide Program, Mail Code E-416, P.O. Box 149030, Austin, Texas 78714-9030.

(C) If the medication aide [permit holder] or home health medication aide program does not request a hearing, in writing, [within] 15 [calendar] days after [of] receipt of the notice, the medication aide [permit holder] or home health medication aide program is deemed to have waived the opportunity for a hearing and the proposed action is taken.

(5) DADS may suspend a permit to be effective immediately when the health and safety of persons are threatened. DADS notifies the medication aide [permit holder] of the emergency action by certified mail, return receipt requested, or personal delivery of the notice and of the effective date of the suspension and the opportunity for the medication aide [permit holder] to request a hearing.

(6) All hearings are governed by [conducted pursuant] to Texas Government Code, Chapter 2001, and Texas Administrative Code, Title 1, [the formal hearing procedures at 4 TAC] §§357.481 - 357.490.

(7) If the medication aide [permit holder] or program fails to appear or be represented at the scheduled hearing, the medication aide [permit holder] or program has waived the right to a hearing and the proposed action is taken.

(8) If DADS suspends a home health medication aide permit, the suspension remains in effect until DADS determines that the reason for suspension no longer exists, revokes the permit, or determines not to renew the permit. DADS investigates before [prior to] making a determination.

(A) During the time of suspension, the suspended medication aide [permit holder] must return the [his or her] permit to DADS.

(B) If a suspension overlaps a renewal date, the suspended medication aide [permit holder] may comply with the renewal procedures in this chapter; however, DADS does not renew the permit until DADS determines that the reason for suspension no longer exists.

(9) If DADS revokes or does not renew a permit, a person may reapply for a permit by complying with the requirements and procedures in this chapter at the time of reapplication.

(A) DADS may refuse to issue a permit if the reason for revocation or nonrenewal continues to exist.

(B) When a permit is revoked or not renewed, a medication aide [permit holder] must immediately return the [license or] permit to DADS.

§95.129. Alternate Licensing Requirements for Military Service.

(a) Fee waiver based on military experience.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter (relating to Application Procedures) and §95.128(n)(1)(A) of this chapter (relating to Home Health Medication Aides) and the permit application fee described in §95.125(f)(1) (relating to Requirements for Corrections Medication Aides) for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of fees under this subsection, an applicant must submit a written request for a waiver with the applicant's application for a permit submitted to DADS in accordance with this section. The applicant must include with the request:

(A) documentation of the applicant's status as a military service member or military veteran that is acceptable to DADS; and

(B) documentation of the type and dates of the service, training, and education the applicant received and an explanation as to why the applicant's military service, training or education substantially meets all of the requirements for a permit under this chapter.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of fees submitted in accordance with this subsection if DADS determines that the applicant is a military service member or a military veteran and the applicant's military service, training, or education substantially meets all of the requirements for licensure under this chapter.

(b) Fee waiver based on reciprocity.

(1) DADS waives the combined permit application and examination fee described in §95.109(c)(1)(A) of this chapter and §95.128(n)(1)(A) of this chapter and the permit application fee described in §95.125(f)(1) of this chapter for an applicant if DADS receives and approves a request for a waiver of fees from the applicant in accordance with this subsection.

(2) To request a waiver of the fee under this subsection, an applicant must include a written request for a waiver of the fee with the applicant's application that is submitted to DADS in accordance with §95.128(h) of this chapter. The applicant must include with the request documentation of the applicant's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the applicant by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the applicant by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the applicant by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the applicant's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the applicant must submit the requested documentation.

(5) DADS approves a request for a waiver of the fee submitted in accordance with this subsection if DADS determines that:

(A) the applicant holds a license, registration, certificate, or permit as a medication aide in good standing in another jurisdiction with licensing requirements substantially equivalent to or that exceed the requirements for a permit under this chapter; and

(B) the applicant is a military service member, a military veteran, or a military spouse.

(c) Additional time for permit renewal.

(1) DADS gives a medication aide an additional two years to complete the permit renewal requirements described in §95.115 of this chapter (relating to Permit Renewal), if DADS receives and approves a request for additional time to complete the permit renewal requirements from a medication aide in accordance with this subsection.

(2) To request additional time to complete permit renewal requirements, a medication aide must submit a written request for additional time to DADS before the expiration date of the medication aide's permit. The medication aide must include with the request documentation of the medication aide's status as a military service member that is acceptable to DADS. Documentation as a military service member that is acceptable to DADS includes a copy of a current military service order issued to the medication aide by the armed forces of the United States, the State of Texas, or another state.

(3) If DADS requests additional documentation, the medication aide must submit the requested documentation.

(4) DADS approves a request for two additional years to complete permit renewal requirements submitted in accordance with this subsection if DADS determines that the medication aide is a military service member, except DADS does not approve a request if DADS granted the medication aide a previous extension and the medication aide has not completed the permit renewal requirements during the two-year extension period.

(5) If a medication aide does not submit the written request described by paragraph (2) of this subsection before the expiration date of the medication aide's permit, DADS will consider a request after the expiration date of the permit if the medication aide establishes to the satisfaction of DADS that the request was not submitted before the expiration date of the medication aide's permit because the medication aide was serving as military service member at the time the request was due.

(d) Renewal of expired permit.

(1) DADS renews an expired permit if DADS receives and approves a request for renewal from a former medication aide in accordance with this subsection.

(2) To request renewal of an expired permit, a former medication aide must submit a written request with a permit renewal application within five years after the former medication aide's permit expired. The former medication aide must include with the request documentation of the former medication aide's status as a military service member, military veteran, or military spouse that is acceptable to DADS.

(3) Documentation of military status that is acceptable to DADS includes:

(A) for status as a military service member, a copy of a current military service order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state;

(B) for status as a military veteran, a copy of a military service discharge order issued to the former medication aide by the armed forces of the United States, the State of Texas, or another state; and

(C) for status as a military spouse:

(i) a copy of a marriage certificate issued to the former medication aide by a state of the United States or a foreign government; and

(ii) a copy of a current military service order issued to the former medication aide's spouse by the armed forces of the United States, the State of Texas, or another state.

(4) If DADS requests additional documentation, the former medication aide must submit the requested documentation.

(5) DADS approves a request for renewal of an expired permit submitted in accordance with this subsection if DADS determines that:

(A) the former medication aide is a military service member, military veteran, or military spouse;

(B) the former medication aide has not committed an offense listed in Texas Health and Safety Code §250.006(a) and has not committed an offense listed in Texas Health and Safety Code §250.006(b) during the five years before the date the former medication aide submitted the initial permit application;

(C) the former medication aide is not listed on the EMR;
and

(D) the former medication aide is not listed on the NAR.

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 July 1, 2016.

TRD-201603324

Lawrence Hornsby

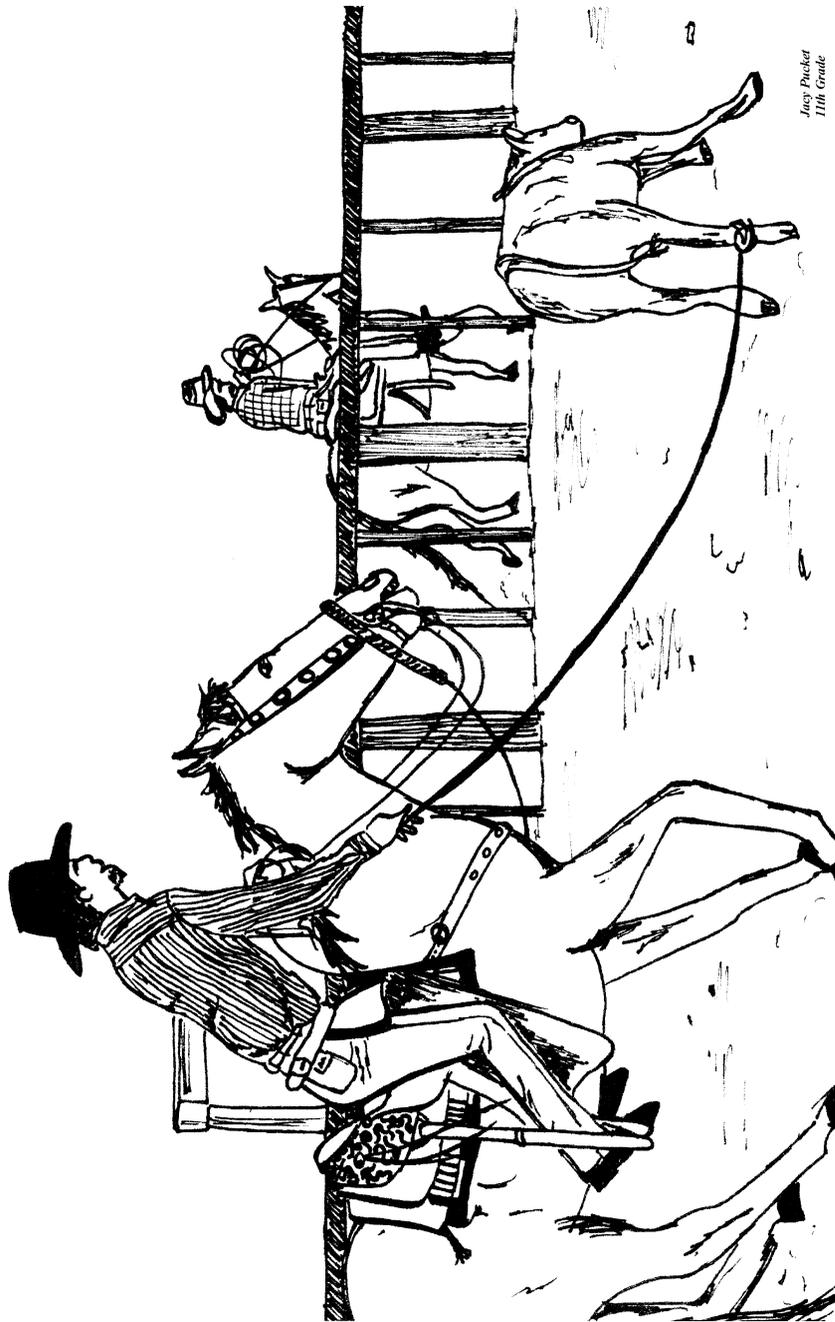
General Counsel

Department of Aging and Disability Services

Earliest possible date of adoption: August 14, 2016

For further information, please call: (512) 438-4836





Judy Packer
11th 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 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

SUBCHAPTER A. LICENSING REQUIREMENTS, QUALIFICATIONS, RESTRICTIONS, AND ENDORSEMENTS

37 TAC §§16.1 - 16.7

The Texas Department of Public Safety withdraws proposed new §§16.1 - 16.7, which appeared in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3254).

Filed with the Office of the Secretary of State on June 30, 2016.

TRD-201603300

D. Phillip Adkins

General Counsel

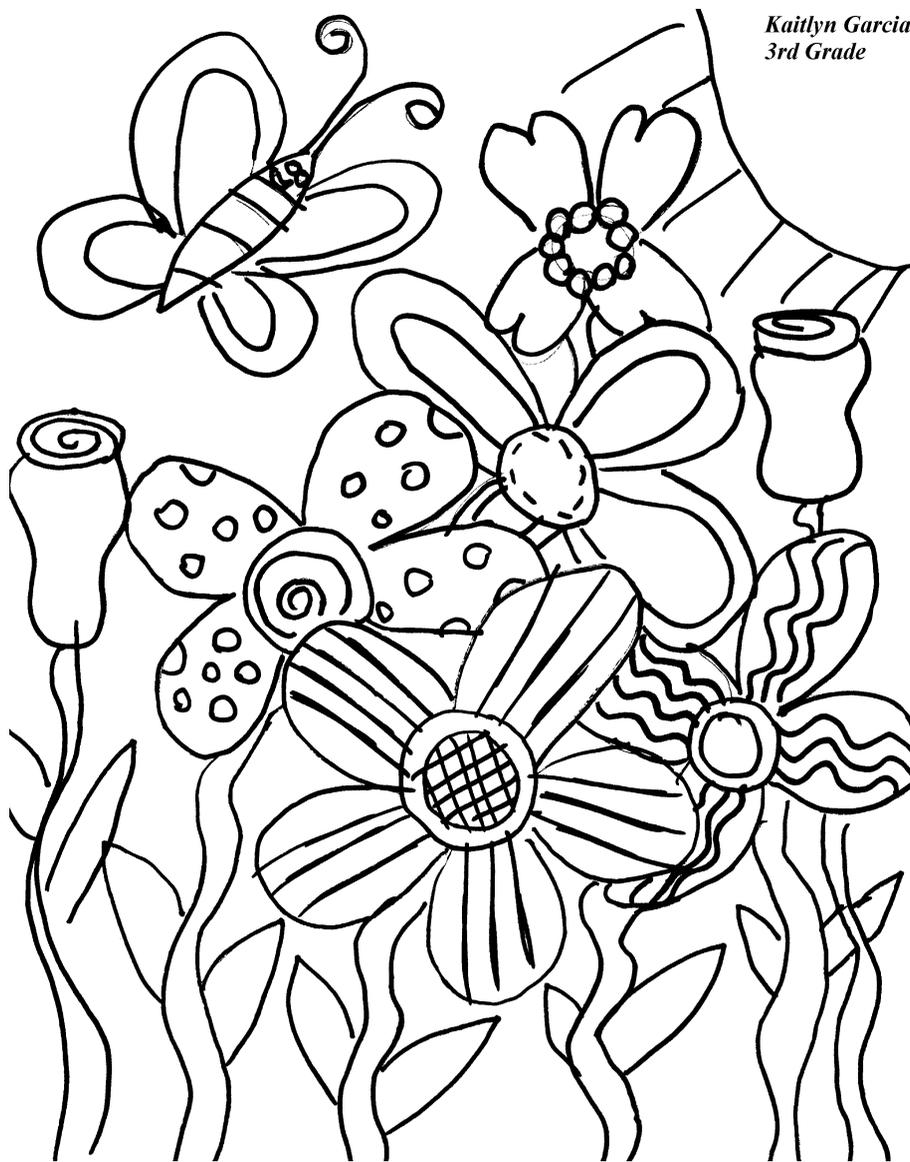
Texas Department of Public Safety

Effective date: June 30, 2016

For further information, please call: (512) 424-5848



Kaitlyn Garcia
3rd Grade



ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 1. ADMINISTRATION

PART 12. COMMISSION ON STATE EMERGENCY COMMUNICATIONS

CHAPTER 252. ADMINISTRATION

1 TAC §252.5

The Commission on State Emergency Communications (CSEC) adopts amendments to §252.5 relating to the eligibility of the agency's employees for training supported by the agency; and the obligations required by Texas Government Code §656.048 that are assumed by employees upon receiving agency supported training and education. The amendments implement House Bill 3337 adopted by the 84th Texas Legislature. The amended section is being adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3388).

No comments were received by CSEC on the proposed amended section.

STATEMENT OF AUTHORITY

The amended section is adopted under Government Code §656.048.

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

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

Filed with the Office of the Secretary of State on July 1, 2016.

TRD-201603323

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: July 21, 2016

Proposal publication date: May 13, 2016

For further information, please call: (512) 305-6922



CHAPTER 253. PRACTICE AND PROCEDURE

1 TAC §253.5

The Commission on State Emergency Communications (CSEC) adopts new §253.5 relating to procedures for identifying contracts requiring enhanced contract or performance monitoring in accordance with Texas Government Code §2261.253(c), which requires each state agency by rule to establish a procedure to identify contracts that require enhanced contract or performance

monitoring. The new section is being adopted without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1311).

No comments were received by CSEC on the new section.

STATEMENT OF AUTHORITY

The new section is adopted pursuant to Texas Government Code §2261.253 and Texas Health & Safety Code §771.051. No other statute, article, or code is affected by the adoption.

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

Filed with the Office of the Secretary of State on July 1, 2016.

TRD-201603322

Patrick Tyler

General Counsel

Commission on State Emergency Communications

Effective date: July 21, 2016

Proposal publication date: February 26, 2016

For further information, please call: (512) 305-6922



TITLE 10. COMMUNITY DEVELOPMENT

PART 1. TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

CHAPTER 5. COMMUNITY AFFAIRS PROGRAMS

SUBCHAPTER A. GENERAL PROVISIONS

10 TAC §5.2

The Texas Department of Housing and Community Affairs (the "Department") adopts the amendments to 10 TAC Chapter 5, Subchapter A, §5.2, Definitions. The amendments are adopted with changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3391).

REASONED JUSTIFICATION. The purpose of the amendments to 10 TAC §5.2 is to state that: 1) households assisted through the Low Income Home Energy Assistance Program are categorically income eligible if they are recipients of Supplemental Security Income ("SSI") or a means tested veterans program; 2) households assisted through the Homeless Housing and Services Program ("HHSP") are categorically eligible for HHSP rapid re-housing or homelessness prevention if they are recipients of Supplemental Security Income ("SSI") or a means tested veterans program; 3) that while households must be below 30%

of the Emergency Solutions Grants ("ESG") Income Limits at the time of program qualification, the person may be up to, but not exceed, 50% of the ESG limits at recertification of income twelve months after initial intake; and 4) that Income Limits will be defined by the U.S. Department of Housing and Urban Development ("HUD") ESG Program and not HUD's Section 8 Program.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department accepted public comment from May 16, 2016, through June 15, 2016. The Department's response to all comments received is set out below. The comments and responses include clarifications and corrections to the amendments recommended by staff. Comments and responses are presented in the order they appear in the rules with comments received from:

Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies (TACAA)

10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.2(b)(31)(B)

COMMENT SUMMARY: Regarding §5.2(b)(31)(B) - Commenter requested that a definition, clarification and an example of a means tested veterans program be added.

STAFF RESPONSE: Staff concurs and recommends the following definition be added to the proposed language in 10 TAC §5.2. Examples are provided below but are not recommended to be added to the rule.

(33) Means Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

Examples:

38 USC 1315 (Previously 38 USC 415) - Payments for parents of a deceased veteran who died in the line of duty or whose death resulted from a service-related injury or disease.

38 USC 1521 (Previously 38 USC 521) - Payments for low-income veterans meeting specified service requirements who are permanently and totally disabled from non-service-connected disability.

38 USC 1541 (Previously 38 USC 541) - Payments for surviving spouses of veterans of a period of war who met specified service requirements or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability.

38 USC 1542 (Previously 38 USC 542) - Payments for children of veterans of a period of war who met specified service requirements or who at the time of death was receiving (or entitled to receive) compensation or retirement pay for a service-connected disability.

38 USC 1521 note (Section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978) - Allowed individuals eligible for previous versions of 38 USC 521, 541, and 542 as of Dec. 31, 1978, to continue receiving such payments as prescribed by those sections.)

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The adopted amendments affect no other code, article, or statute.

§5.2. *Definitions.*

(a) To ensure a clear understanding of the terminology used in the context of the programs of the Community Affairs Division, a list of terms and definitions has been compiled as a reference.

(b) The words and terms in this chapter shall have the meanings described in this subsection unless the context clearly indicates otherwise.

(1) Affiliate--If, directly or indirectly, either one controls or has the power to control the other or a third person controls or has the power to control both. The ways the Department may determine control include, but are not limited to:

(A) Interlocking management or ownership;

(B) Identity of interests among family members;

(C) Shared facilities and equipment;

(D) Common use of employees; or

(E) A business entity which has been organized following the exclusion of a person which has the same or similar management, ownership, or principal employees as the excluded person.

(2) Award Date--Date on which the Department's Board commits funds to an awardee.

(3) Awarded Funds--The amount of funds committed by the Department's board to a Subrecipient or service area.

(4) Child--Household dependent not exceeding eighteen (18) years of age.

(5) Code of Federal Regulations (CFR)--The codification of the general and permanent rules and regulations of the federal government as adopted and published in the Federal Register.

(6) Collaborative Application--An application from two or more organizations to provide services to the target population.

(7) Community Action Agencies (CAAs)--Local Private Nonprofit Organizations and Public Organizations that carry out the Community Action Program, which was established by the 1964 Economic Opportunity Act to fight poverty by empowering the poor in the United States.

(8) Community Affairs Division (CAD)--The Division at the Department that administers CEAP, CSBG, ESG, HHSP, Section 8 Housing Choice Voucher Program, and WAP.

(9) Community Services Block Grant (CSBG)--An HHS-funded program which provides funding for CAAs and other Eligible Entities that seek to address poverty at the community level.

(10) Comprehensive Energy Assistance Program (CEAP)--A LIHEAP-funded program to assist low-income Households, particularly those with the lowest incomes, that pay a high proportion of Household income for home energy, primarily in meeting their immediate home energy needs.

(11) Contract--The executed written Agreement between the Department and a Subrecipient performing an Activity related to a CAD program that describes performance requirements and responsibilities assigned by the document; for which the first day of the contract period is the point at which programs funds may be considered by a Subrecipient for expenditure unless otherwise directed in writing by the Department.

(12) Contracted Funds--The amount of funds obligated by the Department to a Subrecipient as reflected in a Contract.

(13) Declaration of Income Statement (DIS)--A Department-approved form for limited use and only when an applicant cannot obtain income documentation requiring the Subrecipient to document income and the circumstances preventing the client from obtaining documentation. The DIS is not complete unless notarized in accordance with §406.014 of the Texas Government Code.

(14) Deobligation--The partial or full removal of Contracted Funds from a Subrecipient. Partial Deobligation is the removal of some portion of the full Contracted Funds from a Subrecipient, leaving some remaining balance of Contracted Funds to be administered by the Subrecipient. Full Deobligation is the removal of the full amount of Contracted Funds from a Subrecipient. This definition does not apply to CSBG.

(15) Department of Energy (DOE)--Federal department that provides funding for the weatherization assistance program.

(16) Department of Health and Human Services (HHS)--Federal department that provides funding for CSBG and LIHEAP energy assistance and weatherization.

(17) Department of Housing and Urban Development (HUD)--Federal department that provides funding for ESG.

(18) Dwelling Unit--A house, including a stationary mobile home, an apartment, a group of rooms, or a single room occupied as separate living quarters. This definition does not apply to the ESG or HHSP.

(19) Elderly Person--

(A) for CSBG, a person who is fifty-five (55) years of age or older;

(B) for CEAP, WAP and HHSP, a person who is sixty (60) years of age or older; and

(C) for ESG, a person who is sixty-two (62) years of age or older

(20) Emergency Solutions Grants (ESG)--A HUD-funded program which provides funds for services necessary to help persons that are at risk of homelessness or homeless quickly regain stability in permanent housing.

(21) Equipment--Tangible non-expendable personal property including exempt property, charged directly to the award, having a useful life of more than one year, and an acquisition cost of \$5,000 or more per unit.

(22) Expenditure--Funds having been drawn from the Department through the Contract System. For purposes of this rule, expenditure will include draws requested through the system.

(23) Families with Young Children--A family that includes a Child age five (5) or younger.

(24) High Energy Burden--Households with energy burden which exceeds 11% of annual gross income. Determined by dividing a Household's annual home energy costs by the Household's annual gross income.

(25) High Energy Consumption--Household energy expenditures exceeding the median of low-income home energy expenditures, by way of example, at the time of this rulemaking, that amount is \$1,000, but is subject to change.

(26) Homeless or Homeless Individual--An individual as defined by 42 U.S.C. §§11371 - 11378 and 24 CFR §576.2.

(27) Homeless Housing and Services Program (HHSP)--A state funded program established under §2306.2585 of the Texas Government Code with the purpose of providing funds to local programs to prevent and eliminate homelessness in municipalities with a population of 285,500 or more.

(28) Household--Any individual or group of individuals who are living together as one economic unit. For DOE WAP this includes all persons living in the Dwelling Unit. For energy programs, these persons customarily purchase residential energy in common or make undesignated payments for energy.

(29) Inverse Ratio of Population Density Factor--The number of square miles of a county divided by the number of poverty Households of that county.

(30) Local Unit of Government--City, county, council of governments, and housing authorities.

(31) Low Income--Income in relation to family size and that governs income eligibility for a program:

(A) For DOE WAP, at or below 200% of the DOE Income guidelines;

(B) For CEAP and LIHEAP WAP, at or below 150% of the HHS Poverty Income guidelines or categorically eligible because a Household member receives SSI or benefits from a means tested veterans program;

(C) For CSBG, at or below 125% of the HHS Poverty Income guidelines;

(D) For ESG, below 30% of the Median Family Income (MFI) as defined by HUD's 30% Income Limits for All Areas for persons receiving prevention assistance or as amended by HUD;

(E) For HHSP, there is no procedural requirement to verify income for persons living on the street (or other places not fit for human habitation), living in emergency shelter, or receiving rapid re-housing. For all other persons, below 30% of the MFI as defined by HUD for the ESG Program, although persons may be up to, but not exceed, 50% of ESG income limits, at recertification for rapid re-housing or homelessness prevention. Households in which any member is a recipient of SSI or a means tested veterans program are categorically income eligible.

(32) Low Income Home Energy Assistance Program (LIHEAP)--An HHS-funded program which serves low income Households who seek assistance for their home energy bills and/or weatherization services.

(33) Means Tested Veterans Program--A program whereby applicants receive payments under Sections 415, 521, 541, or 542 of title 38, United States Code, or under section 306 of the Veterans' and Survivors' Pension Improvement Act of 1978.

(34) Migrant Farm Worker--An individual or family that is employed in agricultural labor or related industry and is required to be absent overnight from their permanent place of residence.

(35) Modified Cost Reimbursement--A contract sanction whereby reimbursement of costs incurred by the Subrecipient is made only after the Department has reviewed and approved backup documentation provided by the Subrecipient to support such costs.

(36) Office of Management and Budget (OMB)--Office within the Executive Office of the President of the United States that oversees the performance of federal agencies and administers the federal budget.

(37) OMB Circulars--Instructions and information issued by OMB to Federal agencies that set forth principles and standards for determining costs for federal awards and establish consistency in the management of grants for federal funds. Uniform cost principles and administrative requirements for local governments and for nonprofit organizations, as well as audit standards for governmental organizations and other organizations expending federal funds are set forth in 2 CFR Part 200, unless different provisions are required by statute or approved by OMB.

(38) Outreach--The method that attempts to identify clients who are in need of services, alerts these clients to service provisions and benefits, and helps them use the services that are available. Outreach is utilized to locate, contact and engage potential clients.

(39) Performance Statement--A document which identifies the services to be provided by a Subrecipient.

(40) Persons with Disabilities--Any individual who is:

(A) a handicapped individual as defined in §7(9) of the Rehabilitation Act of 1973;

(B) under a disability as defined in §1614(a)(3)(A) or §223(d)(1) of the Social Security Act or in §102(7) of the Developmental Disabilities Services and Facilities Construction Act; or

(C) receiving benefits under 38 U.S.C. Chapter 11 or 15.

(41) Population Density--The number of persons residing within a given geographic area of the state.

(42) Poverty Income Guidelines--The official poverty income guidelines as issued by HHS annually.

(43) Private Nonprofit Organization--An organization described in §501(c) of the Internal Revenue Code (the "Code") of 1986 and which is exempt from taxation under subtitle A of the Code, has an accounting system and a voluntary board, and practices nondiscrimination in the provision of assistance. For ESG, this does not include a governmental organization such as a public housing authority or a housing finance agency.

(44) Production Schedule--A Production schedule signed by the applicable Executive Director/Chief Executive Officer of the Subrecipient, and approved by the Department meeting the requirements of this definition. The Production Schedule shall include the estimated monthly and quarterly performance targets and the estimated monthly and quarterly expenditure targets for all Contracted Funds reflecting achievement of the criteria identified in the specific program sections of this chapter by the end of the contract period.

(45) Public Organization--A unit of government, as established by the Legislature of the State of Texas. Includes, but may not be limited to, cities, counties, and councils of governments.

(46) Referral--The process of providing information to a client Household about an agency, program, or professional person that can provide the service(s) needed by the client.

(47) Reobligation--The reallocation of deobligated funds to other Subrecipients administering those same program's funds.

(48) Seasonal Farm Worker--An individual or family that is employed in seasonal or temporary agricultural labor or related industry and is not required to be absent overnight from their permanent place of residence. In addition, at least 20% of the Household annualized income must be derived from the agricultural labor or related industry.

(49) Single Audit--As defined in the Single Audit Act of 1984 (as amended) or UGMS, a series of audits that cover departments, agencies, and other organizational units which expended or otherwise administered federal or state awards during such fiscal year provided that each such audit shall encompass the financial statements and schedule of expenditures of federal or state awards for each such department, agency, and organizational unit.

(50) State--The State of Texas or the Department, as indicated by context.

(51) Subcontractor--A person or an organization with whom the Subrecipient contracts with to provide services.

(52) Subgrant--An award of financial assistance in the form of money, or property in lieu of money, made under a grant by a Subrecipient to an eligible Subgrantee. The term includes financial assistance when provided by contractual legal agreement, but does not include procurement purchases.

(53) Subgrantee--The legal entity to which a subgrant is awarded and which is accountable to the Subrecipient for the use of the funds provided.

(54) Subrecipient--Generally, an organization with whom the Department contracts and provides CSBG, CEAP, ESG, HHSP, DOE WAP, or LIHEAP funds. (Refer to Subchapters B, D - G, J, and K of this chapter for program specific definitions.)

(55) Supplies--All tangible personal property excluding equipment, intangible property, and debt instruments, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement (subject inventions), as defined in 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements." A computing device is a supply if the acquisition cost is less than the lesser of the capitalization level established by the Subrecipient for financial statement purposes or \$5,000, regardless of the length of its useful life.

(56) System for Award Management (SAM)--Combined federal database that includes the Excluded Parties List System (EPLS).

(57) Supplemental Security Income ("SSI")--A means tested program run by the Social Security Administration.

(58) Systematic Alien Verification for Entitlements (SAVE)--Automated intergovernmental database that allows authorized users to verify the immigration status of applicants.

(59) Texas Administrative Code (TAC)--A compilation of all state agency rules in Texas.

(60) Treatment as a State or Local Agency--For purposes of 5 U.S.C. Chapter 15, any entity that assumes responsibility for planning, developing, and coordinating activities under the CSBG Act and receives assistance under CSBG Act shall be deemed to be a state or local agency.

(61) Uniform Grant Management Standards (UGMS)--Established to promote the efficient use of public funds by providing awarding agencies and grantees a standardized set of financial management procedures and definitions, by requiring consistency among grantor agencies in their dealings with grantees, and by ensuring accountability for the expenditure of public funds. State agencies are required to adhere to these standards when administering grants and other financial assistance agreements with cities, counties and other political subdivisions of the state. In addition, Chapter 2105, Texas Govern-

ment Code, subjects subrecipients of federal block grants (as defined therein) to the Uniform Grant and Contract Management Standards.

(62) Unit of General Local Government--A unit of government which has, among other responsibilities, the authority to assess and collect local taxes and to provide general governmental services.

(63) United States Code (U.S.C.)--A consolidation and codification by subject matter of the general and permanent laws of the United States.

(64) Vendor Agreement--An agreement between the Subrecipient and energy vendors that contains assurance as to fair billing practices, delivery procedures, and pricing for business transactions involving ESG and LIHEAP beneficiaries.

(65) Weatherization Assistance Program (WAP)--DOE and LIHEAP funded program designed to reduce the energy cost burden of low income households through the installation of energy efficient weatherization materials and education in energy use.

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 July 1, 2016.

TRD-201603333

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 21, 2016

Proposal publication date: May 13, 2016

For further information, please call: (512) 475-3803



10 TAC §5.19

The Texas Department of Housing and Community Affairs (the "Department") adopts amendments to 10 TAC Chapter 5, Subchapter A, §5.19, Income Eligibility. The amendments are adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 Tex Reg 3395) and will not be republished.

REASONED JUSTIFICATION. The purpose of the amendments to 10 TAC §5.19 is to ensure that the rules are consistent with newly released federal changes and to state that: 1) income eligibility must be done at least every 12 months (unless a more frequent period is required by federal regulation); 2) that income must be re-certified after a period of twelve months (which is a new requirement for the HHSP); and 3) that the method of calculation for income for HHSP must match the Emergency Solutions Grants ("ESG") method.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The Department accepted public comment from May 16, 2016, through June 15, 2016. The Department's response to all comments received is set out below. The comments and responses include clarifications and corrections to the amendments recommended by staff. Comments and responses are presented in the order they appear in the rules with comments received from:

Stella Rodriguez, Executive Director, Texas Association of Community Action Agencies ("TACAA")

10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.19(b)(2), Recommendation #1

COMMENT SUMMARY: Regarding §5.19(b)(2) - Commenter recommends "Excluded Income" be renamed to "Countable Income" and to list a finite number of types of income. The commenter believes it would make more sense to list a finite number of types of income which could be counted as income rather than an infinite number of types of income that could be excluded. The commenter suggests the "countable" list could be derived from the LIHEAP state plan or the Internal Revenue Service.

STAFF RESPONSE: Staff appreciates the input. The Department had previously structured the rule as the commenter proposed, but by limiting the income types that could be included, eligible possible household sources of income were inadvertently excluded by their not being on the list. Having a finite list, as reflected in the rule, of only those items that cannot be counted, allows subrecipients to know that if an item is not on the list, it must be included. Staff recommends no changes based on this comment.

10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.19(b)(2), Recommendation #2

COMMENT SUMMARY: Regarding §5.19(b)(2) - Commenter recommends that if "Excluded Income" is not renamed to "Countable Income" as in Recommendation #1 above, then "SSI and benefits from a means tested veterans program" be added to the list of "Excluded Income" to keep §5.19, Income Eligibility, consistent with §5.2(b)(31)(B), Definitions.

STAFF RESPONSE: SSI and benefits received from a means tested veterans program make the household categorically eligible for the CEAP and LIHEAP WAP program. If the household receives income from SSI or from a means tested veterans program, the Subrecipient must include the income when determining the household poverty level, benefit level, energy burden and energy consumption as part of the normal intake process. The incomes are not excluded incomes as suggested by the Commenter. Staff recommends no changes based on this comment.

10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.19(c)(4)

COMMENT SUMMARY: Regarding §5.19(c)(4) - The commenter seeks clarification on who is to decide how long a person is expected to work and on what documentation is required for this item for monitoring purposes.

STAFF RESPONSE: The answer to the questions are: 1) that only the client is able to provide the anticipated number of hours or weeks they expect to work; and 2) that a written statement signed by the client is required for monitoring purposes. Staff recommends no changes to the rule based on these questions.

10 TAC Chapter 5, Community Affairs Programs, Subchapter A, General Provisions, §5.19(c)(5)

COMMENT SUMMARY: Regarding §5.19(c)(5) - The commenter seeks clarification asking "Which HHS or DOE program requires a more frequent period?" because the commenter is unclear about how often and at what period a client is required to submit a new application and income certify.

STAFF RESPONSE: No HHS or DOE program requires a more frequent period. Staff recommends no changes to the rule based on this question, but will consider clarifying this requirement in a future rulemaking.

STATUTORY AUTHORITY. The amendments are adopted pursuant to Texas Government Code §2306.053, which authorizes

the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The adopted amendments affect no other code, article, or statute.

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 July 1, 2016.

TRD-201603331

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Effective date: July 21, 2016

Proposal publication date: May 13, 2016

For further information, please call: (512) 475-3803



SUBCHAPTER L. COMPLIANCE MONITORING

10 TAC §5.2101

The Texas Department of Housing and Community Affairs (the "Department") adopts an amendment to 10 TAC Chapter 5, Subchapter L, §5.2101, Purpose and Overview. The amendment is adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3397) and will not be republished.

REASONED JUSTIFICATION. The purpose of the amendment to 10 TAC §5.2101 is to remove the reference to the Compliance Committee. The rule will alternatively indicate that when an Administrator, Subrecipient, Developer, etc. has concerns with a compliance finding, they may pursue an appeal with the Executive Director consistent with the process used in 10 TAC Chapter 1 for most other areas of the Department.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was held May 16, 2016, through June 15, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The adopted amendment affects no other code, article, or statute.

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 July 1, 2016.

TRD-201603330

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: May 13, 2016

For further information, please call: (512) 475-3803



CHAPTER 20. SINGLE FAMILY PROGRAMS UMBRELLA RULE

10 TAC §20.15

The Texas Department of Housing and Community Affairs (the "Department") adopts an amendment to 10 TAC Chapter 20, Single Family Programs Umbrella Rule, §20.15, Compliance and Monitoring. The amendment is adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3399) and will not be republished.

REASONED JUSTIFICATION. The purpose of the amendment to 10 TAC §20.15 is to remove the reference to the Compliance Committee. The rule will alternatively indicate that when an Administrator, Subrecipient, Developer, etc. has concerns with a compliance finding, they may pursue an appeal with the Executive Director consistent with the process used in 10 TAC Chapter 1 for most other areas of the Department.

SUMMARY OF PUBLIC COMMENT AND STAFF RECOMMENDATIONS. The public comment period was held May 16, 2016, through June 15, 2016. No comment was received during this period.

STATUTORY AUTHORITY. The amendment is adopted pursuant to Texas Government Code §2306.053, which authorizes the Department to adopt rules, and Chapter 2306, Subchapter E, which authorizes the Department to administer its Community Affairs programs.

The adopted amendment affects no other code, article, or statute.

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 July 1, 2016.

TRD-201603334

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

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Proposal publication date: May 13, 2016

For further information, please call: (512) 475-3803



TITLE 22. EXAMINING BOARDS PART 11. TEXAS BOARD OF NURSING

CHAPTER 211. GENERAL PROVISIONS

22 TAC §211.10

INTRODUCTION. The Texas Board of Nursing (Board) adopts new §211.10, relating to Training and Education Reimburse-

ment. The rule is adopted without changes to the proposed text published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3819) and will not be re-published.

REASONED JUSTIFICATION. New §211.10 is adopted pursuant to Texas Occupations Code §301.151 and Texas Government Code §656.048. This rule is required by Texas Government Code §656.048 and is necessary to prescribe requirements for the reimbursement of training or education expenses for Board employees, including: eligibility requirements, employee responsibility, the obligations assumed by employees upon receiving those funds, and the requirement that the Executive Director approve education and training reimbursement.

New §211.10 meets the requirements of Texas Government Code, Chapter 656, and benefits the Board and its participating employees by: (1) preparing for technological, nursing, and legal developments; (2) increasing work capabilities; (3) increasing the number of qualified employees in areas for which the Board has difficulty in recruiting and retaining employees; and (4) increasing the competence of agency employees. The Board is charged with protecting the health, safety, and welfare of the people of Texas. The Board seeks to fulfill this obligation, in part, by promoting the competency of the staff of the Board of Nursing. The competence of the staff of the Board of Nursing is improved by encouraging employees to pursue education and training which assists them in performing their duties.

HOW THE SECTIONS WILL FUNCTION.

For an agency employee to be reimbursed for the expenses associated with training or education, new §211.10 requires that the training or education be related to the duties or prospective duties of the employee. The rule permits for reimbursement for training or education that is undertaken by an employee at the request of the agency. If the training or education is not undertaken at the request of the agency, then the employee must meet the all of the requirements in the rule in order to be eligible for reimbursement. First, the employee must have been employed full-time at the Board for a period of six (6) months. Second, the employee must be currently employed full-time at the Board. Third, the employee must have a performance evaluation of 3.0 or above. Finally, the employee must not have a current employment disciplinary record. Further, there are minimum performance expectations that apply to the training or education. If the course is completed at an accredited institution of higher education, there are minimum grade requirements that apply. If the course is completed at an accredited institution of higher education, the employee must achieve a grade of "C" or above for undergraduate work or a grade of "B" or above for graduate work to be eligible for reimbursement. If the course is a pass/fail activity, then the employee must pass the course. If the employee does not meet these expectations, then the employee will not be reimbursed for the training or education.

The rule also addresses obligations that are undertaken by an employee who chooses to participate in an education or training program. The employee must remain employed with the agency for a period of one (1) year following the education or training. If the employee does not meet this obligation, the employee will be required to refund the expenses incurred by the agency.

The rule also limits the maximum reimbursement amount to one-thousand dollars (\$1,000) per fiscal year, which is contingent upon the availability of agency resources.

Finally, the rule requires that the Executive Director authorize reimbursement, which is consistent with the Texas Government Code §656.048(b).

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The Board did not receive any comments on the proposal.

STATUTORY AUTHORITY. The new rule is adopted under Texas Occupations Code §301.151 and Texas Government Code §656.048.

Section 301.151 of the Texas Occupations Code 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.

Section 656.048 of the Texas Government Code requires a state agency to adopt rules relating to training and education. The rules must address the eligibility of the agency's administrators and employees for training and education supported by the agency and the obligations assumed by the administrators and employees on receiving the training and education. The rule also must include a requirement that before an administrator or employee of the agency may be reimbursed, the executive head of the agency must authorize the tuition reimbursement payment.

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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Texas Board of Nursing

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 3. LIFE, ACCIDENT, AND HEALTH INSURANCE AND ANNUITIES

SUBCHAPTER W. MISCELLANEOUS RULES FOR GROUP AND INDIVIDUAL ACCIDENT AND HEALTH INSURANCE

28 TAC §3.3615

The Texas Department of Insurance adopts the repeal of 28 TAC §3.3615, relating to Continuation of Existing Texas Health Insurance Pool Coverage. The repeal is adopted without changes to the proposal published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3425).

EXPLANATION. Section 3.3615 was adopted under Section 7 of SB 1367, 83rd Legislature, Regular Session (2013), to temporarily extend Texas Health Insurance Pool (THIP) insurance coverage until March 31, 2014, because of problems with the federal implementation of the Patient Protection and Affordable Care Act. That function now is complete, and the THIP's enabling act is repealed. Therefore, §3.3615 is no longer needed and should be repealed.

The adoption of the repeal will result in the elimination of unnecessary regulations.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal of §3.3615 is adopted under SB 1367, 83rd Legislature, Regular Session (2013), and Insurance Code §36.001. SB 1367 abolished the THIP and repealed Insurance Code Chapter 1506. 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.

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Norma Garcia

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Texas Department of Insurance

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SUBCHAPTER DD. ASSESSMENTS

28 TAC §3.4401

The Texas Department of Insurance adopts the repeal of 28 TAC Chapter 3, Subchapter DD, §3.4401, relating to Assessment. The repeal is adopted without changes to the proposal published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3426).

EXPLANATION. SB 1367, 83rd Legislature, Regular Session (2013), abolished the Texas Health Insurance Pool (THIP) and eliminated the need for Subchapter DD, which provided for assessments for the purpose of providing the funds necessary to carry out the powers and duties of the THIP. The subchapter is now unnecessary and should be repealed.

The adoption of the repeal will result in the elimination of unnecessary regulations.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal of §3.4401 is adopted under SB 1367, 83rd Legislature, Regular Session (2013), and Insurance Code §36.001. SB 1367 abolished the THIP and repealed Insurance Code Chapter 1506. 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.

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CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §5.4605

The Texas Department of Insurance adopts amendments to 28 TAC §5.4605, concerning Items Not Requiring an Inspection for the Purposes of Windstorm and Hail Insurance Coverage through the Texas Windstorm Insurance Association (TWIA). The amendments are adopted with non-substantive changes to the proposal published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3240).

REASONED JUSTIFICATION. The amendments update the list of items not requiring a compliance inspection as a condition of windstorm and hail coverage under a TWIA policy. Insurance Code §2210.251 requires that structures constructed, altered, remodeled, enlarged, or repaired, or to which additions are made on or after January 1, 1988, must comply with TWIA's plan of operation. The commissioner has adopted several windstorm building codes for TWIA's plan of operation. TDI has developed the uniform list of items, found at §5.4605, that do not require the certification inspection required by §2210.251 for purposes of windstorm and hail insurance coverage through TWIA, provided that any repairs, replacements, or procedures are made with like kind and quality materials, fasteners, and craftsmanship of like kind and quality as compared to the structure before the repairs, replacements, or procedures are made. The uniform list of items not requiring an inspection allows for cost-effective repairs or replacement to various items on a structure.

The amendments to §5.4605 add three new items to the current list: new item 11 is "leveling of an existing pier-and-beam foundation or piling foundation, if no repairs are made"; new item 15 is "repairs or replacement of preformed flanges with a collar or sleeve used for mechanical, plumbing, or electrical roof penetrations"; and new item 21 is "repairs or replacement of storm doors or screen doors (a supplemental door installed on the outside of an exterior door)." The amendments modify four items currently listed: item 1, concerning "repairs to roof coverings with a cumulative area of less than 100 square feet, not involving roof decking or framing members;" item 6, concerning "repairs to porch and balcony handrails and guardrails;" former item 17, renumbered as new item 19, concerning the "replacement of glass in

windows or glass doors or replacement of exterior side-hinged doors not involving the frames, provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure"; and former item 18, renumbered as new item 20, concerning "repairs or replacement of exterior wall coverings, provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure." The amendments also renumber the list because the three new items were added.

SUMMARY OF COMMENTS AND AGENCY RESPONSE. The comment period for the proposed amendments was May 6, 2016, through June 6, 2016. During the comment period, TDI did not receive any comments or requests for a hearing.

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

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

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

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

- (1) repairs to roof coverings with a cumulative area of less than 100 square feet (one square), not involving roof decking or framing members;
- (2) repairs or replacement of gutters;
- (3) replacement of decorative shutters;
- (4) repairs to breakaway walls;
- (5) fascia repairs;
- (6) repairs to porch and balcony handrails and guardrails;
- (7) repairs to stairways or steps, and wheelchair ramps;
- (8) protective measures before a storm;
- (9) temporary repairs after a storm;
- (10) leveling and repairs to an existing slab on grade foundation, unless wall and/or foundation anchorage is altered or repaired;
- (11) leveling of an existing pier and beam foundation or piling foundation, if no repairs are made;
- (12) fence repair;
- (13) painting, carpeting, and refinishing;

- (14) plumbing and electrical repairs;
- (15) repairs or replacement of preformed flanges with a collar or sleeve used for mechanical, plumbing, or electrical roof penetrations;
- (16) repairs to slabs poured on the ground for patios (including slabs under homes on pilings);
- (17) repairs or replacement of soffits less than 24 inches in width;
- (18) repairs or replacement of nonstructural interior fixtures, cabinets, partitions (nonloadbearing), surfaces, trims, or equipment;
- (19) replacement of glass in windows or glass doors or replacement of exterior side-hinged doors not involving the frames provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure;
- (20) repairs or replacement of exterior wall coverings provided that the area is less than 10 percent of the surface area of the affected side (elevation) of the structure; and
- (21) repairs or replacement of storm doors or screen doors (a supplemental door installed on the outside of an exterior door).

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

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Texas Department of Insurance

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER B. INSURANCE HOLDING COMPANY SYSTEMS

28 TAC §7.209

INTRODUCTION. The Texas Department of Insurance adopts amendments to 28 TAC §7.209 concerning the Form A statement, the statement regarding the acquisition or change of control of a domestic insurer. The amendments are adopted without changes to the proposed text as published in the April 29, 2016, issue of the *Texas Register* (41 TexReg 3080).

Under Government Code §2001.033(a)(1), the department's reasoned justification for these amendments is set out in this order, which includes the preamble and the rule.

REASONED JUSTIFICATION. The amendments are necessary to clarify that information submitted to the department as part of the Form A statement that is required by statute is subject to public inspection, while information not required by statute that is requested by the department to evaluate enterprise risk to the domestic insurer is confidential. The department amended the holding company rules in May 2013, to implement statutory

changes to the Holding Company Systems Act, Insurance Code Chapter 823, by SB 1431, 82nd Legislature, Regular Session (2011), and to adopt rules consistent with the updated National Association of Insurance Commissioners (NAIC) model regulations. The intent of the statutory amendments was to strengthen the department's regulatory tools to evaluate enterprise risk that may develop in insurance holding company systems. The statutory amendments improved the department's access to information about the financial condition of insurance holding company systems in response to the nation's recent financial crisis and enhanced the department's ability to protect the interests of the public and the state.

The amendments are meant to make clear that sensitive, proprietary, or confidential supplemental information that is not required by the acquisition statutes, but is, instead, requested by the commissioner under Insurance Code §823.201(e) to evaluate enterprise risk to the insurer, is separate from the Form A statement. This information is confidential under Insurance Code §823.011 and cannot be disclosed to the public except as provided for in Insurance Code §823.011. These changes do not affect information required by the acquisition statutes and filed with the department as part of the Form A statement, which is subject to public inspection under Insurance Code §823.154(c). Headings, certifications, and other information not required by the acquisition statutes that are not sensitive, proprietary, or confidential by nature will remain in the Form A statement.

The amendments to §7.209 will maintain confidentiality of enterprise risk information that is not required by the acquisition statutes as part of the acquisition process. These amendments will give the department the regulatory tools necessary to assess acquisitions and protect insurance consumers without compromising the confidential information of applicants.

The following paragraphs provide a summary and analysis of the reasons for the adopted amendments.

The department adopts subsection (a) to address the separation of information an applicant must submit as part of the Form A statement from supplemental information an applicant must submit for the department to evaluate enterprise risk to the insurer. Only information required under subsections (b) - (p), including information concerning divestiture of control, is required as part of the Form A statement and subject to public inspection. Supplemental information required under proposed new subsections (r) - (z), which is required to evaluate enterprise risk to the insurer, is confidential and separate from the Form A statement. Also, subsection (a) provides notice that an applicant may submit its application and supplemental information on a form made available by the department to simplify the application process.

The department deletes Figure: 28 TAC §7.209(a) and Figure: 28 TAC §7.209(o), which requested basic insurer and applicant information in graphic format, and replaces the content of those figures with text in (b)(1) and (o)(1), respectively, to be consistent with the rest of the narrative.

The department adopts amendments to subsections (c)(2) and (3); (d); (e)(1) and (2); (f)(1); (g); (m)(1), (2), and (4); and (o)(3) and (4), and deletion of subsections (f)(2) and (4) and (m)(3)(B) and (5) to separate requirements regarding submission of sensitive, proprietary, or confidential information not required by the acquisition statutes from the information an applicant must submit as part of the Form A statement. Requirements addressing submission of this information are deleted from these provisions and incorporated into new subsections (r)(1) and (2); (s)(1) and

(2); (t)(1) and (2); (u)(1) - (3); (v); (w)(1) - (5); (y)(1) and (2); and (z), which provide for applicant submission of information to evaluate enterprise risk to the insurer.

The department adopts amendments to subsection (d) and new subsection (s)(1) to clarify that both direct and indirect owners of 10 percent or more of the voting securities of an applicant must furnish information requested under Insurance Code §823.201(b).

The department adopts amendments to subsection (e)(3) to renumber it as (e)(2) and add language to clarify that the applicant must specifically request that the identity of the lender be kept confidential and not include the identity of the lender with the information required by the section.

The department adopts an amendment to delete subsection (f)(3) because this provision addresses determining whether a domestic insurer complies with 28 TAC Chapter 22 (relating to Privacy), but this information is not necessary to assess an acquisition.

The department adopts an amendment to delete language in subsection (i) that requires an applicant to identify persons with whom voting contracts, arrangements, or understandings have been made. The language is redundant because the "full description" in subsection (i) includes the persons with whom the contracts, arrangements, or understandings have been made.

The department adopts an amendment to subsection (m)(2) to allow an applicant to submit statements already filed with the department, NAIC, or another regulatory agency that can be easily accessed by electronic link as an alternative to submission of hard copy or electronic attachments to reduce the use of paper and data storage, and simplify the application process.

The department adopts amendments to delete current subsection (m)(5), which contains language that certain annual reports are for review by the department and are not part of the required material submitted to the department, but are subject to public inspection during the pendency of the application. Under adopted new subsection (w)(5), the reports are requested to evaluate enterprise risk and are confidential.

The department adopts amendments to subsection (o)(1) to delete the request for email addresses, because email addresses for members of the public communicating electronically with a government agency are confidential under Government Code §552.137 and should not be subject to public inspection.

The department adopts an amendment to subsection (o)(4) to add a provision stating that supplemental information concerning divestitures under new subsection (y) is required to evaluate enterprise risk to the insurer and must be submitted separately.

The department adopts an amendment to subsection (p) and language in new subsection (z) to add an exception for alien applicants, who must submit a certification acceptable in their jurisdiction. Figure: 28 TAC §7.209(p) and Figure: 28 TAC §7.209(z) are provided for applicants in the United States.

The department adopts new subsection (q) to reflect that information required to evaluate enterprise risk to the insurer under Insurance Code §823.201(e) in new subsections (r) - (z) is confidential under Insurance Code §823.011 and is separate from the Form A statement.

The department adopts provisions in new subsections (r)(2), (s), and (w)(1) and (2) to add requirements for the submission of the ultimate controlling person's organizational chart, biographical

data and fingerprints, and financial projections and statements, respectively, and to clarify that an affiliate or owner of 10 percent or more of the voting securities includes the ultimate controlling person.

The department adopts provisions in new subsection (s)(2) to add requirements that the applicant and other persons listed in the subsection provide an independent third party background investigation report from a list of vendors furnished by the NAIC or as acceptable to the commissioner. The report gives more data, in addition to fingerprinting, for the department to make an informed decision about the applicant and other persons. A current version of the report is necessary because there is no system in place to verify an event subsequent to the date of the report.

The department adopts new subsection (u)(2) to add a requirement that the applicant must describe its business plans for the insurer and the ultimate controlling person's business plans for the holding company system; increase the length of time from 24 months, as required by subsection (f)(2) of the current rule, to three years or time of debt service to be consistent with the financial statement requirement; allow the applicant to file its business plan on the NAIC Uniform Certificate of Authority Application to simplify the application process; and replace the word "increase" with "change," to clarify any change in capital or surplus.

The department adopts a provision in new subsection (w)(1) to clarify that financial projections are not required for individuals, and the commissioner may provide for a lesser time requirement for publicly traded companies because more unrestricted information is available on publicly traded companies.

The department adopts a provision in new subsection (w)(2) to clarify that financial statements of the ultimate controlling person are only confidential if the person is not a publicly traded company because the statements of a publicly traded company are already available.

The department adopts new subsection (x) to add a requirement that the applicant describe the applicant and ultimate controlling person's cybersecurity plans and the future cybersecurity plans for the insurer, to evaluate enterprise risk to the insurer.

The department adopts new Figure: 28 TAC §7.209(z) to add a separate certification for the supplemental information submitted to the commissioner to evaluate enterprise risk to the insurer.

The department adopts amendments to renumber subsections where appropriate. Finally, the department adopts amendments that are nonsubstantive in nature to conform to the department's writing style guides.

The department accepted written comments on the proposed amendments from April 29, 2016, to May 31, 2016.

SUMMARY OF COMMENTS. The department did not receive any comments on the published proposal.

STATUTORY AUTHORITY. The amendments to §7.209 are adopted under Insurance Code §§823.001(c)(2), 823.011(a)(1), 823.012(a), 823.154(a) and (c), 823.201(e), 823.205(b)(9), and 36.001.

Section 823.001(c)(2) provides that the purpose of Insurance Code Chapter 823 is to promote the public interest by requiring disclosure of pertinent information relating to and approval of changes in control of an insurer.

Section 823.011(a)(1) provides that confidentiality of information includes documents and copies of documents that are reported or otherwise provided under Insurance Code Chapter 823, Subchapter B or C; or §823.201(d) or (e).

Section 823.012(a) provides that the commissioner may, after notice and opportunity for all interested persons to be heard, adopt rules and issue orders to implement Insurance Code Chapter 823, including the conducting of business and proceedings under Insurance Code Chapter 823.

Section 823.154(a) provides that before a person who directly or indirectly controls, or after the acquisition would directly or indirectly control, a domestic insurer may in any manner acquire a voting security of a domestic insurer or before a person may otherwise acquire control of a domestic insurer or exercise any control over a domestic insurer, or before a person may initiate a divestiture of control of a domestic insurer, the acquiring person must file with the commissioner a statement that satisfies the requirements of Insurance Code Chapter 823, Subchapter E; the acquisition or divestiture of control must be approved by the commissioner in accordance with Insurance Code Chapter 823, Subchapter D; and if a person is initiating a divestiture of control, the divesting person must file with the commissioner a notice of divestiture on a form adopted by the NAIC or adopted by the commissioner by rule.

Section 823.154(c) provides that a statement or notice filed under the section must be filed not later than the 60th day before the proposed effective date of the acquisition or change of control or divestiture and is subject to public inspection at the office of the commissioner.

Section 823.201(e) provides that the acquiring person and all subsidiaries within the acquiring person's control in the insurance holding company system must provide information to the commissioner on request of the commissioner as the commissioner deems necessary to evaluate enterprise risk to the insurer.

Section 823.205(b)(9) provides that a statement required under Insurance Code §823.154 must contain any additional information the commissioner by rule prescribes as necessary or appropriate to protect policyholders of the insurer whose voting securities are to be acquired, or the public.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

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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Norma Garcia

General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



CHAPTER 21. TRADE PRACTICES

SUBCHAPTER O. NOTICE OF AVAILABILITY OF COVERAGE UNDER THE TEXAS HEALTH INSURANCE RISK POOL

28 TAC §§21.2301 - 21.2306

The Texas Department of Insurance adopts the repeal of 28 TAC Chapter 21, Subchapter O, §§21.2301 - 21.2306, relating to Notice of Availability of Coverage under the Texas Health Insurance Risk Pool. The repeal is adopted without changes to the proposal published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3432).

EXPLANATION. SB 1367, 83rd Legislature, Regular Session (2013), abolished the Texas Health Insurance Pool (THIP) and eliminated the need for Subchapter O, which was "to facilitate public awareness of coverage under and enrollment in" the THIP. The subchapter is now unnecessary and should be repealed.

The adoption of the repeal will result in the elimination of unnecessary regulations.

SUMMARY OF COMMENTS. TDI did not receive any comments on the proposed repeal.

STATUTORY AUTHORITY. The repeal of §§21.2301 - 21.2306 is adopted under SB 1367, 83rd Legislature, Regular Session (2013), and Insurance Code §36.001. SB 1367 abolished the THIP and repealed Insurance Code Chapter 1506. 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.

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Norma Garcia

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CHAPTER 34. STATE FIRE MARSHAL

The Texas Department of Insurance adopts amendments to 28 TAC Chapter 34, Subchapter C, Standards and Fees for State Fire Marshal Inspections, §34.302; Subchapter E, Fire Extinguisher Rules, §§34.510, 34.514, 34.517, and 34.521; Subchapter F, Fire Alarm Rules, §§34.609, 34.613, 34.615, 34.616, and 34.622 - 34.624; Subchapter G, Fire Sprinkler Rules, §§34.713, 34.716, 34.721, and 34.722; Subchapter H, Storage and Sale of Fireworks, §§34.808, 34.818, 34.823, and 34.832; Subchapter M, Scheduled Administrative Penalties, §34.1302; and new §34.524 in Subchapter E, §34.631 in Subchapter F, §34.726 in Subchapter G, and §34.833 in Subchapter H. These sections are adopted with non-substantive changes for clarity to the proposed text as published in the March 18, 2016, issue of the *Texas Register* (41 TexReg 2090). The department changed §34.823 in response to comments, by declining to adopt proposed §34.823(a)(4)(H). The repeal of Subchapter

J, Stovetop Fire Suppression Device Approval §§34.1001 - 34.1004 is adopted without changes.

REASONED JUSTIFICATION. These amendments, repeals, and new sections are necessary to implement statutory changes made by HB 1150 84th Legislature (2015); SB 807, 84th Legislature (2015); and SB 1307, 84th Legislature (2015); to clarify the intent of the regulations; to revise tags, labels, and stamps; to require certain conduct; and to amend penalty schedules.

Amendments to existing sections are also necessary to make nonsubstantive changes for consistency with the agency style guide, consistency between sections, and to improve readability. These changes change "shall" to the more precise "must," "may," or "is." Other nonsubstantive changes include the addition of oxford commas, changes in capitalization, removing unnecessary instances of "the" before code references, the substitution of other punctuation for semicolons, and the removal of "and/or" in favor of simply "or."

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS

Section 34.302.

The department adds a definition to §34.302, to clarify the meaning of the term "authority having jurisdiction," with respect to state fire marshal inspections.

The definition clarifies that these are the standards adopted by a nationally recognized standards-making association for fire protection and the standards under which the state fire marshal will inspect, as contemplated in Government Code §417.008. Typically, the entity performing an inspection is also the entity with the authority to adopt a local fire code. But since state fire marshal inspectors conduct examinations of dangerous conditions statewide, including areas with locally adopted fire codes, the authority having jurisdiction may not be the inspecting entity. The adopted definition clarifies this relationship.

SUBCHAPTER E. FIRE EXTINGUISHER RULES

Section 34.510.

The adopted amendment to §34.510, relating to Certificates of Registration, establishes what constitutes an adequately equipped business vehicle to ensure that licensees are properly equipped for the services they provide. The amendment parallels the equipment requirements for certain activities already described in the section. The adopted NFPA standard (NFPA 10) specifically requires that the business vehicle be equipped with the applicable service manual when the licensee or licensed firm is servicing certain equipment. Failure to have these reference materials available in the field harms the licensee's or licensed firm's ability to adequately service life-saving fire extinguishing devices.

Section 34.514.

The adopted amendment to §34.514, relating to Applications, adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current rules, the department requests the applicant's criminal history report after it receives the application, which causes delays in processing the application. Requiring the applicants to provide their own criminal history report will expedite application processing. Some individuals, primarily those living outside of Texas, may need to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed.

Section 34.517.

The adopted amendment to §34.517, relating to Installation and Service, clarifies the requirements for fixed fire extinguisher systems. The amendment adds language that allows installation and servicing to comply with a standard adopted by the political subdivision in which the system is installed. In general, the state fire marshal adopts National Fire Protection Association (NFPA) standards, or other standards, when those standards are revised. Local governments having jurisdiction over buildings within the political subdivision may lag behind in adopting these standards. This change provides greater flexibility in allowing licensed persons to perform services consistent with the standards adopted by the political subdivision where the system is installed. Another adopted change, in subsection (h), requires that the service tag indicate temperature and quantity for fusible metal alloy fixed-temperature sensing elements. This will help ensure the safe maintenance and service of these systems. New subsection (k) is added to address pre-engineered dry chemical fixed fire extinguishing systems requirements. This provision was previously in the section, but had been inadvertently deleted in an earlier rule adoption.

Section 34.521.

The adopted amendment to §34.521, relating to Red Tags, requires notification to the authority having jurisdiction (AHJ) when a tag is corrected. The rules already require the licensee or licensed firm to notify the AHJ when they identify a problem, but this amendment will help AHJs follow up with building owners or representatives to determine when they have fixed an unsafe condition. The adopted notification requirement is similar to the existing requirement for licensees or licensed firms to notify an AHJ of a tagged device, and it is consistent with NFPA 17A Standard for Wet Chemical Extinguishing Systems.

Section 34.524.

New §34.524, relating to Military Service Members, Military Veterans, or Military Spouses, reflects the statutory protections as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The adopted amendment puts all military-related waivers and exemptions in one section so that affected persons are on notice that the provisions may apply to them. Subsection (a) implements SB 807, and provides for waiver of application and examination fees for certain military service members, military veterans, and military spouses. Subsection (b) implements SB 1307, Section 8, and provides specific credit for verified military service, with respect to apprentice requirements. Subsection (c) implements SB 1307, Section 4, and provides for the extension of license renewal deadlines for certain military service members. Subsection (d) implements SB 1307, Section 5, and it provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER F. FIRE ALARM RULES

Section 34.609.

The adopted amendment to §34.609, relating to Approved Testing Organization, includes the fire marshal's recognition of another approved testing organization, the Electronic Security Association (ESA), as a testing standards organization for testing license applicants. Insurance Code §6002.156 provides that the

state fire marshal may adopt rules as necessary to implement examination requirements. Insurance Code §6002.158 provides that training schools must be approved by the state fire marshal. The state fire marshal has reviewed ESA's application, course, and testing curriculum and has determined that it is an approved organization for purposes of the Fire Alarm Rules. The ESA materials and course for the residential alarm license provides an acceptable level of training.

Section 34.613.

The adopted amendment to §34.613, relating to Applications, adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current provisions, the department requests the criminal history from the Texas Department of Public Safety after receiving an application, which delays the application approval process. Requiring that applicants provide their criminal history report with their application will expedite the application approval process. The criminal history report process may require some applicants, primarily those living outside of Texas, to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed. Adopted §34.613(b)(1) includes additional language that specifies the general content for the qualifying test as part of a training school for a residential fire alarm technical license. The change clarifies an ambiguity that existed in the content of the residential fire alarm technician training school instruction. Other changes are adopted to accommodate ESA as a testing standards organization, and for consistency with the adopted changes to §34.609.

Section 34.615.

The adopted amendment to §34.615, relating to Test, is in conjunction with the approval of ESA in §34.609, and it adds ESA to the list of organizations that may conduct technical qualifying tests.

Section 34.616.

The adoption order amends §34.616, relating to Sales, Installation, and Service. The amendments to §34.616(b)(1) specify that a licensee who plans fire detection and fire alarm devices or systems must be licensed under the primary registered firm. This amendment is congruent with the structure of the fire alarm licensing requirements in Insurance Code Chapter 6002. The amendments to §34.616(b)(4) add servicing to the list of functions that must be done in accordance with the adopted standards. The amendments also delete the provision related to the Tentative Interim Amendment published by the NFPA and allow for system planning, installation, and servicing if it complies with a more recent standard adopted by the political subdivision in which the system is installed. This change provides greater flexibility in allowing licensed persons to perform services consistent with the standards adopted by the political subdivision. The amendments to §34.616(c) establish a two-year recordkeeping requirement for firms. This requirement is consistent with the adopted NFPA 72 requirements. Additionally, the amendment specifies that the state fire marshal or the state fire marshal's representative can examine the operation records for service, maintenance, testing, and certification. The requirements for storage and access of these records will assist the state fire marshal with fair, thorough, and consistent regulation of licensed firms.

Section 34.622.

The adopted amendment to §34.622, relating to Inspection/Test Labels, creates two new subsections for licensees and licensed

firms to provide notice to AHJs when a new system is installed or a problem is corrected. The change will help AHJs follow up with building owners or representatives. Section 34.622(c) specifies that an inspection/test label may be applied only after an AHJ has approved the new installation. Section 34.622(e) requires notice to the AHJ when a fault or impairment has been corrected.

The department amends §34.622(h) to clarify the size of the adhesive inspection/test label. The amendment to Figure: 28 TAC §34.622(k) provides for indicating the name and address of the business where the inspection occurred. This will assist local AHJs with monitoring the inspections done in their jurisdiction.

Section 34.623.

The adopted amendment to §34.623, relating to Yellow Labels, requires the inspector or service provider to notify the AHJ when a tag is corrected. The rules already require the licensee or registered firm to notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. This submission of the revised status of a yellow label is similar to the existing requirement to notify an AHJ of a tagged device.

Section 34.624.

The adopted amendment to §34.624(d), relating to Red Labels, requires notification to the AHJ when a tag is corrected. The rules already require the licensee or registered firm to notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. Submission of the revised status of a red label is similar to the submission of the existing requirement to notify an AHJ of a tagged device.

Section 34.631.

New §34.631 reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55, and as amended by SB 807 and SB 1307. The adopted section puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.631(a) implements SB 807, and it provides for waiver of application and examination fees for certain military service members, military veterans, and military spouses. Section 34.631(b) implements SB 1307, Section 8, and it provides specific credit for verified military service with respect to apprentice requirements. Section 34.631(c) implements SB 1307, Section 4, and it provides for the extension of license renewal deadlines for certain military service members. Section 34.631(d) implements SB 1307, Section 5, and it provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER G. FIRE SPRINKLER RULES

Section 34.713.

The adopted amendment to §34.713 deletes requirements to submit the examination test score. Proof of National Institute for Certification in Engineering Technologies (NICET) certification at Level II demonstrates sufficient training and knowledge. The adopted change also eliminates a potential redundancy for applicants who already have a Responsible Managing Employee (RME) General license because RME general licensees already

have demonstrated knowledge at a NICET Level III, which means they have demonstrated competency at least equivalent to NICET Level II. The adopted amendment to §34.713 also adds a requirement for the applicant to furnish, along with the application for a license, a copy of the applicant's criminal history report. Under the current provisions, the department requests the criminal history from the Texas Department of Public Safety after receiving the application, which delays the application approval process. Requiring that applicants provide their criminal history report with their application will expedite the application approval process. Some individuals, primarily those living outside of Texas, may need to have fingerprints taken by the Texas Department of Public Safety's vendor and then processed.

Section 34.716.

The adopted amendment to §34.716, relating to Installation, Maintenance, and Service, deletes language to allow for system planning, installation, and servicing to comply with a standard adopted by the political subdivision in which the system is installed; and provides that it is consistent with similar provisions in this chapter. This change provides greater flexibility at the local level by allowing licensees to perform services consistent with the standards adopted by the political subdivision in which the system is installed. The amendments to §34.716(c) establish a recordkeeping requirement for firms. This requirement is consistent with the NFPA 13 requirements.

Section 34.721.

The adopted amendments to §34.721, relating to Yellow Tags, adds that a licensee or licensed firm is required to notify the AHJ when a tag is corrected. The rules already require the licensee or licensed firm notify the AHJ when a problem is identified. This change will help AHJs follow up with building owners or representatives to determine whether they have fixed an unsafe condition. Submitting the notification of a revised status of a tag is similar to the existing requirement to notify an AHJ of a tagged device.

Section 34.722.

The adopted amendment updates Figure 28: TAC §34.722(h) to provide for new exemplar years. The adopted amendment includes a specification that the inspection/test label be approximately three-inches high and three-inches wide.

Section 34.726.

New §34.726, Relating to Military Service Member, Military Veterans, or Military Spouses, reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The adopted amendment puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.726(a) implements SB 807, and it provides for waiver of application and examination fees for certain military service members, military veterans, and military spouses. Section 34.726(b) implements SB 1307, Section 8, and it provides specific credit for verified military service with respect to apprentice requirements. Section 34.726(c) implements SB 1307, Section 4, and it provides for the extension of license renewal deadlines for certain military service members. Section 34.726(d) implements SB 1307, Section 5, and it provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or

waivers due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER H. FIREWORKS RULES (*formerly STORAGE AND SALE OF FIREWORKS*)

The adopted name of the subchapter changes from "Storage and Sale of Fireworks" to the more concise "Fireworks Rules." This nonsubstantive change conforms the title of the subchapter to the similar Fire Extinguisher Rules, Fire Alarm Rules, and Fire Sprinkler Rules elsewhere in the chapter and is intended to improve clarity and organization of the rules.

Section 34.808.

The adopted amendments to §34.808, Definitions, add a definition of "immediate family member" as a family member that specifically includes the spouse, child, sibling, parent, grandparent, grandchild, stepparent, stepchild, and stepsibling; and a relationship established by adoption, as provided in Occupations Code §2154.254, relating to Employment of Minors. Cousins, aunts, uncles, nieces, and nephews are not included in the definition of immediate family member. These individuals could work at an owner's retail sales location, but would not fall under the specific allowance for individuals aged 12 to 15. The department also amends the definition of "retail fireworks site" to include other structures, vehicles, or surrounding area subject to care and control of the retailer, owner, supervisor, or operator of the retail location. A related adopted change is made in §34.832, addressing fire safety hazards near the site. By amending the term to include those areas, retail fireworks site safety is more effectively ensured.

Section 34.818.

The adopted amendment to §34.818, relating to Specific Requirements for Retail Fireworks Stands, adds a requirement for the minimum distance between fireworks and the front of the customer counter and to the back side of the fireworks stand, and it prohibits fireworks from being displayed on the customer counter or in any manner that allows the customer to handle fireworks without the assistance of an employee. This additional requirement ensures that customers cannot endanger themselves or others. Customers may still examine and handle fireworks if an attendant is assisting the customer.

Section 34.823.

The adopted amendment to §34.823, relating to Bulk Storage of Fireworks 1.4G, establishes a requirement for a fire sprinkler system if a fireworks storage facility's floor space exceeds 12,000 square feet, and it allows for additional or more restrictive fire protections that may be adopted by a political subdivision. This adopted requirement will reduce the potential danger inherent in large fireworks storage facilities. Fire sprinklers can slow or stop small fires (reducing the likelihood of detonating the large quantities of explosive materials in fireworks storage facilities), giving the occupants additional time to exit the building and potentially providing emergency responders with additional time to reach the scene. The adopted change is consistent with the NFPA 1 Fire Code paragraph 13.3.2.23.1(2).

Section 34.832.

Section 34.832 relates to Specific Requirements for Retail Fireworks Sites Other Than Stands. The adopted amendment to §34.832(8) modifies the requirement for business owners to provide written notification to the local fire department and

county fire marshal about the location of a building that sells or stores fireworks. HB 1150, 84th Legislature, Regular Session (2015), added additional dates during which fireworks can be sold. Some of these additional sales periods are other than the Fourth of July sales period. So the adopted amendment removes the June 14 notice date and instead requires the licensee or licensed fireworks retailer to notify the AHJ about its intention to store or sell fireworks before the dates or periods during which fireworks will be stored or sold. This amendment will allow local first responders and fire safety officials to continue to receive timely notice about when and where fireworks are sold and stored.

The adopted amendment to §34.832(11) provides that extension cords may not be plugged in to a power strip. Power strips are temporary wiring and are not designed to safely provide power to extension cords. This temporary wiring is not intended to be plugged in to one another, and doing so creates a dangerous fire hazard (NFPA 1, paragraph 11.1.6.2). The adopted amendment to §34.832(20) provides that an indoor fireworks retail site must not display fireworks on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

Section 34.833.

New §34.833, relating to Military Service Members, Military Veterans, or Military Spouses, reflects the statutory protections for military service members, military veterans, and military spouses as provided in Occupations Code Chapter 55 and as amended by SB 807 and SB 1307. The adopted section puts all military-related waivers and exemptions in one section so that applicable persons are on notice that the provisions may apply to them. Section 34.833(a) implements SB 807 and provides for waiver of application and examination fees for certain military service members, military veterans, or military spouses. Section 34.833(b) implements SB 1307, Section 8, and it provides specific credit for verified military service with respect to apprentice requirements. Section 34.833(c) implements SB 1307, Section 4, and it provides for the extension of license renewal deadlines for certain military service members. Section 34.833(d) implements SB 1307, Section 5, and it provides for waiver of license prerequisites for certain military service members, military veterans, and military spouses. Other benefits, exemptions, or waivers that are due to military service members, military veterans, and military spouses as provided in state or federal law may also apply.

SUBCHAPTER J. STOVETOP FIRE SUPPRESSION DEVICE APPROVAL §§34.1001 - 34.1004

Chapter 34, Subchapter J, is repealed. SB 14, 78th Texas Legislature, Regular Session (2003), repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates, including credits or discounts for certain stovetop fire suppression devices.

SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES

Section 34.1302

The adopted amendment to §34.1302 amends the previous penalty schedules and creates a new penalty schedule. The amendment to the penalty schedule for fire sprinkler violations corrects the description for two listed violations. The existing penalty schedules in Figure: 28 TAC §34.1302(a), Figure: 28 TAC §34.1302(b), and Figure: 28 TAC §34.1302(c) are

amended to include additional violations. The current department penalty schedules, in effect since 2013, have promoted efficient and timely resolution of minor administrative violations. The new schedule, Figure: 28 TAC §34.1302(e), provides similar penalties for minor violations of statute and rules related to fireworks distributors.

Changes from proposed rules

As a result of comments, the department does not adopt proposed subparagraph (H) in §34.823(a)(4), relating to Bulk Storage of Fireworks 1.4G.

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: The department received written comments in support of the proposal, with changes, from 12 people.

Comment on §34.823, Bulk Storage of Fireworks 1.4G, proposed fire sprinkler requirement.

All twelve comments received on the proposed rule suggested that the department not adopt the addition of a fire sprinkler requirement as proposed in §34.823(a)(4)(H).

Several commenters referred to the cost estimate in the proposal, which estimated costs of compliance to potentially be hundreds of thousands of dollars. Several commenters suggested that all existing stores should be grandfathered. Several commenters suggested that, if the proposed fire sprinkler requirement were to be adopted, the requirement be prospective only, and should not apply to existing retail fireworks sites other than stands.

One commenter stated that many storage facilities are in rural areas, with limited access to the quantities of water required to service a large sprinkler system. The commenter stated that the cost to supply adequate water flow and pressure would be cost prohibitive.

One commenter stated that there has been no rash in fires in fireworks buildings, and that fireworks storage facilities have an excellent track record.

Several commenters stated that the proposed sprinkler requirement does not have a basis in scientific studies related to safety.

Several commenters stated that the additional sprinkler requirement, and its provisions related to local AHJ regulations, were more restrictive fire protection requirements than what the statute allows, and they noted that Occupations Code §2154.052 states that a rule may not be adopted under this chapter that is more restrictive than a rule in effect on September 1, 1998, without specific statutory authority.

Several commenters stated that an AHJ should not be given the authority to make a sprinkler system requirement more restrictive than state code. One commenter suggested that the provisions in proposed §34.823 would subject operators to a patchwork of more restrictive local regulations, depriving operators of the benefits of statewide rules. Another commenter stated that the expansion of municipal jurisdictions is already a problem for licensees.

Agency response to comments on §34.823, Bulk Storage of Fireworks 1.4G.

The department appreciates the comments concerning the proposed amendment requiring fire sprinkler protections for the bulk storage of fireworks. As a result of comments, the department will not adopt proposed subparagraph (H) in §34.823(a)(4). The

department emphasizes that §34.832(19) already requires indoor retail fireworks site to comply with the mercantile occupancy requirements of the standards adopted in 28 TAC §34.303 (relating to Applicability of Rules). This standard, NFPA 101, Life Safety Code, already requires indoor retail fireworks sites to provide fire sprinkler protection for buildings greater than 12,000 square feet in size. This is a requirement specific to mercantile occupancies, and it does not apply to bulk storage warehouses.

Comment on §34.832, Specific Requirements for Retail Fireworks Sites Other Than Stands.

One commenter suggests that the existing requirement in §34.832(5) be amended to delete the second and third sentences, so that it reads, "Fireworks sales display areas shall be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer." The commenter says that this amendment would remove the specific requirement to include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. The commenter states that this change would improve safety while imposing no significant additional costs. The commenter suggests that removing the barrier requirement would improve customer and employer egress.

Agency response to comment on §34.832.

The department declines to make the requested change to §34.832(5). No change to the existing requirement related to the separation of displayed fireworks from customers was proposed. The adoption of the display area requirement in the December 8, 2002, *Texas Register* (27 TexReg 11562), was the subject a lot of controversy and disagreement, and the department believes any changes to it would need to be included in a proposal so that all those interested in the provision would have the opportunity to consider and comment on them. Revisions may be proposed and considered at a later date if a need to revise the provision becomes apparent.

SUBCHAPTER C. STANDARDS AND FEES FOR STATE FIRE MARSHAL INSPECTIONS DIVISION 1. GENERAL PROVISIONS

28 TAC §34.302

STATUTORY AUTHORITY. The amendment is adopted under Government Code §§417.005, 417.008, and 417.0081; and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association.

Government Code §417.0081 provides that the commissioner by rule will adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.302. *Definitions.*

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

- (1) Authority having jurisdiction (AHJ)--An organization, office, or individual responsible for enforcing the requirements of a code or standard.
- (2) Commissioner--The Commissioner of Insurance.
- (3) NFPA--The National Fire Protection Association, a nationally recognized standards making organization.

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. FIRE EXTINGUISHER RULES

28 TAC §§34.510, 34.514, 34.517, 34.521, 34.524

STATUTORY AUTHORITY. The amendments are adopted under Government Code §§417.005, 417.008, and 417.0081; Occupations Code Chapter 55; and Insurance Code §§6001.051, 6001.052, and 36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association.

Government Code §417.0081 provides that the commissioner by rule will adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Occupations Code Chapter 55, and as amended by SB 807 and SB 1307, provides certain statutory protections for military service members, military veterans, and military spouses.

Insurance Code §6001.051(a) specifies that the department administers Insurance Code Chapter 6001. Insurance Code §6001.051(b) specifies that the commissioner may issue rules the commissioner considers necessary to administer Chapter 6001 through the state fire marshal.

Insurance Code §6001.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards published by the National Fire Protection Association, recognized by federal law or regulation, published by any nationally recognized standards-making organization, or

contained in the manufacturer's installation manuals. Insurance Code §6001.052(b) specifies that the commissioner shall adopt and administer rules determined essentially necessary for the protection and preservation of life and property regarding: (i) registration of firms engaged in the business of installing or servicing portable fire extinguishers or planning, certifying, installing, or servicing fixed fire extinguisher systems or hydrostatic testing of fire extinguisher cylinders; (ii) the examination and licensing of individuals to install or service portable fire extinguishers and plan, certify, install, or service fixed fire extinguisher systems; and (iii) requirements for installing or servicing portable fire extinguishers and planning, certifying, installing, or servicing fixed fire extinguisher systems. Insurance Code §6001.052(c) specifies that the commissioner by rule shall prescribe requirements for applications and qualifications for licenses, permits, and certificates issued under this chapter.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.510. *Certificates of Registration.*

(a) Required. Each firm and each branch office engaged in the business must obtain a certificate of registration from the state fire marshal.

(b) Properly equipped licensed person. Before engaging in the business, each registered firm must have at least one licensed person who must be properly equipped to perform the act or acts authorized by its certificate.

(c) Types of certificates. The business activities authorized by the certificate is limited to the business activities authorized under the license of its employees. A separate Type C registration is required to engage in the business of hydrostatic testing of U.S. Department of Transportation (U.S. DOT) specification fire extinguisher cylinders.

(d) Business location. Each registered firm must maintain a specific business location, and the business location must be indicated on the certificate.

(e) Shop. A registered firm must establish and maintain a shop, whether at a specific business location or in a mobile unit designed so that servicing, repairing, or hydrostatic testing can be performed. The shop must be adequately equipped to service or test all fire extinguishers or systems the registered firm installs and services. At a minimum, a firm must maintain the following:

- (1) a copy of the most recently adopted edition of NFPA 10;
- (2) a copy of the most recently adopted Insurance Code Chapter 6001 and this chapter;
- (3) a list of manufacturers or types of portable extinguishers serviced with their respective manuals or part lists;
- (4) portable scale to accurately measure extinguisher gross weights;
- (5) seals or tamper indicators;
- (6) temporary fire extinguishers replacements;
- (7) if performing annual maintenance on carbon dioxide extinguishers, at a minimum, the following additional items are required:
 - (A) conductivity tester, and
 - (B) conductivity test label.

(8) if performing internal maintenance for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the maintenance or, at a minimum, the following additional items are required:

- (A) appropriate tools to remove and reinstall a valve head;
- (B) charging adapters;
- (C) Teflon tape, silicone grease, solvent, or other lubricant used;
- (D) supply of spare parts for respective manufacturers and type of fire extinguishers serviced;
- (E) appropriate recharge agents;
- (F) agent fill funnels;
- (G) light designed to be used for internal inspections;
- (H) dry chemical closed recovery system or sufficient new dry chemical;
- (I) leak test equipment;
- (J) dry nitrogen cylinders, regulator and calibrated gauges for pressurizing cylinders;
- (K) verification collar rings; and
- (L) six-year maintenance labels.

(9) if performing hydrostatic testing for portable extinguishers, a written notice must be kept on file indicating the registered firm performing the test or, at a minimum, the following additional items are required:

- (A) working hydrostatic test pump with flexible connection, check valves, and fittings;
- (B) protective cage or barrier;
- (C) calibrated gauges;
- (D) drying equipment;
- (E) hydrostatic test log; and
- (F) hydrostatic test labels;

(10) if performing maintenance for U.S. DOT specification portable fire extinguishers, a written notice must be kept on file indicating the registered firm that would perform the hydrostatic test when required or, at a minimum, the following additional items are required:

- (A) a current Type C registration issued by the State Fire Marshal's Office; and
- (B) verification of registration through the U.S. DOT.

(11) if installing or servicing a fixed fire extinguisher system, at a minimum, the following additional items are required:

- (A) a copy of the latest adopted edition of applicable NFPA standards with respect to the type of system installed or serviced;
- (B) applicable manufacturer's service manuals for the type of system; and
- (C) any special tools or parts as required by the manufacturer's manual.

(f) Business vehicles. All vehicles used regularly in installation, service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certifi-

cate of registration number. The numbers and letters must be at least one inch in height and permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate-of-registration number must be designated in the following format: TX ECR-number. A business vehicle must be adequately equipped for the type of service that is being provided.

(g) Branch office initial certificate of registration fees and expiration dates. The initial fee for a branch office certificate of registration is \$100 and is not prorated. Branch office certificates of registration expire and renew on the same date as the certificate of registration for the registered firm's main office.

(h) Change of ownership.

(1) The total change of a firm's ownership invalidates the current certificate. To ensure continuance of the business, the new owners must submit an application for a new certificate to the state fire marshal 14 days prior to the change.

(2) A partial change in a firm's ownership will require a revised certificate if it affects the firm's name, location, or mailing address.

(i) Change of corporate officers. Any change of corporate officers must be reported in writing to the state fire marshal within 14 days. This change does not require an application for a new or revised certificate.

(j) Duplicate certificates. A certificate holder must obtain a duplicate certificate from the state fire marshal to replace a lost or destroyed certificate. The certificate holder must submit written notification of the loss or destruction without delay, accompanied by the required fee.

(k) Revised certificates. The change of a firm's name, location, or mailing address requires a revised certificate. Within 14 days after the change requiring the revision, the registered firm must submit written notification of the necessary change accompanied by the required fee to the State Fire Marshal's Office.

(l) Nontransferable. A certificate is neither temporarily nor permanently transferable from one firm to another.

(m) Initial alignment of the expiration and renewal dates of existing branches. For branch offices in existence as of the effective date of this rule, branch office certificates of registration will expire and renew on the same date as the certificate of registration issued to the main office for that firm. All fees associated with the initial alignment of expiration and renewal dates for the branch office certificate of registration will prorate accordingly.

§34.514. Applications.

(a) Certificates of registration.

(1) Applications for certificates and branch office certificates must be submitted on forms provided by the state fire marshal and accompanied by all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation, or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must be accompanied by evidence of compliance with the Assumed Business or Professional

Name Act, Texas Business and Commerce Code, Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6001 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax "Certificate of Good Standing" issued by the state comptroller's office.

(4) Applications for Type C certificates must be accompanied by a copy of the U.S. DOT letter registering the applicant's facility and that issues a registration number to the facility.

(5) The applicant must comply with the following requirements concerning liability insurance.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files a proof of liability insurance with the State Fire Marshal's Office proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office the certificate of insurance as required.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.154, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state.

(D) If a certificate of registration is to be issued in the name of a corporation, the corporate name must be used on the applicable insurance forms. If the corporation is obtaining a certificate of registration in an assumed name, the insurance must be issued to the corporation doing business as (dba) the assumed name. Example: XYZ Corporation dba XXX Extinguisher Service.

(E) Insurance issued for a partnership must be issued to the name of the partnership or to the names of all the individual partners.

(F) Insurance for a proprietorship must be issued to the individual owner. If an assumed name is used, the insurance must be issued to the individual doing business as (dba) the assumed name. Example: William Jones dba XXX Extinguisher Service.

(b) Fire extinguisher licenses.

(1) Original applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal and accompanied a criminal history report from the Texas Department of Public Safety, and by all other information required by Insurance Code Chapter 6001 and this subchapter.

(2) Applications for Type A and Type K licenses must be accompanied by a written statement from the certificate holder (employer) certifying that the applicant meets the minimum requirements of §34.511(f)(4) of this title (relating to Fire Extinguisher Licenses) and is competent to install or service fixed systems.

(3) Applications for Type PL licenses must be accompanied by one of the following documents to evidence technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's (National Institute for Certification in Engineering Technologies) notification letter regarding the applicant's successful completion of examination requirements for certification at Level III for Special Hazard Systems Layout or Special Hazard Suppression Systems.

(4) All applications must indicate if the individual is an employee or agent of the registered firm.

(A) If the individual is an employee of the registered firm, the State Fire Marshal's Office may request from the registered firm verification of employment of the individual.

(B) If the individual is an agent of the fire extinguisher firm, the State Fire Marshal's Office may request the firm to provide a letter or other document acceptable to the State Fire Marshal's Office issued by the firm's insurance company, verifying the policy number and that the acts of the individual are covered by the same insurance policy required by this subchapter to obtain the firm's registration. If required, the verifying document must be submitted to the State Fire Marshal's Office before a license will be issued or when there is a change in the licensee's registered firm. Unless otherwise required by the State Fire Marshal's Office, renewal of a license does not require insurance verification unless there has been a change in the insurance carrier.

(c) Complete application required for renewal. Renewal applications for certificates of registration and licenses must be submitted on forms provided by the state fire marshal accompanied a criminal history report obtained through the Texas Department of Public Safety and by all other information required by Insurance Code Chapter 6001 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(d) Timely filed. A license or registration will expire at 12:00 midnight on the date printed on the license or registration. A renewal application and fee for license or registration must be postmarked on or before the date of expiration to be accepted as timely. If a renewal application is not complete but there has been no lapse in the required insurance, the applicant will have 30 days from the time the applicant is notified by the State Fire Marshal's Office of the deficiencies in the renewal application to submit any additional requirement. If an applicant fails to respond and correct all deficiencies in a renewal application within the 30-day period, a late fee may be charged.

(e) Requirements for applicants holding licenses from other states. An applicant holding a valid license in another state who desires to obtain a Texas license through reciprocity must submit the following documentation with the application in addition to all other information required by Insurance Code Chapter 6001 and this subchapter:

(1) a letter of certification from the licensing entity of another state certifying the applicant holds a valid license in that state; and

(2) additional information from the state detailing material content of any required examination used to qualify for license, including NFPA or other standards, if applicable.

(f) Apprentice permits. Each person employed as an apprentice by a firm engaged in the business must make application for a permit on a form provided by the state fire marshal and accompanied by the required fee.

(g) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other informa-

tion required by Insurance Code Chapter 6001 and this subchapter, or a new application must be submitted, including all applicable fees.

§34.517. *Installation and Service.*

(a) The following requirements are applicable to all portable extinguishers.

(1) Portable extinguishers must be installed, serviced, and maintained in compliance with the manufacturer's instructions and with the applicable standards adopted in this subchapter except when the installation or servicing complies with a standard that has been adopted by the political subdivision in which the system is installed.

(2) A service tag certifying the work the licensee performed must be securely attached to the portable extinguisher on completion of the work.

(3) When requested in writing by the owner, a portable fire extinguisher of the type described in subparagraphs (A), (B), or (C) of this paragraph may be serviced according to the requirement of this subchapter, regardless of whether it carries the label of approval or listing of a testing laboratory approved according to this subchapter.

(A) All portable fire extinguishers serviced according to the requirements of the United States Coast Guard and installed for use in foreign shipping vessels;

(B) all portable carbon dioxide fire extinguishers serviced according to the requirements of the United States Department of Transportation; or

(C) cartridge-actuated portable fire extinguishers used exclusively by employees of the firm owning the extinguishers.

(4) A licensee who services portable fire extinguishers according to paragraph (3) of this subsection, must comply with the following:

(A) The back of the service tag must be plainly marked with the words "No Listing Mark."

(B) All missing markings, code symbols, instructions, and information required by the applicable performance standard and fire test standard specified in §34.507(1) of this title (relating to Adopted Standards), except for the approving or listing mark of the testing laboratory, must be affixed to each extinguisher in the form of a label designated in the standard.

(b) The following requirements are applicable to all fixed fire extinguisher systems.

(1) Fixed systems must be planned, installed, and serviced in compliance with the manufacturer's installation manuals and specifications or the applicable standards adopted in this subchapter, except when the installation or servicing complies with a standard that has been adopted by the political subdivision in which the system is installed.

(2) On completion of the installation of a pre-engineered fixed fire extinguisher system, a licensee authorized to certify pre-engineered fixed fire extinguishing systems under the provisions of this subchapter must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(3) On completion of the installation of a fixed fire extinguisher system other than a pre-engineered system, a Type A or Type

PL licensee must place an installation label on the system to certify that the system was installed in compliance with the manufacturer's installation manuals and specifications, plans developed by a Type PL licensee or professional engineer, or standards adopted by the commissioner in this subchapter. The licensee whose signature appears on the installation label must be present for the final test of the system prior to certification.

(4) A service tag certifying the work the licensee performed must be securely attached to the system on completion of the work.

(c) Pre-engineered fixed fire extinguisher systems must be installed and serviced by a licensee authorized to install or service pre-engineered fixed fire extinguishing systems under the provisions of this subchapter.

(d) A pre-engineered fixed fire extinguisher system, except those covered by subsection (f) of this section, which has been previously installed in one location may be reinstalled in another location if:

(1) the system is of the size and type necessary to protect all hazards;

(2) all parts and equipment, when installed, will function as designed by the manufacturer; and

(3) the system complies with all applicable adopted standards.

(e) Fixed fire extinguisher systems other than pre-engineered systems must be planned, installed, or serviced by a Type PL licensee or professional engineer. Installation and servicing of these systems may also be performed by or supervised by a Type A licensee. An employee of the registered firm may install these systems, under the direct supervision of a Type A or PL licensee, without obtaining a license or permit.

(f) All pre-engineered fixed fire extinguishing systems, installed or modified after July 1, 1996, according to NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards for the protection of commercial cooking areas, must meet the minimum requirements of Underwriters Laboratories, Inc., Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300). After January 1, 2008, all existing pre-engineered fixed fire extinguishing systems, installed in accordance with NFPA 17 or NFPA 17A or NFPA 96 of the adopted standards, for the protection of commercial cooking areas, must meet the minimum requirements of UL Standard 300, "Fire Testing of Fire Extinguishing Systems for Protection of Restaurant Cooking Area" (UL 300) or a red tag must be attached following the procedures in §34.521 of this title (relating to Red Tags).

(g) If the installation or servicing of a fixed fire extinguishing system includes the installation or servicing of any part of a fire alarm or detection system or a fire sprinkler system other than the installation and servicing of mechanical or pneumatic detection or actuation devices in connection with the fire extinguishing system, the licensing requirements of the appropriate Insurance Code Chapters 6002 or 6003 must be satisfied.

(h) The fixed-temperature sensing elements of the fusible metal alloy type, replaced while servicing a kitchen hood fire extinguishing system, must bear the manufacturer's date stamp, which must be within one year of the date of the replacement. The year of manufacture, temperature, and quantity for new fusible links must be listed on the service tag under service performed.

(i) The disposable actuation cartridge, replaced while servicing a kitchen hood fire extinguisher system, must bear the date of replacement.

(j) After operating the pull pin or locking device during maintenance of a portable fire extinguisher, the flag of the new tamper seal must bear the year it was attached. The date must be imprinted or embossed on the flag of the new tamper seal. Dates applied with a marker are not allowed.

(k) All pre-engineered dry chemical fixed fire extinguishing systems, installed in new, remodeled, or relocated protected areas after January 1, 2006, must meet the minimum requirements of the second edition (1996) or more recent edition of Underwriters Laboratories, Inc., Standard 1254, Pre-engineered Dry Chemical Extinguishing System Units.

§34.521. *Red Tags.*

(a) If impairments exist that make a portable extinguisher or fixed system unsafe or inoperable, the owner or the owner's representative must be notified in writing of all impairments. The registered firm must notify the owner or the owner's representative immediately and must also notify the local authority having jurisdiction (AHJ) when available within 24 hours by phone, fax, or email describing the impairments or deficiencies. A copy of the written notice to the owner must be submitted to the AHJ within three business days. A completed red tag must be attached to indicate that corrective action or replacement is necessary. The signature of the licensee on the tag certifies that the impairments listed indicate that the equipment is unsafe or inoperable. A service tag must not be attached until the impairments have been corrected or the portable extinguisher or fixed system is replaced and the extinguisher or fire extinguisher system re-inspected and found to be in good operating condition. The local AHJ must be notified when corrections are made and a red tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red tag.

(b) Red tags must be the same size as service tags.

(c) Red tags must bear the following information in the format of the tag shown in subsection (e) of this section:

- (1) "DO NOT REMOVE--EQUIPMENT IMPAIRED" (all capital letters, at least 10-point boldface type);
- (2) firm's name and address;
- (3) firm's certificate-of-registration number;
- (4) licensee's name and license number;
- (5) licensee's signature (a stamped signature is prohibited);
- (6) date;
- (7) list of impairments; and
- (8) name and address of owner or occupant.

(d) A red tag may be removed only by an authorized employee of a registered firm who has corrected the impairments and certified the service, an employee of the State Fire Marshal's Office, or an employee of another governmental agency with regulatory authority.

(e) Red tag:

Figure: 28 TAC §34.521(e)

§34.524. *Military Service Members, Military Veterans, or Military Spouses.*

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation will be credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years' additional time to complete any continuing education requirements and any other requirements related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

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SUBCHAPTER F. FIRE ALARM RULES

28 TAC §§34.609, 34.613, 34.615, 34.616, 34.622 - 34.624, 34.631

STATUTORY AUTHORITY. The amendment is adopted under Government Code §§417.005, 417.008, and 417.0081; Occupations Code Chapter 55; and Insurance Code §§6002.051, 6002.052, and 36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association.

Government Code §417.0081 provides that the commissioner by rule will adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Occupations Code Chapter 55, and as amended by SB 807 and SB 1307, provides certain statutory protections for military service members, military veterans, and military spouses.

Insurance Code §6002.051(a) specifies that the department will administer Chapter 6002. Insurance Code §6002.051(b) specifies that the commissioner may adopt rules as necessary to administer Chapter 6002, including rules the commissioner considers necessary to administer Chapter 6002 through the state fire marshal.

Insurance Code §6002.052(a) specifies that in adopting necessary rules, the commissioner may use: (i) recognized standards, such as, but not limited to standards of the National Fire Protection Association, standards recognized by federal law or regulation, or standards published by a nationally recognized standards-making organization; (ii) the National Electrical Code; or (iii) information provided by individual manufacturers. Insurance Code §6002.052(b) specifies that rules adopted under §6002.051 may create specialized licenses or registration certificates for an organization or individual engaged in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining fire alarm or fire detection devices or systems, and that the rules must establish appropriate training and qualification standards for each kind of license and certificate.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.609. Approved Testing Organization.

The commissioner approves the following testing organizations as a testing standards organization for testing license applicants:

- (1) National Institute for Certification in Engineering Technologies (NICET); and
- (2) Electronic Security Association (ESA).

§34.613. Applications.

- (a) Approvals and certificates of registration.

(1) Applications for approvals, certificates, and branch office certificates must be submitted on the forms adopted by reference in §34.630 of this title (relating to Application and Renewal Forms) and be accompanied by all fees, documents, and information required by Insurance Code Chapter 6002 and this subchapter. An application will not be deemed complete until all required forms, fees, and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, or by each partner of a partnership, or by an officer of a corporation. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Texas Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant permitting the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6002 and this subchapter.

(3) For corporations, the application must also include the name of each shareholder owning more than 25 percent of the shares issued by the corporation; the corporate taxpayer identification number; the charter number; a copy of the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas

certificate of authority to do business; and a copy of the corporation's current franchise tax certificate of good standing issued by the comptroller.

(4) A registered firm must employ at least one full-time licensed individual at each location of a main or branch office.

(5) Insurance is required as follows.

(A) The state fire marshal will not issue a certificate of registration under this subchapter unless the applicant files with the State Fire Marshal's Office evidence of an acceptable general liability insurance policy.

(B) Each registered firm must maintain in force and on file in the State Fire Marshal's Office a certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, if applicable.

(6) A firm billing a customer for monitoring is engaged in the business of monitoring and must comply with the insurance requirements of this subchapter for a monitoring firm.

(7) Applicants for a certificate of registration who engage in monitoring must provide the specific business locations where monitoring will take place and the name and license number of the fire alarm licensees at each business location. A fire alarm licensee may not serve in this capacity for a registered firm other than the firm applying for a certificate of registration. In addition, the applicants must provide evidence of listing or certification as a central station by a testing laboratory approved by the commissioner and a statement that the monitoring service is in compliance with NFPA 72 as adopted in §34.607 of this title (relating to Adopted Standards).

(8) Applicants for a certificate of registration--single station must provide a statement, signed by the sole proprietor, a partner of a partnership, or by an officer of the corporation, indicating that the firm exclusively engages in the business of planning, certifying, leasing, selling, servicing, installing, monitoring, or maintaining single station devices.

(b) Fire alarm licenses.

(1) To be complete, applications for a license from an employee or agent of a registered firm must be submitted on forms provided by the state fire marshal and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by Insurance Code Chapter 6002 and this subchapter. Applications must be signed by the applicant and by a person authorized to sign on behalf of the registered firm. All applicants for any type of license must successfully complete a qualifying test regarding Insurance Code Chapter 6002 and the Fire Alarm Rules as designated by the State Fire Marshal's Office. The qualifying test, given as part of the training for residential fire alarm technician license, must include questions regarding Insurance Code Chapter 6002 and the Fire Alarm Rules.

(2) Applicants for fire alarm technician licenses must:

(A) furnish notification from National Institute for Certification in Engineering Technologies (NICET) (National Institute for Certification in Engineering Technologies) or ESA (Electronic Security Association), confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(3) Applicants for a fire alarm monitoring technician license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office, or provide evidence of current registration in Texas as a registered engineer.

(4) Applicants for a residential fire alarm superintendent (single station) license must successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(5) Applicants for a residential fire alarm superintendent license must:

(A) furnish notification from NICET or ESA confirming the applicant's successful completion of the test requirements in work elements pertaining to fire alarm systems, as determined by the state fire marshal; or

(B) successfully complete a technical qualifying test as designated by the State Fire Marshal's Office.

(6) Applications for a fire alarm planning superintendent license must be accompanied by one of the following documents as evidence of technical qualifications for a license:

(A) proof of registration in Texas as a professional engineer; or

(B) a copy of NICET's or ESA's notification letter confirming the applicant's successful completion of the test requirements for NICET or ESA certification at Level III for fire alarm systems.

(7) An applicant for a residential fire alarm technician license must provide evidence of the applicant's successful completion of the required residential fire alarm technician training course from a training school approved by the State Fire Marshal's Office.

(c) Instructor and training school approvals.

(1) Instructor approvals. An applicant for approval as an instructor must:

(A) hold a current fire alarm planning superintendent license, residential fire alarm superintendent license, or fire alarm technician license issued by the State Fire Marshal's Office;

(B) submit a completed Instructor Approval Application, Form No. SF247, signed by the applicant, that is accompanied by all fees; and

(C) furnish written documentation of a minimum of three years of experience in fire alarm installation, service, or monitoring of fire alarm systems unless the applicant has held a fire alarm planning superintendent license, residential fire alarm superintendent license, or fire alarm technician license for three or more years.

(2) Training school approvals.

(A) An applicant for approval of a training school must submit a completed Training School Approval Application, Form No. SF 246, to the State Fire Marshal's Office. To be complete, the application must be:

(i) signed by the applicant, the sole proprietor, by each partner of a partnership, or by an officer of a corporation or organization as applicable;

(ii) accompanied by a detailed outline of the proposed subjects to be taught at the training school and the number and location of all training courses to be held within one year following approval of the application; and

(iii) accompanied by all required fees.

(B) After review of the application for approval for a training school, the state fire marshal will approve or deny the application within 60 days following receipt of the materials. A letter of denial will state the specific reasons for the denial. An applicant that is denied approval may reapply at any time by submitting a completed application that includes the changes necessary to address the specific reasons for denial.

(d) Renewal applications.

(1) In order to be complete, renewal applications for certificates, licenses, instructor approvals, and training school approvals must be submitted on the forms adopted by reference in §34.630 of this title and be accompanied by all fees, documents, a criminal history report from the Texas Department of Public Safety, and information required by the Insurance Code Chapter 6002 and this subchapter. A complete renewal application deposited with the United States Postal Service is deemed to be timely filed, regardless of actual date of delivery, when its envelope bears a postmark date that is before the expiration of the certificate or license being renewed.

(2) A licensee with an unexpired license who is not employed by a registered firm at the time of the licensee's renewal may renew that license; however, the licensee may not engage in any activity for which the license was granted until the licensee is employed and qualified by a registered firm.

(e) Complete applications. The application form for a license, registration, instructor approval, and training school approval must be accompanied by the required fee and must, within 180 days of receipt by the State Fire Marshal's Office of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6002 and this subchapter, or a new application must be submitted including all applicable fees.

§34.615. *Test.*

(a) Each applicant for a license must pass the appropriate tests. Tests may be supplemented by practical tests or demonstrations necessary to determine the applicant's knowledge and ability.

(1) The license test will include a section on this subchapter, Insurance Code Chapter 6002, and a technical qualifying test to be conducted by:

(A) the State Fire Marshal's Office;

(B) NICET (National Institute for Certification in Engineering Technologies);

(C) ESA (Electronic Security Association); or

(D) an outsource testing service.

(2) The standards used in tests will be those adopted in §34.607 of this title (relating to Adopted Standards).

(b) Examinees who fail the test must file a retest application accompanied by the required fee in order to be retested on the next scheduled test date.

(c) A person whose license has been expired for two years or longer who makes application for a new license must take and pass another test. No test is required for a licensee whose license is renewed within two years of expiration.

(d) An applicant may only schedule each type of test three times within a 12-month period.

(e) An applicant for a license must complete and submit all application requirements within one year of the successful completion of any test required for a license; otherwise the test is voided and the individual will have to pass the test again.

§34.616. *Sales, Installation, and Service.*

(a) Residential alarm (single station).

(1) Registered firms may employ persons exempt from the licensing provisions of Insurance Code §6002.155(10) to sell, install, and service residential, single station alarms. Exempted persons must be under the supervision of a residential fire alarm superintendent (single station), residential fire alarm superintendent, or fire alarm planning superintendent.

(2) Each registered firm that employs persons exempt from licensing provisions of Insurance Code §6002.155(10) is required to maintain documentation to include lesson plans and annual test results demonstrating competency of those employees regarding the provisions of Insurance Code Chapter 6002, adopted standards, and this subchapter applicable to single station devices.

(b) Fire detection and fire alarm devices or systems other than residential single station.

(1) The installation of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002 must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent, or a fire alarm planning superintendent for the work permitted by the license. The licensee responsible for the planning of all fire detection and fire alarm devices or systems, including monitoring equipment subject to Insurance Code Chapter 6002, must be licensed under the ACR number of the primary registered firm. The certifying licensee must be licensed under the ACR number of the primary registered firm and must be present for the final acceptance test prior to certification.

(2) The maintenance or servicing of all fire detection and fire alarm devices or systems must be performed by or under the direct on-site supervision of a licensed fire alarm technician, residential fire alarm technician, residential fire alarm superintendent or a fire alarm planning superintendent, for the work permitted by the license. The licensee attaching a label must be licensed under the ACR number of the primary registered firm.

(3) If the installation or servicing of a fire alarm system also includes installation or servicing of any part of a fire protection sprinkler system or a fire extinguisher system other than inspection and testing of detection or supervisory devices, the licensing requirements of Insurance Code Chapters 6001 and 6003 must be satisfied, as appropriate.

(4) The planning, installation, and servicing of fire detection or fire alarm devices or systems, including monitoring equipment, must be performed according to standards adopted in §34.607 of this title (relating to Adopted Standards) except when the planning and installation complies with a more recent edition of the standard that has been adopted by the political subdivision in which the system is installed.

(5) Fire alarm system equipment replaced in the same location with the same or similar electrical and functional characteristics and listed to be compatible with the existing equipment, as determined by a fire alarm planning superintendent, may be considered repair. The equipment replaced must comply with the current adopted standards but the entire system is not automatically required to be modified to meet the applicable adopted code. The local AHJ must be consulted to determine whether to update the entire system to comply with the current code and if plans or a permit is required prior to making the repair.

(6) On request of the owner of the fire alarm system, a registered firm must provide all passwords, including those for the site-specific software, but the registered firm may refrain from provid-

ing that information until the system owner signs a liability waiver provided by the registered firm.

(c) Monitoring requirements.

(1) A registered firm may not monitor a fire alarm system located in the State of Texas for an unregistered firm.

(2) A registered firm may not connect a fire alarm system to a monitoring service unless:

(A) the monitoring service is registered under Insurance Code Chapter 6002 or is exempt from the licensing requirements of that chapter; and

(B) the monitoring equipment being used is in compliance with Insurance Code §6002.25.

(3) A registered firm must employ at least one technician licensee at each central station location. Each dispatcher at the central station is not required to be a fire alarm technician licensee.

(4) A registered firm subcontracting monitoring services to another registered firm must advise the monitoring services subscriber of the identity and location of the registered firm actually providing the services unless the registered firm's contract with the subscriber contains a clause giving the registered firm the right, at the registered firm's sole discretion, to subcontract any or all of the work or service.

(5) A registered monitoring firm, reporting an alarm or supervisory signal to a municipal or county emergency services center, must provide, at a minimum, the type of alarm, address of alarm, name of subscriber, dispatcher's identification, and call-back phone number. If requested, the firm must also provide the name, registration number, and call-back phone number of the firm contracted with the subscriber to provide monitoring service if other than the monitoring station.

(6) If the monitoring service provided under this subchapter is discontinued before the end of the contract with the subscriber, the monitoring firm, central station, or service provider must notify the owner or owner's representative of the monitored property and the local AHJ a minimum of seven days before terminating the monitoring service. If the monitored property is a one- or two- family dwelling, notification of the local AHJ is not required.

(d) Record keeping. The firm must keep complete records of all service, maintenance, and testing on the system for a minimum of two years. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

§34.622. *Inspection/Test Labels.*

(a) After the inspection and testing of a fire alarm system, a fire alarm inspection/test label must be completed in detail and affixed to either the inside or outside of the control panel cover or, if the system has no panel, in a permanent location. The signature of the licensee on the inspection/test label certifies that the inspection and tests performed comply with requirements of the adopted standards.

(b) If any service or maintenance is performed under the inspection or test, a service label, in addition to the inspection/test label, must be completed and attached according to the procedures in this section.

(c) For new installation, an inspection/test label may only be applied after the system has been accepted by the local AHJ.

(d) If, during any inspection or test, the system does not comply with applicable standards adopted at the time the system was installed, has a fault condition, or is impaired from normal operation, the owner or the owner's representative and the local AHJ must be notified of the condition and the licensee must attach, in addition to the inspec-

tion/test label, the appropriate yellow or red label, in accordance with the procedures in this section.

(e) The local AHJ must be notified when the fault or impairment has been corrected.

(f) Inspection/test labels must remain in place for at least five years, after which they may be removed by a licensed employee or agent of a registered firm. An employee of the State Fire Marshal's Office or an authorized representative of a governmental agency with appropriate regulatory authority may remove excess labels at any time.

(g) The inspection/test label must be blue with printed black lettering.

(h) The inspection/test label must be approximately three inches high and three inches wide, and must have an adhesive on the back that allows for label removal.

(i) Approximately a half-inch of the adhesive on the top back of the label should be used to attach the label over the previous inspection/test label to permit viewing of the previous label and the maintaining of a brief history.

(j) Inspection/test labels must contain the following information in the format of the inspection/test label, as set forth in subsection (k) of this section:

(1) DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL (all capital letters in at least 10-point bold face type);

(2) INSPECTION/TEST RECORD (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm performing the inspection/test;

(4) the date of the inspection performed, the licensee's signature (a stamped signature is prohibited) and license number;

(5) the type of inspection/test performed to be marked, new installation, semi-annual, quarterly or annual;

(6) the last date of sensitivity test, if known; and

(7) the status after the inspection/test if acceptable or if yellow label attached, or if red label attached.

(k) Inspection/test label:

Figure: 28 TAC §34.622(k)

§34.623. *Yellow Labels.*

(a) If, after any service, inspection, or test, a system does not comply with applicable codes and adopted standards or is not being tested or maintained according to those standards, a completed yellow label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location to indicate that corrective action is necessary.

(b) The signature of the licensee on a yellow label certifies that the conditions listed on the label cause the system to be out of compliance with applicable codes and standards.

(c) After attaching a yellow label, the licensee or the registered firm must notify the property owner, occupant or their representative, and the local AHJ in writing indicating the conditions with which the system does not comply with the applicable codes and standards. The notification must be postmarked, emailed, faxed or hand delivered within five business days of the attachment of the yellow label.

(d) Yellow labels must remain in place until the conditions are corrected and a service label is attached certifying that the corrections

were made. The yellow label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office, or an authorized representative of a governmental agency with appropriate regulatory authority. The local AHJ must be notified when corrections are made and a yellow label is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the yellow label.

(e) Yellow labels must be approximately three inches high and three inches wide and must have an adhesive on the back that allows for label removal.

(f) Labels must be yellow with printed black lettering.

(g) Yellow labels must bear the following information in the format of the label, as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters in at least 10-point bold face type);

(2) "SYSTEM DOES NOT COMPLY WITH APPLICABLE CODES & STANDARDS" (all capital letters in at least 10-point bold face type);

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the yellow label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the yellow label;

(h) Yellow label:

Figure: 28 TAC §34.623(h) (No change.)

§34.624. *Red Labels.*

(a) If, after any service, inspection or test, a system or any part thereof is inoperable, has a fault condition, or is impaired from normal operation, excluding the area(s) of a building under construction, a completed red label must be attached to the outside of the control panel cover or, if the system has no panel, in a permanent location, to indicate that corrective action is necessary.

(b) The signature of the licensee on a red label certifies that the conditions listed on the label have caused the system to be inoperable, have a fault condition, or be impaired from normal operation.

(c) If the system is inoperable, immediately after attaching a red label the licensee or the registered firm must orally notify the property owner, occupant or their representative, and the local AHJ, where available, of all impairments and provide a written notification, emailed, faxed or hand delivered within the next business day of the attachment of the red label. If the system has a fault condition or is impaired from normal operation, after attaching a red label, the licensee or the registered firm must notify the property owner, occupant or their representative, and the local AHJ in writing indicating the condition(s). The written notification must be postmarked, emailed, faxed or hand delivered within three business days of the attachment of the red label.

(d) Red labels must remain in place until the conditions are corrected and a service label is attached certifying that the corrections were made. The red label may be removed by a licensed employee or agent of a registered firm, an employee of the State Fire Marshal's Office, or an authorized representative of a governmental agency with appropriate regulatory authority. The local AHJ must be notified when corrections are made and a red label is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red label.

(e) Red labels must be approximately three inches high and three inches wide and must have an adhesive on the back that allows for label removal.

(f) Labels must be red with printed black lettering.

(g) Red labels must bear the following information in the format of the label as shown in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all in capital letters, at least 10-point bold face type);

(2) status of the system to be marked, inoperable or impaired or fault;

(3) the registered firm's name, address, telephone number (either main office or branch office) and certificate of registration number of the firm attaching the red label;

(4) the date the label was attached, the licensee's signature (a stamped signature is prohibited) and license number; and

(5) a list of conditions resulting in the red label;

(h) Red label:

Figure: 28 TAC §34.624(h) (No change.)

§34.631. *Military Service Members, Military Veterans, or Military Spouses.*

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

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General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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SUBCHAPTER G. FIRE SPRINKLER RULES

28 TAC §§34.713, 34.716, 34.721, 34.722, 34.726

STATUTORY AUTHORITY. The amendment is adopted under Government Code §§417.005, 417.008, and 417.0081; Occupations Code Chapter 55, and Insurance Code §§6003.051, 6003.052, and 6003.054, and 36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association.

Government Code §417.0081 provides that the commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Occupations Code Chapter 55, and as amended by SB 807 and SB 1307, provides certain statutory protections for military service members, military veterans, or military spouses.

Insurance Code §6003.051(a) specifies that the department administers Chapter 6003. Insurance Code §6003.051(b) specifies that the commissioner may issue rules necessary to administer Chapter 6003 through the state fire marshal.

Insurance Code §6003.052(a) specifies that in adopting necessary rules, the commissioner may use recognized standards, including standards adopted by federal law or regulation, standards published by a nationally recognized standards-making organization, or standards developed by individual manufacturers.

Section 6003.054(a) further specifies that the state fire marshal must implement the rules adopted by the commissioner for the protection and preservation of life and property in controlling: (i) the registration of an individual or an organization engaged in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; and (ii) the requirements for the plan, sale, installation, maintenance, or servicing of fire protection sprinkler systems by determining the criteria and qualifications for registration certificate and license holders; evaluating the qualifications of an applicant for a registration certificate to engage in the business of planning, selling, installing, maintaining, or servicing fire protection sprinkler systems; conducting examinations and evaluating the qualifications of a license applicant; and issuing registration certificates and licenses to qualified applicants.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.713. *Applications.*

(a) Certificates of registration.

(1) Applications for certificates must be submitted on forms provided by the state fire marshal and must be accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter. An application will not be deemed complete until all required forms and documents have been received in the State Fire Marshal's Office.

(2) Applications must be signed by the sole proprietor, by each partner of a partnership, or by an officer of a corporation. For corporations, the application must be accompanied by the corporate charter of a Texas corporation or, in the case of a foreign corporation, a copy of the Texas certificate of authority to do business. For applicants using an assumed name, the application must also be accompanied by evidence of compliance with the Assumed Business or Professional Name Act, Business and Commerce Code Chapter 71. The application must also include written authorization by the applicant that permits the state fire marshal or the state fire marshal's representative to enter, examine, and inspect any premises, building, room, or establishment used by the applicant while engaged in the business to determine compliance with the provisions of Insurance Code Chapter 6003 and this subchapter.

(3) For corporations, the application must also include the corporate taxpayer identification number, the charter number, and a copy of the corporation's current franchise tax certificate of good standing issued by the state comptroller.

(4) An applicant must not designate as its full-time responsible managing employee (RME) a person who is the designated full-time RME of another registered firm.

(5) A registered firm must not conduct any business as a fire protection sprinkler contractor until a full-time RME, as applicable to the business conducted, is employed. An individual with an RME-General Inspector's license does not constitute compliance with the requirements of this subsection.

(6) A certificate of registration may not be renewed unless the firm has at least one licensed RME as a full-time employee before the expiration of the certificate of registration to be renewed. If an applicant for renewal does not have an RME as a full-time employee as a result of death or disassociation of an RME within 30 days preceding the expiration of the certificate of registration, the renewal applicant must inform the license section of the State Fire Marshal's Office of the employment of a full-time RME before the certificate of registration will be renewed.

(7) Insurance required.

(A) The state fire marshal must not issue a certificate of registration under this subchapter unless the applicant files with the state fire marshal's office a proof of liability insurance. The insurance must include products and completed operations coverage.

(B) Each registered firm must maintain in force and on file in the State Fire Marshall's Office the certificate of insurance identifying the insured and the exact nature of the business insured. In identifying the named insured, the certificate of insurance must include either an assumed name or the name of the corporation; partners, if any; or sole proprietor, as applicable. Failure to do so will be cause for administrative action.

(C) Evidence of public liability insurance, as required by Insurance Code §6001.152, must be in the form of a certificate of insurance executed by an insurer authorized to do business in this state, or a certificate of insurance for surplus lines coverage, secured in com-

pliance with Insurance Code Chapter 981, as contemplated by Insurance Code §6001.152(c).

(b) Responsible managing employee licenses.

(1) Original and renewal applications for a license from an employee of a firm engaged in the business must be submitted on forms provided by the state fire marshal, along with a criminal history report from the Texas Department of Public Safety, and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter.

(2) The following documents must accompany the application as evidence of technical qualifications for a license:

(A) RME-General:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the National Institute for Certification in Engineering Technologies (NICET's) notification letter confirming the applicant's successful completion of the test requirements for certification at Level III for water-based fire protection systems layout.

(B) RME-Dwelling:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of NICET's notification letter confirming the applicant's successful completion of the test requirements for certification at Level II for fire protection automatic sprinkler system layout and evidence of current employment by a registered fire sprinkler contractor.

(C) RME-Underground Fire Main:

(i) proof of current registration in Texas as a professional engineer; or

(ii) a copy of the notification letter confirming at least a 70 percent grade on the test covering underground fire mains for fire protection sprinkler systems, administered by the State Fire Marshal's Office or an outsource testing service.

(D) RME-General Inspector:

(i) a copy of NICET's notification letter confirming the applicant's successful completion of the examination requirements for certification at Level II for Inspection and Testing of Water-Based Systems; and

(ii) evidence of current employment by a registered fire protection sprinkler system contractor.

(c) Complete applications. The application form for a license or registration must be accompanied by the required fee and must, within 180 days of receipt by the department of the initial application, be complete and accompanied by all other information required by Insurance Code Chapter 6003 and this subchapter, or a new application must be submitted including all applicable fees.

§34.716. *Installation, Maintenance, and Service.*

(a) All fire protection sprinkler systems installed under Insurance Code Chapter 6003 must be installed under the supervision of the appropriate licensed responsible managing employee.

(1) An RME-General may supervise the installation of any fire protection sprinkler system including one- and two-family dwellings.

(2) An RME-Dwelling may only supervise the installation of a fire protection sprinkler system in one- and two-family dwellings.

(3) An RME-Underground Fire Main may only supervise the installation of an assembly of underground piping or conduits that conveys water with or without other agents and used as an integral part of any type of fire protection sprinkler system.

(b) On completion of the installation, the licensed RME type G, D, or U (as applicable) must have affixed a contractor's material and test certificate for aboveground or underground piping on or near the system riser. If the adopted installation standard does not require testing, all other sections except the testing portion of the contractor's material and test certificate must still be completed. The contractor's material and test certificate must be obtained from the State Fire Marshal's Office. The certificate must be distributed as follows:

(1) original copy kept at the site after completion of the installation;

(2) second copy retained by the installing company at its place of business in a separate file used exclusively by that firm to retain all Contractor's Material and Test Certificates. The certificates must be available for examination by the state fire marshal or the state fire marshal's representative on request. The certificates must be retained for the life of the system; and

(3) third copy to be sent to the local AHJ within 10 days after completion of the installation.

(c) Service, maintenance, or testing, when conducted by someone other than an owner, must be conducted by a registered firm and in compliance with the appropriate adopted standards. The inspection, test, and maintenance service of a fire protection sprinkler system, except in a one- and two-family dwelling, must be performed by an individual holding a current RME-General Inspector or RME-General license. A visual inspection not accompanied by service, maintenance, testing, or certification does not require a certificate of registration.

(d) The firm must keep complete records of all service, maintenance, testing, and certification operations. The records must be available for examination by the state fire marshal or the state fire marshal's representative.

(e) All vehicles regularly used in service, maintenance, testing, or certification activities must prominently display the company name, telephone number, and certificate of registration number. The numbers and letters must be at least one-inch high and must be permanently affixed or magnetically attached to each side of the vehicle in a color contrasting with the background color of the vehicle. The certificate of registration number must be designated in the following format TX: SCR-number.

(f) Each registered firm must employ at least one full-time RME-General or RME-Dwelling licensee at each business office where fire protection sprinkler system planning is performed, who is appropriately licensed to conduct the business performed by the firm.

(g) The planning of an automatic fire protection sprinkler system must be performed under the direct supervision of the appropriately licensed RME.

(h) The planning, installation, or service of a fire protection sprinkler system must be performed in accordance with the minimum requirements of the applicable adopted standards in §34.707 of this title (relating to Adopted Standards), except when the plan, installation, or service complies with a standard that has been adopted by the political subdivision in which the system is installed.

§34.721. *Yellow Tags.*

(a) If a fire protection sprinkler system is found to be noncompliant with applicable NFPA standards, is not being tested or maintained according to adopted standards, or found to contain equipment

that has been recalled by the manufacturer, but the noncompliance or recalled equipment does not constitute an emergency impairment, a completed yellow tag must be attached to the respective riser of each system to permit convenient inspection, to not hamper the system's actuation or operation, and to indicate that corrective action is necessary.

(b) The signature of the service person or inspector on a yellow tag certifies the conditions that caused the system to be out of compliance with NFPA standards.

(c) After attaching a yellow tag, the service person or inspector must notify the building owner or the building owner's representative and the local AHJ in writing of all noncompliant conditions. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the attachment of the yellow tag.

(d) A yellow tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the noncompliant conditions were corrected. The local AHJ must be notified when corrections are made and a yellow tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the date on which the yellow tag is removed.

(e) Yellow tags may be printed for multiple years.

(f) Yellow tags must be the same size as service tags, and must contain the following information in the format of the tag as set forth in subsection (g) of this section:

(1) "DO NOT REMOVE BY ORDER OF TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of items not compliant with NFPA standards.

(g) Sample yellow tag:

Figure: 28 TAC §34.721(g) (No change.)

§34.722. *Red Tags.*

(a) If a fire protection sprinkler system has an impairment which constitutes an emergency impairment, as defined in the adopted edition of NFPA 25, the service person or inspector must complete and attach a red tag to the respective riser of each system to indicate corrective action is necessary.

(b) Immediately after attaching a red tag, the inspector or service person must orally notify the building owner or the building owner's representative and, where available, the local AHJ all impairments. The inspector or service person must also provide written notice to the building owner or the building owner's representative and, where available, the local AHJ of all impairments, and the written notice must be postmarked, emailed, faxed, or hand delivered within 24 hours of the attachment of the red tag.

(c) The signature of the service person or inspector on the red tag certifies the impairments listed constitute an emergency impairment.

(d) A red tag may only be removed by an authorized employee of a registered firm or an authorized representative of a governmental agency with appropriate regulatory authority after the employee or representative completes and attaches a service tag that indicates the impaired conditions were corrected. The local AHJ must be notified when corrections are made and a red tag is removed or revised. The notification must be postmarked, emailed, faxed, or hand delivered within five business days of the removal of the red tag.

(e) Red tags may be printed for a multiple period of years.

(f) Red tags must be the same size as service tags.

(g) Red tags must contain the following information in the format of the sample tag as set forth in subsection (h) of this section:

(1) "DO NOT REMOVE BY ORDER OF THE TEXAS STATE FIRE MARSHAL" (all capital letters, at least 10-point boldface type);

(2) firm's name, address, and phone number;

(3) firm's certificate of registration number;

(4) license number of RME;

(5) printed name of service person or inspector;

(6) signature of service person or inspector;

(7) day, month, and year (to be punched);

(8) name and address of owner or occupant;

(9) building number, location, or system number; and

(10) list of emergency impairments.

(h) Sample red tag:

Figure: 28 TAC §34.722(h)

§34.726. *Military Service Members, Military Veterans, or Military Spouses.*

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

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General Counsel

Texas Department of Insurance

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For further information, please call: (512) 676-6584



SUBCHAPTER H. STORAGE AND SALE OF FIREWORKS

28 TAC §§34.808, 34.818, 34.823, 34.832, 34.833

STATUTORY AUTHORITY. The amendments are adopted under Government Code §§417.005, 417.008, and 417.0081; Occupations Code Chapter 55, §2154.051, and §2154.052; and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Government Code §417.008(e) provides that the commissioner may adopt by rule any appropriate standard related to fire danger developed by a nationally recognized standards-making association. Government Code §417.0081 provides that the commissioner by rule shall adopt guidelines for assigning potential fire safety risk to state-owned and state-leased buildings and providing for the inspection of each building to which this section applies.

Occupations Code Chapter 55, as amended by SB 807 and SB 1307, provides certain statutory protections for military service members, military veterans, and military spouses.

Occupations Code §2154.051 states the commissioner shall determine reasonable criteria and qualifications for licenses and permits pertaining to the regulation of fireworks and fireworks displays.

Occupations Code §2154.052 states that the commissioner will adopt and the state fire marshal must administer rules the commissioner considers necessary for the protection, safety, and preservation of life and property.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.808. *Definitions.*

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

(1) Acceptor building--A building that is exposed to embers and debris emitted from a donor building.

(2) Agricultural, industrial, or wildlife control permits--Permits authorizing the holder to use Fireworks 1.3G for specified purposes in these business activities.

(3) Bare wiring--Any electrical cable or cord any part of which has the insulating cover broken or removed, exposing bare wire.

(4) Barricade--A natural or artificial barrier that will effectively screen a magazine, building, railway, or highway from the effects of an explosion in a magazine or building containing explosives. It must be of a height that a straight line from the top of any side wall of a building, or magazine containing explosives to the eave line of any magazine, or building, or to a point 12 feet above the center of a railway or highway, will pass through such natural or artificial barrier.

(5) Barricade, artificial--An artificial mound or revetted wall of earth of a minimum thickness of one foot.

(6) Barricade, natural--Natural features of ground, such as hills, or timber of sufficient density that the surrounding exposures that require protection cannot be seen from the magazine or building containing explosives when the trees are bare of leaves.

(7) Barricade, screen type--Any of several barriers for containing embers and debris from fires and deflagrations in process buildings that could cause fires and explosions in other buildings. Screen type barricades must be constructed of metal roofing, inch or a half-inch mesh screen or equivalent material. A screen-type barricade extends from the floor level of the donor building to a height that a straight line from the top of any side wall of the donor building to the eave line of the acceptor building will go through the screen at a point not less than five feet from the top of the screen. The top five feet of the screen are inclined at an angle of between 30 and 45 degrees, toward the donor building.

(8) Breakaway construction--A general term that applies to the principle of purposely providing a weak wall so that the explosive effects can be directed and minimized. The term "weak wall" as used in these sections refers to a weak wall and roof, or weak roof. The term "weak wall" is used in a relative sense as compared to the construction of the entire building. The design strength of the weak wall will vary as to the building construction, as well as to the type and quantity of explosive or pyrotechnic materials in the building. The materials used for weak wall construction are usually light gauge metal, plywood, hardboard, or equivalent lightweight material, and the material is purposely selected to minimize the danger from flying missiles. The method of attachment of the weak wall must be constructed to aid the relief of blast pressure and fireball.

(9) Bulk storage, Fireworks 1.4G--The storage of 500 or more cases of Fireworks 1.4G.

(10) Business--The manufacturing, importing, distributing, jobbing, or retailing of permissible fireworks; acting as a pyrotechnic operator; conducting multiple public fireworks displays; or using fireworks for agricultural, wildlife, or industrial purposes.

(11) Buyer--Any person or group of persons offering an agreed upon sum of money or other considerations to a seller of fireworks.

(12) CFR--The Code of Federal Regulations, a codification of the general and permanent rules published in the Federal Register by the executive departments and agencies of the federal government. The Code is divided into 50 titles. The titles are divided into chapters, which are further subdivided into parts.

(13) Commissioner--The Commissioner of Insurance.

(14) Department--The Texas Department of Insurance.

(15) Donor building--A process building from which embers and burning debris are emitted during a fire.

(16) DOT--The United States Department of Transportation.

(17) Fireworks plant--All lands, and building thereon, used for or in connection with the manufacture processing of fireworks. It includes storage facilities used in connection with plant operation.

(18) Firm--A person, partnership, corporation, or association.

(19) Flame effects operator--An individual who, by experience, training, or examination has demonstrated the skill and ability to safely assemble, conduct, or supervise flame effects in accordance with §2154.253, Occupations Code.

(20) Generator--Any device driven by an engine and powered by gasoline or other fuels to generate electricity for use in a retail fireworks stand.

(21) Highway--The paved surface or, where unpaved, the edge of a graded or maintained public street, public alley, or public road.

(22) Indoor retail fireworks site--A retail fireworks site other than a retail stand that sells Fireworks 1.4G from a building or structure.

(23) Immediate family member--The spouse, child, sibling, parent, grandparent, or grandchild of an individual. The term includes a stepparent, stepchild, and stepsibling and a relationship established by adoption.

(24) License--The license issued by the state fire marshal to a person or a fireworks firm authorizing same to engage in business.

(25) Licensed firm--A person, partnership, corporation, or association holding a current license.

(26) Magazine--Any building or structure, other than a manufacturing building, used for storage of Fireworks 1.3G.

(27) Manufacturing--The preparation of fireworks mixes and the charging and construction of all unfinished fireworks, except pyrotechnic display items made on site by qualified personnel for immediate use when the operation is otherwise lawful.

(28) Master electric switch--Manually operated device designed to interrupt the flow of electricity.

(29) Mixing building--A manufacturer's building used for mixing and blending pyrotechnic composition, excluding wet sparkler mixes.

(30) Multiple public display permit--A permit issued for the purpose of conducting multiple public displays at a single approved location.

(31) Nonprocess building--Office buildings, warehouses, and other fireworks plant buildings where no explosive compositions are processed or stored. A finished firework is not considered an explosive composition.

(32) Open flame--Any flame that is exposed to direct contact.

(33) Outsource testing service--The testing service selected by the state fire marshal to administer certain designated qualifying tests for licenses under this subchapter.

(34) Process building--A manufacturer's mixing building or any building in which pyrotechnic or explosive composition is pressed or otherwise prepared for finishing and assembling.

(35) Public display permit--A permit authorizing the holder to conduct a public fireworks display using Fireworks 1.3G, on a single occasion, at a designated location, and during a designated period.

(36) Retail fireworks site--The structure from which Fireworks 1.4G are sold and in which Fireworks 1.4G are held pending retail sale, and other structures, vehicles, or surrounding areas subject to the care and control of the retailer, owner, supervisor, or operator of the retail location.

(37) Retail stand--A retail site that sells Fireworks 1.4G over the counter to the general public who always remain outside the structure.

(38) Safety container--A container especially designed, tested, and approved for the storage of flammable liquids.

(39) School--Any inhabited building used as a classroom or dormitory for a public or private primary or secondary school or institution of higher education.

(40) Selling opening--An open area, including the counter, through which fireworks are viewed and sold at retail.

(41) Storage facility--Any building, structure, or facility in which finished Fireworks 1.4G are stored, but in which no manufacturing is performed.

(42) Supervisor--A person who is 18 years or older and who is responsible for the retail fireworks site during operating hours.

(43) Walk door--An opening through which retail stand attendants can freely move but which can be secured to keep the public from the interior of the stand.

§34.818. Specific Requirements for Retail Fireworks Stands.

A retail fireworks stand must comply with the following requirements:

(1) The fireworks stand in which Fireworks 1.4G are held for retail sale must be constructed of wood, metal, masonry, or concrete, or combinations thereof.

(2) Each stand of less than 16 feet in length must have at least one walk door that opens outward. Stands measuring 16 feet or longer must have at least two walk doors, one in each end, that open outward.

(3) A minimum of combustible material such as posters, signs, and decorations may be used on interior walls.

(4) A minimum distance of six feet must be maintained from the front of the customer counter to the back side of the stand. Fireworks must not be displayed on the customer counter or in any manner that allows the customer to handle fireworks without an attendant directly assisting the customer.

(5) Electrical service to the stand must be installed at least eight feet above ground or buried underground according to standards acceptable to the local AHJ.

(6) Each stand that uses electricity must have a point of power interruption, either inside or outside the stand, (switch or switches) located near a walk door, that interrupts all electric supply to devices and equipment located inside and on the stand.

(7) All electrical wiring, equipment, and devices, both inside and outside the stand, must be UL approved, be securely mounted to the structure, and be installed and maintained to prevent electrical hazards. Splices in electrical wiring servicing equipment and devices inside the stand must be enclosed in junction boxes. Light fixtures and wiring used for illumination inside and outside of the stand must be installed and maintained to prevent accidental contact by the general public and employees.

(8) Drop cords with lights, extension cords, or bare wiring must not be used in any manner inside a retail stand.

(9) In stands where generator-created power is used, the generator must be located in an area free from grass, trash, and other flammable materials and at least 10 feet from the stand. Reserve fuel for the generator must be stored in an approved safety container and a portable fire extinguisher rated to at least 6 BC must be provided.

(10) Fireworks stands must not be illuminated or heated by any device that requires open flame or exposed heating elements. Electric heaters must be equipped with a switching device to stop the flow of current should the heater be tipped over.

(11) If the fireworks stand is used for the overnight storage of Fireworks 1.4G, it must be equipped with suitable locking devices to prevent unauthorized entry.

§34.823. Bulk Storage of Fireworks 1.4G.

(a) General provisions.

(1) These provisions apply to licensees and retail storage of more than 500 cases of Fireworks 1.4G.

(2) Storage facilities containing Fireworks 1.4G must be of solid construction using sound engineering principles.

(3) Electrical installation, if used, must be in compliance with the National Electric Code, 1984. An outside electrical master switch must be provided at each storage facility location when electrical power is installed.

(4) Storage facilities containing Fireworks 1.4G must comply with the following.

(A) Storage facilities must be separated from inhabited buildings, passenger railways, and from the pavement or main travelled surface of any highway by a minimum distance of 50 feet and be in compliance with Table 1 in §34.824 of this title (relating to Distance Tables). Storage facilities in existence prior to January 1, 1986, and then conforming to existing warehouse distance separation rules for jobbers and distributors are exempt from compliance with Table 1, provided such facilities are not enlarged or expanded beyond their January 1, 1986, capacities. An office used for the operation of a storage facility or a retail/wholesale site established in conjunction with a storage facility is exempt from the distance requirements after notifying the state fire marshal. Subsequent construction by adjacent property owners or public authorities must not subject licensee to a distance regulation violation under this section, provided existing storage facilities are not enlarged or expanded after the subsequent construction.

(B) Storage facilities must not contain windows, and any other openings must be situated so that the rays of the sun do not come in contact with or shine through glass directly on fireworks stored in the facility. Skylights that diffuse sun rays are permitted.

(C) No stoves, exposed flames, or electric heaters may be used in any part of storage facility except in a boiler room, machine shop, office building, pump house, or lavatory. Heating of storage facilities must be by means of steam, indirect hot air radiation, or hot water.

(D) Exit doors other than overhead or sliding doors must open outward, must be unlocked during operating hours, and must be clearly marked. Aisles and exit doors must be kept free of any obstruction.

(E) At least one approved Class A fire extinguisher must be provided for each 1,000 square feet of floor space in a storage facility.

(F) The land surrounding storage facilities must be kept clear of brush, dried grass, leaves, and similar combustibles for a distance of at least 10 feet.

(G) Smoking must not be permitted in storage facilities. There must be signs conspicuously posted with the words "Fireworks-No Smoking" in letters not less than four inches high.

(5) Storage buildings must have fencing in compliance with §34.821(a)(1) of this title (relating to Manufacturing Operations) or one of the following:

(A) personnel on the premises 24 hours per day, and the premises remains lighted at night; or

(B) a security alarm system.

(6) Bulk storage of Class I flammable liquids (such as gasoline) and flammable compressed gases must comply with provisions of §34.821(a)(7) of this title (relating to Manufacturing Operations).

(b) Operation of storage facilities.

(1) Storage facilities must at all time during operating hours be in the charge of a competent person who is at least 18 years of age and who is responsible for the enforcement of all safety precautions.

(2) Doors must be kept locked, except during hours of operation.

§34.832. *Specific Requirements for Retail Fireworks Sites Other Than Stands.*

Indoor retail fireworks sites must comply with the following requirements:

(1) The retail fireworks sales building must be a free standing durable structure with only one story of space accessible to the public. It must not be a tent, boat, or mobile vehicle. The fireworks sales area must not be part of a multi-use or multi-tenant building.

(2) The following distance requirements apply to an indoor retail fireworks site owned or leased by a fireworks licensee, which had a fireworks retail permit or a building permit in effect or was under construction on or before November 18, 2002, and stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must be a minimum distance of 60 feet from any inhabited building;

(B) The fireworks sales building must be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must meet the distance requirements of §34.824 Table 1 of this title (relating to Distance Tables), or have a minimum one-hour fire rated exterior wall with minimum three-fourths-hour fire rated protected openings.

(D) An office area used for the operation of the site, separated by a one hour fire rated wall from the fireworks sales or storage area, may be exempt from the distance requirements after it is reported to and reviewed by the state fire marshal.

(3) The following distance requirements must apply to an indoor retail fireworks site owned or leased by a fireworks licensee which did not have a fireworks retail permit or a building permit in effect or was not under construction on or before November 18, 2002, and that stores or displays over 500 cases of Fireworks 1.4G in the building.

(A) The fireworks sales building must be a minimum distance of 60 feet from any inhabited building.

(B) The fireworks sales building must be a minimum distance of 30 feet from the property line.

(C) The fireworks sales building must meet the distance requirements of §34.824 Table 1 of this title, or have a complete automatic fire sprinkler system installed in accordance with NFPA 13 Standard for the Installation of Sprinkler Systems.

(4) Subsequent construction by adjacent property owners or public authorities will not subject licensee or permittee to a distance regulation violation under this section, provided existing facilities are not enlarged or expanded after the subsequent construction.

(5) Fireworks sales display areas must be sufficiently designed to prevent customers from handling fireworks, unless an attendant is directly assisting the customer. Sales display areas must include a continuous durable restraint around displayed fireworks separating the customers from all merchandise. The height, weight, and stability of the restraint must be designed to prevent individuals from penetrating the barrier.

(6) Fireworks in the sales area must be limited to the displayed merchandise unless stored in closed cardboard boxes not accessible to the public.

(7) Access to fireworks when stored in a separate and distinct area away from general fireworks sales must be restricted to employees only and "No Smoking" signs must be posted inside.

(8) The local fire department and the county fire marshal, if one is appointed or elected in that county, must be notified in writing annually, before beginning sales operations, of the business location, placement of fireworks in building or structure, maximum amount of fireworks in the building, and time period that fireworks will be stored or sold.

(9) Trash, rubbish, and unused boxes, except for small quantities stored in an orderly manner for reuse, must be removed from the sales, storage, and adjacent areas daily, or as often as necessary to prevent unsafe accumulation.

(10) Fireworks may not be displayed or stored behind glass through which direct sunlight can shine on the fireworks.

(11) Extension cords may not be located where the general public could walk over them. An extension cord may be used to extend power to a single appliance or single power strip. An extension cord providing power to a power strip must be of the same or greater wire gauge. Power strips used for multiple appliances must contain an internal circuit breaker. Extension cords and power strips must be protected from accidental damage. Flexible cords and cables must not be used as a substitute for the fixed wiring of a structure. An extension cord must not be plugged into a power strip.

(12) A supervisor, 18 years of age or older, must be on duty during all phases of operation. All fireworks sales personnel must be 16 years of age or older. The permit holder and the supervisor must ensure that all sales personnel comply with this subchapter.

(13) All trash containers used by the general public must be metal or heavy plastic and be located 10 feet from any displayed or stored fireworks.

(14) An outside electrical master switch must be provided at each retail location.

(15) Portable space heaters must not be permitted in retail or storage areas.

(16) A retail sales permit, for other than a retail stand, is not valid until a plan is on file at the State Fire Marshal's Office showing the following:

(A) the address or location of the site;

(B) the name of the person to whom the permit is issued;

(C) the outline and length of all building exterior walls;

(D) the floor area, location, and dimensions used for fireworks sales;

(E) the floor area, location, and dimensions used for fireworks storage outside the sales area;

(F) the floor area, location, and dimensions used for other than fireworks sales and storage;

(G) the general location, description, and distances from the exterior walls to all buildings, fireworks storage magazines, highways, and equipment for storage or dispensing of flammable liquids or compressed gas;

(H) the location of the master electrical cut-off switch;

(I) the location and width of all building doors and paths of egress; and

(J) the maximum estimated number of cases of fireworks to be stored or displayed for sale in the site.

(17) Cooking equipment must not be used within rooms used for fireworks sales or storage.

(18) All fireworks retail sites with a sales area more than 2500 square feet must have a minimum average ceiling height of 12 feet. The sales area is the total square feet of floor area used to sell or store fireworks in an indoor retail fireworks site. Each sales area may be separated from another sales area by a fire barrier having a resistance rating of not less than one hour, with all openings therein protected by a three-fourths-hour fire protection-rated self-closing fire doors.

(19) An indoor retail fireworks site must comply with the mercantile occupancy requirements of the standards adopted in §34.303 of this title (relating to Applicability of Rules). This standard, NFPA 101, Life Safety Code, is published by and is available from the National Fire Protection Association, Quincy, Massachusetts, 1-800-344-3555.

(20) An indoor fireworks retail site must have a minimum distance of 20 feet around the perimeter of the building that is kept free of high grass, empty cardboard boxes, and trash.

§34.833. *Military Service Members, Military Veterans, or Military Spouses.*

(a) Waiver of licensed application and examination fees. The department will waive the license application and examination fees for an applicant who is:

(1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or

(2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state.

(b) Apprentice requirements. Verified military service, training, or education that is relevant to the occupation are credited toward the apprenticeship requirements for the license.

(c) Extension of license renewal deadlines. A military service member who holds a license is entitled to two years additional time to complete any continuing education requirements; and any other requirement related to the renewal of the military service member's license.

(d) Alternative licensing. The state fire marshal, after reviewing the applicant's credentials, may waive any prerequisite to obtaining a license for a military service member, military veteran, or military spouse that:

(1) holds a current license issued by another jurisdiction that has licensing requirements substantially equivalent to the requirements for the license in this state; or

(2) within the five years preceding the application date, held the license in this state.

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

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**SUBCHAPTER J. STOVETOP FIRE
SUPPRESSION DEVICE APPROVAL**

28 TAC §§34.1001 - 34.1004

STATUTORY AUTHORITY. The repeals are adopted under SB 14, 78th Legislature, Regular Session (2003); Government Code §417.005; and Insurance Code §36.001.

SB 14 repealed Insurance Code Articles 5.33A and 5.33C, providing for certificates used for premium credits and discounts on insurance rates.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

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SUBCHAPTER M. SCHEDULED ADMINISTRATIVE PENALTIES

28 TAC §34.1302

STATUTORY AUTHORITY. The amendment is adopted under Government Code §417.005 and §417.010, and Insurance Code §36.001.

Government Code §417.005 states that the commissioner, after consulting with the state fire marshal, may adopt rules necessary to guide the state fire marshal in the performance of other duties for the commissioner.

Government Code §417.010 provides that commissioner by rule must delegate to the state fire marshal the authority to take disciplinary and enforcement actions, including the imposition of administrative penalties. The commissioner must specify which types of disciplinary and enforcement actions are delegated to the state fire marshal. The commissioner must also outline the process through which the state fire marshal may impose administrative penalties or take other disciplinary and enforcement actions.

Government Code §417.010 also provides that the commissioner by rule must adopt a schedule of administrative penalties for violations subject to a penalty under this section to ensure that the amount of an administrative penalty is appropriate to the violation. This section requires the department to provide the schedule of administrative penalties to the public on request. The amount of an administrative penalty imposed must be based on the factors specified in Government Code §417.010(c). Section 417.010 also authorizes the state fire marshal to, instead of canceling, revoking, or suspending a license or certificate of registration, impose on the holder of the license or certificate an order directing the holder to cease and desist from a specified activity, pay an administrative penalty, or make restitution to a person harmed by the holder's violation of an applicable law or rule. Under §417.010, the state fire marshal may impose an administrative penalty in the manner prescribed in Subchapter B, Chapter 84, Insurance Code. The state fire marshal may impose an administrative penalty under the section without referring the violation to the department for commissioner action.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the department under the Insurance Code and other laws of this state.

§34.1302. *Schedule of Administrative Penalties.*

(a) The Fire Extinguisher Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(a)

(b) The Fire Alarm Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(b)

(c) The Fire Protection Sprinkler Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(c)

(d) The Fireworks Indoor Retail Stand Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(d)

(e) The Fireworks Retail Site Penalty Schedule specified as follows.

Figure: 28 TAC §34.1302(e)

(f) The Fireworks Distributor Licensing Retailer Permit Penalty specified as follows.

Figure: 28 TAC §34.1302(f)

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

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 7. TEXAS COMMISSION ON LAW ENFORCEMENT

CHAPTER 221. PROFICIENCY CERTIFICATES

37 TAC §221.25

The Texas Commission on Law Enforcement (Commission) adopts amended §221.25, concerning Civil Process Proficiency, without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 Tex Reg 2469).

This amended rule updates the qualifications for eligibility of the Civil Process Proficiency to include clerks in a constable or sheriff's office that work with civil process.

This amendment is necessary to enhance the proficiency and professionalism of those in a constable or sheriff's office that work with civil process.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority and §1701.402, Proficiency Certificates.

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

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Kim Vickers
Executive Director
Texas Commission on Law Enforcement
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For further information, please call: (512) 936-7713



CHAPTER 225. SPECIALIZED LICENSES

37 TAC §225.1

The Texas Commission on Law Enforcement (Commission) adopts amended §225.1, concerning Issuance of Jailer License through a Contract Jail Facility, without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 Tex Reg 2470).

This amended rule reflects a correct rule cross-referencing.

This amended rule is necessary to correct rule cross-referencing.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

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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Kim Vickers
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37 TAC §225.3

The Texas Commission on Law Enforcement (Commission) adopts the amended §225.3, concerning Issuance of Peace Officer License through a Medical Corporation, without changes to the proposed text as published in the April 1, 2016, issue of the *Texas Register* (41 Tex Reg 2471).

This amended rule reflects a correct rule cross-referencing.

This amended rule is necessary to correct rule cross-referencing.

No comments were received regarding adoption of this amendment.

The amendment is adopted under Texas Occupations Code §1701.151, General Powers of the Commission; Rulemaking Authority.

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 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 19. NURSING FACILITY REQUIREMENTS FOR LICENSURE AND MEDICAID CERTIFICATION

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§19.101, 19.204, 19.1911, and 19.1921 and new §19.1936, in Chapter 19, Nursing Facility Requirements for Licensure and Medicaid Certification, with changes to the proposed text as published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 580).

The amendments and new section are adopted to implement Texas Health and Safety Code (THSC), §242.019, as added by House Bill (H.B.) 1337 of the 84th Legislature, Regular Session, 2015, and amendments to THSC, §242.202(d) and §242.040, as made by H.B. 2588 of the 84th Legislature, Regular Session, 2015.

In response to H.B. 1337, the adoption requires a nursing facility (facility) to request a copy of any court order and letters of guardianship appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support, and requires a facility to maintain in a resident's clinical record a copy of the most recent court order and letters of guardianship received by the facility.

In response to H.B. 2588, the adoption defines the term "Alzheimer's disease and related disorders" and requires a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders to include in the facility's disclosure statement whether the facility is certified under THSC, §242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders. A facility must amend its disclosure statement to reflect any changes in the operation of the facility that will affect the information in the statement and provide DADS and a resident, responsible party, or legal guardian with a copy of the amended disclosure statement at least 30 days before the changes are effective.

In §19.204, the agency made minor editorial corrections. In addition, the agency amended subsection (b)(4)(C) to clarify that a facility must amend its disclosure statement regarding Alzheimer's disease and related conditions if changes in the operation of the facility will affect information in the disclosure statement and submit the amended disclosure statement to DADS at least 30 days before the changes are effective.

In §19.1911, the agency made minor editorial corrections. In addition, the agency amended subsection (b)(17) to require a facility to include in the clinical record of a resident a copy of the most recent court order and letters of guardianship received by the facility, regardless of whether they were received in response to a request made in accordance with §19.1936.

In §19.1921, the agency made changes to clarify when and to whom a facility must give a disclosure statement or amended disclosure statement required by §19.204(b)(4).

In §19.1936, the agency made a minor editorial correction in subsection (d) and amended subsection (e)(2) to require a facility to include in the clinical record of a resident a copy of the most recent court order and letters of guardianship received by the facility, regardless of whether it was received in response to a request made in accordance with §19.1936.

DADS received written comments from Coalition for Nurses in Advanced Practice and the State Long-term Care Ombudsman. A summary of the comments and the responses follows.

Comment: One commenter expressed concern regarding the definition of Alzheimer's disease and related disorders in 40 TAC §19.101, requesting that the agency include in the definition a description of dementia and a definition of "related disorders."

Response: Texas Health and Safety Code §242.020 authorizes the HHSC Executive Commissioner to adopt by reference a definition of "Alzheimer's disease and related disorders" that is published in a generally accepted clinical resource for medical professionals. Because the understanding and classification of these conditions may change as research and treatment continue, the agency has referenced the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and the Centers for Disease Control and Prevention as sources that describe the diseases and disorders included in this term. In response to the comment, the agency changed the definition to reference Alzheimer's disease and any other irreversible dementia instead of cognitive disorders to be more specific about the diseases and disorders included in the term.

Comment: One commenter noted that the Nursing Practice Act, Texas Occupations Code Chapter 301, was amended to use the term "advanced practice registered nurse" rather than "advanced practice nurse." The commenter suggested revising the definitions in §19.101 to delete "nurse practitioner," add "advanced practice registered nurse," and amend "licensed health professional" and "supervising physician" to include advanced practice registered nurse instead of nurse practitioner.

Response: The agency agrees that the term "advanced practice registered nurse" should replace "nurse practitioner" and has made the suggested changes, except the term "nurse practitioner" cannot be deleted from the definitions because the term is used in sections of Chapter 19 that are not being amended. However, the definition of "nurse practitioner" has been amended to mean an advanced practice registered nurse. When all uses of the term "nurse practitioner" in Chapter 19 have been removed, the term can be eliminated from the definitions. In addition, the definition of "practitioner" has been amended to refer to an "advanced practice registered nurse" instead of an "advanced practice nurse."

Comment: One commenter suggested adding "practitioner" as a person who can order a prescription in the definitions of "pharmacist" and "poison."

Response: The agency agrees that using the term "practitioner" in the definitions of "pharmacist" and "poison" is consistent with the definition of "practitioner" as someone authorized to sign a prescription order, so the agency made the suggested changes.

Comment: One commenter suggested revising §19.1911(b)(12), regarding content of the clinical record, to include "practitioner" orders in addition to physician orders.

Response: The suggested revision to §19.1911(b)(12), regarding orders included in the clinical record of a resident, is outside the scope of the proposed changes. The agency will consider the implications of the suggested change and may propose amendments to the rule in the future. In addition, the agency notes that subsection (b)(7) requires the clinical record to include the signed and dated clinical documentation from all health care practitioners involved in the resident's care. The agency did not make any changes in response to this comment.

SUBCHAPTER B. DEFINITIONS

40 TAC §19.101

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; 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; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.101. Definitions.

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

- (1) Abuse--Negligent or willful infliction of injury, unreasonable confinement, intimidation, or punishment with resulting physical or emotional harm or pain to a resident; or sexual abuse, including involuntary or nonconsensual sexual conduct that would constitute an offense under Penal Code §21.08 (indecent exposure) or Penal Code Chapter 22 (assaultive offenses), sexual harassment, sexual coercion, or sexual assault.
- (2) Act--Chapter 242 of the Texas Health and Safety Code.
- (3) Activities assessment--See Comprehensive Assessment and Comprehensive Care Plan.
- (4) Activities director--The qualified individual appointed by the facility to direct the activities program as described in §19.702 of this chapter (relating to Activities).
- (5) Addition--The addition of floor space to an institution.
- (6) Administrator--Licensed nursing facility administrator.
- (7) Admission MDS assessment--An MDS assessment that determines a recipient's initial determination of eligibility for medical necessity for admission into the Texas Medicaid Nursing Facility Program.
- (8) Advanced practice registered nurse--A person licensed by the Texas Board of Nursing as an advanced practice registered nurse.
- (9) Affiliate--With respect to a:
 - (A) partnership, each partner thereof;

(B) corporation, each officer, director, principal stockholder, and subsidiary; and each person with a disclosable interest;

(C) natural person, which includes each:

(i) person's spouse;

(ii) partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(10) Agent--An adult to whom authority to make health care decisions is delegated under a durable power of attorney for health care.

(11) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(12) Applicant--A person or governmental unit, as those terms are defined in the Texas Health and Safety Code, Chapter 242, applying for a license under that chapter.

(13) APA--The Administrative Procedure Act, Texas Government Code, Chapter 2001.

(14) Attending physician--A physician, currently licensed by the Texas Medical Board, who is designated by the resident or responsible party as having primary responsibility for the treatment and care of the resident.

(15) Authorized electronic monitoring--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(16) Barrier precautions--Precautions including the use of gloves, masks, gowns, resuscitation equipment, eye protectors, aprons, face shields, and protective clothing for purposes of infection control.

(17) Care and treatment--Services required to maximize resident independence, personal choice, participation, health, self-care, psychosocial functioning and reasonable safety, all consistent with the preferences of the resident.

(18) Certification--The determination by DADS that a nursing facility meets all the requirements of the Medicaid or Medicare programs.

(19) CFR--Code of Federal Regulations.

(20) CMS--Centers for Medicare & Medicaid Services, formerly the Health Care Financing Administration (HCFA).

(21) Complaint--Any allegation received by DADS other than an incident reported by the facility. Such allegations include, but are not limited to, abuse, neglect, exploitation, or violation of state or federal standards.

(22) Completion date--The date an RN assessment coordinator signs an MDS assessment as complete.

(23) Comprehensive assessment--An interdisciplinary description of a resident's needs and capabilities including daily life functions and significant impairments of functional capacity, as described in §19.801(2) of this chapter (relating to Resident Assessment).

(24) Comprehensive care plan--A plan of care prepared by an interdisciplinary team that includes measurable short-term and long-term objectives and timetables to meet the resident's needs developed for each resident after admission. The plan addresses at least the fol-

lowing needs: medical, nursing, rehabilitative, psychosocial, dietary, activity, and resident's rights. The plan includes strategies developed by the team, as described in §19.802(b)(2) of this chapter (relating to Comprehensive Care Plans), consistent with the physician's prescribed plan of care, to assist the resident in eliminating, managing, or alleviating health or psychosocial problems identified through assessment. Planning includes:

(A) goal setting;

(B) establishing priorities for management of care;

(C) making decisions about specific measures to be used to resolve the resident's problems; and

(D) assisting in the development of appropriate coping mechanisms.

(25) Controlled substance--A drug, substance, or immediate precursor as defined in the Texas Controlled Substance Act, Texas Health and Safety Code, Chapter 481, or the Federal Controlled Substance Act of 1970, Public Law 91-513.

(26) Controlling person--A person with the ability, acting alone or in concert with others, to directly or indirectly, influence, direct, or cause the direction of the management, expenditure of money, or policies of a nursing facility or other person. A controlling person does not include a person, such as an employee, lender, secured creditor, or landlord, who does not exercise any influence or control, whether formal or actual, over the operation of a facility. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of a nursing facility;

(B) any person who is a controlling person of a management company or other business entity that operates a nursing facility or that contracts with another person for the operation of a nursing facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of a nursing facility, is in a position of actual control or authority with respect to the nursing facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility.

(27) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(28) DADS--The Department of Aging and Disability Services.

(29) Dangerous drugs--Any drug as defined in the Texas Health and Safety Code, Chapter 483.

(30) Dentist--A practitioner licensed by the Texas State Board of Dental Examiners.

(31) Department--Department of Aging and Disability Services.

(32) DHS--This term referred to the Texas Department of Human Services; it now refers to DADS, unless the context concerns an administrative hearing. Administrative hearings were formerly the responsibility of DHS; they now are the responsibility of the Texas Health and Human Services Commission (HHSC).

(33) Dietitian--A qualified dietitian is one who is qualified based upon either:

(A) registration by the Commission on Dietetic Registration of the Academy of Nutrition and Dietetics; or

(B) licensure, or provisional licensure, by the Texas State Board of Examiners of Dietitians. These individuals must have one year of supervisory experience in dietetic service of a health care facility.

(34) Direct care by licensed nurses--Direct care consonant with the physician's planned regimen of total resident care includes:

- (A) assessment of the resident's health care status;
- (B) planning for the resident's care;
- (C) assignment of duties to achieve the resident's care;
- (D) nursing intervention; and
- (E) evaluation and change of approaches as necessary.

(35) Distinct part--That portion of a facility certified to participate in the Medicaid Nursing Facility program.

(36) Drug (also referred to as medication)--Any of the following:

(A) any substance recognized as a drug in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them;

(B) any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in man;

(C) any substance (other than food) intended to affect the structure or any function of the body of man; and

(D) any substance intended for use as a component of any substance specified in subparagraphs (A) - (C) of this paragraph. It does not include devices or their components, parts, or accessories.

(37) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(38) Emergency--A sudden change in a resident's condition requiring immediate medical intervention.

(39) Executive Commissioner--The executive commissioner of the Health and Human Services Commission.

(40) Exploitation--The illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with a resident using the resources of the resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(41) Exposure (infections)--The direct contact of blood or other potentially infectious materials of one person with the skin or mucous membranes of another person. Other potentially infectious materials include the following human body fluids: semen, vaginal secre-

tions, cerebrospinal fluid, peritoneal fluid, amniotic fluid, saliva in dental procedures, and body fluid that is visibly contaminated with blood and all body fluids when it is difficult or impossible to differentiate between body fluids.

(42) Facility--Unless otherwise indicated, a facility is an institution that provides organized and structured nursing care and service and is subject to licensure under Texas Health and Safety Code, Chapter 242.

(A) For Medicaid, a facility is a nursing facility which meets the requirements of §1919(a) - (d) of the Social Security Act. A facility may not include any institution that is for the care and treatment of mental diseases except for services furnished to individuals age 65 and over and who are eligible as defined in Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR)).

(B) For Medicare and Medicaid purposes (including eligibility, coverage, certification, and payment), the "facility" is always the entity which participates in the program, whether that entity is comprised of all of, or a distinct part of, a larger institution.

(C) "Facility" is also referred to as a nursing home or nursing facility. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care of the resident; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(43) Family council--A group of family members, friends, or legal guardians of residents, who organize and meet privately or openly.

(44) Family representative--An individual appointed by the resident to represent the resident and other family members, by formal or informal arrangement.

(45) Fiduciary agent--An individual who holds in trust another's monies.

(46) Free choice--Unrestricted right to choose a qualified provider of services.

(47) Goals--Long-term: general statements of desired outcomes. Short-term: measurable time-limited, expected results that provide the means to evaluate the resident's progress toward achieving long-term goals.

(48) Governmental unit--A state or a political subdivision of the state, including a county or municipality.

(49) HCFA--Health Care Financing Administration, now the Centers for Medicare & Medicaid Services (CMS).

(50) Health care provider--An individual, including a physician, or facility licensed, certified, or otherwise authorized to administer health care, in the ordinary course of business or professional practice.

(51) Hearing--A contested case hearing held in accordance with the Administrative Procedure Act, Texas Government Code, Chapter 2001, and the formal hearing procedures in 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedure Act) and Chapter 91 of this title (relating to Hearings Under the Administrative Procedure Act).

(52) HIV--Human Immunodeficiency Virus.

(53) Incident--An abnormal event, including accidents or injury to staff or residents, which is documented in facility reports. An occurrence in which a resident may have been subject to abuse, neglect, or exploitation must also be reported to DADS.

(54) Infection control--A program designed to prevent the transmission of disease and infection in order to provide a safe and sanitary environment.

(55) Inspection--Any on-site visit to or survey of an institution by DADS for the purpose of licensing, monitoring, complaint investigation, architectural review, or similar purpose.

(56) Interdisciplinary care plan--See the definition of "comprehensive care plan."

(57) Involuntary seclusion--Separation of a resident from others or from the resident's room or confinement to the resident's room, against the resident's will or the will of a person who is legally authorized to act on behalf of the resident. Monitored separation from other residents is not involuntary seclusion if the separation is a therapeutic intervention that uses the least restrictive approach for the minimum amount of time, not exceed to 24 hours, until professional staff can develop a plan of care to meet the resident's needs.

(58) IV--Intravenous.

(59) Legend drug or prescription drug--Any drug that requires a written or telephonic order of a practitioner before it may be dispensed by a pharmacist, or that may be delivered to a particular resident by a practitioner in the course of the practitioner's practice.

(60) Licensed health professional--A physician; physician assistant; advanced practice registered nurse; physical, speech, or occupational therapist; pharmacist; physical or occupational therapy assistant; registered professional nurse; licensed vocational nurse; licensed dietitian; or licensed social worker.

(61) Licensed nursing home (facility) administrator--A person currently licensed by DADS in accordance with Chapter 18 of this title (relating to Nursing Facility Administrators).

(62) Licensed vocational nurse (LVN)--A nurse who is currently licensed by the Texas Board of Nursing as a licensed vocational nurse.

(63) Life Safety Code (also referred to as the Code or NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(64) Life safety features--Fire safety components required by the Life Safety Code, including, but not limited to, building construction, fire alarm systems, smoke detection systems, interior finishes, sizes and thicknesses of doors, exits, emergency electrical systems, and sprinkler systems.

(65) Life support--Use of any technique, therapy, or device to assist in sustaining life. (See §19.419 of this chapter (relating to Advance Directives)).

(66) Local authorities--Persons, including, but not limited to, local health authority, fire marshal, and building inspector, who may be authorized by state law, county order, or municipal ordinance to perform certain inspections or certifications.

(67) Local health authority--The physician appointed by the governing body of a municipality or the commissioner's court of the county to administer state and local laws relating to public health in the municipality's or county's jurisdiction as defined in Texas Health and Safety Code, §121.021.

(68) Long-term care-regulatory--DADS Regulatory Services Division, which is responsible for surveying nursing facilities to determine compliance with regulations for licensure and certification for Title XIX participation.

(69) Manager--A person, other than a licensed nursing home administrator, having a contractual relationship to provide management services to a facility.

(70) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, or food service.

(71) MDS--Minimum data set. See Resident Assessment Instrument (RAI).

(72) MDS nurse reviewer--A registered nurse employed by HHSC to monitor the accuracy of the MDS assessment submitted by a Medicaid-certified nursing facility.

(73) Medicaid applicant--A person who requests the determination of eligibility to become a Medicaid recipient.

(74) Medicaid nursing facility vendor payment system--Electronic billing and payment system for reimbursement to nursing facilities for services provided to eligible Medicaid recipients.

(75) Medicaid recipient--A person who meets the eligibility requirements of the Title XIX Medicaid program, is eligible for nursing facility services, and resides in a Medicaid-participating facility.

(76) Medical director--A physician licensed by the Texas Medical Board, who is engaged by the nursing home to assist in and advise regarding the provision of nursing and health care.

(77) Medical necessity (MN)--The determination that a recipient requires the services of licensed nurses in an institutional setting to carry out the physician's planned regimen for total care. A recipient's need for custodial care in a 24-hour institutional setting does not constitute a medical need. A group of health care professionals employed or contracted by the state Medicaid claims administrator contracted with HHSC makes individual determinations of medical necessity regarding nursing facility care. These health care professionals consist of physicians and registered nurses.

(78) Medical power of attorney--The legal document that designates an agent to make treatment decisions if the individual designator becomes incapable.

(79) Medical-social care plan--See Interdisciplinary Care Plan.

(80) Medically related condition--An organic, debilitating disease or health disorder that requires services provided in a nursing facility, under the supervision of licensed nurses.

(81) Medication aide--A person who holds a current permit issued under the Medication Aide Training Program as described in Chapter 95 of this title (relating to Medication Aides--Program Requirements) and acts under the authority of a person who holds a current license under state law which authorizes the licensee to administer medication.

(82) Misappropriation of funds--The taking, secretion, misapplication, deprivation, transfer, or attempted transfer to any person not entitled to receive any property, real or personal, or anything of value belonging to or under the legal control of a resident without the effective consent of the resident or other appropriate legal authority, or the taking of any action contrary to any duty imposed by federal or state law prescribing conduct relating to the custody or disposition of property of a resident.

(83) Neglect--The failure to provide goods or services, including medical services that are necessary to avoid physical or emotional harm, pain, or mental illness.

(84) NHIC--This term referred to the National Heritage Insurance Corporation. It now refers to the state Medicaid claims administrator.

(85) Nonnursing personnel--Persons not assigned to give direct personal care to residents; including administrators, secretaries, activities directors, bookkeepers, cooks, janitors, maids, laundry workers, and yard maintenance workers.

(86) Nurse aide--An individual who provides nursing or nursing-related services to residents in a facility under the supervision of a licensed nurse. This definition does not include an individual who is a licensed health professional, a registered dietitian, or someone who volunteers such services without pay. A nurse aide is not authorized to provide nursing or nursing-related services for which a license or registration is required under state law. Nurse aides do not include those individuals who furnish services to residents only as paid feeding assistants.

(87) Nurse aide trainee--An individual who is attending a program teaching nurse aide skills.

(88) Nurse practitioner--An advanced practice registered nurse.

(89) Nursing assessment--See definition of "comprehensive assessment" and "comprehensive care plan."

(90) Nursing care--Services provided by nursing personnel which include, but are not limited to, observation; promotion and maintenance of health; prevention of illness and disability; management of health care during acute and chronic phases of illness; guidance and counseling of individuals and families; and referral to physicians, other health care providers, and community resources when appropriate.

(91) Nursing facility/home--An institution that provides organized and structured nursing care and service, and is subject to licensure under Texas Health and Safety Code, Chapter 242. The nursing facility may also be certified to participate in the Medicaid Title XIX program. Depending on context, these terms are used to represent the management, administrator, or other persons or groups involved in the provision of care to the residents; or to represent the physical building, which may consist of one or more floors or one or more units, or which may be a distinct part of a licensed hospital.

(92) Nursing facility/home administrator--See the definition of "licensed nursing home (facility) administrator."

(93) Nursing personnel--Persons assigned to give direct personal and nursing services to residents, including registered nurses, licensed vocational nurses, nurse aides, and medication aides. Unlicensed personnel function under the authority of licensed personnel.

(94) Objectives--See definition of "goals."

(95) OBRA--Omnibus Budget Reconciliation Act of 1987, which includes provisions relating to nursing home reform, as amended.

(96) Ombudsman--An advocate who is a certified representative, staff member, or volunteer of the DADS Office of the State Long Term Care Ombudsman.

(97) Optometrist--An individual with the profession of examining the eyes for defects of refraction and prescribing lenses for correction who is licensed by the Texas Optometry Board.

(98) Paid feeding assistant--An individual who meets the requirements of §19.1113 of this chapter (relating to Paid Feeding Assistants) and who is paid to feed residents by a facility or who is used under an arrangement with another agency or organization.

(99) PASARR or PASRR--Preadmission Screening and Resident Review.

(100) Palliative Plan of Care--Appropriate medical and nursing care for residents with advanced and progressive diseases for whom the focus of care is controlling pain and symptoms while maintaining optimum quality of life.

(101) Patient care-related electrical appliance--An electrical appliance that is intended to be used for diagnostic, therapeutic, or monitoring purposes in a patient care area, as defined in Standard 99 of the National Fire Protection Association.

(102) Person--An individual, firm, partnership, corporation, association, joint stock company, limited partnership, limited liability company, or any other legal entity, including a legal successor of those entities.

(103) Person with a disclosable interest--A person with a disclosable interest is any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 242. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the facility.

(104) Pharmacist--An individual, licensed by the Texas State Board of Pharmacy to practice pharmacy, who prepares and dispenses medications prescribed by a practitioner.

(105) Physical restraint--See Restraints (physical).

(106) Physician--A doctor of medicine or osteopathy currently licensed by the Texas Medical Board.

(107) Physician assistant (PA)--

(A) A graduate of a physician assistant training program who is accredited by the Committee on Allied Health Education and Accreditation of the Council on Medical Education of the American Medical Association;

(B) A person who has passed the examination given by the National Commission on Certification of Physician Assistants. According to federal requirements (42 CFR §491.2) a physician assistant is a person who meets the applicable state requirements governing the qualifications for assistant to primary care physicians, and who meets at least one of the following conditions:

(i) is currently certified by the National Commission on Certification of Physician Assistants to assist primary care physicians; or

(ii) has satisfactorily completed a program for preparing physician assistants that:

(I) was at least one academic year in length;

(II) consisted of supervised clinical practice and at least four months (in the aggregate) of classroom instruction directed toward preparing students to deliver health care; and

(III) was accredited by the American Medical Association's Committee on Allied Health Education and Accreditation; or

(C) A person who has satisfactorily completed a formal educational program for preparing physician assistants who does not meet the requirements of paragraph (d)(2), 42 CFR §491.2, and has been assisting primary care physicians for a total of 12 months during the 18-month period immediately preceding July 14, 1978.

(108) Podiatrist--A practitioner whose profession encompasses the care and treatment of feet who is licensed by the Texas State Board of Podiatric Medical Examiners.

(109) Poison--Any substance that federal or state regulations require the manufacturer to label as a poison and is to be used externally by the consumer from the original manufacturer's container. Drugs to be taken internally that contain the manufacturer's poison label, but are dispensed by a pharmacist only by or on the prescription order of a practitioner, are not considered a poison, unless regulations specifically require poison labeling by the pharmacist.

(110) Practitioner--A physician, podiatrist, dentist, or an advanced practice registered nurse or physician assistant to whom a physician has delegated authority to sign a prescription order, when relating to pharmacy services.

(111) PRN (pro re nata)--As needed.

(112) Provider--The individual or legal business entity that is contractually responsible for providing Medicaid services under an agreement with DADS.

(113) Psychoactive drugs--Drugs prescribed to control mood, mental status, or behavior.

(114) Qualified surveyor--An employee of DADS who has completed state and federal training on the survey process and passed a federal standardized exam.

(115) Quality assessment and assurance committee--A group of health care professionals in a facility who develop and implement appropriate action to identify and rectify substandard care and deficient facility practice.

(116) Quality-of-care monitor--A registered nurse, pharmacist, or dietitian employed by DADS who is trained and experienced in long-term care facility regulation, standards of practice in long-term care, and evaluation of resident care, and functions independently of DADS Regulatory Services Division.

(117) Recipient--Any individual residing in a Medicaid certified facility or a Medicaid certified distinct part of a facility whose daily vendor rate is paid by Medicaid.

(118) Registered nurse (RN)--An individual currently licensed by the Texas Board of Nursing as a Registered Nurse in the State of Texas.

(119) Reimbursement methodology--The method by which HHSC determines nursing facility per diem rates.

(120) Remodeling--The construction, removal, or relocation of walls and partitions, the construction of foundations, floors, or ceiling-roof assemblies, the expanding or altering of safety systems (including, but not limited to, sprinkler, fire alarm, and emergency systems) or the conversion of space in a facility to a different use.

(121) Renovation--The restoration to a former better state by cleaning, repairing, or rebuilding, including, but not limited to, routine maintenance, repairs, equipment replacement, painting.

(122) Representative payee--A person designated by the Social Security Administration to receive and disburse benefits, act in the best interest of the beneficiary, and ensure that benefits will be used according to the beneficiary's needs.

(123) Resident--Any individual residing in a nursing facility.

(124) Resident assessment instrument (RAI)--An assessment tool used to conduct comprehensive, accurate, standardized, and reproducible assessments of each resident's functional capacity as specified by the Secretary of the U.S. Department of Health and Human Services. At a minimum, this instrument must consist of the Minimum Data Set (MDS) core elements as specified by the Centers for Medicare & Medicaid Services (CMS); utilization guidelines; and Care Area Assessment (CAA) process.

(125) Resident group--A group or council of residents who meet regularly to:

(A) discuss and offer suggestions about the facility policies and procedures affecting residents' care, treatment, and quality of life;

(B) plan resident activities;

(C) participate in educational activities; or

(D) for any other purpose.

(126) Responsible party--An individual authorized by the resident to act for him as an official delegate or agent. Responsible party is usually a family member or relative, but may be a legal guardian or other individual. Authorization may be in writing or may be given orally.

(127) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(128) Restraints (chemical)--Psychoactive drugs administered for the purposes of discipline, or convenience, and not required to treat the resident's medical symptoms.

(129) Restraints (physical)--Any manual method, or physical or mechanical device, material or equipment attached, or adjacent to the resident's body, that the individual cannot remove easily which restricts freedom of movement or normal access to one's body. The term includes a restraint hold.

(130) RN assessment coordinator--A registered nurse who signs and certifies a comprehensive assessment of a resident's needs, using the RAI, including the MDS, as specified by DADS.

(131) RUG--Resource Utilization Group. A categorization method, consisting of 34 categories based on the MDS, that is used to determine a recipient's service and care requirements and to determine the daily rate DADS pays a nursing facility for services provided to the recipient.

(132) Secretary--Secretary of the U.S. Department of Health and Human Services.

(133) Services required on a regular basis--Services which are provided at fixed or recurring intervals and are needed so frequently that it would be impractical to provide the services in a home or family setting. Services required on a regular basis include continuous or

periodic nursing observation, assessment, and intervention in all areas of resident care.

(134) SNF--A skilled nursing facility or distinct part of a facility that participates in the Medicare program. SNF requirements apply when a certified facility is billing Medicare for a resident's per diem rate.

(135) Social Security Administration--Federal agency for administration of social security benefits. Local social security administration offices take applications for Medicare, assist beneficiaries file claims, and provide information about the Medicare program.

(136) Social worker--A qualified social worker is an individual who is licensed, or provisionally licensed, by the Texas State Board of Social Work Examiners as prescribed by the Texas Occupations Code, Chapter 505, and who has at least:

(A) a bachelor's degree in social work; or

(B) similar professional qualifications, which include a minimum educational requirement of a bachelor's degree and one year experience met by employment providing social services in a health care setting.

(137) Standards--The minimum conditions, requirements, and criteria established in this chapter with which an institution must comply to be licensed under this chapter.

(138) State Medicaid claims administrator--The entity under contract with HHSC to process Medicaid claims in Texas.

(139) State plan--A formal plan for the medical assistance program, submitted to CMS, in which the State of Texas agrees to administer the program in accordance with the provisions of the State Plan, the requirements of Titles XVIII and XIX, and all applicable federal regulations and other official issuances of the U.S. Department of Health and Human Services.

(140) State survey agency--DADS is the agency, which through contractual agreement with CMS is responsible for Title XIX (Medicaid) survey and certification of nursing facilities.

(141) Supervising physician--A physician who assumes responsibility and legal liability for services rendered by a physician assistant (PA) and has been approved by the Texas Medical Board to supervise services rendered by specific PAs. A supervising physician may also be a physician who provides general supervision of an advanced practice registered nurse providing services in a nursing facility.

(142) Supervision--General supervision, unless otherwise identified.

(143) Supervision (direct)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. If the person being supervised does not meet assistant-level qualifications specified in this chapter and in federal regulations, the supervisor must be on the premises and directly supervising.

(144) Supervision (general)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence. The person being supervised must have access to the qualified person providing the supervision.

(145) Supervision (intermittent)--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity within his sphere of competence, with initial direction and periodic inspection of the actual act of accomplishing the function or activity. The person being supervised must have access to the qualified person providing the supervision.

(146) *Texas Register*--A publication of the Texas Register Publications Section of the Office of the Secretary of State that contains emergency, proposed, withdrawn, and adopted rules issued by Texas state agencies. The Texas Register was established by the Administrative Procedure and Texas Register Act of 1975.

(147) Therapeutic diet--A diet ordered by a physician as part of treatment for a disease or clinical condition, in order to eliminate, decrease, or increase certain substances in the diet or to provide food which has been altered to make it easier for the resident to eat.

(148) Therapy week--A seven-day period beginning the first day rehabilitation therapy or restorative nursing care is given. All subsequent therapy weeks for a particular individual will begin on that day of the week.

(149) Threatened violation--A situation that, unless immediate steps are taken to correct, may cause injury or harm to a resident's health and safety.

(150) Title II--Federal Old-Age, Survivors, and Disability Insurance Benefits of the Social Security Act.

(151) Title XVI--Supplemental Security Income (SSI) of the Social Security Act.

(152) Title XVIII--Medicare provisions of the Social Security Act.

(153) Title XIX--Medicaid provisions of the Social Security Act.

(154) Total health status--Includes functional status, medical care, nursing care, nutritional status, rehabilitation and restorative potential, activities potential, cognitive status, oral health status, psychosocial status, and sensory and physical impairments.

(155) UAR--HHSC's Utilization and Assessment Review Section.

(156) Uniform data set--See Resident Assessment Instrument (RAI).

(157) Universal precautions--The use of barrier and other precautions to prevent the spread of blood-borne diseases.

(158) Unreasonable confinement--Involuntary seclusion.

(159) Vaccine preventable diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the Centers for Disease Control and Prevention.

(160) Vendor payment--Payment made by DADS on a daily-rate basis for services delivered to recipients in Medicaid-certified nursing facilities. Vendor payment is based on the nursing facility's approved-to-pay claim processed by the state Medicaid claims administrator. The Nursing Facility Billing Statement, subject to adjustments and corrections, is prepared from information submitted by the nursing facility, which is currently on file in the computer system as of the billing date. Vendor payment is made at periodic intervals, but not less than once per month for services rendered during the previous billing cycle.

(161) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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 July 1, 2016.



SUBCHAPTER C. NURSING FACILITY LICENSURE APPLICATION PROCESS

40 TAC §19.204

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; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.204. *Application Requirements.*

(a) Applications. All applications must be made on forms prescribed by and available from DADS.

(1) Each application must be completed in accordance with DADS instructions, and it must be signed and notarized.

(2) Changes to information required in the application must be reported to DADS, as required by §19.1918 of this title (relating to Disclosure of Ownership).

(b) General information required. An applicant must file with DADS an application that contains:

(1) for initial applications and change of ownership only, evidence of the right to possession of the facility at the time the application will be granted, which may be satisfied by the submission of applicable portions of a lease agreement, deed or trust, or appropriate legal document. The names and addresses of any persons or organizations listed as owner of record in the real estate, including the buildings and grounds, must be disclosed to DADS;

(2) a certificate of good standing issued by the Comptroller of Public Accounts;

(3) for initial applications and change of ownership only, the certificate of incorporation issued by the secretary of state for a corporation or a copy of the partnership agreement for a partnership; and

(4) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement, using the departmental form, describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders, as required by the Texas Health and Safety Code, §242.202.

(A) Failure to submit the required disclosure statement will result in an administrative penalty in accordance with §19.2112 of this title (relating to Administrative Penalties).

(B) The disclosure statement must contain the following information:

(i) the facility's philosophy of care for residents with Alzheimer's disease and related disorders;

(ii) whether the facility is certified under Texas Health and Safety Code §242.040 for the provision of specialized care and treatment of residents with Alzheimer's disease and related disorders;

(iii) the preadmission, admission, and discharge process;

(iv) resident assessment, care planning, and implementation of the care plan;

(v) staffing patterns, such as resident to staff ratios, and staff training;

(vi) the physical environment of the facility;

(vii) resident activities;

(viii) program charges;

(ix) systems for evaluation of the facility's program;

(x) family involvement in resident care; and

(xi) the telephone number for DADS toll-free complaint line.

(C) A facility must:

(i) amend its disclosure statement if changes in the operation of the facility will affect the information in the disclosure statement required by subparagraph (B)(i) - (xi) of this paragraph; and

(ii) submit the amended disclosure statement to DADS at least 30 days before the changes are effective.

(c) Requested information. An applicant or license holder must provide any information DADS requests within 30 days after the request.

(d) Exemptions. The provisions of this section do not apply to a bank, trust company, financial institution, title insurer, escrow company, or underwriter title company to which a license is issued in a fiduciary capacity.

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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For further information, please call: (512) 438-2235



SUBCHAPTER T. ADMINISTRATION

40 TAC §§19.1911, 19.1921, 19.1936

The amendments 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; and Texas Health and Safety Code, Chapter 242, which authorizes DADS to license and regulate nursing facilities.

§19.1911. *Contents of the Clinical Record.*

(a) A resident's clinical record must meet all documentation requirements in the Texas Health and Human Services Commission rule at 1 TAC §371.214 (relating to Resource Utilization Group Classification System).

(b) The clinical record of each resident must contain:

(1) a face sheet that contains the attending physician's current mailing address and telephone numbers;

(2) sufficient information to identify and care for the resident, to include at a minimum:

- (A) full name of resident;
- (B) full home/ mailing address;
- (C) social security number;
- (D) health insurance claim numbers, if applicable;
- (E) date of birth; and
- (F) clinical record number, if applicable;

(3) a record of the resident's assessments, including 15 months of MDS records;

(4) the comprehensive, interdisciplinary plan of care and services provided (see also §19.802 of this chapter (relating to Comprehensive Care Plans));

(5) a permanency plan, for residents younger than 22 years of age;

(6) the results of any Preadmission Screening and Resident Review;

(7) signed and dated clinical documentation from all health care practitioners involved in the resident's care, with each page identifying the name of the resident for whom the clinical care is intended;

(8) any directives or medical powers of attorney as described in §19.419 of this chapter (relating to Advance Directives);

(9) discharge information in accordance with §19.803 of this chapter (relating to Discharge Summary (Discharge Plan of Care)) and a physician discharge summary, to include, at least, dates of admission and discharge, admitting and discharge diagnoses, condition on discharge, and prognosis, if applicable;

(10) at admission or within 14 days after admission, documentation of an initial medical evaluation, including history, physical examination, diagnoses and an estimate of discharge potential and rehabilitation potential, and documentation of a previous annual medical examination;

(11) authentication of a hospital diagnosis, which may be in the form of a signed hospital discharge summary, a signed report from the resident's hospital or attending physician, or a transfer form signed by the physician;

(12) the physician's signed and dated orders, including medication, treatment, diet, restorative and special medical procedures, and routine care to maintain or improve the resident's functional abilities (required for the safety and well-being of the resident), which must not be changed either on a handwritten or computerized physician's order sheet after the orders have been signed by the physician unless space allows for additional orders below the physician's signature, including space for the physician to sign and date again;

(13) arrangements for the emergency care of the resident in accordance with §19.1204 of this chapter (relating to Availability of Physician for Emergency Care);

(14) observations made by nursing personnel according to the time frames specified in §19.1010 of this chapter (relating to Nursing Practices);

(15) items as specified on the MDS assessment;

(16) current information, including:

- (A) PRN medications and results;
- (B) treatments and any notable results;
- (C) physical complaints, changes in clinical signs and behavior, mental and behavioral status, and all incidents or accidents;
- (D) flow sheets, which may include bathing, restraint observation or release documentation, elimination, fluid intake, vital signs, ambulation status, positioning, continence status and care, and weight;

(E) a record of dietary intake, including deviations from normal diet, rejection of substitutions, and physician's ordered snacks or supplemental feedings;

(F) a record of the date and hour a drug or treatment is administered; and

(G) documentation of a special procedure performed for the safety and well-being of the resident; and

(17) a copy of the most recent court order and letters of guardianship appointing a guardian of the resident or the resident's estate received by the facility.

§19.1921. *General Requirements for a Nursing Facility.*

(a) The facility must admit and retain only residents whose needs can be met through service from the facility staff, or in cooperation with community resources or other providers under contract.

(b) Individuals who have met the requirements of Chapter 17 of this title (relating to Preadmission Screening and Resident Review (PASRR) and have mental or physical diseases, or both, that endanger other residents may be admitted or retained if adequate rooms and care are provided to protect the other residents.

(c) The term "hospital" may not be used as part of the name of a nursing facility unless it has been classified and duly licensed as a hospital by the appropriate state agency.

(d) A facility that ceases operation, temporarily or permanently, voluntarily or involuntarily, must provide notice to the residents and residents' relatives or responsible parties of closure. See §19.2310 of this chapter (relating to Nursing Facility Ceases to Participate) for additional notice requirements that apply to a Medicaid or Medicare certified facility.

(1) If the closure is voluntary, within one week after the date on which the decision to close is made, the facility must send written notice to residents' relatives or responsible parties stating that the closure will occur no earlier than 60 days after receipt of the notice.

(2) If the closure is involuntary, the facility must make the notification, whether orally or in writing, immediately on receiving notice of the closure.

(e) Each licensed facility must conspicuously and prominently post the information listed in paragraphs (1) - (13) of this subsection in an area of the facility that is readily available to residents, employees, and visitors. The posting must be in a manner that each item of information is directly visible at a single time. In the case of a licensed section that is part of a larger building or complex, the posting must be in the licensed section or public way leading to it. Any exceptions must be approved by DADS. The following items must be posted:

- (1) the facility license;
- (2) a complaint sign provided by DADS giving the toll-free telephone number;
- (3) a notice in a form prescribed by DADS that inspection and related reports are available at the facility for public inspection;
- (4) a concise summary prepared by DADS of the most recent inspection report;
- (5) a notice of DADS toll-free telephone number 1-800-458-9858 to request summary reports relating to the quality of care, recent investigations, litigation or other aspects of the operation of the facility that are available to the public;
- (6) a notice that DADS can provide information about the nursing facility administrator at 512-438-2015;
- (7) if a facility has been ordered to suspend admissions, a notice of the suspension, which must be posted also on all doors providing public ingress to and egress from the facility;
- (8) the statement of resident rights provided in §19.401 of this chapter (relating to Introduction) and any additional facility requirements involving resident rights and responsibilities;
- (9) a notice that employees, other staff, residents, volunteers, and family members and guardians of residents are protected from discrimination or retaliation as provided by the Texas Health and Safety Code, §260A.014 and §260A.015; and that the facility has available for public inspection a copy of the Texas Health and Safety Code, Chapter 260A;
- (10) a prominent and conspicuous sign for display in a public area of the facility that is readily available to the residents, employees, and visitors and that includes the statement: **CASES OF SUSPECTED ABUSE, NEGLECT, OR EXPLOITATION SHALL BE REPORTED TO THE DEPARTMENT OF AGING AND DISABILITY SERVICES BY CALLING 1-800-458-9858;**
- (11) for a facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders, a disclosure statement describing the nature of its care or treatment of residents with Alzheimer's disease and related disorders in accordance with §19.204(b)(4) of this chapter (relating to Application Requirements);
- (12) at each entrance to the facility, a sign that states that a person may not enter the premises with a concealed handgun and that complies with Government Code §411.204; and
- (13) daily for each shift, the current number of licensed and unlicensed nursing staff directly responsible for resident care in the facility. In addition, the nursing facility must make the information required to be posted available to the public upon request.

(f) A facility that advertises, markets, or otherwise promotes that it provides services to residents with Alzheimer's disease and related disorders must give:

(1) the disclosure statement required by §19.204(b)(4) of this chapter (relating to Application Requirements) to:

(A) an individual with Alzheimer's disease or a related disorder who is seeking to become a resident of the facility;

(B) an individual assisting an individual with Alzheimer's disease or a related disorder who is seeking to become a resident of the facility; and

(C) an individual seeking information about the facility's care and treatment of residents with Alzheimer's disease and related disorders; and

(2) an amended disclosure statement required by §19.204(b)(4)(C) to a resident, responsible party, or legal guardian at least 30 days before the change in the operation of the facility reflected in the amended disclosure statement is effective.

(g) The reports referenced in subsection (e)(3) of this section must be maintained in a well-lighted, accessible location and must include:

(1) a statement of the facility's compliance record that is updated at least bi-monthly and reflects at least one year's compliance record, in a form required by DADS; and

(2) if a facility has been cited for a violation of residents' rights, a copy of the citation, which must remain in the reports until any regulatory action with respect to the violation is complete and DADS has determined that the facility is in full compliance with the applicable requirement.

(h) The facility must inform the resident or responsible party or both upon the resident's admission that the inspection reports referenced in subsection (e)(3) of this section are available for review.

(i) A facility must provide the telephone number for reporting cases of suspected abuse, neglect, or exploitation to an immediate family member of a resident of the facility upon the resident's admission to the facility.

(j) A copy of the Texas Health and Safety Code, Chapters 242 and 260A, must be available for public inspection at the facility.

(k) Within 72 hours after admission, the facility must prepare a written inventory of the personal property a resident brings to the facility, such as furnishings, jewelry, televisions, radios, sewing machines, and medical equipment. The facility does not have to inventory the resident's clothing; however, the operating policies and procedures must provide for the management of resident clothing and other personal property to prevent loss or damage. The facility administrator or his or her designee must sign and retain the written inventory and must give a copy to the resident or the resident's responsible party or both. The facility must revise the written inventory to show if property is lost, destroyed, damaged, replaced, or supplemented. Upon discharge of the resident, the facility must document the disposition of personal effects by a dated receipt bearing the signature of the resident or the resident's responsible party or both. See §19.416 of this chapter (relating to Personal Property).

(l) Each facility must comply with the provisions of the Texas Health and Safety Code, Chapter 250 (relating to Nurse Aide Registry and Criminal History Checks of Employees and Applicants for Employment in Certain Facilities Serving the Elderly or Persons with Disabilities).

(m) Before a facility hires an unlicensed employee, the facility must search the employee misconduct registry (EMR) established under §253.007, Texas Health and Safety Code, and the DADS nurse aide registry (NAR) to determine whether the individual is designated in either registry as unemployable. Both registries can be accessed on the DADS Internet website.

(n) A facility is prohibited from hiring or continuing to employ a person who is listed in the EMR or NAR as unemployable.

(o) A facility must provide notification about the EMR to an employee in accordance with §93.3 of this title (relating to Employment and Registry Information).

(p) In addition to the initial search of the EMR and NAR, a facility must:

(1) conduct a search of the NAR and EMR to determine if an employee of the facility is listed as unemployable in either registry as follows:

(A) for an employee most recently hired before September 1, 2009, by August 31, 2011, and at least every 12 months thereafter; and

(B) for an employee most recently hired on or after September 1, 2009, at least every twelve months; and

(2) keep a copy of the results of the initial and annual searches of the NAR and EMR in the employee's personnel file.

(q) A facility must upload to the DADS website, at <http://fives.dads.state.tx.us/choose.asp>, a statement of all facility requirements involving resident rights and responsibilities that are not described in §19.401(b) of this chapter. The facility must promptly upload a revised statement if the facility changes its requirements.

§19.1936. *Guardianship Orders for a Nursing Facility Resident.*

(a) A facility must request a copy of any current court order appointing a guardian and letters of guardianship for a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support.

(b) A facility must request the court order and letters of guardianship:

(1) when a facility admits an individual; and

(2) when the facility becomes aware a guardian is appointed after the facility admits a resident.

(c) A facility must request an updated copy of the court order and letters of guardianship at each annual assessment and retain documentation of any change.

(d) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with subsection (b) or (c) of this section if the facility has not received:

(1) a copy of the court order and letters of guardianship; or

(2) a response that there is no court order and letters of guardianship.

(e) A facility must keep in the resident's clinical record:

(1) documentation of the results of the request for the court order and letters of guardianship; and

(2) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received.

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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Department of Aging and Disability Services

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For further information, please call: (512) 438-2235



CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), amendments to §§92.2, 92.41, 92.51, and 92.53 and new §92.42, in Chapter 92, Licensing Standards for Assisted Living Facilities. The amendments to §§92.2, 92.41, and 92.53 and new §92.42 are adopted with changes to the proposed text published in the January 15, 2016, issue of the *Texas Register* (41 TexReg 592). The amendments to §92.51 are adopted without changes to the proposed text.

The amendments and new section are adopted to implement §247.070, Texas Health and Safety Code (THSC), as added by House Bill (H.B.) 1337 of the 84th Legislature, Regular Session, 2015, and amendments to §247.026 and §247.029, THSC, as made by H.B. 2588 of the 84th Legislature, Regular Session, 2015.

In response to H.B. 1337, the adoption requires an assisted living facility (ALF) to request a copy of any court order and letters of guardianship appointing a guardian of a resident or a resident's estate from the resident's nearest relative or the person responsible for the resident's support, and requires an ALF to maintain in a resident's records a copy of the most recent court order and letters of guardianship received by the ALF.

In response to H.B. 2588, the adoption defines the term "Alzheimer's Assisted Living Disclosure Statement Form" and "Alzheimer's disease and related disorders" and requires an ALF to use the Alzheimer's Assisted Living Disclosure Statement Form and amend the form to reflect any changes in the operation of the ALF that will affect the information in the form.

The adoption also corrects a reference in §92.41 to a rule of the Texas Department of State Health Services regarding food safety.

Minor editorial changes were made to §92.41(h)(2)(F) and §92.42(a), (b), and (d). Changes were made to §92.53(d) and (e) to clarify when an ALF must amend and provide the Alzheimer's Assisted Living Disclosure Statement form. A reference to a section in the Life Safety Code was corrected in §92.53(i)(9).

DADS received written comments from Coalition for Nurses in Advance Practice, Texas Association of Residential Care Communities, and the State Long-term Care Ombudsman. A summary of the comments and the responses follows.

Comment: Two commenters expressed concern regarding the definition of "Alzheimer's disease and related disorders" in §92.2. One commenter questioned the use of clinical references in the definition and recommended the rule provide a comprehensive definition of Alzheimer's disease and related disorders. Another commenter requested that the agency include in the definition a description of dementia and a definition of "related disorders."

Response: Texas Health and Safety Code §247.029 authorizes the HHSC Executive Commissioner to adopt by reference a definition of "Alzheimer's disease and related disorders" that is published in a generally accepted clinical resource for medical professionals. Because the understanding and classification of these conditions may change as research and treatment continue, the agency has referenced the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders and the Centers for Disease Control and Prevention as sources that describe the diseases and disorders included in this term. In response to the comment, the agency changed the definition to reference Alzheimer's disease and any other irreversible dementia instead of cognitive disorders to be more specific about the diseases and disorders included in the term.

Comment: One commenter suggested adding the terms "practitioner" to §92.41(e)(1), (e)(5)(l), (h)(1)(D), (j)(1), (j)(1)(B), (j)(1)(C), (j)(4)(A), (j)(6)(A)(i), (k)(1)(B), (m)(4), (n)(4)(D), (p)(5)(B)(i), and (p)(5)(B)(ii). In addition, the commenter requested that the agency add the terms "advanced practice registered nurse" and "physician assistant" to §92.41(e)(4) and §92.41(h)(1)(F). The commenter stated that these changes would make the rules more accurately reflect which practitioners are authorized to order and provide services to residents of an ALF.

Response: The suggested revisions to §92.41 would substantively affect responsibilities under the chapter and are outside the scope of the proposed changes. The agency will consider the implications of the suggested changes and may propose amendments to the rule in the future. The agency did not make any changes in response to this comment.

SUBCHAPTER A. INTRODUCTION

40 TAC §92.2

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; 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; and Texas Health and Safety Code (THSC), §247.025, which authorizes the licensing of assisted living facilities.

§92.2. Definitions.

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

(1) Abuse--

(A) for 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, the term has the meaning in Texas Family Code §261.401(1), which is an intentional, knowing, or reckless act or omission by an employee, volunteer, or other individual working under

the auspices of a facility or program that causes or may cause emotional harm or physical injury to, or the death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(1), which is:

(i) the negligent or willful infliction of injury, unreasonable confinement, intimidation, or cruel punishment with resulting physical or emotional harm or pain to a resident by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident; or

(ii) sexual abuse of a resident, including any involuntary or nonconsensual sexual conduct that would constitute an offense under Section 21.08, Penal Code (indecent exposure), or Chapter 22, Penal Code (assaultive offenses), committed by the resident's caregiver, family member, or other individual who has an ongoing relationship with the resident.

(2) Accreditation commission--Has the meaning given in Texas Health and Safety Code, §247.032.

(3) Advance directive--Has the meaning given in Texas Health and Safety Code, §166.002.

(4) Affiliate--With respect to:

(A) a partnership, each partner thereof;

(B) a corporation, each officer, director, principal stockholder, subsidiary, and each person with a disclosable interest, as the term is defined in this section; and

(C) a natural person:

(i) said person's spouse;

(ii) each partnership and each partner thereof of which said person or any affiliate of said person is a partner; and

(iii) each corporation in which said person is an officer, director, principal stockholder, or person with a disclosable interest.

(5) Alzheimer's Assisted Living Disclosure Statement form--The DADS-prescribed form a facility uses to describe the nature of care or treatment of residents with Alzheimer's disease and related disorders.

(6) Alzheimer's disease and related disorders--Alzheimer's disease and any other irreversible dementia described by the Centers for Disease Control and Prevention (CDC) or the most current edition of the Diagnostic and Statistical Manual of Mental Disorders.

(7) Alzheimer's facility--A type B assisted living facility that is certified to provide specialized services to residents with Alzheimer's or a related condition.

(8) Applicant--A person applying for a license to operate an assisted living facility under Texas Health and Safety Code, Chapter 247.

(9) Attendant--A facility employee who provides direct care to residents. This employee may serve other functions, including cook, janitor, porter, maid, laundry worker, security personnel, bookkeeper, activity director, and manager.

(10) Authorized electronic monitoring (AEM)--The placement of an electronic monitoring device in a resident's room and using the device to make tapes or recordings after making a request to the facility to allow electronic monitoring.

(11) Behavioral emergency--Has the meaning given in §92.41(p)(2) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(12) Change of ownership--A change of ownership is:

(A) a change of sole proprietorship that is licensed to operate a facility;

(B) a change of 50 percent or more in the ownership of the business organization that is licensed to operate the facility;

(C) a change in the federal taxpayer identification number; or

(D) relinquishment by the license holder of the operation of the facility.

(13) Commingles--The laundering of apparel or linens of two or more individuals together.

(14) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an assisted living facility or other person. A controlling person includes:

(A) a management company, landlord, or other business entity that operates or contracts with others for the operation of an assisted living facility;

(B) any person who is a controlling person of a management company or other business entity that operates an assisted living facility or that contracts with another person for the operation of an assisted living facility;

(C) an officer or director of a publicly traded corporation that is, or that controls, a facility, management company, or other business entity described in subparagraph (A) of this paragraph but does not include a shareholder or lender of the publicly traded corporation; and

(D) any other individual who, because of a personal, familial, or other relationship with the owner, manager, landlord, tenant, or provider of an assisted living facility, is in a position of actual control or authority with respect to the facility, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the facility, except an employee, lender, secured creditor, landlord, or other person who does not exercise formal or actual influence or control over the operation of an assisted living facility.

(15) Covert electronic monitoring--The placement and use of an electronic monitoring device that is not open and obvious, and the facility and DADS have not been informed about the device by the resident, by a person who placed the device in the room, or by a person who uses the device.

(16) DADS--The Department of Aging and Disability Services.

(17) DHS--Formerly, this term referred to the Texas Department of Human Services; it now refers to DADS.

(18) Dietitian--A person who currently holds a license or provisional license issued by the Texas State Board of Examiners of Dietitians.

(19) Disclosure statement--A DADS form for prospective residents or their legally authorized representatives that a facility must complete. The form contains information regarding the preadmission, admission, and discharge process; resident assessment and service

plans; staffing patterns; the physical environment of the facility; resident activities; and facility services.

(20) Electronic monitoring device--Video surveillance cameras and audio devices installed in a resident's room, designed to acquire communications or other sounds that occur in the room. An electronic, mechanical, or other device used specifically for the nonconsensual interception of wire or electronic communication is excluded from this definition.

(21) Exploitation--

(A) for 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, the term has the meaning in Texas Family Code §261.401(2), which is the illegal or improper use of a child or of the resources of a child for monetary or personal benefit, profit, or gain by an employee, volunteer, or other individual working under the auspices of a facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(4), which is the illegal or improper act or process of a caregiver, family member, or other individual who has an ongoing relationship with the resident using the resources of a resident for monetary or personal benefit, profit, or gain without the informed consent of the resident.

(22) Facility--An entity required to be licensed under the Assisted Living Facility Licensing Act, Texas Health and Safety Code, Chapter 247.

(23) Fire suppression authority--The paid or volunteer fire-fighting organization or tactical unit that is responsible for fire suppression operations and related duties once a fire incident occurs within its jurisdiction.

(24) Flame spread--The rate of fire travel along the surface of a material. This is different than other requirements for time-rated "burn through" resistance ratings, such as one-hour rated. Flame spread ratings are Class A (0-25), Class B (26-75), and Class C (76-200).

(25) Governmental unit--The state or any county, municipality, or other political subdivision, or any department, division, board, or other agency of any of the foregoing.

(26) Health care professional--An individual licensed, certified, or otherwise authorized to administer health care, for profit or otherwise, in the ordinary course of business or professional practice. The term includes a physician, registered nurse, licensed vocational nurse, licensed dietitian, physical therapist, and occupational therapist.

(27) Immediate threat--There is considered to be an immediate threat to the health or safety of a resident, or a situation is considered to put the health or safety of a resident in immediate jeopardy, if there is a situation in which an assisted living facility's noncompliance with one or more requirements of licensure has caused, or is likely to cause, serious injury, harm, impairment, or death to a resident.

(28) Immediately available--The capacity of facility staff to immediately respond to an emergency after being notified through a communication or alarm system. The staff are to be no more than 600 feet from the farthest resident and in the facility while on duty.

(29) Large facility--A facility licensed for 17 or more residents.

(30) Legally authorized representative--A person authorized by law to act on behalf of a person with regard to a matter

described in this chapter, and may include a parent, guardian, or managing conservator of a minor, or the guardian of an adult.

(31) Listed--Equipment, materials, or services included in a list published by an organization concerned with evaluation of products or services, that maintains periodic inspection of production of listed equipment or materials or periodic evaluation of services, and whose listing states that either the equipment, material, or service meets appropriate designated standards or has been tested and found suitable for a specified purpose. The listing organization must be acceptable to the authority having jurisdiction, including DADS or any other state, federal or local authority.

(32) Local code--A model building code adopted by the local building authority where the assisted living facility is constructed or located.

(33) Management services--Services provided under contract between the owner of a facility and a person to provide for the operation of a facility, including administration, staffing, maintenance, or delivery of resident services. Management services do not include contracts solely for maintenance, laundry, transportation, or food services.

(34) Manager--The individual in charge of the day-to-day operation of the facility.

(35) Medication--

(A) Medication is any substance:

(i) recognized as a drug in the official United States Pharmacopoeia, Official Homeopathic Pharmacopoeia of the United States, Texas Drug Code Index or official National Formulary, or any supplement to any of these official documents;

(ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;

(iii) other than food intended to affect the structure or any function of the body; and

(iv) intended for use as a component of any substance specified in this definition.

(B) Medication includes both prescription and over-the-counter medication, unless otherwise specified.

(C) Medication does not include devices or their components, parts, or accessories.

(36) Medication administration--The direct application of a medication or drug to the body of a resident by an individual legally allowed to administer medication in the state of Texas.

(37) Medication assistance or supervision--The assistance or supervision of the medication regimen by facility staff. Refer to §92.41(j) of this chapter.

(38) Medication (self-administration)--The capability of a resident to administer the resident's own medication or treatments without assistance from the facility staff.

(39) Neglect--

(A) for 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, the term has the meaning in Texas Family Code, §261.401(3), which is a negligent act or omission by an employee, volunteer, or other individual working under the auspices of a facility or program, including failure to comply with an individual treatment plan, plan of care, or individualized service plan, that causes or may cause substantial emotional harm or physical injury to, or the

death of, a child served by the facility or program as further described by rule or policy; and

(B) for a person other than one described in subparagraph (A) of this paragraph, the term has the meaning in Texas Health and Safety Code §260A.001(6), which is the failure to provide for one's self the goods or services, including medical services, which are necessary to avoid physical or emotional harm or pain or the failure of a caregiver to provide such goods or services.

(40) NFPA 101--The 2000 publication titled "NFPA 101 Life Safety Code" published by the National Fire Protection Association, Inc., 1 Batterymarch Park, Quincy, Massachusetts 02169.

(41) Ombudsman--Has the meaning given in §85.2 of this title (relating to Definitions).

(42) Person--Any individual, firm, partnership, corporation, association, or joint stock association, and the legal successor thereof.

(43) Person with a disclosable interest--Any person who owns 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 247. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company unless such entity participates in the management of the facility.

(44) Personal care services--Assistance with feeding, dressing, moving, bathing, or other personal needs or maintenance; or general supervision or oversight of the physical and mental well-being of a person who needs assistance to maintain a private and independent residence in the facility or who needs assistance to manage his or her personal life, regardless of whether a guardian has been appointed for the person.

(45) Physician--A practitioner licensed by the Texas Medical Board.

(46) Practitioner--An individual who is currently licensed in a state in which the individual practices as a physician, dentist, podiatrist, or a physician assistant; or a registered nurse approved by the Texas Board of Nursing to practice as an advanced practice registered nurse.

(47) Qualified medical personnel--An individual who is licensed, certified, or otherwise authorized to administer health care. The term includes a physician, registered nurse, and licensed vocational nurse.

(48) Resident--An individual accepted for care in a facility.

(49) Respite--The provision by a facility of room, board, and care at the level ordinarily provided for permanent residents of the facility to a person for not more than 60 days for each stay in the facility.

(50) Restraint hold--

(A) A manual method, except for physical guidance or prompting of brief duration, used to restrict:

(i) free movement or normal functioning of all or a portion of a resident's body; or

(ii) normal access by a resident to a portion of the resident's body.

(B) Physical guidance or prompting of brief duration becomes a restraint if the resident resists the guidance or prompting.

(51) Restraints--Chemical restraints are psychoactive drugs administered for the purposes of discipline or convenience and are not required to treat the resident's medical symptoms. Physical restraints are any manual method, or physical or mechanical device, material, or equipment attached or adjacent to the resident that restricts freedom of movement. Physical restraints include restraint holds.

(52) Safety--Protection from injury or loss of life due to such conditions as fire, electrical hazard, unsafe building or site conditions, and the hazardous presence of toxic fumes and materials.

(53) Seclusion--The involuntary separation of a resident from other residents and the placement of the resident alone in an area from which the resident is prevented from leaving.

(54) Service plan--A written description of the medical care, supervision, or nonmedical care needed by a resident.

(55) Short-term acute episode--An illness of less than 30 days duration.

(56) Small facility--A facility licensed for 16 or fewer residents.

(57) Staff--Employees of an assisted living facility.

(58) Standards--The minimum conditions, requirements, and criteria established in this chapter with which a facility must comply to be licensed under this chapter.

(59) Terminal condition--A medical diagnosis, certified by a physician, of an illness that will result in death in six months or less.

(60) Universal precautions--An approach to infection control in which blood, any body fluids visibly contaminated with blood, and all body fluids in situations where it is difficult or impossible to differentiate between body fluids are treated as if known to be infectious for HIV, hepatitis B, and other blood-borne pathogens.

(61) Vaccine Preventable Diseases--The diseases included in the most current recommendations of the Advisory Committee on Immunization Practices of the CDC.

(62) Working day--Any 24-hour period, Monday through Friday, excluding state and federal holidays.

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. STANDARDS FOR LICENSURE

40 TAC §§92.41, 91.42, 91.51, 92.53

The amendments 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; 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; and Texas Health and Safety Code (THSC), §247.025, which authorizes the licensing of assisted living facilities.

§92.41. Standards for Type A and Type B Assisted Living Facilities.

(a) Employees.

(1) Manager. Each facility must designate, in writing, a manager to have authority over the operation.

(A) Qualifications. In small facilities, the manager must have proof of graduation from an accredited high school or certification of equivalency of graduation. In large facilities, a manager must have:

(i) an associate's degree in nursing, health care management, or a related field;

(ii) a bachelor's degree; or

(iii) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working in management or in health care industry management.

(B) Training in management of assisted living facilities. After August 1, 2000, a manager must have completed at least one educational course on the management of assisted living facilities, which must include information on the assisted living standards; resident characteristics (including dementia), resident assessment and skills working with residents; basic principles of management; food and nutrition services; federal laws, with an emphasis on the Americans with Disability Act's accessibility requirements; community resources; ethics, and financial management.

(i) The course must be at least 24 hours in length.

(I) Eight hours of training on the assisted living standards must be completed within the first three months of employment.

(II) The 24-hour training requirement may not be met through in-services at the facility, but may be met through structured, formalized classes, correspondence courses, training videos, distance learning programs, or off-site training courses. All training must be provided or produced by academic institutions, assisted living corporations, or recognized state or national organizations or associations. Subject matter that deals with the internal affairs of an organization will not qualify for credit.

(III) Evidence of training must be on file at the facility and must contain documentation of content, hours, dates, and provider.

(ii) Managers hired after August 1, 2000, who can show documentation of a previously completed comparable course of study are exempt from the training requirements.

(iii) Managers hired after August 1, 2000, must complete the course by the first anniversary of employment as manager.

(iv) An assisted living manager who was employed by a licensed assisted living facility on August 1, 2000, is exempt from the training requirement. An assisted living manager who was employed by a licensed assisted living facility as the manager before Au-

gust 1, 2000, and changes employment to another licensed assisted living facility as the manager, with a break in employment of no longer than 30 days, is also exempt from the training requirement.

(C) Continuing education. All managers must show evidence of 12 hours of annual continuing education. This requirement will be met during the first year of employment by the 24-hour assisted living management course. The annual continuing education requirement must include at least two of the following areas:

- (i) resident and provider rights and responsibilities, abuse/neglect, and confidentiality;
- (ii) basic principles of management;
- (iii) skills for working with residents, families, and other professional service providers;
- (iv) resident characteristics and needs;
- (v) community resources;
- (vi) accounting and budgeting;
- (vii) basic emergency first aid; or
- (viii) federal laws, such as Americans with Disabilities Act, Civil Rights Act of 1991, the Rehabilitation Act of 1993, Family and Medical Leave Act of 1993, and the Fair Housing Act.

(D) Manager's responsibilities. The manager must be on duty 40 hours per week and may manage only one facility, except for managers of small Type A facilities, who may have responsibility for no more than 16 residents in no more than four facilities. The managers of small Type A facilities must be available by telephone or pager when conducting facility business off-site.

(E) Manager's absence. An employee competent and authorized to act in the absence of the manager must be designated in writing.

(2) Attendants. Full-time facility attendants must be at least 18 years old or a high-school graduate.

(A) An attendant must be in the facility at all times when residents are in the facility.

(B) Attendants are not precluded from performing other functions as required by the assisted living facility.

(3) Staffing.

(A) A facility must develop and implement staffing policies, which require staffing ratios based upon the needs of the residents, as identified in their service plans.

(B) Prior to admission, a facility must disclose, to prospective residents and their families, the facility's normal 24-hour staffing pattern and post it monthly in accordance with §92.127 of this title (relating to Required Postings).

(C) A facility must have sufficient staff to:

- (i) maintain order, safety, and cleanliness;
- (ii) assist with medication regimens;
- (iii) prepare and service meals that meet the daily nutritional and special dietary needs of each resident, in accordance with each resident's service plan;
- (iv) assist with laundry;
- (v) assure that each resident receives the kind and amount of supervision and care required to meet his basic needs; and

(vi) ensure safe evacuation of the facility in the event of an emergency.

(D) A facility must meet the staffing requirements described in this subparagraph.

(i) Type A facility: Night shift staff in a small facility must be immediately available. In a large facility, the staff must be immediately available and awake.

(ii) Type B facility: Night shift staff must be immediately available and awake, regardless of the number of licensed beds.

(4) Staff training. The facility must document that staff members are competent to provide personal care before assuming responsibilities and have received the following training.

(A) All staff members must complete four hours of orientation before assuming any job responsibilities. Training must cover, at a minimum, the following topics:

- (i) reporting of abuse and neglect;
- (ii) confidentiality of resident information;
- (iii) universal precautions;
- (iv) conditions about which they should notify the facility manager;
- (v) residents' rights; and
- (vi) emergency and evacuation procedures.

(B) Attendants must complete 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must include:

- (i) in Type A and B facilities, providing assistance with the activities of daily living;
- (ii) resident's health conditions and how they may affect provision of tasks;
- (iii) safety measures to prevent accidents and injuries;
- (iv) emergency first aid procedures, such as the Heimlich maneuver and actions to take when a resident falls, suffers a laceration, or experiences a sudden change in physical and/or mental status;
- (v) managing disruptive behavior;
- (vi) behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints; and
- (vii) fall prevention.

(C) Direct care staff must complete six documented hours of education annually, based on each employee's hire date. Staff must complete one hour of annual training in fall prevention and one hour of training in behavior management, for example, prevention of aggressive behavior and de-escalation techniques, practices to decrease the frequency of the use of restraint, and alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Suggested topics include:

- (i) promoting resident dignity, independence, individuality, privacy, and choice;

(ii) resident rights and principles of self-determination;

(iii) communication techniques for working with residents with hearing, visual, or cognitive impairment;

(iv) communicating with families and other persons interested in the resident;

(v) common physical, psychological, social, and emotional conditions and how these conditions affect residents' care;

(vi) essential facts about common physical and mental disorders, for example, arthritis, cancer, dementia, depression, heart and lung diseases, sensory problems, or stroke;

(vii) cardiopulmonary resuscitation;

(viii) common medications and side effects, including psychotropic medications, when appropriate;

(ix) understanding mental illness;

(x) conflict resolution and de-escalation techniques; and

(xi) information regarding community resources.

(D) Facilities that employ licensed nurses, certified nurse aides, or certified medication aides must provide annual in-service training, appropriate to their job responsibilities, from one or more of the following areas:

(i) communication techniques and skills useful when providing geriatric care (skills for communicating with the hearing impaired, visually impaired and cognitively impaired; therapeutic touch; recognizing communication that indicates psychological abuse);

(ii) assessment and interventions related to the common physical and psychological changes of aging for each body system;

(iii) geriatric pharmacology, including treatment for pain management, food and drug interactions, and sleep disorders;

(iv) common emergencies of geriatric residents and how to prevent them, for example falls, choking on food or medicines, injuries from restraint use; recognizing sudden changes in physical condition, such as stroke, heart attack, acute abdomen, acute glaucoma; and obtaining emergency treatment;

(v) common mental disorders with related nursing implications; and

(vi) ethical and legal issues regarding advance directives, abuse and neglect, guardianship, and confidentiality.

(b) Social services. The facility must provide an activity and/or social program at least weekly for the residents.

(c) Resident assessment. Within 14 days of admission, a resident comprehensive assessment and an individual service plan for providing care, which is based on the comprehensive assessment, must be completed. The comprehensive assessment must be completed by the appropriate staff and documented on a form developed by the facility. When a facility is unable to obtain information required for the comprehensive assessment, the facility should document its attempts to obtain the information.

(1) The comprehensive assessment must include the following items:

(A) the location from which the resident was admitted;

(B) primary language;

(C) sleep-cycle issues;

(D) behavioral symptoms;

(E) psychosocial issues (i.e., a psychosocial functioning assessment that includes an assessment of mental or psychosocial adjustment difficulty; a screening for signs of depression, such as withdrawal, anger or sad mood; assessment of the resident's level of anxiety; and determining if the resident has a history of psychiatric diagnosis that required in-patient treatment);

(F) Alzheimer's/dementia history;

(G) activities of daily living patterns (i.e., wakened to toilet all or most nights, bathed in morning/night, shower or bath);

(H) involvement patterns and preferred activity pursuits (i.e., daily contact with relatives, friends, usually attended religious services, involved in group activities, preferred activity settings, general activity preferences);

(I) cognitive skills for daily decision-making (independent, modified independence, moderately impaired, severely impaired);

(J) communication (ability to communicate with others, communication devices);

(K) physical functioning (transfer status; ambulation status; toilet use; personal hygiene; ability to dress, feed and groom self);

(L) continence status;

(M) nutritional status (weight changes, nutritional problems or approaches);

(N) oral/dental status;

(O) diagnoses;

(P) medications (administered, supervised, self-administers);

(Q) health conditions and possible medication side effects;

(R) special treatments and procedures;

(S) hospital admissions within the past six months or since last assessment; and

(T) preventive health needs (i.e., blood pressure monitoring, hearing-vision assessment).

(2) The service plan must be approved and signed by the resident or a person responsible for the resident's health care decisions. The facility must provide care according to the service plan. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(3) For respite clients, the facility may keep a service plan for six months from the date on which it is developed. During that period, the facility may admit the individual as frequently as needed.

(4) Emergency admissions must be assessed and a service plan developed for them.

(d) Resident policies.

(1) Before admitting a resident, facility staff must explain and provide a copy of the disclosure statement to the resident, family, or responsible party. An assisted living facility that provides brain injury rehabilitation services must attach to its disclosure statement a

specific statement that licensure as an assisted living facility does not indicate state review, approval, or endorsement of the facility's rehabilitative services. The facility must document receipt of the disclosure statement.

(2) The facility must provide residents with a copy of the Resident Bill of Rights.

(3) When a resident is admitted, the facility must provide to the resident's immediate family, and document the family's receipt of, the DADS telephone hotline number to report suspected abuse, neglect, or exploitation, as referenced in §92.102 of this chapter (relating to Abuse, Neglect, or Exploitation Reportable to DADS).

(4) The facility must have written policies regarding residents accepted, services provided, charges, refunds, responsibilities of facility and residents, privileges of residents, and other rules and regulations.

(5) Each facility must make available copies of the resident policies to staff and to residents or residents' responsible parties at time of admission. Documented notification of any changes to the policies must occur before the effective date of the changes.

(6) Before or upon admission of a resident, a facility must notify the resident and, if applicable, the resident's legally authorized representative, of DADS rules and the facility's policies related to restraint and seclusion.

(e) Admission policies.

(1) A facility must not admit or retain a resident whose needs cannot be met by the facility or who cannot secure the necessary services from an outside resource. As part of the facility's general supervision and oversight of the physical and mental well-being of its residents, the facility remains responsible for all care provided at the facility. If the individual is appropriate for placement in a facility, then the decision that additional services are necessary and can be secured is the responsibility of facility management with written concurrence of the resident, resident's attending physician, or legal representative. Regardless of the possibility of "aging in place" or securing additional services, the facility must meet all Life Safety Code requirements based on each resident's evacuation capabilities, except as provided in subsection (f) of this section.

(2) There must be a written admission agreement between the facility and the resident. The agreement must specify such details as services to be provided and the charges for the services. If the facility provides services and supplies that could be a Medicare benefit, the facility must provide the resident a statement that such services and supplies could be a Medicare benefit.

(3) A facility must share a copy of the facility disclosure statement, rate schedule, and individual resident service plan with outside resources that provide any additional services to a resident. Outside resources must provide facilities with a copy of their resident care plans and must document, at the facility, any services provided, on the day provided.

(4) Each resident must have a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record.

(5) The assisted living facility must secure at the time of admission of a resident the following identifying information:

- (A) full name of resident;
- (B) social security number;

(C) usual residence (where resident lived before admission);

(D) sex;

(E) marital status;

(F) date of birth;

(G) place of birth;

(H) usual occupation (during most of working life);

(I) family, other persons named by the resident, and physician for emergency notification;

(J) pharmacy preference; and

(K) Medicaid/Medicare number, if available.

(f) Inappropriate placement in Type A or Type B facilities.

(1) DADS or a facility may determine that a resident is inappropriately placed in the facility if a resident experiences a change of condition but continues to meet the facility evacuation criteria.

(A) If DADS determines the resident is inappropriately placed and the facility is willing to retain the resident, the facility is not required to discharge the resident if, within 10 working days after receiving the Statement of Licensing Violations and Plan of Correction, Form 3724, and the Report of Contact, Form 3614-A, from DADS, the facility submits the following to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility; and

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility.

(B) If the facility initiates the request for an inappropriately placed resident to remain in the facility, the facility must complete and date the forms described in subparagraph (A) of this paragraph and submit them to the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(2) DADS or a facility may determine that a resident is inappropriately placed in the facility if the facility does not meet all requirements referenced in §92.3 of this chapter (relating to Types of Assisted Living Facilities) for the evacuation of a designated resident.

(A) If, during a site visit, DADS determines that a resident is inappropriately placed at the facility and the facility is willing to retain the resident, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph to the DADS regional office within 10 working days after the date the facility receives the Statement of Licensing Violations and Plan of Correction, Form 372, and the Report of Contact, Form 3614-A. If the facility is not willing to retain the resident, the facility must discharge the resident within 30 days after receiving the Statement of Licensing Violations and Plan of Correction and the Report of Contact.

(B) If the facility initiates the request for a resident to remain in the facility, the facility must request an evacuation waiver as described in subparagraph (C) of this paragraph from the DADS regional office within 10 working days after the date the facility determines the resident is inappropriately placed, as indicated on the DADS prescribed forms.

(C) To request an evacuation waiver for an inappropriately placed resident, a facility must submit to the DADS regional office:

(i) Physician's Assessment, Form 1126, indicating that the resident is appropriately placed and describing the resident's medical conditions and related nursing needs, ambulatory and transfer abilities, and mental status;

(ii) Resident's Request to Remain in Facility, Form 1125, indicating that:

(I) the resident wants to remain at the facility; or

(II) if the resident lacks capacity to provide a written statement, the resident's family member or legally authorized representative wants the resident to remain at the facility;

(iii) Facility Request, Form 1124, indicating that the facility agrees that the resident may remain at the facility;

(iv) a detailed emergency plan that explains how the facility will meet the evacuation needs of the resident, including:

(I) the specific staff positions that will be on duty to assist with evacuation and their shift times;

(II) specific staff positions that will be on duty and awake at night; and

(III) specific staff training that relates to resident evacuation;

(v) a copy of an accurate facility floor plan, to scale, that labels all rooms by use and indicates the specific resident's room;

(vi) a copy of the facility's emergency evacuation plan;

(vii) a copy of the facility fire drill records for the last 12 months;

(viii) a copy of a completed Fire Marshal/State Fire Marshal Notification, Form 1127, signed by the fire authority having jurisdiction (either the local Fire Marshal or State Fire Marshal) as an acknowledgement that the fire authority has been notified that the resident's evacuation capability has changed;

(ix) a copy of a completed Fire Suppression Authority Notification, Form 1129, signed by the local fire suppression authority as an acknowledgement that the fire suppression authority has been notified that the resident's evacuation capability has changed;

(x) a copy of the resident's most recent comprehensive assessment that addresses the areas required by subsection (c) of this section and that was completed within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(xi) the resident's service plan that addresses all aspects of the resident's care, particularly those areas identified by DADS, including:

(I) the resident's medical condition and related nursing needs;

(II) hospitalizations within 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(III) any significant change in condition in the last 60 days, based on the date stated on the evacuation waiver form submitted to DADS;

(IV) specific staffing needs; and

(V) services that are provided by an outside provider;

(xii) any other information that relates to the required fire safety features of the facility that will ensure the evacuation capability of any resident; and

(xiii) service plans of other residents, if requested by DADS.

(D) A facility must meet the following criteria to receive a waiver from DADS:

(i) The emergency plan submitted in accordance with subparagraph (C)(iv) of this paragraph must ensure that:

(I) staff is adequately trained;

(II) a sufficient number of staff is on all shifts to move all residents to a place of safety;

(III) residents will be moved to appropriate locations, given health and safety issues;

(IV) all possible locations of fire origin areas and the necessity for full evacuation of the building are addressed;

(V) the fire alarm signal is adequate;

(VI) there is an effective method for warning residents and staff during a malfunction of the building fire alarm system;

(VII) there is a method to effectively communicate the actual location of the fire; and

(VIII) the plan satisfies any other safety concerns that could have an effect on the residents' safety in the event of a fire; and

(ii) the emergency plan will not have an adverse effect on other residents of the facility who have waivers of evacuation or who have special needs that require staff assistance.

(E) DADS reviews the documentation submitted under this subsection and notifies the facility in writing of its determination to grant or deny the waiver within 10 working days after the date the request is received in the DADS regional office.

(F) Upon notification that DADS has granted the evacuation waiver, the facility must immediately initiate all provisions of the proposed emergency plan. If the facility does not follow the emergency plan, and there are health and safety concerns that are not addressed, DADS may determine that there is an immediate threat to the health or safety of a resident.

(G) DADS reviews a waiver of evacuation during the facility's annual renewal licensing inspection.

(3) If a DADS surveyor determines that a resident is inappropriately placed at a facility and the facility either agrees with the determination or fails to obtain the written statements or waiver required in this subsection, the facility must discharge the resident.

(A) The resident is allowed 30 days after the date of notice of discharge to move from the facility.

(B) A discharge required under this subsection must be made notwithstanding:

(i) any other law, including any law relating to the rights of residents and any obligations imposed under the Property Code; and

(ii) the terms of any contract.

(4) If a facility is required to discharge the resident because the facility has not submitted the written statements required by paragraph (1) of this subsection to the DADS regional office, or DADS denies the waiver as described in paragraph (2) of this subsection, DADS may:

(A) assess an administrative penalty if DADS determines the facility has intentionally or repeatedly disregarded the waiver process because the resident is still residing in the facility when DADS conducts a future onsite visit; or

(B) seek other sanctions, including an emergency suspension or closing order, against the facility under Texas Health and Safety Code Chapter 247, Subchapter C (relating to General Enforcement), if DADS determines there is a significant risk and immediate threat to the health and safety of a resident of the facility.

(5) The facility's disclosure statement must notify the resident and resident's legally authorized representative of the waiver process described in this section and the facility's policies and procedures for aging in place.

(6) After the first year of employment and no later than the anniversary date of the facility manager's hire date, the manager must show evidence of annual completion of DADS training on aging in place and retaliation.

(g) Advance directives.

(1) The facility must maintain written policies regarding the implementation of advance directives. The policies must include a clear and precise statement of any procedure the facility is unwilling or unable to provide or withhold in accordance with an advance directive.

(2) The facility must provide written notice of these policies to residents at the time they are admitted to receive services from the facility.

(A) If, at the time notice is to be provided, the resident is incompetent or otherwise incapacitated and unable to receive the notice, the facility must provide the written notice, in the following order of preference, to:

(i) the resident's legal guardian;

(ii) a person responsible for the resident's health care decisions;

(iii) the resident's spouse;

(iv) the resident's adult child;

(v) the resident's parents; or

(vi) the person admitting the resident.

(B) If the facility is unable, after diligent search, to locate an individual listed under subparagraph (A) of this paragraph, the facility is not required to give notice.

(3) If a resident who was incompetent or otherwise incapacitated and unable to receive notice regarding the facility's advance directives policies later becomes able to receive the notice, the facility must provide the written notice at the time the resident becomes able to receive the notice.

(4) Failure to inform the resident of facility policies regarding the implementation of advance directives will result in an administrative penalty of \$500.

(A) Facilities will receive written notice of the recommendation for an administrative penalty.

(B) Within 20 days after the date on which written notice is sent to a facility, the facility must give written consent to the penalty or make written request for a hearing to the Texas Health and Human Services Commission.

(C) Hearings will be held in accordance with the formal hearing procedures at 1 TAC Chapter 357, Subchapter I (relating to Hearings Under the Administrative Procedures Act).

(h) Resident records.

(1) Records that pertain to residents must be treated as confidential and properly safeguarded from unauthorized use, loss, or destruction.

(2) Resident records must contain:

(A) information contained in the facility's standard and customary admission form;

(B) a record of the resident's assessments;

(C) the resident's service plan

(D) physician's orders, if any;

(E) any advance directives;

(F) documentation of a health examination by a physician performed within 30 days before admission or 14 days after admission, unless a transferring hospital or facility has a physical examination in the medical record. Christian Scientists are excluded from this requirement;

(G) documentation by health care professionals of any services delivered in accordance with the licensing, certification, or other regulatory standards applicable to the health care professional under law; and

(H) a copy of the most recent court order appointing a guardian of a resident or a resident's estate and letters of guardianship that the facility received in response to the request made in accordance with §92.42 of this subchapter (relating to Guardianship Record Requirements).

(3) Records must be available to residents, their legal representatives, and DADS staff.

(i) Personnel records. An assisted living facility must keep current and complete personnel records on a facility employee for review by DADS staff including:

(1) documentation that the facility performed a criminal history check;

(2) an annual employee misconduct registry check;

(3) an annual nurse aide registry check;

(4) documentation of initial tuberculosis screenings referenced in subsection (n) of this section;

(5) documentation of the employee's compliance with or exemption from the facility vaccination policy referenced in subsection (r) of this section; and

(6) the signed statement from the employee referenced in §92.102 of this chapter acknowledging that the employee may be criminally liable for the failure to report abuse, neglect and exploitation.

(j) Medications.

(1) Administration. Medications must be administered according to physician's orders.

(A) Residents who choose not to or cannot self-administer their medications must have their medications administered by a person who:

(i) holds a current license under state law that authorizes the licensee to administer medication; or

(ii) holds a current medication aide permit and acts under the authority of a person who holds a current nursing license under state law that authorizes the licensee to administer medication. A medication aide must function under the direct supervision of a licensed nurse on duty or on call by the facility.

(iii) is an employee of the facility to whom the administration of medication has been delegated by a registered nurse, who has trained them to administer medications or verified their training. The delegation of the administration of medication is governed by 22 TAC Chapter 225 (concerning RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions), which implements the Nursing Practice Act.

(B) All resident's prescribed medication must be dispensed through a pharmacy or by the resident's treating physician or dentist.

(C) Physician sample medications may be given to a resident by the facility provided the medication has specific dosage instructions for the individual resident.

(D) Each resident's medications must be listed on an individual resident's medication profile record. The recorded information obtained from the prescription label must include, but is not limited to, the medication:

- (i) name;
- (ii) strength;
- (iii) dosage;
- (iv) amount received;
- (v) directions for use;
- (vi) route of administration;
- (vii) prescription number;
- (viii) pharmacy name; and
- (ix) the date each medication was issued by the pharmacy.

(2) Supervision. Supervision of a resident's medication regimen by facility staff may be provided to residents who are incapable of self-administering without assistance to include and limited to:

- (A) reminders to take their medications at the prescribed time;
- (B) opening containers or packages and replacing lids;
- (C) pouring prescribed dosage according to medication profile record;

(D) returning medications to the proper locked areas;

(E) obtaining medications from a pharmacy; and

(F) listing on an individual resident's medication profile record the medication:

- (i) name;
- (ii) strength;
- (iii) dosage;
- (iv) amount received;
- (v) directions for use;
- (vi) route of administration;
- (vii) prescription number;
- (viii) pharmacy name; and
- (ix) the date each medication was issued by the pharmacy.

(3) Self-administration.

(A) Residents who self-administer their own medications and keep them locked in their room must be counseled at least once a month by facility staff to ascertain if the residents continue to be capable of self-administering their medications/treatments and if security of medications can continue to be maintained. The facility must keep a written record of counseling.

(B) Residents who choose to keep their medications locked in the central medication storage area may be permitted entrance or access to the area for the purpose of self-administering their own medication/treatment regimen. A facility staff member must remain in or at the storage area the entire time any resident is present.

(4) General.

(A) Facility staff will immediately report to the resident's physician and responsible party any unusual reactions to medications or treatments.

(B) When the facility supervises or administers the medications, a written record must be kept when the resident does not receive or take his/her medications/treatments as prescribed. The documentation must include the date and time the dose should have been taken, and the name and strength of medication missed; however, the recording of missed doses of medication does not apply when the resident is away from the assisted living facility.

(5) Storage.

(A) The facility must provide a locked area for all medications. Examples of areas include, but are not limited to:

- (i) central storage area;
- (ii) medication cart; and
- (iii) resident room.

(B) Each resident's medication must be stored separately from other resident's medications within the storage area.

(C) A refrigerator must have a designated and locked storage area for medications that require refrigeration, unless it is inside a locked medication room.

(D) Poisonous substances and medications labeled for "external use only" must be stored separately within the locked medication area.

(E) If facilities store controlled drugs, facility policies and procedures must address the prevention of the diversion of the controlled drugs.

(6) Disposal.

(A) Medications no longer being used by the resident for the following reasons are to be kept separate from current medications and are to be disposed of by a registered pharmacist licensed in the State of Texas:

(i) medications discontinued by order of the physician;

(ii) medications that remain after a resident is deceased; or

(iii) medications that have passed the expiration date.

(B) Needles and hypodermic syringes with needles attached must be disposed as required by 25 TAC §§1.131 - 1.137 (relating to Definition, Treatment, and Disposition of Special Waste from Health Care-Related Facilities).

(C) Medications kept in a central storage area are released to discharged residents when a receipt has been signed by the resident or responsible party.

(k) Accident, injury, or acute illness.

(1) In the event of accident or injury that requires emergency medical, dental or nursing care, or in the event of apparent death, the assisted living facility will:

(A) make arrangements for emergency care and/or transfer to an appropriate place for treatment, such as a physician's office, clinic, or hospital;

(B) immediately notify the resident's physician and next of kin, responsible party, or agency who placed the resident in the facility; and

(C) describe and document the injury, accident, or illness on a separate report. The report must contain a statement of final disposition and be maintained on file.

(2) The facility must stock and maintain in a single location first aid supplies to treat burns, cuts, and poisoning.

(3) Residents who need the services of professional nursing or medical personnel due to a temporary illness or injury may have those services delivered by persons qualified to deliver the necessary service.

(l) Resident finances. The assisted living facility must keep a simple financial record on all charges billed to the resident for care and these records must be available to DADS. If the resident entrusts the handling of any personal finances to the assisted living facility, a simple financial record must be maintained to document accountability for receipts and expenditures, and these records must be available to DADS. Receipts for payments from residents or family members must be issued upon request.

(m) Food and nutrition services.

(1) A person designated by the facility is responsible for the total food service of the facility.

(2) At least three meals or their equivalent must be served daily, at regular times, with no more than a 16-hour span between a substantial evening meal and breakfast the following morning. All exceptions must be specifically approved by DADS.

(3) Menus must be planned one week in advance and must be followed. Variations from the posted menus must be documented. Menus must be prepared to provide a balanced and nutritious diet, such as that recommended by the National Food and Nutrition Board. Food must be palatable and varied. Records of menus as served must be filed and maintained for 30 days after the date of serving.

(4) Therapeutic diets as ordered by the resident's physician must be provided according to the service plan. Therapeutic diets that cannot customarily be prepared by a layperson must be calculated by a qualified dietician. Therapeutic diets that can customarily be prepared by a person in a family setting may be served by the assisted living facility.

(5) Supplies of staple foods for a minimum of a four-day period and perishable foods for a minimum of a one-day period must be maintained on the premises.

(6) Food must be obtained from sources that comply with all laws relating to food and food labeling. If food, subject to spoilage, is removed from its original container, it must be kept sealed, and labeled. Food subject to spoilage must also be dated.

(7) Plastic containers with tight fitting lids are acceptable for storage of staple foods in the pantry.

(8) Potentially hazardous food, such as meat and milk products, must be stored at 45 degrees Fahrenheit or below. Hot food must be kept at 140 degrees Fahrenheit or above during preparation and serving. Food that is reheated must be heated to a minimum of 165 degrees Fahrenheit.

(9) Freezers must be kept at a temperature of 0 degrees Fahrenheit or below and refrigerators must be 41 degrees Fahrenheit or below. Thermometers must be placed in the warmest area of the refrigerator and freezer to assure proper temperature.

(10) Food must be prepared and served with the least possible manual contact, with suitable utensils, and on surfaces that have been cleaned, rinsed, and sanitized before use to prevent cross-contamination.

(11) Facilities must prepare food in accordance with established food preparation practices and safety techniques.

(12) A food service employee, while infected with a communicable disease that can be transmitted by foods, or who is a carrier of organisms that cause such a disease or while afflicted with a boil, an infected wound, or an acute respiratory infection, must not work in the food service area in any capacity in which there is a likelihood of such person contaminating food or food-contact surfaces with pathogenic organisms or transmitting disease to other persons.

(13) Effective hair restraints must be worn to prevent the contamination of food.

(14) Tobacco products must not be used in the food preparation and service areas.

(15) Kitchen employees must wash their hands before returning to work after using the lavatory.

(16) Dishwashing chemicals used in the kitchen may be stored in plastic containers if they are the original containers in which the manufacturer packaged the chemicals.

(17) Sanitary dishwashing procedures and techniques must be followed.

(18) Facilities that house 17 or more residents must comply with 25 TAC Chapter 228, Subchapters A - J (relating to Texas Food Establishment rules) and local health ordinances or requirements must

be observed in the storage, preparation, and distribution of food; in the cleaning of dishes, equipment, and work area; and in the storage and disposal of waste.

(n) Infection control.

(1) Each facility must establish and maintain an infection control policy and procedure designated to provide a safe, sanitary, and comfortable environment and to help prevent the development and transmission of disease and infection.

(2) The facility must comply with departmental rules regarding special waste in 25 TAC §§1.131 - 1.137.

(3) The name of any resident of a facility with a reportable disease as specified in 25 TAC §§97.1 - 97.13 (relating to Control of Communicable Diseases) must be reported immediately to the city health officer, county health officer, or health unit director having jurisdiction, and appropriate infection control procedures must be implemented as directed by the local health authority.

(4) The facility must have written policies for the control of communicable disease in employees and residents, which includes tuberculosis (TB) screening and provision of a safe and sanitary environment for residents and employees.

(A) If employees contract a communicable disease that is transmissible to residents through food handling or direct resident care, the employee must be excluded from providing these services as long as a period of communicability is present.

(B) The facility must maintain evidence of compliance with local and/or state health codes or ordinances regarding employee and resident health status.

(C) The facility must screen all employees for TB within two weeks of employment and annually, according to Centers for Disease Control and Prevention (CDC) screening guidelines. All persons who provide services under an outside resource contract must, upon request of the facility, provide evidence of compliance with this requirement.

(D) All residents should be screened upon admission and after exposure to TB, in accordance with the attending physician's recommendations and CDC guidelines.

(5) Personnel must handle, store, process, and transport linens so as to prevent the spread of infection.

(6) Universal precautions must be used in the care of all residents.

(o) Access to residents. The facility must allow an employee of DADS or an employee of a local authority into the facility as necessary to provide services to a resident.

(p) Restraints. All restraints for purposes of behavioral management, staff convenience, or resident discipline are prohibited. Seclusion is prohibited.

(1) As provided in §92.125(a)(3) of this chapter (relating to Resident's Bill of Rights and Provider Bill of Rights), a facility may use physical or chemical restraints only:

(A) if the use is authorized in writing by a physician and specifies:

(i) the circumstances under which a restraint may be used; and

(ii) the duration for which the restraint may be used;

or

(B) if the use is necessary in an emergency to protect the resident or others from injury.

(2) A behavioral emergency is a situation in which severely aggressive, destructive, violent, or self-injurious behavior exhibited by a resident:

(A) poses a substantial risk of imminent probable death of, or substantial bodily harm to, the resident or others;

(B) has not abated in response to attempted preventive de-escalatory or redirection techniques;

(C) could not reasonably have been anticipated; and

(D) is not addressed in the resident's service plan.

(3) Except in a behavioral emergency, a restraint must be administered only by qualified medical personnel.

(4) A restraint must not be administered under any circumstance if it:

(A) obstructs the resident's airway, including a procedure that places anything in, on, or over the resident's mouth or nose;

(B) impairs the resident's breathing by putting pressure on the resident's torso;

(C) interferes with the resident's ability to communicate; or

(D) places the resident in a prone or supine position.

(5) If a facility uses a restraint hold in a circumstance described in paragraph (2) of this subsection, the facility must use an acceptable restraint hold.

(A) An acceptable restraint hold is a hold in which the individual's limbs are held close to the body to limit or prevent movement and that does not violate the provisions of paragraph (4) of this subsection.

(B) After the use of restraint, the facility must:

(i) with the resident's consent, make an appointment with the resident's physician no later than the end of the first working day after the use of restraint and document in the resident's record that the appointment was made; or

(ii) if the resident refuses to see the physician, document the refusal in the resident's record.

(C) As soon as possible but no later than 24 hours after the use of restraint, the facility must notify one of the following persons, if there is such a person, that the resident has been restrained:

(i) the resident's legally authorized representative;

or

(ii) an individual actively involved in the resident's care, unless the release of this information would violate other law.

(D) If, under the Health Insurance Portability and Accountability Act, the facility is a "covered entity," as defined in 45 Code of Federal Regulations (CFR) §160.103, any notification provided under subparagraph (C)(ii) of this paragraph must be to a person to whom the facility is allowed to release information under 45 CFR §164.510.

(6) In order to decrease the frequency of the use of restraint, facility staff must be aware of and adhere to the findings of the resident assessment required in subsection (c) of this section for each resident.

(7) A facility may adopt policies that allow less use of restraint than allowed by the rules of this chapter.

(8) A facility must not discharge or otherwise retaliate against:

(A) an employee, resident, or other person because the employee, resident, or other person files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility; or

(B) a resident because someone on behalf of the resident files a complaint, presents a grievance, or otherwise provides in good faith information relating to the misuse of restraint or seclusion at the facility.

(q) Accreditation status. If a license holder uses an on-site accreditation survey by an accreditation commission instead of a licensing survey by DADS, as provided in §92.11(c)(2) and §92.15(j) of this chapter (relating to Criteria for Licensing; and Renewal Procedures and Qualifications), the license holder must provide written notification to DADS within five working days after the license holder receives a notice of change in accreditation status from the accreditation commission. The license holder must include a copy of the notice of change with its written notification to DADS.

(r) Vaccine Preventable Diseases.

(1) Effective September 1, 2012, a facility must develop and implement a policy to protect a resident from vaccine preventable diseases in accordance with Texas Health and Safety Code, Chapter 224.

(2) The policy must:

(A) require an employee or a contractor providing direct care to a resident to receive vaccines for the vaccine preventable diseases specified by the facility based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(B) specify the vaccines an employee or contractor is required to receive in accordance with paragraph (1) of this subsection;

(C) include procedures for the facility to verify that an employee or contractor has complied with the policy;

(D) include procedures for the facility to exempt an employee or contractor from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention;

(E) for an employee or contractor who is exempt from the required vaccines, include procedures the employee or contractor must follow to protect residents from exposure to disease, such as the use of protective equipment, such as gloves and masks, based on the level of risk the employee or contractor presents to residents by the employee's or contractor's routine and direct exposure to residents;

(F) prohibit discrimination or retaliatory action against an employee or contractor who is exempt from the required vaccines for the medical conditions identified as contraindications or precautions by the Centers for Disease Control and Prevention, except that required use of protective medical equipment, such as gloves and masks, may not be considered retaliatory action;

(G) require the facility to maintain a written or electronic record of each employee's or contractor's compliance with or exemption from the policy;

(H) include disciplinary actions the facility may take against an employee or contractor who fails to comply with the policy.

(3) The policy may:

(A) include procedures for an employee or contractor to be exempt from the required vaccines based on reasons of conscience, including religious beliefs; and

(B) prohibit an employee or contractor who is exempt from the required vaccines from having contact with residents during a public health disaster, as defined in Texas Health and Safety Code, §81.003 (relating to Communicable Diseases).

(s) A DADS employee must not retaliate against an assisted living facility, an employee of an assisted living facility, or a person in control of an assisted living facility for:

(1) complaining about the conduct of a DADS employee;

(2) disagreeing with a DADS employee about the existence of a violation of this chapter or a rule adopted under this chapter; or

(3) asserting a right under state or federal law.

§92.42. *Guardianship Record Requirements.*

(a) A facility must request, from a resident's legally authorized representative or the person responsible for the resident's support, a copy of:

(1) the current court order appointing a guardian for the resident or the resident's estate; and

(2) current letters of guardianship for the resident.

(b) A facility must request the court order and letters of guardianship:

(1) when the facility admits an individual; and

(2) when the facility becomes aware a guardian is appointed after the facility admits a resident.

(c) A facility must request an updated copy of the court order and letters of guardianship at each annual assessment and retain documentation of any change.

(d) A facility must make at least one follow-up request within 30 days after the facility makes a request in accordance with subsection (b) or (c) of this section if the facility has not received:

(1) a copy of the court order and letters of guardianship; or

(2) a response that there is no court order or letters of guardianship.

(e) A facility must keep in the resident's record:

(1) documentation of the results of the request for the court order and letters of guardianship; and

(2) a copy of the court order and letters of guardianship.

§92.53. *Standards for Certified Alzheimer's Assisted Living Facilities.*

(a) Manager qualifications and training.

(1) The manager of the certified Alzheimer facility or the supervisor of the certified Alzheimer unit must be 21 years of age, and have:

(A) an associate's degree in nursing, health care management;

(B) a bachelor's degree in psychology, gerontology, nursing, or a related field; or

(C) proof of graduation from an accredited high school or certification of equivalency of graduation and at least one year of experience working with persons with dementia.

(2) The manager or supervisor must complete six hours of annual continuing education regarding dementia care.

(b) Staff training.

(1) All staff members must receive four hours of dementia-specific orientation prior to assuming any job responsibilities. Training must cover, at a minimum, the following topics:

(A) basic information about the causes, progression, and management of Alzheimer's disease;

(B) managing dysfunctional behavior; and

(C) identifying and alleviating safety risks to residents with Alzheimer's disease.

(2) Direct care staff must receive 16 hours of on-the-job supervision and training within the first 16 hours of employment following orientation. Training must cover:

(A) providing assistance with the activities of daily living;

(B) emergency and evacuation procedures specific to the dementia population;

(C) managing dysfunctional behavior; and

(D) behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints.

(3) Direct care staff must annually complete 12 hours of in-service education regarding Alzheimer's disease. One hour of annual training must address behavior management, including prevention of aggressive behavior and de-escalation techniques, or fall prevention, or alternatives to restraints. Training for these subjects must be competency-based. Subject matter must address the unique needs of the facility. Additional suggested topics include:

(A) assessing resident capabilities and developing and implementing service plans;

(B) promoting resident dignity, independence, individuality, privacy and choice;

(C) planning and facilitating activities appropriate for the dementia resident;

(D) communicating with families and other persons interested in the resident;

(E) resident rights and principles of self-determination;

(F) care of elderly persons with physical, cognitive, behavioral and social disabilities;

(G) medical and social needs of the resident;

(H) common psychotropics and side effects; and

(I) local community resources.

(c) Staffing. A facility must employ sufficient staff to provide services for and meet the needs of its Alzheimer's residents. In large facilities or units with 17 or more residents, two staff members must be immediately available when residents are present.

(d) Alzheimer's Assisted Living Disclosure Statement form. A facility must use the Alzheimer's Assisted Living Disclosure Statement form and amend the form if changes in the operation of the facility will affect the information in the form.

(e) Pre-admission. The facility must establish procedures, such as an application process, interviews, and home visits, to ensure that prospective residents are appropriate and their needs can be met.

(1) Prior to admitting a resident, facility staff must discuss and explain the Alzheimer's Assisted Living Disclosure Statement form with the family or responsible party.

(2) The facility must give the Alzheimer's Assisted Living Disclosure Statement form to any individual seeking information about the facility's care or treatment of residents with Alzheimer's disease and related disorders.

(f) Assessment. The facility must make a comprehensive assessment of each resident within 14 days of admission and annually. The assessment must include the items listed in §92.41(c)(1)(A) - (T) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities).

(g) Service plan. Facility staff, with input from the family, if available, must develop an individualized service plan for each resident, based upon the resident assessment, within 14 days of admission. The service plan must address the individual needs, preferences, and strengths of the resident. The service plan must be designed to help the resident maintain the highest possible level of physical, cognitive, and social functioning. The service plan must be updated annually and upon a significant change in condition, based upon an assessment of the resident.

(h) Activities. A facility must encourage socialization, cognitive awareness, self-expression, and physical activity in a planned and structured activities program. Activities must be individualized, based upon the resident assessment, and appropriate for each resident's abilities.

(1) The activity program must contain a balanced mixture of activities addressing cognitive, recreational, and activity of daily living (ADL) needs.

(A) Cognitive activities include, but are not limited to, arts, crafts, story telling, poetry readings, writing, music, reading, discussion, reminiscences, and reviews of current events.

(B) Recreational activities include all socially interactive activities, such as board games and cards, and physical exercise. Care of pets is encouraged.

(C) Self-care ADLs include grooming, bathing, dressing, oral care, and eating. Occupational ADLs include cleaning, dusting, cooking, gardening, and yard work. Residents must be allowed to perform self-care ADLs as long as they are able to promote independence and self worth.

(2) Residents must be encouraged, but never forced, to participate in activities. Residents who choose not to participate in a large group activity must be offered at least one small group or one-on-one activity per day.

(3) Facilities must have an employee responsible for leading activities.

(A) Facilities with 16 or fewer residents must designate an employee to plan, supply, implement, and record activities.

(B) Facilities with 17 or more residents must employ, at a minimum, an activity director for 20 hours weekly. The activity director must be a qualified professional who:

(i) is a qualified therapeutic recreation specialist or an activities professional who is eligible for certification as a therapeutic recreation specialist, therapeutic recreation assistant, or an ac-

tivities professional by a recognized accrediting body, such as the National Council for Therapeutic Recreation Certification, the National Certification Council for Activity Professionals, or the Consortium for Therapeutic Recreation/Activities Certification, Inc.; or

(ii) has two years of experience in a social or recreational program within the last five years, one year of which was full-time in an activities program in a health care setting; or

(iii) has completed an activity director training course approved by the National Association for Activity Professionals or the National Therapeutic Recreation Society.

(4) The activity director or designee must review each resident's medical and social history, preferences, and dislikes, in determining appropriate activities for the resident. Activities must be tailored to the residents' unique requirements and skills.

(5) The activities program must provide opportunities for group and individual settings. On weekdays, each resident must be offered at least one cognitive activity, two recreational activities and three ADL activities each day. The cognitive and recreational activities (structured activities) must be at least 30 minutes in duration, with a minimum of six and a half hours of structured activity for the entire week. At least an hour and a half of structured activities must be provided during the weekend and must include at least one cognitive activity and one physical activity.

(6) The activity director or designee must create a monthly activities schedule. Structured activities should occur at the same time and place each week to ensure a consistent routine within the facility.

(7) The activity director or designee must annually attend at least six hours of continuing education regarding Alzheimer's disease or related disorders.

(8) Special equipment and supplies necessary to accommodate persons with a physical disability or other persons with special needs must be provided as appropriate.

(i) Physical plant. Alzheimer's units, if segregated from other parts of the Type B facility with approved security devices, must meet the following requirements within the Alzheimer's unit:

(1) Resident living area(s) must be in compliance with §92.62(m)(3) of this chapter (relating to General Requirements).

(2) Resident dining area(s) must be in compliance with §92.62(m)(4) of this chapter.

(3) Resident toilet and bathing facilities must be in compliance with §92.62(m)(2) of this chapter.

(4) A monitoring station must be provided within the Alzheimer's unit with a writing surface such as a desk or counter, chair, task illumination, telephone or intercom, and lockable storage for resident records.

(5) Access to at least two approved exits remote from each other must be provided in order to meet the Life Safety Code requirements.

(6) In large facilities, cross corridor control doors, if used for the security of the residents, must be similar to smoke doors, which are each 34 inches in width and swing in opposite directions. A latch or other fastening device on a door must be provided with a knob, handle, panic bar, or other simple type of releasing device.

(7) An outdoor area of at least 800 square feet must be provided in at least one contiguous space. This area must be connected to, be a part of, be controlled by, and be directly accessible from the facility.

(A) Such areas must have walls or fencing that do not allow climbing or present a hazard and meet the following requirements. These minimum dimensions do not apply to additional fencing erected along property lines or building setback lines for privacy or to meet requirements of local building authorities.

(i) Minimum distance of the enclosure fence from the building is 8 feet if the fence is parallel to the building and there are no window openings;

(ii) Minimum distance of the enclosure fence (parallel with building walls) from bedroom windows is 20 feet if the fencing is solid and 15 feet from bedroom windows if the fencing is open; or

(iii) For unusual or unique site conditions, areas of enclosure may have alternate configurations with DADS approval.

(B) Access to at least two approved exits remote from each other must be provided from the enclosed area in order to meet the Life Safety Code requirements.

(C) If the enclosed area involves a required exit from the building, the following additional requirements must be met:

(i) A minimum of two gates must be remotely located from each other if only one exit is enclosed. If two or more exits are enclosed by the fencing and entry access can be made at each door, a minimum of one gate is required.

(ii) The gate(s) must be located to provide a continuous path of travel from the building exit to a public way, including walkways of concrete, asphalt, or other approved materials.

(iii) If gate(s) are locked, the gate nearest the exit from the building must be locked with an electronic lock that operates the same as electronic locks on control doors and/or exit doors and is in compliance with the National Electrical Code for exterior exposure. Additional gates may also have electronic locks or may have keyed locks provided staff carry the keys. All gates may have keyed locks, provided all staff carry the keys, and the outdoor area has an area of refuge which:

(I) extends beyond a minimum of 30 feet from the building; and

(II) the area of refuge allows at least 15 square feet per person (resident, staff, visitor) potentially present at the time of a fire.

(8) Locking devices may be used on the control doors provided the following criteria are met:

(A) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(B) The locking device must be electronic and must be released when any one of the following occurs:

(i) activation of the fire alarm or sprinkler system;

(ii) power failure to the facility; or

(iii) activation of a switch or button located at the monitoring station and at the main staff station.

(C) A key pad or buttons may be located at the control doors for routine use by staff.

(9) Locking devices may be used on the exit doors provided:

(A) the locking arrangements meet §7.2.1.6 of the Life Safety Code; or

(B) the following criteria are met:

(i) The building must have an approved sprinkler system and an approved fire alarm system to meet the licensing standards.

(ii) The locking device must be electro-magnetic; that is, no type of throw-bolt is to be used.

(iii) The device must release when any one of the following occurs:

(I) activation of the fire alarm or sprinkler system;

(II) power failure to the facility; or

(III) activation of a switch or button located at the monitoring station and at the main staff station.

(iv) A key pad or buttons may be located at the control doors for routine use by staff.

(v) A manual fire alarm pull must be located within five feet of each exit door with a sign stating, "Pull to release door in an emergency."

(vi) Staff must be trained in the methods of releasing the door device.

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 July 1, 2016.

TRD-201603329

Lawrence Hornsby
General Counsel

Department of Aging and Disability Services
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For further information, please call: (512) 438-2235



PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 800, relating to General Administration, *without changes* to the text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2887):

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the adopted Chapter 800 rule change is to amend Agency rules to clarify that the allocation of Adult Education and Literacy (AEL) funds, pursuant to Texas Labor Code §302.062(d), includes the application of a hold-harmless/stop-gain calculation, as defined in Agency rule §800.52(7).

This adopted amendment also strikes an adjacent clause that is now out of date and unnecessary.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS WITH COMMENTS AND RESPONSES

SUBCHAPTER B. ALLOCATIONS

The Commission adopts the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68(b)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(c)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(d)(3) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(e)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Comment: One commenter requested that the definition found in Texas Labor Code §302.62(d) of "hold-harmless/stop-gain" be added to §800.68.

Response: The Commission retains the definition of "hold-harmless/stop-gain" found in §800.52, Definitions, which meets the commenter's request for a definition.

COMMENTS WERE RECEIVED FROM:

Jon Engel, Community Action, Inc.

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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 June 30, 2016.

TRD-201603302

Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: July 20, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 463-9598



CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 805, relating to Adult Education and Literacy, *with changes* to the rule text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2889): Subchapter A, General Provisions, §805.3.

The Commission adopts amendments to the following sections of Chapter 805, relating to Adult Education and Literacy, *without changes* to the rule text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2889): Subchapter A, General Provisions, §805.2; Subchapter B, Staff Qualifications, §805.21.

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendment to §805.21 is to address issues based on observations and feedback related to finding and supporting qualified staff across an Adult Education and Literacy (AEL) system built on partnerships.

Current staff qualification requirements set forth in §805.21 were carried over with some modifications from the Texas Education Code (TEC). The TEC rules were developed for an AEL program that largely operated as an independent, nonintegrated program. Transition of the AEL program to TWC, with the implementation of new contracts, has revealed a stronger need for partnerships, including partnerships with community colleges and Local Workforce Development Boards (Boards).

The amendment to §805.3 aligns with new Texas Education Code (TEC) §25.085, which modifies the compulsory attendance age from 18 years to 19 years.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

The Commission adopts the following amendments to Subchapter A:

§805.2. Definitions

New §805.2(7) defines "assessment services" as the processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance to direct placement, progress, and achievement in AEL and other instructional services, including the identification of potential academic or support service needs.

New §805.2(8) defines "clock hour," distinguishing a clock hour of 60 minutes from a credit hour, which constitutes 50 minutes of instruction over a 15-week period in a semester system or a 10-week period in a quarter system.

New §805.2(9) defines "college and career transitional support" as support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support

strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

New §805.2(12) defines "literacy," in alignment with the Workforce Innovation and Opportunity Act (WIOA), as an individual's ability to read, write, and speak in English, and to compute and solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

New §805.2(13) defines "principles of adult learning" as a wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

New §805.2(14) defines "proctoring" as one type of assessment service, the administration of tests or pretests by test proctors working under the guidance or supervision of an individual who oversees program assessment services and/or accountability assessment.

New §805.2(15) defines "professional development" as encompassing all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (.5) hour (i.e., the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

New §805.2(16) defines "program year" for AEL purposes. The AEL program year, which aligns to the U.S. Department of Education's (ED) Adult Education and Family Literacy Act (AEFLA) program year, is July 1 through June 30.

New §805.2(17) defines "substitute," specifying the distinction between a substitute and a full- or part-time instructor. A substitute works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

New §805.2(18) defines "support services," to align with the definition in WIOA §2, as services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities.

New §805.2(19) defines "workforce training" to align with the definition in WIOA §134(c)(3)(D), which states that workforce training services may include the following:

occupational skills training, including training for nontraditional employment;

on-the-job training;

incumbent worker training;

programs that combine workplace training with related instruction, which may include cooperative education programs; training programs operated by the private sector; skill upgrading and retraining; entrepreneurial training; transitional jobs; job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

Comment: One commenter requested a modification of the definition of

"Principles of Adult Learning" by removing "effectively manage a changing world."

Response: The Commission maintains the definition from the proposed rules, recognizing that lifelong learning is a critical element for successful career development and a tenet of established adult learning theory, a core philosophy of adult education.

§805.3. Federal and State AEL Funds

Section 805.3 is amended to replace "18 years of age" with "19 years of age" to align with new TEC §25.085.

Comment: One commenter recommended modifying "19 years of age" to "compulsory age" to better align with other language found in Agency guidance and rules.

Response: The Commission agrees with this recommendation and has modified the language accordingly.

SUBCHAPTER B. STAFF QUALIFICATIONS

The Commission adopts the following amendments to Subchapter B:

§805.21. Staff Qualifications and Training

Current §805.21(1) and (2) are removed.

Current §805.21(3) is renumbered as new §805.21(1), and is amended to apply additionally to administrative, data entry, and proctoring staff, and staff providing support or employment services to students.

Current §805.21(4) is renumbered as new §805.21(2), and is amended to remove teachers and counselors and to apply additionally to staff that oversees program assessment services and/or accountability and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

New §805.21(3) is added to specify requirements for workforce training instructors.

New §805.21(4) is added to set forth the process for submitting staff qualification exemption requests

New §805.21(4)(B) specifies that exemptions must be submitted and approved prior to an individual being placed in the position for which an exemption is requested.

Current §805.21(5) is amended to remove teachers and counselors and add "other staff with program oversight or coordination responsibilities." The required 12 clock hours of professional development annually is modified to 15 clock hours each program year. The provision modifying the amount of required professional development once the described individuals have completed six clock hours of AEL college credit or two years of AEL experience is removed. Additionally, staff described in §805.21(5), hired on or after January 1 of a program year, may have half of the required staff professional development time required in that particular program year.

Current §805.21(6) is renumbered as new §805.21(9) new §805.21(6) is added to specify that all AEL instructional staff, except substitutes, who are paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year.

New §805.21(6)(A)(i) - (iii) specify that the 15 hours shall include three clock hours of principles of adult learning as defined in §805.2(13), six clock hours in relevant areas of literacy instruction, with literacy defined in §805.2(12), and six hours at the discretion of the program that consist of content related to the AEL program's purpose, which is to provide adults with specific basic education that enables them to effectively:

--acquire the basic educational skills necessary for literate functioning;

--participate in job training and retraining programs;

--obtain and retain employment; and

--continue their education to at least the level of secondary school completion and postsecondary education preparation.

New §805.21(6)(A)(iv) allows for six clock hours of content area in staff professional development to be waived for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

New §805.21(6)(B) is added to specify that staff meeting the specifications outlined in §805.21(6)(A) and hired on or after January 1 of a program year, may require half of the professional development time required for that program year, and to specify that for instructors in the content areas of reading, writing, mathematics, and English language acquisition, the professional development time completed shall consist of three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

New §805.21(6)(C) is added to specify that staff described in §805.21(2) must receive at least six clock hours of professional development as described in §805.21(b)(2)(A)(i) - (iii) within 30 calendar days of providing instructional activities if new to AEL or direct student service delivery; the six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. New §805.21(6)(C) also specifies that any waiver of the requirement that staff members who are new to AEL or to direct student service must receive staff development within 30 calendar days of providing instructional services shall be approved before the individual provides any instructional services.

Language referring to exemptions for qualifications, which previously required Commission approval when an entity submitted its application for funding, has been removed from current §805.21(6).

New §805.21(7) is added to specify that staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

New §805.21(8) is added to specify that AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

Current §805.21(6) is renumbered as new §805.21(9) and modified to remove the word "in-service" and replace the term "local programs" with "grant recipients." The definition of "exceptional circumstances" is added to include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Language is changed to specify that documents justifying these circumstances shall be available for monitoring and as requested by AEL staff. Language requiring exemptions to be submitted to the Commission for approval in cases of exemptions for minimum qualifications is removed.

Current §805.21(7) is renumbered as new §805.21(10), and "fiscal agent" is replaced with "grant recipient."

Current §805.21(8) is removed.

Comment: One commenter commended the removal of six hours of preliminary professional development and reduction from 24 hours of staff development requirements for new hires.

Response: The Commission appreciates the comment.

Comment: One commenter requested that volunteer instructional staff be waived from the current staff development requirements.

Response: The Commission appreciates the comment, but in order to maintain quality of AEL instruction for all participants, retains this requirement for any individual who acquires contact hours with participants. Local programs have the option to not count the contact hours acquired by volunteer staff, which would remove these requirements, or to request a staff exemption if the staff development time creates an undue burden.

Comment: One commenter requested that the requirement for all staff to yearly receive three hours of staff development in principles of adult learning be waived for returning teachers, new staff, or staff with a college degree in the content area.

Response: The Commission appreciates the comment, but retains this requirement. Principles of adult learning is a general concept, not a specific course, and can cover a wide array of topics necessary for individuals providing adult education instruction to implement meaningful andragogy to ensure success for program participants, including new staff orientation, if that orientation focuses on successful instruction to adults. Local programs are encouraged to explore the wide array of topics that fall within this concept area in order to keep material fresh and timely. Agency professional development contractors are aligning training courses to identify courses that address topics in principles of adult learning.

Comment: One commenter requested clarification for the requirements for instructional staff, including the allowability to use

staff development for goal setting as well as staff development provided by local independent school districts (ISDs) to meet staff development requirements.

Response: The Commission clarifies that staff development should be customized to meet local needs and objectives, as well as AEL objectives, and if goal setting, as well as staff development provided by local ISDs, meets those objectives, it can be used to meet staff development requirements for staff members.

Comment: One commenter requested clarification for the requirements for literacy instructional staff to waive content-area professional development if they have earned college-level credit in their instructional content area, and whether there is an expiration for these requirements.

Response: The Commission clarifies that waivers for literacy instructional staff who waive content-area professional development through college-level credit in their literacy instructional content area are permanent; however, the Commission encourages local programs to assess individual instructors' skills and abilities and use local flexibility to require skill refreshers as needed.

COMMENTS WERE RECEIVED FROM:

Angie Kaldro, Education Service Center 6

Jon Engel, Community Action, Inc.

Resa Wingfield, Literacy Council of Tyler

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §805.2, §805.3

The rules are adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.3. Federal and State AEL Funds.

(a) Federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:

- (1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
- (2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
- (3) are unable to speak, read, or write the English language.

(b) State AEL funds are to be used for AEL programs for out-of-school individuals who are beyond the compulsory age of attendance unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

- (1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;
- (2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or
- (3) are unable to speak, read, or write the English language.

(c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

(d) The Commission shall establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.

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 June 30, 2016.

TRD-201603303

Patricia Gonzalez

Deputy Director, Workforce Development Division Programs

Texas Workforce Commission

Effective date: July 20, 2016

Proposal publication date: April 22, 2016

For further information, please call: (512) 463-9598



SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.21

The rule is adopted under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

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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Texas Workforce Commission

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For further information, please call: (512) 463-9598



TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 2. ENVIRONMENTAL REVIEW OF TRANSPORTATION PROJECTS

The Texas Department of Transportation (department) adopts amendments to §§2.1, 2.3, 2.5, 2.11, 2.14, 2.44, 2.48 - 2.50, 2.81, 2.83 - 2.85, 2.102, 2.104 - 2.108, 2.110, and 2.131, all relating to the environmental review of transportation projects. The amendments to §§2.1, 2.3, 2.5, 2.11, 2.14, 2.44, 2.48 - 2.50,

2.83 - 2.85, 2.104 - 2.106, 2.110, and 2.131 are adopted without changes to the proposed text as published in the April 15, 2016 issue of the *Texas Register* (41 TexReg 2705) and will not be republished. The amendments to §§2.81, 2.102, 2.107, and 2.108 are adopted with changes to the proposed text as published in the April 15, 2016 issue of the *Texas Register* (41 TexReg 2705).

EXPLANATION OF ADOPTED AMENDMENTS

The department has identified the need to make various changes to its environmental review rules to add additional flexibility in certain areas, add clarity, and further streamline and improve the environmental review process. The various changes in this rulemaking are summarized below.

SUBCHAPTER A. GENERAL PROVISIONS

Amendments to §2.1, Purpose of Rules, remove references to Transportation Code, §203.021; Parks and Wildlife Code §26.001 and §26.002; and Natural Resources Code §183.057. As explained below, the department has determined that there is no need for it to have rules implementing these particular statutes.

Transportation Code, §203.021 contains a hearing requirement for a highway project that bypasses or goes through a county or municipality. The statute sets forth specific requirements for holding such a hearing. While it is possible for a hearing held under the department's environmental review rules to be noticed and held to also satisfy the requirements of §203.021, the department considers the hearing requirement in §203.021 to be separate from and not subject to the requirements for hearings held under its environmental review rules. Additionally, §203.021 is a statute that applies by its own force and contains requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing this statute.

Parks and Wildlife Code §26.001 and §26.002 require certain governmental entities to hold a hearing and make certain determinations before approving a program or project that requires the use or taking of public land designated and used prior to the arrangement of the program or project as a park, recreation area, scientific area, wildlife refuge, or historic site. Again, while it is possible for a hearing held on a project under the department's environmental review rules to be noticed to also satisfy the hearing requirement of §26.001 and §26.002, the department considers the hearing requirement in those statutes to be separate from and not subject to the requirements for hearings held under its environmental review rules. Additionally, §26.001 and §26.002 are statutes that apply of their own force and contain requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing these statutes.

In 2015, the Texas Legislature transferred and redesignated Natural Resources Code §183.057 as Parks and Wildlife Code §84.007, and also amended the statute. See Acts 2015, 84th Legislature, Regular Session, Ch. 401 (H.B. No. 1925), Section 1, effective June 10, 2015. This statute requires certain governmental entities to hold a hearing and make certain determinations before approving a program or project that requires the use or taking of private land encumbered by an agricultural conservation easement. Again, while it is possible for a hearing held under the department's environmental review rules to be noticed to also satisfy the hearing requirement of §183.057, the

department considers the hearing requirement in that statute to be separate from and not subject to the requirements for hearings held under its environmental review rules. Additionally, §183.057 is a statute that applies by its own force and contains requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing this statute.

Amendments to §2.3, Applicability; Exceptions, add an exception to the applicability of the department's environmental review rules for certain park road projects undertaken in cooperation with the Texas Parks and Wildlife Department (TPWD). The department is obligated to construct, repair, and maintain roads in and adjacent to state parks and related facilities. See Section 1.02, Chapter 7 (H.B. No. 9), 72nd Legislature, 1st Called Session, 1991, as amended by Chapter 445 (H.B. No. 1359), 74th Legislature, Regular Session, 1995. The department and TPWD have entered into an Interagency Cooperation Contract regarding Design, Construction, and Maintenance of Roads and Parking Within and Adjacent to the Facilities of the Texas Parks and Wildlife Department, effective August 6, 2014. The Interagency Cooperation Contract between the two agencies specifies that TPWD will provide to the department an environmental clearance certification for all projects on park roads owned and operated by TPWD and not listed on the state highway system indicating that all applicable federal and state laws pertaining to environmental procedures have been met. The department believes that the certification provided by TPWD is sufficient, and therefore these projects should be excepted from the environmental review requirements of Chapter 2. Projects on park roads that are owned and operated by the department and listed on the state highway system remain subject to Chapter 2.

Amended §2.3 also excepts from the applicability of Chapter 2 contractor activities outside of the right-of-way which are not directed or directly controlled by the department, including staging areas, disposal sites, equipment storage, and borrow sites selected by a contractor. Compliance with environmental laws in those areas is the respective contractor's responsibility. Contractors may be subject to sanctions under Chapter 9, Subchapter G of the department's rules, relating to Highway Improvement Contract Sanctions, for failure to comply with environmental laws applicable to their activities outside the right-of-way.

Amended §2.3 also clarifies that relocations of individuals, families, businesses, farm operations, nonprofit organizations or utilities to locations outside the right-of-way are not subject to review under Chapter 2. The removal or displacement of any improvement, infrastructure, or activity within the right-of-way is, of course, subject to review under Chapter 2 as part of the respective transportation project. However, while the owners or tenants of certain improvements, infrastructure, and activities may be entitled to compensation or relocation benefits, or both, when displaced by a transportation project in accordance with applicable law, the department does not have jurisdiction or control over the re-establishment of any displaced improvement, infrastructure, or activity by those owners or tenants on property outside the right-of-way. That type of relocation is, therefore, outside the scope of environmental review under Chapter 2.

Amendments to §2.5 remove the definition of "department public hearing officer." As indicated below, amendments to §2.106, Opportunity for Public Hearing, and §2.108, Public Hearing, also remove references to the phrase, "department public hearing officer." This term is confusing because, as provided in subsection

(f) of §2.101, General Requirements, the individuals who preside over a public hearing are not always a department employees. Additionally, amendments to §2.106 and §2.108 remove the requirement of a certification signed by the public hearing officer, as the department believes that there is no need to specify by rule the individual authorized to execute a certification regarding the public participation process.

Amended §2.5 also revises the definition of "environmental review document" to refer to a "documented" reevaluation. This revision corresponds to amendments to §2.85, Reevaluations, which differentiate between "documented reevaluations" and "consultation reevaluations." This distinction is explained further below in the context of the amendments to §2.85.

Amended §2.5 also removes both the definition of "transportation enhancement" and inclusion of that term in the definition of "transportation project." In 2012, the Federal Moving Ahead for Progress in the 21st Century Act, or "MAP-21," replaced the Federal Transportation Enhancement Activities Program with the Transportation Alternatives Program. The Transportation Alternatives Program is a federal funding program for on- and off-road pedestrian and bicycle facilities, infrastructure projects for improving non-driver access to public transportation, community improvement activities, and other types of projects.

The department is required to follow its Chapter 2 rules both for state and Federal Highway Administration (FHWA) transportation projects, at least to the extent they are not inconsistent with applicable federal requirements. However, the primary purpose of the rules is to implement Transportation Code, §201.604, which requires the department to have rules governing the environmental review of the department's projects that are not subject to review under the National Environmental Policy Act (NEPA). Because Transportation Enhancement Program projects are, by definition, federally funded, they are subject to review under NEPA. The department believes it is neither necessary nor appropriate to include them in the definition of "transportation project" in Chapter 2, as they are a federally defined category of actions that are automatically subject to NEPA.

Amendments to §2.11, Employee Certification Process, provide that the certification is required only for a person who is employed by a department district and holds the job title of environmental specialist. The existing rule provides that the certification is required for a person who is employed by a department district and "prepares or reviews environmental reports, environmental review documents or documentation of categorical exclusion." This is too broad however, as there are many different jobs at the department that involve the review of environmental documentation, but that do not necessarily warrant certification under the Environmental Affairs Division's (ENV) process. The revision conforms the rule to the applicable statute, Transportation Code §222.006, which requires the certification only for "department district environmental specialists."

Amendments to §2.14, Project File, provide that a local government project sponsor must provide the project file to the department delegate before approval of the environmental review document or documentation of categorical exclusion. This change will ensure that the department delegate will have access to the full project file prior to rendering an environmental decision on the project.

SUBCHAPTER C. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

Amendments to §2.44, Project Scope, provide that a project scope is required only for a project for which an environmental review document is expected to be prepared, or for any project for which documentation of categorical exclusion (CE) is expected to be prepared and for which the project sponsor is a local government. The purpose of this change is to no longer require project scopes to be prepared for CE projects for which an organizational unit of the department is the project sponsor. CE projects are intended to have the most minimal level of environmental review. The department has determined that the additional administrative burden of requiring project scopes for CE projects undertaken by the department, in addition to the preparation of CE documentation, is not justified by the relatively minor associated benefits. Department personnel have become very familiar with the requirements applicable to most CE projects, and the department is confident that it can properly document that a project qualifies for a CE using the standardized CE documentation required under §2.81, relating to Categorical Exclusions, without the additional procedural step of preparing a project scope. Project scopes will continue to be required for CE projects for which a local government is the project sponsor, as the department believes that it remains a useful exercise for those entities that may not be as familiar as department personnel with requirements applicable to CE projects.

Amendments to §2.48, Administrative Completeness Review, exclude draft environmental impact statements (DEIS), and consultation reevaluations from the requirement to perform an administrative completeness review. The existing rule states that administrative completeness review is required for all environmental review documents, with a clarification that CE projects for which a checklist is prepared are exempt. However, the department does not intend for there to be an administrative completeness review for a DEIS. The primary purpose of administrative completeness review is to ensure that a document is complete, and ready for a timed technical review subject to a review deadline under Transportation Code, §201.759. In other words, if the project sponsor has submitted a document that is, on its face, incomplete, the timed technical review under §201.759 should not begin until the document is re-submitted as a complete document. Under Transportation Code, §201.759, there is a deadline for completing a timed technical review of a final environmental impact statement (FEIS), but there is no such deadline for review of a DEIS. There is, therefore, no compelling reason to have a separate administrative completeness review for a DEIS before it is reviewed for readiness for public review.

Also, the distinction between documented reevaluations and consultation reevaluations in amended §2.85 requires a change to §2.48 to clarify that there is no administrative completeness review for a consultation reevaluation. The amended version of §2.48 provides that administrative completeness review is required only for draft EAs, FEISs, documented reevaluations, and CEs for which a narrative document is prepared rather than a checklist.

Amended §2.48 also clarifies that once a document is declared administratively complete, no further administrative completeness review is required for future revised, amended or final versions of the same document. The department believes this clarification is needed to avoid confusion when an environmental review document is heavily revised or there is a long delay between submittal of different versions of the same document.

Amendments to §2.49, Technical Review, clarify that, while technical review for most types of environmental review documents begins when the document has been determined to be administratively complete, technical review of a DEIS begins when the department delegate receives the document from the project sponsor. This revision corresponds to the above-described amendments to §2.48, indicating that there is no administrative completeness review for a DEIS.

Amendments to §2.50, Deadlines for Completing Certain Types of Technical Reviews; Suspension of Technical Review Deadlines, clarifies the meaning of "the date the public participation process concludes" for purposes of determining the 60-day deadline for rendering an environmental decision on an EA. If no hearing is held and no public comments are received on the draft EA, then "the date the public participation process concludes" is the date on which the project sponsor submits to the department delegate a written confirmation that no further public participation is required and none will be conducted. If a hearing is held or if public comments are received on the draft EA, then "the date the public participation process concludes" is the date that the project sponsor submits to the department delegate the documentation of public hearing required by §2.107 of this chapter (relating to Public Hearing), if applicable, and a revised EA responsive to any public comments received. The department believes this clarification is needed because the existing rule does not account for situations in which only an opportunity for public hearing is held or comments are received outside of a public hearing. Additionally, the public participation process does not "conclude" until the project sponsor has developed responses to any comments received and any corresponding revisions to the draft EA.

Amended §2.50 also provides that the deadline for rendering an environmental decision within 120 days of when the department delegate determines that a reevaluation is administratively complete applies only to a "documented" reevaluation. As described below in the context of amendments to §2.85, Reevaluations, the department is making a distinction between "documented reevaluations" and "consultation reevaluations." While consultation reevaluations should be appropriately noted in the project file, there is no requirement to prepare a document for administrative and technical review if the result of a consultation reevaluation is that no documented reevaluation is required.

SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

Amendments to §2.81, Categorical Exclusions, provide that certain types of projects meeting specified criteria may be processed as CEs, without preparation of individual environmental issues checklists, by recording verification that the project meets the specified criteria. It has been the department's experience that certain classes of activities, by definition, do not involve any potential for significant environmental impacts or need for coordination with resource agencies, and therefore may be cleared as CEs without the need for preparation of an environmental issues checklist for the individual project.

Amended §2.81 also changes the section heading in the reference to §2.131 to conform to the changes made to that heading by these rules.

Amendments to §2.83, Environmental Assessments, provide that, when a public hearing is held, the department delegate will review "the documentation of public hearing" rather than the "summary and analysis." As explained below in the context of

amendments to §2.107, the department will no longer require preparation of a public hearing "summary and analysis." Instead, the department will require preparation of "documentation of public hearing," which consists of various types of materials specified by guidance, including a comment and response matrix.

Amended §2.83 also removes the requirement to include in an EA "a summary of the contacts with agencies and the comments received." The department believes that the remaining requirement to include in the EA the results of coordination, which would typically include copies of any correspondence with resource agencies, is sufficient.

Amendments to §2.84, Environmental Impact Statements, clarify that an environmental impact statement (EIS) is prepared not only if there are likely to be a significant environmental impacts, but also if the project is of a type for which an EIS is typically prepared. ENV is familiar with the types of projects for which an EIS is typically prepared, such as large scale new highways or added-capacity highways. The department believes amendment of §2.84 is needed to ensure that the default classification of these types of projects is an EIS, even when department personnel is unable to conclude that the project is likely to involve significant environmental impacts.

Amended §2.84 also removes the requirement to include in an EIS "a summary of the contacts with agencies and the comments received." The department believes that the remaining requirement to include in the EIS the results of coordination, which would typically include copies of any correspondence with resource agencies, is sufficient.

Amended §2.84 also reflects that a notice of availability of a DEIS or FEIS is "issued" rather than "published." The department believes that "issue" more appropriately describes the department's dissemination of a notice of availability, which, depending on the type of document, may not actually be "published" in any periodical.

Amended §2.84 also removes the reference to preparation of a "draft" record of decision. While a record of decision, like most written documents, is likely to go through one or more rounds of drafting prior to being finalized, preparation of a "draft" record of decision is not a separate procedural step.

Amended §2.84 also revises the description of a record of decision (ROD) to more closely track that set forth in rules promulgated by the Federal Council on Environmental Quality (CEQ) at 40 C.F.R. §1505.2 and by FHWA at 23 C.F.R. §771.127. The department believes the revised description of a ROD to be more clear and precise.

Amended §2.84 also revises the department's procedure for producing a combined FEIS/ROD. Instead of having two signature lines on the cover of the combined FEIS/ROD, one for the FEIS and the other for the ROD, and then waiting 30 days between signing separately for the FEIS and the ROD as required by the existing rule, the revised rule allows the department delegate to sign just once to indicate approval of the combined FEIS/ROD. This is consistent with how other states appear to be handling combined FEIS/RODs. The 30-day waiting period prior to issuance of a ROD remains in place when the FEIS and ROD are prepared as separate documents.

Amended §2.84 also clarifies the language prohibiting certain project activities until a ROD is issued. The existing rule prohibits "further approvals...except for administrative activities taken to

secure further project funding." This language, patterned after FHWA's rule governing RODs at 23 C.F.R. §771.127(a), is somewhat vague and confusing. The department believes it is more appropriate, and consistent with the overall purpose of the department's environmental review requirements, to prohibit "any action concerning the project that would have an adverse environmental impact or limit the choice of reasonable alternatives" until the ROD is issued. The revised language is patterned after CEQ's rule at 40 C.F.R. §1506.1.

Amendments to §2.85, Reevaluations, make a distinction between documented reevaluations and consultation reevaluations, and provide that documented reevaluations may be in the form of a checklist. Documented reevaluations are required if an FEIS is not submitted to the department delegate within three years after a DEIS is circulated, or if major steps to advance the project have not occurred within three years after the FEIS, an FEIS supplement, or the last major department approval or grant. ENV has developed a checklist for preparing a documented reevaluation. While it may be necessary to develop technical reports or other materials in support of a documented reevaluation, the reevaluation itself should be in the format of the department's prescribed checklist.

A consultation evaluation, as opposed to a documented reevaluation, will be conducted whenever there are changed circumstances that could affect the continued validity of a ROD, finding of no significant impact (FONSI) or CE designation. If either the project sponsor or department delegate believes that changed circumstances are present, the project sponsor and department delegate will consult to determine if the environmental documentation remains valid in light of the changed circumstances. The project sponsor should record this consultation in the project file. For example, a journal entry may be added to the department's Environmental Compliance Oversight System indicating the consultation between project sponsor and department delegate, and any determination or outcome of that consultation. If the project sponsor and department delegate are both confident that the environmental documentation remains valid, then there is no need to prepare a documented reevaluation. However, if either the project sponsor or department delegate has any concerns about the continued validity of the environmental documentation, then a documented reevaluation must be completed. Again, any such documented reevaluation should be prepared using the department's prescribed checklist format.

SUBCHAPTER E. PUBLIC PARTICIPATION

Amendments to §2.102, Notice of Intent, change the department's procedure for issuing a notice of intent (NOI), which signals the department's intent to begin the process for preparing an EIS for a project. Under amended §2.102, the department will publish an NOI either in the *Texas Register* or in the *Federal Register*, depending on whether the project is a state or FHWA transportation project, but not in both the *Texas* and *Federal Registers*. Any benefits of the requirement in the existing rule to publish all NOIs in the *Texas Register*, even for FHWA transportation projects for which the NOI is also published in the *Federal Register*, do not justify the additional administrative burden. Publication of the NOI for an FHWA transportation project in the *Federal Register* should be sufficient to alert those entities with interest in the department's EIS projects. Additionally, federal law requires the department to hold early scoping public meetings following issuance of an NOI for an FHWA transportation project. See 23 U.S.C. §139. The methods used to notify the public of these early scoping meetings are typically tailored

to the type and location of the project in order to maximize public awareness. Notification of these meetings is an effective way to notify the public of an FHWA EIS project, without publishing an NOI in the *Texas Register* that is duplicative of the one published in the *Federal Register*.

Amendments to §2.104, Meeting with Affected Property Owners (MAPO), require one or more MAPOs to be held when a project requires a road or bridge closure. The department considers a road or bridge closure as a form of detour, which is one of the triggers for a MAPO in the existing rule, but believes that this revision is needed to clarify the intent of the existing rule.

Amendments to §2.105, Public Meeting, shorten the explanation of the purpose of a public meeting to the essential functions, and remove superfluous descriptive language regarding the purpose of a public meeting.

Amended §2.105 also removes the limitation in the existing rule that the decision to hold a public meeting be based on the level of public concern "that is based on environmental issues." The decision to hold a public meeting should be based on the level of public concern about the project generally, not just environmental issues.

Amended §2.105 also removes the requirement of a project sponsor to prepare a written summary of a public meeting that includes specific enumerated elements. The department believes that the benefits of a written summary of a public meeting do not justify the additional administrative burden and cost. Instead, project sponsors will be required to assemble documentation of a public meeting in accordance with guidance provided by ENV. ENV will continue to require project sponsors to prepare and include in the documentation a matrix containing the department's responses to comments received from the public.

Amendments to §2.106, Opportunity for Public Hearing, remove the requirement that the project sponsor's certification of the public participation process be "signed by the department public hearing officer." As indicated above, the phrase, "department public hearing officer," is confusing because, as provided in subsection (f) of §2.101, General Requirements, the individuals who preside over public hearings are not always department employees. Additionally, the department believes that there is no need to specify by rule the individual authorized to execute a certification regarding the public participation process.

Amended §2.106 also clarifies that notice of the opportunity to request a public hearing must be published before the 30th day before the deadline for submission of written requests for holding a public hearing. This is not a substantive change, but rather conforms to style used elsewhere in Chapter 2.

Amended §2.106 also clarifies that an opportunity for public hearing is afforded for a project for which an environmental assessment is being prepared, rather than a project for which "the results of environmental studies support a FONSI." This change is needed because the existing language may be interpreted as requiring speculation as to what the ultimate conclusion of the environmental assessment will be when determining whether or not an opportunity for public hearing must be afforded.

Amended §2.106 also removes the requirement to afford an opportunity for public hearing when the project sponsor or department delegate determines it is in the public interest. The department believes that, in situations in which none of the other criteria for affording a public hearing are triggered, but project-specific

facts nevertheless warrant a level of public participation beyond a public meeting, a public hearing, rather than a mere opportunity for one, would be more appropriate. The "public interest" criteria, is therefore moved from §2.106 to §2.107, Public Hearing.

Amendments to §2.107, Public Hearing, remove the requirement to hold a public hearing for "a high-profile project." It has been the department's experience that the phrase, "a high-profile project," is too subjective to be a helpful threshold for determining when a public hearing is required. Additionally, a project that may be considered "high-profile" may not, in fact, be the subject of substantial public interest from an environmental review perspective, in which case it would not be a judicious use of the department's resources to hold a hearing on the project.

Amended §2.107 also revises the requirement to hold a hearing on a project that constructs a new "facility" on a new location to instead require a hearing on a project that constructs a new "highway" on a new location. "Facility" is not defined, and could be construed to mean relatively minor infrastructure improvements, such as construction of a pedestrian or bike path, for which a public hearing would not necessarily be justified. Additionally, revising to "highway" corresponds to the requirement in Transportation Code §203.022 to provide notice and an opportunity to comment to adjoining landowners and local governments for projects that involve "the construction of a highway at a new location."

Amended §2.107 also removes references to Chapter 26 of the Parks and Wildlife Code and Chapter 183 of the Natural Resources Code. As explained above, the department considers the hearing requirements in those statutes to be separate from and not subject to the requirements for hearings held under its environmental review rules.

Amended §2.107 also revises the timeframe for publishing newspaper notice of a public hearing, and for making maps, drawings, environmental reports, and other documents available for public inspection, to at least 15 days before the hearing. Under the existing rule, these items are due 30 days before the hearing. This change will allow additional flexibility in the scheduling and arrangement of facilities for holding a public hearing.

Amended §2.107 also revises the deadline for accepting public comments to 15 days after the date of the public hearing, regardless of whether the hearing was held for an EA or EIS project. Under the existing rule, the comment deadline is 10 days after the hearing for an EA project, and 15 days after the hearing for an EIS project. Changing the comment deadline to 15 days after the hearing for both EA and EIS projects reduces the chances for confusion about the correct deadline. It also provides a full 30 days for public comment after the notice of hearing is published and materials are made available for public review.

Amended §2.107 also removes the requirement of a project sponsor to prepare a written summary of a public hearing that includes specific enumerated elements. The department believes that the benefits of a written summary of a public hearing do not justify the additional administrative burden and cost. Instead, project sponsors will be required to assemble documentation of a public hearing in accordance with guidance provided by ENV. ENV will continue to require project sponsors to prepare and include in the documentation a matrix containing the department's responses to comments received from the public.

Amended §2.107 also adds the requirement to hold a public hearing when the department delegate determines it is in the public interest. As explained earlier, the department believes this trigger is more appropriately included under §2.107, Public Hearing, rather than under §2.106, Opportunity for Public Hearing.

Amended §2.107 also adds requirements that one or more department employees must begin a public hearing by making opening remarks to the audience of attendees, and that one or more department employees must be physically present during any portion of a public hearing. This more closely conforms the department's public hearing rule to FHWA's stated interpretation of its own public involvement rule, which provides that a public hearing shall be "held by the State highway agency." 23 C.F.R. §771.111(h)(2).

Amendments to §2.108, Notice of Availability, reflect that a notice of availability (NOA) of a DEIS or FEIS is "issued" rather than "published." The department believes that "issue" more appropriately describes the department's dissemination of a notice of availability, which, depending on the type of document, may not actually be "published" in any periodical.

Amended §2.108 also clarifies that an NOA is issued only for a draft EA. There is no separate NOA for the final EA, as notice of completion of the environmental review process is provided by issuance of an NOA for the FONSI.

Amended §2.108 specifies that NOAs must be sent to "entities identified as having an interest in or regulatory jurisdiction over an aspect of the project in accordance with §2.12, relating to Project Coordination." This change is needed because the requirement in the existing rule that NOAs be sent to "agencies with an interest in the project" is too vague.

Amended §2.108 requires an NOA of a draft EA to be published on the department's website. The existing rule only requires NOAs of FONSI, DEISs, FEISs, and RODs to be published on the department's website. In the interest of encouraging public involvement in the environmental assessment process, the department believes that draft EAs should be similarly noticed on the department's website.

Amended §2.108 also requires newspaper publication of an NOA for a draft EA for which no public hearing is held or an FEIS. This conforms the department's rules to FHWA's rules on this point, which require newspaper notice for these types of NOAs. See 23 C.F.R. §771.119(f) regarding EAs and 23 C.F.R. §771.125(g) regarding FEISs.

Newspaper publication of an NOA for a draft EA may be combined with the opportunity for public hearing notice published under §2.106(c), in which case the department recommends that the title of the notice read, "Notice of Availability of Draft Environmental Assessment and Opportunity for Public Hearing." The combined notice should also clearly indicate how copies of the draft EA may be obtained. Combining the NOA and notice of opportunity for public hearing avoids the need for a second newspaper publication of an NOA for the draft EA if no requests are ultimately received in response to the opportunity for public hearing.

Amended §2.108 also provides that the department will publish an NOA for a DEIS, FEIS or ROD either in the *Texas Register* or in the *Federal Register*, depending on whether the project is a state or FHWA transportation project, but not in both the *Texas* and *Federal Registers*. The benefits of the requirement

in the existing rule to publish an NOA for a DEIS or FEIS in the *Texas Register*, even for FHWA transportation projects for which the NOA is also published in the *Federal Register*, do not justify the additional administrative burden. Publication of the NOA for an FHWA DEIS or FEIS in the *Federal Register* should be sufficient to alert those entities with interest in the department's EIS projects.

Amended §2.108 also removes the requirement of a separate NOA for the ROD when a combined FEIS and ROD is issued. As explained above, §2.84, Environmental Impact Statements, is revised to no longer require two signature lines on the cover of the combined FEIS/ROD with a 30-day waiting period between signatures. It is, therefore, no longer necessary to have a separate NOA for the ROD when a combined FEIS/ROD is issued. A single NOA for the combined document will suffice.

Amended §2.108 also requires that an NOA of a DEIS published in the *Texas Register* or *Federal Register* shall establish a period of not fewer than 45 days and no more than 60 days for the return of comments on the DEIS. The purpose of this change is to conform the department's rules to the analogous FHWA rule, 23 C.F.R. §771.124(i).

Amendments to §2.110, Notice of Impending Construction, provides that the department may provide owners of adjoining property and affected local governments and public officials with notice of impending construction by any means approved by ENV, which may include a sign or signs posted in the right-of-way, mailed notice, printed notice distributed by hand, or notice via website when the recipient has previously been informed of the relevant website address. This will allow the department to more efficiently communicate this notice to the intended audience than would be allowed if mailed notice were the only option.

Amended §2.110 also requires that the notice of impending construction must be provided after a CE determination or issuance of a FONSI or ROD for the project, but before earthmoving or other activities requiring the use of heavy equipment commence. The department believes that this is the appropriate time frame for giving notice of impending construction, as commencement of heavy equipment use may have the potential for impacts to local landowners and governments.

SUBCHAPTER F. REQUIREMENTS FOR SPECIFIC TYPES OF PROJECTS AND PROGRAMS

Amendments to §2.131, Special Right-of-Way Acquisition, remove requirements implementing Parks and Wildlife Code, Chapter 26 and Natural Resources Code, Chapter 183. As explained above, those statutes apply by their own force and contain requirements independent of those specified under the department's environmental review rules. The department, therefore, does not believe it is necessary to have its own rules implementing these statutes. The amendments also re-name the section as "Advance Acquisition of Right-of-Way," as this is the only remaining subject covered by the rule after removal of the requirements implementing Parks and Wildlife Code, Chapter 26 and Natural Resources Code, Chapter 183.

Amended §2.131 also eliminates the requirement to prepare a CE analysis when the department acquires real property for corridor preservation, access management, or other purposes prior to completion of the environmental review process for a project. Those types of advance acquisitions by the department must instead be preceded by preparation of a due diligence report, which will assess the presence or likelihood of contamination and any other undesirable conditions on the real property, and

whether the real property consists of any public land that is designated and used as a park, recreation area, scientific area, wildlife refuge, or historic site. The department believes that a due diligence report is more appropriate than a CE analysis as there are generally no environmental impacts associated with the mere acquisition of real estate. Project impacts on a parcel that was the subject of advance acquisition will be identified and evaluated as part of the environmental review of the actual project.

COMMENTS

The department received comments from FHWA and the Texas Press Association (TPA).

SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

Comment: FHWA commented regarding the department's amendment of §2.81, regarding Categorical Exclusions (CEs). The department proposed to amend this rule to provide that an environmental issues checklist is not required for a project covered under a "programmatic CE" issued by the department's Environmental Affairs Division. FHWA stated that the term, "programmatic CE," is prohibited from use for federal aid projects under Section 1.1.4 of the December 16, 2014 Memorandum of Understanding Between the Federal Highway Administration and the Texas Department of Transportation Concerning State of Texas' Participation in the Project Delivery Program Pursuant to 23 U.S.C. 327 (the NEPA assignment MOU).

Response: The department agrees that "programmatic CE" is not the most appropriate term to describe the department's intent with respect to the proposed amendment of §2.81, as the programmatic agreement between FHWA and the department that allowed for the use of "programmatic CEs" is suspended for the duration of the NEPA assignment MOU.

In response to FHWA's comment, the department is revising its amendment of §2.81 to more specifically describe the department's intent without using the phrase, "programmatic CE." As the department explained in its proposal preamble, it has been the department's experience that certain classes of activities, by definition, do not involve any potential for significant environmental impacts or need for coordination with resource agencies, and therefore do not warrant preparation of an environmental issues checklist for each individual project. Amended §2.81 now allows the department's Environmental Affairs Division to direct that certain types of projects meeting specified criteria may be processed as CEs, without preparation of individual environmental issues checklists, by recording verification that the project meets the specified criteria.

Comment: FHWA commented regarding the department's amendment of §2.85, regarding Reevaluations. The department is amending this rule to specifically allow documented reevaluations to be prepared in a checklist format, as opposed to a narrative document. FHWA expressed concern with this approach, stating its position that the "evaluation" must be explained in enough detail to inform the public. FHWA further stated that it is not convinced that a checklist format would suffice to comply with 23 C.F.R. §771.129(b), which relates to the type of reevaluation required if major steps to advance the action have not occurred within three years of a final environmental impact statement (EIS).

Response: The rule cited by FHWA, 23 C.F.R. §771.129(b), states only that a "written evaluation" be prepared. It does not prescribe any required format or content. Further, unlike FHWA's

rules regarding environmental assessments (EAs) and EISs, the rule does not require any form of public involvement or review with respect to a reevaluation. Because the rule is so broadly written, any format of "evaluation" would suffice so long as it is "written" (i.e., recorded, or expressed in writing as opposed to verbally).

Although there's no requirement that a reevaluation be noticed for public review, the checklist format developed by the department does, in fact, contain information sufficient to allow a member of the public or any other reviewer to understand the analysis conducted. The department's Reevaluation Consultation Checklist form is available on the department's NEPA and Project Development Toolkit webpage. It contains many fields requiring written explanations or descriptions in response to questions or prompts, such as "Have substantial changes occurred to the project design concept and/or scope since the original environmental decision or subsequent reevaluations? (if so, explain)", and "Indicate whether there have been changes in the affected environment since the environmental decision." These and other fields on the form combine to provide an adequate depiction of the analysis conducted that could be easily understood by a member of the public.

SUBCHAPTER E. PUBLIC PARTICIPATION

Comment: FHWA commented regarding the department's amendment of §2.102, regarding Notice of Intent. The department is amending this rule to require publication of a notice of intent (NOI) in either the *Texas Register* or the *Federal Register*, depending on whether the project is a state or FHWA transportation project. FHWA pointed out that this may require re-issuance of an NOI if funding for a project changes from state to federal after initial publication in the *Texas Register*.

Response: The department appreciates FHWA's comment and is aware of this potential consequence, but believes that it is still more efficient to require, as a matter of rule, publication of the NOI only once in the appropriate register, depending on what is known about the source of funding at the outset. Note that nothing in the rule prohibits the department from publishing an NOI in both registers if it believes federal funding is a possibility for a particular project.

Comment: TPA also commented regarding the department's amendment of §2.102. TPA commented that it disagreed with elimination of the requirement to publish an NOI for an EIS in a newspaper of general circulation. It asserted that this change substantially reduces the likelihood that citizens in the affected areas will learn of the project in time to fully participate in the process and that the cost of newspaper publication is negligible compared to overall budgets, among other arguments. TPA also requested a hearing on the department's amendment of §2.102.

Response: The department has determined to not adopt this proposed change regarding newspaper publication. Section 2.102 will continue to require newspaper publication of an NOI for an EIS in a newspaper of general circulation. TPA has withdrawn its request for a hearing on the department's amendment of §2.102.

Comment: FHWA commented regarding the department's amendment of §2.105, relating to Public Meeting, and §2.107, relating to Public Hearing. The department proposed to amend these rules to require the project sponsor to assemble documentation of public meetings and hearings, rather than prepare a written summary with specific enumerated elements. FHWA

stated that it will have to review and approve the department's Public Involvement Handbook to ensure that the contents of public meeting and hearing documentation contain all elements required by federal rules.

Response: The department agrees with FHWA's comment. After completion of this rulemaking, the department intends to revise its existing Public Involvement Handbook to reflect this rulemaking and make other needed revisions. Before finalizing revisions to the handbook, the department will seek FHWA's approval of the procedures set forth in the handbook as required by 23 C.F.R. §771.111(h)(1). While FHWA states that 23 C.F.R. Section 771.123(g)(3) requires enumerated items to document public involvement, that section does not list specific documentation requirements. Note that, in the meantime, the existing handbook already contains the specific elements of public meeting and hearing documentation, which the department believes are consistent with federal rules, specifically §771.111(h)(2)(vi), requiring submission to FHWA of a hearing transcript, written public comments, and certification that a required hearing or hearing opportunity was provided.

Comment: TPA also commented regarding §2.107, and specifically the deletion of references to Chapter 26 of the Texas Parks and Wildlife Code. TPA stated that it had no objection to the deletion of these references.

Response: The department acknowledges TPA's comment.

Comment: FHWA commented that the department's proposed rules use the term, "highway," while the federal regulations use the term, "facility." FHWA asserted that this is problematic for projects other than highways such as rest areas, recreational trails and bicycle and pedestrian projects.

Response: The department believes this comment is made in reference to §2.107, which contains the triggers for holding a public hearing. The department is amending §2.107 to require a hearing for a project that constructs a new "highway," rather than a new "facility," on a new location.

FHWA's rules, at 23 C.F.R. §771.111(h)(2)(iii), require "one or more public hearings or the opportunity for hearing(s) for a project that "substantially changes the layout or functions of connecting roadways or of the facility being improved". The department's rules mirror this requirement, not in §2.107, regarding public hearings, but in §2.106, regarding opportunities for public hearing. Section 2.106 states that an opportunity for public hearing is required for a project that "substantially changes the layout or function of connecting roadways or of the facility being improved".

Because FHWA's rules require either a public hearing or an opportunity for one in this situation, and because the department's rules require an opportunity for a hearing, the department's rules are consistent with FHWA's rules. The department's additional, separate trigger for holding a hearing on a new "highway" does not conflict with FHWA's rules.

Comment: FHWA commented that its rules, at 23 C.F.R. §771.111(h)(2)(iii), require public involvement events to be led or hosted by a department employee, as opposed to a contractor or local government sponsor. FHWA further pointed out that the public has a right to address the department directly.

Response: In response to FHWA's comment, the department is further amending §2.107 to specifically require one or more department employees to begin a public hearing by making opening remarks to the audience of attendees, and to require one or

more department employees to be physically present during any portion of a public hearing. These requirements do not preclude department staff from turning over any portion of a public hearing to a local government official, consultant, or any other individual approved by the department.

Note that the rule cited by FHWA, 23 C.F.R. §771.111(h)(2), applies only to public hearings. It does not apply to other forms of public participation not specifically identified in FHWA's rules, such as public meetings and meetings with affected property owners. Therefore, these forms of public participation are not affected by FHWA's stated interpretation regarding the meaning of "held by the State highway agency," and could continue to be hosted by other entities, without physical attendance by any department employee, in accordance with §2.101: "Public participation hosted by other entities may satisfy department public participation requirements provided the requirements established in this subchapter are met."

Comment: FHWA commented that its rules, at 23 C.F.R. §771.111(h)(2)(viii), require each State to have procedures to carry out a public involvement/public hearing program that provide for public notice and opportunity to comment on a Section 4(f) *de minimis* impact finding. FHWA asserted that this must be addressed for federal aid projects in the department's public participation rules.

Response: Because the Section 4(f) *de minimis* impact requirements are purely federal in nature, and there is no state equivalent, the department believes that FHWA's comment is best addressed by amending department guidance, rather than the state rules.

In 2014, when the department last revised its environmental review rules, FHWA made a similar comment regarding the lack of sufficient detail regarding federal requirements in the department's Chapter 2 rules. In response, the department explained its belief that a guidance document, rather than state rules, is the more appropriate method for informing staff of how to comply with federal public involvement/public hearing requirements. See the April 11, 2014 issue of the *Texas Register* (39 TexReg 2941, 2947). By the time the department responded to public comments in 2014, FHWA had already approved a separate guidance document as fulfilling the requirement to have public involvement procedures meeting federal requirements.

As stated earlier, the department intends to revise its existing Public Involvement Handbook to reflect this rulemaking and make other needed revisions. The department intends to incorporate into the next version of the handbook a reminder about the public notice and comment requirement for Section 4(f) *de minimis* determinations. Before finalizing revisions to the handbook, the department will seek FHWA's approval of the procedures set forth in the handbook as required by 23 C.F.R. §771.111(h)(1). The department believes that this, rather than amending the state rules to codify a purely federal regulatory requirement, is the most appropriate response to FHWA's comment.

Note also that the department's existing guidance on Section 4(f) *de minimis* determinations specifically requires confirmation that a public notice and opportunity for public review and comments was provided, and explains that this requirement can be satisfied in conjunction with other public involvement procedures, such as those for the NEPA process. See the department's "Checklist for Section 4(f) De Minimis for Public Parks, Recreation Lands,

Wildlife and Waterfowl Refuges, and Historic Properties," available on the department's Section 4(f) Toolkit webpage.

Comment: FHWA commented that the department's rules do not comply with 23 C.F.R. §771.119(h), which applies to projects that are of a type for which an EIS is normally prepared, but for which only an EA and FONSI are prepared. Section 771.119(h) states that, for such projects, the final EA must be made available for public review, by issuance of a notice similar to a public hearing notice, for a minimum of thirty (30) days before issuance of the FONSI.

Response: Because the requirement of a 30-day review period between issuance of an EA and FONSI for certain types of projects is a purely federal requirement, and there is no state equivalent, the department believes that FHWA's comment is best addressed by amending department guidance, rather than the state rules (see above response regarding Section 4(f) de minimis determinations).

Accordingly, the department intends to incorporate into the next version of the Public Involvement Handbook an explanation of the procedure for providing the 30-day review period between issuance of an EA and FONSI for certain types of federal projects. Before finalizing revisions to the handbook, the department will seek FHWA's approval of the procedures set forth in the handbook as required by 23 C.F.R. §771.111(h)(1).

Note that the department's recently issued guidance document, Handbook for Preparing an Environmental Assessment, contains an explicit reference to this federal requirement. The handbook is available on the department's NEPA and Project Development Toolkit webpage.

Comment: FHWA commented regarding §2.108, relating to NOA. FHWA stated that its rules, at 23 C.F.R. §771.111(d) & (e), require "other States and Federal land management entities" that may be significantly affected by an action, or by any of the alternatives, be notified early and their views solicited. FHWA asserted that §2.108 does not comply with this federal requirement because it only requires the NOA to be provided to "agencies that have submitted written comments on the project."

Response: In response to FHWA's comment, the department is revising its amendment of §2.108 to require NOAs to be sent to "entities identified as having an interest in or regulatory jurisdiction over an aspect of the project in accordance with §2.12, relating to Project Coordination." Section 2.12 is the department's rule regarding identification of interested entities with whom coordination on any given project may be required. It requires identification of "any agency, department, or other unit of federal, state, local, or Indian tribal government, including a local flood control authority, that may have an interest in a transportation project, or that is a regulatory agency with jurisdiction over an aspect of a project." The department believes that requiring NOAs to be sent to all entities identified under §2.12, regardless of whether they submitted written comments on the project, should satisfy the concern raised by FHWA.

Comment: TPA also commented regarding §2.108, and specifically the addition of a requirement to publish in the newspaper an NOA of a draft EA for which no public hearing is held or a final EIS. TPA stated that it supports this addition.

Response: The department acknowledges TPA's comment.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §§2.1, 2.3, 2.5, 2.11, 2.14

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

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. ENVIRONMENTAL REVIEW PROCESS FOR HIGHWAY PROJECTS

43 TAC §§2.44, 2.48 - 2.50

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

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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Leonard Reese

Associate General Counsel

Texas Department of Transportation

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For further information, please call: (512) 463-8630



SUBCHAPTER D. REQUIREMENTS FOR CLASSES OF PROJECTS

43 TAC §§2.81, 2.83 - 2.85

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.81. *Categorical Exclusions.*

(a) Applicability.

(1) This section applies to a transportation project that is classified by the department delegate as a CE. A CE is a category of actions that have been found to have no significant effect on the environment, individually or cumulatively.

(2) This section applies to a transportation project that is a state transportation project or an FHWA transportation project, except that subsection (e) of this section applies only if the project is an FHWA transportation project.

(3) This section does not apply to the purchase of an option to acquire real property, or to the exercise of an option or other early and advance acquisition of land. The required environmental review for those types of transactions is specified in §2.131 of this chapter (relating to Advance Acquisition of Right-of-Way).

(b) Approval for classification as CE.

(1) If the project sponsor satisfies the requirements of this subsection the department delegate may approve the classification of a transportation project as a CE.

(2) Except as provided in subsection (4) below, the project sponsor will submit to the department delegate documentation that is an environmental issues checklist showing compliance with the section. The checklist may be prepared electronically in the department's environmental database. A categorical exclusion determination in the form of a checklist is not an environmental review document. However, if required by the FHWA for an FHWA transportation project, the project sponsor must submit, instead of a checklist, a brief environmental review document discussing and analyzing the potential environmental impacts. If the department delegate determines that a transportation project qualifies as a CE, it will document that determination in the project file.

(3) The environmental issues checklist must show that the project does not violate the restrictions in subsection (c) of this section and that significant environmental impacts will not result based on the results of an evaluation of the project. The project sponsor must indicate if coordination is required, and if so, the portion of coordination that can be completed before final approval of the environmental review document has been completed.

(4) The department's environmental affairs division may direct that certain types of projects meeting specified criteria be processed as CEs, without preparation of individual environmental issues checklists, by recording verification that the project meets the specified criteria.

(c) Restrictions on classification.

(1) A CE project directly, indirectly, or cumulatively, may not:

(A) induce significant impacts to planned growth or land use for the area;

(B) cause any significant environmental impacts to any natural, cultural, recreational, historic, or other resource;

(C) cause any significant impacts to air, noise, or water quality;

(D) relocate significant numbers of people; or

(E) cause significant impacts on travel patterns.

(2) The CE action may not involve unusual circumstances or lead to:

(A) significant environmental impacts;

(B) substantial controversy on environmental grounds;

or

(C) inconsistencies with federal or state law.

(d) Categories of projects. For a state transportation project or an FHWA transportation project, the categories of projects listed at 23 C.F.R. §771.117(c) and (d) normally will qualify as categorical exclusions, unless unusual circumstances make the project ineligible for designation as a categorical exclusion under subsection (c) of this section. The categories of projects listed at 23 C.F.R. §771.117(c) and (d) are not the only types of projects that may qualify as categorical exclusions.

(e) FHWA transportation projects.

(1) For an FHWA transportation project, in addition to subsections (a) - (d) of this section, the department delegate and project sponsor must comply with any federal laws, including FHWA's rules, applicable to the processing of the project as a CE.

(2) If federal law, including FHWA's rules, or a programmatic agreement conflicts with this chapter, the federal law or programmatic agreement provision controls to the extent of the conflict.

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. PUBLIC PARTICIPATION

43 TAC §§2.102, 2.104 - 2.108, 2.110

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

§2.102. Notice of Intent (NOI).

(a) Purpose. An NOI formally initiates the process for preparing an EIS or a supplemental EIS.

(b) Notice of Intent Required. The project sponsor will prepare an NOI before the preparation of an EIS or supplemental EIS. An NOI must be prepared according to guidelines and procedures established by the department. The department delegate will review the NOI and submit it for publication in the *Texas Register* if the project is a state transportation project or in the *Federal Register* if the project is an FHWA transportation project.

(c) Notice Requirements. The project sponsor will publish the approved NOI in a local newspaper having general circulation in the area affected by the project. If there is no local newspaper in the area affected by the project, the project sponsor will publish the NOI in any newspaper having general circulation in the area affected by the project.

§2.107. Public Hearing.

(a) Purpose. A public hearing is held to present project alternatives and to encourage and solicit public comment.

(b) When to hold a public hearing. A project sponsor will hold a public hearing if:

(1) a request for hearing is received under §2.106 of this subchapter (relating to Opportunity for Public Hearing);

(2) ten or more individuals submit a written request for a hearing, except that a public hearing is not required under this paragraph if a public hearing has been held concerning the project before the requests are received or if the hearing requests are received after the environmental review document or documentation of categorical exclusion for the project is approved;

(3) the department delegate determines it is in the public interest; or

(4) the project is:

(A) a project with substantial public interest or controversy;

(B) an EIS project; or

(C) a project that constructs a new highway on a new location.

(c) Notice requirements.

(1) At a minimum, the project sponsor will publish, before the 15th day before the day of a public hearing, one notice of the hearing in a local newspaper having general circulation in the area affected by the project. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project. For a project that constructs a reliever route, notice must also be published in a newspaper of general circulation in the bypassed area.

(2) In addition to the other notice required by this subsection, the project sponsor will select a minimum of one additional outreach method to inform the public of the public hearing.

(3) The project sponsor will mail notice of the public hearing to landowners abutting the roadway within the proposed project limits, as identified by tax rolls or other reliable land ownership records, and to affected local governments and public officials.

(d) Procedural requirements.

(1) The hearing will be held after location and design studies are developed and the environmental review document or documentation of categorical exclusion is approved for public disclosure by the department delegate.

(2) The project sponsor will make the maps, drawings, environmental reports, and documents concerning the project available to the public for not less than the 15 consecutive days before the date of the public hearing.

(3) The project sponsor shall establish a deadline for accepting public comments of not less than 15 days after the date of the public hearing.

(e) Documentation requirements.

(1) After a public hearing, the project sponsor will assemble documentation of the public hearing. The public hearing documentation will be forwarded to the department delegate for review and maintained in the project file.

(2) For a public hearing regarding an EIS, the project sponsor will document the number of positive, negative, and neutral public comments received in accordance with Transportation Code, §201.811(b). This information must be presented to the commission in

an open meeting and reported on the department's website in a timely manner.

(f) Role of department staff. One or more department employees must begin a public hearing by making opening remarks to the audience of attendees. Additionally, one or more department employees must be physically present during any portion of a public hearing.

§2.108. *Notice of Availability.*

(a) Purpose. A notice of availability is issued to inform the public or recipient of when certain important documents are available for review, and how to obtain copies of those documents.

(b) When to issue notice. A notice of availability is required for:

- (1) a draft EA;
- (2) a FONSI;
- (3) a DEIS;
- (4) a FEIS; or
- (5) a ROD.

(c) Notice requirements.

(1) The project sponsor will send copies of all notices of availability to the appropriate metropolitan planning organization and entities identified as having an interest in or regulatory jurisdiction over an aspect of the project in accordance with §2.12, relating to Project Coordination. The copy of a notice with instructions on how to access the document electronically, may be provided by e-mail if the recipient has provided the department with an e-mail address. If the entity will receive a full copy of the document, it is not necessary to also send a notice of availability.

(2) The project sponsor, in collaboration with the department delegate, will publish a notice of availability on the department website regarding a FONSI, DEIS, FEIS, ROD, or draft EA.

(3) The project sponsor, in collaboration with the department delegate, will publish in a local newspaper having general circulation in the area affected by the project a notice of availability regarding a draft EA for which no public hearing is held or an FEIS. If there is no local newspaper in the area affected by the project, the project sponsor will publish notice in a newspaper having general circulation in the area affected by the project.

(4) The department delegate also must submit for publication a notice of availability regarding a DEIS, FEIS or ROD in the *Texas Register* if the project is a state transportation project or in the *Federal Register* if the project is an FHWA transportation project. For an NOA for a DEIS published in the *Texas Register* or *Federal Register*, the NOA shall establish a period of not fewer than 45 days and no more than 60 days for the return of comments on the DEIS.

(5) If the FEIS and ROD will be a single document, the notice of availability regarding the FEIS should indicate that fact.

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 F. REQUIREMENTS FOR
SPECIFIC TYPES OF PROJECTS AND
PROGRAMS**

43 TAC §2.131

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which authorizes the commission to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §91.033, which authorizes the department to adopt rules concerning the environmental processing of a rail project; Transportation Code, §201.604, which requires the department to promulgate rules providing for its review of transportation projects that are not subject to review under the National Environmental Policy Act (42 U.S.C. §4321 et seq.); Transportation Code, §201.752, which requires the department to promulgate rules to establish standards for processing environmental review documents for highway projects; and Transportation Code, §203.022, which requires the department to promulgate rules concerning public participation during the environmental processing of certain projects.

CROSS REFERENCE TO STATUTE

Transportation Code, §§91.033, 91.034, 201.6035, 201.604, 201.606, 201.607, 201.610, 201.611, 201.617, 203.022, and 222.006 and Chapter 201, Subchapter I-1.

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 6. STATE INFRASTRUCTURE
BANK**

The Texas Department of Transportation (department) adopts the repeal of §6.24, Suspension of Applications, and amendments to §6.31, Department Action, and §6.32, Commission Action, all relating to the State Infrastructure Bank. The repeal and amendments are adopted without changes to the proposed text as published in the April 15, 2015 issue of the *Texas Register* (41 TexReg 2725) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND REPEAL

The rulemaking implements new procedures for the commission's consideration of applications so that the department may more effectively manage the available funds in the State Infrastructure Bank (bank) in accordance with the policies of the Texas Transportation Commission (commission). The commission has historically used the bank to provide loans of varying size for highway projects, including relatively small loans for local government participation in department highway projects and relatively large loans for local governments' own highway projects. The commission's rules currently provide for the commission's consideration of loan applications on a first-come, first-served basis. The commission wishes to assure that funds in the bank will continue to be available for financial assistance to applicants as the need arises so it is amending the procedures for providing financial assistance from the bank.

The repeal of §6.24, Suspension of Applications, is necessary in order to adopt different notice requirements in §6.31, Department Action. Section 6.24, which requires the department to publish a notice in the *Texas Register* regarding the suspension of applications, will no longer be needed upon the adoption of the new notice requirements in §6.31(d).

Amendments to §6.31, Department Action, simplify the specified periods during which the executive director must analyze an application and prepare findings and recommendations for and submit those findings and recommendations to the commission by requiring those actions to be completed as soon as practicable. New subsection (d) requires the executive director to develop guidelines and post information on the department's website regarding available funds, limitations on the amount of bank funds available for various applicants and types of projects, application deadlines, and any other information that the executive director considers necessary for the administration of the bank in accordance with the executive director's analysis and recommendations to the commission under this chapter and the commission's direction to assure that funds in the bank will continue to be available for varying amounts of financial assistance to applicants for various types of projects as needs arise.

Amendments to §6.32, Commission Action, change the procedures regarding the commission's consideration of applications for preliminary and final approval to provide for better management of available funds in the bank. The commission wishes to assure that there will be funds available for loans of less than \$10 million for local participation in a department highway project, which typically take the form of local cost participation in a department project or the relocation of utilities necessary for a department project. The commission wishes to address the potential that local governments will apply for large loans for local government projects for which the department does not have primary responsibility, which could monopolize all of the available funds in the bank and leave no funds for a loan of less than \$10 million for local participation in a department highway project. The commission considers it important to have funds available in the bank for these smaller loans when a local government's participation is needed for a department project. Consequently, the rule amendments streamline the commission's consideration of the smaller loans that benefit department projects, while requiring applicants for large loans and loans for local government projects to compete for available funds through a prioritization process.

Currently, §6.32(a) states that the commission will consider all relevant information, including the sufficiency of the information, the probable reliability of the projections, and the anticipated fi-

ancial condition of the applicant and the project. The amendments to §6.32(a) clarify that the commission will consider all relevant information in the application together with the executive director's findings and recommendations.

Currently, §6.32(b)(1) requires that applications for financial assistance of under \$10 million will be considered by the commission for final approval without going through the preliminary approval process. The amendments limit this group of applications to those for loans of under \$10 million that will be used for local government participation in department projects.

Currently, §6.32(b)(2) requires that applications for financial assistance in the amount of more than \$10 million must be submitted to the commission for consideration for preliminary and final approval separately. The amendments to §6.32(b)(2) require that applications for financial assistance that are not subject to §6.32(b)(1) must be submitted to the commission for preliminary and final approval separately. This category of applications will include those for loans of more than \$10 million and loans of any amount for local government projects for which the department does not have primary responsibility.

Amendments to §6.32(c) add the requirements that the executive director prioritize applications that must be considered for preliminary approval and present to the commission analyses and recommendations for all complete applications received by each deadline established by the executive director in accordance with commission policies. The amendments delete the statement that the commission may consider certain factors and replace it with the requirement that the executive director must base the analyses and recommendations on specified considerations. The amendments also add factors that the executive director must consider in developing the analyses and recommendations to the commission. The amendments also clarify that the commission's preliminary approval is of an application for financial assistance from the bank rather than to a project for bank financing. These amendments are needed to implement the new prioritization and preliminary approval process that will provide for better management of available funds in the bank.

COMMENTS

No comments on the proposed repeal and amendments were received.

SUBCHAPTER C. PROCEDURES

43 TAC §6.24

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the State Infrastructure Bank.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 222, Subchapter D.

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

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SUBCHAPTER D. DEPARTMENT AND COMMISSION ACTION

43 TAC §6.31, §6.32

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code §222.077, which authorizes the commission to adopt rules to implement Transportation Code, Chapter 222, Subchapter D relating to the State Infrastructure Bank.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 222, Subchapter D.

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

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CHAPTER 7. RAIL FACILITIES SUBCHAPTER D. RAIL SAFETY

43 TAC §§7.31, 7.33, 7.34, 7.36

The Texas Department of Transportation (department) adopts amendments to §7.31, Safety Requirements, §7.33, Reports of Accidents/Incidents, §7.34, Hazardous Materials--Telephonic Reports of Incidents, and §7.36, Clearances of Structures Over and Alongside Railway Tracks, concerning Rail Safety. The amendments to §§7.31, 7.33, 7.34 and 7.36 are adopted without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2728) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The rule amendments correct statutory references, update the toll-free number for railroads to use when reporting on rail safety incidents, and clarify the application and approval process for waivers of railway clearance provisions.

Amendments to §7.31, Safety Requirements, add references to Transportation Code, Chapters 191 and 192 to the list of laws

containing safety requirements with which railroads operating in the state must comply. Both chapters provide requirements for railroad companies that are reviewed and monitored by the department.

Amendments to §7.33, Reports of Accidents/Incidents, and §7.34, Hazardous Materials--Telephonic Reports of Incidents, update the toll-free number listed for railroads to use when reporting on rail safety accidents and incidents. The changes replace the toll-free number of a customer service vendor with the number monitored by the department.

Amendments to §7.36, Clearances of Structures Over and Alongside Railway Tracks, update statutory references within the section and clarify the application and approval process for waivers to requirements related to the clearances of structures over and beside railway tracks. The amendments clarify that the commission decides whether to grant a waiver. Vernon's Texas Civil Statutes, Article 6559f, which was originally passed by the legislature in 1925, authorized the Railroad Commission, under certain conditions, by order to grant a deviation from the requirements of Articles 6559a-6559c. In 2005, the legislature transferred all powers and duties of the Railroad Commission that related primarily to railroads and the regulation of railroads to the state transportation agency. The wording of Article 6559f remained unchanged until it was codified as Transportation Code, §191.005, as a part of the legislature's codification of Texas statutes. Section 191.005 authorizes the department by order to grant a deviation (or waiver). Notwithstanding the legislature's generic use of "department" on the transfer of the Railroad Commission's duties, the authority and duties of the Railroad Commission, itself, were transferred to the Transportation Commission and the authority and duties of the staff of Railroad Commission were transferred to the department. Accordingly, the authority to grant a waiver from the requirements of Articles 6559a-6559c rests with the commission and a waiver may be granted only by commission minute order.

The amendments to §7.36 also remove the reference to 43 TAC §7.42 regarding administrative review because the decision on a waiver is made by the commission and not the executive director but expressly retain, as new subsection (e)(3) and (4), the parts of §7.42(c) providing that insufficient information will result in denial of the waiver and that there is no right of appeal.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 111, 191, 192, and 193.

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 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER C. CONTRACTING FOR ARCHITECTURAL, ENGINEERING, AND SURVEYING SERVICES

43 TAC §§9.31, 9.32, 9.34, 9.35, 9.37, 9.41

The Texas Department of Transportation (department) adopts amendments to §9.31, Definitions, §9.32, Selection Processes, Contract Types, Selection Types, and Projected Contracts, §9.34, Comprehensive Process, §9.35, Federal Process, §9.37, Accelerated Process, and §9.41, Contract Administration, concerning Contracting for Architectural, Engineering, and Surveying Services. The amendments are adopted without changes to the proposed text as published in the April 15, 2016, issue of the *Texas Register* (41 TexReg 2730) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Effective June 22, 2015, the Federal Highway Administration revised 23 CFR 172, relating to procurement, management, and administration of engineering, architectural, and surveying contracts. States were given 12 months to make corresponding revisions to their policies and procedures. The changes to the rules incorporate the updates required by federal regulations and correct citations and terminology.

Amendments to §9.31 include new definitions for "department project manager," "indefinite deliverable contract," "multiphase contract," "prime provider project manager," "Professional Engineering Procurement Services Division," "Professional Engineering Procurement Services Division Director," "proposal," "request for proposal," and "specific deliverable contract." The amendments also include revisions to the terms "consultant selection team," "non-listed category," and "relative importance factor." These new and revised definitions are necessary to provide clarity. The terms "managing office," "managing officer," and "notice of intent" are no longer used and are will be deleted.

Amendments to §9.32(b) add multiphase contract as a third contract type offered by the department and provide the maximum period of five years for an indefinite deliverable contract. Federal regulations provide the five-year maximum for federally funded contracts. The amendments apply this contract period to all indefinite deliverable contracts, whether federally or state-funded, for consistency among those contracts.

Amendments to §§9.34, 9.35, 9.37, and 9.41 update references to reflect the current names of departmental positions and entities.

Additionally, §9.35 is amended by adding subsection (d) that modifies the short list evaluation for the federal process by adding the evaluation of proposals in addition to interview for the federal process, as directed by federal regulations.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, §223.041, regarding the use by the department of private sector professional services for transportation projects, and Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act), which sets forth requirements for selection and contracting of architectural and engineering services.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2254, Subchapter A (Professional Services Procurement Act) and Transportation Code, §223.041.

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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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

Commission on State Emergency Communications

Title 1, Part 12

The Commission on State Emergency Communications (CSEC) is conducting its annual review of the definitions of the terms "local exchange access line" and "equivalent local exchange access line" as required by Health and Safety Code §771.063(c). CSEC takes no position on whether the current definitions sufficiently define the terms given the disruptive changes caused by advancements in technology, particularly with respect to mobile Internet Protocol-enabled services.

Persons wishing to comment on or recommend amendments to §255.4 may do so by submitting written comments within 30 days following

publication of this notice in the *Texas Register* to Patrick Tyler, General Counsel, Commission on State Emergency Communications, 333 Guadalupe Street, Suite 2-212, Austin, Texas 78701-3942; by facsimile to (512) 305-6937; or by email to csecinfo@csec.texas.gov. Comments should include in the subject line "Comments on CSEC's Annual Review of Rule 255.4."

TRD-201603297

Patrick Tyler

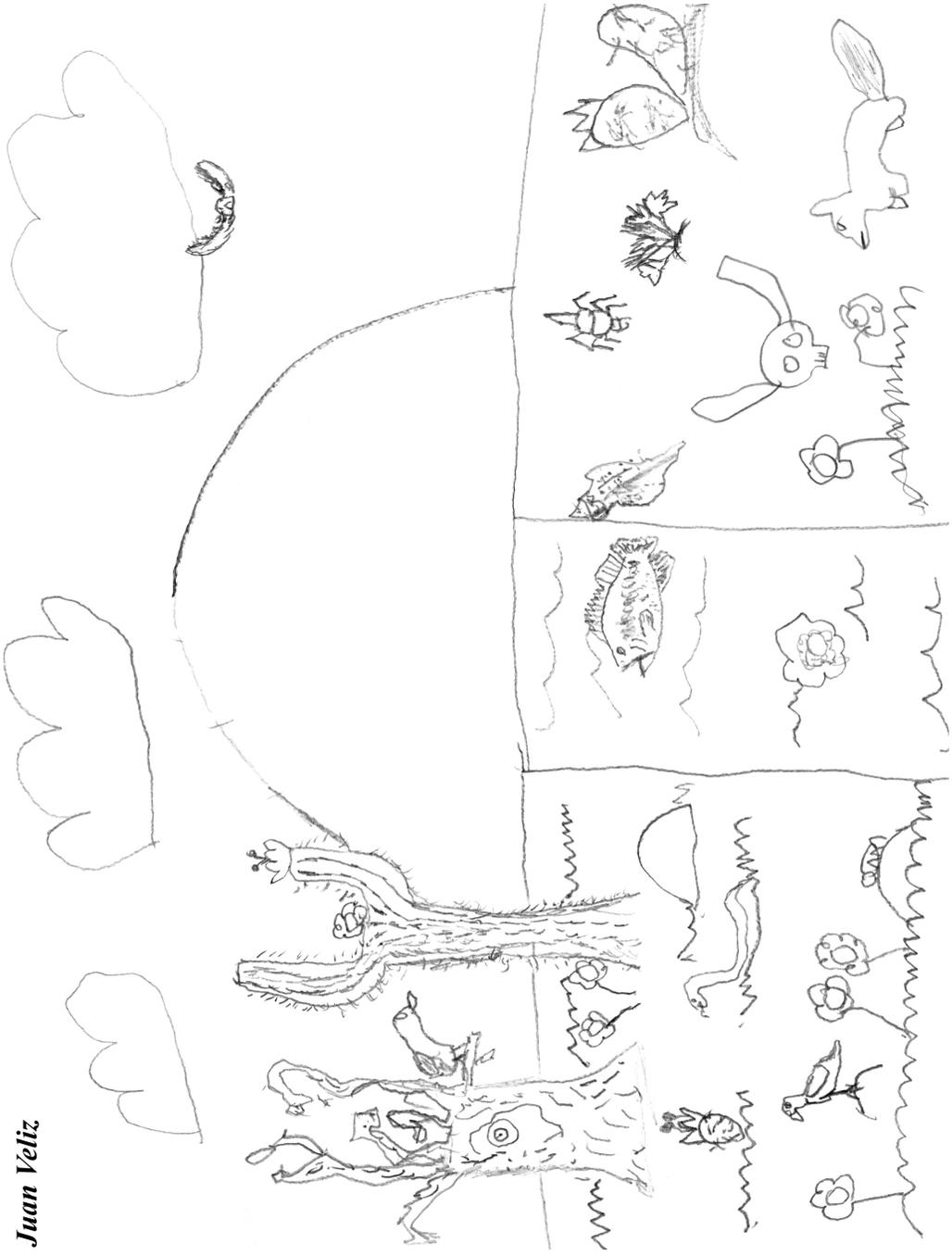
General Counsel

Commission on State Emergency Communications

Filed: June 29, 2016



Juan Véliz



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: 28 TAC §34.521(e)

**DO NOT REMOVE
EQUIPMENT IMPAIRED**

*Name,
Address, &
Telephone Number
of Fire Protection Firm*

Certificate of Registration Number

Name of Licensee

Signature

License Number

Date

OWNER'S NAME and ADDRESS:

LIST of IMPAIRMENTS:

Figure: 28 TAC §34.722(h)

**DO NOT REMOVE BY ORDER OF
TEXAS STATE FIRE MARSHAL**

16	1
17	2
18	3
19	4
20	5
21	6
22	7
23	8
24	9
25	10
26	11
27	12
28	13
29	14
30	15
31	

RED TAG

*Name & Address
of Sprinkler Firm
Phone Number
SCR-Number*

RME's License Number

Printed name of service
person

Signature of authorized
serviceperson / inspector

**IMMEDIATELY REPORT
STATUS TO OWNER
AND AHJ
IN WRITING
(within 5 business days)**

JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	2020
												2019
												2018
												2017
												2016
												2015

**DO NOT REMOVE BY ORDER OF
TEXAS STATE FIRE MARSHAL**

If the system impairments constitute an "emergency" impairment as defined in NFPA 25, attached this red tag to the applicable system riser. An authorized individual may remove this tag after a service tag has been attached indicating the condition has been corrected.

Name of Owner or Occupant

Address

Building No. or Location or System No.

List Emergency Impairments

Figure: 28 TAC §34.1302(a)

Citation	Violation	Fine	Citation	Violation	Fine
	License and Registration		34.517(e)	Fixed system not installed or serviced by Type A or EPL	\$2,000.00
6001.152(a)	Branch office registration certificate required	\$1,000.00		Installation and Service	
6001.161(a)	Apprentice permit required	\$500.00	34.517(a)(1)	Portable extinguisher not installed/serviced/maintained IAW manufacturer's instructions	\$50.00-\$500.00
6001.251(a)(1)	No registration certificate (portable)	\$3,000.00	34.517(a)(2)	Service tag not attached upon completion	\$250.00
6001.251(a)(2)	No registration certificate (fixed)	\$3,000.00	34.517(b)(1)	Fixed system not planned/installed/serviced IAW "manufacturer's Instructions"	\$50.00-\$500.00
6001.251(a)(3)	No license	\$3,000.00	34.517(b)(2)	Installation label not affixed to system upon completion	\$250.00
34.510(e)(10)(A)	No C registration for U.S. DOT extinguishers	\$2,000.00	34.517(b)(3)	Installation label not signed and affixed to system by Type A or PL licensee (non pre-engineered)	\$500.00
34.510(e)(10)(B)	No verification of U.S. DOT registration	\$2,000.00	34.517(b)(3)	Licensee who signed label was not at final test (non pre-engineered)	\$500.00
34.510(f)	Registration information not displayed on vehicle	\$250.00	34.517(b)(4)	Service tag not attached after service completion	\$500.00
34.511(f)(1)	Licensee not employed by registered firm	\$2,000.00	34.517(f)	Pre-engineered kitchen system not UL300	\$2,000.00
34.511(f)(3)	Failure to notify SFMO of termination of employee within 14 days	\$250.00	34.517(h)	Fusible link manufacturer date not within 1 year	\$500.00
34.513	Alteration of certificates, licenses, or permits	\$3,000.00	34.517(i)	Actuation cartridge not dated	\$500.00
34.514(a)(5)(b)	Failure to maintain proof of insurance on file at SFMO	\$750.00	34.517(j)	Tamper indicator not dated	\$500.00
	Adopted Standards		34.518(a)	Shop drawings not on file or not given to owner	\$500.00
34.517(a)(1)	Failure to abide by adopted standards or manufacturers requirements for portable extinguishers	\$50.00 - \$500.00	34.518(c)	Shop drawings not signed by EPL	\$500.00
34.517(b)(1)	Failure to abide by adopted standards or manufacturers requirements for fixed extinguishers		34.519(a)	Service tag not completed in detail	\$250.00
	Location and Business Practices		34.520(b)	Service tag not completed each time service is performed	\$500.00
34.510(d)	Failure to maintain business location	\$500.00	34.521(a)	Owner not notified immediately of impaired portable or fixed extinguisher	\$500.00
34.510(e)	Failure to maintain shop	\$50.00-\$500.00	34.521(a)	AHJ not notified within 24 hrs of impaired portable or fixed extinguisher	\$500.00
6001.252(a)(3)	Misrepresentation of goods or services	\$250.00-\$1,000.00	34.521(a)	Written notice to owner; copy of written notice to AHJ within 3 days	\$500.00
34.517(c)	Pre-engineered system not installed or serviced by authorized licensee	\$2,000.00	34.521(a)	Failed to attach red tag to impaired extinguisher	\$500.00
34.517(e)	Fixed system not planned by EPL or professional engineer	\$2,000.00	34.521(a)	Service tag attached to impaired extinguisher	\$1,000.00

34.514(a)(5)(B)		Lapse of Insurance			
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750

8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(b)

6002.152(a)	Branch office registration certificate required	\$1,000.00		34.617	Failure to distribute/retain certificate	\$500.00
6002.154(a)	No licensed employee	\$1000.00		34.618	Installation inspection improperly performed/documented	\$50.00- \$500.00
6002.154(b)	No license	\$3,000.00		34.618	Installation inspection improperly documented	\$500.00
6002.154(c)	Licensee not an employee of registered firm	\$750.00		34.618	Installation inspection docs not on file for 5 yrs	\$500.00
6002.301	Engage in business w/o license or registration certificate	\$3,000.00				
	Adopted Standards			34.619(a)	System/modification not planned by authorized person	\$3,000.00
34.616(b)(4)	Violation of standards established by 34.607	\$50.00- \$500.00		34.619(b)	Plans not submitted to AHJ	\$500.00
34.6616(b)(4)	Violation of standards established by manufacturers requirements (NFPA 72, §10.3.2)	\$50.00- \$500.00		34.619(b)	Plans incorrectly submitted to AHJ	\$250.00
					Labels	
	Location Business Practices			34.620(a)	Installation label not affixed to inside of control panel cover	\$500.00
34.610(a)	Failure to maintain business location	\$500.00		34.620(d)	Installation label improperly formatted or incomplete	\$500.00
34.610(b)	Designated employee	\$500.00		34.620(f)	Installation label incorrectly formatted or incomplete (1 or 2 family)	\$500.00
34.610(c)	Registration information not displayed on vehicle	\$250.00		34.621(a)	Service label not affixed to control panel cover	\$500.00
34.611(f)(2)	Failure to notify SFMO of termination of employee within 14 days	\$250.00		34.621(b)	Information about yellow or red label not on service label that corrected the impairments	\$500.00
34.616(b)(1)	Installation not performed by or under direct supervision of authorized licensee	\$3,000.00		34.623(c) (yellow) 34.624(c) (red)	Owner or AHJ not notified of impairment	\$500.00
34.616(b)(1)	Certifying licensee not licensed under ACR of primary registered firm or certifying licensee not present for final acceptance test	\$1,000.00		34.621(h)	Service label improperly formatted or incomplete	\$500.00
34.616(b)(2)	Licensee attaching label not licensed under ACR of primary registered firm	\$1,000.00		34.622(a)	Inspection/test label not filled out in detail or not affixed to inside of control panel cover	\$500.00
34.616(b)(2)	Service and maintenance not performed by or under direct supervision of authorized licensee	\$3,000.00		34.622(d)	Owner or AHJ not notified of impairment	\$500.00
6002.302(a)(3)	Misrepresentation of goods or services	\$250.00- \$1,000.00		34.622(j)	Inspection/test label incorrectly formatted/incomplete	\$500.00
	Monitoring			34.623(a)	Completed yellow label not attached to outside of control panel of impaired system	\$500.00
34.616(c)(1)	Monitoring an alarm for an unregistered firm	\$3,000.00		34.623(g)	Yellow label incorrectly formatted/incomplete	\$500.00
34.616(c)(2)(A)	Connecting an alarm to an unregistered monitoring firm	\$2,000.00		34.624(a)	Completed red label not attached to outside of impaired system	\$1,000.00
34.616(3)	No licensed technician at central station	\$1,000.00		34.624(g)	Red label improperly formatted/incomplete	\$500.00

34.613(a)(5)(B)	Lapse of Insurance				
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875

9 - 10	\$750	+	\$1,250	=	\$2,000
10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(c)

Citation	Violation	Fine	Citation	Violation	Fine
	Certificates of Registration and Licenses			Planning and Installation	
6003.151(a)	Engage in business w/o registration certificate	\$3,000.00	34.717(b)	Failed to maintain copy of updated plans	\$500.00
6003.153(b)	Act as responsible managing employee (RME) w/o holding license	\$3,000.00	34.717(c)	Plans do not contain required signatures/ information about firm or licensee	\$500.00
34.710(a)	Subcontracting to unregistered firm to perform work of fire protection sprinkler contractor	\$3,000.00	34.717(c)(2)	Plans not submitted to AHJ for review/permit/rating/record	\$500.00
34.711(a)	Firm's RME not licensed or license expired	\$1,000.00	34.717(c)(2)	Plans incorrectly submitted to AHJ	\$250.00
34.711(e)(1)	Licensee working not employed by registered firm	\$750.00		Tags	
34.711(e)(2)	Firm failed to notify SFMO of termination of employee w/in 14 days	\$250.00	34.718(a)	Installation tag not completed, not completed in detail, not attached to riser	\$500.00
	Adopted Standards		34.718(b)	ITM tag not attached to riser after installation/required tests and inspections	\$500.00
34.716(i)	Planning/installation/service not in accordance with adopted standards	\$50.00- \$500.00	34.719(a)	Service tag not completed and/or not attached to riser	\$500.00
	Location/Business Practices		34.719(c)	New service tag not attached after service	\$500.00
34.710(b)	Failure to maintain business location on certificate of registration	\$500.00	34.719(g)	Service tags improperly formatted	\$250.00
34.711(f)	Individual not licensed for work performed	\$3,000.00	34.720(a)	ITM tag not completed and/or attached to riser after scheduled inspection, testing or maintenance service	\$500.00
34.716(a)	System not installed under supervision of appropriately licensed individual	\$3,000.00	34.720(c)	New ITM tag not completed and attached after each service	\$500.00
34.716(b)	Individual did not affix material and test certificate on or near riser	\$500.00	34.720(g)	ITM tag improperly formatted	\$250.00
34.716(c)	Inspection/test/maintenance service not conducted by appropriately licensed individual	\$3,000.00	34.721(a)	Yellow tag not completed and/or attached to noncompliant system	\$500.00
34.716(d)	Records not available for examination	\$500.00	34.721(c)	Building owner/representative/AHJ not notified of noncompliant system	\$500.00
34.716(e)	Vehicles do not display co. name, tel. number and certificate of registration	\$250.00	34.721(f)	Yellow tag improperly formatted	\$250.00
34.716(g)	The planning not performed under the direct supervision of the appropriately licensed RME.	\$500.00	34.722(a)	Red tag not completed and attached to system with an emergency impairment	\$500.00
34.716(h)	Planning, installation, or service of a fire protection sprinkler system not in accord with the minimum requirements of the applicable adopted standards	\$3,000.00	34.722(b)	Owner/representative/AHJ not orally notified immediately of impairment	\$500.00
6003.252(3)	Misrepresentation	\$250.00- \$1,000.00	34.722(b)	Owner/representative/AHJ not notified in writing of impairment within 24 hours	\$500.00
	Planning and Installation		34.722(g)	Red tag improperly formatted	\$250.00
34.717(a)	Failed to provide as built plans to the owner	\$500.00			
34.717(a)	Failed to maintain a copy of plans	\$500.00			
34.717(b)	Failed to provide updated plans to owner	\$500.00			

34.713(a)(7)(B)		Lapse of Insurance			
Months	Punitive	+	Amount saved	=	Total
0 - 1	\$200	+	\$125	=	Warning Letter
1 - 2	\$500	+	\$250	=	\$750
2 - 3	\$500	+	\$375	=	\$875
3 - 4	\$500	+	\$500	=	\$1,000
4 - 5	\$500	+	\$625	=	\$1,125
5 - 6	\$500	+	\$750	=	\$1,250
6 - 7	\$750	+	\$875	=	\$1,625
7 - 8	\$750	+	\$1,000	=	\$1,750
8 - 9	\$750	+	\$1,125	=	\$1,875
9 - 10	\$750	+	\$1,250	=	\$2,000

10 - 11	\$750	+	\$1,375	=	\$2,125
11 - 12	\$750	+	\$1,500	=	\$2,250

Figure: 28 TAC §34.1302(d)

Code	GENERAL	FINE	Code	PATHWAYS/CORRIDORS OF EGRESS cont	Fine
34.817(m)	TRASH, cardboard or high grass within 10 ft of site	\$50.00	36.2.5.8	No clear exit path AROUND CHECKOUT aisle	\$250.00
34.832(12)	Supervisor less than 18 YEARS OLD (site closed until corrected)	\$500.00	7.11.5	Building has DEAD END CORRIDORS	\$150.00
34.832(12)	Individuals less than 16 YEARS OLD SELLING Fireworks	\$50.00	7.2.1.11.1	Turnstile, ropes or other DEVICES OBSTRUCT EGRESS	\$150.00
34.817(h)	Operator consuming or under influence of ALCOHOL	\$500.00		EXIT DOORS	
2154.252(c)	Fireworks sold or offered to CHILDREN under 16 years old or to an intoxicated or incompetent person	\$500.00	7.11.4	Less than TWO means of EGRESS if room >200 sqft	\$500.00
34.817(l)	No off highway PARKING provided	\$100.00	7.11.1	No EXIT WITHIN 75 ft of any point in the building	\$150.00
34.817(g)	SMOKING inside the site	\$500.00	7.7.1	Exits do not TERMINATE in open space (i.e. blocked)	\$150.00
34.817(g)	SMOKING outside within 10 feet of site	\$250.00	7.2.1.2.3.2	DOOR OPENINGS less than 32" wide	\$150.00
2154.202(g)	Selling fireworks OUTSIDE selling SEASON	\$250.00 TO \$500.00	7.2.1.4.2	Door "doesn't SWING OUT in direction of egress	\$250.00
	FIREWORKS STORAGE		7.2.1.3.1	Floor ELEVATION change Interior >½" or Exterior door >8"	\$100.00
34.832(6)	Stored fireworks in sales area ACCESSIBLE to public	\$100.00	7.2.1.3.3	THRESHOLD at door exceeds ½" in height	\$100.00
34.832(7)	Fireworks storage room not RESTRICTED to employees only	\$100.00	7.11.6	DOORS latch or lock not fire or PANIC HARDWARE	\$1,000.00
34.832(7)	"NO SMOKING" signs not posted in storage room	\$50.00	7.2.1.5.2	Doors have KEY LOCKS on egress side.	\$500.00
	STORAGE (and retail sales) OVER 500 CASES		7.2.1.4.1(3)	Ex (a&c) Not LOCKED OPEN when occupied	\$250.00
34.823(a2)	Not of SOLID CONSTRUCTION or sound engineering	Case	7.2.1.4.1(3)	Ex (b) No "This Door To Remain OPEN etc..." SIGN	\$100.00
34.823(a3)	Electrical does not meet NATIONAL ELECTRIC CODE	\$25.00 TO \$250.00	Code	EXIT DOORS (cont)	Fine
34.823(a3)	No outside MASTER ELECTRICAL SWITCH	\$250.00	7.2.1.4.1(3)	Ex (e) No ONE PANIC hardware door without a roll-up	\$500.00
34.823(a4A)	LESS 50ft from inhabited bldg(s) or surface of highways	\$500.00		SIGNS	
34.823(a4A)	Not in compliance with distances in TABLE 1 34.824	\$500.00	7.10.1.2.1	Not all exits have "EXIT" SIGNS. (if exit not obvious)	\$100.00
34.823(a4B)	WINDOWS or sunlight on fireworks not diffused	\$50.00	7.10.6.1.1	"EXIT" SIGNS NON-COMPLIANT with standard	\$50.00
34.823(a4C)	STOVE, exposed flame or electric heater in storage area	\$500.00	7.10.2.1	Missing DIRECTIONAL SIGNS to exits (if not apparent)	\$50.00
34.823(a4D)	Swing EXIT DOOR locked, not marked or obstructed	\$250.00	7.10.6.2.1	Directional SIGNS NON-COMPLIANT with standard	\$50.00
34.823(a4E)	No Class A EXTINGUISHER for each 1000 sqft of floor	\$100.00	7.10.8.3	Missing "NO EXIT" sign on doors that could be mistaken	\$250.00
34.823(a4F)	Brush, dry grass, leaves or COMBUSTIBLES within 10ft	\$100.00	34.817(g)	"NO SMOKING" sign not posted OUTSIDE entrance doors	\$100.00
34.823(a4G)	Missing "NO SMOKING" signs. (4" letters)	\$100.00	34.817(g)	"NO SMOKING" sign not posted INSIDE entrance doors	\$100.00
34.823(a5)	No fence, SECURITY ALARM or 24 hr. personnel on site	\$500.00	34.817(g)	"NO SMOKING" sign not posted several location inside	\$100.00
34.823(a6)	Class I COMBUSTIBLES (gasoline) less 100 ft from bldg	\$100.00	34.817(g)	"NO SMOKING" sign lettering less than 4 inches high	\$50.00
34.823(a6)	CLASS I dispensing or vents less than 100 ft from bldg (site closed)	\$500.00		EMERGENCY LIGHTING (if over 3000 sq.ft.)	
34.823(b1)	No SUPERVISOR at least 18 years old on duty (site closed until corrected)	\$500.00	36.2.9	No EMERGENCY LIGHTING provided	\$500.00
34.832(3A)	< 60ft from INHABITED bldg. (w/o permit before 11-18-02)	\$500.00	7.8.1.3	Emergency lighting doesn't ILLUMINATE paths of egress	\$250.00
34.832(3B)	< 30ft from PROPERTY line (w/o permit before 11-18-02)	\$250.00	7.9.2.1	Emergency lighting DURATION is less than 1½ hrs	\$250.00
34.832(3C)	Does not comply with TABLE 1 or have fire sprinklers	\$500.00	7.9.3.1.1	No RECORD of emergency lighting inspection & TEST	\$100.00
	PATHWAYS/CORRIDORS OF EGRESS			STRUCTURE	
36.2.5.5	Means of EGRESS/AISLES less than 36 inches	\$150.00	34.832(1)	Building is not FREE STANDING or durable	Case
36.2.5.10	Means of egress < 36" + CART LENGTH (if using carts)	\$150.00	34.832(1)	Mezzanine or 2nd STORY accessible to the public	\$150.00
34.817(e)	Path to exit door OBSTRUCTED	\$250.00	34.832(1)	Selling from a TENT, boat, or mobile vehicle (site closed)	\$500.00
7.1.10.1	Egress not CONTINUALLY FREE of obstructions	\$150.00	34.817(k)	Bldg. single or multi-family RESIDENTIAL STRUCTURE (site closed)	\$500.00
	STRUCTURE cont	Fine		STAIRS	Fine
34.832(1)	Sales area Multi-Use (other business) or MULTI-TENANT (site closed)	\$500.00	7.2.2.2.1	RISER not 4"-7" or TREADS less than 11" wide	\$100.00
34.832(18)	Sales area >2500 sqft with ave. CEILING HEIGHT < 12 ft	\$500.00	7.2.2.2.1.2	Less than 36" WIDE or < 56" wide if occupancy over 2000	\$100.00
34.832(10)	Stored behind glass with impinging direct SUNLIGHT	\$50.00	7.2.2.3.3.1	Stairs treads not SOLID	\$100.00
34.832(14)	No outside MASTER electrical switch	\$100.00	7.2.2.4.1.1	No HANDRAILS 34" to 38" high provided	\$100.00
9.1.2	Electrical WIRING and equipment APPEAR HAZARDOUS	\$25.00 TO \$250.00	7.1.8	Open stairs over 30" rise without a GUARD RAIL	\$100.00
	INTERIOR			STAIR LANDINGS	
34.832(5)	Inadequate PREVENTION of customers handling fwks	\$100.00	7.2.2.3.2.1	No LANDING at door opening	\$100.00
34.832(5)	RESTRAINT around displayed fireworks not durable	\$100.00	7.2.2.3.2.3	Landing LENGTH in direction of travel is less than width	\$100.00
34.832(5)	Customers HANDLING fireworks w/o attendant assistance	\$50.00	7.2.2.3.3.1	Horizontal landing not SOLID (i.e. grating or see through)	\$100.00
34.832(9)	small quantities of unused BOXES in sales/storage area	\$50.00		HANDRAILS	
34.832(11)	EXTENSION CORD located where public can walk over	\$50.00	7.2.2.4.4.1	Not 34" to 38" HIGH above leading edge of tread	\$100.00
34.832(11)	EXTENSION CORD supplies > one device w/o power strip	\$50.00	7.2.2.4.4.5	Less than 2¼" CLEARANCE between rail and wall	\$100.00

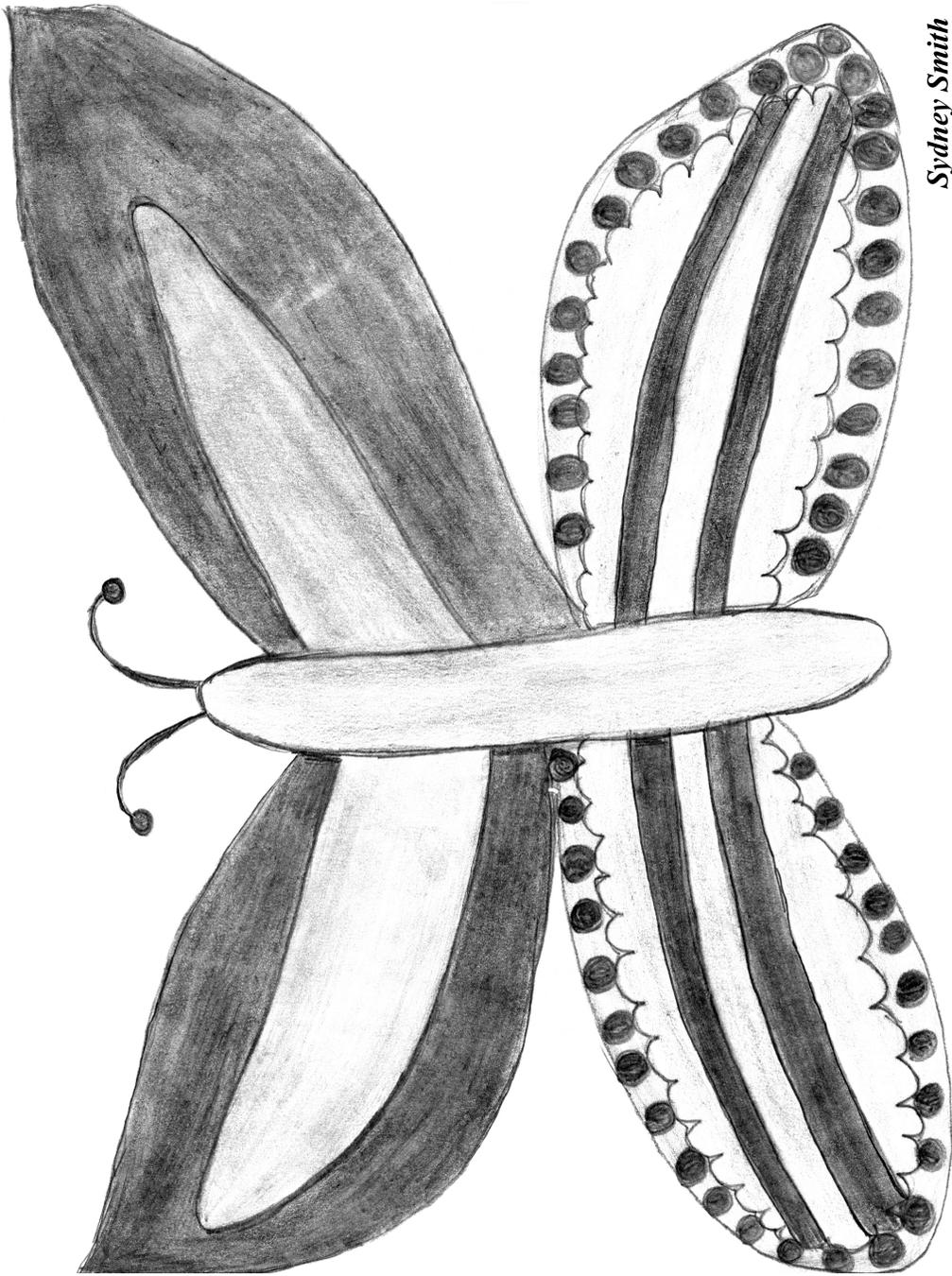
34.832(11)	EXTENSION CORD unprotected from accidental damage	\$50.00		7.2.2.4.4.6	Handrails are not a CIRCULAR cross-section of 1½" to 2"	\$100.00
34.832(11)	EXTENSION CORD used in lieu of fixed structural wiring	\$25.00		7.2.2.4.4.7	Rail is not CONTINUOUS	\$100.00
34.832(11)	Power STRIP without internal circuit breaker	\$25.00		7.2.2.4.4.6	Improper TERMINATION or EXTENSION of rail	\$100.00
34.832(13)	Trash CONTAINERS not METAL or heavy plastic	\$25.00			GUARD RAILS	
34.832(13)	Trash CONTAINERS < 10ft AWAY from fireworks	\$250.00		7.1.8	No GUARD RAIL where egress is > 30" above floor/grade	\$100.00
34.832(15)	SPACE HEATER in sales/storage areas	\$100.00		7.2.2.4.5.2	Guard RAIL is less than 42" high.	\$100.00
34.832(17)	COOKING EQUIPMENT in sales/storage areas	\$100.00		7.2.2.4.5.3	Over 4" between any point in VERTICAL RAILS up to 34" high	\$100.00
34.817(d)	No 2A EXTINGUISHER per 2,000 sqft & within 75 ft travel	\$500.00			RAMPS	
34.817(p)	Internal combustion ENGINES operating inside retail site	\$500.00		7.2.5.3.2(1).	No LANDING at top, bottom or at door openings.	\$100.00
36.3.3.2	Interior wall and ceiling FINISH is not type Class A or B	\$500.00		Tab 7.2.5.2	Single ramp in excess of a 30° RISE.	\$100.00
6.1.14.4.1	No FIREWALL -Btwn High Hazard & other occup > 200 sqft	\$500.00		Tab 7.2.5.2	SLOPE in excess of 1 in 8	\$100.00
	PAPERWORK			Tab 7.2.5.2	Less than 30" WIDE	\$100.00
34.817(j)	Original permit not posted in sales area	\$100.00		7.2.5.3.1(1)	Not permanent FIXED construction	\$100.00
34.817(j)	No permit (site closed until corrected)	\$500.00		7.2.5.3.1(4)	Not SOLID construction.	\$100.00
34.832(8)	Local FD or County FD not NOTIFIED of location in writing	\$100.00		7.2.5.4	No GUARD or HANDRAIL on ramp with rise over 6"	\$100.00
34.832(16)	PLAN not on file at SFMO office (site closed until corrected)	\$250.00			BULK MERCHANDISING >12,000 sqft	
	FIREWORKS			36.4.5	Violation(s) of Bulk Merchandising requirements	Case
2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	\$1,000.00			OTHER NFPA LIFE SAFETY CODE	
2154.003(b)	ILLEGAL fireworks (Bottle or Pop Rockets, M-80's)	\$1,000.00				
2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	\$500.00		34.832(19)	Violations of NFPA 101 the Life Safety Code®	Case
34.817(o)	Fireworks do not conform to USCPS LABELING	\$500.00		9.1.2	One or more FAULTS identified on Receptacle tester	\$25.00
34.817(i)	OTHER than fireworks or fireworks promotional items	100.00				

Figure: 28 TAC §34.1302(e)

Code	Violation	Penalty
Occupations Code §2154.003	Illegal fireworks e.g. Bottle or Pop Rockets, M-80's	\$1,000
Occupations Code §2154.251(2)	Sell <100' from storage and dispensing of flammables (closed until corrected)	\$500
Occupations Code §2154.252(c)	Fireworks sold or offered to children under 16 or to an intoxicated or incompetent person	\$500
Occupations Code §2154.254	Sales personnel <16 years of age	\$500
28 TAC §34.809(c)	No permit (stand closed until corrected)	\$500
28 TAC §34.809(c)	Original permit not posted	\$100
28 TAC §34.817(a)	Stand not supervised, 18 years of age or older (closed until corrected)	\$500
28 TAC §34.817(d)	No equipment to extinguish small exterior fires	\$50
28 TAC §34.817(e)	Exit pathway obstructed	\$50
28 TAC §34.817(g)	Smoking inside the stand	\$500
28 TAC §34.817(g)	Smoking within 10 ft of stand	\$250
28 TAC §34.817(g)	"NO SMOKING" signs not posted (4" letters)	\$50
28 TAC §34.817(h)	Stand operator consuming or under influence of alcohol (closed until corrected)	\$500
28 TAC §34.817(l)	No off highway parking provided	\$100
28 TAC §34.817(f), (k)	Selling fireworks from a single or multi-family residential structure, tent, or motor vehicle	\$500
28 TAC §34.817(j)	No permit for retail stand (1 for ea. non connected stand) (stand closed until corrected)	\$100
28 TAC §34.817(m)	Trash, empty cardboard boxes, or high grass within 10 ft of stand	\$50
28 TAC §34.817(o)	Fireworks do not conform to USCPS LABELING	\$500
28 TAC §34.818(2)	Violations related to exit doors and proper operation	\$100
28 TAC §34.818(5)-(8)	Violations related to electrical inside and outside stand	\$100
28 TAC §34.818(9)	Violations related to generator location/no portable extinguisher	\$100
28 TAC §34.818(10)	Electric heater does not have a tip over cutoff switch	\$50
28 TAC §34.818(10)	Heat or light source with open flames in stand	\$100

Figure: 28 TAC §34.1302(f)

CODE	VIOLATION	FINE
2154.252(b)	Offering 1.4G fireworks for sale from other than an authorized retail location	\$1,000.00
2154.252(d)	Sells fireworks to person who does not hold license or permit	\$1,000.00
34.815(b)(1)	Purchase of 1.4G Fireworks from an unlicensed distributor or jobber.	\$500.00
2154.201(a)	Issue other permit to a person under 18 years old.	\$500.00
34.815(c)(1)	Failed to return permits by March 1st	\$100.00
34.832(16)	No site plan on file with SFMO	\$1,000.00
34.809(a)	Conduct 1.3G display without a permit	\$3,000.00
34.809(a)	Conduct a display without the appropriate licensed operator	\$3,000.00
34.826(c)	Failed to conduct display in compliance with NFPA 1123	\$500.00- \$1,000.00
34.826(f)	Failed to conduct a proximate display in compliance with NFPA 1126	\$500.00- \$1,000.00
34.826(h)	Used a flame effect and failed to comply with NFPA 160	\$500.00- \$1,000.00



Sydney Smith
9th Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Comptroller of Public Accounts

Request for Proposals

Pursuant to §2107.003(c), Texas Government Code, the Comptroller of Public Accounts ("Comptroller"), announces its issuance of a Request for Proposals No. 218e ("RFP") for the purpose of obtaining collection services from a qualified firm for the collection of delinquent state tax accounts that do not meet referral requirements or are otherwise uncollectable by the Texas Attorney General, but are required by law to be collected by the Comptroller (Tier I Accounts). The successful respondent, if any, will be expected to begin performance of the contract on or before December 31, 2016.

Contact: Parties interested in submitting a proposal should contact Cynthia Stapper, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. Central Time ("CT") on Friday, July 15, 2016.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Friday, July 22, 2016. Prospective proposers are encouraged to e-mail Questions to contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, July 29, 2016, the Comptroller expects to post responses to questions on the ESBD. *Questions received after the deadline will not be considered. Respondents shall be solely responsible for verifying timely receipt of Questions in the Issuing Office.*

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. CT, on Friday, August 12, 2016. *Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for ensuring timely receipt of Proposals in the Issuing Office.*

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - July 15, 2016, after 10:00 a.m. CT; Questions Due - July 22, 2016, 2:00 p.m. CT; Official Responses to Questions posted - July 29, 2016; Proposals Due - August 12, 2016, 2:00 p.m. CT; Contract Execution - September 16, 2016, or as soon thereafter as practical; Commencement of Work - December 31, 2016. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201603374

Cynthia Stapper
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 6, 2016



Request for Proposals

Pursuant to §2107.003(c-1), Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller"), announces its issuance of a Request for Proposals No. 218f ("RFP") for the purpose of obtaining collection services from a qualified firm for the collection of delinquent state tax accounts that are uncollectable by the Texas Attorney General, but are required by law to be collected by Comptroller (Tier II Accounts). The successful respondent, if any, will be expected to begin performance of the contract on or before December 31, 2016.

Contact: Parties interested in submitting a proposal should contact Cynthia Stapper, Assistant General Counsel, Contracts, Texas Comptroller of Public Accounts, in the Issuing Office at: 111 E. 17th St., Room 201, Austin, Texas 78774, (512) 305-8673. The RFP will be available electronically on the *Electronic State Business Daily* ("ESBD") at: <http://esbd.cpa.state.tx.us> after 10:00 a.m. Central Time ("CT") on Friday, July 15, 2016.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Friday, July 22, 2016. Prospective proposers are encouraged to e-mail Questions to contracts@cpa.texas.gov to ensure timely receipt. On or about Friday, July 29, 2016, the Comptroller expects to post responses to questions on the ESBD. *Questions received after the deadline will not be considered. Respondents shall be solely responsible for verifying timely receipt of Questions in the Issuing Office.*

Closing Date: Proposals must be delivered in the Issuing Office to the attention of the Assistant General Counsel no later than 2:00 p.m. CT, on Friday, August 12, 2016. *Late Proposals will not be considered under any circumstances. Respondents shall be solely responsible for ensuring timely receipt of Proposals in the Issuing Office.*

Evaluation criteria: Proposals will be evaluated under the evaluation criteria outlined in the RFP. Comptroller and the Board each reserve the right to accept or reject any or all proposals submitted. Comptroller and the Board are not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller and the Board shall not pay for any costs incurred by any entity in responding to this Notice or to the RFP.

The anticipated schedule of events pertaining to this solicitation is as follows: Issuance of RFP - July 15, 2016, after 10:00 a.m. CT; Questions Due - July 22, 2016, 2:00 p.m. CT; Official Responses to Questions posted - July 29, 2016; Proposals Due - August 12, 2016, 2:00 p.m. CT; Contract Execution - September 16, 2016, or as soon thereafter as practical; Commencement of Work - December 31, 2016. Comptroller reserves the right, in its sole discretion, to change the dates listed for the anticipated schedule of events. Any amendment to this solicitation will be posted on the ESBD as a RFP Addendum. It is

the responsibility of interested parties to periodically check the ESBD for updates to the RFP prior to submitting a proposal.

TRD-201603375

Cynthia Stapper

Assistant General Counsel, Contracts

Comptroller of Public Accounts

Filed: July 6, 2016

Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §§303.003, 303.005 and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/16 - 07/17/16 is 18% for Consumer¹/Agricultural/Commercial² credit through \$250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 07/11/16 - 07/17/16 is 18% for Commercial over \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009³ for the period of 07/01/16 - 07/31/16 is 18% or Consumer/Agricultural/Commercial credit through \$250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 07/01/16 - 07/31/16 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.

³ For variable rate commercial transactions only.

TRD-201603360

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Filed: July 5, 2016

Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is August 15, 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 August 15, 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: 7-ELEVEN, INCORPORATED dba 7-Eleven 36304; DOCKET NUMBER: 2016-0493-PST-E; IDENTIFIER: RN100621630; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.49(a)(4) and TWC, §26.3475(d), by failing to provide corrosion protection for all underground and/or totally or partially submerged metal components of an underground storage tank system; PENALTY: \$5,625; ENFORCEMENT COORDINATOR: Jessica Bland, (512) 239-4967; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(2) COMPANY: Andrew B. Rocha; DOCKET NUMBER: 2016-0982-WOC-E; IDENTIFIER: RN109212514; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license (water program); PENALTY: \$175; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1212, (915) 834-4949.

(3) COMPANY: Billy W. Sensat, Sr.; DOCKET NUMBER: 2016-0960-OSS-E; IDENTIFIER: RN105474894; LOCATION: Bronson, Sabine County; TYPE OF FACILITY: on-site sewage facility (OSSF); RULE VIOLATED: 30 TAC §285.61(4), by failing by an installer, to ensure that an authorization to construct has been issued prior to beginning construction of an OSSF; PENALTY: \$175; ENFORCEMENT COORDINATOR: Jill Hoglund, (512) 239-4564; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(4) COMPANY: City of Arlington; DOCKET NUMBER: 2016-0380-WQ-E; IDENTIFIER: RN101385714; LOCATION: Arlington, Tarrant County; TYPE OF FACILITY: public water supply; RULE VIOLATED: TWC, §26.121(a)(2), by failing to prevent the unauthorized discharge of other waste into or adjacent to any water in the state; PENALTY: \$42,750; Supplemental Environmental Project offset amount of \$42,750; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: City of Gladewater; DOCKET NUMBER: 2016-0387-MWD-E; IDENTIFIER: RN101916526; LOCATION: Gladewater, Upshur 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 WQ0010433001, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, by failing to comply with permitted effluent limitations; PENALTY: \$11,250; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(6) COMPANY: City of Palestine; DOCKET NUMBER: 2015-1676-PWS-E; IDENTIFIER: RN101384576; LOCATION: Palestine, An-

derson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m), by failing to ensure the good working condition and general appearance of the system's facilities and equipment; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe that cross connections or other potential contamination hazards exist; and 30 TAC §290.46(m)(1)(A), by failing to timely conduct annual tank inspections on the interior of the tanks; PENALTY: \$16,144; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: EXXON MOBIL CORPORATION; DOCKET NUMBER: 2016-0326-PST-E; IDENTIFIER: RN102579307; LOCATION: Baytown, Harris County; TYPE OF FACILITY: fleet refueling facility; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: \$54,861; Supplemental Environmental Project offset amount of \$21,944; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(8) COMPANY: Fort Bend County Municipal Utility District Number 37; DOCKET NUMBER: 2016-0651-MWD-E; IDENTIFIER: RN102179595; LOCATION: Houston, Fort Bend 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 WQ0012370001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; and TWC, §5.702 and 30 TAC §290.51(a)(6), by failing to pay Public Health Service fees and associated late fees for TCEQ Financial Administration Division Account Number 90790189 for Fiscal Year 2016; PENALTY: \$2,750; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(9) COMPANY: Harris County Municipal Utility District Number 304; DOCKET NUMBER: 2016-0460-MWD-E; IDENTIFIER: RN102097771; LOCATION: Houston, Harris 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 WQ0013564001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: \$4,500; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(10) COMPANY: Jefferson County; DOCKET NUMBER: 2016-0518-PST-E; IDENTIFIER: RN101823490; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: fleet fueling facility; RULES VIOLATED: 30 TAC §334.605(a), by failing to ensure that certified Class A and Class B operators are re-trained within three years of their last training date; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps including the dispenser sumps, manways, overspill containers, or catchment basins associated with the underground storage tank (UST) system at least once every 60 days to assure that the sides, bottoms, and any penetration points are maintained liquid-tight and free of any liquid or debris; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing

to monitor the USTs for releases at a frequency of at least once every month; PENALTY: \$4,301; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(11) COMPANY: Justin Burch and Jim Schmidt; DOCKET NUMBER: 2016-0529-MSW-E; IDENTIFIER: RN109135038; LOCATION: Mason, Mason County; TYPE OF FACILITY: unauthorized municipal solid waste (MSW) disposal site; RULE VIOLATED: 30 TAC §330.15(c), by failing to not cause, suffer, allow, or permit the unauthorized disposal of MSW; PENALTY: \$2,500; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7035, (325) 655-9479.

(12) COMPANY: KIDS MIRACLE VENTURE, INCORPORATED dba Brownies; DOCKET NUMBER: 2016-0383-PST-E; IDENTIFIER: RN101557205; LOCATION: Bedford, Tarrant County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; PENALTY: \$3,375; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: MULLEN-TELLES, INCORPORATED; DOCKET NUMBER: 2016-0361-WQ-E; IDENTIFIER: RN108981812; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(b), by failing to register the APO no later than 10 business days before the beginning date of regulated activities; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: \$5,938; ENFORCEMENT COORDINATOR: Steven Van Landingham, (512) 239-5717; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(14) COMPANY: SHERENA CORPORATION dba Main Stop #2; DOCKET NUMBER: 2016-0368-PST-E; IDENTIFIER: RN101488542; LOCATION: Austin, Travis County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month; 30 TAC §334.51(a)(6) and TWC, §26.3475(c)(2), by failing to assure that all spill and overflow prevention devices are maintained in good operating condition; and 30 TAC §334.49(a)(4), (b)(2), (d)(1)(A), and (B), and TWC, §26.3475(d), by failing to provide corrosion protection for all underground and/or totally or partially submerged metal components which are designed or used to convey, contain, or store regulated substances and failing to inspect and test the metal components at least once every three years to ensure that the metal components remain electrically isolated; PENALTY: \$5,809; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: SOUTHWESTERN PUBLIC SERVICE COMPANY; DOCKET NUMBER: 2015-1849-IWD-E; IDENTIFIER: RN100224641; LOCATION: Amarillo, Potter County; TYPE OF FACILITY: power plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0001990000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, Outfall Numbers 003, 005, 008, and 009, by failing to comply with permitted effluent limits;

PENALTY: \$18,750; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(16) COMPANY: The Mission Texas International Training Center; DOCKET NUMBER: 2015-1209-PWS-E; IDENTIFIER: RN106454978; LOCATION: Weatherford, Parker County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the second quarter of 2014 - the first quarter of 2015, and failing to provide public notification and submit a copy of the notification to the ED regarding the failure to submit a DLQOR to the ED for the second and third quarters of 2014; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failed to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements for the January 1, 2014 - June 30, 2014 and July 1, 2014 - December 31, 2014 monitoring periods; 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 ED regarding the failure to conduct routine coliform monitoring for the months of October 2013 and July 2014; PENALTY: \$580; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201603332

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 1, 2016



Enforcement Orders

An agreed order was adopted regarding City of Alpine, Docket No. 2014-0519-MLM-E on July 6, 2016 assessing \$61,698 in administrative penalties with \$12,339 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, 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 Hawk Cove, Docket No. 2014-0755-MWD-E on July 6, 2016 assessing \$8,000 in administrative penalties with \$1,600 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 W.T. Byler Co., Inc., Docket No. 2014-1699-AIR-E on July 6, 2016 assessing \$11,901 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 City of Henderson, Docket No. 2014-1718-MWD-E on July 6, 2016 assessing \$29,625 in administrative penalties.

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 Exxon Mobil Corporation, Docket No. 2015-0039-AIR-E on July 6, 2016 assessing \$105,529 in administrative penalties with \$21,105 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 Linde Gas North America LLC, Docket No. 2015-0685-AIR-E on July 6, 2016 assessing \$31,200 in administrative penalties with \$6,240 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, 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 Blueberry Hills Water Works, L.L.C., Docket No. 2015-0736-PWS-E on July 6, 2016 assessing \$345 in administrative penalties with \$345 deferred.

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 K & K Construction, Inc., Docket No. 2015-0782-AIR-E on July 6, 2016 assessing \$11,431 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 ARSHAM METAL INDUSTRIES, INC., Docket No. 2015-0858-AIR-E on July 6, 2016 assessing \$30,449 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Elizabeth Carroll Harkrider, 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 Rafael Ayala, Docket No. 2015-1143-IHW-E on July 6, 2016 assessing \$18,750 in administrative penalties with \$15,150 deferred.

Information concerning any aspect of this order may be obtained by contacting Danielle Porras, 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 Cisco, Docket No. 2015-1159-MWD-E on July 6, 2016 assessing \$19,975 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Larry Butler, 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 Wake Village, Docket No. 2015-1172-WQ-E on July 6, 2016 assessing \$17,500 in administrative penalties with \$3,500 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 BEECHWOOD WATER SUPPLY CORPORATION, Docket No. 2015-1213-MWD-E on July 6, 2016 assessing \$8,562 in administrative penalties with \$1,712 deferred.

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 ExxonMobil Oil Corporation, Docket No. 2015-1232-AIR-E on July 6, 2016 assessing \$50,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, 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 The Dow Chemical Company, Docket No. 2015-1242-AIR-E on July 6, 2016 assessing \$15,188 in administrative penalties with \$3,037 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, 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 Smith Oil Company, Inc. dba Ottos 15, Docket No. 2015-1259-PST-E on July 6, 2016 assessing \$13,628 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Ryan Rutledge, 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 City of Three Rivers, Docket No. 2015-1320-MLM-E on July 6, 2016 assessing \$8,987 in administrative penalties with \$1,796 deferred.

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 City of Plano, Docket No. 2015-1349-WQ-E on July 6, 2016 assessing \$20,625 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 TXI Operations, LP, Docket No. 2015-1396-AIR-E on July 6, 2016 assessing \$22,688 in administrative penalties with \$4,537 deferred.

Information concerning any aspect of this order may be obtained by contacting Raime Hayes-Falero, 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 Billy Causey, Docket No. 2015-1403-PST-E on July 6, 2016 assessing \$9,187 in administrative penalties with \$7,987 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 ExxonMobil Oil Corporation, Docket No. 2015-1439-AIR-E on July 6, 2016 assessing \$10,875 in administrative penalties with \$2,175 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio R. Gutierrez, 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 Military Highway Water Supply Corporation, Docket No. 2015-1452-PWS-E on July 6, 2016 assessing \$417 in administrative penalties with \$417 deferred.

Information concerning any aspect of this order may be obtained by contacting Holly Kneisley, 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 INVISTA S.a.r.l., Docket No. 2015-1467-AIR-E on July 6, 2016 assessing \$25,438 in administrative penalties with \$5,087 deferred.

Information concerning any aspect of this order may be obtained by contacting Eduardo Heras, 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 Masco Cabinetry LLC, Docket No. 2015-1513-AIR-E on July 6, 2016 assessing \$29,838 in administrative penalties with \$5,967 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, 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 Kenedy, Docket No. 2015-1515-PWS-E on July 6, 2016 assessing \$18,758 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Epifanio Villareal, 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 KAMIL ENTERPRISES, INC. dba Mega Royal Mart, Docket No. 2015-1627-PST-E on July 6, 2016 assessing \$8,250 in administrative penalties with \$1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Stump, 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 Gary D. Steed dba Canyon Dam Mobile Home Park and Patty M. Steed dba Canyon Dam Mobile Home Park, Docket No. 2015-1679-PWS-E on July 6, 2016 assessing \$1,793 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Steven Hall, 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 Larry Rambo dba Rambo Trucking, Docket No. 2015-1727-WQ-E on July 6, 2016 assessing \$10,000 in administrative penalties with \$2,000 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 WALNUT GROVE WATER SUPPLY CORPORATION, Docket No. 2015-1743-PWS-E on July 6, 2016 assessing \$1,150 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, 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 Fayette Water Supply Corporation, Docket No. 2015-1781-PWS-E on July 6, 2016 assessing \$345 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Boyett, 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 Orange County Water Control and Improvement District No. 2, Docket No. 2015-1801-MWD-E on July 6, 2016 assessing \$11,775 in administrative penalties with \$2,355 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 THE CONSOLIDATED WATER SUPPLY CORPORATION, Docket No. 2016-0050-PWS-E on July 6, 2016 assessing \$345 in administrative penalties with \$345 deferred.

Information concerning any aspect of this order may be obtained by contacting Ryan Byer, Enforcement Coordinator at (512) 239-2545, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201603377

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 6, 2016



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 **August 15, 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 August 15, 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: Douglas A. Bateman d/b/a Bateman Water Works; DOCKET NUMBER: 2015-1137-PWS-E; TCEQ ID NUMBER: RN101198778; LOCATION: 8810 1/2 Bateman Boulevard near Rosharon, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of each quarter, provide public notification, and submit a copy of the public notification to the ED regarding the failure to submit DLQORs; 30 TAC §290.117(c)(2)(B) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory and submit the results to the ED and, 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; 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 ED regarding the failure to submit DLQORs to the ED; PENALTY: \$1,375; 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.

(2) COMPANY: RJMD Enterprises Inc d/b/a Harris Food Mart; DOCKET NUMBER: 2015-1561-PST-E; TCEQ ID NUMBER: RN101727113; LOCATION: 6503 Harrisburg Boulevard, Houston, Harris 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 §115.242(d)(9), by failing to post operating instructions conspicuously on the front of each gasoline dispensing pump equipped with a Stage II vapor recovery system; THSC, §382.085(b) and 30 TAC §115.242(d)(3), by failing to maintain the Stage II vapor recovery system in proper operating condition, as specified by the manufacturer and/or any applicable California Air Resources Board Executive Order, and free of defects that would impair the effectiveness of the system, including the absence or disconnection of any component that is part of the approved system; 30 TAC §334.45(e)(2)(D), by failing to equip all fill pipes in an UST system with a removable or permanent factory-constructed drop tube extending to within 12 inches of the tank bottom; and 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); PENALTY: \$5,164; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(3) COMPANY: S.B. INTERESTS, INC. d/b/a Time Out 1; DOCKET NUMBER: 2014-1510-PST-E; TCEQ ID NUMBER: RN102890407; LOCATION: 1800 Woodworth Boulevard, Port Arthur, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a former convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3) and §334.54(e)(2), by failing to notify the agency of the change or additional information regarding the UST system within 30 days from the date of the occurrence of the change or addition; 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; TWC, §26.3475(c)(1) and 30 TAC §334.54(c)(2), by failing to monitor for releases a UST system which contained regulated substances; and TWC, §26.3475(d) and 30 TAC §334.54(c)(1), by failing to provide proper corrosion protection for the UST system; PENALTY: \$8,500; 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.

TRD-201603335

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 1, 2016



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 **August 15, 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 August 15, 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: Edwin L. Carlisle d/b/a Crafton Mobile Home Park; DOCKET NUMBER: 2015-0165-PWS-E; TCEQ ID NUMBER: RN107912685; LOCATION: 0.15 miles south of the intersection of Farm-to-Market Roads 2127 and 1860, near Chico, Wise 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 microbiological control and distribution protection; 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 water works operator who holds a minimum of a Class D or higher license; 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; and THSC, §341.035(a) and 30 TAC §290.39(e)(1), (h)(1), and (m), by failing to submit plans and specifications to the executive director (ED) for review and approval prior to the establishment of a new public water supply and failing to notify the ED of the startup of a new public water supply; PENALTY: \$946; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Jamie McCune; DOCKET NUMBER: 2015-0547-MLM-E; TCEQ ID NUMBER: RN108060922; LOCATION: 6379 United States Highway 79 South, Henderson, Rusk County; TYPE OF FACILITY: municipal solid waste (MSW) disposal site; RULES VIOLATED: Texas Health and Safety Code, §382.085(b) and 30 TAC §111.201, by causing, suffering, allowing, or permitting unauthorized burning within the State of Texas; and 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of MSW; PENALTY: \$9,000; STAFF ATTORNEY: J. Amber Ahmed, Litigation Division, MC 175, (512) 239-1204; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: MJG Ventures Properties, LLC d/b/a King Food Mart; DOCKET NUMBER: 2015-1287-PST-E; TCEQ ID NUMBER: RN103143608; LOCATION: 7111 Martin Luther King Boulevard, Houston, Harris 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); PENALTY: \$4,500; STAFF ATTORNEY: Jake Marx, Litigation Division, MC 175, (512) 239-5111; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

TRD-201603336

Kathleen C. Decker

Director, Litigation Division

Texas Commission on Environmental Quality

Filed: July 1, 2016



Notice of Public Meeting for Municipal Solid Waste Permit Proposed Permit Number 2374

APPLICATION. Rancho Viejo Waste Management, LLC, 1116 Calle del Norte, Laredo, Webb County, Texas 78041, a waste management company, has applied to the Texas Commission on Environmental Quality (TCEQ) for a permit to authorize the Pescadito Environmental

Resource Center, a new MSW Type I Landfill, Recycling, and Processing Facility. The facility is located at 2864 Jordan Road, approximately 5 miles southeast of U.S. Highway 59 at Ranchitos Las Lomas, Laredo, Webb County, Texas 78043. The TCEQ received the land use compatibility portion (Parts I & II) of the application on April 15, 2011. Portions of the permit application, Parts III and IV, were received by the TCEQ on March 9, 2015. The TCEQ has consolidated the review and processing of all parts of the application and issues this notice as required by rule. All public participations, comments, and requests for a contested case hearing on Parts I and II of the application have been preserved, and a decision whether to grant the contested case hearing requests will be made by the Commission following the comment and hearing request periods held in conjunction with this consolidated application. The following 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: <http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=27.559&lng=-99.160&zoom=13&type=r> For the exact location, refer to application.

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. Response will be provided orally during the Informal Discussion Period. During the Formal Discussion Period on the permit application, members of the public may state their formal comments orally into the official record. A written response to all formal 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, August 11, 2016 at 7:00 p.m.

Casa Blanca Event Center

(Formerly known as Casa Blanca Ballroom)

5400 East Saunders Street/US-Highway 59

Laredo, Texas 78041

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. General information can be found at our Web site at www.tceq.texas.gov. Si desea información en español, puede llamar al (800) 687-4040.

The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Laredo Public Library, 1120 East Calton Road, Laredo, Webb County, Texas. The permit application may be viewed online at <http://www.pescaditoerc.com>. Further information may also be obtained from Rancho Viejo Waste Management, LLC at the address stated above or by calling Mr. Carlos Y. Benavides, III, Manager, at (956) 523-1400.

Persons with disabilities who need special accommodations at the meeting should call the Office of the Chief Clerk at (512) 239-3300 or (800) RELAY-TX (TDD) at least one week prior to the meeting.

Issuance Date: July 5, 2016

TRD-201603369

Bridget C. Bohac

Chief Clerk

Texas Commission on Environmental Quality

Filed: July 6, 2016

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Texas Department of Housing and Community Affairs

Notice of Funding Availability

The Texas Department of Housing and Community Affairs ("Department") is making available 2016 HOME Investment Partnerships Program ("HOME") funding for single family activities.

Funds will be available through the 2016 HOME Single Family Programs Notice of Funding Availability ("NOFA"). The NOFA is for approximately \$15,206,086 to be funded through contract awards and participation in the Reservation System. Contract awards will follow procedures for both a competitive and open application cycle. Funding will be made available through the Reservation System and may be increased from time to time as funds become available. Approval to receive a Reservation System Participant ("RSP") agreement is not a guarantee of funding availability.

The availability and use of these funds are subject to the Department's Administrative Rule at 10 TAC Chapter 1, Enforcement Rule at 10 TAC Chapter 2, Single Family Umbrella Rules at 10 TAC Chapter 20, the Minimum Energy Efficiency Requirements for Single Family Construction Activities at 10 TAC Chapter 21, the Department's HOME Program Rule at 10 TAC Chapter 23, and the federal regulation governing the HOME Program at 24 CFR Part 92.

The NOFA is available on the Department's website at <http://www.td-hca.state.tx.us/nofa.htm>.

All Application materials including manuals, NOFA, program guidelines, and applicable HOME rules and regulations are available on the Department's website at <http://www.tdhca.state.tx.us/home-division/applications.htm>.

Applications submitted in response to the NOFA will be accepted in accordance with deadlines based on the competitive and open application cycles.

TRD-201603350

Timothy K. Irvine

Executive Director

Texas Department of Housing and Community Affairs

Filed: July 5, 2016

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Texas Department of Insurance

Company Licensing

Application for SOMPO JAPAN FIRE & MARINE INSURANCE COMPANY OF AMERICA, a foreign fire and/or casualty company, to change its name to SOMPO AMERICA FIRE & MARINE INSURANCE COMPANY. The home office is in Charlotte, North Carolina.

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-201603370

Norma Garcia

General Counsel

Texas Department of Insurance

Filed: July 6, 2016

Texas Department of Licensing and Regulation

Correction of Error

The Texas Department of Licensing and Regulation adopted new 16 TAC Chapter 115, concerning Midwives, in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4477). Due to a Texas Register editing error, the wrong text for new §115.112 was published on page 4481. Paragraph (3)(A) - (C) should not have been included in the adopted rule. The corrected rule reads as follows:

§115.112. Termination of the Midwife-Client Relationship.

A midwife shall terminate care of a client only in accordance with this section unless a transfer of care results from an emergency situation.

(1) Once the midwife has accepted a client, the relationship is ongoing and the midwife cannot refuse to continue to provide midwifery care to the client unless:

- (A) the client has no need of further care;
- (B) the client terminates the relationship; or
- (C) the midwife formally terminates the relationship.

(2) The midwife may terminate care for any reason by:

- (A) providing a minimum of 30 days written notice, during which the midwife shall continue to provide midwifery care, to enable the client to select another health care provider;
- (B) making an attempt to tell the client in person and in the presence of a witness of the midwife's wish to terminate care;
- (C) providing referrals; and
- (D) documenting the termination of care in midwifery records.

TRD-201603373

Nortex Regional Planning Commission

Request for Proposals

Nortex Regional Planning Commission is requesting proposals from qualified firms of certified public accountants to audit its financial statements for the fiscal year ending September 30, 2016, with the option of auditing its financial statements for each of the three subsequent fiscal years. These audits are to be performed in accordance with generally accepted auditing standards as set forth by the American Institute of Certified Public Accountants, OMB Circular A-133, and the State of Texas Single Audit Circular.

To obtain copies of this Request for Proposal, please contact James Springer, Nortex Regional Planning Commission, P.O. Box 5144, Wichita Falls, Texas 76307, telephone (940) 322-5281. A bidder's conference is scheduled for July 22, 2016, 1:30 p.m., CST, at the offices of Nortex Regional Planning Commission, 4309 Jacksboro Highway, Wichita Falls, Texas, 76302 to answer any and all questions. All proposals must be received no later than 4:30 p.m., CST, on August 1, 2016. Proposals received after the specified date and time will not be considered.

TRD-201603367

Dennis Wilde

Executive Director

Nortex Regional Planning Commission

Filed: July 5, 2016

Public Utility Commission of Texas

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 29, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Invenergy Wind Global LLC for Approval Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 46106.

The Application: On June 29, 2016, Invenergy Wind Global LLC (Invenergy) filed an application for approval of the conveyance of certain equity interests in Invenergy Wake Wind Holdings LLC to Southern Renewable Partnerships LLC (Southern). Following the proposed transaction, the combined generation owned and controlled by Invenergy, its affiliates and Southern will equal approximately 1,722.02 MW, or approximately 1.90% of the installed capacity in Electric Reliability Council of Texas (ERCOT) or capable delivery into ERCOT.

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 46106.

TRD-201603337

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Filed: July 1, 2016

Notice of Application for Sale, Transfer, or Merger

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on July 1, 2016, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.154 and §39.158.

Docket Style and Number: Application of Invenergy Gunsight Mountain Holdings LLC for Approval Pursuant to Section 39.158 of the Public Utility Regulatory Act, Docket Number 46118.

The Application: On July 1, 2016, Invenergy Gunsight Mountain Holdings LLC (Invenergy Gunsight) filed an application for approval of the conveyance of certain Class B equity interests in Invenergy Gunsight to HA INV Gunsight LLC (Hannon). The combined generation owned and controlled by Invenergy Gunsight, its affiliates and Hannon will equal approximately 1,503.29 MW, or approximately 1.66% of the installed capacity in Electric Reliability Council of Texas (ERCOT) or capable delivery into ERCOT.

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 46118.

TRD-201603338
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 1, 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 June 29, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of Bethany Hearne Water Supply Company and City of Hearne for Sale, Transfer, or Merger of Facilities and Certificate Rights in Robertson County, Docket Number 46107.

The Application: Bethany Hearne Water Supply Company (Bethany Hearne) and the City of Hearne (Hearne) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Robertson County. Specifically, City of Hearne seeks approval to acquire a portion of the water system assets of Bethany Hearne held under water Certificate of Convenience and Necessity (CCN) No. 10330.

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 46107.

TRD-201603371
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2016



Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 1, 2016, to amend a certifi-

cated service area for a service area exception within Gray and Donley Counties, Texas.

Docket Style and Number: Application of Greenbelt Electric Cooperative, Inc. for an Amendment to a Certificate of Convenience and Necessity for a Service Area Exception in Gray and Donley Counties. Docket Number 46121.

The Application: Greenbelt Electric Cooperative, Inc. (Greenbelt) filed an application for a service area boundary exception to allow Greenbelt to provide service to a specific customer located within the certificated service area of Southwestern Public Service Company (SPS). SPS has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 22, 2016 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46121.

TRD-201603378
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2016



Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on July 1, 2016, to amend a certificated service area for a service area exception within Hidalgo County, Texas.

Docket Style and Number: Application of Magic Valley Electric Cooperative, Inc. for an Amendment to a Certificate of Convenience and Necessity for a Service Area Exception in Hidalgo County. Docket Number 46122.

The Application: Magic Valley Electric Cooperative, Inc. (Magic Valley) filed an application for a service area boundary exception to allow Magic Valley to provide service to a specific customer located within the certificated service area of AEP Texas Central Company (AEP TCC). AEP TCC has provided an affidavit of relinquishment for the proposed change.

Persons wishing to comment on the action sought or intervene should contact the Public Utility Commission of Texas no later than July 22, 2016 by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46122.

TRD-201603379
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 6, 2016



Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on June 29, 2016, to amend a certificate of convenience and necessity for a proposed transmission line in Hale, Hockley, Lubbock, Terry, and Yoakum Counties, Texas.

Docket Style and Number: Application of Southwestern Public Service Company to Amend a Certificate of Convenience and Necessity for a 345-kV Transmission Line Within Hale, Hockley, Lubbock, Terry and Yoakum Counties (Tuco to Yoakum), Docket Number 46042.

The Application: The proposed 345-kV transmission line is designated as the Tuco to Yoakum Transmission Line Project. The facilities include construction of a new single circuit 345-kV transmission line between the existing Tuco substation, located in Hale County, and the existing Yoakum substation, located in Yoakum County. The proposed 345-kV transmission line will be constructed using primarily two-pole H frame steel structures. The total estimated cost for the project ranges from approximately \$133.6 million to \$155.4 million depending on the route chosen.

The proposed project is presented with 22 alternate routes and is estimated to be approximately 99 to 111 miles in length. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or 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 (888) 782-8477. The deadline for intervention in this proceeding is August 15, 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 46042.

TRD-201603310
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 30, 2016



Notice of Application to Amend a Service Provider Certificate of Operating Authority

On June 27, 2016, Ruth Riza dba Comptel Services filed an application with the Public Utility Commission of Texas (commission) for an amendment to service provider certificate of operating authority number 60093, for a change in ownership and control, service area and type of provider.

Docket Style and Number: Application of Ruth Riza dba Comptel Services for an Amendment to a Service Provider Certificate of Operating Authority, Docket Number 46100.

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 July 22, 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 46100.

TRD-201603311
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: June 30, 2016

University of Houston System

Business and Service Review of Parking and Transportation Services

The University of Houston System announces a Request for Proposal (RFP) for consultant services pursuant to Government Code, Chapter 2254, Subchapter B.

RFP730-16144 (Rebid), Business and Service Review of Parking & Transportation Services

Purpose:

The University invites you to submit a proposal for services to include providing: (a) an independent, comprehensive evaluation of campus, self-operated Parking & Transportation Services; (b) guidance and assistance in any potential service and technology enhancements related to Parking and Transportation Services; (c) guidance to the university regarding the business operations of Parking & Transportation Services; (d) vehicular traffic analysis and management, including review of large event parking and mobility; (e) development of annual departmental performance benchmarks to evaluate annual performance; (f) development of a comprehensive five year business plan and pro forma for the business operation; and (g) recommendations to the university for contract, financial, operational, and management policies, procedures, or systems, including but not limited to the privatization in whole or part of any of its Parking and Transportation Services.

Eligible Applicants:

Consulting firms with related knowledge and experience in:

- Providing general assessments and recommendations for parking and transportation services, including: technology enhancements; current business and operational practices; potential privatization, in whole or part of any of its services; parking and vehicular mobility for large events for clients of similar size and type as the University of Houston.
- Assisting clients in the improvement of its parking and transportation operations.

Services to be performed:

Development of overall schedule to complete activities associated with this proposal.

Review current Parking and Transportation Services operations and provide narrative recommendations for improvement.

Provide the university with a recommendation about potential out-sourcing of any of its parking and transportation services, in whole or part.

Develop a five-year business plan and pro forma for the operation.

Review of current parking and transportation policies and procedures and provide recommendations for improvement.

Review of current staffing levels and incumbents and narrative recommendations for improvement.

Review traffic and vehicular mobility, in particular for large events, and make recommendations.

Development of departmental performance benchmarks that will be used to assess annual performance of Parking and Transportation Services.

Recommendations of improvements in technology and/or contracts that will enhance the overall performance of Parking and Transportation Services.

Finding by Chief Executive Officer, Renu Khator:

As the campus has grown substantially over the past eight years and with the addition of a large residential population, it has been determined that a comprehensive review of Parking and Transportation Services on our campus is necessary. This evaluation will help the university implement best practices from across the country in ensuring that this department is operating efficiently and effectively.

Additionally, this review will provide insight as to whether there are further opportunities to privatize any or all of its services. I have found the expertise to engage in this comprehensive review does not exist at the University; therefore, it is necessary to engage a consultant to complete this review.

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 August 15, 2016 at 11:00 a.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, Rm. 204

Houston, Texas 77204-5015

Phone: (713) 743-5671

Email: jdtenner@central.uh.edu

TRD-201603368

Renu Khator

Chancellor and President

University of Houston System

Filed: July 5, 2016



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)

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