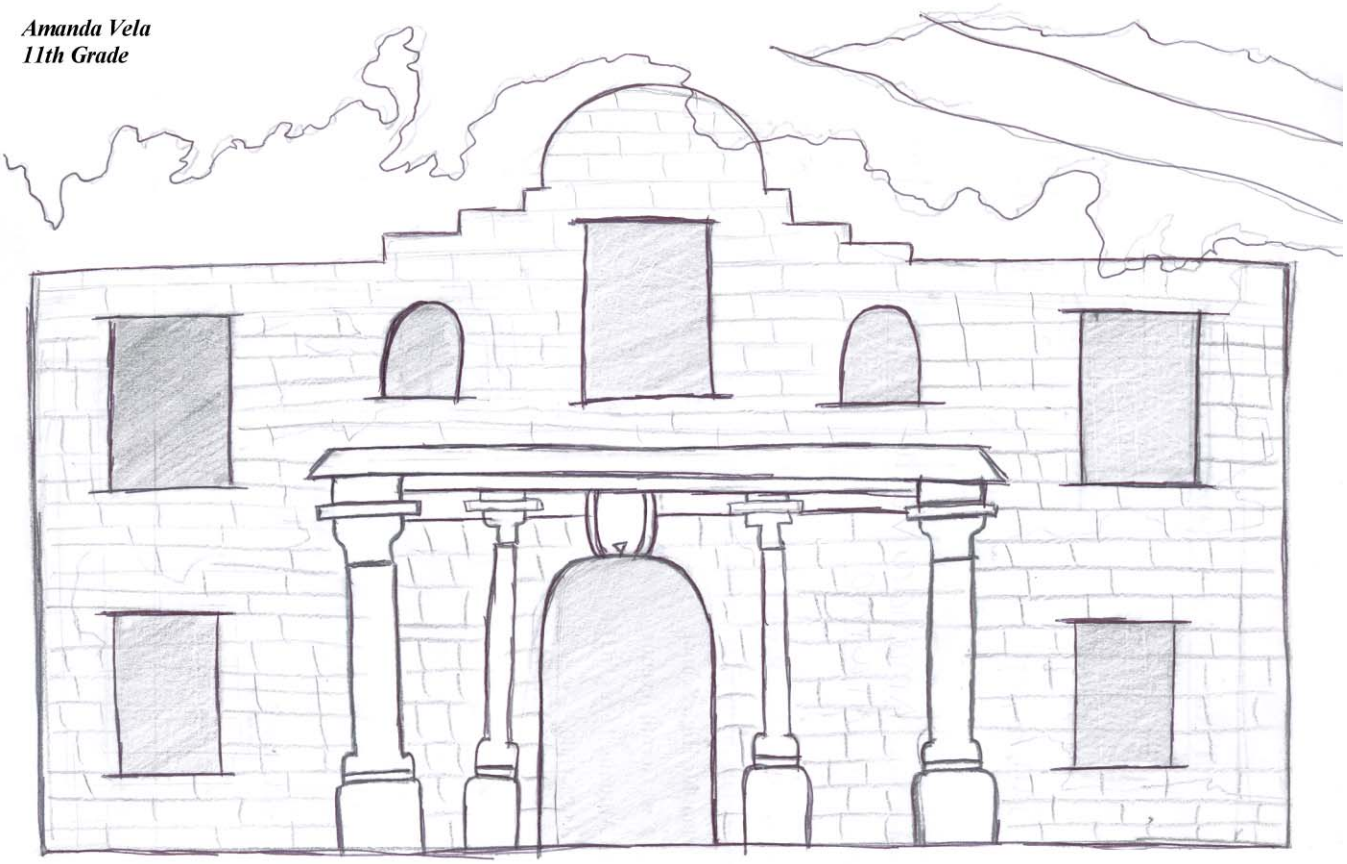
TEXAS REGISTER

Volume 41 Number 32 *August 5, 2016* *Pages 5631 - 5826*



School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but important facet of state government.

The artwork featured on the front cover is chosen at random. Inside each issue, the artwork is published on what would otherwise be blank pages in the *Texas Register*. These blank pages are caused by the production process used to print the *Texas Register*.

Texas Register, **(ISSN 0362-4781, USPS 12-0090),** is published weekly (52 times per year) for $259.00 ($382.00 for first class mail delivery) by Matthew Bender & Co., Inc., 3 Lear Jet Lane Suite 104, P O Box 1710, Latham, NY 12110.

Material in the *Texas Register* is the property of the State of Texas. However, it may be copied, reproduced, or republished by any person without permission of the *Texas Register* director, provided no such republication shall bear the legend *Texas Register* or "Official" without the written permission of the director.

The *Texas Register* is published under the Government Code, Title 10, Chapter 2002. Periodicals Postage Paid at Albany, N.Y. and at additional mailing offices.

POSTMASTER: Send address changes to the *Texas Register,* 136 Carlin Rd., Conklin, N.Y. 13748-1531.

TEXAS REGISTER

a section of the
Office of the Secretary of State
P.O. Box 12887
Austin, TX 78711
(512) 463-5561
FAX (512) 463-5569

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

Secretary of State –
Carlos H. Cascos

Director – Robert Sumners

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

IN THIS ISSUE

GOVERNOR

Appointments....5637

ATTORNEY GENERAL

Requests for Opinions....5639

TEXAS ETHICS COMMISSION

Advisory Opinion Requests....5641

PROPOSED RULES

TEXAS HEALTH AND HUMAN SERVICES COMMISSION

MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

1 TAC §358.357, §358.358....5644

1 TAC §358.389, §358.390....5645

1 TAC §358.431....5645

MEDICARE SAVINGS PROGRAM

1 TAC §359.103, §359.109....5646

MEDICAID BUY-IN PROGRAM

1 TAC §360.113....5648

MEDICAID BUY-IN FOR CHILDREN PROGRAM

1 TAC §361.111....5650

MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

1 TAC §366.319....5654

1 TAC §366.703, §366.707....5654

1 TAC §366.821, §366.847....5655

1 TAC §366.1107....5656

STATE CHILDREN'S HEALTH INSURANCE PROGRAM

1 TAC §370.307....5658

1 TAC §370.807....5658

TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

1 TAC §372.354, §372.355....5660

1 TAC §372.404, §372.406....5662

1 TAC §372.802....5663

1 TAC §372.1153, §372.1154....5664

TEXAS DEPARTMENT OF AGRICULTURE

TEXAS CITRUS PEST AND DISEASE MANAGEMENT CORPORATION

4 TAC §§27.801 - 27.804....5666

PUBLIC UTILITY COMMISSION OF TEXAS

SUBSTANTIVE RULES APPLICABLE TO WATER AND SEWER SERVICE PROVIDERS

16 TAC §§24.1, 24.3, 24.8....5667

16 TAC §§24.101 - 24.107, 24.109 - 24.111, 24.115, 24.117 - 24.120....5671

16 TAC §24.112....5684

16 TAC §24.142, §24.143....5684

TEXAS WATER DEVELOPMENT BOARD

REGIONAL WATER PLANNING

31 TAC §§357.10 - 357.12....5692

31 TAC §§357.20 - 357.22....5696

31 TAC §§357.30 - 357.35....5699

31 TAC §§357.40, 357.42 - 357.46....5703

31 TAC §357.50, §357.51....5705

31 TAC §§357.60, 357.62, 357.64....5707

TEXAS DEPARTMENT OF PUBLIC SAFETY

COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

37 TAC §4.12....5709

TEXAS BOARD OF PARDONS AND PAROLES

PAROLE

37 TAC §145.18....5712

WITHDRAWN RULES

TEXAS DEPARTMENT OF MOTOR VEHICLES

VEHICLE TITLES AND REGISTRATION

43 TAC §217.165....5713

ADOPTED RULES

TEXAS EDUCATION AGENCY

PLANNING AND ACCOUNTABILITY

19 TAC §97.1001....5715

19 TAC §97.1005....5719

TEXAS PARKS AND WILDLIFE DEPARTMENT

WILDLIFE

31 TAC §§65.90 - 65.94....5757

31 TAC §§65.90 - 65.99....5757

COMPTROLLER OF PUBLIC ACCOUNTS

TAX ADMINISTRATION

34 TAC §3.286....5762

TEXAS BOARD OF PARDONS AND PAROLES

HEARINGS
37 TAC §§147.1 - 147.6 5763
37 TAC §§147.21 - 147.24, 147.27 5764
SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION
37 TAC §148.48 5764
MANDATORY SUPERVISION
37 TAC §149.16 5764
MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS
37 TAC §150.55, §150.56 5765
TEXAS COMMISSION ON FIRE PROTECTION
FEES
37 TAC §437.13, §437.17 5765
EXAMINATIONS FOR CERTIFICATION
37 TAC §§439.1, 439.3, 439.7, 439.9, 439.11, 439.19 5765
FIRE OFFICER
37 TAC §451.307 5766
37 TAC §451.407 5766
TEXAS DEPARTMENT OF MOTOR VEHICLES
VEHICLE TITLES AND REGISTRATION
43 TAC §§217.2 - 217.5, 217.7 5768
43 TAC §§217.26, 217.33, 217.40, 217.43, 217.45, 217.46, 217.54, 217.55 5773
43 TAC §217.88 5775
43 TAC §217.123 5776
VEHICLE TITLES AND REGISTRATION
43 TAC §§217.23, 217.24, 217.29, 217.32, 217.52, 217.53 5782
43 TAC §217.31 5785
43 TAC §217.72 5786
43 TAC §§217.181 - 217.185 5786
43 TAC §§217.161 - 217.164, 217.166 - 217.168 5787
43 TAC §§217.201 - 217.207 5798
RULE REVIEW
Proposed Rule Reviews
Texas Alcoholic Beverage Commission 5803
Adopted Rule Reviews
Texas Education Agency 5803
Texas Board of Pardons and Paroles 5804
IN ADDITION
Comptroller of Public Accounts
Notice of Request for Proposals 5805
Office of Consumer Credit Commissioner
Notice of Rate Ceilings 5805
Texas Commission on Environmental Quality
Agreed Orders 5805
Notice of Public Hearing 5809
Notice of Receipt of Application for Land Use Compatibility Determination for a New Municipal Solid Waste Permit 5810
Update to the Water Quality Management Plan (WQMP) 5811
Texas Ethics Commission
List of Late Filers 5811
Texas Facilities Commission
Request for Proposals #303-7-20577 5812
Texas Department of Housing and Community Affairs
Temporary Emergency Housing Services #332-RFP17-1001 5812
Texas Department of Insurance
Company Licensing 5812
Texas Lottery Commission
Scratch Ticket Game Number 1809 "Texas A&M University" 5812
Scratch Ticket Game Number 1810 "The University of Texas" 5816
Public Utility Commission of Texas
Notice of Application for Sale, Transfer, or Merger 5820
Notice of Application for Sale, Transfer, or Merger 5821
Notice of Application for Sale, Transfer, or Merger 5821
Notice of Application for Service Area Exception 5821
Notice of Application for Termination of Waiver from Requirements 5821
Texas Department of Transportation
Aviation Division - Request for Qualifications for Professional Engineering Services 5822
Aviation Division - Request for Qualifications for Professional Services 5823
Aviation Division - Request for Qualifications for Professional Services 5824
Public Hearing - SH 121 5824
Public Notice - Aviation 5825
Texas Workforce Investment Council
Notice of Request for Redesignation of the Alamo Workforce Development Area 5825
Workforce Solutions for the Heart of Texas

Notice of Request for Proposal for Lease Space in Marlin, Texas for Workforce Solutions Center.....5826

Open Meetings

Statewide agencies and regional agencies that extend into four or more counties post meeting notices with the Secretary of State.

Meeting agendas are available on the *Texas Register*'s Internet site:
http://www.sos.state.tx.us/open/index.shtml

Members of the public also may view these notices during regular office hours from a computer terminal in the lobby of the James Earl Rudder Building, 1019 Brazos (corner of 11th Street and Brazos) Austin, Texas. To request a copy by telephone, please call 512-463-5561. Or request a copy by email: register@sos.state.tx.us

For items ***not*** available here, contact the agency directly. Items not found here:

- minutes of meetings
- agendas for local government bodies and regional agencies that extend into fewer than four counties
- legislative meetings not subject to the open meetings law

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://texasattorneygeneral.gov/og/open-government

The Attorney General's Open Government Hotline is 512-478-OPEN (478-6736) or toll-free at (877) OPEN TEX (673-6839).

Additional information about state government may be found here:
http://www.texas.gov

...

Meeting Accessibility. Under the Americans with Disabilities Act, an individual with a disability must have equal opportunity for effective communication and participation in public meetings. Upon request, agencies must provide auxiliary aids and services, such as interpreters for the deaf and hearing impaired, readers, large print or Braille documents. In determining type of auxiliary aid or service, agencies must give primary consideration to the individual's request. Those requesting auxiliary aids or services should notify the contact person listed on the meeting notice several days before the meeting by mail, telephone, or RELAY Texas. TTY: 7-1-1.

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for June 29, 2016

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2021, Joel Alfred Arrigucci of El Paso (replacing Anita M. Nelson of Double Oak whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2021, Liam M. Fry, M.D. of Austin (replacing David A. "Dave" Smith of Brownwood whose term expired).

Appointed to the Nursing Facility Administrators Advisory Committee for a term to expire February 1, 2021, Bridgette Walshe of Fort Worth (replacing Ben C. Mazzara of Beaumont whose term expired).

Appointments for July 1, 2016

Appointed to the Brazos River Authority Board of Directors for a term to expire February 1, 2019, Wesley D. Lloyd of Waco (replacing Raleigh R. White, IV of Temple who resigned).

Appointments for July 5, 2016

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2017, Joe C. Chow of Dallas.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2017, Jennifer C. Flanagan of Fort Worth.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2017, Melanie "Shannon" Lutz of Cypress.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2019, Faraz Adil Khan, M.D. of Houston.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2019, Regan L.R. Landreth of Georgetown.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2019, Carol Waddell of West.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2021, Nicholas M. Beckmann, M.D. of Houston.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2021, Anthony "Tony" Jaso of San Antonio. Mr. Jaso will serve as presiding officer of the board.

Appointed to the Texas Board of Medical Radiologic Technology for a term to expire February 1, 2021, Scott A. Morren of Anton.

Appointments for July 11, 2016

Appointed to the Texas Transportation Commission for a term to expire February 1, 2017, Laura Ryan Heizer of Cypress (replacing Jeffrey A. "Jeff" Moseley of Houston who resigned).

Appointments for July 12, 2016

Designating Robert D. "Bobby" Greenberg, M.D. as presiding officer of the Advisory Council on Emergency Medical Services for a term at the pleasure of the Governor. Dr. Greenberg is replacing Vance L. Riley of Pearland as presiding officer.

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2020, Michael S. "Mike" Clements of Cypress (replacing James D. Williams of Amarillo who resigned).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2022, Jeffery H. "Jeff" Barnhart of Canyon (replacing Lindon M. "Mike" Click of Brownfield whose term expired).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2022, Sheila J. Faske of Rose City (replacing Nora Castañeda of Harlingen whose term expired).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2022, Robert W. Isbell, Jr. of Midland (replacing Vance L. Riley of Pearland whose term expired).

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2022, Ryan P. Matthews of Holliday (Mr. Matthews is being reappointed)

Appointed to the Advisory Council on Emergency Medical Services for a term to expire January 1, 2022, Robert M. "Bob" Vezzetti, M.D. of Austin (Dr. Vezzetti is being reappointed).

Appointments for July 13, 2016

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2021, William H. "Bill" Buchholtz (Ret.) of San Antonio (Colonel Buchholtz is being reappointed).

Appointed to the Commission on State Emergency Communications for a term to expire September 1, 2021, Ernestine M. Robles of Garden Ridge (replacing Mitchell F. Fuller, II of Cedar Park whose term expired).

Greg Abbott, Governor

TRD-201603704

♦ ♦ ♦

Aaron Guzman
11th Grade

THE ATTORNEY GENERAL

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

An index to the full text of these documents is available from the Attorney General's Internet site http://www.oag.state.tx.us. Telephone: 512-936-1730. For information about pending requests for opinions, telephone 512-463-2110.

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

Requests for Opinions

RQ-0118-KP

Requestor:

Mr. Lloyd B. Tisdale

President, San Jacinto River Authority

Post Office Box 329

Conroe, Texas 77305

Re: Whether certain financial transactions of the San Jacinto River Authority comply with the Public Funds Investment Act and the Public Funds Collateral Act (RQ-0118-KP)

Briefs requested by August 22, 2016

RQ-0119-KP

Requestor:

The Honorable Joseph Pickett

Chair, Committee on Transportation

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Administration and procedures related to motor vehicle registration (RQ-0119-KP)

Briefs requested by August 22, 2016

RQ-0120-KP

Requestor:

Mr. Rick Dollahan

Gaines County Auditor

Post Office Box 847

Seminole, Texas 79360

Re: Whether a county attorney who is appointed to serve as a special prosecutor may be paid additional compensation (RQ-0120-KP)

Briefs requested by August 22, 2016

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

TRD-201603681
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: July 26, 2016

TEXAS ETHICS COMMISSION

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

Advisory Opinion Requests

The Texas Ethics Commission has been asked to consider whether a political advertising disclosure statement is required to be included in political advertising broadcast by radio. **(AOR-613)**

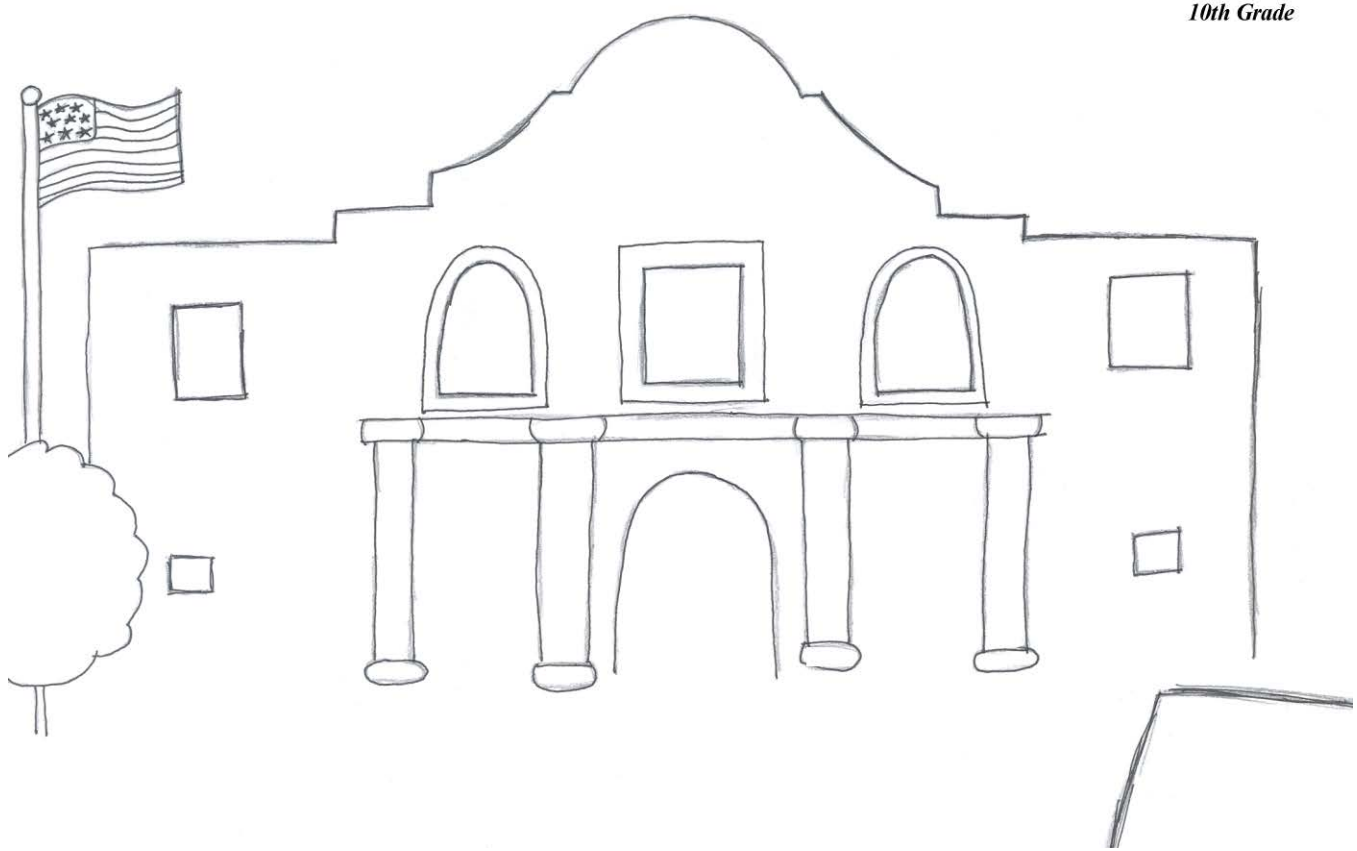
The Texas Ethics Commission is authorized by §571.091 of the Government Code to issue advisory opinions in regard to the following statutes: (1) Chapter 572, Government Code; (2) Chapter 302, Government Code; (3) Chapter 303, Government Code; (4) Chapter 305, Government Code; (5) Chapter 2004, Government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

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

TRD-201603693
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: July 27, 2016

♦ ♦ ♦

Amber Uballe
10th Grade



PROPOSED RULES

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

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 358. MEDICAID ELIGIBILITY FOR THE ELDERLY AND PEOPLE WITH DISABILITIES

SUBCHAPTER C. FINANCIAL REQUIREMENTS

The Texas Health and Human Services Commission (HHSC) proposes new §358.357, concerning Achieving a Better Life Experience Program; §358.358, concerning School-Based Savings Program; §358.389, concerning Achieving a Better Life Experience Program; and §358.390, concerning School-Based Savings Program. The new rules exclude Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income and resources when determining eligibility for Medicaid Eligibility for Elderly and People with Disabilities (MEPD) programs.

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for MEPD programs: Senate Bill (SB) 1664 and House Bill (HB) 3987. These proposed rules implement the statutory changes adopted by those bills.

MEPD is available to eligible individuals who need continuous, long-term services and supports. Services can be provided either through community programs while an individual is living at home or in a place of care, such as a nursing facility or a facility for individuals with intellectual disabilities. Some individuals do not need long-term services and supports but are eligible for Medicaid benefits to cover acute care needs.

In determining eligibility for MEPD, HHSC currently considers as countable income and resources funds used to establish savings accounts, funds held in savings accounts, interest earned on savings accounts, and payments made for expenses of an individual.

Proposed new §358.357 and §358.389 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under §529A of the Internal Revenue Code, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MEPD. Texas Education Code §54.9065, adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MEPD.

The proposed new sections align policy for MEPD eligibility determinations with federal and state law. Under the proposed rules, HHSC will exclude from countable income and resources funds used to establish an ABLE account, funds held in an ABLE account, interest earned on an ABLE account, and payments for disability expenses for the designated beneficiary.

Proposed new §358.358 and §358.390 implement provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for MEPD. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed new sections align policy for MEPD eligibility determinations with HB 3987. Under the proposed rules, HHSC will exclude from countable income and resources school-based savings accounts and interest earned on the accounts. HB 3987 rule changes are contingent on federal approval from the Centers for Medicare and Medicaid Services (CMS) of a Medicaid State Plan Amendment. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing the Medicare Savings Program, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program also appear elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Subchapter C (relating to Financial Requirements)

New §358.357 defines the terms "Achieving a Better Life Experience (ABLE) program," "ABLE account," and "designated ben-

eficiary." The section also excludes funds used to establish an ABLE account and funds held in an ABLE account from countable resources for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §54.9065.

New §358.358 excludes funds held in a school-based savings account from countable resources for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §28.0024 and Texas Human Resources Code §32.02611.

New §358.389 defines the terms "Achieving a Better Life Experience (ABLE) program," "ABLE account," and "designated beneficiary." The section also excludes interest earned on an ABLE account and payments made from an ABLE account that are used for the expenses of the designated beneficiary from countable income for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §54.9065.

New §358.390 excludes funds held in a school-based savings account from countable income for purposes of an eligibility determination for MEPD programs. This is consistent with Texas Education Code §28.0024 and Texas Human Resources Code §32.02611.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be a fiscal impact to state government. While implementation of this bill is anticipated to result in additional costs to state government, a specific estimate cannot be provided at this time. HHSC lacks the information necessary to make appropriate assumptions to determine the anticipated additional costs. Costs and revenues of local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the rules as proposed.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Texas Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751, or by email to *OSS_PSAD@hhsc.state.tx.us.*

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

DIVISION 2. RESOURCES

1 TAC §358.357, §358.358

STATUTORY AUTHORITY (MEDICAID)

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rules implement Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§358.357. Achieving a Better Life Experience Program.

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

(1) Achieving a Better Life Experience (ABLE) program--

(A) the ABLE program authorized under Chapter 54, Subchapter J, of the Texas Education Code; or

(B) an ABLE program of any state that meets the requirements of §529A of the Internal Revenue Code of 1986.

(2) ABLE account--an account established under an ABLE program.

(3) Designated beneficiary--an individual who is named as the beneficiary of an ABLE account established under an ABLE program.

(b) The Texas Health and Human Services Commission excludes from the calculation of countable resources funds used to establish an ABLE account and funds held in an ABLE account.

§358.358. School-Based Savings Program.

The Texas Health and Human Services Commission excludes from the calculation of countable resources funds held in a school-based account

or bond as described by Texas Education Code §28.0024 and authorized by Texas Human Resources Code §32.02611.

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 20, 2016.

TRD-201603603
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 3. INCOME

1 TAC §358.389, §358.390

STATUTORY AUTHORITY (MEDICAID)

The new rules are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed new rules implement Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§358.389. Achieving a Better Life Experience Program.

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

(1) Achieving a Better Life Experience (ABLE) program--

(A) the ABLE Program authorized under Chapter 54, Subchapter J, of the Texas Education Code; or

(B) a qualified ABLE program of any state that meets the requirements of §529A of the Internal Revenue Code of 1986.

(2) ABLE account--an account established under an ABLE program.

(3) Designated beneficiary--an individual who is named as the beneficiary of an ABLE account established under an ABLE program.

(b) The Texas Health and Human Services Commission excludes from the calculation of countable income interest earned on an ABLE account and payments made from an ABLE account that are used for the designated beneficiary's expenses.

§358.390. School-Based Savings Program.

The Texas Health and Human Services Commission excludes from the calculation of countable income interest earned on funds held in a school-based account or bond as described by Texas Education Code §28.0024 and authorized by Texas Human Resources Code §32.02611.

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 20, 2016.

TRD-201603604
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 6. BUDGETING FOR ELIGIBILITY AND CO-PAYMENT

1 TAC §358.431

The Texas Health and Human Services Commission (HHSC) proposes amendments to §358.431, concerning Definitions.

BACKGROUND AND JUSTIFICATION

HHSC proposes the amendments to align the terminology and requirements of Medicaid eligibility for the elderly and people with disabilities (MEPD) with federal laws and current HHSC policy and processes.

The amendments implement the legal recognition of same sex marriage consistent with the United States Supreme Court decision *(Obergefell v. Hodges,* 576 U.S. 135 (2015)). The decision in this case, issued on June 26, 2015, requires states to recognize a marriage between two people of the same sex to the same extent it would recognize a marriage between two people of opposite sex. Furthermore, states must also recognize a marriage between two people of the same sex when the marriage was lawfully performed in another state to the same extent the state would recognize the marriage between two people of opposite sex.

SECTION-BY-SECTION SUMMARY

Section 358.431 defines key terms for the subchapter. The proposed amendments align definitions with federal laws and current HHSC policy and processes regarding marriages recognized under federal law.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no fiscal impact to state governments. Costs and revenues of state and local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposed rule, as there is no requirement to alter current business practices as a result of the proposed rule.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because agency rules will correctly reflect agency compliance with federal law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Sara McGhee, Policy Analyst, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

No other statutes, articles, or codes are affected by this proposal.

§358.431. Definitions.

In this division, the following words and terms have the following meanings, unless the context clearly indicates otherwise.

(1) Child--Has the meaning given in 20 CFR §416.1856.

(2) Couple--Two persons who live together and:

(A) present themselves to the community as married [husband and wife], intend to be married, and are considered to be married [under state law];

(B) are determined to be married [husband and wife] for purposes of receiving Social Security benefits; or

(C) are recognized as married [husband and wife under state law].

(3) Dependent relative--A relative who was living in the home of an applicant or recipient before the applicant's or recipient's absence and who is unable to support himself or herself outside of the person's home due to medical, social, or other reasons.

(4) Married--Joined in a legal union between two people. A same-sex marriage that occurred before June 26, 2015, is considered valid effective June 26, 2015, and a same-sex marriage that occurred on or after June 26, 2015, is considered valid on the date it occurred.

(5) [(4)] Parent--Has the meaning given in 20 CFR §416.1881.

(6) Spouse--A person who is married.

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 20, 2016.

TRD-201603602
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 359. MEDICARE SAVINGS PROGRAM

1 TAC §359.103, §359.109

The Texas Health and Human Services Commission (HHSC) proposes to amend §359.103, concerning the Qualified Medicare Beneficiary Program and §359.109, concerning the Qualified Disabled and Working Individual Program. The rules as amended exclude Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income and resources when determining eligibility for Medicare Savings Programs.

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for Medicare Savings Programs: Senate Bill (SB) 1664 and House Bill (HB) 3987. These proposed rules implement the statutory changes adopted by those bills.

Medicare Savings Programs are for individuals who receive Medicare and need help paying for premiums, co-insurance, and deductibles. If an individual meets the income and resource requirements of a Medicare Savings Program, Medicaid will help pay for some Medicare costs. HHSC administers four Medicare Savings Programs: the Qualified Medicare Beneficiary (QMB) program, the Specified Low-Income Medicare Beneficiary (SLMB) program, the Qualifying Individual (QI) program, and the Qualified Disabled and Working Individual (QDWI) program.

In determining eligibility for the Medicare Savings Programs, HHSC currently considers as countable income and resources funds used to establish savings accounts, funds held in savings accounts, interest earned on savings accounts, and payments for expenses of an individual.

Proposed amendments to §359.103 and §359.109 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Ed-

ucation Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under §529A of the Internal Revenue Code, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including Medicare Savings Programs. Texas Education Code §54.9065, as adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including Medicare Savings Programs.

The proposed rules align policy for Medicare Savings Program eligibility determinations with federal and state law. Under the proposed rules, HHSC will exclude from countable income and resources funds used to establish an ABLE account, funds held in an ABLE account, interest earned on an ABLE account, and payments for disability expenses for the designated beneficiary.

Proposed rules §359.103 and §359.109 implement provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, School-Based Savings Program, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resource Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for Medicare Savings Programs. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed rules align policy for eligibility determinations for Medicare Savings Programs with state law. Under the proposed rules, HHSC will exclude from countable income and resources school-based savings accounts and interest earned on the accounts. HB 3987 rule changes are contingent on federal approval from the Centers for Medicare and Medicaid Services (CMS) of a Medicaid State Plan Amendment. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing Medicaid Eligibility for the Elderly and People with Disabilities, Medicaid Buy-In Program, and Medicaid Buy-In for Children Program appear elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Section 359.103 excludes from countable resources and income for purposes of an eligibility determination for Qualified Medicare Beneficiary Programs payments from an ABLE account, interest earned on an ABLE account, funds used to establish an ABLE account, and funds held in an ABLE account. The section also excludes from countable resources and income for purposes of an eligibility determination for Qualified Medicare Beneficiary Programs interest earned on a school-based savings account and funds held in a school-based savings account.

Section 359.109 excludes from countable resources and income for purposes of an eligibility determination for Qualified Disabled and Working Individual Programs payments from an ABLE account, interest earned on an ABLE account, funds used to establish an ABLE account, and funds held in an ABLE account. The section also excludes from countable resources and income for purposes of an eligibility determination for Qualified Disabled and Working Individual Programs interest earned on a school-based savings account and funds held in a school-based savings account.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COSTS

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Texas Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751, or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendments implement Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§359.103. Qualified Medicare Beneficiary Program.

(a) Authorized under 42 U.S.C. §1396a(a)(10)(E)(i), the Qualified Medicare Beneficiary (QMB) Program pays Medicare premiums, deductibles, and coinsurance for a person who meets the requirements of this section. A person receiving Medicaid may also receive QMB benefits if the person meets the requirements of this section.

(b) To be eligible for QMB coverage, a person must:

(1) be entitled to benefits under Medicare Part A;

(2) meet income requirements in 42 U.S.C. §1396d(p), except for:

(A) payments made from or interest earned on a tuition savings program under §358.388 of this title (relating to Tuition Savings Programs); [~~and~~]

(B) payments made from or interest earned on an Achieving a Better Life Experience (ABLE) account under §358.389 of this title (relating to Achieving a Better Life Experience Program); and

(C) income earned on a school-based savings program under §358.390 of this title (relating to School-Based Savings Program).

(3) meet resource requirements in 42 U.S.C. §1396d(p), except for:

(A) funds used to establish a tuition savings program under §358.356 of this title (relating to Tuition Savings Programs);[~~.~~]

(B) funds used to establish an ABLE account and funds held in an ABLE account under §358.357 of this title (relating to Achieving a Better Life Experience Program); and

(C) funds held in a school-based savings program under §358.358 of this title (relating to School-Based Savings Program).

(c) A person is not eligible for QMB coverage if the person:

(1) is in the custody of penal authorities as defined in 42 C.F.R. §411.4(b); or

(2) is over 20 years of age and under 65 years of age and resides in an institution for mental diseases.

(d) A person's QMB eligibility begins on the first day of the month after the month the person is certified for QMB benefits.

(e) A person with QMB coverage is not eligible for three months prior medical coverage.

§359.109. Qualified Disabled and Working Individual Program.

(a) Authorized under 42 U.S.C. §1396a(a)(10)(E)(ii), the Qualified Disabled and Working Individual (QDWI) Program pays only Medicare Part A premiums for a person who meets the requirements of this section. A person cannot be eligible for regular Medicaid and QDWI coverage at the same time.

(b) To be eligible for QDWI coverage, a person must:

(1) be under 65 years of age;

(2) be entitled to benefits under Medicare Part A;

(3) not otherwise be eligible for Medicaid;

(4) have a monthly income equal to or less than 200% of the federal poverty level, except for the following exclusions:

(A) payments made from or interest earned on a tuition savings program under §358.388 of this title (relating to Tuition Savings Programs); [~~and~~]

(B) payments made from or interest earned on an Achieving a Better Life Experience (ABLE) account under §358.389 of this title (relating to Achieving a Better Life Experience Program); and

(C) income earned on a school-based savings program under §358.390 of this title (relating to School-Based Savings Program).

(5) have no more than twice the countable resources allowed under the Supplemental Security Income (SSI) program, as described in §1611 of the Social Security Act (42 U.S.C. §1382), except for:

(A) funds used to establish a tuition savings program under §358.356 of this title (relating to Tuition Savings Programs);[~~.~~]

(B) funds used to establish an ABLE account and funds held in an ABLE account under §358.357 of this title (relating to Achieving a Better Life Experience Program); and

(C) funds held in a school-based savings program under §358.358 of this title (relating to School-Based Savings Program).

(c) A person's QDWI eligibility begins in accordance with the coverage period described in §1818A of the Social Security Act (42 U.S.C. §1395i-2a(c)).

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 20, 2016.

TRD-201603605
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 360. MEDICAID BUY-IN PROGRAM

1 TAC §360.113

The Texas Health and Human Services Commission (HHSC) proposes amendments to §360.113, concerning Resources.

The rule as amended excludes Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as resources when determining eligibility for the Medicaid Buy-In (MBI) program.

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for the MBI program: Senate Bill (SB) 1664 and House Bill (HB) 3987. The proposed amendments implement the statutory changes adopted by those bills.

The MBI program provides Medicaid benefits to eligible individuals with disabilities who work, regardless of their age. Some individuals "buy-in" to the program by paying a monthly premium.

In determining eligibility for the MBI program, HHSC currently considers funds used to establish savings accounts and funds held in savings accounts as resources. Unearned income is not counted in the eligibility determination for MBI. Therefore, the proposed rules do not exempt interest earned on an ABLE or school-based account and payments for qualified disability expenses for the designated beneficiary.

Proposed amendments to §360.113 implement provisions of SB 1664. SB 1664 amended Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow the creation of tax-exempt, state-based private savings accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under Internal Revenue Code §529A, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MBI. Texas Education Code §54.9065, as adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MBI.

The proposed amendments align policy for MBI eligibility determinations with federal and state law. Under the proposed rules, HHSC will exclude from countable resources funds used to establish an ABLE account and funds held in an ABLE account.

Proposed rule §360.113 implements provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts when determining eligibility for MBI. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed rules align policy for MBI eligibility determinations with HB 3987. Under the proposed amendments, HHSC would exclude from countable resources school-based savings accounts. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing Medicaid for the Elderly and People with Disabilities (MEPD), Medicare Savings Program, and Medicaid Buy-In for Children Program also appear elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Section §360.113 excludes from countable resources for purposes of an eligibility determination for the Medicaid Buy-In Program funds used to establish an ABLE account and funds held in an ABLE. The section also excludes from countable resources for purposes of an eligibility determination for the Medicaid Buy-In Program funds held in a school-based savings account.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS AND IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of

Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment implements Texas Human Resources Code §32.02611, Texas Education Code §54.0965, and Texas Government Code Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§360.113. Resources.

(a) To establish and maintain eligibility for MBI, a person's countable resources must be equal to or less than $3,000 plus the amount of the Supplemental Security Income (SSI) resource limit for an individual that is explained in 20 CFR §416.1205. Countable resources means resources for SSI purposes as defined in 20 CFR §416.1205, minus all applicable exemptions and exclusions explained in 20 CFR §§416.1207 - 416.1239.

(b) In addition to the exemptions and exclusions explained in subsection (a) of this section, the following are not countable resources under this section:

(1) Independence accounts.

(A) An independence account (IA) is a segregated account in a financial institution, the purpose of which is to save for future health care and work-related expenses to increase an individual's independence and employment potential.

(B) Only a person's own earned income may be deposited into an IA, and amounts deposited cannot exceed 50% of the person's gross earnings. If for any SSA Qualifying Quarter a person deposits more than 50% of the person's gross earnings into an account that is designated as an IA, the account loses its IA designation and the funds in the account become a countable resource for the 12-month period beginning with the first month after the SSA Qualifying Quarter. An SSA Qualifying Quarter is a three-month period that ends on March 31, June 30, September 30, and December 31 of each calendar year and during which a person's reported earnings and FICA contributions are enough for SSA to give the person Social Security wage credits.

(C) Only health care or work-related expenses may be paid from an IA. For any SSA Qualifying Quarter, if funds in an IA account are used for any other purpose, the account loses its IA designation and the funds in the account become a countable resource for the 12-month period beginning with the first month after the SSA Qualifying Quarter.

(2) Retirement related tax-sheltered accounts. Retirement related tax-sheltered accounts include IRAs, 401(k)s, TSAs, and KEOUGHs that comply with IRS regulations.

(3) Tuition savings programs. The Texas Health and Human Services Commission excludes funds used to establish a tuition savings program under §358.356 of this title (relating to Tuition Savings Programs).

(4) Achieving a Better Life Experience (ABLE) Program. HHSC excludes from the calculation of countable resources funds used to establish an ABLE account and funds held in an ABLE account under §358.357 of this title (relating to Achieving a Better Life Experience Program).

(5) School-Based Savings Program. HHSC excludes from the calculation of countable resources funds held in a school-based savings program under §358.358 of this title (relating to School-Based Savings Program).

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603606
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

CHAPTER 361. MEDICAID BUY-IN FOR CHILDREN PROGRAM

1 TAC §361.111

The Texas Health and Human Services Commission (HHSC) proposes amendments to §361.111, concerning Income. The rule as amended excludes Achieving a Better Life Experience (ABLE) accounts and School-Based Savings accounts from being counted as income when determining eligibility for Medicaid Buy-In for Children Program (MBIC).

BACKGROUND AND JUSTIFICATION

The 84th Legislature adopted two bills that affect eligibility determinations for MBIC: Senate Bill (SB) 1664 and House Bill (HB) 3987. The proposed amendments implement the statutory changes adopted by these bills.

MBIC provides Medicaid benefits to eligible children with disabilities whose families "buy-in" to the program by paying a monthly premium. In determining eligibility for the MBIC program, HHSC currently considers savings account interest and payments for expenses of a child with a disability as income.

Resources are not counted in the eligibility determination for MBIC. Therefore, the proposed rules do not include exempting funds used to establish an ABLE account, funds held in an ABLE account, or funds held in a school-based savings account.

Proposed amendments to §361.111 implement provisions of SB 1664. SB 1664 amended the Texas Education Code Chapter 54 by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program. Subchapter J creates the Texas ABLE Program and requires the Prepaid Higher Education Tuition Board in the Office of the Comptroller to administer it in accordance with federal law. In 2014, federal law was amended to allow creation of tax-exempt, state-based private savings

accounts for individuals with disabilities to fund disability-related expenses, called ABLE accounts. Under Internal Revenue Code §529A, funds used to establish ABLE accounts, funds held in ABLE accounts, interest earned on the accounts, and payments for disability expenses for the designated beneficiaries are exempt when determining eligibility for certain federal means-tested programs, including MBIC. Texas Education Code §54.9065, adopted by SB 1664, likewise excludes the amount in an ABLE account, earnings on the account, and payments for qualified disability expenses from certain benefit eligibility determinations, including MBIC.

The proposed amendments align policy for MBIC eligibility determinations with federal and state law. Under the proposed rules, HHSC excludes from countable income interest earned on an ABLE account and payments for disability expenses for the designated beneficiary.

Proposed rule §361.111 implements provisions of HB 3987. HB 3987 adopted a new Texas Education Code §28.0024, School-Based Savings Program, which permits school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for MBIC. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed rules align policy for MBIC eligibility determinations with HB 3987. Under the proposed rules, HHSC will exclude from countable income the interest earned on school-based savings accounts. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

Related proposals for rules governing Medicaid for the Elderly and People with Disabilities, Medicare Savings Program, and Medicaid Buy-In Program also appear elsewhere in this issue of the *Texas Register.*

SECTION-BY-SECTION SUMMARY

Section 361.111 excludes from countable income for purposes of an eligibility determination for MBIC payments from an ABLE account and interest earned on an ABLE account that are used for the expenses of the designated beneficiary. The section also excludes from countable income for purposes of an eligibility determination for MBIC interest earned on school-based savings accounts.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, costs and revenues of state and local governments will not be affected.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rules, as they will not be required to alter their business practices as a result of the proposed rules.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Texas Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted within 30 days after publication of this proposal in the *Texas Register* to Dee Church, Health and Human Services Commission, Office of Social Services, MC-2115, 909 West 45th Street, Austin, Texas 78751 or by email to OSS_PSAD@hhsc.state.tx.us.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

The proposed amendment implements Texas Human Resources Code §32.02611, Texas Education Code §54.9065, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by this proposal.

§361.111. Income.

(a) To be eligible for MBIC, a child's family must have monthly countable income less than or equal to 150% of the Federal Poverty Level (FPL).

(b) Countable income means:

(1) earned income for purposes of the Supplemental Security Income (SSI) program minus all applicable exclusions and exemptions, as explained in 20 CFR §§416.1110 - 416.1112; and

(2) unearned income for purposes of the SSI program minus all applicable exclusions and exemptions, as explained in 20 CFR §§416.1120 - 416.1124, except HHSC does not count as income:

(A) in-kind support and maintenance; [~~or~~]

(B) payments made from or interest earned on a tuition savings program under §358.388 of this title (relating to Tuition Savings Programs);[~~.~~]

(C) payments made from or interest earned on an Achieving a Better Life Experience (ABLE) account under §358.389 of this title (relating to Achieving a Better Life Experience Program); and

(D) income earned on a school-based savings program under §358.390 of this title (relating to School-Based Savings Program).

(c) To determine the family's monthly countable income, HHSC counts the income of the child applying for or receiving MBIC, the income of the child's parents living in the same household as the child, and the income of the child's ineligible siblings living in the same household as the child.

(1) For a stepparent's income to count, the stepparent must be the current husband or wife of a natural or adoptive parent living in the same household as the child and the natural or adoptive parent.

(2) A sibling's income counts through the month of the sibling's:

(A) 18th birthday; or

(B) 22nd birthday, if the sibling is, as determined by HHSC, regularly attending school, college, or job training.

(3) HHSC calculates the family's monthly countable income as follows:

(A) Total the following:

(i) Monthly countable income of the child applying for or receiving MBIC.

(ii) Combined monthly countable income of the child's parents.

(iii) Countable monthly income of each of the child's ineligible siblings that is in excess of 150% of the FPL for a household of one, multiplied by 2, plus $85.

(B) Subtract $85 from the total arrived at in subparagraph (A) of this paragraph.

(C) Divide the total arrived at in subparagraph (B) of this paragraph by 2.

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 20, 2016.

TRD-201603607

Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

CHAPTER 366. MEDICAID ELIGIBILITY FOR WOMEN, CHILDREN, YOUTH, AND NEEDY FAMILIES

The Texas Health and Human Services Commission (HHSC) proposes amendments to §366.319, concerning Child Support and Medical Support; §366.703, concerning Definitions; §366.707, concerning Eligible Group; §366.821, concerning Child Support and Medical Support; §366.847, concerning Exempt Resources; and §366.1107, concerning Determination of Household Composition.

BACKGROUND AND JUSTIFICATION

HHSC proposes several amendments to various sections of Chapter 366, concerning Medicaid Eligibility for Women, Children, Youth, and Needy Families. The amendments align the rules with federal policies and current HHSC policy and processes, and exclude school-based savings accounts as countable resources when determining eligibility for the Medically Needy program in accordance with state law.

HHSC proposes to amend §366.319, concerning Child Support and Medical Support for Pregnant Women's Medicaid, and §366.821, concerning Child Support and Medical Support for the Medically Needy Program, to align the rules with federal law and current HHSC policy and processes. Federal law prohibits HHSC from asking detailed questions about parents living outside of the home for certain Medicaid programs. Therefore, HHSC policy no longer requires pregnant women to provide information related to the biological father when applying for Medicaid. The proposed amendment aligns state rules with federally required changes and the Medicaid State Plan.

HHSC proposes to amend §366.703, concerning Definitions for the Medicaid for Parents and Caretaker Relatives program, to align state rules with federally required changes and the Medicaid State Plan. A dependent child must live with a parent or caretaker relative in order for the adult to be eligible for Medicaid for Parents and Caretaker Relatives. The proposed amendment removes the deprivation requirement from the definition of dependent child for Medicaid for Parents and Caretaker Relatives. Children of parents and caretaker relatives who are income eligible for Medicaid for Parents and Caretaker Relatives are considered to meet the deprivation requirement. Therefore, it is no longer required that a child meet a separate deprivation requirement to be considered a dependent child for purposes of the adult's Medicaid for Parents and Caretaker Relatives eligibility.

HHSC proposes to amend §366.707, concerning Eligible Group for the Medicaid for Parents and Caretaker Relatives program, to align state rules with federally required changes and the Medicaid State Plan. The proposed amendments implement the federal requirements from the Affordable Care Act (ACA), which amended §1902(a)(10)(A)(i)(VIII) and §1902(k)(3) of the Social Security Act, to provide that the spouse of the caretaker relative may be eligible for the Medicaid for Parents and Caretaker Relatives Program if the spouse is living with the parent or other care-

taker relative and meets all other eligibility criteria. 42 U.S.C.S. §1396a(a)(10)(A)(i)(VIII) and §1396a(k)(3).

HHSC proposes to amend §366.847, concerning Exempt Resources for the Medically Needy Program, to implement provisions of House Bill (H.B.) 3987, 84th Legislature, Regular Session, 2015. HB 3987 amended Texas Education Code by adding §28.0024, which allows school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. H.B. 3987 also amended Texas Human Resources Code §32.02611 to exclude school-based savings accounts and interest earned on the accounts when determining eligibility for the Medically Needy Program. Section 32.02611 limits the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

The proposed amendments align the eligibility rules for the Medically Needy Program with H.B. 3987. Under the proposed rules, HHSC will exclude from countable resources school-based savings accounts. H.B. 3987 rule changes are contingent on federal approval from the Centers for Medicare and Medicaid Services (CMS) of a Medicaid State Plan Amendment. HHSC is developing a Medicaid State Plan Amendment reflecting the proposed policy changes for the school-based savings accounts.

HHSC proposes to amend §366.1107, concerning Determination of Household Composition for the Modified Adjusted Gross Income Methodology used for Medicaid programs, to align state rules with federally required changes and the Medicaid State Plan. The proposed amendment clarifies that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual and in the household composition of any individual whose household includes the pregnant individual.

SECTION-BY-SECTION SUMMARY

Subchapter C (relating to Pregnant Women's Medicaid)

Section 366.319 describes the requirements for an individual to be eligible for Pregnant Women's Medicaid. The proposed amendment removes the requirement for a pregnant woman to provide the name and last known address of the father of her unborn child because this is not required when applying.

Subchapter G (relating to Medicaid for Parents and Caretaker Relatives Program)

Section 366.703 defines key terms for the subchapter. The proposed amendments align the rules with federal policy and current HHSC policy and processes by removing the requirement from the definition of "dependent child" that a child be deprived to be considered a dependent child for an adult's Medicaid for Parents and Caretaker Relatives eligibility.

Section 366.707 describes individuals who are eligible for Medicaid for the Parents and Caretaker Relatives Program. The proposed amendment allows the spouse of a parent or other caretaker relative to be eligible for the Medicaid for Parents and Caretaker Relatives Program if the spouse is living with the parent or other caretaker relative and meets all other eligibility criteria.

Subchapter H (relating to Medically Needy Program)

Section 366.821 describes the requirements for an individual to be eligible for the Medically Needy Program. The proposed amendment removes the requirement for a pregnant woman to provide the name and last known address of the father of her unborn child because it is not a requirement for the purposes of eligibility. It also amends the rule to clarify that a pregnant woman is not required to cooperate to find the absent parent to obtain child or medical support.

Section 366.847 describes exempt resources in the Medically Needy Program. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable resources when determining eligibility for the Medically Needy Program.

Subchapter K (relating to Modified Adjusted Gross Income Methodology)

Section 366.1107 describes the modified adjusted gross income methodology for determining household composition when making eligibility determinations for certain Medicaid programs. The proposed amendment requires that when a pregnant woman is included in the household of another individual applying for Medicaid, the pregnant woman must be counted as herself plus the number of children she is expected to deliver.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the proposed rules, as there is no requirement to alter current business practices as a result of the proposed amendments.

PUBLIC BENEFIT AND COST

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state and federal law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Forester, Policy Analyst, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

SUBCHAPTER C. PREGNANT WOMEN'S MEDICAID

1 TAC §366.319

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.319. Child Support and Medical Support.

[~~A pregnant woman receiving Medicaid must provide the name and last known address of the legal or biological father of her unborn child.~~] Applicants and recipients may volunteer to receive child support or medical support services. [~~There is no penalty for noncooperation.~~]

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 20, 2016.

TRD-201603608
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

SUBCHAPTER G. MEDICAID FOR PARENTS AND CARETAKER RELATIVES PROGRAM

1 TAC §366.703, §366.707

STATUTORY AUTHORITY (MEDICAID)

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.703. Definitions.

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

(1) Applicant--A person seeking assistance under the Medicaid for Parents and Caretaker Relatives Program who:

(A) has never received Medicaid and is not currently receiving Medicaid; or

(B) previously received Medicaid but subsequently was denied and reapplies for Medicaid.

(2) Authorized representative--A person or organization whom an applicant authorizes to apply for Medicaid benefits on behalf of the applicant.

(3) Caretaker--A person who supervises and cares for a dependent child and who meets relationship requirements in §366.719(c) of this subchapter (relating to Relationship and Domicile).

(4) CFR--Code of Federal Regulations.

(5) Dependent child--A child who is:

(A) [~~either:~~]

[~~(i)~~] under the age of 18; or

(B) [~~(ii)~~] 18 and a full-time student in secondary school or equivalent vocational or technical training, if before attaining age 19 the child may reasonably be expected to complete such school or training.[~~; and~~]

[~~(B) is deprived of parental support by reason of the death, absence from the home, physical or mental incapacity, or unemployment of at least one parent.~~]

(6) Eligible group--A category of people who are eligible for the Medicaid for Parents and Caretaker Relatives Program.

(7) Federal Poverty Level (FPL)--The household income guidelines issued annually and published in the Federal Register by the United States Department of Health and Human Services.

(8) HHSC--The Texas Health and Human Services Commission or its designee.

(9) Household composition--The group of individuals who are considered in determining eligibility for an applicant or recipient for certain medical programs based on tax status, tax relationships, living arrangements, and family relationships, referenced in 42 CFR §435.603(f) as "household."

(10) Medicaid--A state and federal cooperative program, authorized under Title XIX of the Social Security Act (42 U.S.C. §1396 et seq.) and Texas Human Resources Code chapter 32, that pays for certain medical and health care costs for people who qualify. Also known as the medical assistance program.

(11) Person acting responsibly--A person, other than a provider, who may apply for Medicaid on behalf of an applicant who is incompetent or incapacitated if the person is determined by HHSC to be acting responsibly on behalf of the applicant.

(12) Recipient--A person receiving benefits under the Medicaid for Parents and Caretaker Relatives Program, including a person who is renewing eligibility for the Medicaid for Parents and Caretaker Relatives Program.

(13) Retroactive coverage--Payment for Medicaid-reimbursable medical services received up to three months before the month of application.

(14) Texas Works Handbook--An HHSC manual containing policies and procedures used to determine eligibility for Supplemental Nutrition Assistance Program (SNAP) food benefits, Temporary Assistance for Needy Families (TANF), the Children's Health Insurance Program (CHIP), and Medicaid programs for children and families. The Texas Works Handbook is found on the Internet at www.hhsc.state.tx.us/Programs/Programs.shtml#handbooks.

(15) Third-party resource--A person or organization, other than HHSC or a person living with the applicant or recipient, who may be liable as a source of payment of the applicant's or recipient's medical expenses (for example, a health insurance company).

(16) U.S.C.--United States Code.

§366.707. Eligible Group.

To be eligible for the Medicaid for Parents and Caretaker Relatives Program, a person must be a [~~caretaker or second~~] parent or caretaker relative of a dependent child who receives Medicaid. The spouse of a parent or caretaker relative is also eligible for the Medicaid for Parents and Caretaker Relatives Program, if living with such parent or other caretaker relative.

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 20, 2016.

TRD-201603609
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER H. MEDICALLY NEEDY PROGRAM

1 TAC §366.821, §366.847

STATUTORY AUTHORITY (MEDICAID)

The amendments are proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

The amendments affect Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.821. Child Support and Medical Support.

[~~(a) Pregnant women must provide the name and last known address of the legal parent or biological father, or both, of unborn children.~~]

[~~(b)~~] An applicant who is a child under 19 years of age or a pregnant woman is not required to cooperate to find absent parents to obtain child or medical support.

§366.847. Exempt Resources.

HHSC exempts the following from countable resources:

(1) funds in a retirement account (even if accessible, so long as the funds remain in the account);

(2) balances in the Texas Guaranteed Tuition Plan (formerly called the Texas Tomorrow Fund) even if accessible, so long as the funds remain in the account;

(3) crime victim's compensation payments;

(4) earned income tax credit (EIC) payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months, unless there is a break in certification of more than 30 days, in which case any remaining portion of the EIC payment is counted as a resource;

(5) payments or allowances made under any federal law for the purpose of energy assistance;

(6) federal disaster payments and comparable disaster assistance provided by states, local governments, and disaster assistance organizations if the applicant or recipient is subject to legal penalties if the funds are not used as intended;

(7) transitional living allowances;

(8) any resource federal law excludes;

(9) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(10) the cash value of life insurance policies;

(11) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(12) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(13) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(14) burial plots;

(15) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the applicant or recipient uses as its primary residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(16) income-producing property (any real or personal property that generates income) that:

(A) is essential to a household composition member's employment or self-employment (such as tools of a trade, farm machinery, stock, and inventory), including:

(i) during temporary periods of unemployment if the household composition member expects to return to work; and

(ii) for farmers or fishers, the value of the land or equipment for one year after the date the self-employment ceases;

(B) annually produces income consistent with a fair market value comparable in the community (as determined by HHSC through sources such as local realtors, tax assessors, and the Small Business Administration), even if used only on a seasonal basis such as rental property; or

(C) is that portion of the property that is necessary for the maintenance or use of a vehicle exempted as income-producing or as necessary for transporting a physically disabled household member;

(17) real property HHSC determines the applicant or recipient is making a good faith effort to sell;

(18) resources HHSC determines are not accessible to the applicant or recipient;

(19) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(20) equity value of resources that are not legally available (inaccessible) to the household;

(21) a nonliquid resource if its equity is less than or equal to $1,500;

(22) a One-Time Temporary Assistance for Needy Families (OTTANF) payment for the month of receipt and any remaining OTTANF benefits the month after receipt;

(23) a TANF One-Time Grandparent payment;

(24) reimbursements earmarked and used for replacing or repairing an exempt resource;

(25) for an applicant or recipient who lives at the same physical address as a sponsored alien, the resources of a sponsor and the sponsor's spouse to the extent allowed by federal law;

(26) resources of residents in shelters for battered women and children if:

(A) resources are jointly owned by the member of the household composition in the shelter and household composition members of the former physical living address; and

(B) shelter resident's access to the value of the resource depends on the agreement of a joint owner who still lives in the resident's former physical living address;

(27) resources of a recipient of Supplemental Security Income living in the home; [~~and~~]

(28) liquid resources resulting from the earnings of a certified child who is attending school full time, or less than full time and employed less than 30 hours per week; and[~~.~~]

(29) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §32.02611 of the Texas Human Resources Code.

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 20, 2016.

TRD-201603610
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER K. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §366.1107

STATUTORY AUTHORITY (MEDICAID)

The amendment is proposed under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority, and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas. Amendments related to the school-based savings accounts are proposed under Texas Human Resources Code §32.02611.

The amendment affects Texas Government Code Chapter 531 and Texas Human Resources Code Chapter 32. No other statutes, articles, or codes are affected by this proposal.

§366.1107. Determination of Household Composition.

(a) To determine household composition, an individual is designated as:

(1) a taxpayer;

(2) a tax dependent who does not meet any exceptions;

(3) a tax dependent who meets one or more of the exceptions set out in 42 CFR §435.603(f)(2); or

(4) not a taxpayer or tax dependent.

(b) If the individual is a taxpayer, the following individuals are included in the taxpayer's household composition:

(1) the taxpayer;

(2) the taxpayer's spouse, if the taxpayer and the spouse live together;

(3) the taxpayer's spouse, if the taxpayer and spouse file a joint federal income tax return; and

(4) any individual the taxpayer expects to claim as a tax dependent for the taxable year in which Medicaid eligibility is requested.

(c) If the individual is a tax dependent, the following individuals are included in the tax dependent's household composition:

(1) the tax dependent;

(2) the household composition of the taxpayer claiming the tax dependent; and

(3) the tax dependent's spouse, if the tax dependent and the spouse live together.

(d) The rules in subsection (e) of this section apply to a tax dependent who:

(1) is not the taxpayer's spouse or the taxpayer's child;

(2) is a child who lives with both parents who did not file a joint federal income tax return and was claimed by one parent; or

(3) is a child who is claimed as a tax dependent only by a non-custodial parent.

(e) The household composition of an individual who is not a taxpayer or a tax dependent includes:

(1) the individual's spouse;

(2) the individual's children; and

(3) if a child, the individual's parents and siblings.

(f) A spouse is included in an individual's household composition if living together or filing a joint federal income tax return.

(g) Subsection (c) of this section applies to an individual who is both a tax dependent and taxpayer.

(h) The number of [~~An~~] unborn children [~~child~~] is included in the household composition of:

(1) a pregnant woman; and

(2) any individual whose [~~a child included in the~~] household composition includes the [~~of a~~] pregnant woman.

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 20, 2016.

TRD-201603611
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

CHAPTER 370. STATE CHILDREN'S HEALTH INSURANCE PROGRAM

The Texas Health and Human Services Commission (HHSC) proposes amendments to §370.307, concerning the Continuous Enrollment Period for CHIP; and §370.807, concerning Determination of Household Composition, to align the rules with federal law and current HHSC policy and processes.

BACKGROUND AND JUSTIFICATION

The proposed amendment to §370.307 is issued in accordance with the Social Security Act §2110(b)(2), and 42 CFR §457.310 and §457.315, and clarifies that an individual's continuous CHIP coverage is denied if they become a resident of an institution.

The proposed amendment to §370.807 requires that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of the pregnant individual for purposes of CHIP. The proposed amendment aligns state rules with federally-required changes and the CHIP State Plan.

SECTION-BY-SECTION SUMMARY

Subchapter C (relating to Enrollment, Renewal, Disenrollment, and Cost Sharing)

Section 370.307 defines the continuous enrollment period for CHIP and lists exceptions to continuous enrollment. The proposed amendment adds to the list of exceptions to the continuous enrollment period a member becoming a resident of an institution.

Subchapter I (relating to Modified Adjusted Gross Income Methodology)

Section 370.807 describes how household composition is determined for purposes of CHIP. The proposed amendment requires that the number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual. The number of unborn children a pregnant individual is expected to deliver continues to be included in the household composition of an applicant for the CHIP-Perinatal Program under §370.401 (relating to Perinates).

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

HHSC has determined that there will be no adverse economic effect on small businesses or micro-businesses to comply with the amended rules, as there is no requirement to alter current business practices as a result of the proposed amendments.

PUBLIC BENEFIT AND COSTS

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the rules will align with federal law and current HHSC policy and processes.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

HHSC has determined that this proposal is not a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule that has the specific intent 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.

TAKING IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Forester, Policy Analyst, 909 W. 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register.*

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

SUBCHAPTER C. ENROLLMENT, RENEWAL, DISENROLLMENT, AND COST SHARING

DIVISION 1. ENROLLMENT AND DISENROLLMENT

1 TAC §370.307

STATUTORY AUTHORITY (CHIP)

The amendments are proposed under the authority granted to HHSC by Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties under Chapter 531 of the Government Code, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance Program.

The proposed amendments affect Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.307. Continuous Enrollment Period.

(a) CHIP enrollment always begins on the first calendar day of the month and continues for a period up to 12 consecutive months.

(b) Exceptions to continuous enrollment include, but are not limited to:

(1) a sibling member in the home has an earlier initial date of coverage, in which case the coverage period for the newly enrolled child will be the remaining period of coverage of the already enrolled sibling;

(2) aging out when the member turns 19;

(3) change in health or dental insurance status (parent acquires employer coverage);

(4) family moves out of state;

(5) death of the member;

(6) data match reveals member is enrolled in both CHIP and Medicaid;

(7) notification of member's pregnancy;

(8) failure to drop current health insurance if member was determined to be CHIP-eligible due to the 10 percent rule regarding the cost of the current insurance; [~~or~~]

(9) direction by HHSC based on evidence that the member's original eligibility determination was incorrect; or[~~.~~]

(10) member becomes a resident of an institution as defined in 42 C.F.R §457.310(c)(2).

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 20, 2016.

TRD-201603612
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER I. MODIFIED ADJUSTED GROSS INCOME METHODOLOGY

1 TAC §370.807

STATUTORY AUTHORITY (CHIP)

The amendments are proposed under the authority granted to HHSC by Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to implement HHSC's duties under Chapter 531 of the Government Code, and Texas Health and Safety Code §62.051(d), which directs HHSC to adopt rules necessary to implement the Children's Health Insurance Program.

The proposed amendments affect Texas Health and Safety Code, Chapter 62, and Texas Government Code, Chapter 531. No other statutes, articles, or codes are affected by these proposed amendments.

§370.807. Determination of Household Composition.

(a) To determine household composition, an individual is designated as:

(1) a taxpayer;

(2) a tax dependent who does not meet any exceptions;

(3) a tax dependent who meets one or more of the exceptions; or

(4) not a taxpayer or tax dependent.

(b) If the individual is a taxpayer, the following individuals are included in the taxpayer's household composition:

(1) the taxpayer;

(2) the taxpayer's spouse, if the taxpayer and the spouse live together;

(3) the taxpayer's spouse, if the taxpayer and spouse file a joint federal income tax return; and

(4) any individual the taxpayer expects to claim as a tax dependent for the taxable year in which CHIP eligibility is requested.

(c) If the individual is a tax dependent, the following individuals are included in the tax dependent's household composition:

(1) the tax dependent;

(2) the taxpayer's household claiming the tax dependent; and

(3) the tax dependent's spouse, if the tax dependent and the spouse live together.

(d) The rules in subsection (e) of this section apply to a tax dependent who:

(1) is not the taxpayer's spouse or the taxpayer's child;

(2) is a child who lives with both parents whose parents did not file a joint federal income tax return and was claimed as a tax dependent by one parent; or

(3) is a child who is claimed as a tax dependent by a non-custodial parent pursuant to 42 CFR §435.603(f)(2).

(e) The household composition of an individual who is not a taxpayer or a tax dependent includes:

(1) the individual;

(2) the individual's spouse;

(3) the individual's children; and

(4) if the individual is a child, the individual's parents and siblings.

(f) A spouse is included in an individual's household composition if living together or filing a joint federal income tax return.

(g) Subsection (c) of this section applies to an individual who is both a tax dependent and taxpayer.

(h) The number of unborn children a pregnant individual is expected to deliver is included in the household composition of that pregnant individual or [~~For~~] an applicant under §370.401 of this chapter (relating to Perinates) [~~, an unborn child is included in the household composition~~].

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 20, 2016.

TRD-201603613
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

CHAPTER 372. TEMPORARY ASSISTANCE FOR NEEDY FAMILIES AND SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAMS

The Texas Health and Human Services Commission (HHSC) proposes amendments to §372.354, concerning Treatment of Resources in TANF; §372.355, concerning Treatment of Resources in SNAP; §372.404, concerning Countable and Excluded Income in TANF; §372.406, concerning Countable and Excluded Income in SNAP; §372.802, concerning One-Time TANF Eligibility Requirements; §372.1153, concerning Personal Responsibility Agreement Requirements; and §372.1154, concerning Cooperating with Personal Responsibility Agreement Requirements

BACKGROUND AND JUSTIFICATION

HHSC proposes the amendments to Chapter 372 to align the rules with federal law and current HHSC policy and processes, and to align the rules with state law to exclude school-based savings accounts as countable resources and interest income when determining eligibility for two programs: Temporary Assistance for Needy Families (TANF) and Supplemental Nutrition Assistance Program (SNAP).

First, HHSC proposes to amend §372.354 and §372.355 in Subchapter B to align the rules with House Bill 3987, 84th Legislature, Regular Session, 2015. HB 3987 amended the Texas Education Code by adopting §28.0024, School-Based Savings Program, which allows school districts to establish school-based savings programs to increase financial literacy and encourage students to save for higher education. HB 3987 also adopted statutes excluding school-based savings accounts and interest earned on the accounts when determining eligibility for certain HHSC-administered programs. Thus, new Texas Human Resources Code §31.0039 and §32.0291 exclude such accounts and interest when determining eligibility for TANF and SNAP, respectively. Section 31.0039 and §33.0291, as adopted by HB 3987, limit the amount of the exclusion for school-based savings accounts to the cost of undergraduate resident tuition and required fees for one academic year consisting of 30 semester credit hours charged by the general academic teaching institution with the highest such tuition and fee costs for the most recent academic year as determined by the Texas Higher Education Coordinating Board.

Under the proposed rules, HHSC will exclude school-based savings accounts from countable income and resources when determining eligibility, pursuant to Texas Education Code §28.0024 and Texas Human Resources Code §31.0039 and §33.0291. HB 3987 rule changes are contingent on federal approval from the Food and Nutrition Service (FNS) of a waiver request to apply the proposed policy changes for the school-based savings accounts to SNAP households that are not categorically eligible, which is pending approval.

Second, HHSC proposes to amend §372.802, concerning One-Time TANF Eligibility Requirements, to clarify the eligibility requirements for a caretaker adult to receive One-Time TANF and reorganizes the rules to better align them with current HHSC policy and processes.

And third, HHSC proposes to amend §372.1153, concerning Personal Responsibility Agreement Requirements, and §372.1154, concerning Cooperating with Personal Responsibility Agreement Requirements, to align with federal requirements. Federal rules at 45 Code of Federal Regulations §264.30 require HHSC to refer families requesting TANF cash assistance to the Office of the Attorney General (OAG) when paternity has not been established for a child or when a child support order needs to be established, modified, or enforced. HHSC refers all appropriate individuals in the family of a child for whom paternity has not been established or for whom a child support order needs to be established, modified, or enforced to the OAG. The OAG determines if establishing paternity of the dependent child is necessary to establish or enforce child support orders.

The proposed changes strengthen the rules and align with current federal requirements and HHSC policy and processes of making referrals to OAG.

SECTION-BY-SECTION SUMMARY

Subchapter B (relating to Eligibility)

Section 372.354 describes the treatment of resources in TANF. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable resources when determining eligibility for TANF.

Section 372.355 describes the treatment of resources in SNAP. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable resources when determining eligibility for SNAP.

Section 372.404 describes countable and excluded income in TANF. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable income when determining eligibility for TANF.

Section 372.406 describes countable and excluded income in SNAP. The proposed amendments align the rule with state law by excluding school-based savings accounts as countable income when determining eligibility for SNAP.

Subchapter C (relating to Associated Programs)

Section 372.802 defines the eligibility requirements for One-Time TANF. The proposed amendments clarify the eligibility requirements to align the rules with current HHSC policy and processes.

Subchapter E (relating to Participation Requirements)

Section 372.1153 describes participation agreement requirements for the TANF program. The proposed amendment requires caretakers to establish paternity, when necessary, for the purposes of pursuing child support.

Section 372.1154 describes participation agreement requirements and parental cooperation for the TANF program. The proposed amendment requires caretakers to provide any necessary information for HHSC to make a referral to the OAG.

FISCAL NOTE

Greta Rymal, Deputy Executive Commissioner for Financial Services, has determined that for each year of the first five years the amended rules are in effect, there will be no impact to costs and revenues of state and local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT

HHSC has determined that there will be no adverse economic effect on small businesses or micro businesses to comply with the proposed rule. The proposed amendments affect eligibility for publicly funded health and human services programs by clarifying existing requirements. There is no impact on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Wayne Salter, Deputy Executive Commissioner, Office of Social Services, has determined that for each year of the first five years the rule is in effect, the public will benefit from the adoption of the rule because the agency will be in compliance with state and federal law.

Ms. Rymal has also determined there are no probable economic costs to persons who are required to comply with the amended rules.

HHSC has determined that the amended rules will not affect a local economy. There is no anticipated negative impact on local employment.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

HHSC 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 §2007.043 of the Government Code.

PUBLIC COMMENT

Written comments on the proposal may be submitted to Diana Forester, Policy Analyst, 909 West 45th Street, Austin, Texas 78751; by fax to (512) 206-5141; or by e-mail to OSS_PSAD@hhsc.state.tx.us within 30 days of publication of this proposal in the *Texas Register*.

PUBLIC HEARING

A public hearing is scheduled for August 23, 2016, at 3:00 p.m. (central time) in the Brown-Heatly Building, Public Hearing Room, located at 4900 North Lamar Boulevard, Austin, Texas 78751. Persons requiring further information, special assistance, or accommodations should contact Diana Forester at (512) 206-4893.

SUBCHAPTER B. ELIGIBILITY

DIVISION 6. RESOURCES

1 TAC §372.354, §372.355

STATUTORY AUTHORITY (TANF)

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts.

The amendments affect Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.354. Treatment of Resources in TANF.

(a) In the TANF Program, the countable resources limit is $1,000.

(b) Unless a resource is excluded under subsection (c) of this section, the Texas Health and Human Services Commission (HHSC) counts the resources of:

(1) the members of the certified group;

(2) each parent of a child in the certified group living in the household and ineligible or disqualified from receiving TANF benefits;

(3) each sibling of a dependent child in the certified group living in the household and disqualified from receiving TANF benefits; and

(4) the sponsors and the sponsors' spouses, for a household containing a sponsored alien.

(c) HHSC excludes the following resources:

(1) an amount up to $7,500 per person of prepaid burial insurance (or of a prepaid funeral plan);

(2) burial plots;

(3) crime victim compensation funds;

(4) earned income tax credit payments to applicants the month of receipt and the following month, and to recipients the month of receipt and the following 11 months;

(5) the homestead and surrounding real property, including:

(A) any structure, including a houseboat or a motor home, the household uses as its residence;

(B) surrounding real property divided by a public right-of-way (such as a street or road) but not divided by real property owned by others; and

(C) the homestead if it is temporarily unoccupied due to employment, training for future employment, illness, casualty, or natural disaster, as long as the household intends to return;

(6) resources HHSC determines are not accessible to the household, including:

(A) jointly owned property as described for SNAP in 7 CFR §273.8(d); and

(B) trust funds as described for SNAP in 7 CFR §273.8(e)(8);

(7) business property, including property retained for income-producing business purposes;

(8) vehicles used to transport a disabled household member and property used to maintain such vehicles;

(9) the cash value of all life insurance policies;

(10) funds from the earned income of a child as described in §372.404(2) of this subchapter (relating to Countable and Excluded Income in TANF);

(11) personal possessions HHSC determines are essential for daily living, such as clothing, jewelry, furniture, livestock, and farm equipment;

(12) funds from a reimbursement intended for and actually used in the month of receipt to repair or replace a lost or damaged resource excluded under this section, but HHSC counts the funds from such a reimbursement, beginning in the month after receipt, to the extent the funds were not used as intended to repair or replace the lost or damaged resource;

(13) federal, state, or local government payments provided to rebuild a home or replace personal possessions damaged in a disaster, including payments under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §5121, et seq.), if the recipient is subject to legal sanction if the payment is not used as intended;

(14) any resource federal law excludes;

(15) funds in a retirement account excluded under 7 U.S.C. §2014(g);

(16) funds in an education account excluded under 7 U.S.C. §2014(g);

(17) loans, if the circumstances satisfy HHSC that there exists an understanding the money will be repaid, and the applicant or recipient reasonably explains to HHSC how the money will be repaid;

(18) funds from educational assistance payments (but only during the quarter, semester, or applicable period the payment is intended to cover);

(19) the value of real property the household is making a good faith effort to sell at a reasonable price;

(20) funds excluded under §372.355(d) of this division (relating to Treatment of Resources in SNAP);

(21) funds excluded under §372.404(25) of this subchapter; [~~and~~]

(22) the fair market value of one automobile up to $4,650; and[~~.~~]

(23) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §31.0039 of the Texas Human Resources Code.

§372.355. Treatment of Resources in SNAP.

(a) In SNAP, the Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.8(a) and (b) to determine the countable resources limit. Unless a household is considered categorically eligible for SNAP under 7 CFR §273.2(j) by receiving Supplemental Security Income, TANF cash, or TANF non-cash benefits, the countable resource limit for a household is the amount of liquid resources and excess vehicle values specified in 7 CFR §273.8(b).

(b) HHSC follows 7 CFR §273.8 to determine whose resources to count in SNAP.

(c) HHSC follows 7 CFR §273.8 to determine what resources are counted, and 7 CFR §273.8(e) and 7 U.S.C. §2014(g) to determine what resources are excluded.

(d) HHSC also excludes:

(1) up to $2,000 of gifts annually from tax-exempt organizations provided to children with life-threatening conditions;

(2) independent living payments to youths who are leaving foster care, as provided by the Social Security Act, Title IV-E (42 U.S.C. §670 et seq.);

(3) funds from payments up to $2,000 to Native Americans made under the federal Old Age Assistance Claims Settlement Act (25 U.S.C. §2301) or the federal Alaska Native Claims Settlement Act (43 U.S.C. §1601);

(4) funds from payments made to volunteers under Title I of the Domestic Volunteer Services Act of 1973 (regardless of whether the recipient was receiving SNAP benefits at the time of receipt);

(5) funds from adoption subsidy payments made under Title IV-A and Title IV-E of the Social Security Act;

(6) funds from insurance policy dividends;

(7) funds from veterans payments earmarked as a housebound allowance or as an aid and attendance allowance;

(8) $15,000 for the first vehicle and $4,650 for each additional vehicle; [~~and~~]

(9) resources of categorically eligible households as described in 7 CFR §273.8(a); and[.]

(10) funds held in a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §33.0291 of the Texas Human Resources Code.

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 20, 2016.

TRD-201603614
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

DIVISION 7. INCOME

1 TAC §372.404, §372.406

STATUTORY AUTHORITY (TANF)

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts .

The amendments affect Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.404. Countable and Excluded Income in TANF.

In the TANF program, the Texas Health and Human Services Commission (HHSC) counts all income of a person described in §372.403 of this division (relating to Determining Whose Income Counts in TANF), except HHSC excludes the following:

(1) any income federal law excludes;

(2) the earned income of a child who is:

(A) a full-time student, as defined by the school (regardless of how many hours the child works); or

(B) a part-time student employed less than 30 hours a week;

(3) up to $300 per federal fiscal quarter in cash gifts and contributions from private, nonprofit organizations and based on need;

(4) up to $75 per month in regular child support payments per household, except HHSC counts all child support payments a household receives if HHSC determines the household violated an agreement to assign child support to the State;

(5) income legally diverted before actual receipt, such as payments a parent makes for alimony, child support, and to dependents outside the home;

(6) proceeds from claims on insurance policies to compensate a loss or used to pay medical expenses;

(7) payments from federal volunteer programs for volunteer service, such as payments:

(A) for volunteer service in a senior citizen volunteer program, under the Domestic Volunteer Service Act (42 U.S.C. §5000 et seq.);

(B) for volunteer service to Volunteers in Service to America (VISTA), under 42 U.S.C. §§4951 - 4960; and

(C) for volunteer service under the National and Community Service Act (42 U.S.C. §§12511 - 12656);

(8) payments under the Workforce Investment Act of 1998;

(9) the value of any benefits received under a government nutrition assistance program based on need, including benefits under SNAP, the Child Nutrition Act of 1966, the National School Lunch Act, and the Older Americans Act of 1965;

(10) foster care payments;

(11) payments made under a government housing assistance program based on need;

(12) energy assistance payments;

(13) job training payments that:

(A) are earmarked as reimbursement for training-related expenses; and

(B) do not duplicate payment for an item covered by budgetary needs;

(14) a lump sum provided and used to pay burial, legal, or medical bills, or to replace damaged or lost possessions, except HHSC does not exclude amounts from lump sums used for another purpose;

(15) reimbursements for monies spent on items not covered by budgetary needs;

(16) amounts deducted from royalties for production expenses and severance taxes;

(17) all income of Supplemental Security Income recipients;

(18) third-party funds received and used for a third-party beneficiary who is not a household member;

(19) vendor payments from funds not legally obligated to the household;

(20) veterans benefits for special needs items not covered by budgetary needs;

(21) workers' compensation payments legally obligated to the recipient that are earmarked and used for medical expenses;

(22) the amount of any nonfarm self-employment income offsetting a tax deduction taken that year for a farm loss, for households with farms generating income of at least $1,000 annually;

(23) any income described in §372.355(d) of this subchapter (relating to Treatment of Resources in SNAP);

(24) any income described in §372.354(c)(4), (13), (17), and (18) of this subchapter (relating to Treatment of Resources in TANF);

(25) crime victim's compensation payments; [~~and~~]

(26) the earned income of a person who marries a caretaker or payee, for the first six months from the date of the marriage, if:

(A) the caretaker or payee is receiving TANF benefits on the date of the marriage; and

(B) the combined income of the person and the caretaker or payee, countable under this section, not exceeding 200% of the Federal Poverty Guidelines, as calculated based on the total number of the following persons:

(i) the caretaker or payee;

(ii) the person who marries the caretaker or payee;

(iii) each child living in the household who is related to the caretaker, payee, or person within the degree described in §372.108 of this chapter (relating to Relationship Requirement); and

(iv) a required member if not disqualified or ineligible; and[~~.~~]

(27) interest earned on a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §31.0039 of the Texas Human Resources Code.

§372.406. Countable and Excluded Income in SNAP.

(a) In SNAP, the Texas Health and Human Services Commission (HHSC) follows 7 CFR §273.9 to determine what income to count, and 7 CFR §273.9(c) and 7 U.S.C. §2014(d) to determine what income to exclude.

(b) HHSC also excludes:

(1) payments described in §372.404(7) of this division (relating to Countable and Excluded Income in TANF);

(2) any income described in §372.355(d) of this subchapter (relating to Treatment of Resources in SNAP); [~~and~~]

(3) amounts deducted from royalties for production expenses and severance taxes; and[~~.~~]

(4) interest earned on a school-based account or bond as described by §28.0024 of the Texas Education Code and authorized by §33.0291 of the Texas Human Resources Code.

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 20, 2016.

TRD-201603615
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

SUBCHAPTER C. ASSOCIATED PROGRAMS
DIVISION 5. ONE-TIME TANF (OTTANF)

1 TAC §372.802

STATUTORY AUTHORITY (TANF)

The amendment is proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts.

The amendment affects Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.802. One-Time TANF Eligibility Requirements.

(a) A One-Time TANF (OTTANF) applicant must:

(1) meet all TANF eligibility and participation requirements in this chapter, except the requirement at §372.1154(g) of this chapter (relating to Cooperating with Personal Responsibility Agreement Requirements) to participate in the Choices work program;

(2) not have received an OTTANF benefit during the 12 months before the application month;

(3) be experiencing a short-term crisis; and

(4) not be a member of a household that is currently receiving TANF benefits.

[~~(3) be in need of emergency assistance; and~~]

[~~(4) be employed or likely to be employed within a short period of time.~~]

(b) The household meets the criteria in subsection (a)(3) [~~(a)(2) and (3)~~] of this section if a caretaker adult:

(1) lost employment during the period beginning two months before the application month through the month HHSC determines the household's eligibility (loss of employment does not include voluntary quit without good cause);

(2) is the only adult in the certified group and:

(A) within the last 12 months before the application month through the month HHSC determines household eligibility, a child in the household lost the financial support of a parent or stepparent through death, divorce, separation, abandonment, or termination, or the child's financial support was reduced; and

(B) the adult has a history of employment within the 12 months before the application month or the month HHSC determines household eligibility;

(3) graduated from a university, college, junior college, or technical training school within the 12 months before the application month through the month HHSC determines household eligibility and:

(A) is unemployed or underemployed;

(B) is not currently enrolled in an institution of higher learning;

(C) provides proof of his or her degree or certificate of completion from a university, college, junior college, or technical training school; and

(D) received TANF benefits or a OTTANF benefit anytime in the 12 months before enrolling or while attending a university, college, junior college, or technical training school; or

(4) is currently employed and facing a crisis due to the loss or potential loss of transportation or shelter, or due to a medical emergency that temporarily prevents the person from working during the

period beginning two months before the application month through the month HHSC determines the household's eligibility.

[~~(1) is facing a crisis due to the loss or potential loss of transportation or shelter, or due to a medical emergency that temporarily prevents the person from working;~~]

[~~(2) lost employment during the period beginning two months before the application month through the month the Texas Health and Human Services Commission (HHSC) determines the household's eligibility (loss of employment does not include voluntary quit without good cause); or~~]

[~~(3) graduated from a university, college, junior college, or technical training school within the 12 months before the application month through the month HHSC determines household eligibility and:~~]

[~~(A) is unemployed or underemployed;~~]

[~~(B) is not currently enrolled in an institution of higher learning;~~]

[~~(C) provides proof of his or her degree or certificate of completion from a university, college, junior college, or technical training school; and~~]

[~~(D) received TANF benefits or an OTTANF benefit anytime in the 12 months before enrolling or while attending a university, college, junior college, or technical training school.~~]

[~~(c) In the case of a household with only one adult in the certified group, the household meets the criteria in subsection (a)(2) and (3) of this section if:~~]

[~~(1) a child in the household lost the financial support of a parent or stepparent through death, divorce, separation, abandonment, or termination or reduction of financial support within the last 12 months before the application month through the month HHSC determines household eligibility; and~~]

[~~(2) the adult has a history of employment within the 12 months before the application month or the month HHSC determines household eligibility.~~]

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603616
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

SUBCHAPTER E. PARTICIPATION REQUIREMENTS
DIVISION 2. THE TANF PERSONAL RESPONSIBILITY AGREEMENT (PRA)

1 TAC §372.1153, §372.1154

STATUTORY AUTHORITY (TANF)

The amendments are proposed under Texas Government Code §531.0055, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §31.001, which provides HHSC with authority to operate the TANF; Texas Human Resources Code §31.0039, which sets forth TANF financial eligibility requirements for school-based savings accounts; Texas Human Resources Code §33.0006, which provides HHSC with authority to operate SNAP; and Texas Human Resources Code §33.0291, which set forth TANF financial eligibility requirements for school-based savings accounts.

The amendments affect Chapters 31 and 33 of the Texas Human Resources Code. No other statutes, articles, or codes are affected by this proposal.

§372.1153. Personal Responsibility Agreement Requirements.

(a) A Personal Responsibility Agreement (PRA) of a payee contains the following requirements:

(1) Child support. The parent of a dependent child must cooperate if necessary to:

(A) establish the paternity of the dependent child; or [~~and~~]

(B) to establish or enforce child support.

(2) Children's health checkups. A dependent child must complete early and periodic screening, diagnosis, and treatment checkups on schedule.

(3) Children's immunizations. A dependent child must be immunized unless the child is exempt, as prescribed by the Texas Health and Safety Code, §161.004.

(4) Children's school attendance. A dependent child under 18 years of age and a parent under 19 years of age must attend school regularly, if the child or parent has not completed high school or its equivalent, unless the child or parent is exempt under the Texas Education Code, §25.086.

(5) No drug or alcohol abuse. A person must refrain from abusing alcohol and from possessing, using, or selling marijuana or a controlled substance in violation of the Texas Health and Safety Code, Chapter 481.

(b) The PRA of an adult in a certified group and a minor parent in a certified group whom the Texas Health and Human Services Commission (HHSC) has certified as an adult contains all the requirements in subsection (a) of this section and the following requirements:

(1) Retaining employment. The person must refrain from voluntarily quitting employment of at least 30 hours per week without good cause.

(2) Activities toward becoming self-sufficient. The person must engage in an activity toward becoming self-sufficient through participation in an education, job placement, employment skills, volunteer, or work program.

(3) Parenting skills training. If appropriate, the person must attend appropriate parenting skills training classes.

§372.1154. Cooperating with Personal Responsibility Agreement Requirements.

(a) Child support.

(1) A person cooperates with this requirement:

(A) for a person who is not exempt, by:

(i) assigning the right to receive child support payments to the State of Texas;

(ii) providing information to the Texas Health and Human Services Commission (HHSC) for a referral to the Office of the Attorney General (OAG) to, if necessary, establish the paternity of a dependent child; [~~, and to~~]

(iii) providing information to HHSC for a referral to the OAG to, if necessary, establish or enforce child and medical support; or [~~and~~]

(iv) [~~(iii)~~] cooperating with Title IV-D program rules as specified in §55.3 and §55.4 of this title (relating to Cooperation Required for Recipients of Child Support Services; and Determination of Cooperation); or

(B) for a person who claims to be exempt, by providing HHSC any requested information to verify the exemption.

(2) A person is exempt from the child support requirement if the OAG or HHSC determines:

(A) the person is a participant in the TANF State Program;

(B) the child was conceived as a result of incest or rape;

(C) adoption proceedings for the child are pending and the parent of the child, for three months or less, has been working with an agency to decide whether to place the child for adoption;

(D) the child may be physically or emotionally harmed by cooperation;

(E) the parent may be physically harmed, or emotionally harmed to the extent of impairing the parent's ability to care for the child, by cooperation; or

(F) the requirement is waived under 45 CFR §260.52(c) in accordance with the requirements of the Texas Human Resources Code, §31.0322.

(b) Children's health checkups.

(1) A person cooperates with this requirement by:

(A) enrolling the child in the Texas Health Steps Program administered by the Texas Department of State Health Services (DSHS);

(B) ensuring that the child participates in the Texas Health Steps Program; and

(C) providing DSHS any requested verification of cooperation.

(2) HHSC communicates with DSHS, or the Medicaid insurance carrier that DSHS contracts with, to verify cooperation with this requirement.

(c) Children's immunizations. A person cooperates with this requirement:

(1) for a child who is not exempt, by:

(A) ensuring that the child receives all appropriate immunization shots on schedule (or in accordance with any alternate immunization schedule prescribed for the child); and

(B) submitting verification to HHSC in the form of an immunization record from a licensed medical professional or a record showing the child attends a public school; or

(2) for a child who is exempt under the Texas Health and Safety Code, §161.004, by verifying the exemption to HHSC with information such as:

(A) medical records indicating or a statement from a licensed physician stating that immunization is not in the child's best medical interests; or

(B) a statement by the caretaker or parent that the requirement violates the caretaker's or parent's religious beliefs or conscience.

(d) Children's school attendance. A person cooperates with this requirement:

(1) for a child who is not exempt, by:

(A) ensuring regular school attendance by each person in the household subject to the requirement; and

(B) submitting verification to HHSC on request, such as a written or oral statement from the school; or

(2) for a child who is exempt under the Texas Education Code, §25.086, by providing HHSC any requested information that would verify the exemption.

(e) No drug or alcohol abuse. HHSC verifies cooperation with this requirement by obtaining criminal history information on the person from the Texas Department of Public Safety or another law enforcement agency. HHSC considers a person to be cooperating with this requirement if the person is neither convicted of nor receives deferred adjudication for:

(1) a crime involving alcohol abuse; or

(2) an offense under the Texas Health and Safety Code, Chapter 481, involving marijuana or another controlled substance.

(f) Retaining employment. A person cooperates with this requirement by not voluntarily quitting a job of 30 or more hours per week without good cause to do so. HHSC determines cooperation with this requirement. When HHSC learns that the person no longer has the job, HHSC investigates and decides whether the work separation was a voluntary quit, and if so, whether there was good cause to quit under §372.1156 of this division (relating to Good Cause for Noncooperation with Personal Responsibility Agreement Requirements).

(1) Voluntarily quitting a job means any separation from employment that HHSC determines was initiated by the person, regardless of whether the employer or the person claims that the person resigned or was fired. For example, HHSC may decide the work separation was not a voluntary quit if a person resigned at the employer's demand. Similarly, HHSC may decide the work separation was a voluntary quit when a person is fired for reasons such as leaving a job unannounced.

(2) HHSC does not consider either of the following to be a separation from employment:

(A) a reduction in work hours below 30 per week, if the person continues to work for the same employer; or

(B) the ending of a self-employment enterprise.

(g) Activities toward becoming self-sufficient.

(1) A person who is not exempt cooperates with this requirement by enrolling and participating in the Choices work program administered by the Texas Workforce Commission (TWC). TWC determines cooperation with the Choices work program and informs HHSC of noncooperation.

(2) A person who claims to be exempt from this requirement cooperates by demonstrating the exemption to HHSC or TWC.

(3) A person is exempt from this requirement (but may choose to voluntarily participate, as applicable) if the person:

(A) chooses the One-Time TANF benefit instead of regular TANF benefits, as explained in §372.802 of this chapter (relating to One-Time TANF Eligibility Requirements);

(B) lives in a county that does not offer Choices work program services;

(C) is a caretaker relative of a disabled person who lives in the home and requires the caretaker relative's presence, or is a single person caring for a child under one year of age;

(D) is a single grandparent 50 years of age or older caring for a child under three years of age;

(E) is disabled and the disability is expected to last more than 180 days;

(F) is pregnant and unable to work as a result of the pregnancy; or

(G) is 60 years of age or older.

(h) Parenting skills training. A person cooperates with this requirement by:

(1) ensuring that each minor parent in the certified group and each parent in the certified group with a child in the home under five years of age attends parenting skills training classes; and

(2) submitting verification to HHSC, such as a written or oral statement from the provider of the training.

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603618
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-6900

♦ ♦ ♦

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 27. TEXAS CITRUS PEST AND DISEASE MANAGEMENT CORPORATION

SUBCHAPTER H. CREATION OF PEST MANAGEMENT ZONES

4 TAC §§27.801 - 27.804

The Texas Department of Agriculture (Department) proposes new Title 4, Part 1, Chapter 27, Creation of Pest Management Zones, Subchapter H, §§27.801 - 27.804. New Subchapter H is proposed to implement rules related to the creation of pest management zones under Chapter 80 of the Texas Agriculture Code (the Code) in order for the Texas Citrus Pest and Disease Management Corporation, Inc. (Corporation), a Texas nonprofit corporation, the recognized entity by the Department, to plan, carry out, and operate suppression programs to manage and control citrus pests and diseases in this state under the supervision of the Department.

Proposed Subchapter H includes the authority and procedures for creation of a pest management zone, including a public hearing and a required citrus producer referendum. The proposal also defines the counties that will be within the initial proposed Lower Rio Grande Valley Pest Management Zone.

Mr. Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, has determined that for the first five-year period the proposed new rules are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Strnad has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the rules will be the reduction and management of the spread of citrus pests and diseases. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Written comments on the proposal may be submitted to Mr. Stuart Strnad, Coordinator for Agriculture Commodity Boards and Producer Relations, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711, or by email to: *Stuart.Strnad@TexasAgriculture.gov.* Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The new rules are proposed under Chapter 80 of the Texas Agriculture Code, which authorizes the Department to adopt rules as necessary for the Texas Citrus Pest and Disease Management Corporation to plan, carry out, and operate suppression programs to manage and control pests and diseases in citrus plants in the state under the supervision of the Department as provided by Chapter 80.

The code affected by the proposal is Texas Agriculture Code, Chapter 80.

§27.801. Authority and Purpose.

The Texas Agriculture Code, §80.005, provides the Commissioner of agriculture with the authority, by rule, to designate an area of the state as a proposed pest management zone.

§27.802. Public Hearing.

The commissioner may hold a public hearing in the proposed pest management zone to discuss the proposed geographic boundaries of the zone. The public hearing may include any other topic allowed under this chapter.

§27.803. Zone Activation; Grower Approval.

(a) Once a pest management zone has been designated by adoption of a rule under the Texas Agriculture Code, §80.005, the pest management zone is not established until approved by a referendum of citrus producers in the new zone held in accordance with the Texas Agriculture Code, §80.006.

(b) Once a pest management zone has been designated by rule and established by approval of citrus producers in the zone, as provided in this section, the zone shall operate in accordance with the provisions of the Texas Agriculture Code, Chapter 80, and rules adopted thereunder.

§27.804. Lower Rio Grande Valley Pest Management Zone.

The Lower Rio Grande Valley Pest Management Zone shall consist of the following areas: Cameron, Hidalgo, and Willacy Counties.

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 25, 2016.

TRD-201603659
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-4075

♦ ♦ ♦

TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

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

The Public Utility Commission of Texas (commission) proposes amendments to §24.1, relating to Purpose and Scope of this Chapter; §24.3, relating to Definitions of Terms; §24.8, relating to Administrative Completeness; §24.101, relating to Certificate Required; §24.102, relating to Criteria for Considering and Granting Certificates of Convenience and Necessity or Amendments; §24.103, relating to Certificates Not Required; §24.104, relating to Applicant; §24.105, relating to Contents of Certificate of Convenience and Necessity Applications; §24.106, relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications; §24.107, relating to Action on Applications; §24.109, relating to Report of Sale, Merger, Etc.; Investigation, Disallowance of Transaction; §24.110, relating to Foreclosure and Bankruptcy; §24.111, relating to Purchase of Voting Stock in Another Utility; §24.115, relating to Cessation of Operations by a Retail Public Utility; §24.117, relating to Contracts Valid and Enforceable; §24.118, relating to Contents of Request for Commission Order Under TWC §13.252; §24.119, relating to Filing of Maps; §24.120, relating to Single Certification in Incorporated or Annexed Areas; §24.142, relating to Operation of a Utility that Discontinues Operation or is Referred for Appointment of a Receiver; §24.143, relating to Operation of a Utility by a Temporary Manager; and the repeal of §24.112, relating to Transfer of Certificate of Convenience and Necessity. The proposed amendments and repeal will update provisions regarding applications and mapping requirements for new certificates of convenience and necessity (CCNs) and CCN amendments, administrative completeness, sale/transfer/mergers, and other non-rate related water and sewer provisions. Project Number 45111 is assigned to this proceeding.

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

Ms. Benter has determined that for each year of the first five years the proposed sections are in effect the public benefit anticipated as a result of enforcing the sections will be to add clarity and simplicity to the rules governing applications for new water CCNs, amendments to existing CCNs, and the sale, transfer, or merger of existing CCN areas. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with these sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on September 26, 2016. The request for a public hearing must be received by September 6, 2016.

Comments on the amendments and repeal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by September 6, 2016. Sixteen copies of comments to the proposed amendment are required to be filed pursuant to §22.71(c) of this title. Reply comments may be submitted by September 19, 2016. Comments should be organized in a manner consistent with the organization of the proposed rule(s). The commission invites specific comments regarding the costs associated with, and benefits that will be gained by, implementation of the proposed sections. The commission will consider the costs and benefits in deciding whether to adopt the sections. All comments should refer to Project Number 45111.

SUBCHAPTER A. GENERAL PROVISIONS

16 TAC §§24.1, 24.3, 24.8

The amendments are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.1. Purpose and Scope of this Chapter.

(a) This chapter is intended to establish a comprehensive regulatory system under Texas Water Code [~~(TWC)~~], Chapter 13 to assure rates, operations, and services which are just and reasonable to the consumer and the retail public utilities, and to establish the rights and responsibilities of both the retail public utility and consumer. This chapter shall be given a fair and impartial construction to obtain these objectives and shall be applied uniformly regardless of race, color, religion, sex, or marital status. This chapter shall also govern the procedure for the institution, conduct and determination of all water and sewer rate causes and proceedings before the commission. These sections shall not be construed so as to enlarge, diminish, modify, or alter the jurisdiction, powers, or authority of the commission or the substantive rights of any person.

(b) A rule, form, policy, procedure, or decision of the Texas Commission on Environmental Quality (TCEQ) related to a power,

duty, function, program, or activity transferred pursuant to House Bill 1600 and Senate Bill 567, 83rd Legislature, Regular Session (this Act), continues in effect as a rule, form, policy, procedure, or decision of the Public Utility Commission of Texas (commission) and remains in effect until amended or replaced by the commission. Any jurisdiction ceded to the TCEQ continues in effect and shall be deemed to be ceded to the commission [~~Beginning September 1, 2013, the commission may propose rules, forms, policies, and procedures related to a function to be transferred to the commission under this Act~~].

(c) (No change.)

(d) An application received by the commission and file stamped in the commission's Central Records office shall be processed in accordance with the rules in effect on the date that the application was received by Central Records.

§24.3. Definitions of Terms.

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

(1) - (19) (No change.)

[~~(20) Code--The Texas Water Code (TWC).~~]

(20) [~~(21)~~] Commission--The Public Utility Commission of Texas or a presiding officer, as applicable.

(21) [~~(22)~~] Corporation--Any corporation, joint-stock company, or association, domestic or foreign, and its lessees, assignees, trustees, receivers, or other successors in interest, having any of the powers and privileges of corporations not possessed by individuals or partnerships, but shall not include municipal corporations unless expressly provided otherwise in the TWC.

(22) [~~(23)~~] Customer--Any person, firm, partnership, corporation, municipality, cooperative, organization, or governmental agency provided with services by any retail public utility.

(23) [~~(24)~~] Customer class--A description of utility service provided to a customer that denotes such characteristics as nature of use or type of rate. For rate-setting purposes, a group of customers with similar cost-of-service characteristics that take utility service under a single set of rates.

(24) [~~(25)~~] Customer service line or pipe--The pipe connecting the water meter to the customer's point of consumption or the pipe which conveys sewage from the customer's premises to the service provider's service line.

(25) District--Any district or authority created by authority of either Section 52(b)(1) and (2), Article II, or Section 59, Article XVI, Texas Constitution, regardless of how created. The term "district" shall not include any navigation district or port authority created under general or special law, any consideration and reclamation district created pursuant to Chapter 62, Acts of the 52nd Legislature, 1952 (Article 8280-141, Vernon's Texas Civil Statutes), or any conservation and reclamation district governed by Chapter 36 of the Water Code unless a special law creating the district or amending the law creating the district states that Chapter 49 of the Water Code applies to that district.

(26) Facilities--All the plant and equipment of a retail public utility, including all tangible and intangible real and personal property without limitation, and any and all means and instrumentalities in any manner owned, operated, leased, licensed, used, controlled, furnished, or supplied for, by, or in connection with the business of any retail public utility.

(27) - (31) (No change.)

(32) Intervenor--A person, other than the applicant, respondent, or the commission staff representing the public interest, who is permitted by this chapter or by ruling of the presiding officer, to become a party to a proceeding.

(33) [~~(32)~~] Incident of tenancy--Water or sewer service, provided to tenants of rental property, for which no separate or additional service fee is charged other than the rental payment.

(34) [~~(33)~~] Known and measurable (K&M)--Verifiable on the record as to amount and certainty of effectuation. Reasonably certain to occur within 12 months of the end of the test year.

(35) [~~(34)~~] Landowner--An owner or owners of a tract of land including multiple owners of a single deeded tract of land as shown on the appraisal roll of the appraisal district established for each county in which the property is located.

(36) [~~(35)~~] License--The whole or part of any commission permit, certificate, registration, or similar form of permission required by law.

(37) [~~(36)~~] Licensing--The commission process respecting the granting, denial, renewal, revocation, suspension, annulment, withdrawal, or amendment of a license, certificates of convenience and necessity, or any other authorization granted by the commission in accordance with its authority under the TWC.

(38) [~~(37)~~] Main--A pipe operated by a utility service provider that is used for transmission or distribution of water or to collect or transport sewage.

(39) [~~(38)~~] Mandatory water use reduction--The temporary reduction in the use of water imposed by court order, government agency, or other authority with appropriate jurisdiction. This does not include water conservation measures that seek to reduce the loss or waste of water, improve the efficiency in the use of water, or increase the recycling or reuse of water so that a water supply is made available for future or alternative uses.

(40) [~~(39)~~] Member--A person who holds a membership in a water supply or sewer service corporation and who is a record owner of a fee simple title to property in an area served by a water supply or sewer service corporation, or a person who is granted a membership and who either currently receives or will be eligible to receive water or sewer utility service from the corporation. In determining member control of a water supply or sewer service corporation, a person is entitled to only one vote regardless of the number of memberships the person owns.

(41) [~~(40)~~] Membership fee--A fee assessed each water supply or sewer service corporation service applicant that entitles the applicant to one connection to the water or sewer main of the corporation. The amount of the fee is generally defined in the corporation's bylaws and payment of the fee provides for issuance of one membership certificate in the name of the applicant, for which certain rights, privileges, and obligations are allowed under said bylaws. For purposes of TWC §13.043(g), a membership fee is a fee not exceeding approximately 12 times the monthly base rate for water or sewer service or an amount that does not include any materials, labor, or services required for or provided by the installation of a metering device for the delivery of service, capital recovery, extension fees, buy-in fees, impact fees, or contributions in aid of construction.

(42) [~~(41)~~] Multi-jurisdictional--A utility that provides water and/or wastewater service in more than one state, country, or separate rate jurisdiction by its own operations, or through an affiliate.

(43) [~~(42)~~] Municipality--A city, existing, created, or organized under the general, home rule, or special laws of this state.

(44) [~~(43)~~] Municipally owned utility--Any retail public utility owned, operated, and controlled by a municipality or by a nonprofit corporation whose directors are appointed by one or more municipalities.

(45) [~~(44)~~] Net Book Value--The amount of the asset that has not yet been recovered through depreciation. It is the original cost of the asset minus accumulated depreciation.

(46) [~~(45)~~] Nonfunctioning system or utility--A system that is operating as a retail public utility that is required to have a CCN and is operating without a CCN; or a retail public utility under supervision pursuant to §24.141 of this title (relating to Supervision of Certain Utilities); or a retail public utility under the supervision of a receiver, temporary manager, or that has been referred for the appointment of a temporary manager or receiver, pursuant to §24.142 of this title (relating to Operation of Utility That Discontinues Operation or Is Referred for Appointment of a Receiver) and §24.143 of this title (relating to Operation of a Utility by a Temporary Manager).

(47) [~~(46)~~] Person--Includes natural persons, partnerships of two or more persons having a joint or common interest, mutual or cooperative associations, water supply or sewer service corporations, and corporations [~~Any natural person, partnership, cooperative, corporation, association, or public or private organization of any character other than an agency or municipality~~].

(48) [~~(47)~~] Point of use or point of ultimate use--The primary location where water is used or sewage is generated; for example, a residence or commercial or industrial facility.

(49) [~~(48)~~] Potable water--Water that is used for or intended to be used for human consumption or household use.

(50) [~~(49)~~] Potential connections--Total number of active plus inactive connections.

(51) [~~(50)~~] Premises--A tract of land or real estate including buildings and other appurtenances thereon.

(52) Protestor--A person who is not a party to the case who submits oral or written comments. A person classified as a protestor does not have rights to participate in a proceeding other than by providing oral or written comments.

(53) [~~(51)~~] Public utility--The definition of public utility is that definition given to water and sewer utility in this subchapter.

(54) [~~(52)~~] Purchased sewage treatment--Sewage treatment purchased from a source outside the retail public utility's system to meet system requirements.

(55) [~~(53)~~] Purchased water--Raw or treated water purchased from a source outside the retail public utility's system to meet system demand requirements.

(56) [~~(54)~~] Rate--Includes every compensation, tariff, charge, fare, toll, rental, and classification or any of them demanded, observed, charged, or collected, whether directly or indirectly, by any retail public utility, or water or sewer service supplier, for any service, product, or commodity described in TWC §13.002(23), and any rules, regulations, practices, or contracts affecting any such compensation, tariff, charge, fare, toll, rental, or classification.

(57) [~~(55)~~] Ratepayer--Each person receiving a separate bill shall be considered as a ratepayer, but no person shall be considered as being more than one ratepayer notwithstanding the number of bills received. A complaint or a petition for review of a rate change shall be considered properly signed if signed by any person, or spouse of any such person, in whose name utility service is carried.

(58) [~~(56)~~] Rate region--An area within Texas for which the applicant has set or proposed uniform tariffed rates by customer class.

(59) [~~(57)~~] Reconnect fee--A fee charged for restoration of service where service has previously been provided. It may be charged to restore service after disconnection for reasons listed in §24.88 of this title (relating to Discontinuance of Service) or to restore service after disconnection at the customer's request

(60) [~~(58)~~] Retail public utility--Any person, corporation, public utility, water supply or sewer service corporation, municipality, political subdivision or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation.

(61) [~~(59)~~] Retail water or sewer utility service--Potable water service or sewer service, or both, provided by a retail public utility to the ultimate consumer for compensation.

(62) [~~(60)~~] Return on invested capital--The rate of return times invested capital.

[~~(61) Safe drinking water revolving fund--The fund established by the Texas Water Development Board to provide financial assistance in accordance with the federal program established under the provisions of the Safe Drinking Water Act and as defined in TWC §15.602.~~]

(63) [~~(62)~~] Service--Any act performed, anything furnished or supplied, and any facilities or lines committed or used by a retail public utility in the performance of its duties under the TWC to its patrons, employees, other retail public utilities, and the public, as well as the interchange of facilities between two or more retail public utilities.

(64) [~~(63)~~] Service line or pipe--A pipe connecting the utility service provider's main and the water meter or for sewage, connecting the main and the point at which the customer's service line is connected, generally at the customer's property line.

(65) [~~(64)~~] Sewage--Ground garbage, human and animal, and all other waterborne type waste normally disposed of through the sanitary drainage system.

(66) [~~(65)~~] Stand-by fee--A charge imposed on unimproved property for the availability of water or sewer service when service is not being provided.

(67) [~~(66)~~] Tap fee--A tap fee is the charge to new customers for initiation of service where no service previously existed. A tap fee for water service may include the cost of physically tapping the water main and installing meters, meter boxes, fittings, and other materials and labor. A tap fee for sewer service may include the cost of physically tapping the main and installing the utility's service line to the customer's property line, fittings, and other material and labor. Water or sewer taps may include setting up the new customer's account, and allowances for equipment and tools used. Extraordinary expenses such as road bores and street crossings and grinder pumps may be added if noted on the utility's approved tariff. Other charges, such as extension fees, buy-in fees, impact fees, or contributions in aid of construction (CIAC) are not to be included in a tap fee.

(68) [~~(67)~~] Tariff--The schedule of a retail public utility containing all rates, tolls, and charges stated separately by type or kind of service and the customer class, and the rules and regulations of the retail public utility stated separately by type or kind of service and the customer class.

(69) [~~(68)~~] TCEQ--Texas Commission on Environmental Quality.

(70) [~~(69)~~] Temporary water rate provision for mandatory water use reduction--A provision in a utility's tariff that allows a utility to adjust its rates in response to mandatory water use reduction.

(71) [~~(70)~~] Temporary rate for services provided for a nonfunctioning system--A temporary rate for a retail public utility that takes over the provision of services for a nonfunctioning retail public water or sewer utility service provider.

(72) [~~(71)~~] Test year--The most recent 12-month period, beginning on the first day of a calendar or fiscal year quarter, for which operating data for a retail public utility are available.

(73) Tract of land--Any piece of land that has common ownership and is contiguous. To be contiguous, all portions of the property must be in uninterrupted physical contact. A single tract may not be separated by other property with different ownership, such as roads and railroads, whether owned by government entities or private parties. A single tract of land may be part of separate surveys or be acquired through multiple deeds.

(74) TWC--Texas Water Code.

(75) [~~(72)~~] Utility--The definition of utility is that definition given to water and sewer utility in this subchapter.

(76) [~~(73)~~] Water and sewer utility--Any person, corporation, cooperative corporation, affected county, or any combination of those persons or entities, other than a municipal corporation, water supply or sewer service corporation, or a political subdivision of the state, except an affected county, or their lessees, trustees, and receivers, owning or operating for compensation in this state equipment or facilities for the production, transmission, storage, distribution, sale, or provision of potable water to the public or for the resale of potable water to the public for any use or for the collection, transportation, treatment, or disposal of sewage or other operation of a sewage disposal service for the public, other than equipment or facilities owned and operated for either purpose by a municipality or other political subdivision of this state or a water supply or sewer service corporation, but does not include any person or corporation not otherwise a public utility that furnishes the services or commodity only to itself or its employees or tenants as an incident of that employee service or tenancy when that service or commodity is not resold to or used by others.

(77) [~~(74)~~] Water use restrictions--Restrictions implemented to reduce the amount of water that may be consumed by customers of the utility [~~system~~] due to emergency conditions or drought.

(78) [~~(75)~~] Water supply or sewer service corporation--Any nonprofit corporation organized and operating under TWC Chapter 67, that provides potable water or sewer service for compensation and that has adopted and is operating in accordance with bylaws or articles of incorporation which ensure that it is member-owned and member-controlled. The term does not include a corporation that provides retail water or sewer utility service to a person who is not a member, except that the corporation may provide retail water or sewer utility service to a person who is not a member if the person only builds on or develops property to sell to another and the service is provided on an interim basis before the property is sold. For purposes of this chapter, to qualify as member-owned, member-controlled a water supply or sewer service corporation must also meet the following conditions.

(A) All members of the corporation meet the definition of "member" under this section, and all members are eligible to vote in those matters specified in the articles and bylaws of the corporation. Payment of a membership fee in addition to other conditions of service may be required provided that all members have paid or are required to pay the membership fee effective at the time service is requested.

(B) Each member is entitled to only one vote regardless of the number of memberships owned by that member.

(C) A majority of the directors and officers of the corporation must be members of the corporation.

(D) The corporation's bylaws include language indicating that the factors specified in subparagraphs (A) - (C) of this paragraph are in effect.

(79) [~~(76)~~] Wholesale water or sewer service--Potable water or sewer service, or both, provided to a person, political subdivision, or municipality who is not the ultimate consumer of the service.

§24.8. Administrative Completeness.

(a) An application to change rates, including a minor rate change, applications for sale, transfer, merger, consolidation, acquisition, lease, or rental, [~~merger, or consolidation,~~] assignment of facilities or certificates; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility and applications for certificates of convenience and necessity (CCN) shall be reviewed for administrative completeness within 30 [~~thirty~~] calendar days from the date the application is file stamped by the commission's Central Records office [~~of receipt of the application~~]. If the applicant is required to issue notice, the applicant shall be notified [~~If notice is required,~~] upon determination that the notice or application is administratively complete[~~, the applicant shall be notified of that determination~~].

(b) (No change.)

(c) In cases involving a proposed sale, transfer, merger, consolidation, acquisition, lease, or rental, [~~merger, or consolidation~~] of any water or sewer system or utility owned by an entity required by law to possess a CCN [~~certificate of convenience and necessity~~], the proposed effective date of the transaction must be at least 120 days after the date that an application is received and file stamped by the commission's Central Records office [~~commission~~] and public notice is provided, unless notice is waived for good cause shown.

(d) Applications for the [~~A report of~~] sale, transfer, merger, consolidation, acquisition, lease, or rental, of a retail public utility [~~merger, or consolidation~~]; requests for purchase of voting stock or change in controlling interest of a utility; applications for cessation of operations by a retail public utility; [~~and~~] applications to obtain or amend a CCN [~~for certificates of convenience and necessity~~] are not considered filed until the commission makes a determination that the application is administratively complete [~~of administrative completeness~~].

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 25, 2016.

TRD-201603655
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 936-7223

♦ ♦ ♦

SUBCHAPTER G. CERTIFICATES OF CONVENIENCE AND NECESSITY

16 TAC §§24.101 - 24.107, 24.109 - 24.111, 24.115, 24.117 - 24.120

The amendments are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.101. Certificate of Convenience and Necessity Required.

(a) Unless otherwise specified, a utility, a utility operated by an affected county[~~except an affected county to which Local Government Code, §412.017 applies,~~] or a water supply or sewer service corporation may not in any way render retail water or sewer utility service directly or indirectly to the public without first having obtained from the commission a certificate of convenience and necessity (CCN) [~~that the present or future public convenience and necessity requires or will require that installation, operation, or extension~~]. Except as otherwise provided by this subchapter, a retail public utility may not furnish, make available, render, or extend retail water or sewer utility service to any area to which retail water or sewer utility service is being lawfully furnished by another retail public utility without first obtaining [~~having obtained~~] a CCN [~~certificate of public convenience and necessity~~] that includes the area in which the consuming facility is located.

(b) A person that is not a retail public utility, [~~or~~]a utility, or a water supply or sewer service corporation that is operating under provisions pursuant to [~~the~~]TWC[~~,~~] §13.242(c) may not construct facilities to provide retail water or sewer utility service to more than one service connection not on the property owned by the person and that is [~~are~~] within the CCN [~~certificated~~] service area of a retail public utility without first obtaining written consent from the retail public utility.

(c) A district may not provide services within the CCN boundaries of [~~an area for which~~] a retail public utility [~~holds a certificate of convenience and necessity~~] or within the boundaries of another district without the retail public utility's or district's consent, unless the district has a valid CCN [~~certificate of convenience and necessity~~] to provide retail water or sewer utility services to that area.

(d) A retail public utility may not provide retail water or sewer utility service within the boundaries of a district that provides the same type of retail water or sewer utility service without the district's consent, unless the retail public utility has a valid CCN to provide service to that area.

(e) [~~(d)~~] A supplier of wholesale water or sewer service may not require a purchaser to obtain a CCN [~~certificate of public convenience and necessity~~] if the purchaser is not otherwise required by this chapter to obtain a CCN [~~the certificate~~].

§24.102. Criteria for Granting or Amending a Certificate of Convenience and Necessity [~~Criteria for Considering and Granting Certificates or Amendments~~].

(a) In determining whether to grant or amend a certificate of [~~public~~]convenience and necessity (CCN), the commission shall ensure that the applicant possesses the financial, managerial, and technical capability to provide continuous and adequate service.

(1) For retail water utility service, the commission shall ensure that the applicant has:

(A) a TCEQ approved public water system that it is capable of providing drinking water that meets the requirements of Texas Health and Safety Code, Chapter 341, TCEQ's [~~and TCEQ~~] rules, and the TWC;[~~,~~] and

(B) [~~has~~] access to an adequate supply of water or a long-term contract for purchased water with an entity whose system meets the requirement of paragraph (1)(A) of this subsection.

(2) For retail sewer utility service, the commission shall ensure that the applicant has:

(A) a TCEQ approved system that it is capable of meeting the TCEQ's design criteria for sewer treatment plants, TCEQ rules, and the TWC; and

(B) access to sewer treatment and/or capacity or a long-term contract for purchased sewer treatment and/or capacity with an entity whose system meets the requirements of paragraph (2)(A) of this subsection.

(b) When applying for a new CCN or a CCN amendment [~~Where a new CCN is being issued~~] for an area which would require construction of a physically separate water or sewer system, the applicant must demonstrate that regionalization or consolidation with another retail public utility is not economically feasible. To demonstrate this, the applicant must at a minimum provide:

(1) for applications to obtain or amend a water CCN, a list of all retail public water and/or sewer utilities within two miles from the outer boundary of the proposed service area(s) [~~a list of all public drinking water supply systems or sewer systems within a two-mile radius of the proposed system~~];

(2) for applications to obtain or amend a sewer CCN, a list of all retail public sewer utilities within two miles from the outer boundary of the proposed service area(s);

(3) [~~(2)~~] copies of written requests seeking to obtain service from each of the retail public utilities referenced in paragraph (1) and/or (2) of this subsection or evidence that it is not economically feasible to obtain service from the retail public utilities referenced in paragraph (1) or (2) of this subsection [~~public drinking water supply systems or sewer systems or demonstrate that it is not economically feasible to obtain service from a neighboring public drinking water supply system or sewer system~~];

(4) [~~(3)~~] copies of written responses from each of the retail public utilities referenced in paragraph (1) and/or (2) of this subsection [~~systems~~] from which written requests for service were made or evidence that they failed to respond within 30 days of the date of the request;

(5) [~~(4)~~] if a neighboring retail public utility has agreed to provide service to an area where a new CCN is being requested, then the following information must also be provided by the applicant:

(A) a description of the type of service that the [~~a~~] neighboring retail public utility [~~public drinking water supply system or sewer system~~] is willing to provide and comparison with service the applicant is proposing;

(B) [~~(5)~~] an analysis of all necessary costs for constructing, operating, and maintaining the new facilities [~~system~~] for at least the first five years of operations, including such items as taxes and insurance; and

(C) [~~(6)~~] an analysis of all necessary costs for acquiring and continuing to receive service from the neighboring retail public utility [~~public drinking water supply system or sewer system~~] for at least the first five years of operations.

(c) The commission may approve applications and grant or amend a CCN [~~certificate~~] only after finding that granting or amending the CCN [~~the certificate or amendment~~] is necessary for the service, accommodation, convenience, or safety of the public. The commis-

sion may grant [~~issue~~] or amend the CCN [~~certificate~~] as applied for, or refuse to grant [~~issue~~] it, or grant [~~issue~~] it for the construction of a portion only of the contemplated facilities [~~system or facility~~] or extension thereof, or for the partial exercise only of the right or privilege and may impose special conditions necessary to ensure that continuous and adequate service is provided.

(d) In considering whether to grant or amend a CCN [~~certificate~~], the commission shall also consider:

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

(3) the effect of granting or amending a CCN on the CCN recipient, on the landowner(s) in the area, and on any retail public utility that provides the same service and that is [~~the granting of a certificate or of an amendment on the recipient of the certificate or amendment, on the landowners in the area, and on any retail public utility of the same kind~~] already serving the proximate area, including, but not limited to, regionalization, compliance, and economic effects;

(4) the ability of the applicant to provide adequate service, including meeting the standards of the TCEQ and the commission, taking into consideration the current and projected density and land use of the area;

(5) - (9) (No change.)

(e) The commission may require an applicant seeking to obtain a new CCN or CCN amendment to provide a bond or other form of financial assurance to ensure that continuous and adequate retail water or sewer [~~for a certificate or for an amendment to provide a bond or other financial assurance to ensure that continuous and adequate~~] utility service is provided. The commission shall set the amount of financial assurance. The form of the financial assurance will be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(f) Where applicable, in addition to the other factors in this chapter [~~section~~] the commission shall consider the efforts of the applicant to extend retail water and/or sewer utility service to any economically distressed areas located within the applicant's requested CCN service areas [~~certificated to the applicant~~]. For purposes of this subsection, "economically distressed area" has the meaning assigned in TWC §15.001.

(g) For two or more retail public utilities that apply for a CCN to provide retail water and/or [~~or~~] sewer utility service to an uncertificated area located in an economically distressed area as defined in TWC §15.001, the commission shall conduct an assessment of the applicants to determine which applicant is more capable financially, managerially and technically of providing continuous and adequate service. The assessment shall be conducted after the preliminary hearing and only if the parties are unable to resolve the service area dispute. The assessment shall be conducted considering the following information [~~using a standard form designed by the commission and will include~~]:

(1) - (7) (No change.)

(8) credit-worthiness [~~credit worthiness~~];

(9) - (11) (No change.)

(h) Except as provided by subsection (i) of this section, a landowner who owns a tract of land that is at least 25 acres and that is wholly or partially located within the proposed CCN service area may elect to exclude some or all of the landowner's property from the proposed CCN service area by providing written notice to the commission before the 30th day after the date the landowner receives notice of an [~~a new~~] application for a CCN or for a CCN [~~an~~] amendment of [~~to an existing CCN~~]. The landowner's election is effective without a further hearing or other process by the commission. If a landowner makes an election under this subsection, the proposed area in the application shall be modified to remove [~~so that~~] the electing landowner's property [~~is not included in the proposed service area~~]. An applicant [~~for a CCN~~] that has land removed from its proposed CCN [~~certificated~~] service area because of a landowner's election under this subsection may not be required to provide retail water or sewer utility service to the removed land for any reason, including the violation of law or commission rules [~~by the water or sewer system of another person~~].

(1) The landowner's request to opt-out of the proposed CCN service area shall be filed with the commission shall include the following information:

(A) the commission docket number and CCN number(s) if applicable;

(B) the total acreage amount of the tract of land subject to the landowner's opt-out request; and

(C) a metes and bounds survey (legal description) for the tract of land subject to the landowner's opt-out request, certified by a licensed state land surveyor or registered professional land surveyor.

(2) The applicant shall file the following maps, and information, to address each landowner's opt-out request:

(A) a large scale (detailed) map showing the revised proposed service area(s) after removing the tract(s) of land subject to each landowner's opt-out request. The map shall also show the outer boundary of each tract of land, subject to each landowner's opt-out request, in relation to the revised proposed service area(s). The map shall have enough detail to accurately locate each tract of land and the proposed service area(s) in reference to verifiable man-made and/or natural landmarks such as roads, rivers, or railroads;

(B) digital data as required by §24.106(e)(3) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) for the revised proposed service area(s) after the removing each tract of land subject to landowner's opt-out request(s); and

(C) the approximate total acreage for the revised proposed service area(s) after the removing each tract of land subject to landowner's opt out requests. The total acreage for the revised proposed service area(s) must correspond to the approximate total acreage included with the digital data.

(i) A landowner is not entitled to make an election under subsection (h) of this section but is entitled to file a request to intervene in order to contest the inclusion of the landowner's property in the proposed service area at a hearing regarding the application if the proposed CCN service area is located within the boundaries or extraterritorial jurisdiction of a municipality with a population of more than 500,000 and the municipality or a retail public utility owned by the municipality is the applicant.

§24.103. Certificates Not Required.

(a) Extension of Service.

(1) Except for a utility or water supply or sewer service corporation which possesses a facilities only certificate of [~~public~~] convenience and necessity (CCN), a retail public utility is not required to obtain a CCN [~~secure a certificate of public convenience and necessity~~] for:

(A) an extension into territory contiguous to that already served by the retail public utility if:

(i) the point of ultimate use is within one quarter mile of the outer boundary of its existing CCN area;

(ii) the area is not receiving similar service from another retail public utility; and

(iii) the area is not located inside another retail public utility's CCN [~~it, if the point of ultimate use is within one quarter mile of the boundary of its certificated area, and not receiving similar service from another retail public utility and not within the area of public convenience and necessity of another retail public utility~~]; or

(B) an extension within or to territory already served by it or to be served by it under a CCN [~~certificate of public convenience and necessity~~].

(2) Whenever an extension is made pursuant to paragraph (1)(A) of this subsection, the utility or water supply or sewer service corporation making the extension must inform the commission of the extension by submitting within 30 days of the date service is commenced, a copy of a map of the service [~~certificated~~] area clearly showing the extension, accompanied by a written explanation of the extension.

(b) Construction of Facilities. A CCN is not required for the construction or upgrading of distribution facilities within the retail public utility's service area, or for the purchase or condemnation of real property for use as facility sites or rights-of-way. Prior acquisition of facility sites or rights-of-way, and prior construction or upgrading of distribution facilities, does not entitle a retail public utility to be granted a CCN or CCN amendment without a showing that the proposed CCN or CCN amendment [~~A certificate is not required for the construction or upgrading of distribution facilities within the retail public utility's service area. The term construction and/or extension, as used in this subsection, shall not include the purchase or condemnation of real property for use as facility sites or right-of-way. However, prior acquisition of such sites or right-of-way shall not be deemed to entitle a retail public utility to the grant of a certificate of convenience and necessity without showing that the proposed extension~~] is necessary for the service, accommodation, convenience, or safety of the public.

(c) Municipality Pursuant to [~~the~~] TWC[~~,~~] §13.255.

(1) A municipality which has given notice under TWC §13.255 that it intends to provide retail water or sewer utility service to an area or to customers not currently being served is not required to obtain a CCN prior to commencing service in the area if the municipality:

(A) provides a copy of the notice required in TWC §13.255, to the retail public utility;

(B) files a copy of the notice provided pursuant to paragraph (1) of this subsection with the commission;

(C) files mapping documents showing the area affected under TWC §13.255 as required by §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications), and the location of new connections in the area affected which the municipality proposes to serve.

(2) This subsection applies only in cases where:

(A) the retail public utility that is authorized to serve in the CCN area that is annexed or incorporated by the municipality is a non-profit water supply or sewer service corporation, a special utility district under TWC Chapter 65, or a fresh water supply district under TWC Chapter 53; or

(B) the retail public utility that is authorized to serve in the CCN area that is annexed or incorporated by the municipality that is a retail public utility, other than a non-profit water supply or sewer service corporation, and whose service area is located entirely within the boundaries of a municipality with a population of 1.7 million or more according to the most recent federal census. [~~A municipality which has given notice under the TWC, §13.255 that it intends to provide retail water service to an area or customers not currently being served is not required to obtain a certificate prior to beginning to provide service if the municipality provides:~~]

[~~(1) a copy of the notice required pursuant to the TWC, §13.255, and~~]

[~~(2) a map showing the area affected under the TWC, §13.255 and the location of new connections in the area affected which the municipality proposes to serve.~~]

(d) Municipal Systems in Unserved Area

(1) This section applies only to a home-rule municipality that is:

(A) located in a county with a population of more than 1.75 million; and

(B) adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district.

(2) If a district does not establish a fire department under TWC §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment.

(3) For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC §13.255(b).

(e) [~~(d)~~] Water Utility or Water Supply Corporation With Less Than 15 Potential Connections.

(1) A water utility or water supply corporation is exempt from the requirement to possess a CCN [~~certificate of convenience and necessity in order~~] to provide retail water utility service if it:

(A) has less than 15 potential service connections;

(B) is not owned by or affiliated with a retail public water utility or any other provider of potable water service;

(C) is not located within the CCN service [~~certificated~~] area of another retail public water utility; and

(D) is not within the corporate boundaries of a district or municipality unless it receives written authorization from the district or municipality.

(2) Water utilities [~~Utilities~~] or water supply corporations with less than 15 potential connections currently operating under a CCN [~~certificate of convenience and necessity~~] may request revocation of the CCN [~~certificate~~] at any time.

(3) The commission may revoke the current CCN [~~certificate of convenience and necessity~~] upon written request by the exempt utility or water supply corporation.

(4) An exempt [~~exempted~~] utility shall comply with the service rule requirements in the Exempt Utility Tariff Form prescribed by the commission which shall not be more stringent than those in §§24.80 - 24.90 of this title (relating to Customer Service and Protection).

(5) The exempt [~~exempted~~] utility shall provide each future customer at the time service is requested and each current customer upon request with a copy of the exempt utility tariff.

(6) An applicant requesting exempt utility registration status from the commission shall comply with the mapping documents as prescribed in §24.106(e)(2)-(3) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications).

(7) [~~(6)~~] Exempt Utility Tariff and Rate Change Requirements. An exempt [~~exempted~~] utility operating under exempt utility registration status [~~with or without a certificate of convenience and necessity~~]:

(A) must maintain a current copy of the exempt utility's tariff [~~utility tariff form~~] with its current rates at its business location; and

(B) may change its rates without following the requirements in §24.22 of this title (relating to Notice of Intent to Change Rates) if it provides each customer with written notice of the rate change [~~rate changes~~] prior to the effective date of the rate change indicating the old rates, the new rates, the effective date of the new rates and the address of the commission along with a statement that written comments or requests to intervene may be filed with the commission at the following mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326. If the commission receives written comments or requests to intervene to a [~~protests may be submitted to the commission at that address. If the commission receives written protests to a proposed~~] rate change from at least 50% of the customers of an exempt utility following this procedure within 90 days after the effective date of the rate change, the commission shall [~~will~~] review the exempt utility's records or other information relating to the cost of providing service. After reviewing the information and any comments or requests to intervene from customers or the exempt utility, the commission shall [~~will~~] establish the rates to be charged by the exempt utility which shall be effective on the date originally noticed by the exempt utility unless a different effective date is agreed to by the exempt utility and customers. These rates may not be changed for 12 months after the proposed effective date without authorization by the commission. The exempt utility shall refund any rates collected in excess of the rates established by the commission in accordance with the time frames or other requirements established by the commission.

(C) The exempt utility or water supply corporation, Office of Public Utility Counsel [~~office of public utility counsel~~], commission staff, or any affected customer may file a written motion for rehearing. The rates determined by the commission shall remain in effect while the commission considers the request to intervene or comments [~~or protest~~].

[~~(D) A rate change application filed by an exempt utility that follows the rate change procedures in §24.22 of this title will be processed according to the requirements and procedures which apply to rate changes under that section.~~]

(8) [~~(7)~~] Unless authorized in writing by the commission, an exempt water [~~a~~] utility or a water supply corporation operating under these requirements may not cease [~~utility~~] operations. An exempt water [~~A~~] utility may not discontinue service to a customer with or without notice except in accordance with its commission approved [~~the~~] Exempt Utility Tariff [~~Form~~] and an exempt [~~a~~] water supply corporation may not discontinue service to a customer for any reason not in accordance with its bylaws.

(9) [~~(8)~~] An exempt water [~~A~~] utility or water supply corporation operating under this exemption which does not comply with the requirements of these rules or the minimum requirements of the Exempt Utility Tariff approved [~~specified~~] by the commission shall be subject to any and all enforcement remedies provided by this chapter and [~~the~~] TWC[~~,~~] Chapter 13.

[~~(e) This subsection applies only to a home-rule municipality that is located in a county with a population of more than 1.75 million that is adjacent to a county with a population of more than 1 million, and has within its boundaries a part of a district. If a district does not establish a fire department under TWC, §49.352, a municipality that contains a part of the district inside its boundaries may by ordinance or resolution provide that a water system be constructed or extended into the area that is in both the municipality and the district for the delivery of potable water for fire flow that is sufficient to support the placement of fire hydrants and the connection of the water system to fire suppression equipment. For purposes of this subsection, a municipality may obtain single certification in the manner provided by TWC, §13.255, except that the municipality may file an application with the commission to grant single certification immediately after the municipality provides notice of intent to provide service as required by TWC, §13.255(b).~~]

§24.104. Applicant.

(a) It is the responsibility of the owner of the utility, the utility's designated representative or authorized agent, [~~or~~] the president of the board of directors or designated representative of the water supply or sewer service corporation, affected county, as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality to file [~~submit~~] an application for a certificate of convenience and necessity (CCN) with the commission to obtain or amend a CCN.

(b) (No change.)

§24.105. Contents of Certificate of Convenience and Necessity Applications.

(a) Application. To obtain or amend a certificate of convenience and necessity (CCN), a person, public water or sewer utility, water supply or sewer service corporation, affected county as defined in §24.3(4) of this title (relating to Definitions of Terms), county, district, or municipality shall file an application for a new CCN or CCN amendment with the commission. Applications must contain the following materials, unless otherwise specified in the application form [~~To obtain a certificate of public convenience and necessity (CCN) or an amendment to a certificate, a public utility or water supply or sewer service corporation shall submit to the commission an application for a certificate or for an amendment. Applications for CCNs or for an amendment to a certificate must contain the following materials, unless otherwise specified in the application~~]:

(1) (No change.)

(2) mapping documents as prescribed in §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) and §24.119 of this title (relating to Filing of Maps); [~~a map and description of only the proposed service area by:~~]

[~~(A) metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;~~]

[~~(B) the Texas State Plane Coordinate System or any standard map projection and corresponding metadata;~~]

[~~(C) a state county base map, scale one inch equals two-miles showing the area to be served that clearly defines the proposed~~

~~location of the applicant and each neighboring water or sewer utility within five miles of the applicant's proposed service area for a CCN and within two miles of the applicant's proposed service area for a CCN amendment;]~~

~~[(D) verifiable landmarks, including a road, creek, or railroad line; or a copy of the recorded plat of the area, if it exists, with lot and block number;]~~

~~[(E) maps as described in §24.119 of this title (relating to Filing of Maps);]~~

~~[(F) a separate map for each county in which the applicant seeks a CCN or CCN amendment;]~~

~~[(G) a general location map; and]~~

~~[(H) other maps as requested]~~

(3) information to demonstrate a need [~~a description of any requests~~] for service in the proposed service area, including:[~~;~~]

(A) a copy of each written request for service received, if any; and

(B) a map showing the location of each request for service, if any;

(4) if applicable, a statement that the proposed service area overlaps with the corporate boundaries of a district, municipality, or other public authority, including:

(A) a list of the entities that overlap with the proposed area; and

(B) evidence to show that the applicant has received the necessary approval(s) including consent(s), franchise(s), permit(s), or license(s) to provide retail water or sewer utility service in the proposed service area(s) from the applicable municipality, district, or other public authority that:

(i) currently provides retail water or sewer utility service in the proposed service area;

(ii) is authorized to provide retail water or sewer service by enabling statute or order; or

(iii) has an ordinance in effect that allows it to provide retail water or sewer service in the proposed service area, if any. [~~any evidence as required by the commission to show that the applicant has received the necessary consent, franchise, permit, or license from the proper municipality or other public authority;~~]

(5) If the proposed service area overlaps with the corporate boundaries of a district, and the district does not intervene in the docket by the intervention deadline after propose notice of the application is given, the commission will determine that the district is consenting to the applicant's request to provide service in the proposed area.

(6) an explanation from the applicant demonstrating that issuance of a new CCN or CCN amendment is necessary for the service, accommodation, convenience, or safety of the public;

~~[(5) an explanation of the applicant's reasons for contending that issuance of a certificate as requested is necessary for the service, accommodation, convenience, or safety of the public];~~

(7) [~~(6)~~]if the infrastructure is not already in place or if existing infrastructure needs repairs and improvements to provide continuous and adequate service to the proposed area, a capital improvement [~~improvements~~] plan, including a budget and an estimated time line for construction of all facilities necessary to provide full service to the entire proposed service area, keyed to a map [~~maps~~] showing where such facilities will be located to provide service;

(8) [~~(7)~~] a description of the sources of funding for all facilities that will be constructed to serve the proposed service area, if any;

~~[(8) for utilities or water supply or sewer service corporation previously exempted for operations or extensions in progress as of September 1, 1975, a list of all current customer locations which were being served on September 1, 1975, and an accurate location of them on the maps submitted. Current customer locations which were not being served on that date should also be located on the same map in a way which clearly distinguishes the two groups;]~~

(9) disclosure of all affiliated interests as defined by §24.3 of this title [~~(relating to Definitions of Terms)~~];

(10) to the extent known, a description of current and projected land uses, including densities;

(11) a current financial statement of the applicant;

(12) according to the tax roll of the central appraisal district for each county in which the proposed service area is located, a list of the owner(s) [~~owners~~] of each tract of land that is:

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

(13) if dual certification is being requested, a copy of the executed agreement that allows for dual certification of the proposed service area(s) [~~and an agreement between the affected utilities exists, a copy of the agreement~~];

(14) if decertification is being requested with an existing CCN holder, a copy of the executed agreement to decertify the existing CCN area; [~~for a water CCN for a new or existing system, a copy of:~~]

~~[(A) the approval letter for the plans approved by the TCEQ and specifications for the system or proof that the applicant has submitted either a preliminary engineering report or plans and specification for the first phase of the system unless 30 TAC §290.39(j)(1)(D) (relating to General Provisions) applies;]~~

~~[(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or]~~

~~[(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;]~~

(15) for an application for a new water CCN or CCN amendment that will require the construction of a new public drinking water system or facilities to provide retail water utility service, a copy of:

(A) the approval letter for the plans and specifications issued by the TCEQ for the public drinking water system(s) or facilities. Proof that the applicant has submitted plans and specifications for the proposed drinking water system is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new water CCN or CCN amendment will be dismissed without prejudice. Approval letter(s) for the proposed public drinking water system or facilities must be filed with the commission before the issuance of a new CCN or CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application without prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required pursuant to TCEQ rules;

(B) other information that indicates the applicant is in compliance with §24.93 of this title (relating to Adequacy of Water Utility Service) for the system; or

(C) a contract with a wholesale provider that meets the requirements in §24.93 of this title;

[~~(15) for a sewer CCN for a new or existing facility, a copy of:~~]

[~~(A) a wastewater permit or proof that a wastewater permit application for that facility has been filed with the Texas Commission on Environmental Quality;~~]

[~~(B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or~~]

[~~(C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and~~]

(16) for an application for a new sewer CCN or CCN amendment that will require the construction of a new sewer system or new facilities to provide retail sewer utility service, a copy of:

(A) a wastewater permit or proof that a wastewater permit application for the additional facility has been filed with the TCEQ. Proof that the applicant has submitted an application for a wastewater permit is sufficient for a determination of administrative completeness. The applicant shall notify the commission within ten days upon receipt of any TCEQ disapproval letter. If the applicant receives a TCEQ disapproval letter, the application for a new sewer CCN or CCN amendment will be dismissed without prejudice. Approval letter(s) for the permit application must be filed with the commission before the issuance of a new CCN or CCN amendment. Failure to provide such approvals within a reasonable amount of time after the application is found administratively complete may result in the dismissal of the application within prejudice. Plans and specifications are only required if the proposed change in the existing capacity is required pursuant to TCEQ rules.

(B) other information that indicates that the applicant is in compliance with §24.94 of this title (relating to Adequacy of Sewer Service) for the facility; or

(C) a contract with a wholesale provider that meets the requirements in §24.94 of this title; and

(17) [~~(16)~~] any other item or information required by the commission.

(b) If an applicant is a utility as defined in §24.3(75) of this title, and does not currently have a tariff applicable to the area subject to the CCN application being proposed (e.g., a subdivision currently being built or proposed), the utility shall file a proposed tariff with the commission. The application requesting the new tariff shall provide:

(1) a rate study or other documentation supporting the proposed rates, which may include the costs of existing invested capital or estimates of future invested capital;

(2) all calculations supporting the proposed rates;

(3) all assumptions for any projections included in the rate study;

(4) an estimated completion date(s) for the physical plant(s);

(5) an estimate of the date(s) service will begin for all phases of construction;

(6) notice to the commission once billing for service begins; and

(7) a Class A or B rate change application within 18 months from the date service begins to adjust the rates to a historic test year with the appropriate regulatory authority and true up the new tariff rates to the historical test year.

(c) [~~(b)~~] Application within the municipal boundaries or extraterritorial jurisdiction of certain municipalities.

(1) This subsection applies only to a municipality with a population of 500,000 or more.

(2) Except as provided by paragraphs (3) - (7) of this subsection, the commission may not grant to a retail public utility a CCN for a service area within the boundaries or extraterritorial jurisdiction of a municipality without the consent of the municipality. The municipality may not unreasonably withhold the consent. As a condition of the consent, a municipality may require that all water and sewer facilities be designed and constructed in accordance with the municipality's standards for facilities.

(3) If a municipality has not consented under paragraph (2) of this subsection before the 180th day after the date the municipality receives the retail public utility's application, the commission shall grant the CCN without the consent of the municipality if the commission finds that the municipality:

(A) does not have the ability to provide service; or

(B) has failed to make a good faith effort to provide service on reasonable terms and conditions.

(4) If a municipality has not consented under this subsection before the 180th day after the date a landowner or a retail public utility submits to the municipality a formal request for service according to the municipality's application requirements and standards for facilities on the same or substantially similar terms as provided by the retail public utility's application to the commission, including a capital improvement [~~improvements~~] plan required by TWC[~~,~~] §13.244(d)(3) or a subdivision plat, the commission may grant the new CCN or CCN amendment without the consent of the municipality if:

(A) the commission makes the findings required by paragraph (3) of this subsection;

(B) the municipality has not entered into a binding commitment to serve the area that is the subject of the retail public utility's application to the commission before the 180th day after the date the formal request was made; and

(C) the landowner or retail public utility that submitted the formal request has not unreasonably refused to:

(i) comply with the municipality's service extension and development process; or

(ii) enter into a contract for retail water or sewer utility service [~~services~~] with the municipality.

(5) If a municipality refuses to provide service in the proposed service area, as evidenced by a formal vote of the municipality's governing body or an official notification from the municipality, the commission is not required to make the findings otherwise required by this section and may grant the CCN to the retail public utility at any time after the date of the formal vote or receipt of the official notification.

(6) The commission must include as a condition of a CCN granted under paragraph (4) or (5) of this subsection that all water and

sewer facilities be designed and constructed in accordance with the municipality's standards for water and sewer facilities.

(7) Paragraphs (4) - (6) of this subsection do not apply in the following counties: Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson.

(8) A commitment by a city to provide service must, at a minimum, provide that the construction of service facilities will begin within one year and will be substantially completed within two years after the date the retail public utility's application was filed with the municipality.

(9) If the commission makes a decision under paragraph (3) of this subsection regarding the granting of a CCN without the consent of the municipality, the municipality or the retail public utility may appeal the decision to the appropriate state district court.

(d) [~~(c)~~] Extension beyond extraterritorial jurisdiction.

(1) Except as provided by paragraph (2) of this subsection, if a municipality extends its extraterritorial jurisdiction to include an area in the CCN of [~~certificated to~~] a retail public utility, the retail public utility may continue and extend service in its CCN service area [~~of public convenience and necessity~~] under the rights granted by its CCN [~~certificate~~] and this chapter.

(2) The commission may not extend a municipality's CCN beyond its extraterritorial jurisdiction if an owner of land that is located wholly or partly outside the extraterritorial jurisdiction elects to exclude some or all of the landowner's property within a proposed service area in accordance with TWC[~~,~~] §13.246(h). This subsection does not apply to a sale, transfer, merger, consolidation, acquisition, lease, or rental of a CCN [~~transfer of a certificate~~] as approved by the commission.

(3) Paragraph (2) of this subsection does not apply to an extension of extraterritorial jurisdiction in Cameron, Fannin, Grayson, Guadalupe, Hidalgo, Willacy, or Wilson Counties.

(4) To the extent of a conflict between this subsection and TWC[~~,~~] §13.245, TWC[~~,~~] §13.245 prevails.

(e) [~~(d)~~] Area within municipality.

(1) If an area is within the boundaries of a municipality, all retail public utilities holding or entitled to hold a CCN [~~certified or entitled to certification~~] under this chapter to provide retail water and sewer utility service or operate facilities in that area may continue and extend service in its CCN area [~~of public convenience and necessity~~] within the area under the rights granted by its CCN [~~certificate~~] and this chapter, unless the municipality exercises its power of eminent domain to acquire the property of the retail public utility under this subsection. Except as provided by TWC[~~,~~] §13.255, a municipally owned or operated utility may not provide retail water and sewer utility service within the CCN area of [~~certificated to~~] another retail public utility without first having obtained from the commission a CCN that includes the area(s) [~~area~~] to be served.

(2) This subsection may not be construed as limiting the power of municipalities to incorporate or extend their boundaries by annexation, or as prohibiting any municipality from levying taxes and other special charges for the use of the streets as are authorized by Texas Tax Code, §182.025.

(3) In addition to any other rights provided by law, a municipality with a population of more than 500,000 may exercise the power of eminent domain in the manner provided by Texas Property Code, Chapter 21, to acquire a substandard water or sewer system if all the facilities of the system are located entirely within the municipality's boundaries. The municipality shall pay just and adequate compensation for the property. In this subsection, substandard water or sewer system means a system that is not in compliance with the municipality's standards for water and wastewater service.

(A) A municipality shall notify the commission no later than seven days after filing an eminent domain lawsuit to acquire a substandard water or sewer system and also notify the commission no later than seven days after acquiring the system.

(B) With the notification of filing its eminent domain lawsuit, the municipality, in its sole discretion, shall either request that the commission cancel the CCN of the acquired system or transfer the certificate to the municipality and the commission shall take such requested action upon notification of acquisition of the system.

§24.106. Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications.

(a) If an application to obtain a new [~~for issuance or amendment of a~~] certificate of [~~public~~] convenience and necessity (CCN) or CCN amendment is filed, the applicant will prepare the notice(s) [~~a notice or notices~~], as prescribed in the commission's application form, which will include the following:

(1) (No change.)

(2) all information stipulated in the commission's instructions for completing an application for a CCN; [~~and~~]

(3) a statement that persons who wish to intervene or comment upon the action sought must file a request with the commission, within 30 days of mailing or publication of notice, whichever occurs later; and[~~.~~]

(4) except for publication of notice, the notice(s) must include a map showing the proposed service area.

(b) After reviewing and, if necessary, modifying the proposed notice(s) [~~notice~~], the commission will provide the notice(s) [~~send the notice~~] to the applicant for publication and/or mailing.

(1) For applications for [~~issuance of~~] a new CCN or CCN amendment, the applicant shall mail the notice to the following:

(A) cities, districts, and neighboring retail public utilities providing the same utility service whose corporate boundaries or CCN service area(s) are located within two miles from the outer boundary of the proposed service area(s); [~~cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within five miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction that overlaps the proposed service area boundaries. Applicants are also required to provide notice to the county judge of each county and to each groundwater conservation district that is wholly or partly included in the area proposed to be certified.~~]

(B) the county judge of each county that is wholly or partially included in the proposed service area; and

(C) each groundwater conservation district that is wholly or partially included in the proposed service area(s);

[~~(2) For applications for an amendment of a CCN, the applicant shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or certificated service area boundaries are within two miles of the requested service area boundaries, and any city with an extraterritorial jurisdiction that overlaps the proposed service area boundaries. If decertification or dual certification is being requested, the applicant shall provide notice by certified mail to the current CCN holder. Applicants are also required to provide notice to the county judge of each county and to each~~

~~groundwater conservation district that is wholly or partly included in the area proposed to be certified.~~]

(2) [~~(3)~~] Except as otherwise provided by this subsection, in addition to the notice required by subsection (a) of this section, the applicant shall mail notice to each owner of a tract of land that is at least 25 acres and is wholly or partially included in the proposed service area(s) [~~area proposed to be certified~~]. Notice required under this subsection must be mailed by first class mail to the owner of the tract of land according to the most current tax appraisal rolls of the applicable central appraisal district at the time the commission received the application for the CCN [~~certificate or amendment~~]. Good faith efforts to comply with the requirements of this subsection shall be considered adequate mailed notice to landowners. Notice under this subsection is not required for a matter filed with the commission under:

(A) TWC[~~,~~] §13.248 or §13.255; or

(B) TWC[~~,~~] Chapter 65.

[~~(4) Applicants previously exempted for operations or extensions in progress as of September 1, 1975, must provide individual mailed notice to all current customers. The notice must contain the information required in the application.~~]

(3) [~~(5)~~] Utilities that are required to possess a CCN [~~certificate~~] but that are currently providing service without a CCN [~~certificate~~] must provide individual mailed notice to all current customers. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the application or notice form or by the commission [~~in the application~~].

(4) [~~(6)~~] Within 30 days of the date of the notice, the applicant shall file in the docket [~~submit to the commission~~] an affidavit specifying the persons(s) and entity(ies) [~~persons~~] to whom notice was provided and the date [~~of~~] that the notice was provided.

(c) - (d) (No change.)

[~~(e) In this section, utility service provider means a retail public utility other than a district subject to TWC, §49.452.~~]

(e) [~~(f)~~]An application for a new CCN or CCN amendment shall provide the following mapping documents [~~A utility service provider shall~~]:

(1) a small scale (general location) map showing only the location of the proposed service area(s) in the vicinity of the nearest town, city, or county; [~~record in the real property records of each county in which the service area, or a portion of the service area is located, a certified copy of the map of the CCN and of any amendment to the certificate as contained in the commission's records, and a boundary description of the service area by:~~]

[~~(A) a metes and bounds survey certified by a licensed state land surveyor or a registered professional land surveyor;~~]

[~~(B) the Texas State Plane Coordinate System;~~]

[~~(C) verifiable landmarks, including a road, creek, or railroad line; or~~]

[~~(D) if a recorded plat of the area exists, lot and block number; and~~]

(2) a large scale (detailed) map showing only the location of the proposed service area(s) with enough detail to accurately locate the proposed service area(s) in reference to verifiable landmarks, such as roads, rivers, or railroads; and [~~submit to the commission evidence of the recording.~~]

(3) a metes and bounds survey and/or a recorded plat of the proposed service area(s) certified by a licensed state land surveyor or a registered professional land surveyor; or digital mapping data using an industry standard file format acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by the commission staff. The digital mapping data shall be provided in a coordinate system and datum (project) in either Texas State Plane Coordinate System or a projection the commission utilizes.

(f) [~~(g)~~] The recording in the county records required by this section must be completed not later than the 31st day after the date a CCN holder receives a final order from the commission granting a new CCN or CCN amendment which results in a change to the CCN holder's service area [~~The recording required by this section must be completed not later than the 31st day after the date a utility service provider receives a final order from the commission granting an application for a new certificate or for an amendment to a certificate that results in a change in the utility service provider's service area~~].

[~~(h) The recording required by this section for holders of certificates of public convenience and necessity already in existence as of September 1, 2005 must be completed not later than January 1, 2007.~~]

§24.107. Action on Applications.

(a) (No change.)

(b) After proper notice is given, the commission may take action on an application which is uncontested at the end of the intervention period or for which all interventions are subsequently withdrawn [~~The commission may take action on an application at a regular meeting without holding a public hearing if 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing has been requested~~].

[~~(c) The commission may take action on an application which is uncontested at the end of the 30 day protest period following mailed or published notice or for which all protests are subsequently withdrawn.~~]

(c) [~~(d)~~] If a hearing is requested, the application will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

§24.109. Sale, Transfer, Merger, Consolidation, Acquisition, Lease, or Rental. [~~Report of Sale, Merger, Etc.; Investigation; Disallowance of Transaction.~~]

(a) Any water or sewer utility, or water and sewer utility, owned by an entity required by law to possess a certificate of convenience and necessity (CCN) shall, and a retail public utility that possesses a CCN may, file a written application with the commission and give public notice of any sale, transfer, merger, consolidation, acquisition, lease, or rental at least 120 days before the effective date of the transaction. The 120-day period begins on the most recent of:

(1) the last date the applicant mailed the required notice(s) as stated in the applicant's affidavit of notice; or

(2) the last date of the publication of the notice in the newspaper as stated in the affidavit of publication, if required.

[~~(a) On or before the 120th day before the effective date of any sale, acquisition, lease, rental, merger, or consolidation of any water or sewer system required by law to possess a certificate of public convenience and necessity, the utility or water supply or sewer service corporation shall file a written application with the commission and give public notice of the action. The notification shall be on the form required by the commission and the comment period will not be less~~

than 30 days. Public notice may be waived by the commission for good cause shown. The 120-day period begins on the last date of whichever of the following events occur]:

[(1) the date the applicant files an application under this section;]

[(2) if mailed notice is required, the last date the applicant mailed the required notice as stated in the applicant's affidavit of notice; or]

[(3) if newspaper notice is required, the last date of the publication of the notice in the newspaper as stated in the affidavit of publication.]

(b) The notice shall be on the form required by the commission and the intervention period shall not be less than 30 days. Public notice may be waived by the commission for good cause shown [A person purchasing or acquiring the water or sewer system must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person].

(c) Unless notice is waived by the commission for good cause shown, proper notice shall be given to affected customers and to other affected parties as determined by the commission and on the form prescribed by the commission which shall include the following:

(1) the name and business address of the current utility holding the CCN (transferor) and the retail public utility or person which will acquire the facilities or CCN (transferee);

(2) a description of the proposed service area being transferred; and

(3) a statement that persons who wish to protest or intervene upon the action sought should file comments with the commission within 30 days of mailing or publication of notice, whichever occurs later

(d) If notice is not waived by the commission for good cause shown, the transferee shall mail the notice to cities and neighboring retail public utilities providing the same utility service whose corporate limits or CCN boundaries are within two miles from the outer boundary of the proposed service area, and any city with an extraterritorial jurisdiction which overlaps the proposed service area.

(e) The commission may require the transferee to publish notice once each week for two consecutive weeks in a newspaper of general circulation in each county in which the retail public utility being transferred is located.

(f) The commission may allow published notice in lieu of individual notice as required in this subsection.

(g) A retail public utility or person that files an application under this section to purchase, transfer, merge, acquire, lease, rent, or consolidate a utility or system (transferee) must demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area(s) and any area(s) currently located within the CCN of the transferee as required by §24.102(a) of this title (relating to Criteria for Granting or Amending Certificates of Convenience and Necessity).

(h) [(e)] If the transferee [person purchasing or acquiring the water or sewer system] cannot demonstrate adequate financial capability, the commission may require that the transferee [person] provide financial assurance to ensure continuous and adequate retail water and/or sewer utility service is provided to the requested area plus any area already being served under the transferee's existing CCN and any related affiliates. The commission shall set the amount of financial assurance. The form of the financial assurance shall [must] be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this title [chapter] does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

(i) [(d)] The commission shall, with or without a public hearing, investigate the sale, transfer, merger, consolidation, acquisition, lease, or rental, [merger or consolidation] to determine whether the transaction will serve the public interest.

(j) [(e)] Prior to the expiration of the 120-day [notification] period, the commission shall either approve the sale administratively or require a public hearing to determine if the transaction will serve the public interest. The commission may require a hearing if:

(1) the application filed with the commission or the public notice was improper;

(2) the transferee [person purchasing or acquiring the water or sewer system] has not demonstrated adequate financial, managerial, and technical capability for providing continuous and adequate service to the service area being acquired and to any areas currently certificated to the transferee [that person];

(3) the transferee [person or an affiliated interest of the person purchasing or acquiring the water or sewer system] has a history of:

(A) noncompliance with the requirements of the TCEQ, the commission or the Texas Department of State Health Services; or

(B) continuing mismanagement or misuse of revenues as a utility service provider;

(4) the transferee [person purchasing or acquiring the water or sewer system] cannot demonstrate the financial ability to provide the necessary capital investment to ensure the provision of continuous and adequate service to the proposed service area(s); or [customers of the water or sewer system;]

(5) there are concerns that the transaction does not serve the public interest. It [it] is in the public interest to investigate the following factors:

(A) whether the transferor or transferee have [seller has] failed to comply with any [a] commission or TCEQ order. The commission may refuse to approve a sale, transfer, merger, consolidation, acquisition, lease, or rental where conditions of a judicial decree, compliance agreement, or other enforcement order have not been substantially met;

(B) the adequacy of service currently provided to the area;

(C) the need for additional service in the requested area;

(D) the effect of approving the transaction on the transferee [utility or water supply or sewer service corporation], the transferor [person purchasing or acquiring the water or sewer system], and on any retail public utility of the same kind already serving the proximate area;

(E) the ability of the transferee [person purchasing or acquiring the water or sewer system] to provide adequate service;

(F) the feasibility of obtaining service from an adjacent retail public utility;

(G) the financial stability of the transferee [person purchasing or acquiring the water or sewer system], including, if applicable, the adequacy of the debt-equity ratio of the transferee [person

~~purchasing or acquiring the water or sewer system~~] if the transaction is approved;

(H) the environmental integrity; and

(I) the probable improvement of service or lowering of cost to consumers in that area resulting from approving the transaction.

(k) [~~(f)~~] Unless the commission requires that a public hearing be held, the sale, transfer, merger, consolidation, acquisition, lease, or rental [~~or merger or consolidation~~] may be completed as proposed:

(1) at the end of the 120-day period; or

(2) [~~or may be completed~~] at any time after the transferee [~~utility or water supply or sewer service corporation~~] receives notice from the commission that a hearing will not be requested.

(l) If the commission decides to hold a hearing, or if the transferee fails to process the application as required, or to provide public notice, the transaction proposed in the application may not be completed unless the commission determines that the proposed transaction serves the public interest.

(m) Within 30 days of the commission order that allows the sale, transfer, merger, consolidation, acquisition, lease, or rental to proceed as proposed, the transferee shall provide a written update on the status of the transaction, and every 30 days thereafter, until such a time that the transaction is complete. The transferee shall inform the commission of any changes in financial, managerial, and technical capability for providing continuous and adequate service to the requested area plus any area already being lawfully served by the transferee during the time before the transaction has been approved.

(n) Within 30 days of the actual effective date of the transaction, the transferor and transferee shall file with the commission, under oath, in addition to other information, a list showing the following:

(1) the names and addresses of all customers who have a deposit on record with the transferor;

(2) the date such deposit was made;

(3) the amount of the deposit; and

(4) the unpaid interest thereon. All such deposits shall be refunded to the customer or transferred to the transferee, along with all accrued interest.

(o) [~~(g)~~] Within 30 days after the actual effective date of the transaction, the transferee and transferor shall [~~utility or water supply or sewer service corporation must~~] file a signed contract, bill of sale, or other appropriate documents as evidence that the transaction has closed as proposed in the corresponding docket. The signed contract, bill of sale, or other documents, must be signed by both the transferor and transferee. The transferor and transferee shall also file [~~been made final and~~] documentation as evidence that customer deposits have been transferred or refunded to the customers [~~customer~~] with interest as required by this section [~~these rules~~].

[~~(h) If a hearing is requested or if the utility or water supply or sewer service corporation fails to make the application as required or to provide public notice, the sale, acquisition, lease, merger, consolidation, or rental may not be completed unless the commission determines that the proposed transaction serves the public interest.~~]

(p) The commission's approval of a sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility expires 180 days following the date of the commission order allowing the transaction to proceed as proposed. If the sale has not been consummated within that period and unless the transferee or transferor have requested and received an extension from the commission, the approval is void.

(q) If the commission does not require a hearing, and the transaction is closed as proposed, the commission may issue an order approving the transaction.

(r) [~~(i)~~] A sale, transfer, merger, consolidation, acquisition, lease, or rental of any water or sewer system or retail public utility required by law to possess a CCN, or transfer of customers and/or service area, owned by an entity required by law to possess a CCN [~~certificate of public convenience and necessity~~] that is not completed in accordance with the provisions of [~~the~~] TWC §13.301 is void.

(s) [~~(j)~~] The requirements of [~~the~~] TWC §13.301 do not apply to:

(1) the purchase of replacement property;

(2) a transaction under [~~the~~] TWC §13.255; or

(3) foreclosure on the physical assets of a utility.

(t) [~~(k)~~] If a utility's [~~utility~~] facility or system is sold and the utility's facility or system was partially or wholly constructed with customer contributions in aid of construction derived from specific surcharges approved by the regulatory authority over and above revenues required for normal operating expenses and return, the utility may not sell or transfer any of its assets, its CCN [~~certificate of convenience and necessity~~] or controlling interest in an incorporated utility, unless the utility provides to the [~~purchaser or~~] transferee and to the commission before the date of the sale or transfer a written disclosure relating to the contributions. The disclosure must contain, at a minimum, the total dollar amount of the contributions and a statement that the contributed property or capital may not be included in invested capital or allowed depreciation expense by the regulatory authority in rate-making proceedings.

(u) A retail public utility that holds a CCN, or that is required by law to hold a CCN, that proposes to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities, customers, service area or controlling interest shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, transfer, merge, acquire, lease, rent, or consolidate its facilities.

[~~(l) A utility or a water supply or sewer service corporation that proposes to sell, assign, lease, or rent its facilities shall notify the other party to the transaction of the requirements of this section before signing an agreement to sell, assign, lease, or rent its facilities.~~]

§24.110. Foreclosure and Bankruptcy.

(a) If a utility that is required by law to possess a certificate of convenience and necessity (CCN) [~~A utility that~~] receives notice that all or a portion of the utility's or system's facilities or property used to provide utility service is [~~are~~] being posted for foreclosure, the utility shall notify the commission in writing of that fact and shall provide a copy of the foreclosure notice to the commission not later than the tenth day after the date on which the retail public utility or system receives the notice.

(b) A person other than a financial institution that forecloses on facilities used to provide utility services shall not charge or collect rates for providing retail public water or sewer services [~~utility service~~] unless the person has a completed application for a CCN [~~certificate of convenience and necessity~~] or to transfer the current CCN [~~certificate of convenience and necessity~~] on file with the commission within 30 days after the foreclosure is completed.

(c) A financial institution that forecloses on a utility or on any part of the utility's facilities or property that are used to provide util-

ity service is not required to provide the 120-day notice prescribed by TWC[,] §13.301, but shall provide written notice to the commission before the 30th day preceding the date on which the foreclosure is completed.

(d) The financial institution may operate the utility for an interim period not to exceed 12 months before selling, transferring, merging, consolidating, acquiring, leasing, or renting its facilities or otherwise obtaining a CCN unless the commission in writing extends the time period for good cause shown [~~transferring or otherwise obtaining a certificate of convenience and necessity unless the commission in writing extends the time period~~]. A financial institution that operates a utility during an interim period under this subsection is subject to each commission rule to which the utility was subject and in the same manner.

(e) Not later than the 48th hour after a retail public [~~the hour in which a~~] utility files a bankruptcy petition, the retail public utility shall report this fact to the commission and the TCEQ in writing.

§24.111. Purchase of Voting Stock or Acquisition of a Controlling Interest in a [~~in Another~~] Utility.

(a) A utility may not purchase voting stock in and a person may not acquire a controlling interest in a utility doing business in this state unless the utility or person files a written application with the commission no [~~not~~] later than the 61st day before the date on which the transaction is to occur. A controlling interest is defined as a person or a combination of a person and other family members possessing at least 50% of the voting stock of the utility; or a person that controls at least 30% of the stock and is the largest stockholder.

(b) A person purchasing voting stock or acquiring a controlling interest in a utility shall [~~may~~] be required to demonstrate adequate financial, managerial, and technical capability for providing continuous and adequate service to the requested area and any areas currently certificated to the person.

(c) If the person purchasing voting stock or acquiring a controlling interest cannot demonstrate adequate financial capability, the commission may require [~~that~~] the person provide financial assurance to ensure continuous and adequate utility service is provided to the CCN service area. The commission shall set the amount of financial assurance. The form of the financial assurance shall [~~must~~] be as specified in §24.11 of this title (relating to Financial Assurance). The obligation to obtain financial assurance under this chapter does not relieve an applicant from any requirements to obtain financial assurance in satisfaction of another state agency's rules.

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

~~[(f) The utility or person must notify the commission within 30 days after the date that the transaction is completed.]~~

(f) [~~(g)~~] If a hearing is required or if the person or utility fails to make the application to the commission as required, the purchase of voting stock or acquisition of a controlling interest may not be completed unless the commission determines that the proposed transaction serves the public interest. A purchase or acquisition that is not completed in accordance with the provisions of this section is void.

(g) The utility or person shall notify the commission within 30 days after the date that the transaction is completed.

(h) Within 30 days of the commission order that allows the purchase of voting stock or acquisition of a controlling interest to proceed as proposed, the person purchasing voting stock or acquiring a controlling interest shall provide a written update on the status of the transaction, and every 30 days thereafter, until such time that the transaction has been completed.

(i) The commission's approval of the purchase of voting stock or acquisition of a controlling interest in a utility expires 180 days following the date of the commission order that allows the purchase of stock or a controlling interest to proceed as proposed. If the transaction has not been consummated within the 180-day time period and unless the utility or person purchasing voting stock or acquiring a controlling interest has requested and received an extension from the commission, the approval is void.

§24.115. Cessation of Operations by a Retail Public Utility.

(a) Any retail public utility which possesses or is required to possess a certificate of convenience and necessity (CCN) desiring to discontinue, reduce or impair retail water or sewer utility service, except under the conditions listed in [~~the~~] TWC[,] §13.250(b), must file a petition with the commission which sets out:

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

(4) the area affected by the action, including maps as described by §24.106(e)(1) - (2)[~~(f)(1)~~] of this title (relating to Notice and Mapping Requirements for Certificates of Convenience and Necessity Applications).

(b) The retail public utility shall file a proposed notice to customers and any other affected parties. The proposed notice shall include [~~The retail public utility shall submit a proposed notice to be provided to customers of the utility and other affected parties which will include the following~~]:

(1) the name, CCN number(s) (if any), mailing [~~ and business~~] address, and business telephone number of the retail public utility which seeks to cease operations;

(2) (No change.)

(3) the anticipated effect of the cessation of operations on the rates and services provided to the customers; and

(4) [~~and~~] a statement that persons(s) [~~persons~~] who wish to intervene or comment upon the action sought should file a request to intervene or comments with the commission at the commission's mailing address: Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 [~~within 30 days of mailing or publication of notice, whichever occurs later~~].

(c) After reviewing and, if necessary, modifying the proposed notice, [~~review by~~] the commission will provide the notice to[,] the applicant for mailing [~~shall mail the notice~~] to cities and neighboring retail public utilities providing the same utility service within two miles of the outer boundary of the petitioner's service area and any city whose extraterritorial jurisdiction overlaps the petitioner's [~~applicant's~~] service area, [~~and~~] to the customers of the petitioner [~~applicant~~] proposing to cease operations, and to any person(s) that have requested service from the petitioner but that have not yet received service.

(d) The petitioner [~~applicant~~] may be required by the commission to publish notice once each week for two consecutive weeks in a newspaper of general circulation in the county(ies) [~~county~~] of operation which shall include, in addition to the information specified in subsection (b) of this section:

(1) (No change.)

(2) the name, CCN number(s) (if any), and mailing address of the owner(s) or authorized representative [~~owner~~] of the retail public utility; and

(3) the business telephone of the retail public utility.

(e) The commission may require the petitioner [~~applicant~~] to deliver notice to other affected persons or agencies.

(f) If, 30 days after the required mailed or published notice has been issued, whichever occurs later, no hearing is requested, the commission may consider the petition [~~application~~] for final decision without further hearing.

(g) If a hearing is requested, the petition [~~application~~] will be processed in accordance with Chapter 22 of this title (relating to Procedural Rules).

(h) In no circumstance may a retail public utility which possesses or is required to possess a CCN [~~certificate of convenience and necessity~~], a person who possesses facilities used to provide retail water or sewer utility service, or a water utility or water supply corporation with less than 15 connections that is operating without a CCN [~~certificate of convenience and necessity~~] pursuant to §24.103 of this title (relating to Certificates Not Required) cease operations without commission authorization.

(i) In determining whether to grant authorization to the retail public utility for discontinuation, reduction, or impairment of retail water or sewer utility service, the commission shall consider, but is not limited to, the following factors:

(1) the effect on the customer(s) [~~customers~~] and landowner(s) [~~landowners~~];

(2) the costs associated with bringing the utility [~~system~~] into compliance;

(3) (No change.)

(4) the applicant's efforts to sell the utility [~~system~~], such as running advertisements, contacting similar adjacent retail public utilities, or discussing cooperative organization with the customers;

(5) the asking price for purchase of the utility [~~system~~] as it relates to the undepreciated original cost of the system for ratemaking purposes;

(6) - (8) (No change.)

(j) If a utility abandons [~~does abandon~~] operation of its facilities without commission authorization, the commission may appoint a temporary manager or place the utility into supervision to take over operations, management, and finances of the utility and its facilities to ensure continuous and adequate retail water and/or sewer utility service is provided.

§24.117. Contracts Valid and Enforceable.

(a) Contracts between retail public utilities designating areas to be served and customers to be served by those retail public utilities, when approved by the commission after notice and hearing, are valid and enforceable and are incorporated into the corresponding certificates of [~~public~~] convenience and necessity (CCNs). This section is applicable to the transfer of service area(s) and customer(s) only between existing CCN holders. Nothing in this provision negates the requirements of TWC[~~,~~] §13.301 to obtain a new CCN and document the transfer of assets and facilities between retail public utilities.

(b) Retail public utilities may request approval of a contract by filing a written petition with the commission [~~contracts by filing a written request with the commission~~] including:

(1) maps of the area(s) [~~area~~] to be transferred pursuant to §24.119(a) of this title (relating to Filing of Maps);

(2) a copy of the executed contract or agreement;

(3) the number of customer(s) to be transferred, if any; [~~if applicable, an affidavit that notice has been provided under TWC, §13.301; and~~]

(4) information described in subsection (c)(3) of this section; and

(5) any other information required by the commission.

(c) For the purpose of this section, notice under §24.106 of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications) does not apply. Notice for a petition requesting approval of a contract between retail public utilities designating areas to be served and customers to be served shall be as follows:

(1) if there are affected customers to be transferred as part of the contract, then individual notice to the affected customers shall be provided by mail, e-mail, or hand delivery. The notice must contain the current rates, the effective date those rates were instituted, and any other information required by the commission;

(2) if the decision to enter into a contract between parties designating area to be transferred was discussed at a city council, board meeting of a water supply or sewer service corporation, district board meeting, county commissioner's court, or other regulatory authority meeting, a copy of the meeting agenda and minutes where the item was discussed may be considered sufficient notice;

(3) if notices pursuant to paragraphs (1) and/or (2) of this subsection were provided, an affidavit attesting to the date that notice was provided and copies of the items in paragraphs (1) and (2) of this subsection.

§24.118. Contents of Request for Cease and Desist Order by the Commission Under TWC [~~Commission Order Under the Texas Water Code,~~] §13.252.

(a) If a retail public utility in constructing or extending a line, plant or system interferes or attempts to interfere with the operation of a line, plant, or system of any other retail public utility, or furnishes, makes available, renders, or extends retail water or sewer utility service to any portion of the service area of another retail public utility that has been granted or is not required to possess a certificate of [~~public~~] convenience and necessity (CCN), the commission may issue an order prohibiting the construction, extension, or provision of service, or prescribing terms and conditions for locating the line, plant, or system affected or for the provision of service. A request for commission order shall include the following:

(1) the name, CCN number(s) (if applicable), e-mail address, phone number, and mailing [~~business~~] address of the retail public utility making the request;

(2) the name, CCN number(s) (if applicable), mailing address, phone number (if known) and e-mail address (if known) [~~and business address~~] of the retail public utility which is to be the subject of the order;

(3) a description of the alleged interference;

(4) a map showing the service area of the requesting utility which clearly shows the location of the alleged interference;

(5) copies of any other information or documentation which would support the position of the requesting utility; and

(6) other information as required by the commission [~~may require~~].

(b) A request for commission order under this section shall be filed with the commission in the form or a petition and shall contain the

necessary information under subsection (a) of this section. The petition must be filed within 180 days from the date the petitioner becomes aware that another retail public utility is interfering or attempting to interfere with the operation of a line, plant or system or making available, rendering or extending retail water or sewer utility service to any portion of another retail public utility that possesses or is required to possess a CCN, unless the petitioner can demonstrate good cause for its failure to file such action within the 180 days.

§24.119. Filing of Maps.

(a) Applications to obtain or amend a certificate of convenience and necessity (CCN) shall contain:

(1) a small scale (general location) map showing only the location of the proposed service area(s) in the vicinity of the nearest town, city, or county;

(2) a large scale (detailed) map showing only the proposed service area(s) with enough detail to accurately locate the proposed service area(s) in reference to verifiable landmarks, such as roads, rivers, or railroads;

(3) a metes and bounds survey and/or a recorded plat of the proposed service area(s) certified by a licensed state land surveyor or a registered professional land surveyor; or digital mapping data using an industry standard file format, acceptable to the commission containing feature class subcomponents of a geodatabase and capable of being manipulated by the commission staff. The digital mapping data shall be provided in a coordinate system and datum (project) in either Texas State Plane Coordinate System or a projection the commission utilizes; and

(4) if applicable, a map(s) showing any facilities for production, transmission, and distribution of its services, customers, or area currently being served outside its certificated areas. Facilities shall be shown on subdivision plats, engineering planning maps, or other large scale maps. Color coding [~~With applications to obtain or amend a certificate of convenience and necessity, each public utility and water supply or sewer service corporation shall file with the commission a map or maps of the area or areas being requested in the application showing all its facilities and illustrating separately facilities for production, transmission, and distribution of its services, and each certificated retail public utility shall file with the commission a map or maps showing any facilities, customers, or area currently being served outside its certificated areas. Facilities shall be shown on United States Geological Survey 7.5"-minute series maps, subdivision plats, engineering planning maps, or other large scale maps. A color code~~] may be used to distinguish the types of facilities indicated. The location of any such facility shall be described with such exactness that the facility can be located "on the ground" from the map or in supplementary data with reference to physical landmarks where necessary to show its actual location.

(b) All maps should be filed pursuant to §22.71 of this title (relating to Filing of Pleadings, Documents and Other Materials) and §22.72 of this title (Formal Requisites of Pleadings and Documents to be Filed with the Commission).

§24.120. Single Certification in Incorporated or Annexed Areas.

(a) If [~~In the event that~~] an area is incorporated or annexed by a municipality, either before or after the effective date of this section, the municipality and a retail public utility that provides retail water or sewer utility service to all or part of the area under a certificate of convenience and necessity (CCN) may agree in writing that all or part of the CCN area may be served by a municipally owned utility, by a franchised utility, or by the retail public utility. In this section, the phrase "franchised utility" [~~franchised utility~~] means a retail public utility that has been granted a franchise by a municipality to provide retail water or sewer utility service inside municipal boundaries. The agreement may provide for single or dual certification of all or part of the area, for the purchase of facilities or property, and for such other or additional terms that the parties may agree on. If a franchised utility is to serve the area, the franchised utility shall also be a party to the agreement. The executed agreement shall be filed on a completed form prescribed by the commission for an application pursuant to TWC §13.255, along with mapping information filed in accordance with §24.106(e) of this title (relating to Notice and Mapping Requirements for Certificate of Convenience and Necessity Applications). After these items have been properly filed, the commission [~~with the commission, and the commission, on receipt of the agreement,~~] shall incorporate the terms of the agreement into the respective CCNs [~~certificates of convenience and necessity~~] of the parties to the agreement.

(b) If an agreement is not executed within 180 days after the municipality, in writing, notifies the retail public utility of its intent to provide service to the incorporated or annexed area, and if the municipality desires and intends to provide retail water or sewer utility service to the area, the municipality, prior to providing service to the area, shall file a completed [~~an~~] application with the commission along with the corresponding mapping information in accordance with §24.106(e) to grant single certification to the municipally owned retail water or sewer utility or to a franchised utility. The municipality shall also provide to the retail public utility a copy of the application and corresponding mapping information filed with the commission. If an application for single certification is filed without an executed agreement between the parties to the agreement, the commission shall fix a time and place for a hearing and shall give notice of the hearing to the municipality and franchised utility, if any, and notice of the application and hearing to the retail public utility. Within ten calendar days after receipt of notice that a decertification process has been initiated, a retail public utility with outstanding debt secured by one or more liens shall:

(1) file a written list with the name(s) and address(es) of the lienholder(s) and the amount of outstanding debt with the commission [~~submit to the commission a written list with the names and addresses of the lienholders and the amount of debt~~]; and

(2) notify the lienholder(s) [~~lienholder~~] of the decertification process and request that the lienholder(s) [~~lienholder~~] provide information to the commission sufficient to establish the amount of compensation necessary to avoid impairment of any debt allocable to the area in question.

(c) The commission shall grant single certification to the municipality. The commission shall also determine whether single certification as requested by the municipality would result in property of a retail public utility being rendered useless or valueless to the retail public utility, and shall determine in its order the monetary amount that is adequate and just to compensate the retail public utility for such property. If the municipality in its application has requested the transfer of specified property of the retail public utility to the municipality or to a franchised utility, the commission shall also determine in its order the adequate and just compensation to be paid for such property under the provisions of this section, including an award for damages to property remaining in the ownership of the retail public utility after single certification. The order of the commission shall not be effective to transfer property. A transfer of property may only be obtained under this section by a court judgment rendered under TWC[~~,~~] §13.255(d) or (e). The granting [~~grant~~] of single certification by the commission shall go into effect on the date the municipality or franchised utility, as the case may be, pays adequate and just compensation in accordance with the court order, or pays an amount into the registry of the court or to the retail public utility under TWC[~~,~~] §13.255(f). If the court judgment

provides that the retail public utility is not entitled to any compensation, the granting [~~grant~~] of single certification shall go into effect when the court judgment becomes final. The municipality or franchised utility must provide to each customer of the retail public utility being acquired an individual written notice within 60 days after the effective date for the transfer specified in the court judgment. The notice must clearly advise the customer of the name and contact information [~~identity~~] of the new service provider, the reason for the transfer, the rates to be charged by the new service provider, and the effective date of those rates.

(d) - (h) (No change.)

(i) A municipality or a franchised utility may dismiss an application for single certification without prejudice at any time before a judgment becomes final provided the municipality or the franchised public utility has not taken physical possession of property of the retail public utility or made payment for such right under TWC[~~,~~] §13.255(f).

(j) (No change.)

(k) This section shall apply only in a case where:

(1) the retail public utility that is authorized to serve in the CCN [~~certificated~~] area that is annexed or incorporated by the municipality is a nonprofit water supply or sewer service corporation, a special utility district under TWC[~~,~~] Chapter 65, or a fresh water supply district under TWC[~~,~~] Chapter 53; or

(2) (No change.)

(l) - (m) (No change.)

(n) The commission shall deny an application for single certification by a municipality that fails to demonstrate compliance with the TCEQ's minimum design requirements for public drinking water and/or has failed to demonstrate compliance with TCEQ's wastewater permit rules [~~The commission shall deny an application for single certification by a municipality that fails to obtain a finding from TCEQ that it is will demonstrate compliance with the TCEQ's minimum requirements for public drinking water systems, pursuant to 30 TAC Chapter 290, Subchapter D (relating to Rules and Regulations for Public Water Systems)~~].

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 25, 2016.

TRD-201603656
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 936-7223

♦ ♦ ♦

16 TAC §24.112

The repeal is proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.112. Transfer of Certificate of Convenience and Necessity.

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 25, 2016.

TRD-201603654
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 936-7223

♦ ♦ ♦

SUBCHAPTER J. ENFORCEMENT, SUPERVISION, AND RECEIVERSHIP

16 TAC §24.142, §24.143

The amendments are proposed under the Texas Water Code Annotated §13.041(b) (West 2008 & Supp. 2015) (TWC), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction.

Cross Reference to Statutes: TWC §13.041(b)

§24.142. Operation of Utility that Discontinues Operation or is Referred for Appointment of a Receiver.

(a) The commission, after providing to a [~~the~~] utility notice and an opportunity for a hearing, may authorize a willing person, municipality, or political subdivision to temporarily manage and/or [~~and~~] operate a utility that:

(1) (No change.)

(2) is being referred to the attorney general for the appointment of a receiver under TWC[~~,~~] §13.412 for:

(A) - (C) (No change.)

(b) The commission may appoint a person, municipality, or political subdivision under this section by emergency order under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities). A corporation may be appointed as a temporary manager.

(c) - (d) (No change.)

§24.143. Operation of a Utility by a Temporary Manager.

(a) By emergency order under TWC[~~, §5.507 and~~] §13.4132, the commission may appoint a person, municipality, or political subdivision under Chapter 22, Subchapter P of this title (relating to Emergency Orders for Water Utilities) to temporarily manage and/or [~~and~~] operate a utility that has discontinued or abandoned operations or the provision of service, or which has been or is being referred to the attorney general for the appointment of a receiver under TWC[~~,~~] §13.412.

(b) A person, municipality, or political subdivision appointed under this section has the powers and duties necessary to ensure the continued operation of the utility and the provision of continuous and adequate service [~~services~~] to customers, including the power and duty to:

(1) - (9) (No change.)

(c) (No change.)

(d) The temporary manager shall serve a term of 180 days [~~one year~~], unless:

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

(e) - (i) (No change.)

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

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

TRD-201603657
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 936-7223

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 357. REGIONAL WATER PLANNING

The Texas Water Development Board ("TWDB" or "board") proposes amendments to §§357.10 - 357.12, 357.20 - 357.22, 357.30 - 357.35, 357.40, 357.42 - 357.45, 357.50, 357.51, 357.60, 357.62, and 357.64, relating to the regional water planning process. New §357.46 is proposed.

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE PROPOSED AMENDMENTS AND NEW SECTION.

The purpose of the amendments and new section is to implement legislative changes from Senate Bill (SB) 1101, 84th Legislative Session, House Bill (HB) 4, 83rd Legislative Session, and HB 3357 and HB 30, 84th Legislative Session; improve the planning process and increase flexibility in planning; reduce certain unessential reporting requirements; address stakeholder concerns raised during the previous planning cycle; standardize language; and clarify rules and refine definitions to make them more understandable and user-friendly. The specific provisions being amended or added and the reasons for the amendments and new section are addressed in more detail below.

SECTION BY SECTION DISCUSSION OF PROPOSED AMENDMENTS AND NEW SECTION.

Subchapter A. General Definitions.

Section 357.10. Definitions and Acronyms.

The proposed amendments to 31 Texas Administrative Code (TAC) §357.10 (relating to Definitions and Acronyms) proposes multiple changes to existing definitions and definitions for multiple new terms, as well as capitalization of defined terms as reflected throughout the proposed chapter revision. The amended and new definitions are intended to clarify the meanings of terms commonly used in the regional and state water planning process. The section has been renumbered to reflect the addition of new definitions.

The definition of "Agricultural Water Conservation" is added to clarify this commonly-used water management strategy (WMS) in the state and regional water plans. Title 31 TAC §363.1302 defines agricultural water conservation, and the proposed amendment references that definition.

The definition of "Availability" is revised to clarify its meaning and distinguish "Availability" from "Existing Water Supply". The distinction being that availability is the total amount of raw water that could be produced from a source during drought of record conditions, while existing water supply is the amount of that water that is physically and legally available for use by a water user group (WUG).

The discussion of "consistency between a regional water plan (RWP) and a desired future condition" is relocated to 31 TAC §357.32(d)(1) and adds references to a modeled available groundwater (MAG) peak factor. The current definition requires an existing water supply or a recommended WMS to not exceed modeled available groundwater to be consistent. The proposed amendment modifies the measure of consistency to include a MAG peak factor greater than the modeled available groundwater value or to allow for other availability estimates where there is no modeled available groundwater value or where 31 TAC §357.32(d)(2) applies.

The definition of "County-Other" is revised to accommodate the revised definition of "Water User Group" under the approach of utility-based planning as delineated by water provider service areas.

The definition of "Drought Management Water Management Strategy" is added to clarify the term as used in practice since regional water planning groups (RWPGs) evaluate and recommend drought management measures as quantified strategies in RWPs.

The definition of "Drought of Record" is revised to add the words "historical records indicate that" and "would have" to clarify that a drought of record is based on historical records and modeling that indicate a period of least amount of water supply.

The definition of "Existing Water Supply" is revised to clarify its meaning and more clearly distinguish it from "Availability". The distinction being that availability is the total amount of raw water that could be produced from a source during drought of record conditions, while existing water supply is the amount of that water that is physically and legally available for use by a WUG.

The definition of "Firm Yield" is revised to specify that a firm yield calculation must assume that applicable permit conditions are met. Adding this requirement is consistent with the firm yield definition in Texas Commission on Environmental Quality rules, 30 TAC §297.1(20). The definition is also amended to replace the word "reasonable" with "anticipated" before "sedimentation rates" because "anticipated" more accurately describes the use of sedimentation rates in the planning process due to its predictive nature.

The definition of "Major Water Provider", or "MWP", is added to define this category of water supplier. An MWP is a significant public or private WUG or wholesale water provider (WWP), whose significance is determined by the RWPG, and provides water for any water use category in a regional water planning area (RWPA). Major water provider is defined because it is a category of water provider that is proposed to be used for reporting purposes in regional and state water planning instead of previous WWP-based reporting requirements. Wholesale water providers were previously defined based upon a static volumetric threshold of water supplied that resulted in fluctuations in categories during each planning cycle due to changes in reported

annual water use. The revision gives RWPGs more flexibility in deciding on which large water provider they want to report information in their RWPs and facilitates the use of a single, stable list of entities.

The definition "Modeled Available Groundwater (MAG) Peak Factor" is added, along with an amendment to §357.32(d), to provide flexibility in planning for groundwater availability while ensuring consistency with long-term desired future conditions and integrity of the planning process. The definition specifies that a MAG peak factor would be expressed as a percentage of modeled available groundwater (e.g., greater than 100 percent) and would represent the quantified annual groundwater availability temporarily available, for planning purposes. The MAG peak factor may accommodate anticipated fluctuations in pumping between wet and dry periods or may account for other shifts in the timing of pumping while remaining consistent with desired future conditions. This is a quantified groundwater availability for pumping, not permitting, to be utilized for planning purposes only and is not intended as a limit to permits.

The definition of "Planning Decades" is added to clarify the significance of demands, supplies, needs, and strategy volumes as reported in regional and state water plans (2020, 2030, 2040, etc.). The new definition clarifies that data associated with a particular year represent conditions occurring in that single year. A WMS associated with a particular decade year "snapshot" (e.g. 2030) in a regional or state water plan would come online before or in that year.

The definition of "RWPG-Estimated Groundwater Availability" is added along with an amendment to §357.32(d) to implement changes required by Senate Bill (SB) 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health of Certain Regional Water Plans) and to reflect the planning practice of groundwater availability estimation for areas where no desired future condition has been adopted. Senate Bill 1101 amended Texas Water Code (TWC), §16.053(e)(2-a) to require an RWPG with no groundwater conservation districts (GCDs) within its regional water planning area (RWPA) to determine the supply of groundwater for regional planning purposes.

The definition of "Reuse" is added to clarify this commonly-used WMS in the state and regional water plans. Board rule, 31 TAC §363.1302(14), defines reuse, and the proposed amendment references that definition to make it consistent with the Board's State Water Implementation Fund for Texas (SWIFT) rules.

The definition of "State Water Planning Database" is added to explain that the database, maintained by TWDB, is used to collect, store, and disseminate regional and state water planning data such as population, water demand projections, existing water supplies, WMSs, and capital projects.

The definition of "Unmet Water Need" is added to clarify the portion of a water need that is not met by recommended WMSs in a regional or state water plan. The new definition of "Unmet Water Need", along with the new definition for "Water Need", are intended to clarify the use of these terms in the water planning process.

The definition of "Water Conservation Measures" is revised to add language from the definition of "Water Conservation" in 31 TAC §363.1302(18) to make it more consistent with the Board's State Water Implementation Fund for Texas rules. The amendment also adds new language to clarify that, for planning purposes, water conservation measures do not include projects that develop new supplies, such as new reservoirs or aquifer storage and recovery projects. This clarification is proposed to reduce confusion regarding the delineation between strategies or projects which conserve existing supplies and strategies or projects that develop new supplies, for example, by storing water for later use.

The definition of "Water Conservation Plan" is revised to remove the words "more than" from the first sentence because those words are redundant and inconsistent with the language in TWC, §11.1271. The revised definition also adds a period at the end of the first sentence.

The definition of "Water Conservation Strategy" is added to discuss a WMS that saves quantified volumes of water using water conservation measures.

The definition of "Water Demand" is added to discuss the volume of water that a WUG would require during drought of record conditions for its anticipated domestic, public, and/or economic activities.

The definition of "Water Management Strategy", or "WMS", is revised to remove the words "or specific project" to distinguish between a "Water Management Strategy" and a "Water Management Strategy Project", which is defined in proposed §357.10(39). The revision is intended to clarify that a strategy is a plan to meet a water need of a WUG, which may or may not require capital projects to be implemented.

The definition of "Water Management Strategy Project", or "WMSP", is added to distinguish between a "Water Management Strategy Project" and a "Water Management Strategy". As discussed above, a water management strategy is a plan to meet a water need; however, a water management strategy project is an infrastructure project that may be required to implement a water management strategy. The proposed definition specifies that water management strategy projects have non-zero capital costs and would develop, deliver, or treat additional water supply volumes, or conserve water for water user groups or wholesale water suppliers. The proposed definition also clarifies that one water management strategy project may be associated with multiple WMSs. For example, the construction of a single reservoir project may support multiple water user group strategies that use that new supply.

The definition of "Water Need" is added to explain the difference between projected water demands and existing water supplies. When existing water supply is less than the projected demand, there is the potential for a water shortage, or water need. The new definition for water need is intended to clarify the use of the term in the water planning process.

The definition of "Water User Group", or "WUG", is revised to be more consistent across all municipal water users and to reflect a utility-based planning approach. The current definition qualifies municipal water user groups on both a population threshold (500) for cities and a different, volumetric threshold (280 acre-feet) for non-city water utilities, creating a significant disparity between the size thresholds of the included entities. The revision would create a single, standard, volume-based criterion of 100 acre-feet per year for all municipal retail water utilities owned by a public or non-profit organization (not including private investor-owned utilities). The proposed 100-acre-foot threshold is designed to put rural and urban municipal use on an even footing regarding who is planned for and to increase the rural population that is planned for in discreet water user groups, as opposed to being classified as county-other. The 100-acre-foot threshold

will result in what is considered a manageable increase in the number of WUGs for which population and water demands must be projected for by the agency and planned for by RWPGs using existing resources.

The proposed rule also adds the 100 acre-feet per year criteria for privately-owned utilities that request inclusion as a water user group. Under this proposed revision, the 100 acre-feet per year requirement is for each owned water system and must be for municipal use. Additionally, the associated RWPG must concur with the request for inclusion. This change is proposed as §357.10(41)(B).

The proposed rule also adds the 100 acre-feet per year criteria for institutions or facilities that request inclusion as a municipal water user group, with the associated RWPG required to concur with the request for inclusion. This change is proposed as §357.10(41)(C).

The proposed rule also amends the definition of WUG to require that the inclusion of a collective reporting unit as water user group must be requested by the RWPG. This change is proposed as §357.10(41)(D).

The definition of "Wholesale Water Provider", or "WWP", is revised to eliminate the annual 1,000 acre-foot delivery or sales threshold and stipulate that the RWPG will determine the wholesale water providers in its region. The definition also inserts language to specify that a wholesale water provider may deliver or sell treated or raw wholesale water to water user groups or other wholesale water providers. The intent of this proposed revision is to provide flexibility to RWPGs and to clarify how wholesale water providers are designated.

Subchapter B. Guidance Principles and Notice Requirements.

Section 357.21. Notice and Public Participation.

Section 357.21 is revised to implement changes consistent with HB 3357, 84th Legislative Session. HB 3357 (relating to Permitted Methods for Certain Political Subdivisions to Post Notice of a Meeting) amended Texas Government Code, §551.053(a) and (c), allowing a political subdivision or district to post notice of its meetings on its website as an alternative to providing notice to the county clerk of the county in which its administrative offices are located, which was the previous statutory requirement. While an RWPG is not a political subdivision or district, the administrators for the planning groups are, and a number of them had asked for flexibility in notice requirements.

Section 357.21(b)(4) is revised to add the words "in writing" to clarify that notice to RWPG members, and to people and entities who have requested notice, must be made in writing, which includes by email notification. As a result of this change, the words "either in writing or email as requested by the person or entity" are removed from §357.21(b)(4)(B) because they are no longer necessary. Section 357.21(b)(4) is also amended to remove subparagraph (C), which requires the RWPG to provide notice to each county clerk in the regional water planning area (RWPA). The removal of subparagraph (C) is proposed to make the rule consistent with HB 3357, which gives a political subdivision or district the option to give notice to the county clerk in the county where its administrative offices are located, or post the notice on its website.

Section 357.21(b)(5)(A) is revised to add language allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to the county clerk of the county in which the administrative offices of the political subdivision are located and to remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own.

Section 357.21(c)(4) is revised to add the words "in writing" to clarify that notice to RWPG members, and to people and entities who have requested notice, must be made in writing. As a result of this change, the words "either in writing or email as requested by the person or entity" are removed from §357.21(c)(4)(B) because they are no longer necessary. Section 357.21(c)(4) is also amended to remove subparagraph (C), which requires the RWPG to provide notice to each county clerk in the RWPA. The removal of subparagraph (C) is proposed to make the rule consistent with HB 3357, which gives a political subdivision or district the option to give notice to the county clerk in the county where its administrative offices are located, or post the notice on its website.

Section 357.21(c)(5)(A) is revised to add language allowing an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to the county clerk of the county in which the administrative offices of the political subdivision are located and to remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own.

Section 357.21(d)(1) is revised to remove the words "requesting research and planning funds from the board" so the notice requirements in §357.21(d) would no longer apply to that action. Section 357.21(d)(2)(B) and (4) are also proposed to be removed for the same reason. The words "as follows:" are proposed to be removed and §357.21(d)(2)(A) is consolidated into §357.21(d)(2), since the proposed deletion of §357.21(d)(2)(B) would eliminate the need for a list. Section 357.21(d) is proposed to be renumbered to accommodate the deletions. Before rule amendments were made in August 2012, requesting research and planning funds did not require that notice be posted on the Secretary of State's website or in the *Texas Register.* The 2012 rule amendments inadvertently added those posting requirements, and this proposed amendment would remove them. To specify the notice requirements for requesting research and planning funds from the board, the board proposes to add new §357.21(e), which will be discussed below.

Section 357.21(d)(5) is revised by renumbering it to §357.21(d)(4) and by substituting the words "electronic media" for the words "an electronic disc, or drive" in the list of acceptable formats. The term electronic media is proposed to be inserted because it is a catch-all term for future formats that may be used by an RWPG to transmit copies of an initially prepared plan (IPP). Electronic media includes electronic discs or drives, so this proposed change does not limit the use of those formats, but instead, expands the present or future formats that may be used. The format used is still limited by the capability of the facility being provided the IPP. Section 357.21(d)(4) is also revised to add the words "through an electronic web link" to the list of acceptable formats that an RWPG may use to provide copies of its IPP. As with the other proposed revisions to the list of acceptable formats, the intent is to expand the present and future formats that may be used. Section 357.21(d)(4) is also revised to specify that the public inspection requirement only applies to IPPs. This change is proposed to clearly reflect the statutory requirement in TWC, §16.053(i).

Section 357.21(d)(7) is renumbered to §357.21(d)(6) and revised to add language to proposed §357.21(d)(6)(A) allowing

an RWPG to post its meeting notice and agenda on its website or the website of the host political subdivision - or to provide the notice and agenda in writing to the county clerk of the county in which the administrative offices of the political subdivision is located and remove the option for an RWPG to post its meeting notice and agenda on the board's website instead of its own.

Section 357.21 is revised to add new §357.21(e) designating notice requirements for RWPGs that are requesting research and planning funds from the board. Rule changes in August 2012 inadvertently required that notice of RWPG requests for research and planning funds from the board be posted on the Secretary of State's website and in the *Texas Register.* The intent of the proposed change is to restore the previous notice requirements.

Section 357.22. General Considerations for Development of Regional Water Plans.

Section 357.22(a) is revised to implement a change to TWC, §16.053(e)(5)(A), made by SB 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health of Certain Regional Water Plans). The SB 1101 change to §16.053(e)(5)(A) requires that each RWPG must submit an RWP that includes consideration of potential impacts on public health, safety, or welfare in the state. Section 357.22(a) is revised to reflect the change to §16.053(e)(5)(A) by inserting "potential impacts on public health, safety, or welfare" into the list of factors considered by the RWPG in developing its plan as §357.22(a)(13) and the list is renumbered to reflect the addition. Other proposed rule changes resulting from SB 1101 are discussed below in §357.32.

Subchapter C. Planning Activities for Needs Analysis and Strategy Recommendations.

Section 357.30. Description of the Regional Water Planning Area.

Section 357.30(4) is revised to change the requirement from identifying "wholesale water providers" to identifying "major water providers". The revision gives RWPGs more flexibility in deciding on which large water providers they want to report information in their regional water plans.

Section 357.31. Projected Population and Water Demands.

Section 357.31(b) is revised to require RWPGs to report projected water demands for MWPs instead of WWPs. The proposed rule would also remove the requirements that RWPGs report projected water demands of WWPs for each county or portion of a county in the RWPA and for each river basin within each county or portion of a county. This change is proposed to clarify and ensure consistency of reporting requirements in the RWPs and to remove nonessential reporting.

The revision would also change the RWPG's requirement from "report" to "evaluate" regarding contractual obligations of WUGs and WWPs beyond the projected demands for those entities. This change is proposed to retain required analysis during plan development yet remove nonessential reporting requirements associated with proposed changes to §357.31(b).

Section 357.31(d) is revised to change the requirement from "determine and report" to only "report" how changes in plumbing fixtures would affect municipal water demands. In practice, the effects of plumbing code savings are currently determined by the TWDB, and RWPGs only report them in the RWP. The proposed change is intended to more accurately reflect actual practice and expectations.

The proposed rule would also change §357.31(f) reporting requirements for projections to present data for MWPs rather than WWPs. This change is proposed to clarify and ensure consistency of reporting requirements in the RWPs and to remove nonessential reporting.

Section 357.32. Water Supply Analysis.

Section 357.32(c) is revised to reorganize, improve, and clarify the requirements and specify how evaluations of run of river surface water (water available for diversion when stream flow levels are sufficient) should be conducted in line with planning practice. Language regarding evaluation of existing stored surface water is moved from the beginning of §357.32(c) to new §357.32(c)(1) and the word "stored" is added to clarify that the requirement applies to stored water. Section 357.32(c)(2) is added to specify that evaluation of existing run of river surface water availability for municipal WUGs must be based on the minimum monthly diversion amounts that are available 100% of the time, if that run of river supply is the only supply for the municipal WUG. The revision is intended to clarify and improve the requirements for evaluation of existing surface water supplies by RWPGs by specifying more realistic and sensible modeling criteria that must be followed in evaluating water supply during drought of record conditions.

Section 357.32(c) is revised to clarify water availability evaluation requirements for existing surface water. In the first sentence of proposed amended §357.32(c), the plural "analyses" is inserted to replace the singular "analysis" because RWPGs perform multiple water supply analyses in the development of the RWP. In the second sentence of revised §357.32(c), the words "As the default approach for evaluating existing supplies" are added at the beginning of the sentence to clarify that the listed assumptions are to be used unless a variance is approved by the EA.

Section 357.32(c) is revised to include the words "use anticipated sedimentation" as the default assumption that RWPGs should use in the evaluation of existing water supplies. Sedimentation is not considered in the unmodified TCEQ WAM Run 3, because it is not considered in permitting of water rights; however, the physical effects of sedimentation on the firm yield of surface water reservoirs is relevant for planning purposes and is consistent with the proposed definition in §357.10(15).

Section 357.32(c) is revised to include the words "better, more representative" to replace the word "other". The intent of this proposed change is to emphasize to RWPGs that they should use the best available site-specific information and the most appropriate modeling assumptions for planning. The RWPGs are encouraged to consider using assumptions that are appropriate for evaluating existing supplies in their planning areas. The words "and approved in writing by the EA" are included at the end of the last sentence of §357.32(c) to clarify and reinforce that using information different than that available from TCEQ requires written approval from the EA.

The availability requirements for existing supplies of stored and run of river water are split out from §357.32(c) as §357.32(c)(1) and (2) respectively. Proposed §357.32(c)(2) clarifies that availability of existing run of river supplies for municipal WUGs with run of river supplies as their sole source of water will be based on minimum amounts available for diversion in 100% of months in the TCEQ Water Availability Model period of record.

Section 357.32(d) is revised to replace "Board" with "EA" in reference to issuance of modeled available groundwater volumes.

The existing rule incorrectly states that modeled available groundwater volumes are issued by the board; the proposed change is intended to correct the statement.

A new §357.32(d)(1) is added to implement SB 1101. The new language states that the RWPG shall determine groundwater availability for planning purposes where applicable; the board shall review and approve that the availability is physically compatible with desired future conditions in relevant aquifers; and the EA shall use the board's groundwater availability models to conduct the physical compatibility review. The intent of the proposed rule is to implement SB 1101.

SB 1101, 84th Legislative Session (relating to the Authority to Determine the Supply of Groundwater in and Potential Impacts on Public Health in Certain Regional Water Plans), amended TWC, §16.053(e)(2-a) to require an RWPG with no GCDs within its RWPA to determine the supply of groundwater for regional planning purposes. The bill stipulates that the board shall review and approve that the groundwater supply determined by the RWPG is physically compatible with desired future conditions for the relevant aquifers in the groundwater management area (GMA) that are regulated by GCDs. The bill requires that the review of physical compatibility be done using the board's groundwater availability models. At this time, the bill only applies to the North East Texas RWPG (Region D) because it is the only RWPG in the state with no GCDs in its RWPA as of the date of this proposed revision.

Section 357.32(d)(3) is added to allow RWPGs to request use of a MAG peak factor to accommodate temporary increases in annual availability. TWC, §36.1132 requires management of groundwater production on a long-term basis which, in practice, may include variations in availability from year to year in response to relative wet and dry periods. Additionally, most of the modeled available groundwater values were developed for long-term average, not drought of record, conditions.

The new §357.32(d)(3) would allow RWPGs to request the application of a MAG peak factor, in the form of a percentage of a modeled available groundwater value (e.g., greater than 100 percent) to better reflect, for regional water planning purposes, the quantified, temporary, projected groundwater pumping. The MAG peak factor may accommodate anticipated fluctuations in pumping between wet and dry periods or may account for other shifts in the timing of pumping while remaining consistent with desired future conditions. The purpose of proposed new §357.32(d)(3) is to provide relief from the stricter limit on groundwater availability in current §357.32(d). The intent is to allow regional water plans to reflect more realistic groundwater pumping, where appropriate and approved by relevant regulatory or permitting districts, while maintaining consistency with the desired future conditions and maintaining the integrity of the planning process.

A MAG peak factor, requested under proposed §357.32(d)(3), would be submitted to the board in the form of a percentage of a modeled available groundwater value (e.g., greater than 100 percent). If approved, the MAG peak factor would be applied to the associated modeled available groundwater volume in the state water planning database to calculate the modified availability volume that would be used by RWPGs for planning.

Section 357.32(d)(3) states that the EA shall consider a request from an RWPG to apply a MAG peak factor. The proposed rule explains that the MAG peak factor must be expressed as a percentage (e.g., greater than 100 percent) of the modeled groundwater availability value to accommodate temporary increases in availability.

The new §357.32(d)(3)(A) stipulates that the request must include written concurrence from the GCD, or representatives of the groundwater management area, if no GCD exists. The new §357.32(d)(3)(B) requires that the request must also provide its technical basis, and the new §357.32(d)(3)(C) requires that the request must document how the temporary increase would not prevent the GCD from managing groundwater resources to achieve desired future conditions.

Section 357.32(g) is amended to change the reporting requirement for evaluation results under §357.31(a) and (b) from reporting by WUG and WWP to reporting by WUG and MWP.

Section 357.33. Needs Analysis: Comparison of Water Supplies and Demands.

Section 357.33 is revised to clarify reporting requirements and ensure that RWPGs report and present surpluses, needs, and secondary needs for the most significant water suppliers as identified by the RWPGs.

Section 357.33(b) is revised to replace the requirement to report surpluses or needs for WWPs with MWPs. The requirement to report surpluses and needs for WUGs would remain unchanged.

Section 357.33(d) is revised to change reporting of results for WUGs and WWPs to reporting for WUGs and MWPs.

Section 357.33(e) is revised to change the requirement to present secondary water needs volumes from presenting for WUGs and WWPs to presenting for WUGs and MWPs.

Section 357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

Consistent with the proposed definition of "water management strategy project", §357.34 is revised to add "and Water Management Strategy Projects" to its title and add the words "and the WMSPs required to implement those strategies" to §357.34(a) to specifically require RWPGs to identify and evaluate WMSPs in RWPs. Similarly, the revision inserts the words "and associated WMSPs" in renumbered §357.34(e) and inserts the words "and WMSPs" in renumbered §357.34(f).

Section 357.34(c)(2) is revised to specify seawater and brackish groundwater as desalination WMSs that RWPGs must consider when identifying potentially feasible strategies during the development of RWPs. The proposed revision is to implement changes consistent with House Bill (HB) 30, 84th Legislative Session. HB 30 (relating to the Development of Seawater and Brackish Groundwater) which specifically requires that seawater desalination and brackish groundwater desalination be considered by RWPGs.

Section 357.34(d) is added to clarify that all recommended WMSs and WMSPs that are entered into the state water planning database and prioritized by RWPGs must reduce water consumption, reduce water loss or waste; improve water use efficiency; or develop, deliver, or treat additional water supply volumes to WUGs or WWPs in at least one planning decade such that during drought of record conditions water is available. The language also stipulates that WMSs that do not meet those requirements must be identified and presented separately in the RWP and are not eligible for SWIFT funding. Examples of WMSs and WMSPs that do not meet the requirements of §357.34(d) could include, but are not limited to, new retail dis-

tribution facilities that do not convey additional water supplies; new wells required to replace aging wells; and maintenance of, or upgrades to, existing equipment or facilities that do not increase volumetric water supply.

The intent of proposed §357.34(d) is to clarify a SWIFT eligibility requirement for WMSs and WMSPs and to accommodate the inclusion of WMSs or WMSPs to facilitate permitting or other activities associated with other agencies that may not conserve or develop supplies under drought of record conditions.

Section 357.34 is renumbered to accommodate the addition of §357.34(d).

Section 357.35. Recommended and Alternative Water Management Strategies and Water Management Strategy Projects.

Section 357.35 is revised to add the words "and Water Management Strategy Projects" to the end of the title. The purpose of the proposed amendment is to require RWPGs to recommend WMSPs separately from WMSs.

Section 357.35 was also revised to add the text "and water management strategy projects required to implement them" and "and Water Management Strategy Projects" to §357.35(a).

Section 357.35(g)(1) is revised to remove the requirement to report WWP data split by river basins, counties, or RWPAs. This change is proposed to remove unessential reporting requirements in the RWPs.

Section 357.35(g)(2) is revised to change the term "safety factor" to "management supply factor" and clarify that the board calculates these values and provides them to the RWPGs to include in their RWPs for reporting purposes only.

Subchapter D. Impacts, Drought Response, Policy Recommendations, and Implementation.

Section 357.40. Impacts of Regional Water Plan.

Section 357.40(b) is revised to renumber references to correctly reflect revisions from §357.34.

Section 357.44. Infrastructure Financing Analysis.

Section 357.44 is revised to add the words "and associated WMSPs" to specify that reporting of infrastructure financing must also include WMSPs.

Section 357.46. Prioritization of Projects by Regional Water Planning Groups.

New §357.46 is added to require each RWPG to prioritize the recommended WMSPs in its RWP and submit the prioritization separately with its adopted RWP. The proposed new section specifies that the prioritization of projects must be performed in accordance with the uniform standards developed by the stakeholder committee established under TWC, §15.436(c), in place at the time it adopts its RWP. Prioritization of WMSPs is necessary to implement HB 4, 83rd Legislative Session, which requires prioritization of recommended projects for SWIFT.

Subchapter E. Adoption, Submittal, and Amendments to Regional Water Plans.

Section 357.50. Adoption, Submittal, and Approval of Regional Water Plans.

Section 357.50(a) is revised to correctly reference the appropriate subsection of the rule.

Section 357.50(g)(2)(B) is revised to include the words "state water" in front of "planning" in the first sentence and insert "state water planning" in front of "database" in the second sentence. These changes are intended to specify that the rule refers to the state water planning database, as that term is defined in §357.10 of this rule revision.

A new §357.50(j) is added to address the inclusion of unmet municipal water needs in RWPs. The intent of the proposed new subsection is to explain the basic elements that must be included in an RWP to justify including unmet municipal water needs. The rule requires that, in order for the board to consider approval of an RWP with unmet municipal water needs, the RWP must provide adequate justification including: document that the RWPG considered all potentially feasible WMSs and explain why additional conservation and/or drought management were not recommended to address the need; describe how municipal WUGs will protect public health, safety, and welfare in a repeat of the drought of record; and explain whether the unmet municipal needs could be addressed with an amendment before the next IPP. The new subsection is inserted after §357.50(i), as §357.50(j), and the rest of the section renumbered.

Section 357.51. Amendments to Regional Water Plans.

Section 357.51(a)(2) is revised to include language to more explicitly describe how the board considers and acts upon a petition to amend an RWP, if the RWPG does not act upon the petition. The proposed amendment inserts language specifying that within 90 days after a request by a political subdivision, the RWPG is required to provide a written explanation to the EA if it does not amend its plan. The proposed amendment also inserts language specifying that at the public meeting, which is required by existing rule, the board may direct the RWPG to amend its RWP based on the local political subdivision's request.

Section 357.51(b) is revised by removing §357.51(b)(3)(B), which currently requires that a proposed major amendment shall not produce unmet needs to the adopted RWP. This proposed change is intended to make requirements for major amendments consistent with, and no more restrictive than, the requirements for adoption of the RWP, which may contain unmet needs. As a result of the deletion of §357.51(b)(3)(B), the rest of §357.51(b)(3) is renumbered.

Section 357.51(c)(1) is revised to remove the words "Minor Amendment to RWP" because they are unnecessary and redundant in the context of the rule language.

Section 357.51(c)(2) is revised to add a requirement specifying that a minor amendment "does not increase unmet needs or produce new unmet needs in the adopted RWP". The intent of this proposed new requirement is to distinguish minor amendments from major amendments and RWP adoption, both of which may include unmet needs. The new requirement is in §357.51(c)(2)(C), and the rest of the subsection is renumbered.

Section 357.51(e) is revised to specify how RWPGs may substitute alternative WMSs for recommended WMSs. The board proposes to amend §357.51(e) to insert the words "without over-allocating any source". The proposed change is intended to specify that when substituting an alternative WMS for a recommended WMS, the substitution cannot result in an over-allocation of a source in the same manner that sources may not be over-allocated in adopted plans.

Subchapter F. Consistency and Conflicts in Regional Water Plans.

Section 357.60. Consistency of Regional Water Plans.

Section 357.60(b)(1) is revised to replace the words "a current" with the words "an existing" because "an existing" is more accurately descriptive in the context of the rules and add the words "or water source" after the words "water supply" to clarify that a project can be an enhancement to an existing water source to meet the parameters for consistency with an RWP.

Section 357.60(b)(2) is revised to replace the word "and" with "or" because in practice a project only needs to meet one of the requirements to be considered consistent with an RWP. These amendments to §357.60(b) are intended to clarify the parameters for determining consistency of a project with an RWP.

Non-substantive changes are made to the following sections: §§357.11, 357.12, 357.20, 357.40, 357.42, 357.43, 357.45, 357.62, and 357.64, relating to the regional water planning process.

FISCAL NOTE: COSTS TO STATE AND LOCAL GOVERNMENTS

Ms. Cindy Demers, Chief Financial Officer, has determined that there will be no significant fiscal implications for state or local governments as a result of the proposed rulemaking. For the first five years these rules are in effect, there are not expected to be additional costs to state or local governments resulting from their administration.

These rules are expected to result in a minor reduction in costs to local governments. The reduction in costs is due to changes to notice requirements for RWPGs. The cost savings would be incurred by the RWPG-designated political subdivisions that hold regional water planning contracts. The savings would be allocated elsewhere in RWPG contracts. These rules are not expected to result in reductions in costs to state government.

These rules are not expected to have any impact on state or local revenues. The rules do not require any increase in expenditures for state or local governments as a result of administering these rules.

PUBLIC BENEFITS AND COSTS

Ms. Cindy Demers also has determined that for each year of the first five years the proposed rulemaking is in effect, there will be no impact to the public.

LOCAL EMPLOYMENT IMPACT STATEMENT

The board has determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect because they will impose no new requirements on local economies. The board also has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this rulemaking. The board also has determined that there is no anticipated economic cost to persons who are required to comply with the rulemaking as proposed. Therefore, no regulatory flexibility analysis is necessary. These rules are designed to implement legislative changes, improve the planning process and increase flexibility in planning, reduce certain unessential reporting requirements, and standardize and clarify language.

DRAFT REGULATORY IMPACT ANALYSIS DETERMINATION

The board reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in the Administrative Procedure Act. A "major environmental rule" is defined as a rule with the specific intent to protect the environment or reduce risks to human health from environmental exposure, a rule that may adversely affect in a material way the economy or a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the rulemaking is to implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning.

Even if the proposed rules were major environmental rules, Texas Government Code, §2001.0225 still would not apply to this rulemaking because Texas Government Code, §2001.0225 only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability criteria because it: 1) does not exceed federal law; 2) does not exceed an express requirement of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather Texas Water Code §16.053. Therefore, these proposed rules do not fall under any of the applicability criteria in Texas Government Code, §2001.0225.

The board invites public comment regarding this draft regulatory impact analysis determination. Written comments on the draft regulatory impact analysis determination may be submitted to the contact person at the address listed under the Submission of Comments section of this preamble.

TAKINGS IMPACT ASSESSMENT

The board evaluated this proposed rulemaking and performed an analysis of whether it constitutes a taking under Texas Government Code, Chapter 2007. The specific purpose of this rulemaking is to implement legislative changes, improve processes, increase flexibility, and provide greater clarity regarding the TWDB's rules related to regional water planning. The proposed rulemaking would substantially advance this stated purpose by adding language related to legislative changes, clarifying definitions, and incorporating agency and stakeholder input into the TWDB rules related to regional water planning.

The board's analysis indicates that Texas Government Code, Chapter 2007 does not apply to this proposed rulemaking because this is an action that is reasonably taken to fulfill an obligation mandated by state law, which is exempt under Texas Government Code, §2007.003(b)(4). The board is the agency that administers the regional water planning process in order to develop a state water plan.

Nevertheless, the board further evaluated this proposed rules and performed an assessment of whether they constitute a taking under Texas Government Code, Chapter 2007. Promulgation and enforcement of these proposed rules would be neither

a statutory nor a constitutional taking of private real property. Specifically, the subject proposed regulation does not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulation. In other words, these rules require compliance with state law regarding the regional water planning process. Therefore, the proposed rules do not constitute a taking under Texas Government Code, Chapter 2007.

ANNOUNCEMENT OF HEARING

The board will hold a public hearing on this proposal on August 24, 2016, in Room 170, Stephen F. Austin Building, 1700 North Congress Avenue, Austin, Texas 78701 at 1:00 p.m. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon. Open discussion and questions to the board will not be permitted during the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Merry Klonower at (512) 463-8165 as far in advance as possible, and no later than five (5) work days prior to the hearing so that appropriate arrangements can be made.

SUBMISSION OF COMMENTS

Written comments on the proposed rulemaking may be submitted by mail to Mr. Les Trobman, Office of General Counsel, Texas Water Development Board, P.O. Box 13231, Austin, Texas 78711-3231, by email to rulescomments@twdb.texas.gov, or by fax to (512) 475-2053. Comments will be accepted until the 5:00 p.m. of the 31st day following publication the *Texas Register.*

SUBCHAPTER A. GENERAL INFORMATION

31 TAC §§357.10 - 357.12

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.10. Definitions and Acronyms.

The following words, used in this chapter, have the following meanings.

(1) Agricultural Water Conservation--Defined in §363.1302 of this title (relating to Definition of Terms).

(2) [~~(1)~~] Alternative Water Management Strategy [~~water management strategy~~]--A fully evaluated Water Management Strategy [~~water management strategy~~] that may be substituted into a Regional Water Plan [~~regional water plan~~] in the event that a recommended Water Management Strategy [~~water management strategy~~] is no longer recommended.

(3) [~~(2)~~] Availability--Maximum amount of raw water that could be produced by [~~available from~~] a source during a repeat of the Drought of Record [~~drought of record~~], regardless of whether the supply is physically connected to or legally accessible by Water User Groups [~~or legally available to water user groups~~].

(4) [~~(3)~~] Board--The Texas Water Development Board.

(5) [~~(4)~~] Collective Reporting Unit--A grouping of utilities located in the Regional Water Planning Area. Utilities within a Collective Reporting Unit must have a logical relationship, such as being served by common Wholesale Water Providers [~~wholesale water providers~~], having common sources, or other appropriate associations.

(6) [~~(5)~~] Commission--The Texas Commission on Environmental Quality.

[~~(6) Consistency between a regional water plan and a desired future condition--A regional water plan is consistent with a desired future condition if the groundwater availability amount in the regional water plan and on which an existing water supply or recommended water management strategy relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a state water plan or, at the option of the regional water planning group, a desired future condition adopted on a subsequent date.~~]

(7) County-Other [~~other~~]--An aggregation of [~~residential, commercial, and institutional water users in cities with less than 500 people or~~] utilities that provide less than an average of 100 acre-feet per year [~~250,000 gallons per day~~], as well as [~~unincorporated~~] rural areas not served by a water utility in a given county.

(8) Drought Contingency Plan [~~contingency plan~~]--A plan required from wholesale and retail public water suppliers and irrigation districts pursuant to Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders). The plan may consist of one or more strategies for temporary supply and demand management and demand management responses to temporary and potentially recurring water supply shortages and other water supply emergencies as required by the Commission.

(9) Drought Management Measures [~~management measures~~]--Demand management activities to be implemented during drought that may be evaluated and included as Water Management Strategies [~~water management strategies~~].

(10) Drought Management Water Management Strategy--A drought management measure or measures evaluated and/or recommended in a State or Regional Water Plan that quantifies temporary reductions in demand during drought conditions.

(11) [~~(10)~~] Drought of Record [~~record~~]--The period of time when historical records indicate that natural hydrological conditions would have provided the least amount of water supply.

(12) [~~(11)~~] Executive Administrator [~~administrator~~] (EA)--The Executive Administrator [~~executive administrator~~] of the Board or a designated representative.

(13) [~~(12)~~] Existing Water Supply--Maximum amount of water [~~available from existing sources for use during drought of record conditions~~] that is physically and legally accessible from existing sources [~~available~~] for immediate use by a Water User Group under a repeat of Drought of Record conditions [~~water user group~~].

(14) [~~(13)~~] Firm Yield--Maximum water volume a reservoir can provide each year under a repeat of the Drought of Record [~~drought of record~~] using anticipated [~~reasonable~~] sedimentation rates and assuming that all senior water rights will be totally utilized and all applicable permit conditions met.

(15) [~~(14)~~] Interbasin Transfer of Surface Water [~~transfer of surface water~~]--Defined and governed in Texas Water Code §11.085 (relating to Interbasin Transfers) as the diverting of any state water from a river basin and transfer of that water to any other river basin.

(16) [~~(15)~~] Interregional Conflict [~~conflict~~]--An interregional conflict exists when:

(A) more than one Regional Water Plan [~~regional water plan~~] includes the same source of water supply for identified and quantified recommended Water Management Strategies [~~water management strategies~~] and there is insufficient water available to implement such Water Management Strategies [~~water management strategies~~]; or

(B) in the instance of a recommended Water Management Strategy [~~water management strategy~~] proposed to be supplied from a different Regional Water Planning Area [~~regional water planning area~~], the Regional Water Planning Group [~~RWPG~~] with the location of the strategy has studied the impacts of the recommended Water Management Strategy [~~water management strategy~~] on its economic, agricultural, and natural resources, and demonstrates to the Board that there is a potential for a substantial adverse effect on the region as a result of those impacts.

(17) [~~(16)~~] Intraregional Conflict [~~conflict~~]--A conflict between two or more identified, quantified, and recommended Water Management Strategies [~~water management strategies~~] in the same Initially Prepared Plan [~~initially prepared plan~~] that rely upon the same water source, so that there is not sufficient water available to fully implement all Water Management Strategies [~~water management strategies~~] and thereby creating an over-allocation of that source.

(18) [~~(17)~~] Initially Prepared Plan (IPP)--Draft Regional Water Plan [~~regional water plans~~] that is [~~are~~] presented at a public hearing in accordance with §357.21(d) of this title (relating to Notice and Public Participation) and submitted for Board review and comment.

(19) Major Water Provider (MWP)--A Water User Group or a Wholesale Water Provider of particular significance to the region's water supply as determined by the Regional Water Planning Group. This may include public or private entities that provide water for any water use category.

(20) Modeled Available Groundwater (MAG) Peak Factor--A percentage (e.g., greater than 100 percent) that is applied to a modeled available groundwater value reflecting the annual groundwater availability that, for planning purposes, shall be considered temporarily available for pumping consistent with desired future conditions.

(21) Planning Decades--Temporal snapshots of conditions anticipated to occur and presented at even intervals over the planning horizon used to present simultaneous demands, supplies, needs, and strategy volume data. A Water Management Strategy that is shown as providing a supply in the 2040 decade, for example, is assumed to come online in or prior to the year 2040.

(22) [~~(18)~~] Political Subdivision [~~subdivision~~]--City, county, district, or authority created under the Texas Constitution, Article III, §52, or Article XVI, §59, any other Political Subdivision [~~political subdivision~~] of the state, any interstate compact commission to which the state is a party, and any nonprofit water supply corporation created and operating under Texas Water Code Chapter 67 (relating to Nonprofit Water Supply or Sewer Service Corporations).

(23) [~~(19)~~] Regional Water Plan [~~water plan~~] (RWP)--The plan adopted or amended by a Regional Water Planning Group [~~regional water planning group~~] pursuant to Texas Water Code §16.053 (relating to Regional Water Plans) and this chapter.

(24) [~~(20)~~] Regional Water Planning Area [~~water planning area~~] (RWPA)--Area designated pursuant to Texas Water Code §16.053.

(25) [~~(21)~~] Regional Water Planning Group [~~water planning group~~] (RWPG)--Group designated pursuant to Texas Water Code §16.053.

(26) RWPG-Estimated Groundwater Availability--The groundwater Availability used for planning purposes as determined by RWPGs to which §357.32(d)(2) of this title (relating to Water Supply Analysis) is applicable or where no desired future condition has been adopted.

(27) [~~(22)~~] Retail Public Utility [~~public utility~~]--Defined in Texas Water Code §13.002 (relating to Water Rates and Services) as "any person, corporation, public utility, water supply or sewer service corporation, municipality, Political Subdivision [~~political subdivision~~] or agency operating, maintaining, or controlling in this state facilities for providing potable water service or sewer service, or both, for compensation."

(28) Reuse--Defined in §363.1302 of this title (relating to Definition of Terms).

(29) [~~(23)~~] State Drought Preparedness Plan--A plan, separate from the State Water Plan [~~state water plan~~], that is developed by the Drought Preparedness Council for the purpose of mitigating the effects of drought pursuant to Texas Water Code §16.0551 (relating to State Drought Preparedness Plan).

(30) [~~(24)~~] State Drought Response Plan--A plan prepared and directed by the chief of the Texas Division of Emergency Management for the purpose of managing and coordinating the drought response component of the State Water Plan and the State Drought Preparedness Plan pursuant to Texas Water Code §16.055 (relating to Drought Response Plan).

(31) [~~(25)~~] State Water Plan--The most recent state water plan adopted by the Board under the Texas Water Code §16.051 (relating to State Water Plan).

(32) State Water Planning Database--Database maintained by TWDB that stores data related to population and Water Demand projections, water Availability, Existing Water Supplies, Water Management Strategy supplies, and Water Management Strategy Projects. It is used to collect, analyze, and disseminate regional and statewide water planning data.

(33) Unmet Water Need--The portion of an identified Water Need that is not met by recommended Water Management Strategies.

(34) [~~(26)~~] Water Conservation Measures [~~conservation measures~~]--Practices, techniques, programs, and technologies that will protect water resources, reduce the consumption of water, reduce the loss or [~~of~~] waste of [~~or~~] water, or improve the efficiency in the use of water that may be presented as Water Management Strategies, so that a water supply is made available for future or alternative uses. For planning purposes, Water Conservation Measures do not include reservoirs, aquifer storage and recovery, or other types of projects that develop new water supplies. [~~water management strategies.~~]

(35) Water Conservation Strategy--A Water Management Strategy with quantified volumes of water associated with Water Conservation Measures.

(36) [~~(27)~~] Water Conservation Plan--The most current plan required by Texas Water Code §11.1271 (relating to Water Conservation Plans) from an applicant for a new or amended water rights permit and from any holder of a permit, certificate, etc. who is authorized to appropriate [~~more than~~] 1,000 acre-feet per year or more for municipal, industrial, and other non-irrigation uses and for those who are authorized to appropriate 10,000 acre-feet per year or

more for irrigation, and the most current plan required by Texas Water Code §13.146 from a Retail Public Utility [~~retail public utility~~] that provides potable water service to 3,300 or more connections. These plans must include specific, quantified 5-year and 10-year targets for water savings.

(37) Water Demand--Volume of water required to carry out the anticipated domestic, public, and/or economic activities of a Water User Group during drought conditions.

(38) [~~(28)~~] Water Management Strategy (WMS)--A plan [~~or specific project~~] to meet a need for additional water by a discrete Water User Group [~~user group~~], which can mean increasing the total water supply or maximizing an existing supply, including through reducing demands. A Water Management Strategy may or may not require associated Water Management Strategy Projects to be implemented.

(39) Water Management Strategy Project (WMSP)--Water project that has a non-zero capital costs and that when implemented, would develop, deliver, or treat additional water supply volumes, or conserve water for Water User Groups or Wholesale Water Providers. One WMSP may be associated with multiple WMSs.

(40) Water Need--A potential water supply shortage based on the difference between projected Water Demands and Existing Water Supplies.

(41) [~~(29)~~] Water User Group (WUG)--Identified user or group of users for which Water Demands [~~water demands~~] and Existing Water Supplies [~~water supplies~~] have been identified and analyzed and plans developed to meet Water Needs [~~water needs~~]. These include:

[~~(A) Incorporated Census places of a population greater than 500, including select Census Designated Places, such as significant military bases or cases in which the Census Designated Place is the only Census place in the county;~~]

(A) [~~(B)~~] Retail Public Utilities owned by a Political Subdivision [~~public utilities~~] providing more than 100 [~~280~~] acre-feet per year for municipal use;

(B) Privately-owned utilities that request inclusion as an individual Water User Group, provide more than 100 acre-feet per year for municipal use for each owned water system, and are approved for inclusion as an individual Water User Group by the RWPG;

(C) Water systems serving institutions or facilities owned by the state or federal government that request inclusion as an individual Water User Group, provide more than 100 acre-feet per year for municipal use, and are approved for inclusion as an individual Water User Group by the RWPG;

(D) [~~(C)~~] Collective Reporting Units, or groups of retail public utilities that have a common association and are requested for inclusion by the RWPG;

(E) [~~(D)~~] Municipal and domestic water use, referred to as County-Other [~~county-other~~], not included in subparagraphs (A) - (D) [~~(C)~~] of this paragraph; and

(F) [~~(E)~~] Non-municipal water use including manufacturing, irrigation, steam electric power generation, mining, and livestock watering for each county or portion of a county in an [~~a~~] RWPA.

(42) [~~(30)~~] Wholesale Water Provider (WWP)--Any person or entity, including river authorities and irrigation districts, that delivers or sells water wholesale (treated or raw) to WUGs or other WWPs [~~has contracts to sell more than 1,000 acre-feet of water wholesale in any one year during the five years immediately preceding the adoption of the last regional water plan~~]. The RWPGs [~~regional water planning groups~~] shall determine the Wholesale Water Providers within each region [~~include as wholesale water providers other persons and entities that enter or that the regional water planning group expects or recommends to enter contracts to sell more than 1,000 acre-feet of water wholesale during the period covered by the plan~~].

§357.11. Designations.

(a) The Board shall review and update the designations of RWPAs as necessary but at least every five years, on its own initiative or upon recommendation of the EA [~~executive administrator~~]. The Board shall provide 30 days notice of its intent to amend the designations of RWPAs by publication of the proposed change in the *Texas Register* and by mailing the notice to each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPAs proposed to be impacted, to each water district or river authority located in whole or in part in the RWPA based upon lists of such water districts and river authorities obtained from the Commission, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted. After the 30 day notice period, the Board shall hold a public hearing at a location to be determined by the Board before making any changes to the designation of an [~~a~~] RWPA.

(b) If upon boundary review the Board determines that revisions to the boundaries are necessary, the Board shall designate areas for which RWPs [~~regional water plans~~] shall be developed, taking into consideration factors such as:

(1) River basin and aquifer delineations;

(2) Water utility development patterns;

(3) Socioeconomic characteristics;

(4) Existing RWPAs [~~regional water planning areas~~];

(5) Political Subdivision [~~subdivision~~] boundaries;

(6) Public comment; and

(7) Other factors the Board deems relevant.

(c) After an initial coordinating body for a RWPG [~~regional water planning group~~] is named by the Board, the RWPGs shall adopt, by two-thirds vote, bylaws that are consistent with provisions of this chapter. Within 30 days after the Board names members of the initial coordinating body, the EA [~~executive administrator~~] shall provide to each member of the initial coordinating body a set of model bylaws which the RWPG shall consider. The RWPG shall provide copies of its bylaws and any revisions thereto to the EA [~~executive administrator~~]. The bylaws adopted by the RWPG shall at a minimum address the following elements:

(1) definition of a quorum necessary to conduct business;

(2) method to be used to approve items of business including adoption of RWPs [~~regional water plans~~] or amendments thereto;

(3) methods to be used to name additional members;

(4) terms and conditions of membership;

(5) methods to record minutes and where minutes will be archived as part of the public record; and

(6) methods to resolve disputes between RWPG members on matters coming before the RWPG.

(d) RWPGs shall maintain at least one representative of each of the following interest categories as voting members of the RWPG. However, if an [~~a~~] RWPA does not have an interest category below, then the RWPG shall so advise the EA and no membership designation is required.

(1) Public, defined as those persons or entities having no economic interest in the interests represented by paragraphs (2) - (12) of this subsection other than as a normal consumer;

(2) Counties, defined as the county governments for the 254 counties in Texas;

(3) Municipalities, defined as governments of cities created or organized under the general, home-rule, or special laws of the state;

(4) Industries, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit and which produce or manufacture goods or services and which are not small businesses;

(5) Agricultural interests, defined as those persons or entities associated with production or processing of plant or animal products;

(6) Environmental interests, defined as those persons or groups advocating the conservation of the state's natural resources, including but not limited to soil, water, air, and living resources;

(7) Small businesses, defined as corporations, partnerships, sole proprietorships, or other legal entities that are formed for the purpose of making a profit, are independently owned and operated, and have fewer than 100 employees or less than $1 million in gross annual receipts;

(8) Electric generating utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof, meeting each of the following three criteria: own or operate for compensation equipment or facilities which produce or generate electricity; produce or generate electricity for either wholesale or retail sale to others; and are neither a municipal corporation nor a river authority;

(9) River authorities, defined as any districts or authorities created by the legislature which contain areas within their boundaries of one or more counties and which are governed by boards of directors appointed or designated in whole or part by the governor or board, including, without limitation, San Antonio River Authority and Palo Duro River Authority;

(10) Water districts, defined as any districts or authorities, created under authority of either Texas Constitution, Article III, §52(b)(1) and (2), or Article XVI, §59 including districts having the authority to regulate the spacing of or production from water wells, but not including river authorities;

(11) Water utilities, defined as any persons, corporations, cooperative corporations, or any combination thereof that provide water supplies for compensation except for municipalities, river authorities, or water districts; and

(12) Groundwater management areas, defined as a single representative for each groundwater management area that is at least partially located within an [~~a~~] RWPA. Defined as a representative from a groundwater conservation district that is appointed by the groundwater conservation districts within the associated groundwater management area.

(e) The RWPGs shall add the following non-voting members, who shall receive meeting notifications and information in the same manner as voting members:

(1) Staff member of the Board to be designated by the EA;

(2) Staff member of the Texas Parks and Wildlife Department designated by its executive director;

(3) Member designated by each adjacent RWPG to serve as a liaison;

(4) One or more persons to represent those entities with headquarters located in another RWPA and which holds surface water rights authorizing a diversion of 1,000 acre-feet a year or more in the RWPA, which supplies water under contract in the amount of 1,000 acre-feet a year or more to entities in the RWPA, or which receives water under contract in the amount of 1,000 acre-feet a year or more from the RWPA; and

(5) Staff member of the Texas Department of Agriculture designated by its commissioner.

(f) Each RWPG shall provide a current list of its members to the EA; the list shall identify the interest represented by each member including interests required in subsection (d) of this section.

(g) Each RWPG, at its discretion, may at any time add additional voting and non-voting representatives to serve on the RWPG for any new interest category, including additional representatives of those interests already listed in subsection (d) of this section that the RWPG considers appropriate for water planning.

(h) Each RWPG, at its discretion, may remove individual voting or non-voting members or eliminate RWPG representative positions in accordance with the RWPG bylaws as long as minimum requirements of RWPG membership are maintained in accordance with subsection (d) of this section.

(i) RWPGs may enter into formal and informal agreements to coordinate, avoid conflicts, and share information with other RWPGs or any other interests within any RWPA for any purpose the RWPGs consider appropriate including expediting or making more efficient water planning efforts. These efforts may involve any portion of the RWPG membership. Any plans or information developed through these efforts by RWPGs or by committees may be included in an [~~a~~] RWP only upon approval of the RWPG.

(j) Upon request, the EA will provide technical assistance to RWPGs, including on water supply and demand analysis, methods to evaluate the social and economic impacts of not meeting needs, and regarding Drought Management Measures [~~drought management measures~~] and water conservation practices.

§357.12. General Regional Water Planning Group Responsibilities and Procedures.

(a) Prior to the preparation for the RWPs, in accordance with the public participation requirements in §357.21 of this title (relating to Notice and Public Participation), the RWPGs shall:

(1) hold at least one public meeting to gather suggestions and recommendations from the public as to issues that should be addressed or provisions that should be included in the next regional or state water plan;

(2) prepare a scope of work that includes a detailed description of tasks to be performed, identifies responsible parties for task execution, a task schedule, task and expense budgets, and describes interim products, draft reports, and final reports for the planning process;

(3) approve any amendments to the scope of work only in an open meeting of the RWPG where notice of the proposed action was provided in accordance with §357.21 of this title; and

(4) designate a Political Subdivision [~~political subdivision~~] as a representative of the RWPG eligible to apply for financial assistance for scope of work and RWP development pursuant to Chapter 355, Subchapter C of this title (relating to Regional Water Planning Grants).

(b) An [~~A~~] RWPG shall hold a public meeting to determine the process for identifying potentially feasible WMSs [~~water management strategies~~]; the process shall be documented and shall include input received at the public meeting; after reviewing the potentially feasible strategies using the documented process, then the RWPG shall list all possible WMSs [~~water management strategies~~] that are potentially feasible for meeting a Water Need [~~need~~] in the region. The public meeting under this subsection shall be in accordance with the requirements of §357.21(b) of this title.

(c) If applicable, and approved by the EA, implement simplified planning in accordance with guidance to be provided by the EA. If an [~~a~~] RWPG determines in its analysis of Water Needs [~~water needs~~] that it has sufficient Existing Water Supplies [~~supplies~~] in the RWPA to meet Water Needs [~~water needs~~] for the 50-year planning period, RWPGs may conduct simplified regional water planning as follows:

(1) identify Existing Water Supplies [~~water supplies~~] that are available for voluntary redistribution in an [~~a~~] RWPA or to other RWPAs;

(2) where appropriate, adopt previous RWP or State Water Plan [~~state water plan~~] information, updated as necessary, as the RWP; and

(3) other activities upon approval of the EA necessary to complete an [~~a~~] RWP that meets rule and statute requirements.

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

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

TRD-201603637
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER B. GUIDANCE PRINCIPLES AND NOTICE REQUIREMENTS

31 TAC §§357.20 - 357.22

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.20. Guidance Principles for State and Regional Water Planning.

Development of the State Water Plan [~~state water plan~~] and of RWPs shall be guided by the principles stated in §358.3 of this title (relating to Guidance Principles).

§357.21. Notice and Public Participation.

(a) RWPGs shall conduct all business in meetings posted and held in accordance with the Texas Open Meetings Act, Texas Government Code Chapter 551, with a copy of all materials presented or discussed available for public inspection prior to and following the meetings and shall meet the additional notice requirements when specifically referenced as required under other subsections.

(b) All public notices required by this subsection shall comply with this section and shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: regular RWPG meetings; amendments to the regional water planning scope of work or budget; process of identifying potentially feasible WMSs [~~water management strategies~~]; meetings to replace RWPG members or addition of new RWPG members; and adoption of RWPs [~~regional water plans~~].

(2) Published 72 hours prior to the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken; and

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members; and

(B) any person or entity who has requested notice of [~~or~~] RWPG activities. [~~either in writing or email, as requested by the person or entity; and~~]

[~~(C) each County Clerk, in writing, within the RWPA.~~]

(5) Notice and agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located [~~political subdivision or on the Board website if requested by the RWPG~~]; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials presented or discussed at the meeting.

(c) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: population projection and Water Demand [~~water demand~~] projection revision requests to officially adopted Board projections; substitution of Alternative WMSs [~~alternative water management strategies~~]; and minor amendments to RWPs.

(2) Notice of meetings under this subsection shall be published/postmarked on the internet, emailed, and mailed to the public before the 14th day preceding the date of the meeting.

(3) Notice shall include:

(A) a date, time, and location of the meeting;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the meetings and information on how the public may submit written comments separate from such meetings. The RWPG shall specify a deadline for submission of public written comments of not earlier than 14 days after the meeting.

(4) Entities to be notified in writing include:

(A) all voting and non-voting RWPG members;

(B) any person or entity who has requested notice of RWPG activities [~~either in writing or email, as requested by the person or entity~~]; and

[~~(C) each County Clerk, in writing, within the RWPA; and~~]

(C) [~~(D)~~] each RWPG County Clerk in counties outside the RWPA where a recommended or Alternative WMS [~~alternative water management strategy~~] being considered would be located.

(5) Notice and associated meeting agenda to be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located [~~political subdivision or on the Board website if requested by the RWPG~~]; and

(B) Texas Secretary of State website.

(6) Documents to be made available on the internet or in hard copy for public inspection prior to and following meeting include:

(A) Agenda of meeting; and

(B) Copies of all materials, reports, plans presented or discussed at the meeting.

(7) Public comments to be accepted as follows:

(A) Written comments for 14 days prior to meeting with comments considered by RWPG members prior to action;

(B) Oral and written public comment during meeting; and

(C) Written comments must also be accepted for 14 days following the meeting and all comments received during the comment period must be submitted to the Board by the RWPG.

(d) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply to the following RWPG actions: holding a preplanning public meeting to obtain public input on development of the next RWP; major amendments to RWPs; and holding hearings for IPPs[~~; and requesting research and planning funds from the Board~~].

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA [~~as follows:~~]

[~~(A)~~] before the 30th day preceding the date of the public meeting or hearing.[~~; and~~]

[~~(B) when applying for Board funding, at least 30 days prior to Board consideration of funding applications.~~]

(3) Notice of the public meetings and public hearings shall include:

(A) a date, time, and location of the public meeting or hearing;

(B) a summary of the proposed action to be taken;

(C) the name, telephone number, and address of the person to whom questions or requests for additional information may be submitted; and

(D) information that the RWPG will accept written and oral comments at the hearings and information on how the public may submit written comments separate from such hearings. The RWPG shall specify a deadline for submission of public written comments as specified in paragraph (7)(A) [~~(8)(A)~~] of this subsection.

[~~(4) If applying for Board funding, the notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the regional water planning area; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.~~]

(4) [~~(5)~~] RWPGs shall make copies of the IPP available for public inspection at least 30 days before a public hearing required or held by providing a copy of the IPP in at least one public library in each county and either the county courthouse's law library, the county clerk's office, or some other accessible place within the county courthouse of each county having land in the RWPA and include locations of such copies in the notice for public hearing. For distribution of the IPP and adopted RWP, the RWPG may consult and coordinate with county and local officials in determining the most appropriate location in the county courthouse to ensure maximum accessibility to the public during business hours. Additionally, the RWPG may consult with local and county officials in determining which public library in the county can provide maximum accessibility to the public. According to the capabilities of the facility, the RWPG may provide the copy electronically, on electronic media, through an internet web link [~~an electronic disc or drive~~], or in hard copy. The RWPG shall make an effort to ensure ease of access to the public, including where feasible, posting the IPP on websites and providing notice of such posting. The public inspection requirement in this subsection applies only to IPPs; adopted RWPs are only required to be submitted to the Board pursuant to Texas Water Code, §16.053(i).

(5) [~~(6)~~] Notice shall be mailed to, at a minimum, the following:

(A) Notification of all entities that are to be notified under subsection (c)(4) of this section;

(B) Each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;

(C) Each county judge of a county located in whole or in part in the RWPA;

(D) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission;

(E) Additionally, for public hearings or meetings to obtain input on development of a future RWP or a meeting or hearing associated with IPPs or major RWP amendments:

(i) each Retail Public Utility [~~retail public utility~~], defined as a community water system, that serves any part of the RWPA or receives water from the RWPA based upon lists of such entities obtained from the Commission; and

(ii) each holder of record of a water right for the use of surface water the diversion of which occurs in the RWPA based upon lists of such water rights holders obtained from the Commission; and

(F) Additionally, an [~~a~~] RWPG that intends to request Board funds for regional water planning must provide written notice to all other RWPGs.

(6) [~~(7)~~] Notice and associated hearing and meeting agenda shall also be posted:

(A) On the website of the RWPG or host Political Subdivision. In lieu of posting the meeting notice and agenda on the website of the RWPG or host Political Subdivision, the notice and agenda may be provided, in writing, to the County Clerk of the county in which the administrative office of the host Political Subdivision is located [~~political subdivision or on the Board website if requested by the RWPG~~];

(B) Texas Secretary of State website; and

(C) In the *Texas Register*.

(7) [~~(8)~~] Public comments to be accepted as follows:

(A) Written comments submitted immediately following 30-day public notice posting and prior to and during meeting or hearing; and

(i) Until not earlier than 30-days following the date of the public hearing on a major amendment to an [~~a~~] RWP.

(ii) Until not earlier than 60 days following the date of the public hearing on an IPP.

(B) Verbal public comments at the noticed meeting or hearing;

(C) Comments received must be considered as follows:

(i) Comments associated with hearings must be considered by RWPG members when adopting an [~~a~~] RWP or adopting a major amendment to an [~~a~~] RWP.

(ii) Comments associated with a preplanning meeting, scope of work development, and an application for funding to the Board must be considered prior to taking RWPG action.

(e) Notice under this subsection shall meet the following requirements:

(1) These notice requirements apply when an RWPG is requesting research and planning funds from the Board.

(2) Notice shall be published in a newspaper of general circulation in each county located in whole or in part in the RWPA at least 30 days prior to Board consideration of funding applications.

(3) Notice shall include the name and address of the eligible applicant and the name of the applicant's manager or official representative; a brief description of the RWPA; the purposes of the planning project; the Board's name, address, and the name of a contact person with the Board; a statement that any comments must be filed with the EA and the applicant within 30 days of the date on which the notice is mailed or published. Prior to action by the Board, the applicant must provide one copy of the notice sent, a list of those to which the notice was sent, the date on which the notice was sent, copies of all notices as published showing name of the newspaper and the date on which the notice was published.

(4) Notice shall be mailed to, at a minimum, the following:

(A) Each mayor of a municipality with a population of 1,000 or more or which is a county seat that is located in whole or in part in the RWPA;

(B) Each county judge of a county located in whole or in part in the RWPA;

(C) Each special or general law district or river authority with responsibility to manage or supply water in the RWPA based upon lists of such water districts and river authorities obtained from the Commission; and

(D) All other RWPGs.

(5) Notice shall also be posted on the website of the RWPG or host Political Subdivision.

§357.22. General Considerations for Development of Regional Water Plans.

(a) RWPGs shall consider existing local, regional, and state water planning efforts, including water plans, information and relevant local, regional, state and federal programs and goals when developing the RWP [~~regional water plan~~]. The RWPGs shall also consider:

(1) Water Conservation Plans [~~water conservation plans~~];

(2) drought management and Drought Contingency Plans [~~drought contingency plans~~];

(3) information compiled by the Board from water loss audits performed by Retail Public Utilities [~~retail public utilities~~] pursuant to §358.6 of this title (relating to Water Loss Audits);

(4) publicly available plans for major agricultural, municipal, manufacturing and commercial water users;

(5) local and regional water management plans;

(6) water availability requirements promulgated by a county commissioners court in accordance with Texas Water Code §35.019 (relating to Priority Groundwater Management Areas);

(7) the Texas Clean Rivers Program;

(8) the U.S. Clean Water Act;

(9) water management plans;

(10) other planning goals including, but not limited to, regionalization of water and wastewater services where appropriate;

(11) approved groundwater conservation district management plans and other plans submitted under Texas Water Code §16.054 (relating to Local Water Planning);

(12) approved groundwater regulatory plans; [~~and~~]

(13) potential impacts on public health, safety, or welfare; and

(14) [~~(13)~~] any other information available from existing local or regional water planning studies.

(b) The RWP shall contain a separate chapter for the contents of §§357.30, 357.31, 357.32, 357.33, 357.42, 357.43, 357.44, 357.45, and 357.50 of this title and shall also contain a separate chapter for the contents of §357.34 and §§357.35, 357.40 and 357.41 of this title for a total of eleven separate chapters.

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 25, 2016.

TRD-201603638
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER C. PLANNING ACTIVITIES FOR NEEDS ANALYSIS AND STRATEGY RECOMMENDATIONS

31 TAC §§357.30 - 357.35

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.30. Description of the Regional Water Planning Area.

RWPGs shall describe their RWPA [~~regional water planning area~~] including the following:

(1) social and economic aspects of a region such as information on current population, economic activity and economic sectors heavily dependent on water resources;

(2) current water use and major water demand centers;

(3) current groundwater, surface water, and Reuse [~~reuse~~] supplies including major springs that are important for water supply or protection of natural resources;

(4) Major Water Providers [~~wholesale water providers~~];

(5) agricultural and natural resources;

(6) identified water quality problems;

(7) identified threats to agricultural and natural resources due to water quantity problems or water quality problems related to water supply;

(8) summary of existing local and regional water plans;

(9) the identified historic drought(s) of record within the planning area;

(10) current preparations for drought within the RWPA;

(11) information compiled by the Board from water loss audits performed by Retail Public Utilities [~~retail public utilities~~] pursuant to §358.6 of this title (relating to Water Loss Audits); and

(12) an identification of each threat to agricultural and natural resources and a discussion of how that threat shall [~~will~~] be addressed or affected by the WMSs [~~water management strategies~~] evaluated in the plan.

§357.31. Projected Population and Water Demands.

(a) RWPs shall present projected population and Water Demands [~~water demands~~] by WUG as defined in §357.10 of this title (relating to Definitions and Acronyms). If a WUG lies in one or more counties or RWPA or river basins, data shall be reported for each river basin, RWPA, and county split.

(b) RWPs shall present projected Water Demands [~~water demands~~] associated with MWPs [~~WWPs~~] by category of water use, including municipal, manufacturing, irrigation, steam electric power generation, mining, and livestock for [~~each county or portion of a county in~~] the RWPA. [~~If a county or portion of a county is in more than one river basin, data shall be reported for each river basin.~~]

(c) RWPs shall evaluate [~~report~~] the current contractual obligations of WUGs [~~WUG~~] and WWPs to supply water in addition to any demands projected for the WUG or WWP. Information regarding obligations to supply water to other users must also be incorporated into the water supply analysis in §357.32 of this title (relating to Water Supply Analysis) in order to determine net existing water supplies available for each WUG's own use.

(d) Municipal demands shall be adjusted to reflect water savings due to plumbing fixture requirements identified in the Texas Health and Safety Code, Chapter 372. RWPGs shall [~~will determine and~~] report how changes in plumbing fixtures would affect projected municipal Water Demands [~~water demands~~] using projections with plumbing code savings provided by the Board or by methods approved by the EA.

(e) Source of population and Water Demands [~~water demands~~]. In developing RWPs, RWPGs shall use:

(1) Population and Water Demand [~~water demand~~] projections developed by the EA that shall [~~will~~] be contained in the next State Water Plan [~~state water plan~~] and adopted by the Board after consultation with the RWPGs, Commission, Texas Department of Agriculture, and the Texas Parks and Wildlife Department.

(2) RWPGs may request revisions of Board adopted population or Water Demand [~~water demand~~] projections if the request demonstrates that population or Water Demand [~~water demand~~] projections no longer represents a reasonable estimate of anticipated conditions based on changed conditions and or new information. Before requesting a revision to population and Water Demand [~~water demand~~] projections, the RWPG shall discuss the proposed revisions at a public meeting for which notice has been posted in accordance with §357.21(c) of this title (relating to Notice and Public Participation). The RWPG shall summarize public comments received on the proposed request for projection revisions. The EA shall consult with the requesting RWPG and respond to their request within 45 days after receipt of a request from an [~~a~~] RWPG for revision of population or Water Demand [~~water demand~~] projections.

(f) Population and Water Demand [~~water demand~~] projections shall be presented for each Planning Decade [~~planning decade~~] for WUGs and MWPs [~~each of the above reporting categories~~].

§357.32. Water Supply Analysis.

(a) RWPGs shall evaluate:

(1) source water Availability [~~availability~~] during Drought of Record [~~drought of record~~] conditions; and

(2) existing water supplies that are legally and physically available to WUGs and wholesale water suppliers within the RWPA for use during the Drought of Record [~~drought of record~~].

(b) Evaluations shall consider surface water and groundwater data from the State Water Plan [~~state water plan~~], existing water rights, contracts and option agreements relating to water rights, other planning and water supply studies, and analysis of water supplies existing in and available to the RWPA during Drought of Record [~~drought of record~~] conditions.

(c) [~~Evaluation of the existing surface water available during drought of record shall be based on firm yield. The analysis may be based on justified operational procedures other than firm yield. The EA shall consider a written request from a RWPG to use procedures other than firm yield.~~] For surface water supply analyses [~~analysis~~], RWPGs shall [~~will~~] use most current Water Availability Models from the Commission to evaluate the adequacy of surface water supplies. As the default approach for evaluating existing supplies, RWPGs shall use anticipated sedimentation and [~~will~~] assume full utilization of existing water rights and no return flows when using Water Availability Models. RWPGs may use better, more representative, [~~other~~] water availability modeling assumptions or better site-specific information with written approval from the EA. Information available from the Commission shall be incorporated by RWPGs unless better site-specific information is available and approved in writing by the EA.

(1) Evaluation of existing stored surface water available during Drought of Record conditions shall be based on Firm Yield. The analysis may be based on justified operational procedures other than Firm Yield. The EA shall consider a written request from an RWPG to use procedures other than Firm Yield.

(2) Evaluation of existing run of river surface water available for municipal WUGs during Drought of Record conditions shall be based on the minimum monthly diversion amounts that are available 100 percent of the time, if those run of river supplies are the only supply for the municipal WUG.

(d) RWPGs shall use modeled available groundwater volumes for groundwater Availability [~~availability~~], as issued by the EA [~~Board~~], and incorporate such information in its RWP unless no modeled available groundwater volumes are provided. Groundwater Availability [~~availability~~] used in the RWP must be consistent with the desired future conditions as of the date the Board most recently adopted a State Water Plan [~~state water plan~~] or, at the discretion of the RWPG, established subsequent to the adoption of the most recent State Water Plan [~~state water plan~~].

(1) An RWP is consistent with a desired future condition if the groundwater Availability amount in the RWP and on which an Existing Water Supply or recommended WMS relies does not exceed the modeled available groundwater amount associated with the desired future condition for the relevant aquifers, in accordance with paragraph (2) of this subsection or as modified by paragraph (3) of this subsection, if applicable. The desired future condition must be either the desired future condition adopted as of the date the Board most recently adopted a State Water Plan or, at the option of the RWPG, a desired future condition adopted on a subsequent date.

(2) If no groundwater conservation district exists within the RWPA, then the RWPG shall determine the Availability of groundwater for regional planning purposes. The Board shall review and consider approving the RWPG-Estimated Groundwater Availability, prior to inclusion in the IPP, including determining if the estimate is physically compatible with the desired future conditions for relevant aquifers in groundwater conservation districts in the co-located groundwater management area or areas. The EA shall use the Board's groundwater availability models as appropriate to conduct the compatibility review.

(3) In RWPAs that have at least one groundwater conservation district, the EA shall consider a written request from an RWPG to apply a MAG Peak Factor in the form of a percentage (e.g., greater than 100 percent) applied to the modeled available groundwater value of any particular aquifer-region-county-basin split within the jurisdiction of a groundwater conservation district, or groundwater management area if no groundwater conservation district exists, to allow temporary increases in annual availability for planning purposes. The request must:

(A) Include written approval from the groundwater conservation district, if a groundwater conservation district exists in the particular aquifer-region-county-basin split, and from representatives of the groundwater management area;

(B) Provide the technical basis for the request; and

(C) Document the basis for how the temporary availability increase will not prevent the groundwater conservation district from managing groundwater resources to achieve the desired future condition.

(e) RWPGs shall evaluate the Existing Water Supplies [~~existing water supplies~~] for each WUG and WWP.

(f) Water supplies based on contracted agreements shall [~~will~~] be based on the terms of the contract, which may be assumed to renew upon contract termination if the contract contemplates renewal or extensions.

(g) Evaluation results shall be reported by WUG in accordance with §357.31(a) of this title (relating to Projected Population and Water Demands) and MWP [~~WWPs~~] in accordance with §357.31(b) of this title.

§357.33. Needs Analysis: Comparison of Water Supplies and Demands.

(a) RWPs shall include comparisons of existing water supplies and projected Water Demands [~~water demands~~] to identify Water Needs [~~water needs~~].

(b) RWPGs shall compare projected Water Demands [~~water demands~~], developed in accordance with §357.31 of this title (relating to Projected Population and Water Demands), with existing water supplies available to WUGs and WWPs in a planning area, as developed in accordance with §357.32 of this title (relating to Water Supply Analysis), to determine whether WUGs will experience water surpluses or needs for additional supplies. Results shall [~~will~~] be reported for WUGs [~~and for WWPs~~] by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for each county or portion of a county in an [~~a~~] RWPA. Results shall be reported for MWPs by categories of use including municipal, manufacturing, irrigation, steam electric, mining, and livestock watering for the RWPA.

(c) The social and economic impacts of not meeting Water Needs shall [~~water needs will~~] be evaluated by RWPGs and reported for each RWPA.

(d) Results of evaluations shall [~~will~~] be reported by WUG in accordance with §357.31(a) of this title and MWP [~~WWPs~~] in accordance with §357.31(b) of this title.

(e) RWPGs shall perform a secondary water needs analysis for all WUGs and WWPs for which conservation WMSs [~~water management strategies~~] or direct Reuse WMSs [~~reuse water management strategies~~] are recommended. This secondary water needs analysis shall [~~will~~] calculate the Water Needs [~~water needs~~] that would remain after assuming all recommended conservation and direct Reuse WMSs [~~reuse water management strategies~~] are fully implemented. The resulting secondary water needs volumes shall be presented in the RWP by WUG and MWP [~~WWP~~] and decade.

§357.34. Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects.

(a) RWPGs shall identify and evaluate potentially feasible WMSs and the WMSPs required to implement those strategies [~~water management strategies~~] for all WUGs and WWPs with identified Water Needs [~~water needs~~].

(b) RWPGs shall identify potentially feasible WMSs [~~water management strategies~~] to meet water supply needs identified in §357.33 of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands) in accordance with the process in §357.12(b) of this title (relating to General Regional Water Planning Group Responsibilities and Procedures). Strategies shall be developed for WUGs and WWPs. The strategies shall meet new water supply obligations necessary to implement recommended WMSs [~~water management strategies~~] of WWPs and WUGs. RWPGs shall plan for water supply during Drought of Record conditions. In developing RWPs, RWPGs shall provide WMSs to be used during a Drought of Record [~~drought of record~~].

(c) Potentially feasible WMSs [~~water management strategies~~] may include, but are not limited to:

(1) Expanded use of existing supplies including system optimization and conjunctive use of water resources, reallocation of reservoir storage to new uses, voluntary redistribution of water resources including contracts, water marketing, regional water banks, sales, leases, options, subordination agreements, and financing agreements, subordination of existing water rights through voluntary agreements, enhancements of yields of existing sources, and improvement of water quality including control of naturally occurring chlorides.

(2) New supply development including construction and improvement of surface water and groundwater resources, brush control, precipitation enhancement, seawater desalination, brackish groundwater desalination, water supply that could be made available by cancellation of water rights based on data provided by the Commission, rainwater harvesting, and aquifer storage and recovery.

(3) Conservation and Drought Management Measures [~~drought management measures~~] including demand management.

(4) Reuse of wastewater.

(5) Interbasin Transfers of Surface Water. [~~transfers of surface water.~~]

(6) Emergency transfers of surface water including a determination of the part of each water right for non-municipal use in the RWPA that may be transferred without causing unreasonable damage to the property of the non-municipal water rights holder in accordance with Texas Water Code §11.139 (relating to Emergency Authorizations).

(d) All recommended WMSs and WMSPs that are entered into the State Water Planning Database and prioritized by RWPGs shall be designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one planning decade such that additional water is available during Drought of Record conditions. Any other RWPG recommendations regarding permit modifications, operational changes, and/or other infrastructure that are not designed to reduce the consumption of water, reduce the loss or waste of water, improve the efficiency in the use of water, or develop, deliver or treat additional water supply volumes to WUGs or WWPs in at least one Planning Decade such that additional water is available during Drought of Record conditions shall be indicated as such and presented separately in the RWP and shall not be eligible for funding from the State Water Implementation Fund for Texas.

(e) [~~(d)~~] Evaluations of potentially feasible WMSs and associated WMSPs [~~water management strategies~~] shall include the following analyses:

(1) For the purpose of evaluating potentially feasible WMSs [~~water management strategies~~], the Commission's most current Water Availability Model with assumptions of no return flows and full utilization of senior water rights, is to be used. Alternative assumptions may be used with written approval from the EA who shall [~~will~~] consider a written request from an [~~a~~] RWPG to use assumptions other than no return flows and full utilization of senior water rights.

(2) An equitable comparison between and consistent evaluation and application of all WMSs [~~water management strategies~~] the RWPGs determine to be potentially feasible for each water supply need.

(3) A quantitative reporting of:

(A) The net quantity, reliability, and cost of water delivered and treated for the end user's requirements during Drought of Record [~~drought of record~~] conditions, taking into account and reporting anticipated strategy water losses, incorporating factors used calculating infrastructure debt payments and may include present costs and discounted present value costs. Costs do not include distribution of water within a WUG after treatment.

(B) Environmental factors including effects on environmental water needs, wildlife habitat, cultural resources, and effect of upstream development on bays, estuaries, and arms of the Gulf of Mexico. Evaluations of effects on environmental flows shall [~~will~~] include consideration of the Commission's adopted environmental flow standards under 30 Texas Administrative Code Chapter 298 (relating to Environmental Flow Standards for Surface Water). If environmental flow standards have not been established, then environmental information from existing site-specific studies, or in the absence of such information, state environmental planning criteria adopted by the Board for inclusion in the State Water Plan [~~state water plan~~] after coordinating with staff of the Commission and the Texas Parks and Wildlife Department to ensure that WMSs [~~water management strategies~~] are adjusted to provide for environmental water needs including instream flows and bays and estuaries inflows.

(C) Impacts to agricultural resources.

(4) Discussion of the plan's impact on other water resources of the state including other WMSs [~~water management strategies~~] and groundwater and surface water interrelationships.

(5) A discussion of each threat to agricultural or natural resources identified pursuant to §357.30(7) of this title (relating to Description of the Regional Water Planning Area) including how that threat will be addressed or affected by the WMSs [~~water management strategies~~] evaluated.

(6) If applicable, consideration and discussion of the provisions in Texas Water Code §11.085(k)(1) for Interbasin Transfers of Surface Water [~~interbasin transfers of surface water~~]. At minimum, this consideration shall [~~will~~] include a summation of Water Needs [~~water needs~~] in the basin of origin and in the receiving basin.

(7) Consideration of third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas.

(8) A description of the major impacts of recommended WMSs [~~water management strategies~~] on key parameters of water quality identified by RWPGs as important to the use of a water resource and comparing conditions with the recommended WMSs [~~water management strategies~~] to current conditions using best available data.

(9) Consideration of water pipelines and other facilities that are currently used for water conveyance as described in §357.22(a)(3) of this title (relating to General Considerations for Development of Regional Water Plans).

(10) Other factors as deemed relevant by the RWPG including recreational impacts.

(f) [~~(e)~~] RWPGs shall evaluate and present potentially feasible WMSs and WMSPs [~~Water Management Strategies~~] with sufficient specificity to allow state agencies to make financial or regulatory decisions to determine consistency of the proposed action before the state agency with an approved RWP.

(g) [~~(f)~~] Conservation, Drought Management Measures, and Drought Contingency Plans shall be considered by RWPGs when developing the regional plans, particularly during the process of identifying, evaluating, and recommending WMSs [~~water management strategies~~]. RWPs shall incorporate water conservation planning and drought contingency planning in the RWPA [~~regional water planning area~~].

(1) Drought Management Measures [~~management measures~~] including water demand management. RWPGs shall consider Drought Management Measures [~~drought management measures~~] for each need identified in §357.33 of this title and shall include such measures for each user group to which Texas Water Code §11.1272 (relating to Drought Contingency Plans for Certain Applicants and Water Right Holders) applies. Impacts of the Drought Management Measures [~~drought management measures~~] on Water Needs [~~water needs~~] must be consistent with guidance provided by the Commission in its administrative rules implementing Texas Water Code §11.1272. If an [~~a~~] RWPG does not adopt a drought management strategy for a need it must document the reason in the RWP. Nothing in this paragraph shall be construed as limiting the use of voluntary arrangements by water users to forgo water usage during drought periods.

(2) Water conservation practices. RWPGs must consider water conservation practices, including potentially applicable best management practices, for each identified Water Need [~~water need~~].

(A) RWPGs shall include water conservation practices for each user group to which Texas Water Code §11.1271 and §13.146 (relating to Water Conservation Plans) apply. The impact of these water conservation practices on Water Needs [~~water needs~~] must be consistent with requirements in appropriate Commission administrative rules related to Texas Water Code §11.1271 and §13.146.

(B) RWPGs shall consider water conservation practices for each WUG beyond the minimum requirements of subparagraph (A) of this paragraph, whether or not the WUG is subject to Texas Water Code §11.1271 and §13.146. If RWPGs do not adopt a Water Conservation Strategy [~~water conservation strategy~~] to meet an identified need, they shall document the reason in the RWP.

(C) For each WUG or WWP that is to obtain water from a proposed interbasin transfer to which Texas Water Code §11.085 (relating to Interbasin Transfers) applies, RWPGs shall [~~will~~] include a Water Conservation Strategy [~~water conservation strategy~~], pursuant to Texas Water Code §11.085(1), that will result in the highest practicable level of water conservation and efficiency achievable. For these strategies, RWPGs shall [~~will~~] determine and report projected water use savings in gallons per capita per day based on its determination of the highest practicable level of water conservation and efficiency achievable. RWPGs shall [~~will~~] develop conservation strategies based on this determination. In preparing this evaluation, RWPGs shall [~~will~~] seek the input of WUGs and WWPs as to what is the highest practicable level of conservation and efficiency achievable, in their opinion, and take that input into consideration. RWPGs shall [~~will~~] develop water conservation strategies consistent with guidance provided by the Commission in its administrative rules that implement Texas Water Code §11.085. When developing water conservation strategies, the RWPGs must consider potentially applicable best management practices. Strategy evaluation in accordance with this section shall [~~will~~] include a quantitative description of the quantity, cost, and reliability of the water estimated to be conserved under the highest practicable level of water conservation and efficiency achievable.

(D) RWPGs shall consider strategies to address any issues identified in the information compiled by the Board from the water loss audits performed by Retail Public Utilities [~~retail public utilities~~] pursuant to §358.6 of this title (relating to Water Loss Audits).

(h) [~~(g)~~] RWPs shall include a subchapter consolidating the RWPG's recommendations regarding water conservation. RWPGs shall include in the RWPs model water conservation plans pursuant to Texas Water Code §11.1271.

§357.35. Recommended and Alternative Water Management Strategies and Water Management Strategy Projects.

(a) RWPGs shall recommend WMSs and the WMSPs required to implement those WMSs [~~water management strategies~~] to be used during a Drought of Record [~~drought of record~~] based on the potentially feasible WMSs [~~Water Management Strategies~~] evaluated under §357.34 of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies and Water Management Strategy Projects).

(b) RWPGs shall recommend specific WMSs and WMSPs [~~water management strategies~~] based upon the identification, analysis, and comparison of WMSs [~~water management strategies~~] by the RWPG that the RWPG determines are potentially feasible so that the cost effective WMSs [~~water management strategies~~] that are environmentally sensitive are considered and adopted unless an [~~a~~] RWPG demonstrates that adoption of such WMSs [~~strategies~~] is inappropriate. To determine cost-effectiveness and environmental sensitivity, RWPGs shall [~~will~~] follow processes described in §357.34 of this title. The RWP may include Alternative WMSs [~~alternative water management strategies~~] evaluated by the processes described in §357.34 of this title.

(c) Strategies shall [~~will~~] be selected by the RWPGs so that cost effective WMSs [~~water management strategies~~], which are consistent with long-term protection of the state's water resources, agricultural resources, and natural resources are adopted.

(d) RWPGs shall identify and recommend WMSs [~~water management strategies~~] for all WUGs and WWPs with identified Water Needs [~~water needs~~] and that meet all Water Needs [~~water needs~~] during the Drought of Record [~~drought of record~~] except in cases where:

(1) no WMS [~~water management strategy~~] is feasible. In such cases, RWPGs must explain why no WMSs [~~management strategies~~] are feasible; or

(2) a Political Subdivision [~~political subdivision~~] that provides water supply other than water supply corporations, counties, or river authorities explicitly does not participate in the regional water planning process for needs located within its boundaries or extraterritorial jurisdiction.

(e) Specific recommendations of WMSs [~~water management strategies~~] to meet an identified need shall [~~will~~] not be shown as meeting a need for a Political Subdivision [~~political subdivision~~] if the Political Subdivision [~~political subdivision~~] in question objects to inclusion of the strategy for the Political Subdivision [~~political subdivision~~] and specifies its reasons for such objection. This does not prevent the inclusion of the strategy to meet other needs.

(f) Recommended strategies shall protect existing water rights, water contracts, and option agreements, but may consider potential amendments of water rights, contracts and agreements, which would require the eventual consent of the owner.

(g) RWPGs shall report the following:

(1) Recommended WMSs, recommended WMSPs, [~~water management strategies~~] and the associated results of all the potentially feasible WMS [~~water management strategy~~] evaluations by WUG and MWP [~~WWP~~]. If a WUG [~~or WWP~~] lies in one or more counties or RWPAs or river basins, data shall [~~will~~] be reported for each river basin, RWPA, and county.

(2) Calculated planning management supply factors for each WUG and MWP [~~WWP~~] included in the RWP assuming all recommended WMSs [~~water management strategies~~] are implemented. This calculation shall be based on the sum of: the total existing water supplies, plus all water supplies from recommended WMSs [~~water management strategies~~] for each entity; divided by that entity's total projected Water Demand [~~water demand~~], within the Planning Decade [~~planning decade~~]. The resulting calculated management supply [~~safety~~] factor shall be presented in the plan by entity and decade for every WUG and MWP. Calculating planning management supply factors is for reporting purposes only. [~~WWP.~~]

(3) Fully evaluated Alternative WMSs and associated WMSPs [~~Water Management Strategies~~] included in the adopted RWP shall be presented together in one place in the RWP.

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 25, 2016.

TRD-201603639
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER D. IMPACTS, DROUGHT RESPONSE, POLICY RECOMMENDATIONS, AND IMPLEMENTATION

31 TAC §§357.40, 357.42 - 357.46

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.40. Impacts of Regional Water Plan.

(a) RWPs shall include a quantitative description of the socioeconomic impacts of not meeting the identified Water Needs [~~water needs~~] pursuant to §357.33(c) of this title (relating to Needs Analysis: Comparison of Water Supplies and Demands).

(b) RWPs shall include a description of the impacts of the RWP regarding:

(1) Agricultural resources pursuant to §357.34(e)(3)(C) [~~§357.34(d)(3)(C)~~] of this title (relating to Identification and Evaluation of Potentially Feasible Water Management Strategies);

(2) Other water resources of the state including other WMSs [~~water management strategies~~] and groundwater and surface water interrelationships pursuant to §357.34(e)(4) [~~§357.34(d)(4)~~] of this title;

(3) Threats to agricultural and natural resources identified pursuant to §357.34(e)(5) [~~§357.34(d)(5)~~] of this title;

(4) Third-party social and economic impacts resulting from voluntary redistributions of water including analysis of third-party impacts of moving water from rural and agricultural areas pursuant to §357.34(e)(7) [~~§357.34(d)(7)~~] of this title;

(5) Major impacts of recommended WMSs [~~water management strategies~~] on key parameters of water quality pursuant to §357.34(e)(8) [~~§357.34(d)(8)~~] of this title; and

(6) Effects on navigation.

(c) RWPs shall include a summary of the identified Water Needs [~~water needs~~] that remain unmet by the RWP.

§357.42. Drought Response Information, Activities, and Recommendations.

(a) RWPs shall consolidate and present information on current and planned preparations for, and responses to, drought conditions in the region including, but not limited to, Drought of Record [~~drought of record~~] conditions based on the following subsections.

(b) RWPGs shall conduct an overall assessment of current preparations for drought within the RWPA including a description of how water suppliers in the RWPA identify and respond to the onset of drought. This may include information from local Drought Contingency Plans [~~drought contingency plans~~].

(c) RWPGs shall develop drought response recommendations regarding the management of existing groundwater and surface water sources in the RWPA designated in accordance with §357.32 of this title (relating to Water Supply Analysis), including:

(1) Factors specific to each source of water supply to be considered in determining whether to initiate a drought response for each water source including specific recommended drought response triggers;

(2) Actions to be taken as part of the drought response by the manager of each water source and the entities relying on each source, including the number of drought stages; and

(3) Triggers and actions developed in paragraphs (1) and (2) of this subsection may consider existing triggers and actions associated with existing Drought Contingency Plans [~~drought contingency plans~~].

(d) RWPGs shall [~~will~~] collect information on existing major water infrastructure facilities that may be used for interconnections in event of an emergency shortage of water. In accordance with Texas Water Code §16.053(r), this information is CONFIDENTIAL INFORMATION and cannot be disseminated to the public. The associated information is to be collected by a subgroup of RWPG members in a closed meeting and submitted separately to the EA in accordance with guidance to be provided by EA.

(e) RWPGs shall [~~will~~] provide general descriptions of local Drought Contingency Plans [~~drought contingency plans~~] that involve making emergency connections between water systems or WWP systems that do not include locations or descriptions of facilities that are disallowed under subsection (d) of this section.

(f) RWPGs may designate recommended and alternative Drought Management Water Management Strategies [~~drought management water management strategies~~] and other recommended drought measures in the RWP including:

(1) List and description of the recommended Drought Management Water Management Strategies [~~drought management water management strategies~~] and associated WUGs and WWPs, if any, that are recommended by the RWPG. Information to include associated triggers to initiate each of the recommended Drought Management WMSs [~~drought management water management strategies~~];

(2) List and description of alternative Drought Management WMSs [~~drought management water management strategies~~] and associated WUGs and WWPs, if any, that are included in the plan. Information to include associated triggers to initiate each of the alternative Drought Management WMSs [~~drought management water management strategies~~];

(3) List of all potentially feasible Drought Management WMSs [~~drought management water management strategies~~] that were considered or evaluated by the RWPG but not recommended; and

(4) List and summary of any other recommended Drought Management Measures [~~drought management measures~~], if any, that are included in the RWP, including associated triggers if applicable.

(g) The RWPGs shall evaluate potential emergency responses to local drought conditions or loss of existing water supplies; the evaluation shall include identification of potential alternative water sources that may be considered for temporary emergency use by WUGs and WWPs in the event that the Existing Water Supply [~~existing water supply~~] sources become temporarily unavailable to the WUGs and WWPs due to unforeseeable hydrologic conditions such as emergency water right curtailment, unanticipated loss of reservoir conservation storage, or other localized drought impacts. RWPGs shall evaluate, at a minimum, municipal WUGs that:

(1) have existing populations less than 7,500;

(2) rely on a sole source for its water supply regardless of whether the water is provided by a WWP; and

(3) all County-Other [~~county-other~~] WUGs.

(h) RWPGs shall consider any relevant recommendations from the Drought Preparedness Council.

(i) RWPGs shall make drought preparation and response recommendations regarding:

(1) Development of, content contained within, and implementation of local Drought Contingency Plans [~~drought contingency plans~~] required by the Commission;

(2) Current drought management preparations in the RWPA including:

(A) drought response triggers; and

(B) responses to drought conditions;

(3) The Drought Preparedness Council and the State Drought Preparedness Plan; and

(4) Any other general recommendations regarding drought management in the region or state.

(j) The RWPGs shall develop region-specific model Drought Contingency Plans [~~drought contingency plans~~].

§357.43. Regulatory, Administrative, or Legislative Recommendations.

(a) The RWPs shall contain any regulatory, administrative, or legislative recommendations developed by the RWPGs.

(b) Ecologically Unique River and Stream Segments. RWPGs may include in adopted RWPs recommendations for all or parts of river and stream segments of unique ecological value located within the RWPA by preparing a recommendation package consisting of a physical description giving the location of the stream segment, maps, and photographs of the stream segment and a site characterization of the stream segment documented by supporting literature and data. The recommendation package shall address each of the criteria for designation of river and stream segments of ecological value found in this subsection. The RWPG shall forward the recommendation package to the Texas Parks and Wildlife Department and allow the Texas Parks and Wildlife Department 30 days for its written evaluation of the recommendation. The adopted RWP shall include, if available, Texas Parks and Wildlife Department's written evaluation of each river and stream segment recommended as a river or stream segment of unique ecological value.

(1) An [~~A~~] RWPG may recommend a river or stream segment as being of unique ecological value based upon the criteria set forth in §358.2 of this title (relating to Definitions).

(2) For every river and stream segment that has been designated as a unique river or stream segment by the legislature, during a session that ends not less than one year before the required date of submittal of an adopted RWP to the Board, or recommended as a unique river or stream segment in the RWP, the RWPG shall assess the impact of the RWP on these segments. The assessment shall be a quantitative analysis of the impact of the plan on the flows important to the river or stream segment, as determined by the RWPG, comparing current conditions to conditions with implementation of all recommended WMSs [~~water management strategies~~]. The assessment shall also describe the impact of the plan on the unique features cited in the region's recommendation of that segment.

(c) Unique Sites for Reservoir Construction. An [~~A~~] RWPG may recommend sites of unique value for construction of reservoirs by including descriptions of the sites, reasons for the unique designation and expected beneficiaries of the water supply to be developed at the site. The criteria at §358.2 of this title shall be used to determine if a site is unique for reservoir construction.

(d) Any other recommendations that the RWPG believes are needed and desirable to achieve the stated goals of state and regional water planning including to facilitate the orderly development, management, and conservation of water resources and prepare for and respond to drought conditions.

(e) RWPGs may develop information as to the potential impacts of any proposed changes in law prior to or after changes are enacted.

(f) RWPGs should consider making legislative recommendations to facilitate more voluntary water transfers in the region.

§357.44. Infrastructure Financing Analysis.

RWPGs shall assess and quantitatively report on how individual local governments, regional authorities, and other Political Subdivisions [~~political subdivisions~~] in their RWPA propose to finance recommended WMSs and associated WMSPs [~~water management strategies~~].

§357.45. Implementation and Comparison to Previous Regional Water Plan.

(a) RWPGs shall describe the level of implementation of previously recommended WMSs [~~water management strategies~~]. Information on the progress of implementation of all WMSs [~~water management strategies~~] that were recommended in the previous RWP, including conservation and Drought Management WMSs [~~drought management water management strategies~~]; and the implementation

of WMSPs [~~projects~~] that have affected progress in meeting the state's future water needs.

(b) RWPGs shall provide a brief summary of how the RWP differs from the previously adopted RWP with regards to:

(1) Water Demand [~~demand~~] projections;

(2) Drought of Record [~~record~~] and hydrologic and modeling assumptions used in planning for the region;

(3) Groundwater and surface water Availability, Existing Water Supplies [~~availability, existing water supplies~~], and identified Water Needs [~~water needs~~] for WUGs and WWPs; and

(4) Recommended and Alternative WMSs [~~alternative water management strategies~~].

§357.46. Prioritization of Projects by Regional Water Planning Groups.

Each RWPG shall prioritize recommended WMSPs in its respective RWP and submit the prioritization separately with its adopted RWP. The RWPG must prioritize the WMSPs in accordance with the uniform standards, developed by the stakeholders committee established under Texas Water Code, §15.436(c), in effect at the time it adopts its RWP.

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 25, 2016.

TRD-201603640
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER E. ADOPTION, SUBMITTAL, AND AMENDMENTS TO REGIONAL WATER PLANS

31 TAC §357.50, §357.51

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.50. Adoption, Submittal, and Approval of Regional Water Plans.

(a) The RWPGs shall submit their adopted RWPs to the Board every five years on a date to be disseminated by the EA, as modified by subsection (g)(2) [~~(e)(2)~~] of this section, for approval and inclusion in the State Water Plan [~~state water plan~~].

(b) Prior to the adoption of the RWP, the RWPGs shall submit concurrently to the EA and the public an IPP. The IPP submitted to the EA must be in the electronic and paper format specified by the EA. Each RWPG must certify that the IPP is complete and adopted by the RWPG. In the instance of a recommended WMS [~~water management strategy~~] proposed to be supplied from a different RWPA [~~regional water planning area~~], the RWPG recommending such strategy shall submit, concurrently with the submission of the IPP to the EA, a copy of the IPP, or a letter identifying the WMS [~~water management strategy~~] in the other region along with an internet link to the IPP, to the RWPG associated with the location of such strategy.

(c) The RWPGs shall distribute the IPP in accordance with §357.21(d)(4) [~~§357.21(d)(5)~~] of this title (relating to Notice and Public Participation).

(d) Within 60 days of the submission of IPPs to the EA, the RWPGs shall submit to the EA, and the other affected RWPG, in writing, the identification of potential Interregional Conflicts [~~interregional conflicts~~] by:

(1) identifying the specific recommended WMS [~~water management strategy~~] from another RWPG's IPP;

(2) providing a statement of why the RWPG considers there to be an Interregional Conflict [~~interregional conflict~~]; and

(3) providing any other information available to the RWPG that is relevant to the Board's [~~board's~~] decision.

(e) The RWPGs shall seek to resolve conflicts with other RWPGs and shall promptly and actively participate in any Board sponsored efforts to resolve Interregional Conflicts [~~interregional conflicts~~].

(f) The RWPGs shall solicit, and consider the following comments when adopting an [~~a~~] RWP:

(1) the EA's written comments, which shall be provided to the RWPG within 120 days of receipt of the IPP;

(2) written comments received from any federal agency or Texas state agency, which the RWPGs shall accept after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 90 days after the public hearing is held pursuant to §357.21(d) of this title; and

(3) any written or oral comments received from the public after the first public hearing notice is published pursuant to §357.21(d) of this title until at least 60 days after the public hearing is held pursuant to §357.21(d) of this title.

(4) The RWPGs shall revise their IPPs to incorporate negotiated resolutions or Board resolutions of any Interregional Conflicts [~~interregional conflicts~~] into their final adopted RWPs.

(5) In the event that the Board has not resolved an Interregional Conflict [~~interregional conflict~~] sufficiently early to allow an involved RWPG to modify and adopt its final RWP by the statutory deadline, all RWPGs involved in the conflict shall proceed with adoption of their RWP by excluding the relevant recommended WMS [~~water management strategy~~] and all language relevant to the conflict and include language in the RWP explaining the unresolved Interregional Conflict [~~interregional conflict~~] and acknowledging that the RWPG may be required to revise or amend its RWP in accordance with a negotiated or Board resolution of an Interregional Conflict [~~interregional conflict~~].

(g) Submittal of RWPs. RWPGs shall submit the IPP and the adopted RWPs and amendments to approved RWPs to the EA in conformance with this section.

(1) RWPs shall include:

(A) The technical report and data prepared in accordance with this chapter and the EA's specifications;

(B) An executive summary that documents key RWP findings and recommendations; and

(C) Summaries of all written and oral comments received pursuant to subsection (f) of this section, with a response by the

RWPG explaining how the plan was revised or why changes were not warranted in response to written comments received under subsection (f) of this section.

(2) RWPGs shall submit RWPs [~~regional plans~~] to the EA according to the following schedule:

(A) IPPs [~~Initially prepared plans~~] are due every five years on a date disseminated by the EA unless an extension is approved, in writing, by the EA.

(B) Prior to submission of the IPP, the RWPGs shall upload the data, metadata and all other relevant digital information supporting the plan to the Board's State Water Planning Database [~~planning database system~~]. All changes and corrections to this information must be entered into the Board's State Water Planning Database [~~database~~] prior to submittal of a final adopted plan.

(C) The RWPG shall [~~will~~] transfer copies of all data, models, and reports generated by the planning process and used in developing the RWP to the EA. To the maximum extent possible, data shall be transferred in digital form according to specifications provided by the EA. One copy of all reports prepared by the RWPG shall be provided in digital format according to specifications provided by the EA. All digital mapping shall use a geographic information system according to specifications provided by the EA. The EA shall seek the input from the State Geographic Information Officer regarding specifications mentioned in this section.

(D) Adopted RWPs are due to the EA every five years on a date disseminated by the EA unless, at the discretion of the EA, a time extension is granted consistent with the timelines in Texas Water Code §16.053(i).

(E) Once approved by the Board, RWPs shall [~~will~~] be made available on the Board website.

(h) Upon receipt of an [~~a~~] RWP adopted by the RWPG, the Board shall [~~will~~] consider approval of such plan based on the following criteria:

(1) verified adoption of the RWP by the RWPG; and

(2) verified incorporation of any negotiated resolution or Board resolution of any Interregional Conflicts [~~interregional conflicts~~], or in the event that an Interregional Conflict [~~interregional conflict~~] is not yet resolved, verified exclusion of the relevant recommended WMS [~~water management strategy~~] and all language relevant to the conflict.

(i) Approval of RWPs by the Board. The Board may approve an [~~a~~] RWP only after it has determined that the RWP complies with statute and rules.

(j) The Board shall consider approval of an RWP that includes unmet municipal Water Needs provided that the RWPG includes adequate justification, including that the RWP:

(1) documents that the RWPG considered all potentially feasible WMSs, including Drought Management WMSs and contains an explanation why additional conservation and/or Drought Management WMSs were not recommended to address the need;

(2) describes how, in the event of a repeat of the Drought of Record, the municipal WUGs associated with the unmet need shall ensure the public health, safety, and welfare in each Planning Decade that has an unmet need; and

(3) explains whether there may be occasion, prior to development of the next IPP, to amend the RWP to address all or a portion of the unmet need.

(k) [~~(j)~~] Board Adoption of State Water Plan. RWPs approved by the Board pursuant to this chapter shall be incorporated into the State Water Plan [~~state water plan~~] as outlined in §358.4 of this title (relating to Guidelines).

§357.51. Amendments to Regional Water Plans.

(a) Local Water Planning Amendment Requests. A Political Subdivision [~~political subdivision~~] in the RWPA may request an [~~a~~] RWPG to consider specific changes to an adopted RWP based on changed conditions or new information. An [~~A~~] RWPG must formally consider such request within 180 days after its receipt and shall amend its adopted RWP if it determines an amendment is warranted. If the Political Subdivision [~~political subdivision~~] is not satisfied with the RWPG's decision on the issue, it may file a petition with the EA to request Board review the decision and consider changing the approved RWP. The Political Subdivision [~~political subdivision~~] shall send a copy of the petition to the chair of the affected RWPG.

(1) The petition must state:

(A) the changed condition or new information that affects the approved RWP;

(B) the specific sections and provisions of the approved RWP that are affected by the changed condition or new information;

(C) the efforts made by the Political Subdivision [~~political subdivision~~] to work with the RWPG to obtain an amendment; and

(D) the proposed amendment to the approved RWP.

(2) If the EA determines that the changed condition or new information warrants a change in the approved RWP, the EA shall request the RWPG to consider making the appropriate change and provide the reason in writing. The Political Subdivision [~~political subdivision~~] that submitted the petition shall [~~will~~] receive notice of any action requested of the RWPG by the EA. If the RWPG does not amend its plan consistent with the request within 90 days, it shall provide a written explanation to the EA, after which the EA shall [~~will~~] present the issue to the Board for consideration at a public meeting. Before presenting the issue to the Board, the EA shall [~~will~~] provide the RWPG, the Political Subdivision [~~political subdivision~~] submitting the petition, and any Political Subdivision [~~political subdivision~~] determined by the EA to be affected by the issue 30 days notice. At the public meeting, the Board may direct the RWPG to amend its RWP based on the local Political Subdivision's request.

(b) Major Amendments to RWPs and State Water Plan. An [~~A~~] RWPG may amend an adopted RWP at any meeting, after giving notice for a major amendment and holding a hearing according to §357.21(d) of this title (relating to Notice and Public Participation). An amendment is major if it does not meet the criteria of subsection (c), (d) or (e) of this section. An [~~A~~] RWPG may propose amendments to an approved RWP by submitting proposed amendments to the Board for its consideration and possible approval under the standards and procedures of this section.

(1) Initiation of a Major Amendment. An entity may request an [~~a~~] RWPG amend its adopted RWP. An [~~A~~] RWPG's consideration for action to initiate an amendment may occur at a regularly scheduled meeting.

(2) RWPG Public Hearing. The RWPG shall hold a public hearing on the amendment as defined in §357.21(d) of this title. The amendment shall be available for agency and public comment at least 30 days prior to the public hearing and 30 days following the public hearing as defined in §357.21(d) of this title.

(3) The proposed major amendment:

(A) Shall not result in an over-allocation of an existing or planned source of water; and

[~~(B) Shall not produce unmet needs new to the adopted RWP; and~~]

(B) [~~(C)~~] Shall conform with rules applicable to RWP development as defined in Subchapters C and D of this chapter.

(4) RWPG Major Amendment Adoption. The RWPG may adopt the amendment at a regularly scheduled RWPG meeting held in accordance with §357.21(b) of this title following the 30-day public comment period held in accordance with §357.21(d) of this title. The amendment shall include response to comments received.

(5) Board Approval of Major Amendment. After adoption of the major amendment, the RWPG shall submit the amendment to the Board which shall consider approval of the amendment at its next regularly scheduled meeting following EA review of the amendment.

(c) Minor Amendments to RWPs and State Water Plan.

(1) An [~~Minor Amendment to RWP. A~~] RWPG may amend its RWP by first providing a copy of the proposed amendment to the EA for a determination as to whether the amendment would be minor.

(2) EA Pre-Adoption Review. The EA shall evaluate the proposed minor amendment prior to the RWPG's vote to adopt the amendment. An amendment is minor if it meets the following criteria:

(A) does not result in over-allocation of an existing or planned source of water;

(B) does not relate to a new reservoir;

(C) does not increase unmet needs or produce new unmet needs in the adopted RWP;

(D) [~~(C)~~] does not have a significant effect on instream flows, environmental flows or freshwater flows to bays and estuaries;

(E) [~~(D)~~] does not have a significant substantive impact on water planning or previously adopted management strategies; and

(F) [~~(E)~~] does not delete or change any legal requirements of the plan.

(3) Determination by EA. If the EA determines that the proposed amendment is minor, EA shall notify, in writing, the RWPG as soon as practicable.

(4) RWPG Public Meeting. After receipt of the written determination from the EA, the RWPG shall conduct a public meeting in accordance with §357.21(c) of this title. The public shall have an opportunity to comment and the RWPG shall amend the proposed minor amendment based on public comments, as appropriate, and to comply with existing statutes and rules related to regional water planning responses.

(5) Board Approval of Minor Amendment. After adoption of the minor amendment, the RWPG shall submit the amendment to the Board which shall approve the amendment at its next regularly scheduled meeting unless the amendment contradicts or is in substantial conflict with statutes and rules relating to regional water planning.

(d) Amendment for Water Planning for a Clean Coal Project. An amendment to an [~~a~~] RWP or the State Water Plan [~~state water plan~~] to facilitate planning for water supplies reasonably required for a clean coal project, as defined by Texas Water Code §5.001, relating to the Texas Commission on Environmental Quality, shall be adopted by the process described in this section. However, an [~~a~~] RWPG may amend the RWP to accommodate planning for a clean coal project without a public meeting or hearing if the EA determines that:

(1) the amendment does not significantly change the RWP; or

(2) the amendment does not adversely affect other WMSs [~~water management strategies~~] in the RWP.

(e) Substitution of Alternative WMSs [~~Water Management Strategies~~]. After notice is provided in accordance with §357.21(c) of this title, RWPGs may substitute one or more evaluated Alternative Water Management Strategies [~~alternative water management strategies~~] for a recommended strategy if the strategy originally recommended is no longer recommended and the substitution of the Alternative WMS [~~alternative water management strategy~~] is capable of meeting the same Water Need without over-allocating any source [~~water need~~]. Proposed substitutions must receive written approval from the EA prior to substitution by the RWPG.

(f) In the instance of a substitution of an Alternative WMS [~~alternative water management strategy~~] or a proposed amendment with a recommended WMS [~~water management strategy~~] to be supplied from a different RWPA [~~regional water planning area~~], the RWPG recommending such strategy shall submit, concurrently with the submission of the substitution or proposed amendment to the EA, a copy of the substitution or proposed amendment to the RWPG for the location of such strategy. The provisions of sections 357.50(d), (e), (f), and (h), and 357.62, related to Interregional Conflicts, shall apply to substitution or amendment to the RWP in the same manner as those subdivisions apply to an IPP.

(g) Amending the State Water Plan. Following amendments of RWPs, including substitutions of Alternative WMSs [~~alternative water management strategies~~], the Board shall make any necessary amendments to the State Water Plan [~~state water plan~~] as outlined in §358.4 of this title (relating to Guidelines).

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 25, 2016.

TRD-201603641
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-7686

♦ ♦ ♦

SUBCHAPTER F. CONSISTENCY AND CONFLICTS IN REGIONAL WATER PLANS

31 TAC §§357.60, 357.62, 357.64

STATUTORY AUTHORITY

This rulemaking is proposed under the authority of Texas Water Code §16.053.

The proposed rulemaking affects Chapter 16 of the Texas Water Code.

§357.60. Consistency of Regional Water Plans.

(a) RWPGs shall submit to the development Board an [~~a~~] RWP that is consistent with the guidance principles and guidelines outlined in §357.20 of this title (relating to Guidance Principles for State and

Regional Water Planning). Information provided shall be based on data provided or approved by the Board in a format consistent with the guidelines of Subchapters C and D of this chapter and guidance by the EA.

(b) For the purposes of the Texas Water Code §16.053(j) (relating to Board Financial Assistance) projects proposed to the Board for funding shall [~~will~~] be considered to meet any need identified in an approved RWP in a manner consistent with the RWP if the project:

(1) Is an enhancement of an Existing Water Supply or water source [~~a current water supply~~] identified in the analysis developed under §357.32 of this title (relating to Water Supply Analysis) as meeting a demand, even though the project is not specifically recommended in the RWP;

(2) Involves a minor modification to an existing surface water right that is not in conflict with the RWP; or [~~and~~]

(3) Is meeting a need in a manner consistent with the plan developed under Subchapters C and D of this chapter.

(4) For the purposes of the Texas Water Code §16.053(j), projects proposed to the Board for funding to meet any need identified in an approved RWP for which there is not a recommended WMS [~~water management strategy~~] in such plan shall [~~will~~] be considered by the Board not to be consistent with the approved RWP.

(5) For the purposes of the Texas Water Code §16.053(k) (relating to Board Waivers), the Board may consider, among other factors, changed conditions if a Political Subdivision [~~political subdivision~~] requests a waiver of the Texas Water Code §16.053(j) for a project proposed to the Board for funding to meet a need in a manner that is not consistent with the manner the need is addressed in an approved RWP. The Board shall request the members of any affected RWPG to provide input on the request for waiver of the Texas Water Code §16.053(j).

(c) Relation to state and local plans. RWPs shall be consistent with Chapter 358 of this title (relating to State Water Planning Guidelines) and this chapter. RWPGs shall consider and use as a guide the State Water Plan [~~state water plan~~] and local water plans provided for in the Texas Water Code §16.054 (relating to Local Water Planning).

§357.62. Interregional Conflicts.

(a) In the event an [~~a~~] RWPG has asserted an interregional conflict and the Board has determined that there is a potential for a substantial adverse effect on that region, or the Board finds that an interregional conflict exists between IPPs, the EA may use the following process:

(1) notify the affected RWPGs of the nature of the interregional conflict;

(2) request affected RWPGs appoint a representative or representatives authorized to negotiate on behalf of the RWPG and notify the EA in writing of the appointment;

(3) request affected RWPGs' assistance in resolving the conflict; and

(4) negotiate resolutions of conflicts with RWPGs as determined by the EA.

(b) In the event the negotiation is unsuccessful, the EA may:

(1) determine a proposed recommendation for resolution of the conflict;

(2) provide notice of its intent to hold a public hearing on proposed recommendations for resolution of the conflict by publishing notice of the proposed change in the Texas Register and in a newspaper of general circulation in each county located in whole or in part in the RWPAs involved in the dispute 30 days before the public hearing and by mailing notice of the public hearing 30 days before public hearing to those persons or entities listed in §357.21(d) of this title (relating to Notice and Public Participation) in the RWPAs proposed to be impacted, and to each county judge of a county located in whole or in part in the RWPAs proposed to be impacted and to each affected RWPG;

(3) hold a public hearing on the proposed recommendation for resolution of the conflict at a time and place determined by the EA. At the hearing, the EA shall take comments from the RWPGs, Political Subdivisions [~~political subdivisions~~], and members of the public on the issues identified by the Board as unresolved problems; and

(4) make a recommendation to the Board for resolution of the conflict.

(c) The Board shall consider the EA's recommendation and any written statements by a representative for each affected RWPG and determine the resolution of the conflict. The Board's decision is final and not appealable.

(d) The EA shall notify affected RWPGs of Board's decision and shall direct changes to the affected RWPs.

§357.64. Conflicts Between Regional Water Plans and Groundwater Management Plans.

(a) A groundwater conservation district may file a written petition with the EA stating that a potential conflict exists between the district's approved management plan developed under Texas Water Code §36.1071 (relating to Management Plans) and the approved State Water Plan [~~state water plan~~]. A copy of the petition shall be provided to the affected RWPG. The petition must state:

(1) the specific nature of the conflict;

(2) the specific sections and provisions of the approved management plan and approved State Water Plan [~~state water plan~~] that are in conflict; and

(3) the proposed resolution to the conflict.

(b) If the EA determines a conflict exists, the EA will provide technical assistance to and coordinate with the groundwater conservation district and the affected RWPG to resolve the conflict. Coordination may include any of the following processes:

(1) requiring the RWPG to respond to the petition in writing;

(2) meeting with representatives from the groundwater conservation district and the RWPG to informally mediate the conflict; and/or

(3) coordinating a formal mediation session between representatives of the groundwater conservation district and the RWPG.

(c) If the parties do not reach resolution, the EA will recommend a resolution to the conflict to the Board within 60 days of the date the mediation is completed. Notice shall be provided at least 15 days prior to the date of the Board meeting to discuss the proposed resolution. The Board may:

(1) revise an approved RWP; and

(2) revise a district's approved management plan.

(d) If the Board requires a revision to the groundwater conservation district's approved management plan, the Board shall provide information to the groundwater conservation district on what revisions are required and why. The groundwater conservation district shall prepare any revisions to its plan based on the information provided by the Board and hold, after notice, at least one public hearing. The groundwater conservation district shall consider all public and Board com-

ments, prepare, revise, and adopt its plan, and submit the revised plan to the Board pursuant to Chapter 356 of this title (relating to Groundwater Management). If the groundwater conservation district disagrees with the decision of the Board, the district may appeal the decision to a district court in Travis County, Texas.

(e) If the Board requires a revision to the approved RWP, the Board shall provide information to the RWPG on what revisions are required and why. The RWPG shall prepare the revisions as a major amendment to their approved RWP pursuant to §357.51(b) of this title.

(f) At the Board's discretion, the Board shall include in the State Water Plan [~~state water plan~~] a discussion of the conflict and its resolution.

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 25, 2016.

TRD-201603642
Les Trobman
General Counsel
Texas Water Development Board
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 463-7686

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 4. COMMERCIAL VEHICLE REGULATIONS AND ENFORCEMENT PROCEDURES

SUBCHAPTER B. REGULATIONS GOVERNING TRANSPORTATION SAFETY

37 TAC §4.12

The Texas Department of Public Safety (the department) proposes amendments to §4.12, concerning Exemptions and Exceptions. The proposed amendments are necessary to ensure this section is consistent with interstate hours of service rules promulgated under federal statute in 49 CFR Part 395.

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

Ms. Whittenton has also determined that there will be some economic effect on small businesses or micro-businesses required to comply with the section as proposed. The department is unable to estimate the number of small businesses and micro-businesses that will be subject to this amended rule because the Texas Department of Motor Vehicles registers carriers but is unable to provide the department with the number of carriers meeting the definition of "small business" or "micro business".

The economic effect on a small business or micro-business will depend on the type of electronic logging device (ELD) that carriers or drivers use, the condition of the ELD, and the driver training needed upon effect. ELDs cost between $240 and $5800 dollars per year per unit depending on where the device is purchased/leased and from whom. The businesses also have various purchase, rental, support, and enhancement options which impact the overall cost of the device. Further, this federal mandate (as identified in United States Department of Transportation/Federal Motor Carrier Safety Administration memorandum MC-ECE-2016-0001) has a two year window of compliance (12-18-17) unless the carrier is already using an Automated Onboard Recording Device, in which case the carrier has a four year window of compliance (12-16-19). This deployment expense is mitigated by reduced fines for log book violations, improvement of safety management system scores at the federal level, and reduced liability by keeping log book violations at a minimum and keeping fatigued drivers off of the road. Additionally, intrastate carriers will continue to be able to utilize the record of duty status exemption outlined in this section.

The department, taking into consideration the health, safety, and the environmental and economic welfare of the state, has analyzed whether using an alternative regulatory method would accomplish the same objectives of the proposed rule but minimize the adverse impact on small businesses or micro businesses. The department considered exempting intrastate carriers and intrastate businesses meeting the definition of "small business" and "micro business" from this rule as it relates to ELDs as a method of reducing the adverse impact of the rule. However, these alternatives are not possible because exempting small businesses and/or micro businesses from this rule would allow for the continued use of handwritten records of duty status (log books). This rule serves to reduce log book errors, reduces fatigued driving, and reduces falsified log book records. These reductions in turn create safer highways.

Ms. Whittenton has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of enforcing the rule will be maximum efficiency of the Motor Carrier Safety Assistance Program.

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.

The Texas Department of Public Safety, in accordance with the Administrative Procedure Act, Texas Government Code, §2001, et seq., and Texas Transportation Code, Chapter 644, will hold a public hearing on Monday, August, 15, 2016, at 10:00 a.m., at the Texas Department of Public Safety, Texas Highway Patrol Division, Building G Annex, 5805 North Lamar, Austin, Texas. The purpose of this hearing is to receive comments from all interested persons regarding adoption of the proposed amendments to Administrative Rule §4.11 regarding Transportation of Hazardous Materials, proposed for adoption under the authority of

Texas Transportation Code, Chapter 644, which provides that the director shall, after notice and a public hearing, adopt rules regulating the safe operation of commercial motor vehicles.

Persons interested in attending this hearing are encouraged to submit advance written notice of their intent to attend the hearing and to submit a written copy of their comments. Correspondence should be addressed to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500.

Persons with special needs or disabilities who plan to attend this hearing and who may need auxiliary aids or services are requested to contact Major Chris Nordloh at (512) 424-2775 at least three working days prior to the hearing so that appropriate arrangements can be made.

Other comments on this proposal may be submitted to Major Chris Nordloh, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These amendments are proposed pursuant to Texas Transportation Code, §644.051, which authorizes the director to adopt rules regulating the safe transportation of hazardous materials and the safe operation of commercial motor vehicles; and authorizes the director to adopt all or part of the federal safety regulations, by reference.

Texas Transportation Code, §644.051 is affected by this proposal.

§4.12. Exemptions and Exceptions.

(a) Exemptions. Exemptions to the adoptions in §4.11 of this title (relating to General Applicability and Definitions) are made pursuant to Texas Transportation Code, §§644.052 - 644.054, and are adopted as follows:

(1) Such regulations shall not apply to the following vehicles when operated intrastate:

(A) a vehicle used in oil or water well servicing or drilling which is constructed as a machine consisting in general of a mast, an engine for power, a draw works, and a chassis permanently constructed or assembled for such purpose or purposes;

(B) a mobile crane which is an unladen, self-propelled vehicle constructed as a machine used to raise, shift, or lower weights;

(C) a vehicle transporting seed cotton; or

(D) concrete pumps.

(2) Drivers in intrastate commerce will be permitted to drive 12 hours following 8 consecutive hours off duty. Drivers in intrastate commerce may not drive after having been on duty 15 hours, following 8 consecutive hours off duty. Drivers in intrastate commerce violating the 12 or 15 hour limits provided in this paragraph shall be placed out-of-service for 8 consecutive hours. Drivers of vehicles operating in intrastate commerce shall be permitted to accumulate the equivalent of 8 consecutive hours off duty by taking a combination of at least 8 consecutive hours off duty and sleeper berth time; or by taking two periods of rest in the sleeper berth, providing:

(A) neither rest period in the sleeper berth is shorter than 2 hours duration;

(B) the driving time in the period immediately before and after each rest period in the sleeper berth, when added together, does not exceed 12 hours;

(C) the on duty time in the period immediately before and after each rest period in the sleeper berth, when added together, does not include any driving time after the 15th hour; and

(D) the driver may not return to driving subject to the normal hours of service requirements in this subsection without taking at least 8 consecutive hours off duty, at least 8 consecutive hours in the sleeper berth, or a combination of at least 8 consecutive hours off duty and sleeper berth time.

(3) Drivers in intrastate commerce who are not transporting placardable hazardous materials and were regularly employed in Texas as commercial vehicle drivers prior to August 28, 1989, are not required to meet the medical standards contained in the federal regulations.

(A) For the purpose of enforcement of this regulation, those drivers who reached their 18th birthday on or after August 28, 1989, shall be required to meet all medical standards.

(B) The exceptions contained in this paragraph shall not be deemed as an exemption from drug and alcohol testing requirements contained in Title 49, Code of Federal Regulations, Parts 40 and 382.

(4) The maintenance of a driver's record of duty status is not required if the vehicle is operated within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 12 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 12 hours on duty; and

(C) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include the following information:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding seven days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(5) The maintenance of a driver's record of duty status is not required for the driver of a ready-mix concrete delivery vehicle if the vehicle is operated intrastate within a 150 air-mile radius of the driver's normal work reporting location if:

(A) the driver returns to the normal work reporting location and is released from work within 14 consecutive hours;

(B) the driver has at least 8 consecutive hours off duty separating each 14 hours on duty;

(C) the driver does not exceed 12 hours maximum driving time following 8 consecutive hours off duty; and

(D) the motor carrier that employs the driver maintains and retains for a period of 6 months true and accurate time and business records which include:

(i) the time the driver reports for duty each day;

(ii) the total number of hours the driver is on duty each day;

(iii) the time the driver is released from duty each day;

(iv) the total time on duty for the preceding 7 days in accordance with Title 49, Code of Federal Regulations, §395.8(j)(2) for drivers used for the first time or intermittently; and

(v) the motor carrier maintains business records that provide the date, time, quantity, and location of the delivery of a product or service, including delivery tickets or sales invoices.

(6) An electronic logging device (ELD) and an automatic on-board recording device have the meaning as defined in Title 49, Code of Federal Regulations, §395.2.

(7) Unless otherwise exempted, until December 16, 2019, a motor carrier operating commercial motor vehicles intrastate shall require each of its drivers to record the driver's record of duty status:

(A) Using an ELD that meets the requirements of subpart B of Title 49, Code of Federal Regulations, Part 395;

(B) Using an automatic on-board recording device that meets the requirements of Title 49, Code of Federal Regulations, §395.15; or

(C) Manually, recorded as specified in Title 49, Code of Federal Regulations, §395.8. The record of duty status must be recorded in duplicate for each 24-hour period for which recording is required.

(8) Unless otherwise exempted, a motor carrier operating commercial motor vehicles intrastate must install and require each of its drivers to use an ELD to record the driver's duty status in accordance with Title 49, Code of Federal Regulations, Part 395 no later than December 16, 2019.

(9) [~~(5)~~] The provisions of Title 49, Code of Federal Regulations, Part 395 shall not apply to drivers transporting agricultural commodities in intrastate commerce for agricultural purposes within a 150 air-mile radius from the source of the commodities or the distribution point for the farm supplies during planting and harvesting seasons.

(10) [~~(6)~~] Unless otherwise specified, a motor carrier transporting household goods for compensation in intrastate commerce in a vehicle not defined in Texas Transportation Code, §548.001(1) is subject to the record keeping requirements in Title 49, Code of Federal Regulations, Part 395 and the hours of service requirements specified in this subchapter.

(11) [~~(7)~~] Unless otherwise specified, a contract carrier is subject only to Title 49, Code of Federal Regulations, Part 391, except §391.11(b)(4) and Subpart E, Parts 393, 395, and 396, except §396.17.

(b) Exceptions. Exceptions adopted by the director of the Texas Department of Public Safety not specified in Texas Transportation Code, §644.053, are as follows:

(1) Title 49, Code of Federal Regulations, §393.86, requiring rear-end protection shall not be applicable provided the vehicle was manufactured prior to September 1, 1991 and is used solely in intrastate commerce.

(2) Drivers of vehicles under this section operating in intrastate transportation shall not be permitted to drive after having worked and/or driven for 70 hours in any consecutive seven-day period. A driver may restart a consecutive seven-day period after taking 34 or more consecutive hours off-duty. Drivers in intrastate transportation violating the 70 hour limit provided in this paragraph will be placed out-of-service until no longer in violation.

(3) For drivers of commercial motor vehicles operating in intrastate transportation and used exclusively in the transportation of oilfield equipment, including the stringing and picking up of pipe used in pipelines, and servicing of the field operations of the natural gas and oil industry, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours.

(4) For drivers of a commercial motor vehicle operating in intrastate transportation and used primarily in the transportation of construction materials and equipment, any period of 7 consecutive days may end with the beginning of any off-duty period of 24 or more successive hours. "Transportation of construction materials and equipment" has the meaning assigned by Title 49, Code of Federal Regulations, §395.2.

(5) Drivers of vehicles operating in intrastate transportation claiming the 150 air mile radius exemption in subsection (a)(4) of this section must return to the work reporting location; be released from work within 12 consecutive hours; and have at least 8 consecutive hours off-duty separating each 12 hours on-duty.

(6) Title 49, Code of Federal Regulations, §391.11(b)(1), is not adopted for intrastate drivers. The minimum age for an intrastate driver shall be 18 years of age. Intrastate drivers in violation of this paragraph shall be placed out-of-service until no longer in violation.

(7) Title 49, Code of Federal Regulations, §391.11(b)(2), is not adopted for intrastate drivers. An intrastate driver must have successfully passed the examination for a Texas Commercial Driver's License and be a minimum age of 18 years old.

(8) Texas Transportation Code, §547.401 and §547.404, concerning brakes on trailers weighing 15,000 pounds gross weight or less take precedence over the brake requirements in the federal regulations for trailers of this gross weight specification unless the vehicle is required to meet the requirements of Federal Motor Vehicle Safety Standard No. 121 (Title 49, Code of Federal Regulations §571.121) applicable to the vehicle at the time it was manufactured.

(9) Title 49, Code of Federal Regulations, §390.23 (Relief from Regulations), is adopted for intrastate motor carriers with the following exceptions:

(A) Title 49, Code of Federal Regulations, §390.23(a)(2) is not applicable to intrastate motor carriers making emergency residential deliveries of heating fuels or responding to a pipeline emergency, provided the carrier:

(i) documents the type of emergency, the duration of the emergency, and the drivers utilized; and

(ii) maintains the documentation on file for a minimum of six months. An emergency under this paragraph is one that if left unattended would result in immediate serious bodily harm, death or substantial property damage but does not include routine requests to re-fill empty propane gas tanks.

(B) The requirements of Title 49, Code of Federal Regulations, §390.23(c)(1) and (2), for intrastate motor carriers shall be:

(i) the driver has met the requirements of Texas Transportation Code, Chapter 644; and

(ii) the driver has had at least eight consecutive hours off-duty when the driver has been on duty for 15 or more consecutive hours, or the driver has had at least 34 consecutive hours off duty when the driver has been on duty for more than 70 hours in seven consecutive days.

(10) Title 49, Code of Federal Regulations, Part 380 (Subparts A - D), is not adopted for intrastate motor carriers and drivers. Title 49, Code of Federal Regulations, Part 380 (Subpart E) is adopted for intrastate motor carriers and drivers. Intrastate motor carriers and drivers must complete the requirements of Title 49, Code of Federal Regulations, §380.500 on or before July 31, 2005.

(11) In accordance with §4132 of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETA-LU) (Pub. L. 109-59), the hours of service regulations in this subchapter are not applicable to utility service vehicles that operate in either interstate or intrastate commerce. Utility service vehicles are those vehicles operated by public utilities, as defined in the Public Utility Regulatory Act, the Gas Utility Regulatory Act, the Texas Water Code, Title 49, Code of Federal Regulations, §395.2, or other applicable regulations, and charged with the responsibility for maintaining essential services to the public to protect health and safety.

(12) The United States Department of Transportation number requirements in Texas Transportation Code, Chapter 643 do not apply to vehicles/motor carriers operating exclusively in intrastate commerce and that are exempted from the requirements by Texas Transportation Code, §643.002.

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 19, 2016.

TRD-201603566
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 424-5848

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 145. PAROLE

SUBCHAPTER A. PAROLE PROCESS

37 TAC §145.18

The Texas Board of Pardons and Paroles proposes an amendment to 37 TAC Chapter 145, §145.18, concerning action upon review; extraordinary vote (HB 1914). The amendment is proposed to add 36 months to subsection (a)(3)(A).

David Gutiérrez, Chair of the Board, determined that for each year of the first five-year period the proposed amendment is in effect, no fiscal implications exist for state or local government as a result of enforcing or administering this section.

Mr. Gutiérrez also has determined that for each year of the first five years the proposed amendment is in effect, the public benefit anticipated as a result of enforcing the amendment to this section will be to ensure consistency between this rule and Board Policy. There will be no effect on small businesses. There is no anticipated economic cost to persons required to comply with the amended rule as proposed.

An Economic Impact Statement and Regulatory Flexibility Analysis is not required because the proposed amendment will not have an economic effect on small businesses as defined in Texas Government Code §2006.001(2).

Comments should be directed to Bettie Wells, General Counsel, Texas Board of Pardons and Paroles, 209 W. 14th Street, Suite 500, Austin, Texas 78701 or by e-mail to *bettie.wells@tdcj.texas.gov.* Written comments from the general public should be received within 30 days of the publication of this proposal.

The amended rule is proposed under Texas Government Code §§508.036, 508.0441, 508.045, 508.141, and 508.149. Section 508.036 requires the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.141 provides the board authority to adopt policy establishing the date on which the board may reconsider for release an inmate who has previously been denied release. Section 508.149 provides authority for the discretionary release of offenders on mandatory supervision.

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

§145.18. Action upon Review; Extraordinary Vote (HB 1914).

(a) This section applies to any offender convicted of a capital offense, who is eligible for parole, and an offense under Texas Penal Code, Section 22.021. All members of the board shall vote on the release of an eligible offender. At least two-thirds of the members must vote favorably for the offender to be released to parole. Members of the board shall not vote until they receive and review a copy of a written report from the department on the probability of the offender committing an offense after being released.

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

(3) If it is determined that circumstances do not support a favorable action upon review, the following options are available:

(A) NR (Month/Year)--Deny release and set the next review date for 36, 60, 84 or 120 months following the panel decision date; or

(B) (No change.)

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

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

Filed with the Office of the Secretary of State on July 22, 2016.

TRD-201603633
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Earliest possible date of adoption: September 4, 2016
For further information, please call: (512) 406-5388

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 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER H. DEPUTIES

43 TAC §217.165

The Texas Department of Motor Vehicles withdraws proposed new §217.165 which appeared in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2930).

Filed with the Office of the Secretary of State on July 19, 2016.

TRD-201603567
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: July 19, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

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 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 97. PLANNING AND ACCOUNTABILITY

SUBCHAPTER AA. ACCOUNTABILITY AND PERFORMANCE MONITORING

19 TAC §97.1001

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 19 TAC §97.1001 is not included in the print version of the Texas Register. The figure is available in the on-line version of the August 5, 2016, issue of the Texas Register.)

The Texas Education Agency (TEA) adopts an amendment to §97.1001, concerning accountability. The amendment is adopted with changes to the proposed text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3807). The section describes the state accountability rating system and annually adopts the most current accountability manual. The amendment adopts applicable excerpts of the *2016 Accountability Manual.* Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

REASONED JUSTIFICATION. The TEA has adopted its academic accountability manual in rule since 2000. The accountability system evolves from year to year, so the criteria and standards for rating and acknowledging schools in the most current year differ to some degree over those applied in the prior year. The intention is to update 19 TAC §97.1001 annually to refer to the most recently published accountability manual.

The amendment to 19 TAC §97.1001 adopts excerpts of the *2016 Accountability Manual* into rule as a figure. The excerpts, Chapters 2-9 of the *2016 Accountability Manual,* specify the indicators, standards, and procedures used by the commissioner of education to determine accountability ratings for districts, campuses, and charter schools. These chapters also specify indicators, standards, and procedures used to determine distinction designations on additional indicators for Texas public school campuses and districts. The TEA will issue accountability ratings under the procedures specified in the *2016 Accountability Manual* by August 15, 2016. Distinction designations will be awarded by September 16, 2016. Ratings and distinction designations may be revised as a result of investigative activities by the commissioner as authorized under Texas Education Code (TEC), §39.056 and §39.057.

In 2016, campuses and districts will be evaluated using a performance index framework. The framework includes four indices. These indices include performance on the State of Texas Assessments of Academic Readiness (STAAR®) assessments for Grades 3-8 and end-of-course, longitudinal graduation rates, four-year Recommended High School Program/Distinguished Achievement Program (RHSP/DAP) graduation rate, four-year Foundation High School Program (FHSP) with endorsement/distinguished level of achievement graduation rate, and annual dropout rates. These indices incorporate the various criteria mandated by statute as set out in the statutory authority section. In 2016, the distinction designations system will award seven distinctions to eligible campuses that receive a *Met Standard* rating: Academic Achievement in English Language Arts/Reading, Academic Achievement in Mathematics, Academic Achievement in Science, Academic Achievement in Social Studies, Top 25 Percent Student Progress, Top 25 Percent Closing Performance Gaps, and Postsecondary Readiness. Districts will be eligible for a distinction designation for Postsecondary Readiness.

There are four substantive changes to the accountability system for 2016. First, results of STAAR® assessments for mathematics, Grades 3-8, are included. These assessments were excluded from the 2015 accountability ratings due to the implementation of the new mathematics Texas Essential Knowledge and Skills (TEKS) at Grades 3-8 in 2014-2015. Second, the results of STAAR® A are included in all four indices and STAAR® Alternate 2 results are included in Index 1, Index 2, and Index 3. These assessments were excluded from the 2015 accountability ratings because they were administered for the first time in 2014-2015. Third, the calculation for the graduation plan component of Index 4 now includes students who graduate under the FHSP. This year, two percentages are calculated: the percentage of students graduating under the RHSP/DAP; and the percentage of students graduating under either the RHSP/DAP or the FHSP with an endorsement (FHSP-E) or the distinguished level of achievement (DLA).

The percentage that contributes the most points to the Index 4 score will be used.

This change was made so that districts with students graduating under the FHSP sooner than required would not be disadvantaged.

Fourth, and finally, the Texas Success Initiative (TSI) assessment is replacing the exit-level Texas Assessment of Knowledge and Skills (TAKS) in the postsecondary component of Index 4. This change is being made because the results of the exit-level TAKS are no longer available.

The adopted amendment to 19 TAC §97.1001 includes minor technical changes such as date changes and new language in Chapter 2 that explains the special processing rules that will be

applied to tests affected by the spring 2016 testing issues. It also includes the following changes in response to public comment.

The chart on page 63 was updated to show that Grade 6 Mathematics Performance (Level III) is included in distinction designation calculations for elementary schools with students who take the Grade 6 mathematics test. This modification was made to reflect the use of assessment results in distinction designation calculations.

Language was revised on pages 20, 60, 77, 81, 82, 84, 85, and 89 to reflect the updated schedule for the release of accountability ratings, the release of data tables and other accountability reports, and the deadline for appealing accountability ratings. This modification was made to ensure that affected parties are aware of the new timetable put in place because of the delays in reporting the spring 2016 assessment results by the test contractor, Educational Testing Service (ETS).

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 27, 2016, and ended June 27, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1001, Accountability Rating System.

Comment. The Texas Parents' Educational Rights Network (TPERN) suggested adding the following language to §97.1001: No state assessment instrument may be used in the determination of district or campus accountability ratings unless such assessment complies with the requirements of the TEC, Texas Administrative Code, and any applicable federal law or regulation. TPERN contended that the STAAR® assessment administered during the 2015-2016 school year did not comply with completion-time requirements specified in the TEC. Twelve parents and two individuals submitted similar comments.

Agency Response. The agency disagrees. The agency complied with House Bill (HB) 743, 84th Texas Legislature, 2015, by making modifications intended to shorten all the relevant assessment instruments so that 85% of the students in Grades 3-5 would be able to complete the test in two hours and 85% of the students in Grades 6-8 would be able to complete the assessment instruments in three hours, while still maintaining valid and reliable assessment instruments. The agency removed all embedded field test items, which reduced the length of each assessment by five to eight questions. This resulted in a significant reduction in the amount of material on the assessments. The agency also shortened the 2016 STAAR® Grades 4 and 7 writing tests so that these tests will be completed in one testing administration instead of two administrations over two days. The agency also collected timing data on all the shortened assessment instruments in order to assess whether any assessment instrument needs additional modification.

Comment. Eight district personnel, five parents, and the Texas School Alliance (TSA) expressed concern about testing irregularities associated with the administration of the STAAR® and STAAR® A assessments, including examples such as lost documents, students attributed to the wrong school district, assessment questions with no correct answers, and other technical issues. Commenters questioned whether the results will be accurate. Some commenters asked that the ratings be withheld, that a not-rated rating be issued, that the agency allow districts with results lower than in the previous year to be held harmless, and that the ratings be information only. Other commenters suggested that the district decide whether or not to include data from the affected tests in the accountability determinations. Other commenters suggested that no new interventions be taken based on the results. Other commenters asked that STAAR® A results be withheld from accountability calculations.

Agency Response. The agency disagrees. The agency understands the concerns that have been raised regarding using STAAR® results in accountability ratings. The agency's testing contractor, Educational Testing Service, has conducted additional quality checks and verifications to ensure that results for all students for which answer documents or online records were submitted are reported error-free and attributed to the correct campus and district. The agency has worked closely with the testing contractor to ensure that the data files used to calculate and assign accountability ratings are reliable. Furthermore, the agency has revised the schedule for releasing accountability ratings and related reports in order to ensure that the accountability ratings are reliable.

Comment. An individual requested that the criteria for campus comparison groups be reconfigured to include the percentage of students served by special education programs.

Agency Response. The agency disagrees. The campus comparison groups that are constructed annually for the distinction designations are based on the student demographic characteristics of a campus (e.g., mobility rates, percent English language learners (ELLs), and percent economically disadvantaged) rather than student participation rates in program areas such as special education, gifted/talented, or bilingual/English as a second language. TEA has taken this approach since campus comparison groups were first created for the comparable improvement acknowledgements in 1998. Within certain parameters, districts and campuses determine locally how best to serve their respective student populations in the various program areas. The campus comparison group methodology is designed to select comparable schools based on the student demographic indicators, which are not determined by local policy, rather than program areas that are determined by local policy.

Comment. An individual requested that TEA identify schools that have an advantage due to selection bias in their student population such as charters, early college high schools, and magnet schools.

Agency Response. The agency understands the concern and plans to explore options that address this issue in future accountability cycles. At this point, the agency does not have a definitive way to identify these campuses, particularly open-enrollment charter campuses that have a specific set of student recruitment procedures and admission policies that warrant evaluation as a separate group of campus types. Therefore, the campus comparison group methodology is unchanged for 2016.

Comment. An individual requested the creation of separate targets for accountability, Public Education Grant (PEG), and Performance-Based Monitoring Analysis System (PBMAS) for three types of schools: (1) schools that have an advantage due to selection bias, (2) schools that serve all students in their communities, and (3) schools that are disadvantaged due to selection bias.

Agency Response. The agency understands the concern regarding the accountability system and plans to explore options that address this issue in future accountability cycles. For the

PEG program, state law that establishes the PEG program (TEC, Chapter 29, Subchapter G, §§29.201-29.205) describes how a PEG campus is identified: less than 50% of its students passed a STAAR® assessment in any two of the prior three years or it has been rated *Improvement Required* anytime in the prior three years. TEA does not have the statutory authority to modify these criteria. The comment regarding PBMAS is outside the scope of the proposed rulemaking.

Comment. An individual requested that TEA, the regional education service centers, local districts, and institutions of higher education conduct studies of the effect of student recruitment and admission policies on student performance to quantify the extent to which ratings, distinction designations, PEG list status, and PBMAS interventions are determined by selection bias rather than the quality of instruction or other relevant factors.

Agency Response. The comment is outside the scope of the proposed rulemaking.

Comment. Two parents requested the reconsideration of how students served by special education and ELL programs are included in accountability calculations. The commenters contended that accommodations allowable during STAAR® testing do not meet the accommodations outlined in Section 504 plans and Individualized Education Programs developed to ensure children who have a disability receive appropriate specialized instruction, related services, and/or accommodations.

Agency Response. The comment is outside the scope of the proposed rulemaking. Districts decide which STAAR® assessment will be administered and which accommodations will be allowed during the administration of the test based on input from parents and staff during 504 and admission, review, and dismissal meetings.

Comment. A parent requested that the TEA push the legislature to broaden accountability indicators to include additional sources of data beyond STAAR® (e.g., teacher turnover rates; level of experience of teachers; level of experience of administrators; satisfaction ratings by parents; whether a school has physical education, music, and art programs; special education referral rates; how many kids go on to pass classes at the next level; discipline statistics; and whether a counselor, nurse, librarian, or social worker is on the campus).

Agency Response. The comment is outside the scope of the proposed rulemaking. Legislation has already been broadened by HB 2804, 84th Texas Legislature, Regular Session, 2015. New indicators will be implemented in the 2017-2018 school year.

Comment. Two principals, one district administrator, and one teacher requested that Grade 6 mathematics performance be included as an indicator for the distinction designation in mathematics for elementary campuses.

Agency Response. The agency agrees. The chart on page 63 of the *2016 Accountability Manual* was updated at adoption to reflect that Grade 6 mathematics performance is included as an indicator for the distinction designation in mathematics for elementary schools with students who take the Grade 6 mathematics test.

Comment. The TSA requested that, for 2016, the agency not issue PEG identification on the basis of preliminary ratings.

Agency Response. The agency agrees and has changed the release of the 2017-2018 PEG schools to December 2016, after the resolution of the 2016 accountability rating appeals.

Comment. A district administrator requested that 2016 state accountability ratings not be cancelled.

Agency Response. The agency agrees. State accountability ratings and distinction designations will be issued for 2016.

Comment. A principal made suggestions for additional wording in the *STAAR® Test Administrator Manual.*

Agency Response. The comment is outside the scope of the proposed rulemaking, but the comment has been provided to the TEA Division of Student Assessment.

Comment. A district administrator recommended excluding all "New to Texas" student results from district and campus accountability calculations for 2016 and subsequent years.

Agency Response. The agency disagrees. HB 2349, 84th Texas Legislature, Regular Session, 2015, required the commissioner to report the results of state assessments for students who recently moved from another state separately from the results of other students. The agency met the requirements of this statute by reporting the results for students identified as "New to Texas" on the assessment summary reports produced by the testing contractor. For accountability purposes, Texas public schools are only accountable for students who have been enrolled in their district or campus as of the fall Public Education Information Management System snapshot date regardless of whether the student moved to their school from another public school district in Texas or from another state.

Comment. A district administrator recommended including Final Level II results on the "PDF summary reports" because Final Level II has been consistent since its inception.

Agency Response. The comment is outside the scope of the proposed rulemaking assuming the referenced reports are the assessment summary reports produced by the testing contractor. Final Level II results are provided in the accountability data tables and data downloads.

Comment. The Texas Charter Schools Association (TCSA) contended that the proposed rule item limits the ratings appeal process as described in Chapter 7 by stating that the basis upon which a ratings appeal would be granted is narrow and limited and does not address concerns of unintended consequences.

Agency Response. The agency disagrees. A school district or charter school can appeal a rating for any reason, but the rule allows a change in rating for only certain specific reasons.

Comment. TCSA proposed that when a charter school receives an accountability rating that is low due to a data calculation or entry error made by the school, it should have the opportunity to fully appeal that rating, including the opportunity to demonstrate to the commissioner, with supporting evidence, that it should receive a higher accountability rating if the error is corrected.

Agency Response. The agency disagrees. Because accurate data is the foundation of a meaningful accountability system, TEA must take the approach that most encourages accurate data submission. The responsibility for accurate data submission lies with the district or charter school; accordingly, the appeals process is not the appropriate avenue to correct data reported inaccurately by a district or charter school. Districts and charter schools are responsible for providing accurate information to the agency, including information provided on student answer documents. School districts and charter schools have several opportunities to confirm and correct data submitted for accountability purposes. Once these opportunities have passed,

data must be considered final to effectuate the purposes of the academic accountability and accreditation systems.

The following public feedback was received outside the comment period. However, the agency has elected to provide brief responses.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein, LLP, contended that the proposed rule item limits the ratings appeal process as described in Chapter 7 by stating that the basis upon which a ratings appeal would be granted is narrow and limited and does not address concerns of unintended consequences.

Agency Response. The agency disagrees. A school district or charter school can appeal a rating for any reason, but the rule allows a change in rating for only certain specific reasons.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that the rule item does not meet the statutory requirement for Required Improvement under TEC, §39.053(e).

Agency Response. The agency disagrees. In 2015, results of STAAR® assessments in mathematics for Grades 3-8 and STAAR® A and STAAR® Alternate 2 for all subjects and grade levels were excluded from accountability. Because of this, and the inclusion of these assessments in 2016 accountability, a separate required improvement calculation at the index level for districts and campuses that do not meet the accountability target for the index cannot be calculated. Required improvement will be considered when the underlying indicators can be more appropriately used for year-to-year comparisons. Furthermore, TEC, §39.053(e), was repealed by HB 2804, 84th Texas Legislature, Regular Session, 2015.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that in Index 3, economically disadvantaged students are held to higher standards of performance than any other student in the state.

Agency Response. The agency disagrees. The agency does not hold economically disadvantaged students to a higher standard than other students.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that there is a redundancy in index calculations that weights the performance of economically disadvantaged, minority, special needs, and limited English proficient (LEP) students more than other students. Furthermore, the firm stated that economically disadvantaged and minority students failing to meet the standard for Index 1 are counted against the school two more times in Index 3. The firm stated that small schools targeting populations of high-needs students, such as economically disadvantaged, minority, and underserved students, are not only held to higher standards for larger proportions of their student populations than other schools (Index 3), but are also penalized more for students not meeting standards since high-needs students are counted more often in the accountability system. Additionally, the firm contended that small schools serving primarily high-needs students are held to higher standards and the students' test scores count more times in the calculations than other schools.

Agency Response. The agency disagrees. Districts and campuses earn points toward their Index 3 score for not only students who score at the advanced Level III standard, but also those who meet the Level II Satisfactory Standard. Index 3 measures performance from a different perspective than does Index 1. In 2015, most schools with a student population that is more than 90% economically disadvantaged and missed the target for Index 1 did meet the target for Index 3. The performance of special needs, LEP, low socio-economic, and minority students are not calculated at a higher weight than any other statutorily required subpopulation. Furthermore, including an index that measures the performance of students who have historically performed lower than the general student population encourages districts to work to close the performance gap.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein contended that small-numbers analysis penalizes the smallest of schools for previous years' performances and is contradictory to the agency's stance on required improvement.

Agency Response. The agency disagrees. The use of small-numbers analysis provides a three-year average performance used at the indicator level to calculate indicators for small districts and campuses that do not meet minimum-size criteria using current-year data. Furthermore, small-numbers analysis is just as likely to help campuses and districts that performed well in previous years.

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein stated that the rule item provides a limited growth metric that recognizes growth only at the satisfactory level of performance and does not recognize growth toward the college readiness or advanced levels of performance. The firm added that schools with large populations of underserved students exhibit growth but are still penalized for underperformance in Indexes 3 and 4.

Agency Response. The agency disagrees. Index 2 measures growth but does not measure growth toward a specific standard. All students, regardless of whether they meet the satisfactory standard, are included in Index 2, and the growth of those students is measured against growth expectations, not against either the satisfactory or college-readiness standard. Additionally, distinction designations for English language arts/reading and mathematics award credit for greater than expected growth. It is possible for a campus or district, regardless of the demographics of its population, to meet the target for Index 2 (exhibit acceptable growth) and not meet the targets for Index 3 and/or Index 4. The accountability system uses four indices, each measuring a different aspect of performance, and campuses and district must show acceptable performance in three of these aspects (either performance or growth and closing performance gaps and post-secondary readiness).

Public Feedback. The law firm of Schulman, Lopez, Hoffer & Adelstein expressed concerns that the rule item disproportionally affects small schools. The firm contended that schools labeled *Improvement Required* have been smaller and served more minority and economically disadvantaged students than schools labeled Met Standard, which they attribute to a bias in accountability calculations rather than actual performance.

Agency Response. The agency disagrees. The same standards and minimum-size criteria are applied to all districts and campuses. Furthermore, alternative education campuses and charter districts with large populations of at-risk students are evaluated under alternative education accountability provisions.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §39.052(a) and (b)(1)(A), which require the commissioner to evaluate and consider the performance on achievement indicators described in TEC, §39.053(c), when determining the accreditation status of each

school district and open-enrollment charter school; TEC, §39.053, which requires the commissioner to adopt a set of performance indicators related to the quality of learning and achievement in order to measure and evaluate school districts and campuses; TEC, §39.0535, which provides a temporary provision that the commissioner shall assign each district and campus a performance rating not later than August 15 of each year; TEC, §39.054, which requires the commissioner to adopt rules to evaluate school district and campus performance and to assign a performance rating; TEC, §12.104(b)(2)(L), which subjects open-enrollment charter schools to the rules adopted under public school accountability in Chapter 39; TEC, §39.0545, which requires each school district to evaluate and report to the agency its own performance and the performance of each of its campuses in community and student engagement; TEC, §29.081(e), which defines criteria for alternative education programs for students at risk of dropping out of school and subjects those campuses to the performance indicators and accountability standards adopted for alternative education programs; TEC, §39.0548, which requires the commissioner to designate campuses that meet specific criteria as dropout recovery schools and to use specific indicators to evaluate them; TEC, §39.055, which prohibits the use of assessment results and other performance indicators of students in a residential facility in state accountability; TEC, §39.151, which provides a process for a school district or an open-enrollment charter school to challenge an academic or financial accountability rating; TEC, §39.201, which requires the commissioner to award distinction designations to a campus or district for outstanding performance; TEC, §39.2011, which makes charter districts and campuses that earn a *Met Standard* rating eligible for distinction designations; and TEC, §39.202 and §39.203, which authorize the commissioner to establish criteria for distinction designations for campuses and districts.

CROSS REFERENCE TO STATUTE. The amendment implements the Texas Education Code, §§39.052(a) and (b)(1)(A), 39.053, 39.0535, 39.054, 39.0545, 39.0548, 39.055, 39.151, 39.201, 39.2011, 39.202, 39.203, 29.081(e), and 12.104(b)(2)(L).

§97.1001. Accountability Rating System.

(a) The rating standards established by the commissioner of education under Texas Education Code (TEC), §§39.052(a) and (b)(1)(A); 39.053, 39.0535, 39.054, 39.0545, 39.0548, 39.055 , 39.151 , 39.201 , 39.2011, 39.202 , 39.203 , 29.081(e) , and 12.104(b)(2)(L), shall be used to evaluate the performance of districts, campuses, and charter schools. The indicators, standards, and procedures used to determine ratings will be annually published in official Texas Education Agency publications. These publications will be widely disseminated and cover the following:

(1) indicators, standards, and procedures used to determine district ratings;

(2) indicators, standards, and procedures used to determine campus ratings;

(3) indicators, standards, and procedures used to determine distinction designations; and

(4) procedures for submitting a rating appeal.

(b) The procedures by which districts, campuses, and charter schools are rated and acknowledged for 2016 are based upon specific criteria and calculations, which are described in excerpted sections of the *2016 Accountability Manual* provided in this subsection.
Figure: 19 TAC §97.1001(b)

(c) Ratings may be revised as a result of investigative activities by the commissioner as authorized under TEC, §39.056 and §39.057.

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

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

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

Filed with the Office of the Secretary of State on July 22, 2016.

TRD-201603635
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 11, 2016
Proposal publication date: May 27, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

19 TAC §97.1005

The Texas Education Agency (TEA) adopts an amendment to §97.1005, concerning accountability and performance monitoring. The amendment is adopted without changes to the proposed text as published in the May 20, 2016 issue of the *Texas Register* (41 TexReg 3595) and will not be republished. The section describes the purpose of the Performance-Based Monitoring Analysis System (PBMAS) and manner in which school districts and charter school performance is reported. The section also adopts the most recently published PBMAS Manual. The amendment adopts the 2016 PBMAS Manual. Earlier versions of the manual will remain in effect with respect to the school years for which they were developed.

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

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

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

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

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

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

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

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

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

Additionally, the 2016 PBMAS marks the beginning of a transition to a new PL structure for SPED Indicator #11 (SPED African American [Not Hispanic/Latino] Representation), SPED Indicator #12 (SPED Hispanic Representation), and SPED Indicator #13 (SPED LEP Representation). This new structure aligns with the transition already made in the 2015 PBMAS for the special education discipline indicators' PL structure and will, beginning with the 2017 PBMAS, replace the current percentage point difference with a disproportionality rate. Changes to the PBMAS indicators for 2016 are marked in the manual as *"New!"* for easy reference.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 20, 2016, and ended June 20, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed amendment to 19 TAC Chapter 97, Planning and Accountability, Subchapter AA, Accountability and Performance Monitoring, §97.1005, Performance-Based Monitoring Analysis System.

Comment. The Texas Council of Administrators of Special Education (TCASE), the Texas Association of School Administrators (TASA), and the Texas Elementary Principals and Supervisors Association (TEPSA) stated their agreement with proposals in the 2016 PBMAS Manual related to the (1) PL 4 assignments for the SPED Indicators #1(i-v) and #3(i-iv); (2) deletion of the Recommended High School Program and Distinguished Achievement Program indicators; (3) combining of the 6-11 and 12-21 age groups that were used for the SPED Regular Class ≥80% Rate and SPED Regular Class <40% Rate indicators into one 6-21 age group, resulting in the deletion of two indicators; (4) assignment of Report Only designations of significant disproportionality based on race or ethnicity for the 6-21 age groups; and (5) modification of the SPED African American (Not Hispanic/Latino) Representation indicator to include African American students reported with only one race as African American. The Texas School Alliance (TSA) expressed support for this comment.

Agency Response. The agency agrees those proposals in the 2016 PBMAS Manual are appropriate.

Comment. TCASE, TASA, and TEPSA recommended aligning the PBMAS PL 0 cut points for SPED Indicators #1(i-v), #2(i-v), and #3(i-iv) with a 60% Index 1 target used in the state accountability system, contending it is unfair, unaligned, and disjointed to have conflicting thresholds for the same data element. TSA expressed support for this comment.

Agency Response. The agency agrees that the PLs proposed for use in the 2016 PBMAS are different from the Index 1 target proposed in the 2016 state accountability system but disagrees that the PBMAS and the state accountability system are measuring the same data elements. Because the PBMAS and the state accountability systems are designed differently, and the indicators evaluated are substantially different, each system includes targets or PLs appropriate for the purposes, goals, design, and requirements of the particular system. One of the critical differences between the two systems is evident in the distinction between a single, pass/fail accountability index target and a range of PBMAS PL assignments. The comment related to the alignment of standards incorrectly equates a single-standard, pass/fail system (the state accountability system) with a multi-level PL system (PBMAS). Because of this fundamental difference between a single standard/target in the accountability system and a range of PLs in PBMAS, the agency disagrees that

the values associated with assigning PBMAS PLs are unfair. In fact, compared to the single 60% Index 1 target, only districts with passing rates less than 20% on Indicator 1(i-v), 50% on Indicator 2(i-v), and (depending on subject area) less than 19% to 35% on Indicator 3(i-iv) are assigned the lowest PL in the 2016 PBMAS.

Comment. TCASE, TASA, and TEPSA recommended moving SPED Indicator #4 to Report Only to comply with the Every Student Succeeds Act (ESSA), contending ESSA specifically prohibits setting a cap on local districts for the percentage of students who can take an alternate assessment. TSA expressed support for this comment.

Agency Response. The agency disagrees that SPED Indicator #4 sets a cap on local districts for the percentage of students who can take an alternate assessment. Comparisons between the ESSA requirements regarding alternate assessments and SPED Indicator #4 are not appropriate given the purpose, definitions, and methodology are significantly different between ESSA and PBMAS. SPED Indicator #4 does not set a cap on local districts for the percentage of students who can take an alternate assessment, and regardless of how many students are administered the STAAR® Alternate 2 in any district, there are no limits in PBMAS on the number or percent of those results that may be included in other PBMAS indicators that evaluate districts' STAAR® subject-area proficiency rates.

Independent from ESSA's provisions related to alternate assessments, however, there are state and federal requirements that SPED Indicator #4 is specifically designed to meet. These include state statute (TEC, §39.057) that requires the agency to determine when "excessive numbers of students in special education programs under Subchapter A, Chapter 29, are assessed through instruments developed or adopted under Section 39.023(b) [alternate assessments]." Additionally, a key component of the U.S. Department of Education (USDE) state assessments peer review process requires each state to monitor (1) the administration of its state assessments to ensure standardized test administration procedures are implemented with fidelity across districts and schools; and (2) test administration in its districts and schools to ensure appropriate assessments, with or without appropriate accommodations, are selected for students with disabilities under the Individuals with Disabilities Education Act (IDEA), students covered by Section 504, and English language learners so that they are appropriately included in assessments and receive accommodations that are consistent with the state's policies for accommodations; appropriate for addressing a student's disability or language needs for each assessment administered; consistent with accommodations provided to the students during instruction and/or practice; consistent with the assessment accommodations identified by a student's Individualized Education Program (IEP) team or 504 team for students with disabilities, or another process for an ELL; and administered with fidelity to test administration procedures.

The agency is also required to ensure it has implemented a state data audit system that assesses data quality, validity, and reliability of individual student data, including student assessment data. Furthermore, in making state determinations under IDEA, §616(d), USDE holds states accountable for the percentage of children with disabilities who participate in regular statewide assessments compared to the percentage who participate in alternate assessments.

SPED Indicator #4 enables the agency to respond to these, and other, diverse state and federal requirements while at the same time allowing districts make appropriate assessment decisions for students based on individual students' needs and the extent to which students meet the eligibility requirements for a particular assessment or accommodation. Moreover, because the STAAR® Alternate 2 does have specific eligibility requirements, and districts evaluated by the agency's monitors for their students' participation in the STAAR® Alternate 2 have not always been able to provide evidence that justified the administration of the alternate assessment, SPED Indicator #4 will continue to be an important component of the agency's monitoring system.

Comment. TCASE, TASA, and TEPSA recommended that Report Only designations be assigned for SPED Indicators #5, #6, and #7 if, for example, a district earns a PL 0 or 1 on SPED Indicators #1, #2, and #3, contending this would recognize and balance achievement and compliance ratings. The commenters stated that Disability Rights Texas (DRTx) agrees with this recommendation. TSA expressed support for this comment.

Agency Response. The agency disagrees. By design, PBMAS is comprised solely of indicators of student performance and program effectiveness. Additionally, irrespective of a district's performance on SPED Indicators #1, #2, and #3, the PBMAS ensures that districts are held accountable for the extent to which their special education programs effectively ensure that students with disabilities have access to the least restrictive environment (LRE).

Comment. TCASE, TASA, and TEPSA recommended consolidating SPED Indicators #5, #6, and #7 into one indicator with sub-indicators resulting in one PL while changing all sub-indicators to Report Only. TSA expressed support for this comment.

Agency Response. The agency disagrees. SPED Indicators #5, #6, and #7 are designed to meet federal requirements specific to certain discrete education environments and, as applicable, specific racial and ethnic student groups.

Comment. TCASE, TASA, and TEPSA recommended replacing the current calculations for SPED Indicators #8 and #9 and using Senate Bill (SB) 1867, 84th Texas Legislature, 2015, to calculate graduation and dropout rates or to create an appeals process for PL assignments to be adjusted based on data analysis using SB 1867 rate calculations. Additionally, TCASE offered a general recommendation regarding the use of endorsement data in future iterations of PBMAS. The commenters stated that DRTx agrees with these recommendations. TSA expressed support for this comment.

Agency Response. The agency disagrees. SPED Indicators #8 and #9 are designed to meet federal requirements specific to dropout and graduation rates. Provisions under SB 1867 do not meet federal requirements. The comment about future iterations of the PBMAS is outside the scope of the current rule proposal.

Comment. TCASE, TASA, and TEPSA recommended consolidating Indicators #10, #11, #12, and #13 into one Representation and Disproportionality indicator resulting in one PL with sub-indicators as Report Only. TSA expressed support for this comment.

Agency Response. The agency disagrees. However, as noted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70,* available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/, the agency is engaged in an ongoing process of integrating and aligning its special education mon-

itoring responsibilities and as part of that process will continue the phase-in transitional approach to indicator redevelopment evident in previous years' PBMAS releases. While the 2016 PBMAS includes an initial redevelopment of the SPED representation indicators, the agency anticipates it will be the 2017 PBMAS before additional considerations could be implemented with existing agency resources.

Comment. TCASE, TASA, and TEPSA recommended clarifying the identification of a Hispanic student to one in which that is his/her only race in order to align with the new changes proposed for African American identification. TSA expressed support for this comment.

Agency Response. The agency disagrees. Hispanic is an ethnicity, not a race. Commenters may wish to review the USDE's final guidance on the collection and reporting of racial and ethnic data published in the Federal Register on October 19, 2007 (72 Fed Reg 59267).

Comment. TCASE, TASA, and TEPSA recommended consolidating SPED Indicators #14, #15, and #16 into one discipline and disproportionality indicator, resulting in one PL with sub-indicators as Report Only. TSA expressed support for this comment.

Agency Response. The agency disagrees. However, as noted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70,* available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/, the agency is engaged in an ongoing process of integrating and aligning its special education monitoring responsibilities and as part of that process will continue the phase-in transitional approach to indicator redevelopment evident in previous years' PBMAS releases. While an initial redevelopment of the SPED discipline indicators began with the 2015 PBMAS, the agency anticipates it will be the 2017 PBMAS before additional considerations could be implemented with existing agency resources.

Comment. TCASE, TASA, and TEPSA recommended continuing SPED Indicators #14, #15, and #16 as Report Only indicators for two more years. TSA expressed support for this comment.

Agency Response. The comment is outside the scope of the current rule proposal.

Comment. TCASE, TASA, and TEPSA recommended adding an appeals process to incentivize greater student achievement and allow use of the most current data. The commenters stated that DRTx agrees with this recommendation. TSA expressed support for this comment.

Agency Response. The agency disagrees. The data used in the monitoring system are the most current data available to the agency. Districts, however, have earlier access to their data than the agency does. Therefore, districts that engage in robust and ongoing self-monitoring prior to the agency's annual PBMAS reporting can best assure the data the agency uses in its monitoring system reflect, as closely as possible, the most recent state of performance and program effectiveness at the district level. Additionally, although districts have always been able to request a review of incorrect PL assignments, more specific information detailing the process for doing so was formally adopted beginning with the 2010 PBMAS. The agency will continue to make appropriate adjustments to any PL assignments that are determined to be assigned erroneously.

Comment. TCASE, TASA, and TEPSA offered general recommendations concerning the PEIMS, proposed USDE risk ratio calculations, user-friendly communication tools, the State Performance Plan, and residential facilities monitoring. The commenters stated that DRTx agrees with the recommendations related to PEIMS and user-friendly communication tools. TSA expressed support for this comment.

Agency Response. This comment is outside the scope of the current rule proposal.

Comment. DRTx commented that the PBMAS provides a wealth of information regarding students with disabilities; that, in general, it helps hold school districts serving students with disabilities accountable; and that the organization appreciates that the agency has considered changes and updates to the PBMAS Manual over time.

Agency Response. The agency agrees the PBMAS provides a wealth of information regarding students with disabilities and that it helps hold school districts serving students with disabilities accountable.

Comment. DRTx commented that it sees no benefit to changing the number of years' data available for analysis under SPED Indicator #5 from one to two.

Agency Response. The agency disagrees that there is no benefit to increasing the number of years' data available for analysis under SPED Indicator #5 from one to two. As articulated in the proposed rule's guiding principles, PBMAS evaluates a maximum number of school districts by using appropriate alternatives to analyze the performance of districts with small numbers of students. Allowing districts to meet the minimum size requirement (MSR) based on two years of data increases the number of districts that can be evaluated under SPED Indicator #5 each year. The agency anticipates, for example, that nearly 100 more districts will be evaluated under SPED Indicator #5 in the 2016 PBMAS when the number of years' data available for analysis increases from one to two.

Comment. Regarding SPED Indicator #6 and SPED Indicator #7, DRTx commented that maintaining the age reporting categories of 6 to 11 and 12 to 21 better ensures compliance with IDEA's mandate that students with disabilities be educated and served in the LRE. DRTx further stated, given the distribution of students with disabilities by age is not even, and there is a far greater number of students with disabilities ages 12 to 21, blending the four age-based indicators is likely to mask the experiences of younger students with disabilities as those students will be underrepresented in the proposed aggregated indicator. DRTx maintained that ensuring compliance with the LRE mandate necessitates two indicators for mainstreaming by age groupings. One individual commented that elementary school versus middle school versus high school is very different, and putting the indicators together does not give that representation.

Agency Response. The agency disagrees that maintaining the age reporting categories of 6 to 11 and 12 to 21 better ensures compliance with IDEA's mandate that students with disabilities be educated and served in the LRE. The proposed 6-21 age category for SPED Indicator #6 and SPED Indicator #7 is directly aligned with the federally defined age category for LRE.

Comment. DRTx commented that the disproportionality rate calculation proposed under SPED Indicators #6 and #7 for subgroups of students with disabilities from minority backgrounds will be beneficial.

Agency Response. The agency agrees the proposed disproportionality rate calculation for disaggregated racial and ethnic groups will be beneficial.

Comment. DRTx commented that there is no authority to include SPED Indicator #10 and that the indicator is contrary to TEC, §29.010(f).

Agency Response. The agency disagrees. In addition to a wide range of state and federal authority authorizing the agency to monitor districts' special education programs, IDEA, §612(a)(24), requires states to have a process in place to prevent not only the disproportionate representation of children by race and ethnicity, but also the over-identification of children with disabilities. Like all SPED indicators in the 2016 PBMAS, SPED Indicator #10 is consistent with both federal law and TEC, §29.010(f).

Comment. DRTx expressed a grave concern that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate and that the indicator does not account for school districts that do not identify enough students with disabilities. DRTx indicated it has received numerous complaints over the years about referrals not being made because of a concern about this indicator affecting districts' choices.

Agency Response. The agency disagrees that SPED Indicator #10 sets a target for districts to enroll students with disabilities at only a certain rate. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that districts have not initiated referrals because of a concern about any PBMAS indicator and has evidence of a violation of processes and procedures resulting in the denial of special education services to an eligible student, it should file a special education complaint with the agency.

Comment. The Texas Charter Schools Association (TCSA) commented that all schools have a federal responsibility to evaluate and identify all students suspected of having a disability, that SPED Indicator #10 suggests to schools that they are not allowed to have more than 8.5% of students identified as a student with a disability even though they may believe more students should be receiving services, and that SPED Indicator #10 is at odds with the federal Child Find mandate. TCSA further commented that by accepting all students who were identified by previous school districts, by attracting families with children with disabilities, and by having geographic boundaries that often overlap more than one school district, some charter schools may have higher than average special education representation and that SPED Indicator #10, therefore, unfairly penalizes charter schools. TCSA stated that SPED Indicator #10 could directly result in the non-renewal or closure of a charter school as a result of the Charter School Performance Framework. TCSA recommended that SPED Indicator #10 be changed to a Report Only indicator.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to schools that they are not allowed to have more than 8.5% of their students identified as a student with a disability even though they may believe more students should be receiving services. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure students are placed in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications and provide protections against evaluation measures that are racially or culturally discriminatory.

The agency disagrees that SPED Indicator #10 unfairly penalizes charter schools, noting there is no evidence that charters in general are unfairly assigned the lowest PLs for the indicator or that when a charter is assigned the PLs, it is because the charter accepted all students who were identified by previous school districts, attracted families with children with disabilities, or has geographic boundaries that overlap more than one school district. Additionally, the agency notes that although the Charter School Performance Framework is outside the scope of the proposed rule action, it is not aware of any circumstances whereby charter revocation or nonrenewal ensues from a charter school appropriately meeting its obligation to identify and provide a free appropriate public education to all students with disabilities who require special education.

Comment. TCSA recommended that PBMAS offer greater flexibility for school districts and charter schools that are under the Alternative Education Accountability (AEA) system so that the agency's measure of student success matches the mission of the school. TCSA requested a distinction between standard accountability and alternative accountability in the PBMAS, as seen with the AEA.

Agency Response. The agency disagrees. The PBMAS is designed to align with the program requirements and priorities of state and federal programs that apply to all districts serving students in those programs, irrespective of district type or "mission." Additionally, although the AEA system is only applicable to the state accountability system, because the PBMAS was specifically developed to be different from a pass/fail system, it appropriately takes into consideration the diversity that exists across districts, not only in terms of charter districts, but also the considerable diversity that exists among non-charter districts. This diversity is accommodated in the PBMAS through a variety of unique components, including ranges of PL cut points, special analysis, minimum size requirements, and required improvement. Moreover, any district (regardless of type or mission) performing at the lower end of the PBMAS indicators is likely to benefit from the implementation of local improvement efforts given the strong alignment between the PBMAS and other federal accountability measures.

Comment. TSCA commented that, unlike the proposed *2016 Accountability Manual,* the 2016 PBMAS Manual does not address the various issues raised during the administration of the 2016 STAAR®.

Agency Response. The agency disagrees. As noted in Section II of the 2016 PBMAS Manual in the section entitled *Data Sources,* "a data source used in the PBMAS may be unintentionally affected by unforeseen circumstances, including natural disasters or test contractor administration issues. Should those circumstances occur, [the agency] will consider how or whether that data source will be used to ensure PBMAS calculations, performance level assignments, and interventions are implemented appropriately and in alignment with the system's guiding principles." The commissioner of education clarified, in correspondence dated April 29, 2016, that March 2016 test results affected by online testing issues will only be included in the PBMAS if the student meets or exceeds the applicable standard for Satisfactory Academic Performance (http://tea.texas.gov/taa_letters.aspx). Districts received further information from the test contractor on June 1, 2016, regarding the identification of students affected by online testing issues in March 2016.

Comment. TSCA commented that the 2016 PBMAS STAAR® and EOC assessment indicators set a higher cut score than the *2016 Accountability Manual* and that the PBMAS indicators penalize schools that receive anything less than 65% on the mathematics, science, social studies, reading, and writing assessments.

Agency Response. The agency agrees that the PLs proposed for use in the 2016 PBMAS are different from the Index 1 target proposed in the 2016 state accountability system but disagrees that the PBMAS and the state accountability system are measuring the same data elements or that the PBMAS PL cut points are higher and penalize schools that receive anything less than 65% on mathematics, science, social studies, reading, and writing assessments. Because the PBMAS and the state accountability systems are designed differently, and the indicators evaluated are substantially different, each system includes targets or PLs appropriate for the purposes, goals, design, and requirements of the particular system. One of the critical differences between the two systems is evident in the distinction between a single, pass/fail accountability index target and a range of PBMAS PL assignments. The comment related to the alignment of standards incorrectly equates a single-standard, pass/fail system (the state accountability system) with a multi-level PL system (PBMAS). In fact, compared to the single 60% Index 1 target, only districts with passing rates less than 20% on Indicator 1(i-v), 50% on Indicator 2(i-v), and (depending on subject area) less than 19% to 35% on Indicator 3(i-iv) are assigned the lowest PL in the 2016 PBMAS.

Comment. The Arc of Texas (The Arc) commented that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education services and requested the agency reconsider using it as a PL. The Arc suggested the indicator had a significant impact on the number of students enrolled in special education services and that enrollment mirrored the national average at 11.5% in 2006, but quickly dropped to 8.5% after the PL was implemented, which to The Arc indicates school districts are using it as a hard line determinate for the number of students permitted to be enrolled in special education. The Arc stated that roughly 3% of students in Texas are not getting the supports and services they need and that school districts are working to meet the 8.5% rather than identifying students with disabilities.

The Arc further commented that having unidentified students with special needs contributes to the strain on teachers and the consequential teacher shortage. Lastly, The Arc stated that if students are not getting the supports they need and teachers are not prepared to support them, this will be reflected in test scores, dropout rates, and graduation levels.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that a district has denied special education services to an eligible student because of a concern about a PBMAS indicator or that eligible students in Texas are not getting the supports and services they need, it should file a special education complaint with the agency.

Comment. A representative of the Coalition of Human Rights Policy Advocates commented that she has attended many admission, review, and dismissal (ARD) committee meetings where there was a clear indication a student would qualify for special education services and a parent requested an independent evaluation to further advocate for that and that children should receive services if they qualify, not based on an 8.5% cap or limit.

Agency Response. If the commenter has evidence that, during any initial evaluation, a school district engaged in a violation of processes and procedures resulting in the denial of special education services to an eligible student, she should file a special education complaint with the agency. The agency agrees that children should receive services if they qualify and notes that there are many reasons a student may not be eligible based on the considerable amount of evidence the ARD committee is required to consider in making that determination. The agency disagrees there is an 8.5% cap or limit. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Comment. An individual commented that we need to assess our students and decide whether they belong in special education based on the student, not based on an indicator that places the school in trouble for going over 8.5%. The individual further com-

mented that there are a lot of bad outcomes for not identifying 1 out of 3 students.

Agency Response. The agency disagrees that SPED Indicator #10 suggests to school districts they should aim to have an 8.5% enrollment rate for special education. As stated in the proposed rule, a district is obligated to identify and provide a free appropriate public education to all students with disabilities who require special education services. Furthermore, the agency has consistently upheld, through numerous PBMAS rule adoptions, that districts are required to adhere to all state and federal requirements pertaining to serving students with disabilities irrespective of districts' anticipated PL assignment on any PBMAS indicator.

Concurrently, the agency is obligated to ensure districts place students in special education services through an evaluation process that is aligned with IDEA requirements, monitor districts to ensure those placements are not inappropriate, and comply with IDEA's regulations specifically designed to minimize the number of misidentifications, including separate evaluation measures to ensure those placements are not racially or culturally discriminatory. If the commenter has evidence that a district has denied special education services to an eligible student because of a concern about a PBMAS indicator or that eligible students in Texas are not getting the supports and services they need, it should file a special education complaint with the agency.

Comment. DRTx commented that the MSR for SPED Indicators #14, #15, and #16 adopted under the 2015 PBMAS are more appropriate and beneficial to ensure that students with disabilities are not unfairly assigned to disciplinary placements and that the organization sees no benefit to change the MSR numerator to 30. DRTx further stated there is no justification to move away from special analysis for those indicators and that the adoption of a disproportionality rate calculation does not appear to require a larger numerator.

Agency Response. The agency disagrees that the MSR adopted for SPED Indicators #14, #15, and #16 adopted under the 2015 PBMAS are more appropriate and beneficial than the MSR proposed for those indicators in the 2016 PBMAS. While the MSR under the 2015 PBMAS was based on both the number of placements and the number of students, the 2016 MSR for those indicators is based on the number of placements irrespective of the number of students. Prioritizing the number of placements over the number of students recognizes that students with disabilities are not only disproportionately placed in disciplinary settings generally relative to their non-disabled peers, but they are also more likely to be placed repeatedly. MSR for each PBMAS indicator is evaluated annually to ensure an appropriate balance between the proposed rule's guiding principle of maximum inclusion and the essential requirement for statistical reliability and validity.

The agency disagrees that there is no justification to move away from special analysis. The initial redevelopment of the SPED discipline indicators began with the 2015 PBMAS and continues with the 2016 PBMAS. When the redevelopment process has been fully implemented, the agency anticipates it will propose reinstating the special analysis process for these indicators as it has done with other redeveloped PBMAS indicators in the past.

Comment. Enabled Advocacy commented that the number of students for the SPED discipline indicators MSR had tripled and that change was not in alignment with the stated purpose of PBMAS to include as many districts as possible.

Agency Response. The agency disagrees that the number of students for the SPED discipline indicators MSR has tripled. While the MSR under the 2015 PBMAS was based on both the number of placements and the number of students, the 2016 MSR for those indicators is based on the number of placements irrespective of the number of students. Prioritizing the number of placements over the number of students recognizes that students with disabilities are not only disproportionately placed in disciplinary settings generally relative to their non-disabled peers but are also more likely to be placed repeatedly. MSR for each PBMAS indicator is evaluated annually to ensure an appropriate balance between the proposed rule's guiding principle of maximum inclusion and the essential requirement for statistical reliability and validity.

Comment. Enabled Advocacy commented that the PBMAS MSR for the SPED indicators are not in alignment with the stated purpose of PBMAS to include as many districts as possible and that one quarter of districts do not meet the MSR for any of the PBMAS special education indicators. Enabled Advocacy further commented that for the SPED EOC, graduation, and dropout indicators, as many as 60% do not meet MSR.

Agency Response. The agency disagrees that the PBMAS MSR for the SPED indicators are not in alignment with the stated purpose of PBMAS to include as many districts as possible. MSR for each PBMAS indicator is evaluated annually to ensure an appropriate balance between the proposed rule's guiding principle of maximum inclusion and the essential requirement for statistical reliability and validity.

Comment. Enabled Advocacy commented that special analysis does not apply to 14 out of the 16 SPED indicators.

Agency Response. The agency recognizes that the proposed rule's guiding principle of system evolution creates a dynamic in which indicators are added, revised, or deleted in response to changes and developments that occur outside of the system, including new legislation and the development of new assessments. The 2016 PBMAS will be implemented not only within the context of ongoing changes to the assessment system but also within the context of a phased-in, transitional approach to indicator redevelopment in the SPED program area resulting from recommendations adopted in *A Report on the Texas Education Agency's Efforts in Implementing the Provisions of Rider 70,* available at http://tea.texas.gov/Reports_and_Data/Legislative_Reports/Legislative_Reports/. Given those contexts, it is not surprising there will be fewer indicators eligible for the special analysis process (which requires multiple years of comparable data) until all of those changes have been fully implemented.

Comment. One individual requested an analysis of an IEP goal directly correlated to a STAAR® Alternate 2 test item to monitor how well IEPs are being implemented.

Agency Response. This comment is outside the scope of the current rule proposal.

Comment. A school district special services director recommended that all PBMAS indicators that rely on state assessment data be revised to Report Only in light of the ongoing concerns with the STAAR® and STAAR® Accommodated test administrations.

Agency Response. The agency disagrees. As noted in Section II of the 2016 PBMAS Manual in the section entitled *Data Sources,* "a data source used in the PBMAS may be unintentionally affected by unforeseen circumstances, including natural

disasters or test contractor administration issues. Should those circumstances occur, [the agency] will consider how or whether that data source will be used to ensure PBMAS calculations, performance level assignments, and interventions are implemented appropriately and in alignment with the system's guiding principles." The commissioner of education clarified, in correspondence dated April 29, 2016, that March 2016 test results affected by online testing issues will only be included in the PBMAS if the student meets or exceeds the applicable standard for Satisfactory Academic Performance (http://tea.texas.gov/taa_letters.aspx). Districts received further information from the test contractor on June 1, 2016, regarding the identification of students affected by online testing issues in March 2016.

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

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

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 20, 2016.

TRD-201603594
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 9, 2016
Proposal publication date: May 20, 2016
For further information, please call: (512) 475-1497

♦ ♦ ♦

TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

The Texas Parks and Wildlife Commission (Commission) in a duly noticed meeting on June 20, 2016 adopted the repeal of §§65.90 - 65.94 and new §§65.90 - 65.99 concerning Chronic Wasting Disease - Movement of Deer. New §§65.90 - 65.92 and 65.94 - 65.98 are adopted with changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2853). The repeals, new §65.93, and new §65.99 are adopted without changes and will not be republished.

Change to Definitions

The change to §65.90, concerning Definitions, adds a definition for "Interim Breeder Rules." The rules as adopted, include provisions predicated upon compliance with previous rules. Therefore, a definition of "Interim Breeder Rules" was added to provide a shorthand reference for those rules.

Changes to General Provisions

The change to §65.91, concerning General Provisions, alters subsection (a). As proposed, the subsection provided that to the extent any provision of the proposed new rules conflicted with any other provision of Chapter 65, the new rules would control; however, Chapter 65, Subchapter B, Division 1 contains provisions regarding Chronic Wasting Disease (CWD) management zones that are intended to function on their own terms. Therefore, it is necessary to clarify that fact.

The change to §65.91 also adds new subsection (d) to clarify that a deer breeding facility is prohibited from moving deer out of the breeding facility if such movement is prohibited under a hold order or quarantine imposed on the breeding facility by the Texas Animal Health Commission (TAHC). Under the rules as proposed, and as adopted, the lawful movement of breeder deer is predicated on a facility's designation as Movement Qualified (MQ). Although the provisions of §65.99 as adopted, concerning Violations and Penalties, provide that a person who possesses or receives white-tailed deer or mule deer pursuant to a Triple T permit, DMP or a deer breeder permit is subject to the provisions of TAHC regulations regarding Chronic Wasting Disease, subsection (d) was clarified to state that if a facility is prohibited from moving deer under a hold order or quarantine issued by TAHC, movement of deer under those circumstances is prohibited.

In addition, a change was made to §65.91(e) (which was §65.91(d) as proposed) to modify the cross-reference to the subsection regarding receipt of deer by a release site. The rules as adopted adjust the time period for release site testing. As a result, it is more appropriate to reference the entirety of §65.95(c) regarding release sites, rather than the more specific §65.95(c)(1)(D).

Changes to CWD Testing

The change to §65.92, concerning CWD Testing, clarifies who may collect the tissue upon which ante-mortem tests are to be conducted and provides additional detail to ensure that a valid sample is collected. As proposed, §65.92(b) required ante-mortem test samples be collected "by or under the supervision of a qualified licensed veterinarian." However, to ensure compliance with statutory requirements regarding the practice of veterinary medicine, as well as regulatory requirements of TAHC and the Texas Board of Veterinary Medical Examiners regarding the collection of ante-mortem samples, the change to §65.92(b) provides that ante-mortem samples must be collected by a "licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC." In addition, to ensure that samples are sufficient to accommodate ante-mortem testing, §95.92(b) was modified to require that at least six lymphoid follicles be collected.

The change to §65.92(b) also eliminates the 16-month residency requirement for ante-mortem testing of breeder deer imposed by proposed subsection (b)(2). The intent of proposed subsection (b)(2) was to ensure that animals subjected to ante-mortem testing had been in a facility long enough to have contracted CWD if it were present. However, while a deer with a residency in a facility of less than 16 months may not have had sufficient incubation time to detect CWD if it was contracted in that facility, a test of that deer would provide information about any previous facility in which the deer was held. Therefore, the residency requirement was eliminated.

Another change to §65.92 reduces the interval of ante-mortem testing eligibility established in subsection (b)(3) from 36 months to 24 months. The intent of proposed subsection (b)(3) was to ensure that the epidemiological value of ante-mortem testing is not compromised. Repeated testing of a single animal for which "not detected" test results have been obtained would compromise the value of ante-mortem testing within a deer herd. In addition, ante-mortem testing is an invasive procedure that removes tissues and those tissues do not immediately regenerate; therefore, after several biopsies, sample quality may diminish. However, because most breeding facilities contain fewer than 50 deer, the rule as proposed would have made compliance with the 36-month interval between testing difficult for small herds. In addition, veterinarians have indicated that testing a deer every 24 months can be accomplished without significantly compromising sample quality. Therefore, the department reduced the testing frequency interval.

The change to proposed §65.92 also removes proposed subsection (c)(3), which imposed a five-month "window" for ante-mortem test results to be submitted to the department for purposes of increasing status. The rules as proposed included a mechanism to enable a deer breeding facility to achieve Transfer Category (TC) 1 by annually submitting "not detected" ante-mortem CWD tests of at least 25 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and annual post-mortem tests of at least 50 percent of eligible mortalities. As a result, the proposal included a testing "window" to preserve administrative efficiency by restricting testing for the purpose of "upgrading" from a lower status to the time of year when deer breeders are typically handling deer for other purposes. However, because this option for "upgrading" has been eliminated as described in the discussion of changes to §65.95, the department has determined that year-round submission of ante-mortem test results can be sustained.

The change to §65.92 also clarifies who may collect tissue samples for post-mortem CWD testing. As proposed, §65.92(c) (proposed §65.92(d)) stipulated that to be valid for testing, an obex had to be collected by a qualified licensed veterinarian or other person certified by TAHC, and that a medial retropharyngeal lymph node collected by a qualified licensed veterinarian or other person approved by the department could be submitted in addition to or in lieu of an obex. In the interests of simplification, the provision has been altered to state that a sample is not valid unless it was collected by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

Finally, the change to §65.92 alters the ratio of ante-mortem test results that may be substituted for post-mortem test results in subsection (d)(proposed subsection (e)). As proposed, the ratio was two ante-mortem test results for every required post-mortem test result, provided at least two eligible mortalities had occurred in the facility during the corresponding reporting year and post-mortem test results equivalent to 50 percent of the total required results had been submitted. In other words, ante-mortem test results could be substituted for no more than 50 percent of the required post-mortem test results. As adopted, that ratio is three ante-mortem test results for every required post-mortem test result (i.e., a 3:1 ratio), but there is no limit on the number of post-mortem tests for which ante-mortem tests can be substituted. An ante-mortem to post-mortem ratio that is higher than 1:1 is necessary to compensate for the fact that deer that have died from natural causes are far more epidemiologically valuable than live and apparently healthy deer selected for ante-mortem testing. A deer that has died naturally, by definition, died as a result of some causal agent. As a result, it is more likely that a deer that has died naturally would test positive for CWD than an apparently healthy deer. During the public comment period, there was discussion of eliminating the maximum use of ante-mortem substitution. However, if no mortalities are tested, a higher number of ante-mortem tests would be required to achieve the same epidemiological benefits as post-mortem tests, perhaps as much as 6:1. There was stakeholder input suggesting a 4:1 substitution if less than 50 percent of mortalities were tested, and retaining the 2:1 ratio if the number of post-mortem tests submitted was equal to at least 50 percent of eligible mortalities. The department also received public comment and discussion suggesting the simplification of the regulations wherever possible. Therefore, in an effort to simplify this requirement, an ante-mortem substitution ratio of 3:1 was selected. From an epidemiological perspective, while more testing is preferred, a substitution ratio of 3:1 was determined to be adequate.

Changes to Breeding Facility Minimum Movement Qualifications (§65.94) and Movement of Breeder Deer (§65.95) - Generally

With regard to the changes to §65.94, concerning Breeding Facility Minimum Movement Qualification, and §65.95 concerning Movement of Breeder Deer, several changes were made in response to comments, stakeholder input, and public testimony.

The rules as proposed and as adopted (as well as the Emergency and Interim Breeder Rules) establish three categories of breeding facilities based on level of epidemiological risk, with Transfer Category 1 (TC 1) representing the lowest risk of harboring or transmitting CWD and TC 3 representing the highest risk. Similarly, three levels of release sites (sites onto which breeder deer had been liberated) are established, also based on

the level of epidemiological risk, with Class I release sites representing the lowest risk of harboring or transmitting CWD and Class III release sites representing the highest risk.

The Emergency Rules and the Interim Breeder Rules required testing of hunter-harvested deer from sites on which breeder deer had been released, except for release sites that received deer only from Transfer Category 1 (TC 1) facilities. Under the Emergency and Interim Breeder Rules, only breeding facilities that had achieved "fifth year" or "certified status" in the TAHC CWD Herd Certification Program were TC 1 facilities.

As the department worked with stakeholders to develop the proposed rules, deer breeders continued to state that the elimination or reduction of testing at release sites was important to them. Out of the facilitated process, described elsewhere herein, came additional options for achieving TC 1 status that also incorporated ante-mortem testing. More specifically, three additional options were developed to enable breeding facilities that were not "fifth year" or "certified status" facilities to obtain TC 1 status and to provide for the use of ante-mortem tests to achieve TC 1 status more quickly.

As with previous rules, the proposed rules also established minimum testing requirements that a deer breeder must meet to transfer deer to another facility, including a release site. A breeding facility that met the minimum requirements for the transfer of deer (i.e., a breeding facility that was "movement qualified" or "MQ") but did not meet the requirements for being a TC 1 facility (and was not a TC 3 facility) would be classified as TC 2 facility. Because TC 2 represented a higher risk of harboring or transmitting CWD than a TC 1 breeding facility, under the proposed rules, a release site (which was not a Class III release site) onto which a deer from a TC 2 facility was liberated (classified as a Class II release site) would be required to submit CWD tests for hunter-harvested deer as provided in the rules.

During the public comment period and in testimony before the Commission, concerns continued to be raised about the continuation of required testing at release sites that received deer from TC 2 facilities (Class II release sites). As a result of those comments and additional discussions among stakeholders, the rules, as adopted, provide for the elimination of release site testing at Class II release sites after the 2018-2019 hunting year. To accomplish the elimination of Class II release site testing, it was necessary to adjust the provisions for classifying a facility as MQ or NMQ so that the probability of detection of CWD in all breeding facilities would increase to an acceptable level by the time no release site testing (except for Class III release sites) was required. As a result, changes were made in the rules as adopted to §65.94 concerning Breeding Facility Minimum Movement Qualifications and to §65.95 concerning Movement of Breeder Deer. In the rules as proposed and as adopted, the classification of TC 3 for breeding facilities and Class III for release sites is reserved for those breeding facilities and release sites that have been received deer from an originating facility that is a TC 3 facility, received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, and have not been released from a TAHC hold order).

Changes to Breeding Facility Minimum Movement Qualifications (§65.94)

Changes were made to §65.94 concerning Breeding Facility Minimum Movement Qualifications to clarify the MQ requirements applicable upon the rules' effective date, to incorporate the modified MQ requirements that will go into effect April 1, 2017, and to make minor clarifying changes.

With regard to §65.94(a)(1)(A), under the proposed rules as well as the adopted rules, upon the rule's effective date, a breeding facility will be MQ if it has complied with the historic CWD testing requirement which required submission of CWD "not detected" test results for at least 20 percent of the total number of eligible mortalities that occurred in the facility since May 23, 2006. However, to accommodate facilities (mostly newer facilities) that had experienced a low number of mortalities, a provision was added that incorporated §65.604(d)(2) of the previous MQ requirements to provide that no testing was required if a breeding facility has had less than five eligible mortalities from May 23, 2006 through March 31, 2016.

The change to §65.94(a)(1)(B) sets out the MQ testing standard that will be effective with the reporting year beginning April 1, 2017. Under the rules as proposed, a deer breeder seeking to be MQ would be required to submit a number of "not-detected" post-mortem test results equal to least 50 percent of the total number of eligible mortalities in the facility each year, and beginning April 1, 2021, a minimum number of post-mortem "not detected" results for each of the previous five years of 2.25 percent of the eligible-aged population in the breeding facility. This standard is replaced with a requirement that to be MQ, a deer breeder must submit "not detected" test results for at least 80 percent of the eligible mortalities that occurred in the facility during the previous reporting year (i.e., the report year that ended March 31), with a minimum annual number of post-mortem "not detected" results for facilities that have been permitted for six months or more that is equal to at least 3.6 percent of the eligible aged population in the breeding facility. As explained below, 3.6 percent is 80 percent of the average expected annual mortality in a breeding facility. In addition, a provision was added to clarify that a breeding facility that had achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program meets the testing requirements to be considered MQ.

The change to §65.94 also inserts the word "or" after subsection (a)(3) because the list of criteria in subsection (a) is intended to be a list of criteria that are individually grounds for being designated NMQ.

The change to §65.94 also alters subsection (a)(4) to clarify that in addition to the recordkeeping and reporting provisions of 31 TAC §65.608, a permittee must be compliant with the recordkeeping and reporting provisions of the rules as adopted.

Finally, the change to §65.94 alters subsections (b) and (c) to clarify that "facility" as used in those subsections means deer breeding facility, and alters subsection (d) by replacing the word "received" with the phrase "have been in possession of," which is intended to clarify that the provision applies to deer that were ever in a facility as well as to deer that are within the facility at the current time.

Changes to Movement of Breeder Deer

The changes to §65.95, concerning Movement of Breeder Deer, consists of several alterations. As noted in the general discussion of the changes to §65.94 and §65.95, as a result of public comment and extensive outreach to the regulated community and stakeholders, the rule as adopted provides a testing program that eventually eliminates release site testing for all release sites (except for Class III release sites), and offers an ante-mortem testing component as a pathway for TC 2 breed-

ing facilities to achieve TC 1 status (which would eliminate release-site testing obligations immediately).

Proposed §65.95(b)(1) would have assigned TC 1 status to a breeding facility if it satisfied one of three testing regimes: (1) submission of "not detected" post-mortem test results for at least 80 percent of eligible mortalities in each of the preceding five report years and then 80 percent of eligible mortalities annually thereafter, provided the "not detected" post-mortem test results for the five-year period were equal to or greater than the annual sum of the eligible-aged population and the eligible mortalities during the five-year period, multiplied by 3.6 percent; (2) a one-time ante-mortem "not detected" test result for 80 percent of the population of eligible-aged deer in the facility, followed by annual "not detected" post-mortem testing of 80 percent of eligible mortalities, provided that after April 1, 2021, "not detected" post-mortem test results for the preceding five-year period are equal to or greater than the sum of the eligible-aged population in the facility at the end of each report year and the eligible mortalities during the five-year period, multiplied by 3.6 percent; or (3) the annual submission of "not detected" ante-mortem test results for 25 percent of the facility's eligible-aged population and 50 percent of eligible mortalities.

In response to comments, §65.95(b)(1) was modified to simplify the mechanisms for obtaining TC 1 status by providing two methods of achieving TC 1 status, in addition to the "fifth year" or "certified" TAHC herds. The first method recognizes that there are some deer breeding facilities that, although not "fifth year" or "certified status," have been testing at a high level for a number of years. Under the first method, a breeding facility will be designated as a TC 1 breeding facility if it has submitted "not detected" test results for at least 80 percent of the total number of eligible mortalities over the preceding five report years, provided the number of "not detected" results is equivalent to or greater than the sum of the eligible-aged population in the facility at the end of each report year and the eligible mortalities during the five-year period, multiplied by 3.6 percent. This option is similar to the option provided in §65.95(b)(1)(A)(ii) of the proposed rules. However, the rule as adopted allows TC 1 status to be attained by providing "not detected" test results for 80 percent of the *total* number of eligible mortalities over the preceding five-year period, rather than 80 percent of eligible mortalities in *each year* of the preceding five-years.

In lieu of the other two options contained in proposed §65.95(b)(1)(A)(iii) and (iv) for achieving TC 1 status more quickly, the rules as adopted provide a simplified option for achieving TC 1 status more quickly. Under this option, a deer breeder can obtain TC 1 status by submitting "not detected" ante-mortem test results for at least 50 percent of the eligible-aged deer in the facility as of the date on which ante-mortem testing begins. However, to facilitate the transition to the new rules, and recognizing that in anticipation of the adoption of these rules some deer breeders may have already begun conducting ante-mortem testing but not yet tested 50 percent of eligible-aged deer, a temporary provision is included to allow a breeding facility that submits "not detected" ante-mortem test results for at least 25 percent of the eligible aged deer in the facility to be temporarily classified as TC 1; however, the facility must provide the balance of the required tests by May 15, 2017.

In addition, the change eliminates proposed §65.95(b)(1)(B) regarding the failure to comply with TC 1 testing requirements. Under the rules as proposed, a TC 1 breeding facility that ante-mortem tested 80% of the eligible deer in the facility but failed to submit the required post-mortem test results to retain its TC 1 status would be reduced in status to a TC 2 facility, but would have been given a 60-day window to submit the substitution test results necessary to regain TC 1 status. If, however, a TC 1 breeding facility that had been reduced in status for failure to provide sufficient post-mortem test results did not provide sufficient substitution test results within the 60-day period to regain TC 1 status, the breeding facility would not be eligible to regain TC 1 status for two years. This was necessary due to the higher minimum post-mortem testing standard set forth for TC 1 status as opposed to the lower standard for basic MQ testing requirements. Conversely, the MQ requirements in §65.94(b), as proposed and as adopted, provide that a breeding facility that has been designated as NMQ for failure to comply with the MQ testing requirements, would be restored to MQ upon submission of the required test results. Because the adopted rule applies a standard MQ testing requirement to all facilities, it is unnecessary to retain the requirement for regaining TC 1 status within 60-days, as the provisions for regaining MQ status will suffice, so long as lower status breeder deer are not introduced into the TC 1 facility.

The change to §65.95(b) also modifies proposed paragraph (3)(A) and (C) to add the word "quarantine" to the list of TAHC actions that could result in the designation of a breeding facility as a TC 3 facility. A TAHC quarantine would prevent movement of deer. As a result, it is necessary to include quarantine, in addition to other TAHC actions impacting the movement of deer.

Several changes are made to §65.95(c), which addresses release sites. As proposed, §65.95(c)(1)(A) stipulated that a release site consisted solely of the specific tract of land to which deer are released and acreage designated as a release site. However, commenters were concerned that this provision would prevent a landowner from altering the release site by removing cross-fencing or making other changes following changes in ownership. The department has determined that such release site modifications need not be prohibited, although any testing obligations should also apply to the new acreage. Therefore, the change allows modification of the release site description provided the department is notified prior to the physical modification.

As proposed, §65.95(c)(1)(B) stipulated that liberated breeder deer must have complete, unrestricted access to the entirety of the release site. This provision was intended to ensure clarity regarding the sites on which release site testing obligations apply. As a result of public comment, the department determined that there are circumstances under which a landowner legitimately should be able to exclude deer from certain areas, such as landing strips and crops. Therefore, the change allows the exclusion of deer for purposes of human safety or the protection of agricultural resources.

As proposed, §65.95(c)(1)(C) stipulated that breeder deer could be liberated only to release sites surrounded by a fence capable of retaining deer at all times and that the owner of the release site was required to ensure the integrity of gates and fencing. As a result of public comment, the department determined that it was necessary to acknowledge that the provision is subject to mitigating circumstances such as natural disasters and other unintentional disruptors. Therefore, the change specifies that infrastructure integrity be maintained under "reasonable and ordinary" circumstances.

As proposed, §65.95(c)(1)(D) would have release-site testing requirements continue in effect for five consecutive years following

the date of each liberation that resulted in release-site testing. With the elimination of the proposed release-site testing requirements after March 1, 2019 (except for sites that have not submitted the required test results), the five-year time period is no longer necessary. In addition, for consistency with subsection (c)(3), a statement was added regarding the requirement that a release site submit release site test results until the release site's testing obligations have been satisfied, regardless of the March 1, 2019 general expiration of Class II release site testing.

The change to §65.95 also rewords subsection (c)(2) to provide that a facility will be considered a Class I release site if (in addition to not being a Class II of Class III release site), it receives deer only from a TC 1 facility after August 15, 2016. As noted elsewhere in this preamble, the department intends for the rules to go into effect August 15, 2016. Under the provisions of §65.98 as adopted, a release site that is in compliance with the provisions of the Interim Breeder Rules as of August 15, 2016 will not be subject to release site testing until deer are liberated onto the release site that would trigger release site testing under the rules as adopted. Since release sites that were compliant with the Interim Rules will be "reset," it is necessary to clarify that the release of deer from other than a TC 1 facility prior to August 15, 2016 will not result in a compliant release site being considered other than a Class I release site, so long as the only breeder deer released on the release site after August 15, 2016, are from TC 1 facilities.

The change to §65.95 also alters (c)(3) to replace the testing obligations for Class II release sites with a less complicated standard and to provide for the expiration of Class II release site testing. As discussed earlier in this preamble, the changes to the proposed rulemaking are intended to address public comment and reflect intensive interactions with the regulated community and stakeholder groups, particularly the desire to minimize or eliminate release-testing obligations. Therefore, the change to §65.95(c) requires Class II release sites to test the first deer harvested and every deer harvested after the first deer, with no release-site owner required to test more than 15 deer in a single season for each year that release site testing is required. As proposed, Class II release site owners would have been required to provide "not detected" test results for 50 percent of harvested liberated breeder deer or, if no liberated breeder deer were harvested, 50 percent of hunter-harvested deer, and would have been required to test for a minimum of five years following any release of TC 2 deer. However, in an effort to simplify the requirements, which will in turn facilitate compliance and enforcement, the rules as adopted provide for testing up to the first 15 deer harvested at the release site. After analyzing 2015-2016 harvest data at Class II release sites, the department concluded that requiring every deer harvested at a site (but not more than 15) to be tested would enhance the level of release site testing at most sites. Thus, the change results in a simpler standard that is easier to comply with and enforce while remaining epidemiologically efficacious.

The change to §65.95(c)(3) also provides for the expiration of release site testing for Class II release sites in subparagraph (C). As discussed above, in response to comments and concerns about release site testing, required release site testing is being eliminated after March 1, 2019. However, the expiration of release site testing does not obviate the requirement that release sites provide required tests. Therefore, §65.95(c)(3)(C) provides that release site testing for Class II release sites expires on March 1, 2019, for release sites that are in compliance with the release site testing requirements. For release sites that are not compliant with release site testing requirements, the requirements shall continue until the required tests have been submitted.

Finally, the change to §65.95 adds an inadvertently omitted pronoun "it" and to add the term "quarantine" in subsection (c)(4)(A)(ii), for the same reason discussed in the change to §65.95(b) previously in this preamble.

Changes to Movement of DMP Deer

The change to §65.96, concerning Movement of DMP Deer, replaces the CWD testing obligations in proposed paragraph (1)(B) with a requirement for the landowner of the release site to test the first hunter-harvested deer and every hunter-harvested deer thereafter, but no more than 15 hunter-harvested deer are required to be tested in a single season. The change is made for the same reasons discussed in the change to testing requirements for Class II release sites discussed in the changes to §65.95(c).

The change to §65.96(1) also adds subparagraph (C) to clarify the expiration of release site testing on March 1, 2019, and the obligation to continue to provide test results until test result submission requirements have been met, regardless of the March 1, 2019 release site testing expiration. The reason for this change is the same as was discussed in connection with the changes to §65.95(c)(3)(C), above.

The change to §65.96 also alters paragraph (2) to clarify that the department will not authorize the transfer of deer to a DMP facility from a Class III release site or from a release site or breeding facility that is not in compliance with the testing requirements of the section. As proposed, the transfer of a deer to a DMP facility from a TC 3 breeding facility would not be authorized. However, like deer in a TC 3 breeding facility, deer from a Class III release site or a release site that is not in compliance with applicable rules also pose a higher risk of having been exposed to CWD. A Class III release site is an unsuitable source of deer for DMP activities because it has received exposed deer or is under a hold order or quarantine issued by TAHC. Also, under §65.97 as proposed and as adopted, the department will not issue a Triple T permit for any trap site that has received breeder deer within the previous five years. A Triple T permit is the only method by which deer may be introduced to a DMP facility other than by deer breeder permit or by trapping of free-ranging deer resident on the property for which the DMP is issued. Additionally, any source of deer that is delinquent or deficient in complying with CWD testing obligations should not be authorized to transfer deer because of the possibility of spreading CWD. The change to §65.96(2) will provide greater consistency with the provisions regarding Triple T permits in §65.97.

Changes to Testing and Movement of Deer Pursuant to Triple T or TTP Permit

The change to §65.97(a)(1) stipulates that "unless expressly provided otherwise in this section," the disease detection provisions of 31 TAC §65.102 cease effect upon the effective date of the new section. Because of the change to §65.97(a)(5) to reference the marking requirements of §65.102, it is necessary to recognize that a provision of §65.102 will continue to apply.

The change to §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, alters subsection (a)(5) to clarify that the tagging requirements imposed by the rule as adopted are in addition to existing identification requirements imposed by current regulation at 31 TAC §65.102. The depart-

ment received several comments concerning the tagging of deer released pursuant to a Triple T permit. This change is necessary to ensure clarity. In addition, as a result of public comment, the testing requirement for Triple T release sites was eliminated. As a result, provisions requiring or referencing release site testing in subsection (a)(9)-(12) have been removed. The requirement to conduct trap site testing, in addition to the limitations on the sites from which deer may be trapped, has been determined to be epidemiologically sufficient to dispense with required Triple T release site testing.

Changes to Transition Provisions

The change to §65.98, concerning Transition Provisions, alters the provisions of proposed subsection (c) to harmonize the rule with the changes made to §65.94 and §65.95, discussed earlier in this preamble. The change allows Class I release sites that receive breeder deer from a TC 2 breeding facility after the effective date of the rule to be designated Class I at the close of the 2016/17 hunting year if release site complies with all testing requirements in that season and the source breeding facility or facilities have subsequently become TC 1 or all deer received from TC 2 source facilities are harvested and tested with "not detected" test results. In addition, subsection (d)(1) (subsection (c)(1) as proposed) was modified to specify that noncompliant release sites must comply with the adopted rules' requirements for three "consecutive" years. In addition, subsection (d)(2) (subsection (c)(2) as proposed) was modified to clarify that noncompliant release sites would be ineligible to receive deer transferred pursuant to a DMP, in addition to a Triple T permit.

Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for better wildlife management (popularly referred to as "Triple T" permits). In addition, the department may issue permits authorizing the trapping, transporting and processing of surplus white-tailed deer (popularly referred to as TTP permits) and permits for the removal of urban white-tailed deer.

Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer within a facility for breeding purposes and the release of such deer. A deer breeder permit affords deer breeders certain privileges, such as (among other things) the authority to buy, sell, transfer, lease, and release captive-bred white-tailed and mule deer, subject to the regulations of the Commission and the conditions of the permit. Breeder deer may be purchased, sold, transferred, leased, or received only for purposes of propagation or liberation. There are currently approximately 1,200 permitted deer breeders (operating more than 1,250 deer breeding facilities) in Texas.

Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, and Deer Management Permit (DMP) regulations for white-tailed deer at 31 TAC Chapter 65, Subchapter D, the department may allow the temporary possession of free-ranging white-tailed or mule deer for propagation within an enclosure on property surrounded by a fence capable of retaining deer. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition, department regulations authorize the introduction of a deer from a deer breeding facility into a DMP facility for propagation. Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T.

The new rules include requirements regarding the release, retention and movement of deer pursuant to DMPs, Triple T permits, TTP permits, and deer breeder permits.

CWD Background

The department and TAHC have been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

As a result, the department and the TAHC have worked closely to protect susceptible species of exotic and native wildlife from CWD, and developed a Chronic Wasting Disease Management Plan (the Plan) to guide the department and TAHC in addressing risks, developing management strategies, and protecting big game resources from CWD in captive or free-ranging cervid populations. The most recent version of the Plan was finalized in March 2015. Much of the information provided in this preamble is also contained in the Plan.

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, black-tailed deer, elk, red deer, sika, moose, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob disease (vCJD) (found in humans). Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans.

What is known is that it is a progressive, fatal disease with no known immunity or treatment. CWD is known to occur via natural transmission in white-tailed deer, mule deer, black-tailed deer, red deer, sika deer, elk, and moose (Sohn et al. 2011, CWD Alliance 2012, Saunders et al. 2012). There are two primary sources of exposure to CWD for uninfected deer: (1) CWD infected deer, and (2) CWD contaminated environments (Williams et al. 2002, Miller et al. 2004, Mathiason et al. 2009). It is believed that some TSE prions may appear spontaneously and sporadically, but there is no evidence of spontaneous CWD (Chesebro 2004). The presence of infected deer over time increases the number of infectious CWD prions in the environment. As CWD becomes established in an area, environmental contamination may become the primary source of exposure for uninfected deer. Conversely, in areas where CWD is not established, and where the environment is relatively uncontaminated, direct animal contact is considered the most likely source of transmission of CWD to uninfected deer.

CWD is an additional mortality factor in deer populations, and data indicate that mortality rates can surpass fawn recruitment in local populations with high CWD prevalence. This additive mortality can result in declining population trends. CWD does not have the immediate short-term impacts to deer populations that may be seen with some other diseases such as anthrax or

epizootic hemorrhagic disease (EHD); however, insidious, persistent diseases that increase in prevalence in early years with no noticeable impacts, such as CWD, may be more likely to influence long-term population dynamics. CWD prevalence is much higher and has increased more rapidly in some populations than what is often proclaimed. For example, the Wyoming Game and Fish Department has been monitoring an infected mule deer population in southeast Wyoming since 2001, when there were an estimated 14,393 mule deer and a CWD prevalence of 15%. Ten years later, the disease prevalence was 57% and the mule deer population was estimated at less than 7,500 deer.

In addition, studies have found that CWD-positive deer were much more likely to die as compared to their uninfected counterparts. While CWD-positive deer in the studies that did survive to the clinical stages of the disease did eventually succumb to CWD, preclinical CWD-positive animals were also shown to be more vulnerable to other mortality factors such as predation, hunter harvest, and vehicle collisions.

In early stages of infection, limiting the growth of environmental contamination through the reduction of infected individuals may offer some control in limiting disease prevalence and distribution (Wasserberg et al. 2009, Almberg et al. 2011). However, infected individuals on the landscape serve as a reservoir for prions which will be shed into the environment. Prions are shed from infected animals in saliva, urine, blood, soft-antler material, and feces (Gough et al. 2009, Mathiason et al. 2009, Saunders et al. 2012). There are no known management strategies to mitigate the risk of indirect transmission of CWD once an environment has been contaminated with infectious prions. This makes eradication of CWD very difficult, if not impossible in areas where CWD has been established for a long period before initial detection. Although the incubation period for CWD is not fully understood, a susceptible species infected with CWD is expected to display symptoms within five years after infection.

As CWD is invariably fatal, a high prevalence of the disease in free-ranging populations has been correlated to deer population declines. Human dimensions research suggests that hunters will avoid areas of high CWD prevalence (See, e.g. Duda 2011, Needham et al. 2007, Vaske 2009, Zimmer 2012). The potential implications of CWD for Texas and its annual, multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and controlled.

The number of states and provinces in which CWD has been discovered has steadily increased in the past decade, forcing many state and provincial wildlife agencies, hunters, and stakeholders to confront the myriad of consequences and implications this disease presents. Implications of CWD are often centered on the anticipated, or unknown potential impacts to wild cervid populations, most notably concerns for population declines resulting from infected herds. Disease eradication is expected to become less attainable as CWD becomes more established in a population, emphasizing the criticality of a sound CWD surveillance and response plan. Of course, disease prevention is the best approach to protecting cervid populations and avoiding social and economic repercussions resulting from CWD or other wildlife diseases (Sleeman & Gillin 2012).

In addressing CWD, the CWD Management Plan sets forth three major goals: (1) Minimize CWD risks to the free-ranging and captive white-tailed deer, mule deer, and other susceptible species in Texas; (2) Establish and maintain support for prudent CWD management with hunters, landowners, and other stakeholders; and (3) Minimize direct and indirect impacts of CWD to hunting, hunting related economies, and conservation in Texas. The department is guided by these three goals in the development of rules needed to address CWD. The intent of the new rules is to increase the probability of detecting and containing CWD where it exists.

Discovery of CWD

As noted above, the department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 45,000 "not detected" CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 20,000 "not detected" test results as well. The intent of the proposed new rules is to reduce the probability of CWD being spread from facilities where it might exist and to increase the probability of detecting and containing CWD if it does exist.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Under the provisions of the Agriculture Code, §161.101(a)(6), CWD is a reportable disease and requires a veterinarian, veterinary diagnostic laboratory, or person having care, custody, or control of an animal to report the existence of CWD to TAHC within 24 hours after diagnosis. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the five years preceding the discovery of CWD in the index facility, the index facility had accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and two DMP facilities in Texas, as well as two destinations in Mexico). The department estimates that more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility. At least one of those locations, a deer breeding facility in Lavaca County, was also confirmed to have a CWD positive white-tailed deer acquired from the index facility.

Heightened testing requirements resulted in additional discoveries. A total of 25 white-tailed breeder deer have now been confirmed positive at four facilities (including the index facility). A total of four CWD positive deer were found in the index facility. Five CWD positive deer that originated from the index facility were discovered in the Lavaca County facility. A CWD positive deer was harvested from a Medina County release site and another CWD positive deer was sampled in the associated breeding facility located on the same ranch. While this breeding facility is epidemiologically linked to the index facility, neither positive deer at this location originated from the index facility. More recently, another CWD positive deer was reported in another Medina County deer breeding facility and subsequent testing revealed an additional thirteen CWD positive deer from the same facility, totaling 14. A free-ranging hunter-harvested mule deer in Hartley County was also confirmed to have CWD, as well as another hunter-harvested deer in the Hueco Mountains.

Previous CWD Rulemaking

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory re-

quirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and TAHC convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules (31 TAC §§65.80-65.88), among other things, require deer harvested in a specific geographical area (the Containment Zone), to be presented at check stations to be tested for CWD.

In response to the first discovery of CWD in a deer breeding facility in Medina County, the department adopted emergency rules on August 18, 2015 (40 TexReg 5566) to address deer breeding facilities and release sites for breeder deer. The department followed the emergency rulemaking with the "interim" rules that are proposed for repeal as part of this rulemaking, which were published for public comment in the October 2, 2015, issue of the *Texas Register,* adopted by the Commission on November 5, 2015, and published for adoption in the January 29, 2016, issue of the *Texas Register* (41 TexReg 815).

The department also adopted emergency rules governing DMP and Triple T activities (effective October 5, 2015, published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305, 7307) and followed with interim DMP rules published for public comment in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086), adopted by the Commission on January 21, 2016, and published for adoption in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1250).

Current Rulemaking

To ensure that the concerns and interests of the regulated community were fully understood and considered, the department engaged the Center for Public Policy Dispute Resolution (CPPDR) at the University of Texas School of Law to provide facilitation services for the spectrum of stakeholders (including deer breeders, landowners and land managers, hunters, veterinarians, wildlife enthusiasts, the Texas Animal Health Commission (TAHC), and the department), the purpose of which was to negotiate and develop a consensus concerning the essential components of eventual regulations to comprehensively address and implement effective chronic wasting disease (CWD) management strategies. The stakeholder group convened three times during February and March, at which time apparent consensus was reached. The stakeholders also participated in a final phone conference on March 21. The official report of the facilitator is available on the department's website at http://tpwd.texas.gov/huntwild/wild/diseases/cwd/.

At the March 23, 2016 meeting of the Texas Parks and Wildlife Commission (Commission), department staff briefed the Commission on the process and results of the facilitation and presented a synoptic overview of the substantive regulatory provisions being recommended for proposal by staff to address both the consensus issues that emerged from the facilitation and additional regulatory components necessary to operationalize consensus decisions, as well as other regulatory components deemed necessary but on which there was no consensus.

Following the publication of the proposed rules in the *Texas Register,* on April 22, 2016, as part of the process for soliciting public comment, the department staff, as well as a facilitator from CPPDR continued to engage stakeholders. At the May 26, 2016 Commission meeting, the Commission heard public testimony regarding the rules. However, the Commission postponed action on the proposed rules in order to facilitate additional efforts to arrive at consensus with stakeholders and the regulated community. A special Commission meeting was held on June 20, 2016, at which time the Commission heard additional public testimony.

In addition to the facilitated process, and responses to comments and public testimony, the new rules, as adopted, are a result of extensive cooperation between the department and TAHC to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

Although a lasting consensus among all participants was not achieved through the facilitated rulemaking, the basis for the rules as proposed was developed through this process.

The rules being repealed were intended to function as interim rules (referred to herein as Interim Deer Breeder Rules) in order to maintain regulatory continuity for the duration of the 2015-16 deer season and the period immediately thereafter. As stated in previous rulemakings, the department's intent was to review the interim rules, as well as the emergency rules regarding Triple T and TTP permits and DMP, and, based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free ranging deer herds, guidance from TAHC, and input from stakeholder groups, present the results of that review to the Commission in the spring of 2016 for possible modifications. The rules adopted herein resulted from that process.

New §65.90, concerning Definitions, sets forth the meanings of specialized words and terms in order to eliminate ambiguity and enhance compliance and enforcement.

New §65.90(1) defines "accredited testing facility" as "a laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD." The definition is necessary in order to provide a standard for testing facilities.

New §65.90(2) defines "ante-mortem" testing as "a CWD test performed on a live deer." The definition is necessary because the new rules allow or require ante-mortem testing in addition to post-mortem testing.

New §65.90(3) defines "breeder deer" as "a white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." The definition is necessary to establish a shorthand term for a phrase that is used frequently in the new rules but cumbersome to repeat.

New §65.90(4) defines "confirmed" as "a CWD test result of "positive" received from the National Veterinary Service Laboratories (NVSL) of the United States Department of Agriculture." The definition is necessary in order to provide a definitive standard for

asserting the presence of CWD in a sample. Samples collected from breeder deer are sent initially to an accredited testing facility, such as the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). A test result of "suspect" is returned when CWD is detected, and a tissue sample is forwarded to the NVSL for confirmation.

New §65.90(5) defines "CWD" as "chronic wasting disease." The definition is necessary to provide an acronym for a term that is used repeatedly in the rules.

New §65.90(6) defines "CWD-positive facility" as "a facility where CWD has been confirmed." The definition is necessary because the new rules contain provisions that are predicated on whether or not CWD has been detected and confirmed in a given deer breeding, deer management permit (DMP), nursing, or other facility authorized to possess white-tailed deer or mule deer.

New §65.90(7) defines "deer breeder" as "a person who holds a valid deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." As with several other definitions in the new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the new rules but cumbersome to repeat.

New §65.90(8) defines "deer breeding facility (breeding facility)" as "a facility permitted to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." As with several other definitions in the new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the new rules but cumbersome to repeat.

New §65.90(9) defines "department (department)" as "Texas Parks and Wildlife Department." The definition is necessary to avoid confusion, since the new rules contain references to another state agency.

New §65.90(10) defines "Deer Management Permit (DMP)" as "a permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation." The new rules regulate certain aspects of activities conducted under a DMP and a definition is necessary to avoid any confusion as to what is meant by the term.

New §65.90(11) defines "eligible-aged deer." This definition provides two standards for determining if a deer is an "eligible-aged deer." Under §65.90(11)(A), "if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program" an eligible-aged deer is a deer that is "12 months of age or older." However, for any other deer, an eligible-aged deer is a deer that is "16 months of age or older." CWD is difficult to detect in deer younger than 12 months of age. The department's previous CWD testing rules at §65.604(e) of this title provided for testing of mortalities that were 16 months or older. The department is retaining that standard but is also recognizing that the TAHC and the United States Department Agriculture (USDA) use a standard of 12 months.

New §65.90(12) defines "eligible mortality" as "an eligible-aged deer that has died." Because the rules provide for post-mortem testing of deer, it is necessary to define an "eligible" mortality" from which a valid post-mortem sample can be collected and tested. As mentioned earlier, CWD is difficult to detect in younger animals; therefore, the test results required to engage in certain activities under the new rules must be obtained from eligible aged deer.

New §65.90(13) defines "exposed deer." This definition replaces the former definition used in the Interim Breeder Rules for "Tier 1," which proved to be easily confused with other terms used in the rules, such as "TC 1." The definition provides that "unless the department determines through an epidemiological investigation that a specific breeder deer has not been exposed to CWD, an exposed deer is a white-tailed deer or mule deer that is in a CWD-positive facility or was in a CWD-positive facility within the five years preceding the confirmation of CWD in that facility." The definition is necessary to distinguish the circumstances under which certain provisions of the new rules are applicable. The five-year timeframe was selected because a deer infected with CWD could shed prions (the infectious agent believed to cause CWD) and infect other animals during this period before exhibiting clinical symptoms of the disease. However, if an epidemiological investigation concludes that any part of the five-year window is unnecessary, the status of "exposed" could be altered.

New §65.90(14) defines "facility" as "any location required to be registered in TWIMS under a deer breeder permit, Triple T permit, or DMP, including release sites and/or trap sites." The definition is necessary to provide a shorthand term for the locations to which the new rules apply, rather than having to enumerate a cumbersome list of sites. (As explained below, TWIMS is the department's Texas Wildlife Information Management Services online application.)

New §65.90(15) defines "hunter-harvested deer" as "a deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation)." The definition is necessary because the proposed rules in some instances require deer harvested by hunters (as opposed to other types of mortality) to be tested for CWD.

New §65.90(16) defines "hunting year." Because the new rules stipulate the testing of deer harvested by lawful hunting, it is necessary to create a term that covers hunting under the normal seasons and bag limits established for each county by the Commission and hunting that occurs during the period of validity of tags issued pursuant to the Managed Lands Deer program; therefore, "hunting year" is defined as "that period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation)."

New §65.90(17) defines "Interim Breeder Rules" as "rules regarding Chronic Wasting Disease-Movement of Deer, approved by the Commission on November 5, 2015, and published in the *Texas Register* on January 29, 2016 (41 TexReg 815)." The definition is necessary because the new rules reference compliance with the Interim Breeder Rules; therefore, a definition is necessary to establish a shorthand term for a phrase that is used in the new rules but cumbersome to repeat.

New §65.90(18) defines "landowner (owner)" as "any person who has an ownership interest in a tract of land, and includes a landowner's authorized agent." The definition is necessary because the new rules set forth testing requirements and other obligations for persons who own land where breeder deer are released.

New §65.90(19) defines "landowner's authorized agent (agent)" as "a person designated by a landowner to act on the landowner's behalf." The definition is necessary for the same reason set forth in the discussion of new §65.90(18).

New §65.90(20) defines "liberated deer" as "a free-ranging deer that bears evidence of a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue)." The definition is necessary because the new rules, in certain circumstances, require the testing of hunter-harvested deer that could be identified as deer that have been liberated.

New §65.90(21) defines "Movement Qualified (MQ) as "a designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer." The new rules impose requirements, including a minimum level of testing, that deer breeding facilities must meet in order to be authorized by the department to transfer breeder deer under the rules. It is therefore necessary to create a shorthand term to reference that ability.

New §65.90(22) defines "Not Movement Qualified (NMQ)" as "a designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder." Because the new rules prohibit the movement of deer from any facility that is not MQ, a definition for that condition is necessary.

New §65.90(23) defines "NUES tag" as "an ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES)." The definition is necessary because the new rules require certain breeder deer and Triple T deer released to a release site to be tagged with either a RFID or NUES tag.

New §65.90(24) defines "originating facility" as "any facility from which deer have been transported, transferred, or released, as provided in this division or as determined by an investigation of the department, including for breeder deer, the source facility identified on a transfer permit and for deer being moved under a Triple T permit, the trap site." The new rules impose certain requirements, restrictions, or prohibitions, based on the status of the property or facility from which deer are moved. Therefore, a shorthand definition is necessary to ensure clarity.

New §65.90(25) defines "post-mortem test" as "a CWD test performed on a dead deer," which is necessary in order to delineate post-mortem testing from ante-mortem testing. The new rules impose requirements and restrictions based on the type of test being performed.

New §65.90(26) defines "properly executed." Because the new rules require the submission of electronic reports and forms that provide critical information to the department, it is necessary to make clear that all information on such a form or report must be provided. Therefore, the new rules define "properly executed" as "a form or report required by this division on which all required information has been entered."

New §65.90(27) defines "reconciled herd" as "the deer held in a breeding facility for which the department has determined that the deer breeder has accurately reported every birth, mortality, and transfer of deer in the previous reporting year." The definition is necessary because the proposed rules require a deer breeder to have a reconciled herd in order to transfer or release breeder deer. Herd reconciliation is a necessary component of disease management.

New §65.90(28) defines "release site" as "a specific tract of land that has been approved by the department for the release of deer under this division." The definition is necessary because the new rules impose CWD testing and other requirements for certain tracts of land where breeder deer are liberated or transferred.

New §65.90(29) defines "reporting year" as "the period of time from April 1 of one calendar year to March 31 of the next calendar year." Deer breeders are required to file annual reports with the department. The new rules condition the eligibility of deer breeders to transfer and release deer on the completeness and accuracy of those reports. In addition, the new rules contain provisions that begin or end with a specified reporting year. Therefore, it is necessary to clarify the definition of "reporting year."

New §65.90(30) defines "RFID tag" as "a button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system." The definition is necessary because the new rules require certain breeder deer and Triple T deer released to release sites to be tagged with either an RFID or NUES tag.

New §65.90(31) defines "status" as "the level of testing required by this division for any given deer breeding facility or release site." The definition also clarifies that the highest status for a deer breeder is Transfer Category is 1 and the lowest status is Transfer Category 3. Similarly, Class I is the highest status for release sites and Class III is the lowest. As noted previously, the new rules categorize breeding facilities and release sites based on relative risk. The definition is necessary because the new rules include regulatory requirements that are predicated upon the status of a breeding facility or release site.

New §65.90(32) defines "submit." In order to eliminate lengthy repetition throughout the new rules, "submit" is defined as "when used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory."

New §65.90(33) defines "suspect." The testing process for determining that a deer is, in fact, infected with CWD is two-fold. If the initial test on a sample indicates the presence of the disease, the sample or another sample from the same animal is re-tested by the National Veterinary Service Laboratories of the United States Department of Agriculture. Because the new rules make any facility NMQ pending confirmation (i.e., the re-test), it is necessary to create a term for the initial test result that causes the re-test. Therefore, "suspect" is defined as "an initial CWD test result of "detected" that has not been confirmed."

New §65.90(34) defines "TAHC" as "Texas Animal Health Commission." As noted elsewhere in this preamble, the Texas Animal Health Commission is the Texas state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b). Because the new rules include provisions that are based on determinations or actions of TAHC, a short-hand reference to the agency is necessary.

New §65.90(35) defines "TAHC CWD Herd Certification Program" as "the disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae)." The new rules have provisions specific to deer breeders who participated in the TAHC herd certification program. The definition makes it clear that references to herd certification are references to the herd certification program administered by TAHC.

New §65.90(36) defines "TAHC Herd Plan" as "a set of requirements for disease testing and management developed by TAHC for a specific facility." In response to the discovery of a disease

over which TAHC has jurisdiction, including CWD, the TAHC may issue a herd plan which imposes certain testing requirements and movement restrictions. The new rules in some cases make eligibility to transfer or receive breeder deer contingent on compliance with a herd plan developed by TAHC. The definition makes it clear that references to herd plans are references to herd plans developed by TAHC.

New §65.90(37) defines "Test, Test Result(s), or Test Requirement" as "a CWD test, CWD test result or CWD test requirement as provided in this division." This definition is provided to ensure clarity regarding the type of test referenced whenever the word "test" is used without the acronym "CWD."

New §65.90(38) defines "trap site" as "a specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1," which is necessary because the new rules impose testing and reporting requirements on trap sites under various permits.

New §65.90(39) defines "Triple T permit." Because the new rules affect certain activities conducted under Triple T permits, the term is defined in order to eliminate any confusion. A Triple T permit is "a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds)." In the context of the new rules, a reference to Triple T permit is limited to a Triple T permit for activities involving white-tailed and mule deer.

New §65.90(40) defines "Trap, Transport and Process (TTP) permit"-as "a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit)." The proposed definition is necessary to clarify and distinguish TTP and Triple T permit requirements.

New §65.90(41) defines "TWIMS" as "the department's Texas Wildlife Information Management Services (TWIMS) online application." TWIMS is the system that is required to be used to file required notifications and reports under the rules.

New §65.91, concerning General Provisions, sets forth a number of provisions that are applicable to the transfer or release of deer.

New §65.91(a) stipulates that in the event that a provision of the new rules conflicts with any other provision of 31 TAC Chapter 65, other than Division 1 of Subchapter B (regarding Disease Detection and Response), the new rules apply. This provision is necessary to avoid confusion resulting from a conflict between the new rules and the agency's existing rules governing white-tailed deer and mule deer. Provided, however, in the event of a conflict between the new rules and Division 1 of Subchapter B of Chapter 65, Division 1 would control. Division 1 addresses the establishment of zones within which movement and testing requirements apply to minimize the risk of CWD expanding beyond the area(s) in which it currently exists in free-ranging deer populations. Although the new rules are intended to be independent of the rules in Division 1, there may be instances in which the new rules would appear to authorize an activity that is prohibited by Division 1. In such a case, the provisions of Division 1 would control.

New §65.91(b) prohibits the transfer of live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP for any purpose except as provided by the new rules. Because deer breeders, landowners, and wildlife managers frequently transfer deer under various permits, it is necessary in light of the emergence of CWD in Texas deer breeding facilities as well as in free-ranging deer to prohibit the movement of breeder deer except as authorized by the proposed rules.

New §65.91(c) prohibits the movement of deer to or from any facility where CWD has been detected, beginning with the notification that a "suspect" test result has been received from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. New §65.91(c) also stipulates that such prohibition takes effect immediately upon the notification of a CWD "suspect" test result and continues in effect until the department expressly authorizes the resumption of permitted activities at that facility. The new provision is necessary because CWD is an infectious disease, which makes it necessary to prohibit certain activities that could result in the spread of the disease while test results are confirmed. If a "suspect" test result is determined to be "not detected" then the department may authorize resumption of permitted activities. However, if the result is "confirmed" then provisions of the rule regarding exposed facilities would govern.

New §65.91(d) provides that notwithstanding any provisions of the division, a facility may not move deer to any location if prohibited by a TAHC herd plan associated with a TAHC hold order or TAHC quarantine. As noted elsewhere in this preamble, TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b). In accordance with that authority, TAHC may issue a hold order or quarantine preventing the movement of deer. New §65.91(c) clarifies that movement of deer in violation of a TAHC hold order or quarantine is not authorized.

New §65.91(e) provides that a facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of the division at that status for a minimum of two years, if the facility is a breeding facility, or for the period specified for release sites in §65.95(c) of this title (relating to Movement of Breeder Deer). The new rules create a tiered system of testing requirements based on the level of risk of transmission of CWD for each deer breeding facility or release site. The level of risk is based on the degree to which the facility has been monitored for the presence of CWD, or contains or is connected to exposed animals. Epidemiological science dictates that a population receiving individuals from a higher risk population is itself at greater risk; therefore, the new rules address such transfers from higher risk to lower risk populations by requiring the receiving facility or release site to comply with the testing requirements associated with the originating facility, and stipulates a duration for the application of continued testing requirements.

New §65.91(f) provides that a deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received. The new subsection is necessary for the same reasons addressed in the discussion of new §65.91(e).

New §65.91(g) provides that the designation of status by the department in and of itself does not authorize the transfer or movement of deer. New §65.91(g) also prohibits any person from removing or causing the removal of deer from a facility that has been designated NMQ by the department. The provision is necessary because a breeding facility of any status can be designated NMQ.

New §65.91(h) requires all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department. To provide greater regulatory efficiency, it is necessary to require the use of an automated system.

New §65.91(i) provides that in the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division, which is necessary to provide for continuity of administration in the event of technical disruptions.

New §65.92, concerning CWD Testing, establishes the general provisions regarding the collection and submission of CWD test samples.

New §65.92(a) requires all CWD test samples at the time of submission for testing to be accompanied by a properly executed, department-prescribed form provided for that purpose. The technical response being developed by the department provides for Texas Veterinary Medical Diagnostic Laboratory (TVMDL), an accredited laboratory that performs CWD testing, to notify the department of test results electronically. By requiring persons who submit test samples to those laboratories to use a department-supplied form that contains data fields that can be entered by the laboratory, the process of notification and the sharing of records is enhanced by eliminating the need for manual upload of test results by the permitted deer breeder and manual data entry by the department after the test results have been received.

New §65.92(b) sets forth the requirements for valid ante-mortem testing, including the identification of the specific tissues that may be used. New §65.92(b) also requires that tissue samples be collected by a licensed veterinarian, that the testing be done by an accredited laboratory, that at least six lymphoid follicles be collected, and that samples be submitted within six months of submission from a live deer that is at least 16 months of age and that has not been the source of a "not detected" ante-mortem test result submitted within the previous 24 months. To ensure consistency with the Texas Veterinary Practices Act (Occupations Code, Chapter 801), regulations applicable to the practice of veterinary medicine in Texas, and regulations of the TAHC, this subsection requires that ante-mortem samples be collected by a licensed veterinarian authorized to do so by the referenced statutes and regulations. Additionally, in order to be epidemiologically valuable, tissue samples must be extracted from deer older than 16 months of age. Finally, the most significant epidemiological distinction between ante-mortem testing and post-mortem testing is that the testing of animals that have died provides a much higher likelihood of detecting the presence of disease, since diseased animals are more likely to die than healthy animals. In order to prevent the repeated use of tissues from an animal that has produced "not detected" results in the recent past, it is necessary to stipulate a minimum frequency that an animal may be used to provide tissue samples. The department has chosen the 24-month interval to increase the likelihood that sufficient host tissues are available for testing and to prevent the continued use of a single deer to provide tests. It should also be noted that although ante-mortem testing has not yet been acknowledged as an official test protocol by the USDA, the submission of a "suspect" ante-mortem test may cause the subject animal to be euthanized and subjected to post-mortem testing for confirmation.

New §65.92(c) sets forth the requirements for post-mortem testing, stipulating that a post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex or the medial retropharyngeal lymph node of an eligible mortality and may be collected only by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department. Obviously, the department's efforts to detect and contain CWD depend on the quality of the testing itself. At the current time, USDA will not certify herd plans for deer unless post-mortem CWD testing is performed by laboratories that have been approved by USDA. The standard for approval is compliance with 9 CFR §55.8, which sets forth the specific tests, methodology, and procedure for conducting post-mortem CWD tests. Therefore, in order to ensure that post-mortem CWD tests are performed in accordance with uniform standards, the new rules require all CWD tests to be performed by a laboratory approved by USDA. Additionally, the new subsection specifies which tissues must be submitted and who is authorized to collect those tissues. At the current time, the only CWD testing approved by USDA must be performed on certain tissues from eligible mortalities, such as the obex (a structure in the brain) or certain lymph nodes. To ensure that valid samples are collected, the new subsection also stipulates that the sample may only be collected by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

New §65.92(d) allows ante-mortem tests to be substituted for required post-mortem tests at a ratio of 3:1. The department acknowledges that natural mortality is unpredictable and that there will be time periods when test results for a sufficient number of mortalities cannot be submitted; therefore, the new rule allows substitution of ante-mortem tests for post-mortem tests. For reasons noted earlier in this preamble, test results from natural mortalities have a higher epidemiological value than ante-mortem tests; therefore, if ante-mortem tests are being conducted in lieu of post-mortem tests, the new rules provide that three "not detected" ante-mortem test results are required for each "not detected" post-mortem test result required.

New §65.92(e) prohibits the use of a single ante-mortem test result more than once to satisfy any testing requirement of the division. From an epidemiological perspective, the use of one test result to satisfy more than one testing requirement (especially if the submissions take place in more than one reporting year) creates a weakness in disease mitigation because the different ante-mortem testing requirements were developed to be used in combination, and to submit one test to meet two independent criteria does not provide the probability of detection anticipated by the department and on which the rules were based.

New §65.92(f) stipulates that the testing requirements of the division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division. The department believes that a person subject to the provisions of the new rules should not be able to avoid compliance simply by selling, donating, or trading property to another person related to the seller for the purpose of avoiding the requirements of the rules.

New §65.92(g) provides that the owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division. The new rules contemplate a disease management strategy predicated on the results of CWD testing. Incomplete, inadequate, or tardy reporting of test results confound that strategy. For this reason, the new rule establishes a date certain for reporting test results to the department.

New §65.93, concerning Harvest Log, sets forth the elements and requirements for on-site harvest documentation. The new rules require a harvest log to be maintained on Class II and Class III release sites. For each deer harvested from a Class II or Class III release site for which a harvest log is required, the new rules require the hunter's name and hunting license number (or driver's license number, if the daily harvest log is also being used as a cold storage/processing book) to be entered into the harvest log, along with the date of kill, type of deer killed, any alphanumeric identifier tattooed on the deer, the tag number of any RFID or NUES tag affixed to the deer, and any other identifier and identifying number on the deer. The new provision will enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary. The new paragraph also requires the daily harvest log to be presented to any department employee acting within the scope of official duties and for the contents of the daily harvest log to be reported to the department via TWIMS by no later than April 1 of each year, and also provides for the format and retention of the harvest log.

New §65.94, concerning Breeding Facility Minimum Movement Qualification, sets forth the testing requirements necessary for a breeding facility to be able to transfer deer to other deer breeders or for purposes of liberation.

New §65.94(a) provides that a breeding facility will be NMQ (Not Movement Qualified--prohibited from transferring breeder deer anywhere for any purpose) if it has not met the testing, inventory, reporting, and recordkeeping, and TAHC Herd Plan requirements set forth in that subsection.

New §65.94(a)(1) sets forth the CWD testing requirements that must be met to avoid being NMQ. Pursuant to new §65.94(a)(1)(A), from the effective date of the rules through March 31, 2017, a breeding facility must have either had less than five eligible mortalities from May 23, 2006 through March 31, 2016, or obtained "not detected" test results for at least 20 percent of the eligible mortalities that occurred in the facility since May 23, 2006. The provisions of §65.94(a)(1)(A) are essentially the same as that provided in the deer breeder movement rules that existed prior to the June 2015 discovery of CWD in a deer breeding facility. Although this standard provides a very low statistical confidence of detecting CWD if it exists in a facility, this standard is the standard contained in previous rules, as well as the Interim Rules. In addition, the department reasons that any breeding facility not in compliance with this standard should not be allowed to move breeder deer until it has "tested out," or submitted sufficient test samples of "not detected" to provide a higher level of confidence that CWD will not be transmitted from the facility.

New §65.94(a)(1)(B)(i) provides that beginning April 1, 2017, and each April 1 thereafter, a breeding facility that has achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program will be considered to have met the testing requirements necessary to be considered MQ. In order to achieve and maintain "fifth-year" or "certified" status, a deer breeder must comply with certain disease monitoring protocols, including the testing of 100% of eligible mortalities and not receiving deer from facilities that have not obtained that "fifth year" or "certified" status. See, 4 TAC §40.3. For breeding facilities that have not achieved "fifth-year" or "certified status," beginning April 1, 2017 and each April 1 thereafter, annual CWD "not detected" test results for at least 80% of eligible mortalities occurring in the facility during the previous reporting year must be submitted. However, the department recognizes that if a breeding facility has an unusually low number of eligible mortalities, this provision could result in the submission of few test results. Therefore a provision is included to require that for breeding facilities that have been permitted at least six months, the number of "not detected" post-mortem test results submitted during each reporting year must be equal to or greater than the eligible-aged population in the breeding facility at the end of the reporting year, plus the eligible mortalities that occurred within the breeding facility in the reporting year, multiplied by 3.6 percent. This provision is intended to provide a minimum number of tests that must be submitted each year to achieve the epidemiological goals of the rules. To develop this number, the department considered that the average natural mortality in a deer breeding facility is approximately 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility that has an average natural mortality rate among eligible-aged deer tested 80% of those mortalities, the breeding facility would test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. As explained elsewhere in this preamble, the rules provide for ante-mortem substitution for these test results at ratio of three "not detected" ante-mortem test results for each required "not detected" post-mortem test result.

New §65.94 also provides additional criteria for designating NMQ status. Section 65.94(a)(2) - (3) provides that a breeding facility may be NMQ if it is not authorized to transfer deer pursuant to a TAHC Herd Plan associated with a TAHC hold order or quarantine, does not have a reconciled herd inventory, or is not in compliance with reporting and recordkeeping requirements. Department rules at §65.608 of this title (relating to Annual Reports and Records) require deer breeders to submit an annual report. The annual report must include a herd reconciliation that accounts for every breeder deer held, acquired, or transferred by a breeding facility, as well as births and mortalities. A breeding facility that is not in compliance with the reporting requirements or has submitted incomplete or inaccurate records frustrates efforts to determine the source and/or disposition of every deer in the facility, as a reconciled herd inventory is a necessary component of disease management. Also, as noted elsewhere in this preamble, a TAHC Herd Plan may contain provisions that impose movement restrictions in which case the TAHC Herd Plan will control. In addition, to ensure compliance with applicable regulatory provisions, it is imperative that the facility have an accurate herd inventory that accounts for the movement of breeder deer into and out of the breeding facility, as well as deaths and births within the facility.

New §65.94(b) provides that a breeding facility that has been designated NMQ for failure to comply with testing requirements will be restored to MQ when sufficient "not detected" test results are submitted. The department has determined that once a breeding facility is compliant with applicable testing requirements, MQ status should be restored, so long as all other requirements for MQ status are met. The "not detected" test results

can be provided through ante-mortem substitution as provided in §65.92(d) or by the submission of additional post-mortem test results. It should be noted, however, that if post-mortem test results are being submitted to satisfy the requirement to submit "not detected" post-mortem test results for 80% of the annual mortalities, the creation of additional mortalities will alter the calculation (i.e., the total number of mortalities will change, which will, in turn, alter the number of post-mortem tests required to achieve 80%).

New §65.94(c) requires a breeding facility designated NMQ to report all mortalities within the facility to the department immediately upon discovery. From an epidemiological perspective, once a breeding facility cannot provide the minimum assurance that adequate disease surveillance is being maintained, there is an increased risk that if CWD is present it could be spread. Therefore, the new rule requires facilities that are not in compliance with movement qualification requirements to report all mortalities immediately, rather than at the end of the reporting year.

New §65.94(d) provides that immediately upon the notification that a facility has received a "suspect" test result, all facilities that have been in possession of deer that were held in the suspect facility within the previous five years will be designated NMQ until a determination is made that the facility is not epidemiologically linked to the suspect deer, or upon further testing, the "suspect" deer is determined not to be positive. The new rules are intended to detect CWD if it is present and prevent the spread of CWD once it is detected; therefore, once a "suspect" test result has been returned, all movement to and from all connected facilities should be stopped until the "suspect" test is either confirmed or determined to be non-positive.

New §65.95, concerning Movement of Deer, establishes the various status levels and attendant testing requirements for breeding facilities and release sites.

New §65.95(a) allows a TC 1 or TC 2 breeding facility designated MQ and in compliance with the applicable provisions of the division to transfer breeder deer under existing rules to another breeding facility, an approved release site, a DMP facility, or to another person for nursing purposes. This subsection is necessary to set out the types of transfers that may be authorized by the rules.

New §65.95(b) establishes three categories of breeding facilities based on level of epidemiological risk: Transfer Category (TC) 1, TC 2, and TC 3. As noted in the discussion of the definition of "status" earlier in this preamble, the highest level/status (i.e., the level with the least risk for CWD) for a breeding facility is TC 1 and the lowest level is TC 3.

Under new §65.95(b)(1)(A), a breeding facility will be classified as a TC 1 facility if it has achieved "fifth-year" or "certified" status in the TAHC Herd Certification Program. Under new §65.95(b)(1)(B)(i), a breeding facility will be classified as a TC 1 facility if it has obtained "not detected" CWD test results for at least 80% of total eligible mortalities over the last five report years, with a minimum number of post-mortem test results over that five-year period equal to at least 3.6% of the eligible-aged population during that period. The 3.6% minimum testing requirement is calculated as the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a breeding facility with an average number of natural mortalities among eligible-aged deer tested 80% of those mortalities, the breeding facility would test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility plus eligible-aged mortalities for each of the previous five report years is added together, and that sum is then multiplied by 3.6 percent. The resulting number is 80 percent of the average expected eligible-aged mortality for a deer breeding facility over a five-year period.

Alternatively, under new §65.95(b)(1)(B)(ii), a breeding facility that has submitted ante-mortem "not detected" CWD test results for 50% of eligible-aged deer in the breeding facility will be considered a TC 1 facility. The department understands that in anticipation of being able to use ante-mortem test results to achieve TC 1 status, some deer breeders may already have been conducting ante-mortem tests. Therefore, to facilitate the transition to the new rules for the report year beginning April 1, 2016 and ending March 31, 2017, a breeding facility that has submitted "not detected" ante-mortem test results for at least 25% of eligible-aged deer in the facility will be temporarily considered a TC-1, so long as the remaining "not detected" results are submitted by May 15, 2017.

New §65.95(b)(2) establishes that the testing requirements for TC 2 breeding facilities are the minimum testing requirements for MQ status stipulated in §65.94, relating to Breeding Facility Minimum Movement Qualification. A TC 2 breeding facility is a facility that is neither a TC 1 breeding facility nor a TC 3 facility.

New §65.95(b)(3) establishes provisions regarding classification and requirements for TC 3 breeding facilities. A TC 3 breeding facility is any breeding facility registered in TWIMS that is under a TAHC hold order, quarantine and/or herd plan and received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, or possessed a deer that was in a CWD-positive facility within the previous five years. As such, TC 3 breeding facilities are the facilities with the highest risk of harboring and spreading CWD. Therefore, the new rule prohibits the transfer of deer from any TC 3 facility unless such transfer is expressly authorized in a TAHC herd plan, and then only in accordance with the provisions of the division and the TAHC herd plan, and requires all transferred deer to be tagged in one ear with a NUES tag or button-type RFID tag approved by the department. The tagging requirement is necessary because breeder deer translocated from a TC 3 breeding facility are epidemiologically valuable. Should a released breeder deer test positive, the department and TAHC can use the eartag to quickly identify the source facility and initiate necessary epidemiological investigations and responses to prevent additional spread of CWD.

New §65.95(c) sets forth provisions governing release sites. New §65.95(c)(1)(A) provides that an approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS. In order to determine where release site testing requirements apply, and to provide a measure of confidence that CWD is not spread from those places where breeder deer are released, it is necessary to identify the specific locations where breeder deer are authorized to be released. However, this provision does allow a release site owner to modify the registered release site

in order to reflect changes in acreage (such as the removal of cross-fencing), so long as the release site owner notifies the department of such modifications prior to the acreage modification. Any release site requirements provided in this subsection will also fully apply to the modified release site.

New §65.95(c)(1)(B) requires that liberated breeder deer have complete, unrestricted access to the entirety of the release site. Such a provision is necessary to ensure that released deer are not confined in smaller enclosures within a permitted release site. The testing requirements are based on the assumption that liberated deer commingle with the rest of the population, to which testing requirements apply. To keep the populations segregated defeats the purpose of release-site testing on the larger site. Additionally, for potential epidemiological investigations it is necessary that the release site information registered with the department be an accurate reflection of the acreage on which the deer were released. However, a release site owner is not prohibited from fencing areas that may be considered part of the release site, but from which deer should be excluded for safety reasons (e.g., air strips) or to prevent depredation (e.g., crops, ornamental plants).

New §65.95(c)(1)(C) stipulates that all release sites onto which breeder deer are liberated be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. In addition, the owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances. It is necessary to establish a level of vigilance sufficient to give reasonable assurance that breeder deer are not allowed to leave the specific premise where they were released.

New §65.95(c)(1)(D) provides that any testing requirements of the division continue in effect until all required "not detected" test results are submitted and that a release site not in compliance with the testing requirements of the subsection is ineligible to receive deer and must continue to submit testing results until the testing requirements are satisfied. The epidemiological value of release site testing is compromised if release site tests are not submitted. Therefore, the department reasons that release sites should not be allowed to obtain liberated breeder deer until the release site demonstrates compliance with existing or previous requirements.

New §65.95(c)(1)(E) prohibits any intentional act that allows any live deer to leave or escape from a release site. As noted elsewhere in this preamble, it is important to ensure that breeder deer do not escape from the acreage onto which the deer have been liberated.

New §65.95(c)(1)(F) requires the owner of a Class II or Class III release site to maintain a harvest log. The requirements for the harvest log are set out in new §65.93. A harvest log is necessary to ensure that the release site keeps accurate records of deer harvested on the property.

New §65.95(c)(2) - (4) establishes classes of release sites. New §65.95(c)(2) establishes that a Class I release site is a release site that has received deer only from TC 1 facilities since August 15, 2016 (the effective date of the new rules). Class I release sites represent the lowest risk of harboring or spreading CWD and are therefore not required to perform CWD testing.

New §65.95(c)(3) establishes criteria and requirements for Class II release sites. New §65.95(c)(3)(A) provides that a Class II release site is a release site that receives deer from a TC 2 breeding facility (but not a breeding facility of lower status). New §65.95(c)(3)(B) requires that for each hunting year following the release of deer from a TC 2 breeding facility, the owner of the release site must submit "not detected" post-mortem test results for the first deer harvested and every deer harvested thereafter up to the first 15 deer harvested. Because a Class II release site has received breeder deer that represent a higher risk of harboring or transmitting CWD, some level of testing is necessary. However, as described elsewhere in this preamble, as a result of changes to the MQ requirements, the rules as adopted provide for the elimination of release-site testing at Class II release sites after the 2018-2019 hunting year. Therefore, §65.95(c)(3)(C) provides that the Class II testing requirements contained in §65.95(c)(3)(B) expire March 1, 2019 for Class II release sites that have submitted all of the required test results. For release sites that have not submitted the required test results, testing obligations continue until all required test results are submitted.

New §65.95(c)(4) establishes criteria and requirements regarding Class III release sites. New §65.95(c)(4)(A) establishes that a Class III release site is a release site that has received deer from an originating facility that is a TC 3 facility, received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility and has not been released from a TAHC hold order. Class III release sites represent the highest level of risk of harboring or transmitting CWD. As a result, new §65.95(c)(4)(B) requires the landowner of a Class III release site to submit post-mortem CWD test results for 100 percent of all hunter-harvested deer or one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release site in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year, whichever is greater, and provides that the minimum harvest and testing provisions may be as prescribed in a TAHC herd plan. Similarly, new §65.95(c)(4)(C) prohibits the transfer of a breeder deer to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag. Since deer released onto a Class III release site pose a much higher epidemiological risk, it is important that such deer be easily identifiable as liberated deer.

New §65.96, concerning Movement of DMP Deer, sets forth the movement and testing requirements associated with DMP activities. The new rule requires a DMP release site to which breeder deer from a TC 2 breeding facility are released, or if the DMP property from which deer are trapped for DMP purposes is a Class II release site, to submit "not detected" test results for the first deer harvested and every deer harvested thereafter up to the first 15 deer harvested. As discussed elsewhere in this preamble, a TC 2 breeding facility or Class II release site represents a higher risk of transmitting CWD than a TC 1 breeding facility or Class I release site; therefore some level of testing is appropriate. The department has determined that testing the first 15 deer harvested each year through March 1, 2019, provides a reasonable assurance that CWD will be detected if it were present. The new rule prohibits the transfer of deer from a TC 3 breeding facility, Class III release site or from a release site or deer breeding facility that is not in compliance with applicable testing requirements. Breeder deer in a TC 3 breeding facility, deer in a Class III release site and deer from breeding facilities and release sites that are not in compliance with the applicable regulatory requirements pose an unacceptable risk of spreading CWD to free-rang-

ing populations. The rule does not impose testing requirements on any DMP facility that either does not receive breeder deer or receives breeder deer solely from TC 1 deer breeding facilities.

New §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, sets forth general provisions and testing requirements applicable to the movement of deer under a Triple T or TTP permit.

New §65.97(a)(1) stipulates that unless expressly provided otherwise, the disease detection provisions of 31 TAC §65.102 cease effect upon the effective date of the new section. This is necessary to prevent regulatory conflict.

New §65.97(a)(2) provides that the department may require a map of any prospective Triple T trap site to be submitted as part of the application process, which is necessary to address situations in which the exact nature of a prospective Triple T site and its relationship to nearby or adjoining tracts of land is unclear with respect to previous releases.

New §65.97(a)(3) further enumerates the criteria under which the department will not authorize deer to be trapped for Triple T purposes, including a release site that has received breeder deer within five years of the application for a Triple T permit, a release site that has failed to fulfill testing requirements, any site where a deer has been confirmed positive for CWD, any site where a deer has tested "suspect" for CWD, or any site under a TAHC hold order or quarantine.

Further, new §65.97(a)(4) provides that in addition to the reasons for denying a Triple T permit listed in 31 TAC §65.103(c) (concerning Trap, Transport, and Transplant Permit), the department will not issue a Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so creates an unacceptable risk for the spread of CWD. Each of the enumerated criteria for permit refusal represents an unacceptable risk of spreading CWD to free-ranging populations.

In addition, new §65.97(a)(5) requires all Triple T deer to be tagged prior to release in one ear with a button-type RFID tag approved by the department, in addition to the marking required by §65.102 (relating to Permits for Trapping, Transporting, and Transplanting Deer - Disease Detection Requirements) and for the RFID tag information to be submitted to the department. The new provision enables the department to identify all released deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary.

New §65.97(a)(6) further stipulates that a Triple T permit does not authorize the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation), which is necessary to ensure that all deer are harvested by hunters under the regulations established for lawful hunting.

New §65.97(a)(7) requires all test samples to be collected or tested after the Saturday closest to September 30 (the first day of lawful hunting in any year), which is necessary to ensure that test samples are temporally linked to the year for which activities of the permit are authorized; however, new §65.97(a)(8) clarifies that this requirement does not apply to permits issued for the removal of urban deer, for which test samples may be collected between April 1 and the time of application.

New §65.97(b)(1) establishes the testing requirements for Triple T trap sites. At a Triple T trap site, the new rule requires 15 "not detected" post-mortem test results to be submitted prior to permit issuance. The department is confident that a sample of 15 deer from a prospective trap site that is not otherwise prevented from being a trap site by the new rules is sufficient to establish that CWD is not present and will not be spread.

New §65.97(b)(2) stipulates that CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property. The department does not believe that deer trapped from a free-ranging population to be released elsewhere within that same population represent a significant disease-transmission risk.

New §65.97(c) sets forth the testing requirements for TTP permits. The new provision requires "not detected" test results for at least 15 eligible-aged deer from the trap site to be submitted and requires the landowner of a Class III release site where TTP deer are trapped to submit CWD test results for 100% of the deer trapped. The new rule also requires test results related to a TTP permit to be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

Transition Provisions

New §65.98, concerning Transition Provisions sets forth provisions to clarify enforcement of regulations with respect to the effective dates of various provisions and stipulates that the department's executive director develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations.

New §65.98(a) provides that offenses committed before the effective date of the new rules will be governed by the law in effect at the time, which is necessary to provide clear guidance for enforcement and judicial processes.

New §65.98(b) provides that a release site in compliance with the Interim Breeder Rules as of August 15, 2016 (the effective date of the new rules) is not subject to the testing requirements of the new rules until deer are liberated onto the release site.

New §65.98(c) provides that if a Class I release site becomes a Class II release site as a result of the release of deer onto the release site on or after August 15, 2016, the release site will be designated a Class I release site if all TC 2 breeding facilities that provided deer to the release site achieve TC 1 status by May 15, 2017, or if all breeder deer released on the release site between August 15, 2016 and October 1, 2016 are harvested during the 2016-2017 hunting season and return "not detected" CWD results and no deer from a TC 2 or TC 3 facility are released on the release site after October 1, 2016. This provision is intended to provide breeding facilities and release sites an opportunity to "test up" to a level sufficient to eliminate the requirement for future release-site testing. However, it should be noted that the "reset" will occur after the 2016-2017 hunting season and that release sites will be required to fulfill the release-site testing requirements for the 2016-2017 hunting season.

References

Adamowicz, W. L., C. Arnot, P. Boxall, C. Dridi, E. Goddard, M. Jordan, K. Forbes, E. Laate, K. Myshaniuk, B. Parlee, M. Petigara, J. Unterschultz, and N. Zimmer. 2010. Research on socioeconomic impacts of chronic wasting disease (CWD) in Al-

berta. Department of Rural Economy, Project Report 10(03), Alberta, Canada.

Almberg, E. S., P. C. Cross, C. J. Johnson, D. M. Heisey, and B. J. Richards. 2011. Modeling routes of chronic wasting disease transmission: environmental prion persistence promotes deer population decline and extinction. PLoS ONE. 6(5):e19896.

Barria MA, Telling GC, Gambetti P, Mastrianni J, Soto C. 2011. Generation of a new form of human PrPSc in vitro by interspecies transmission from cervid prions. Journal of Biological Chemistry. 286:7490-5.

Belay, E. D., R. A. Maddox, E. S. Williams, M. W. Miller, P. Gambetti, and L. B. Schonberger. 2004. Chronic wasting disease and potential transmission to humans. Emerging Infectious Disease Journal. 10(6). http://www.cdc.gov/eid/article/10/6/03-1082.htm. Accessed 10 Apr 2012.

Bishop, R. C. 2004. The economic impacts of chronic wasting disease (CWD) in Wisconsin. Human Dimensions of Wildlife. 9(3):181-92.

Brown, T. L., J. Shanahan, D. Decker, W. Siemer, P. Curtis, and J. Major. 2005. Response of hunters and the general public to the discovery of chronic wasting disease in deer in Oneida County, New York. Human Dimensions Research Unit, Department of Natural Resource Cornell University. Series 5-08.

Cannon, R.M., Roe, R.T. (1982). Livestock disease surveys. A field manual for veterinarians. Bureau of Range Science, Department of Primary Industry. Australian Government Publishing Service, Canberra.

Chesebro, Bruce. 2004. A fresh look at BSE. Science. 305:1918-1921.

Chronic Wasting Disease Alliance. 2012. Homepage. http://www.cwd-info.org/index.php. Accessed 4 Apr 2012.

DeVivo, Melia T. 2015. Chronic Wasting Disease Ecology and Epidemiology of Mule Deer in Wyoming. Dissertation. University of Wyoming, Department of Veterinary Sciences.

Edmunds, David R. 2013. Chronic Wasting Disease Ecology and Epidemiology of White-tailed Deer in Wyoming. Dissertation. University of Wyoming, Department of Veterinary Sciences.

Fryer, H. R., and A. R. McLean. 2011. There is no safe dose of prions. PLoS ONE. 6(8):e23664.

Geremia C, M.W. Miller, J.A. Hoeting, M.F. Antolin, and N.T. Hobbs. 2015. Bayesian Modeling of Prion Disease Dynamics in Mule Deer Using Population Monitoring and Capture-Recapture Data. PLoS ONE 10(10): e0140687.

Gigliotti, L. M. 2004. Hunters' concerns about chronic wasting disease in South Dakota. Human Dimensions of Wildlife. 9:233-235.

Gough, K.C., and B.C. Maddison. 2010. Prion transmission: Prion excretion and occurrence in the environment. Landes Bioscience Journal: Prion. 4:275-82.

Gould, F. W. 1975. Texas plants - a checklist and ecological summary. Texas Agricultural Experiment Station Publication 585, College Station, Texas, USA.

Johnson, C. J., J. P. Bennett, S. M. Biro, J. C. Duque-Velasquez, C. M. Rodriguez, R. Bessen, and T. Rocke. 2011. Degradation of the disease-associated prion protein by a serine protease from lichens. PLoS ONE. 6(5):e19836.

Mathiason, C. K., S. A. Hays, J. Powers, J. Hayes-Klug, J. Langenberg, et al. 2009. Infectious prions in pre-clinical deer and transmission of chronic wasting disease solely by environmental exposure. PLoS ONE. 4(6):e5916.

MaWhinney, S., W. J. Pape, J. E. Forster, C. A. Anderson, P. Bosque, M. W. Miller. 2006. Human prion disease and relative risk associated with chronic wasting disease. Emerging Infectious Disease Journal. 12(10). http://dx.doi.org/10.3201/eid1210.060019. Accessed 10 Apr 2012.

Miller, W., E. S. Williams, N. T. Hobbs, L.L. Wolfe. 2004. Environmental sources of prion transmission in mule deer. Emerging Infectious Disease Journal. 10(6). http://wwwnc.cdc.gov/eid/article/10/6/04-0010.htm. 10 Apr 2012.

Miller M.W., H.M. Swanson, L.L. Wolfe, F.G. Quartarone, S.L. Huwer, C. H. Southwick, and P. M. Lukacs. 2008. Lions and Prions and Deer Demise. PLoS ONE 3(12): e4019.

Monello, R. J., J.G. Powers, N.T. Hobbs, T.R. Spraker, M.K. Watry, and M.A. Wild. 2014. Survival and Population Growth of a Free-Ranging Elk Population with a Long History of Exposure to Chronic Wasting Disease. Journal of Wildlife Management 78:214-223.

Needham, M. D., J. Vaske, M. P. Donnelly and M. J. Manfredo. 2007. Hunting specialization and its relationship to participation in response to chronic wasting disease. Journal of Leisure Research. 39(3):413-437.

Petchenik, J. B. 2003. Chronic wasting disease in Wisconsin and the 2002 hunting season: gun deer hunters' first response. Wisconsin Department of Natural Resources, Bureau of Integrated Science Services, Madison, Wisconsin, USA.

Race, B., K. D. Meade-White, M. W. Miller, K. D. Barbian, R. Rubenstein, G. LaFauci. 2009. Susceptibilities of nonhuman primates to chronic wasting disease. Emerging Infectious Disease Journal. 15(9). http://www.cdc.gov/eid/article/15/9/09-0253.htm. Accessed 4 April 2012.

Responsive Management (2011). Hunters' attitudes toward chronic wasting disease and the effects of management efforts on hunting participation in Hampshire County, West Virginia. Harrisonburg, VA: Responsive Management.

Sandberg, M. K., H. Al-Doujaily, C. J. Sigurdson, M. Glatzel, C. O'Malley, C. Powell, E. A. Asante, J. M. Linehan, S. Brandner, J. D. F. Wadsworth, and J. Collinge. 2010. Chronic wasting disease prions are not transmissible to transgenic mice overexpressing human prion protein. Journal of General Virology. 91:2651-2657.

Saunders, S. E., S. L. Bartelt-Hunt, J. C. Bartz. 2012. Occurrence, transmission, and zoonotic potential of chronic wasting disease. Emerging Infectious Disease Journal. 18(3). http://dx.doi.org/10.3201/eid1803.110685. Accessed 4 April 2012.

Sigurdson, C. J. 2008. A prion disease of cervids: chronic wasting disease. Veterinary Research. 39(4):41.

Sleeman, J., C. Gillin. 2012. Ills in the pipeline: emerging infectious diseases and wildlife. The Wildlife Professional. 6(1):28-32.

Sohn, H., Y. Lee, M. Kim, E. Yun, H. Kim, W. Lee, D. Tark, and I. Cho. 2011. Chronic wasting disease (CWD) outbreaks and surveillance program in the Republic of Korea. Page 3 in Pro-

ceedings of the Prion 2011, Pre-congress Workshop: Transmissible Spongiform Encephalopathies in animals and their environment, 16 May 2011, Montreal, Quebec, Canada.

Vaske, J., L. Shelby, M. Needham. 2009. Preparing for the next disease: the human-wildlife connection. Pages 244-261 in M. J. Manfredo, J. J. Vaske, P. J. Brown, D. J. Decker, and E. A. Duke, editors, Wildlife and Society: The Science of Human Dimensions. Island Press, Washington D.C., USA.

Wang, F., X. Wang, C. G. Yuan, J. Ma. 2010. Generating a prion with bacterially expressed recombinant prion protein. Science. 327:1132-1135.

Wasserber, G., E. E. Osnas, R. E. Rolley, and M.D. Samuel. 2009 Host culling as an adaptive management tool for chronic wasting disease in white-tailed deer: a modeling study. Journal of Applied Ecology. 46:457-466.

Wyoming Game and Fish Department. 2012. Hunting season justification for the South Converse mule deer herd unit. http://gf.state.wy.us/web2011/wildlife-1000287.aspx Accessed 17 April 2012.

Williams, E. S. 2005. Chronic wasting disease. Veterinary Pathology. 42:530-549.

World Health Organization [WHO]. 2000. Proceedings of the meeting of World Health Organization consultation on public health and animal transmissible spongiform encephalopathies: Epidemiology, risk, and research requirements. Geneva, Switzerland.

Zimmer, N. P., P. C. Boxall, and W. L. Adamowicz. 2012. The impacts of chronic wasting disease and its management on recreational hunters. Canadian Journal of Agricultural Economics. 60:71-92.

NOTE: Between the publication date of the proposed rules (April 22, 2016) and the Commission meeting held on May 26, 2016, the department received a total of 605 comments regarding adoption of the proposed new rules (501 comments submitted via the department's website, 77 comments in writing, and 27 comments submitted in person at the May 26, 2016 Commission meeting).

A total of 414 comments opposing adoption were received, including a form letter submitted by 72 commenters. At the June 20, 2016, special Commission meeting, an additional 52 comments opposing adoption were received. The department notes that because many individual comments contained multiple statements, and multiple individuals made similar comments, the number of responses does not equal the total number of comments.

Perceived Emergency

Seventy-three commenters opposed adoption and stated that the rules were based on a perceived emergency. The department disagrees with the comments and responds that if the comments refer to the previously adopted emergency CWD breeder rules, since the rules being adopt herein are not being adopted as emergency rules, the issue of whether an emergency exists or existed is not germane to the adopted rules. If the commenters intend to suggest that the rules are unnecessary, the department disagrees and notes that CWD is a communicable, fatal disease that has the potential to profoundly alter the dynamics of deer hunting and deer management. Because there is no question that CWD exists in captive cervid populations in Texas and has been spread by the movement of captive cervids in Texas, there continues to be an immediate danger to Texas deer populations that warrants regulatory action by the department. No changes were made as a result of the comments.

Scientific Methodology

Four commenters opposed adoption and stated that the department should use or follow science to develop rules, two commenters opposed adoption and stated that the department should listen to the experts, and one commenter opposed adoption and stated that the department should look at history and facts. The department agrees with the comments and responds that, as explained elsewhere in this preamble, the importance of the role of science was paramount in the development of the rules as adopted. The department sought the expertise of numerous highly qualified veterinarians, epidemiologists, and wildlife disease specialists to advise and guide the department in the development of the rules. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that more research is needed before making rules. The department disagrees with the comment and responds that there is sufficient scientific evidence to conclude that CWD is a credible and potent threat to native wildlife and that the use of the regulatory process to protect native cervid species from that threat is justified. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the department should "look into genetics." The department agrees that there is value and promise in continued research into the role of genetics in contracting CWD. However, the department disagrees with the comment and responds that although there appears to be a predisposition to susceptibility for the contraction of CWD in certain white-tailed deer genotypes, genetics is not germane to the intent of the rulemaking, which is to implement a reasonable surveillance program to detect CWD if it exists so that it can be contained. No changes were made as a result of the comment.

One commenter opposed adoption and stated that by restricting CWD testing to deer breeders, the "sample survey" was "too small for scientific study." The department disagrees with the comment and responds that the rules are intended to address disease mitigation in processes involving the unnatural movement of deer by human agency (deer breeder, Triple T, DMP), are based on epidemiological models for disease-testing and propagation in captive populations, and produce meaningful data that allow the department to characterize and qualify the status of captive populations with regard to risk for the spread of CWD. The department also notes that voluntary CWD testing by landowners and hunters has been more than sufficient in most parts of the state to establish confidence that if CWD exists on the landscape, it is at extremely low prevalence. No changes were made as a result of the comment.

Epidemiology

Seventy-four commenters opposed adoption and stated that the department doesn't know how CWD spreads. The department disagrees with the comments and responds that scientific studies have demonstrated that CWD can be transmitted by animal-to-animal contact, by contact with bodily fluids, and by environmental contamination. No changes were made as a result of the comments.

Seventy-four commenters opposed adoption and stated that the department doesn't know where CWD originated. The depart-

ment agrees with the comments and responds that although CWD has been detected in three free-ranging mule deer, 24 white-tailed deer from four deer-breeding facilities, and one white-tailed deer that had been liberated from one of the four positive breeding facilities, the source of CWD is unknown. However, although the exact source of CWD is unknown, given the high interconnectivity of breeding facilities in Texas, only those facilities with rigorous testing histories can categorically be excluded as disease reservoirs. No changes were made as a result of the comments.

Eighteen commenters opposed adoption and stated that CWD cannot be either controlled or stopped. The department disagrees with the comments. The department acknowledges that stopping, containing, or attenuating CWD is very difficult once an environment has been contaminated with infectious prions and where CWD has been established for a long period before initial detection. As a result, for disease management and control, early detection of CWD infected animals is paramount. The time between introduction and detection of the disease is the most critical factor impacting the ability to control and possibly eradicate the disease before it can become established. Therefore, the rules provide for enhanced surveillance in an effort to detect CWD. No changes were made as a result of the comments.

Eleven commenters opposed adoption and stated that CWD isn't a problem, has no impact, and deer herds in states where CWD has been detected are thriving and growing. The department disagrees with the comments and responds that in most states where CWD has been detected in free-ranging deer, its prevalence has increased over time, and in some cases is exerting measurable negative impacts on deer populations and hunting behaviors. The long-term results of CWD are pernicious, because prions (the infectious agent) remain viable in the environment long after a host organism has died, which potentially exposes new animals to the infectious agent even after the infected animal has expired. In addition, human dimensions research indicating that hunters will avoid areas of high CWD prevalence is cause for concern as well. Therefore, the department believes it is prudent to treat CWD as a serious threat in order to protect Texas deer populations and the economies dependent upon them. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that CWD has no impacts on human health. The department agrees that there has been no scientific evidence of transmission of CWD to humans; however, the department notes that although at the current time there is no evidence that CWD is transmissible to humans, the World Health Organization advises that no part or product of an animal which has shown signs of a TSE (i.e., the family of diseases that includes CWD) should enter the food chain. No changes were made as a result of the comments.

One commenter opposed adoption and stated that CWD has been around for centuries. The department disagrees with the comment and responds that although TSEs have been known since the 18th century, CWD was first recognized in 1967 but was not identified as a TSE until 1978. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer will die of something anyway. The department agrees that deer have a finite lifespan, but disagrees that this fact reduces or eliminates the need to implement regulatory provisions to address disease detection and response measures. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD is not contagious. The department disagrees with the comment and responds that scientific evidence has established that CWD is a transmissible infectious disease. No changes were made as a result of the comment.

One commenter opposed adoption and stated that nothing should be done about CWD because it will run its course and the deer that survive will be resistant. The department disagrees that doing nothing is an option. The department is unaware of any strain of white-tailed deer or mule deer that can survive CWD if contracted. No changes were made as a result of the comment.

One commenter opposed adoption and stated that no animals have died from CWD so the increased prevalence is due to increased testing. The department disagrees with the assertion that there is a causal relationship between the magnitude of testing and the prevalence of CWD and responds that those two values are independent of one another. The department does acknowledge that increased testing, particularly in herds that have not been testing adequately, has resulted in more CWD discoveries, but such testing does not increase the prevalence rate of the disease. With regard to CWD causing the death of deer, although the deer in Texas that tested positive for CWD died from a cause other than CWD, the science evidence clearly establishes that CWD is a fatal disease and does result in mortalities. In addition, it should also be noted that CWD is an additional mortality factor in deer populations; data indicate that mortality rates can surpass fawn recruitment in local populations with high CWD prevalence. Studies have found that CWD-positive deer were much more likely to die as compared to their uninfected counterparts. (See, e.g., Edmunds 2013, DeVivo 2015). While CWD-positive deer in the studies that did survive to the clinical stages of the disease did eventually succumb to CWD, preclinical CWD-positive animals were also shown to be more vulnerable to other mortality factors such as predation, hunter harvest, and vehicle collisions. This additive mortality can result in declining population trends. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that CWD is political disease. The department disagrees with the comments and responds that, as noted elsewhere in this preamble (and in response to the previous comment), CWD is an insidious, persistent disease that, if not controlled, increases in prevalence in early years with no noticeable impacts, but can have long-term negative impacts on population dynamics. No changes were made as a result of the comments.

Impact on Deer Breeders

One commenter opposed adoption and stated that breeder deer are the most tested and protected deer in the state. The department disagrees with the comment and responds that while there are many deer breeders who have taken appropriate, necessary, and effective steps to ensure that CWD is not present in their inventories, that fact alone cannot be extrapolated to provide epidemiological confidence for the entirety of the regulated community. No changes were made as a result of the comment.

One commenter opposed adoption and stated that breeder deer are tested and regulated 1,000 times more than wild deer. The department disagrees with the comment and responds that white-tailed deer and mule deer are public resources and cannot be lawfully possessed alive except as provided by law. In addition, the assertion that breeder deer are tested 1,000 times

more than free-ranging deer is not correct; in fact, free-ranging deer populations in most areas of the state have been sampled at statistical confidence levels higher than most deer breeding facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the first case of CWD in the wild was found with .1% testing, but many deer breeders test at 100%; deer breeders test at 20-100% to find it, but it was found in the wild with little testing. The department infers that the commenter believes that the rules impose testing requirements on deer breeders are more intensive than those used to detect CWD in free-ranging deer. If that is the case, the department disagrees with the comment and responds that the sampling of free-ranging deer in most parts of the state has been sufficient to detect CWD if it exists at very low prevalence. No changes were made as a result of the comment.

One commenter opposed adoption and stated that deer breeders shouldn't have to analyze failures in other states because that is the department's job. The department disagrees with the comment and responds that the rules as adopted do not require deer breeders to analyze events occurring in another state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules will not work because CWD has nothing to do with breeder deer. The department disagrees with the comment and responds that CWD has, in fact, been discovered within deer breeding facilities and the rules as adopted have been in part developed according to accepted principles of epidemiological response for the purpose of detecting it if it exists in any given deer breeding facility. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that CWD is not a deer breeder disease. The department agrees that breeder deer are not the only deer susceptible to CWD, but responds that CWD has been discovered in deer breeding facilities, which by necessity means that deer breeding facilities must be addressed by any rules intended to detect and control CWD. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that "it is absolutely imperative that deer breeders and release sites must have the ability to live test out of loss of status" and suggested that the rules be changed to allow "for the facility that received the originating deer secures a "non detected" test result through post-mortem or live tonsil test from the specific deer transferred to the facility." The department interprets this comment to suggest that a facility or release site should be able to regain TC 1 or Class I status by conducting ante-mortem tests on TC 2 deer received at breeding facilities or by performing post-mortem testing of all TC 2 deer received at a release site. The department disagrees with the comment and responds that the statistical confidence used to establish minimum testing standards is based on herd-level sampling, and cannot be used to determine the probability of detection for individual animals. It should be noted that the rules as adopted provide a means for breeding facilities to "test up" to TC 1 status. It should also be noted that rules allow release sites an opportunity to "test-up" during the 2016-2017 season in order to regain Class I status. No changes were made as a result of the comments.

One commenter opposed adoption and stated that rules shouldn't punish facilities unconnected to the index herd. The department disagrees that the rules are intended to be punitive. With regard to facilities believed to be unconnected to the index herd, the department responds that during the epidemiological investigation of the first CWD-positive in a breeding facility, the department determined that over 75 percent of the deer breeders in Texas were linked to the CWD-positive facility by no more than three degrees of separation. Although many deer breeders may believe they are "unconnected" to a CWD-positive facility, the investigation alluded to demonstrates that most facilities were epidemiologically connected to the CWD-positive facility to some degree. As a result, it is necessary to obtain sufficient epidemiological evidence through testing to establish a level of confidence that CWD is not present in a facility prior to deer being transferred from the facility. No changes were made as a result of the comment.

Ninety-one commenters opposed adoption and stated that deer breeders are being singled out, targeted, punished, discriminated against, destroyed, and/or decimated by the department. The department disagrees that the rules are intended to be punitive or otherwise harm deer breeders. The risk of inadvertently moving CWD to new areas of the state is highest with the artificial movement of deer (i.e., in trailers). The only lawful methods for moving deer via human agency are permits for that purpose issued by the department (Triple T, DMP, deer breeder); therefore, rules designed to address the epidemiological risk associated with such confinement and movement in order to protect a public resource must necessarily regulate the persons authorized by permit to engage in those activities. For approximately a decade the department has required CWD testing at all sites of origin, whether these sites were deer breeding facilities or Triple T trap sites. Under the proposed and adopted rules (as well as previous rules), those who do not wish to move deer by Triple T permit are not required to CWD test, and deer breeders who do not wish to move deer are not required to CWD test. In comparing the level of CWD testing conducted in the last five years, deer breeders tested liberated deer for CWD at much lower percentage compared to CWD testing of deer moved via TTT permits. It should also be noted that when CWD was discovered in free-ranging mule deer in the Hueco Mountains of West Texas in 2012, the department established a 3.1 million acre Containment Zone (CZ). Within this zone no artificial movement of deer has been allowed. Additionally, every white-tailed deer and mule deer harvested by hunters in the CZ has been required to be presented at a check station for CWD testing. The CWD regulations in the CZ apply not only to the CWD-positive population, but to adjoining and surrounding populations as well. Given the high degree of interconnectivity of the deer breeding network in Texas (deer moving back and forth between and among deer breeders), if the regulations for deer breeders were consistent with the regulations in West Texas, all deer breeders would be required to test 100% of all mortalities, which would include hunter-harvested deer. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the state is imposing rules, but only deer breeders are paying. The department disagrees with the comment and responds that the rules as adopted are intended to prevent the spread of CWD as a result of human agency. Because deer breeders, Triple T permit holders, and DMP holders (under some circumstances) are agents of unnatural deer movement, they are directly affected by the rules while other parties (those who don't possess or move deer) are not. No changes were made as a result of the comment.

Fifteen commenters opposed adoption and stated that the intent of the department is to put deer breeders out of business or trample an industry. The department disagrees with the comment and responds that sole intent of the rules as adopted is to

protect a public resource. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that third-party associations and "anti-breeders" are trying to put deer breeders out of business. The department disagrees with the comment and responds that the rules as adopted were created with the invited input of a number of stakeholder groups, including deer breeders. The department is not aware of any groups or associations trying to put deer breeders out of business. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is trying to control deer breeders. The department disagrees with the comment and responds that the department has a statutory duty to protect and conserve the wildlife resources of the state; therefore, rules designed to address the epidemiological risks associated with the confinement and artificial movement of wildlife resources, such as those associated with deer breeding, are necessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the increase in CWD proves there is no connection to captive deer. The department disagrees with the comment and responds that CWD has been found in multiple deer breeding facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that all testing is aimed at deer breeders. The department disagrees with the comment and responds that in some cases there are CWD testing requirements for certain release sites that receive breeder deer or deer from certain DMP facilities. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD isn't being handled properly because the rules are being forced on deer breeders, forcing people out of business and severely hurting the deer breeding industry. The department disagrees with the comment and responds that the rules are the minimum necessary to allow the department to determine the extent and combat the spread of CWD. As mentioned elsewhere in this preamble, because deer breeders physically move deer in ways that nature does not, and in the process magnify the possibility of spreading disease, the rules as adopted must necessarily affect deer breeders. The department also disagrees that the rules force anyone out of business. A relatively small number of breeding facilities are prohibited from transferring deer (i.e., buying and selling deer) because they either received deer from an infected herd or cannot provide epidemiological evidence that CWD is not present. Even if the rules of the department and TAHC allowed such facilities to move deer, it is unlikely that possible customers (other deer breeders and persons who wish to have breeder deer released on their property) would consider obtaining deer from such sources because of the possibility of exposure to CWD. No changes were made as a result of the comment.

Nine commenters opposed adoption and stated that the rules are unfair to deer breeders and that breeders should be treated the same as any other landowner. The department disagrees with the comments and responds that deer breeders are afforded the privilege of possessing live deer (a public resource) under rules promulgated by the department. The department also has a statutory duty to protect and conserve the wildlife resources of the state. The rules as adopted represent the minimum measures necessary to discharge the department's statutory duty to protect the state's wildlife resources and were promulgated with the intent to minimize intrusiveness and regulatory burden as much as possible while achieving the goals of the department to determine the extent and prevent the spread of CWD. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the status of a deer breeding facility should not be determined by a five-year testing history. The department disagrees with the comment and responds that if the commenter is referring to one of the options for obtaining TC 1 status under the rules, the scientifically accepted incubation period for CWD is up to five years, therefore it is important to calculate risk based on a five-year testing history. However, the department also notes that the rules as adopted provide another method of obtaining TC 1 status for the 2016-2017 hunting year that does not include a five-year testing history. In addition, as explained elsewhere in this preamble, beginning in 2019 the distinctions between TC 1 and TC 2 will be of no consequence. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department focuses on deer breeders, high-fences, and white-tailed deer when 50 percent of CWD is found in mule deer. The department disagrees with the comment and responds that even if half the CWD cases in Texas were found in mule deer (which is not the case), the fact remains that CWD has been discovered in captive white-tailed deer populations and must be addressed in order to protect all deer populations. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD did not originate in Texas white-tails or breeder deer. The department agrees that while an exact understanding of the source or origin of CWD is unknown, what is known is that it has been detected in captive white-tailed in deer breeding facilities and must be addressed in order to protect all deer populations. No changes were made as a result of the comment.

Breeding Facility Testing

Seventy-four commenters opposed adoption and stated that rules should not include a testing "window" for ante-mortem testing. The department agrees with the comments and the rules have been changed accordingly.

Seventy-two commenters opposed adoption and stated that the rules should be altered to change "the definitions for "Failure to Comply" for TC 1 facilities, including clarification of testing language to reflect both ante- and post-mortem testing, as well as setting a 90-day window for the TC 1 breeder to furnish necessary test results to return to his TC 1 status and setting a one-year moratorium on reapplication to TC 1 status if the breeder does not meet this 90-day requirement." The department agrees that the "testing window" for regaining TC 1 status should be eliminated and the rule as adopted does not contain a "testing window". The department infers that the comment relates to the provisions of proposed §65.95(b)(1)(B) which would have imposed a 60-day window for a TC 1 facility that had failed to submit sufficient test results to retain TC 1 status to submit substitution test results or be classified as a TC 2 facility for a two-year period. Because the adopted rule applies a standard MQ testing requirement to both TC 1 and TC 2 facilities, it is unnecessary to retain the requirement for regaining TC 1 status within 60-days, as the provisions for regaining MQ status will suffice, so long as lower status breeder deer are not introduced into the TC 1 facility.

Seventy-two commenters opposed adoption and stated that "timeframes need to maximize the breeder's ability to achieve a higher status - not set them up for certain failure." The department agrees that the rules as adopted impose standards that prevent the movement of breeder deer under circumstances in which the epidemiological risk is significant, but disagrees that any aspect of the rules as adopted are designed or intended to prevent breeding facilities from increasing in status, or to coerce any person into imprudent or unwise decisions. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that the rules' testing requirements should be "realistic and reliable" instead of punishing "those facilities with the best stewardship of their animals by being below an arbitrary standard of "average mortality." The department disagrees with the comment and responds that the rules as adopted are not intended to be punitive. In addition, the testing requirements within the rules as adopted were developed based on principles of science and epidemiology, including the use of an average mortality rate as a reasonable baseline to determine the level of testing within any given facility, which is necessary to generate statistical confidence through time that CWD is not present. If anything, the rules provide the greatest degree of flexibility to those with the highest testing performance. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules shouldn't apply to deer breeders who haven't received deer in "awhile." The department disagrees with the comment and responds that the rules are designed to achieve a level of confidence that CWD is not present in any given breeding facility, irrespective of the length of time since breeder deer were acquired. No changes were made as a result of the comment.

Seventy-two commenters opposed adoption and stated that proposed §65.95 should be altered to allow "the at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility of the immediately preceding five-year period and each year thereafter, rather than making this requirement applicable annually." The department interprets this comment to mean that the commenters opposed the portion of the proposed rule that provided an option to achieve TC 1 status by providing "not detected" results for 80% of the mortalities that occurred in each of the preceding five report years, and that instead a facility should be allowed to provide "not detected" results for 80% of the cumulative mortalities that occurred in the previous five report years. If this interpretation is correct, the department agrees with the comment and the rules have been changed accordingly.

Seventy-two commenters opposed adoption and stated that there must be "an additional option added to ensure deer tested prior to trade or release are allowed to move freely with a TC 1 classification. The new option requested would include (I) ante-mortem tests of any deer transferred from the facility; and (II) post-mortem tests of at least 50 percent of eligible mortalities. This would ensure that any deer that moves from a facility which had received a "not-detected" live test result carries no movement restrictions or further testing with it." The department interprets part (I) of this comment to suggest that even if a deer comes from a TC 2 facility, if it has been live-tested it should be treated as coming from a TC 1 facility. The department disagrees and responds that the statistical confidence used to establish minimum testing standards is based on herd-level sampling, and cannot be used to determine the probability of detection for individual animals. The department interprets part (II) of this comment to recommend that a 50 percent post-mortem testing standard be the new standard for obtaining TC 1 status. The department disagrees with the comment and responds that given the strong desire on the part of the regulated community to eliminate release-site requirements, a higher post-mortem testing standard is necessary. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that the rules should be adopted with the following provisions to "allow breeders the ability to test cumulatively over the course of one reporting year" as follows: (i) Upon the processing of the annual report, if a facility has met any of the requirements of this section, the facility shall be designated a TC 1 facility for the next reporting year, so long as the facility does not accept a breeder deer from a lower status breeding facility; and (ii) Upon the processing of the annual report, if a facility has cumulatively tested equal to or greater than any of the ante-mortem testing requirements of this section during the entire reporting year, the facility shall be designated a TC 1 facility based upon their cumulative testing percentages." The department disagrees with the comments and responds that risk mitigation is not achieved by conferring TC 1 status on the random satisfaction of testing requirements. Allowing breeding facilities to achieve TC 1 status when the facility is not compliant with TC 1 testing requirements defeats the purpose of the rules. No changes were made as a result of the comments.

One commenter stated that he had recommended a testing regime which provided for 100% post-mortem testing, but that the recommendation had been rejected by staff. The department understands that this recommendation was combined with a more immediate elimination of release site testing. While the department acknowledges the value of a testing regime that tests 100% of mortalities in a breeding facility, the evaluation of the adequacy of such a regime must take into consideration the breeding facility's previous testing history. As noted elsewhere in this preamble, even with a higher level of mortality testing it would take several years to achieve a sufficient level of confidence that CWD would be detected in a facility if it existed at a low prevalence. No changes were made as a result of this comment.

May 6 Recommendation

Twenty-six commenters opposed adoption of rules and urged the Commission to adopt what was referred to as the "May 6 proposal," the "Texas Deer Association proposal" or the "unified industry proposal." The department interprets these comments to refer to a proposal put forth in a stakeholder meeting held on May 6, 2016, during the public comment period. This meeting, among other things, sought comments on the proposed rules. At the meeting, certain representatives of the deer breeding community put forth recommendations for revisions to the rules as proposed. The elements of this recommendation (referred to herein as the "May 6 recommendation") were documented in a letter dated May 7, 2016, signed by representatives of the Texas Deer Association, the Deer Breeders Corporation, the Exotic Wildlife Association and the North American Deer Farmers Association. The department disagrees with the comment and responds generally that although certain elements of the recommendation were determined to be effective in enhancing efforts for the surveillance and detection of CWD and have been incorporated into the rule as adopted, when considered as a whole the recommendation would not provide an adequate level of confidence that CWD would be detected if it existed a low prevalence.

As a result, when the May 6 recommendation taken a whole is considered, it was determined to be inadequate. The various elements of the recommendation are set forth separately as follows.

Twenty-six commenters opposed adoption of the proposed rules and urged the Commission to adopt the portion of the May 6 recommendation that would have made a deer breeder that meets the following criteria movement qualified (MQ): has "fifth year" or "certified" status in the TAHC CWD Herd Certification Program; has tested 80% of its eligible mortalities; and, has a minimum number of tests equal to or greater than 3.6% of the herd inventory at the end of the reporting year, with at least half of the required test conducted post-mortem. The department agrees that each of these elements has value and has incorporated some of these into the rules as adopted. Specifically, the department agrees that "fifth-year" or "certified status" breeding facilities should be MQ and the rules as proposed and adopted provide for that. The department also agrees that a breeding facility that tests 80% of its eligible mortalities each year with a minimum number of post-mortem tests equal to or greater than 3.6% of the herd inventory at the end of each reporting year provides sufficient confidence to be designated as MQ. Therefore, the rules as adopted include a provision that beginning with the report year that starts April 1, 2017, and for each report year thereafter, a deer breeder that has "fifth year" or "certified status" in the TAHC CWD Herd Certification Program is considered MQ, as is a deer breeder that has submitted CWD "not detected" test results for at least 80% of eligible mortalities occurring in the facility during the previous reporting year, so long as the number of "not detected" test results submitted during the previous reporting year are equal to or greater than 3.6% of the eligible-aged deer reported in the breeding facility inventory at the end of the previous reporting year. However, a release site that receives deer from a breeding facility that only meets the minimum MQ requirements in the 2016-2017 permit year (and is not a "fifth year" or "certified" facility), would be subject to release-site testing as provided in the rules as adopted. Changes were made to the rules as adopted to incorporate an annual testing level of 80% of eligible mortalities with a minimum number of post-mortem tests required, in part in response to these comments. However, although changes were made to the rules as adopted to eventually eliminate release site testing, such changes are not a result of the May 6 recommendation.

Twenty-six commenters opposed adoption of rules and urged the Commission to adopt the portion of the May 6 recommendation that would have required a deer breeder to test half of the 80% of eligible mortalities through post-mortem testing (i.e., ante-mortem substitution would not be authorized for more than 50% of the tests required to achieve 80% testing of mortalities). In addition, the commenters requested that substitution of ante-mortem tests be allowed at a ratio of two ante-mortem mortem tests for one post-mortem test. The ante-mortem substitution ratio included in the May 6 recommendation is consistent with provisions of the proposed rules; however, the department disagrees with the comments and responds that, as noted elsewhere in this preamble and in response to comments about maximizing ante-mortem testing, the department considered several options that would allow ante-mortem substitution for all required post-mortem tests. If no mortalities are tested, a higher number of ante-mortem tests would be required to achieve the same epidemiological confidence as post-mortem tests, perhaps at as much as a 6:1 substitution ratio. Stakeholders suggested a 4:1 substitution if less than 50 percent of mortalities were tested but retaining the 2:1 ratio if the number of post-mortem tests submitted was equal to at least 50 percent of eligible mortalities. The department also received public comment and engaged in discussions concerning the simplification of the regulations. Therefore, in an effort to simplify this requirement, an ante-mortem substitution ratio of 3:1 was selected. From an epidemiological perspective, while more testing is preferred, a substitution ratio of 3:1 was determined to be adequate. Although changes in the use of ante-mortem substitution were made in the adopted rules, no changes were made as a result of these comments.

Twenty-six commenters opposed adoption of rules and urged the Commission to adopt the portion of the May 6 recommendation that recommended elimination of all release site testing after the 2016-2017 hunting year. The department disagrees with this comment and responds that, as noted elsewhere in this preamble, while breeding facility testing of 80% of eligible mortalities with a minimum number of post-mortem tests equal to or greater than 3.6% of the herd inventory at the end of each reporting year, will, over time, provide sufficient confidence that CWD would be detected if it existed in a breeding facility at a low prevalence, given the historic variability among deer breeders' testing history, not until March 1, 2019 will there be sufficient testing history at this level to dispense with release-site testing for deer released from facilities that meet only the MQ requirement. No changes were made in response to the comments.

Twenty-six commenters opposed adoption of the rules and urged the Commission to adopt the portion of the May 6 recommendation that urged elimination of release-site testing for the first year of the rule's effectiveness for release sites that met the following: received deer only from breeding facilities with "fifth year" or "certified" status in the TAHC Herd Certification program; was classified as a Class I release site and was in full compliance with the Interim Breeder Rules; only received deer from a breeding facility that had tested 80% of its eligible mortalities in the preceding reporting year; or received deer only from a breeding facility that had obtained ante-mortem test results for more than 25% of eligible-aged deer. The commenters also recommended that any release site in compliance with the requirements of the Interim Breeder Rules be "reset" to Class I for the 2016-2017 hunting season. The department agrees that a release site in compliance with the requirements of the Interim Breeder Rules should be "reset" to Class I for the 2016-2017 hunting season (so long as the release site does not receive deer of a lower status after the effective date of the rules). The department also agrees with the portion of the recommendation seeking the elimination of release-site testing in the 2016-2017 hunting year for release sites that received deer only from herds with "fifth year" or "certified" status in the TAHC Herd Certification program (Class I release sites) and notes that this part of the May 6 recommendation is consistent with the rules as proposed. However, the department disagrees with the remainder of this portion of the May 6 recommendation. As explained elsewhere in this preamble, given the historic variability among deer breeders' testing history, not until March 1, 2019, will there be sufficient testing history at the 80% level to dispense with release-site testing for deer released from such breeding facilities. Further, statistical analyses conducted by the department found that a breeding facility that has submitted "not detected" ante-mortem test results for at least 50 percent of the eligible-aged deer in the facility as of the date on which ante-mortem testing begins has a sufficiently low level of risk to be classified as TC 1, meaning deer released from that facility would not trigger release-site testing requirements. However, to facilitate the transition to the new rules and recognizing that in

anticipation of the adoption of these rules some deer breeders may have already begun conducting ante-mortem testing but not yet tested 50 percent of eligible-aged deer, a temporary provision is included in the rules as adopted to allow a breeding facility that submits "not detected" ante-mortem test results for at least 25 percent of the eligible aged deer in the facility to be temporarily classified as TC 1; however, the facility must provide the balance of the required testing by May 15, 2017 to maintain TC 1 status. No changes were made as a result of these comments.

Twenty-six commenters opposed adoption of the rules and urged the Commission to adopt the portion of the May 6 recommendation that recommended that there be only one year of release site testing following the adoption of the rules (i.e., the 2016-2017 hunting year) and that those release sites be required to test the first 15 hunter-harvested deer (but not to exceed 15). As explained elsewhere in this preamble, the department agrees that the number of tests required to be submitted from release sites where hunter-harvested deer are required to be tested should be modified to require such tests from the first 15 hunter-harvested deer at the site and the rules as adopted, contain such a modification. However, for reasons explained in response to the previous comments, the department disagrees that release site testing should cease after the 2016-2017 hunting year. No changes were made in response that portion of the comments.

Ante-Mortem Testing

Seventy-two commenters opposed adoption and stated that proposed §65.92(f) "undermines the value of a non-detected live test. A result of non-detected should have the same weight and value in all applicable sections of this division. To suggest that a non-detected result should not count towards other sections or portions of this rules, directly devalues the finding of a non-detected result." The provision in question prohibits the use of an ante-mortem test result more than once to satisfy any testing requirement of the division. The department understands the comment to mean that a permittee should be able to use the same "not detected" test result multiple times to satisfy any testing requirement of the proposed rules. The department disagrees with the comment and responds that the epidemiological value of a "not detected" ante-mortem test result is unique in time and application and cannot be used to satisfy multiple requirements. For example, the epidemiological importance of the 3.6% requirement is independent of the 50% ante-mortem testing, and thus independent samples must be used to achieve the level of confidence intended. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that "live animal testing protocols must maximize and value "not detected" results. Restricting animals that can be tested and limiting the number of times an animal can be tested undermines the true value of "not detected" results as well as the producer's willingness to comply." The department disagrees that the rules as adopted do not "maximize and value" test results of "not detected." While the department agrees that ante-mortem testing can be an effective component of an overall testing regime, as explained previously in this preamble in connection with the substitution of ante-mortem for post-mortem tests provided in §65.92(b), testing animals that have died provides a much higher likelihood of detecting the disease, since diseased animals are more likely to die than healthy animals. The rules as adopted contain changes to allow for the more frequent ante-mortem testing of a single animal (from no more than once every 36 months to once every 24 months). In addition, the rules as adopted were changed to eliminate the minimum number of test results that must be post-mortem (i.e., to allow ante-mortem substitution for all required post-mortem test results). To compensate for the enhanced use of ante-mortem testing, the ratio at which ante-mortem tests may be substituted was adjusted from two ante-mortem test results for each required post-mortem test results to three ante-mortem test results for each required post-mortem test result. In addition, the rules as adopted were modified to eliminate the residency prerequisite (i.e. the time in which a breeder deer must have been in the breeding facility) for testing validity. The rules as adopted retain a minimum age requirement and testing frequency limitation for ante-mortem test validity. The literature indicates that animals younger than 16 months of age are problematic because if they are infected, the disease may not have had enough time to manifest itself in lymphatic or brain tissue. The testing frequency limitation is necessary because the affected tissues must be given sufficient time to regenerate before they can be tested again with efficacy. The department also disagrees that the standards contained in the rules as adopted function to discourage compliance. No additional changes were made as a result of the comments.

One commenter opposed adoption and stated that live testing should be allowed. The department agrees with the comment and responds that, as noted above, both the rules as proposed and the rules as adopted allow for ante-mortem (live) testing of deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there should not be residency requirements for ante-mortem testing. The department agrees with the comment and responds that, as previously noted, changes have been made accordingly.

One commenter opposed adoption and stated that the rules do not specifically provide for live testing. The department disagrees with the comment and responds that the rules as proposed and as adopted contain provisions that specifically provide for and allow ante-mortem testing of breeder deer. No changes were made as a result of the comment.

Seventy-two commenters opposed adoption and stated that the provisions of proposed §65.92(e)(1) should be eliminated because there are small facilities that may not experience two natural mortalities in one year. As proposed, §65.92 would have limited the number of post-mortem tests for which ante-mortem substitution was allowed. As noted elsewhere in this preamble, the department agrees with the comment and has made changes accordingly.

Release Site Requirements

Seventy-two commenters opposed adoption and stated that release-site testing should be required for three years following release, rather than five. The department agrees and responds that as explained in the discussion of §65.95(c)(1), the rules as adopted eliminate release-site testing requirements for Class II release sites after March 1, 2019 (except for sites that have not submitted the required test results).

Seventy-two commenters opposed adoption and stated that release-site testing should be a "three consecutive hunting year period for the submission of "non-detected" post-mortem results, specifying a threshold of 50% of either liberated or hunter-harvested deer, whichever is less." With regard to the time period for release site testing and as explained in response to the previous comment, the department agrees and responds that as explained in the discussion of §65.95(c)(1), the rules as adopted eliminate release-site testing requirements for Class II release

sites after March 1, 2019 (except for sites that have not submitted the required test results). However, the department disagrees that Class II release-site testing requirements should be the lesser of 50 percent of either liberated or hunter-harvested deer as provided in the proposed rules. Instead, the department responds that after analyzing 2015-2016 harvest data at Class II release sites, the department concluded that requiring every deer harvested at a site (but not more than 15) to be tested would enhance the level of release site testing at most sites. Thus, the change results in a simpler standard that is easier to comply with and enforce while remaining epidemiologically efficacious.

Seventy-two commenters opposed adoption and stated that the testing requirements for DMP facilities affected by the proposed rules should apply for three years. The department agrees and responds that as explained in connection with the discussion of §65.96, the rules as adopted eliminate the proposed release-site testing requirements for Class II release sites after March 1, 2019 (except for sites that have not submitted the required test). It should also be noted that §65.98 as adopted reduces the time period for which release sites not in compliance with the Interim Breeder Rules must submit tests (from five years to three years).

Seventy-two commenters opposed adoption and stated that proposed §65.98 should be changed "to only require testing for one year." The department disagrees with the comment and responds that although §65.98 is adopted with changes to reduce the number of years that testing is required by release sites not in compliance with Interim Breeder Rules (from five years to three years), further reduction of such release site testing is insufficient to establish epidemiological confidence that CWD is not likely present. No changes were made as a result of the comments.

Seventy-two commenters opposed adoption and stated that "the five year testing protocols for unconnected, currently tested Class II release sites is excessive and unwarranted. Deer that are released on Class II release sites come from tested, unconnected breeding facilities. They should not be treated similarly to exposed release sites." The department disagrees with the comment and responds that the proposed five-year testing history under the rules as proposed was not excessive or unwarranted; however, in light of changes made to the testing requirements as adopted, and as explained in the discussion of §65.95, modification of release-site testing requirements is appropriate. Therefore, the rules as adopted eliminate the proposed release-site testing requirements for Class II release sites after March 1, 2019, thus reducing the five-year time period to three years or less. It should also be noted that §65.98 as adopted reduces the time period for which release sites not in compliance with the Interim Breeder Rules must submit tests (from five years to three years). With regard to the portion of this comment regarding "unconnected" breeding facilities, the department disagrees and responds that during the epidemiological investigation of the first CWD-positive in a breeding facility, it was determined that over 75% of deer breeders in Texas were linked to the CWD-positive facility by no more than three degrees of separation. As a result, although many deer breeders may believe they are "unconnected" to a CWD-positive facility, the investigation demonstrated that most facilities were epidemiologically connected to a CWD-positive facility to some degree. However, the rules as proposed and as adopted do make a distinction between breeding facilities that are more directly exposed to CWD (TC 3 facilities) and other breeding facilities. Except with regard to the change to the time period for which release-site testing is required, no changes were made as a result of this comment.

Seven commenters opposed adoption and stated that there should be no release-site testing. The department agrees that except for Class III release sites (which have been more directly exposed to CWD), when deer breeders seeking to move deer have uniformly achieved a higher level of testing (80% of mortalities each year, with a minimum expected annual post-mortem test equal to at least 3.6% of the eligible aged population), the confidence level of detecting CWD if it exists in a breeding facility will be at a level sufficient to dispense with release-site testing for most release sites beginning in 2019. However, the department disagrees that release-site testing can be eliminated immediately and responds that epidemiological science dictates that it is prudent to require release-site testing in conjunction with testing at deer breeding facilities until the statistical probability of detecting CWD has reached an acceptable level. With regard to testing at Class III release sites, the department disagrees with the comment and responds that if deer are released from a facility that is either connected to another facility where CWD has been confirmed or cannot provide adequate testing history to conclude that CWD is not present in facility, the release site poses a much higher epidemiological risk; therefore, continued Class III release site testing is appropriate. No changes were made as a result of the comments.

One commenter opposed adoption and stated that there should be no testing required of any deer breeding facility or release site. The department disagrees with the comment and responds that the only way to prevent CWD from threatening all deer in the state is to determine its prevalence and spread by sampling free-ranging and captive populations of deer. No changes were made as a result of the comment.

One commenter opposed adoption and stated that release site owners shouldn't have to test 50 percent of harvested deer for five years. The department agrees with the comment and responds that the release-site testing requirements of the rules as adopted have been changed to require the first harvested deer and every deer subsequently harvested to be tested, but require no release site owner to test more than 15 deer in any year. In addition, as explained in connection with the discussion of §65.96, the rules as adopted eliminate release-site testing requirements for Class II release sites after March 1, 2019 (except for sites that have not submitted the required test).

Seventy-two commenters opposed adoption and stated that "release site requirements must maintain a commitment to the best practices for deer management, promoting the health and vitality of the deer herd by allowing soft release and transition sites as options." The department disagrees that "soft release" is not allowed by the rules as adopted and notes that current regulations in 31 TAC §65.610 provide for "soft release" of breeder deer to allow acclimation, so long as such "soft release" complies with the requirements of that section. The department is uncertain what the commenters mean by "transition sites" or the intended purpose of such sites. To the extent that the commenter is referring to alterations in fencing, the department notes that the rules as adopted allow for release sites to be modified, but continue to require that deer have access to the entirety of the release site (with certain exceptions for safety and protection of agriculture), which is necessary to establish epidemiological certainty regarding the exact locations where liberated deer are confined. Except for the changes to clearly allow modification of a release site and the fencing of areas for safety and to prevent depredation, no changes were made as a result of these comments.

Seventy-two commenters opposed adoption and stated that a release site should consist of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS or any contiguous tract of land owned by the landowner designated as a release site in TWIMS. The department disagrees with the comments and responds that for purposes of disease management, if the department is to allow the release of breeder deer, it must be able to know the exact geographical parameters of the release site. The rules as adopted have been changed to allow for release sites to be modified with the prior notification of the department and to allow for enclosures for the purpose of safety or the protection of crops. No changes otherwise were made as a result of the comments.

Seventy-four commenters opposed adoption and stated that the department does not have the authority to stipulate fence height requirements for release sites, especially when a breeding facility is releasing deer directly from the facility to adjoining low-fenced property owned by the same person. The department disagrees with the comments and responds that under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter L, the Commission is authorized to regulate the possession of deer held under a deer breeder permit, which includes establishing the circumstances under which the possession of breeder deer may legally cease. No changes were made as a result of the comments.

Testing of Free-Ranging Deer

Three commenters opposed adoption and stated that testing requirements should apply to all wild deer and all landowners. Four commenters opposed adoption and stated that all deer should be tested. The department assumes that these commenters are all referring to testing of free-ranging deer. The department disagrees with the comment and responds that there is a common misperception that free-ranging deer populations and captive deer populations present identical epidemiological contexts for disease sampling. Free-ranging deer populations are resident for the entirety of their lifespans within an extremely narrow geospatial extent (compared to the range of the species), whereas captive deer are commingled within facilities with deer from various other populations and are quite often relocated to destinations far beyond what would occur with normal natural movement. The sizes of the populations of inference are also disparate. Therefore, the two types of populations present two entirely different epidemiological situations that require different responses. The department's long-term CWD sampling efforts in free-ranging deer in almost every region of the state have produced epidemiological results that allow the department to conclude with 99 percent confidence that if CWD exists, it is at a prevalence of less than 1 percent. This statistical confidence cannot be achieved in captive populations (because even large breeding facilities contain an infinitesimally small statistical sample size) except over long periods of time. No changes were made as a result of the comments.

One commenter opposed adoption and stated that hunter-killed deer should be tested at the same rate as breeder deer. While the department agrees that the testing of hunter-harvested deer is an important component of disease management, and notes that the rules as adopted require the testing of hunter-harvested deer at some release sites, the department disagrees that all hunter-harvested deer should be required to be tested for CWD. As explained in more detail in the response to other comments, through voluntary cooperation by hunters and sampling of roadkills, the department has obtained sufficient samples from free-ranging deer to provide an enhanced level of assurance of detection of CWD in the free-ranging population. The department also notes that the rate of testing is immaterial; the sheer number of hunter-harvested deer tested (over time) is more significant, from a statistical point of view, than the rate of testing. As noted elsewhere in this preamble, at the current time the department is confident that surveillance of free-ranging populations is adequate in almost every region of the state to detect CWD in free-ranging populations at a very low prevalence. No changes were made as a result of the comments.

One commenter opposed adoption and stated that TPWD should test wild deer. The department assumes the commenter is referring to free-ranging deer. The department agrees with the comment and responds the department conducts a robust sampling effort on a continual basis. No changes were made as a result of the comment.

One commenter opposed adoption and stated that 50 percent of hunter killed deer should be tested. The department disagrees with the comment and responds that it is not necessary to sample 50 percent of hunter-harvested to achieve confidence that CWD can be detected at extremely low prevalence, which is explained in detail elsewhere in this preamble. As general background regarding the level of surveillance of free ranging deer, the department notes that testing a higher proportion of mortalities within a herd/population does not necessarily equate to more intensive sampling and/or a higher probability of detecting the disease. In calculating appropriate sample sizes, the department relies on probability detection tables constructed from a computation put forward by researchers Cannon and Roe that has been used extensively over many years for sample-size detection determinations. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that low-fenced deer aren't being tested or aren't being tested at the same intensity as breeder deer. The department disagrees with the comments and responds that if by "low-fenced deer" the commenter means free-ranging deer (which, it should be noted, includes deer on high-fenced properties), sufficient numbers of deer have been tested to yield high confidence that if CWD exists on the landscape, even at extremely low prevalence, it would have been detected in most regions of Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that only a small percentage of native deer are tested. The department assumes the commenters are referring the testing of free-ranging deer. The department agrees with the comment and responds that with regard to the level of surveillance of free ranging deer, testing a higher proportion of mortalities within a herd/population does not necessarily equate to more intensive sampling and/or a higher probability of detecting the disease. In calculating appropriate sample sizes, the department relies on probability detection tables constructed from a computation put forward by researchers Cannon and Roe that have been used extensively over many years for sample-size detection determinations. Simply put, as the population size increases, the proportion of the population that must be sampled to yield an equivalent confidence level decreases. No changes were made as a result of the comment.

One commenter opposed adoption and stated that more wild deer have tested positive for CWD than captive deer. The department disagrees with the comment and responds that although it is a fact that more breeder deer than free-ranging deer have been confirmed with CWD, it is irrelevant because the presence of the disease in even a single deer in either captive

or free-ranging populations is cause for concern and action. No changes were made as a result of the comment.

Triple T

Seventy-two commenters opposed adoption and stated that the rules should not include the provision prohibiting the issuance of a Triple T permit to trap deer at a site that has been a release site for breeder deer within the previous five years and should be changed to allow for deer to be trapped at Class I release site for Triple T purposes. The department disagrees with the comments and responds that any release site that received breeder deer within the last five years cannot be definitively excluded as a possible place where CWD has been introduced; similarly, a Class I status for a release site reflects only the source of breeder deer that have been released at that site since August of 2015 and does not account for the epidemiological status of deer that were previously released or resident on the site prior to the liberation of breeder deer. Therefore, the rules prohibit the trapping of deer for Triple T purposes at any location where breeder deer have been liberated within the previous five years (the accepted incubation period for CWD).

Seventy-two commenters opposed adoption and stated that the identification requirements for released Triple T deer should be eliminated. The department disagrees with the comment and responds that it is imperative that translocated deer be identifiable in order to facilitate epidemiological investigations in the event that CWD is discovered in a free-ranging deer population that has received Triple T deer. No changes were made as a result of the comments.

Twelve commenters opposed adoption by stating in identical or nearly identical fashion that the rules would severely limit Triple T activities. The commenters stated that instead of release site testing, the requirement should be for 10% testing at the trap site (no more than 10 deer per year per trap site) and that there should be uniformity of test requirements between all classes and levels. The department disagrees with the comments and responds that both trap site testing and release testing are imperative under certain circumstances. As proposed, the rules would have required 15 "not detected" post-mortem test results from the trap site to be submitted prior to permit issuance. For release sites, the proposed rules would have required the landowner of a Triple T release site to submit "not detected" post-mortem test results for a period of five consecutive hunting years immediately following the release for either 50 percent of liberated deer that are harvested at the Triple T release site, or if no liberated deer were harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer. However, the rules as adopted retain the requirement for 15 deer from the trap site to be tested with "not detected" results, but release-site testing has been eliminated.

Four commenters opposed adoption and stated that there should be no Triple T release-site testing. The department agrees with the comments and has made changes accordingly.

One commenter opposed adoption and stated that the proposed Triple T provisions are burdensome, excessive, and unnecessary. The department disagrees that the rules as proposed were onerous, but responds that the rules have been adopted with changes to facilitate compliance while still achieving a scientifically acceptable level of surveillance.

Administrative Procedure, Governmental Efficiency, and Public Policy

Ninety-four commenters opposed adoption and stated that the rules are overregulation, overreach, overkill, overreaction, overbearing, unwarranted, unjustified, or unnecessary. The department disagrees with the comments and responds that the rules as adopted are intended to represent a narrowly drawn, scientifically efficacious mechanism for increasing disease surveillance in captive populations and populations that receive deer from captive populations. In addition, the rules' requirements are based on the risk of exposure to and spread of CWD and the need for surveillance as part of the department's effort to ensure that the rules were not, in fact, broader than necessary. In addition, the department is undertaking efforts to educate those required to comply about the rules' requirements and modifying TWIMS (the department's online reporting system) to facilitate compliance. No changes were made as a result of the comments.

Eighty commenters opposed adoption and stated that the rules are an excessive expenditure of or waste of tax money. The department disagrees with the comments and responds that the administration and enforcement of fish and game laws in Texas is funded primarily by revenues from the sale of hunting and fishing licenses and permits; therefore, the cost of administering and enforcing the rules as adopted is already part of the department's existing duties. No changes were made as a result of the comments.

Eight commenters opposed adoption and stated that the rules are shady, the result of political influence and backroom dealing, promulgated according to a hidden agenda, or written by unknown "stakeholders" in closed-door meetings with no notice. The department disagrees with the comments and responds that the rules were developed in an open, inclusive, and transparent process that involved the invited participation of the regulated community and stakeholders (including trade associations representing deer breeders) with facilitation provided by of the Center for Public Policy Dispute Resolution of the University of Texas School of Law and regular contact with interested legislators. No changes were made as a result of the comments.

Seventy-four commenters stated that the rules are burdensome. One commenter opposed adoption and stated that the rules are too stringent. The department disagrees with the comments and responds that as noted in the proposal preamble, the department recognizes that the rules will have an impact on those required to comply. However, the rules' classification of breeding facilities and release sites based on risk of exposure to CWD, with requirements based on a breeding facility's and release site's risk of exposure to CWD, was part of the department's effort to ensure that the rules were not, in fact, broader than necessary. In addition, the department is undertaking efforts to educate those required to comply about the rules' requirements and modifying TWIMS (the department's online reporting system) to facilitate compliance. No changes were made as a result of the comments.

Three commenters opposed adoption and stated that rules are excessively complicated. The department disagrees with the comment and responds that the rules as adopted to the greatest extent possible avoid complexity, but that by the very nature of the regulatory terrain (disease management in a large state with large populations of landowners and deer, and more than 1,000 deer breeders, Triple T, and DMP cooperators), some regulatory complexity is unavoidable. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that the costs of the rules outweigh the benefits and the risk of CWD is less than the value of the rules. The department disagrees with the comments and responds that the cost of not having the rules could be severe if CWD becomes established at landscape scale, affecting the state's deer populations and the multi-billion dollar economies surrounding hunting, ranching, real estate, and conservation. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules were arbitrary and inefficient. The department disagrees with the comment and responds that, as explained elsewhere in this preamble, the rules were developed based on scientific principles of epidemiology and disease management, and are intended to be as efficient as possible under the circumstances. No changes were made as a result of the comment.

One commenter opposed adoption and stated that there were now over 500 pages of regulations governing deer breeders. The department disagrees with the comment and responds that depending on how the rules and statutes are quantified, there appears to be fewer than 20 pages of regulatory material that applies to deer breeders. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the Commission should adopt the recommendation of the Texas Deer Association. The department disagrees with the comment and responds that persons associated with the Texas Deer Association made a number of recommendations, some of which have been incorporated into the rules adopted, although other recommendations from the Texas Deer Association were insufficient to meet responsible disease-management goals. With regard to the recommendations made by the Texas Deer Association and others on May 6, 2016, the department's response to the comments regarding those recommendations are provided elsewhere in this preamble. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules cause landowners to buy deer only from TC 1 breeding facilities. The department disagrees with the comment and responds that the rules do not determine who buys or sells deer for whatever reason, rather, it is the emergence of CWD acting to make potential customers anxious about the health of breeder deer being purchased. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the federal government was regulating where they have no business at taxpayer expense. The department disagrees with the comment and responds that the rules are not the result of a requirement of the federal government. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the government tells people how to raise deer but not cattle. The department disagrees with the comment and responds that unlike cattle, which are considered livestock, mule deer and white-tailed deer are public resources. In addition, it should be noted that state and federal agencies have enacted regulations regarding cattle production. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that government shouldn't be involved in deer breeding and that deer breeding is a private enterprise that government should stay out of. The department disagrees with the comment and responds that under Parks and Wildlife Code, Chapter 43, Subchapter L, the department is required to regulate the possession of live deer under a deer breeder's permit. No changes were made as a result of the comments.

Two commenters opposed adoption and stated that TPWD violated the Open Meeting Act. The department disagrees with the comment and responds that although the commenter did not specify the actions that the commenter believes violated the Open Meetings Act or when they occurred, the rules were adopted by the Parks and Wildlife Commission in a lawfully noticed meeting in compliance with applicable provisions of the Texas Open Meetings Act, following publication of a Notice of Proposed Rulemaking in the *Texas Register* and solicitation of public comment as required under the Texas Administrative Procedure Act. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules constituted a destruction of freedom of commerce. The department disagrees with the comment and responds that the rules as adopted are not for the purpose of regulating commercial activity. As noted in the proposal preamble, the department acknowledges that the rules may have an economic impact on persons required to comply. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the stakeholder groups that provided input to the department were not representative of the public. The department agrees that the various stakeholder groups are not demographically reflective of the state's population as a whole; however, the stakeholder groups were representative of the persons impacted by the rules. The department considers that a stakeholder is a person or organization that has a direct interest in the department's actions, objectives, and policies. On that basis, the composition of the stakeholder groups was focused on the parties directly affected by potential rules addressing the nexus of disease management and the unnatural movement of a popular game species. The stakeholder groups therefore included individuals and associations that could knowledgably inform the department about the perspectives of affected regulatory agencies, landowners, wildlife managers, hunters, and deer breeders. In addition, through the notice and comment process required for the adoption of the rules, any person with an interest in the rules was given an opportunity to participate. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the department is too political, and one commenter opposed adoption and stated that the rules are part of TPWD's political agenda. The department disagrees with the comments and responds that, as explained in more detail elsewhere in this preamble, the basis for the rules was the protection of a public resource using biologically defensible measures intended to minimize CWD risks to free-ranging and captive white-tailed deer, mule deer, and other susceptible species in Texas while minimizing direct and indirect impacts of CWD to hunting, hunting-related economies, and conservation in Texas. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules are just a way for the department to create more government jobs. The department disagrees with the comment and responds that, as mentioned elsewhere in this preamble, the rules are for the purpose of protecting a public resource. Although the department has engaged additional manpower on a temporary basis

to enhance customer service to the regulated community, the administration and enforcement of the rules as adopted will be effected by existing personnel. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules are a "cash cow" for the department and one commenter opposed adoption and stated that the department was trying to add more government jobs and increase budget. The department disagrees with the comment and responds that the rules are not motivated by and do not affect the department's revenue stream. No changes were made as a result of the comment.

One commenter opposed adoption and stated that politics should be kept out of rulemaking. The department agrees with the comment and responds that the rules as adopted are for the purpose of protecting a public resource based on the best epidemiological science available. No changes were made as a result of the comment.

One commenter opposed adoption and stated that TPWD is corrupt because testing goals in the two counties where CWD was discovered were not attained. The department assumes that the commenter is referring to the fact that although the department exceeded its goal for collection of CWD samples from hunter-harvested deer on a statewide basis, the department did not achieve its goal for hunter-harvest sample collection in the Central Texas areas surrounding the sites on which CWD was detected. The department disagrees with the comment and responds that every effort was and is being made to accumulate an epidemiologically complete picture of the prevalence of CWD in every part of the state. The department also responds that suboptimal sampling in any given location does not make the department "corrupt" or the rules as adopted unnecessary. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules change constantly, which is illegal. The department disagrees with the comment and responds that as explained elsewhere in this preamble, while the department acknowledges that there have been several iterations of regulations regarding CWD, the emergency rules and the Interim Breeder Rules were developed for the stated purpose of providing an immediate response in the wake of the June 2015 discovery of CWD in a breeding facility, to enable breeders, release sites, land managers, hunters, and wildlife enthusiasts some degree of certainty through the 2015-2016 hunting season, and to afford the department an opportunity, through a process that included extensive stakeholder input, to develop regulations that would provide a mechanism for responding to CWD for the long term. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the per-animal testing costs in the preamble are too high. The department disagrees with the comment and responds that because the procedures for CWD sample collection were relatively new and only a small number of persons at the time the proposed rules were published had been trained or certified to perform those procedures, the department based the estimates of the cost of compliance on information solicited from a number of private veterinarians. As more people become trained and certified to become sample collectors, the cost of compliance will be reduced, which has proven to be the case. No changes were made as a result of the comment.

One commenter opposed adoption and stated that TPWD admitted there were no goals. The department disagrees with the comment and responds that it is unaware of any statement to the effect that there is no goal for this rulemaking. The department stated numerous times in numerous rulemakings, as well as continuously to the public via the department's communications efforts since the discovery of CWD in a deer breeding facility in June 2015, that the department is guided by the three major goals set forth in the CWD Management Plan: (1) Minimize CWD risks to the free-ranging and captive white-tailed deer, mule deer, and other susceptible species in Texas; (2) Establish and maintain support for prudent CWD management with hunters, landowners, and other stakeholders; and (3) Minimize direct and indirect impacts of CWD to hunting, hunting related economies, and conservation in Texas. No changes were made as a result of the comment.

One commenter opposed adoption and stated that it is unethical to have unreasonable rules. The department disagrees that the rules are unethical or unreasonable and responds that as explained elsewhere in this preamble, the department has undertaken considerable efforts to involve affected parties in the process of developing these rules to ensure that the rules as adopted provide a reasonable mechanism for the surveillance and containment of CWD based on scientific principles of disease management while still allowing regulated activities to occur. No changes were made as a result of the comment.

Three commenters opposed adoption and stated that the original rules worked just fine. The department disagrees with the comment and responds that the while the original rules (i.e., the rules that existed at the time CWD was discovered in a Medina County breeding facility in June 2015) provided an adequate initial baseline for testing, the rules were inadequate to provide a level of assurance that CWD would be detected if it existed in a breeding facility. It should be noted that although the minimum testing requirement under the original rule was 20%, the average testing rate for breeding facilities was previously 40%. Also, every Texas deer breeding facility where CWD has been discovered had tested more than 90% of eligible mortalities. In the first deer breeding facility where CWD was discovered (Medina County), 95% of the eligible mortalities were tested. In the second facility (Lavaca County), the facility owner was required as prescribed in a TAHC herd plan to test 100% of eligible mortalities, and it was under this testing rate that CWD was discovered. The third and fourth discoveries of CWD in white-tailed deer occurred at facilities under a TAHC herd plan or subject to enhanced testing under the Interim Breeder Rules. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules have too many traps and holes. The department disagrees with the commenter, especially in the absence of the identification of specific problematic provisions, and responds that the rules were not intended to include traps and holes. In addition, as noted in response to other comments, through outreach and modifications to TWIMS, the department is seeking to address concerns about compliance with the rules.

One commenter opposed adoption and stated that the rules are "not right." The department understand this comment to be stating a general objection to the rules. The department disagrees with the comment and responds that it is discharging a statutory duty to protect the wildlife resources of the state. No changes were made as a result of the comment.

One commenter opposed adoption and stated that CWD cannot be regulated away. The department agrees with the comment and responds that the rules as adopted are not intended to elim-

inate CWD, but to detect it where it exists so that it can be contained. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules do not account for long-term impacts. The department disagree with the comment and responds that the rules actually are intended to avoid long-term impacts. By providing a pathway for most, if not all, breeding facilities to achieve movement status without release-site testing requirements, the rules intentionally seek to minimize long-term impacts for those deer breeders who are willing to conduct adequate testing. No changes were made as a result of the comment.

Nature of Breeder Deer

Seventy-two commenters opposed adoption and stated that the rules shouldn't "interfere with the private property rights of the individual landowner." The department agrees with the comments and responds that the rules as adopted do not affect the private property rights of any individual landowner. No changes were made as a result of the comments.

Seventy-five commenters opposed adoption and stated that the rules should not require breeder deer to be killed. The department disagrees that the rules require breeder deer to be killed. The rules provide for testing requirements that must be met in order to be able to move deer and provide the option of sacrificing deer in order to meet those requirements, but do not require any deer breeder to kill any deer. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that breeder deer are private property and should be treated like cattle. The department disagrees with the comments and responds that breeder deer are the property of the people of the state under the provisions of the Parks and Wildlife Code, while cattle are considered livestock. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules violate property rights. The department disagrees with the comment and responds that the rules as adopted do not regulate the acquisition, use, or transfer of private property, real or personal. No changes were made as a result of the comment.

One commenter opposed adoption and stated that breeder deer are livestock and shouldn't be regulated by the state. The department disagrees with the comment and responds that deer are not livestock under the laws of this state, and that under the Parks and Wildlife Code, white-tailed deer and mule deer are the property of the people of the state. No changes were made as a result of the comment.

Economic Impacts

Two commenters opposed adoption and stated that the rules will destroy property values. The department disagrees with the comments and responds that the presence of CWD in an area, rather than the presence of rules designed to detect and contain CWD, would seem to be the major determinant of the effect of CWD on property values. In addition, while the department recognizes that there could be costs associated with additional testing under the rules, the detection and containment of CWD is necessary to protect the state from the threat of CWD to the state's multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies, which should positively impact property values. No changes were made as a result of the comments.

Eighty-one commenters opposed adoption and stated that the rules will hurt state and local economies and cost jobs. Six commenters opposed adoption and stated that the rules will kill the deer breeding industry and put people out of business. Two commenters opposed adoption and stated that the rules will create financial burdens, economic hardship, and hurt families. Similarly, one commenter opposed adoption and stated that the rules will hurt thousands of businesses and people. One commenter opposed adoption and stated that the rules will jeopardize 800,000 jobs. The department disagrees with the comments and responds that depending on a breeding facility's classification under the rules and the types of activities that the breeding facility seeks to undertake, there may be costs associated with additional testing. If the comment is referring to marketplace behavior, the proposal preamble also noted that to the extent that any marketplace analysis can be conducted, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the proposed rules from marketplace behavior that is the result of the discovery of CWD. With regard to the comment about jeopardizing jobs, an unpublished study conducted by the Agricultural and Food Policy Center at Texas A&M University in 2007 estimated the number of jobs created by the deer breeding industry at that time to be 7,335 jobs with the "multiplier effect." The department further responds that detection and containment of CWD is necessary to protect the state's multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules will result in a loss of at least $1.2 million in revenue to the department in the form of deer breeders going out of business and lost license revenue from non-resident hunters. The department disagrees with the comment and responds that department data indicate a steady trend line for the number of permitted deer breeders, that there is no data to estimate what percentage of non-resident hunters hunt released breeder deer, and that significant revenue loss and economic harm could result if CWD is not contained and managed. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules constituted an unfunded mandate, because deer breeders must bear the cost of CWD testing while free-ranging deer are tested by the state at no cost to hunters and landowners. The department disagrees with the comment and responds that deer breeding is a commercial enterprise that is voluntarily engaged in by deer breeders and much the same as the cost of fencing, feed, and medical care, the testing requirements imposed by the rules are a cost of doing business that can be passed to the consumer if the business operator so chooses. It should also be noted that persons transporting deer pursuant to Triple T or TTP permit must pay costs associated with the movement of deer, including the cost of CWD testing. Hunter-harvested deer are tested at no cost because the department finds an imperative need to develop an epidemiological characterization of CWD in free-ranging populations everywhere in the state. No changes were made as a result of the comment.

Two commenters opposed adoption and stated that the rules will hurt or kill hunting. The department disagrees with the comments and responds that the rules adopted will protect hunting by protecting the resources that are hunted. No changes were made as a result of the comments.

One commenter opposed adoption and stated that because deer breeders provide the lion's share of hunting opportunity, and the rules will hurt department revenue and the economy. The department disagrees with the comment and responds that although breeder deer compose a very small percentage of the deer harvest, the threat to the economy arises from failing to respond responsibly to CWD, which, if not managed, has the potential to negatively impact the state's hunting economy. No changes were made as a result of the comment.

Compliance and Enforcement

Seventy-two commenters opposed adoption and stated that "Any penalties for non-compliance must accurately reflect the actions and requirements of the current rules, not extending penalties beyond what is reasonable or just." The department is uncertain exactly what is meant by the comment, but responds that the penalties for violations of the rules as adopted are stipulated by statute and do not differ from the penalties currently in effect. No changes were made as a result of the comments.

Miscellaneous

One commenter opposed adoption and stated that there should be no rules whatsoever. The department disagrees with the comment and responds that the department has a statutory duty to protect public wildlife resources and it is imperative to do so because CWD poses a threat to those resources. No changes were made as a result of the comment.

Seventy-two commenters opposed adoption and stated that "It is imperative that any rules regarding standards for testing and release be based on the overall stewardship and health of the deer herd, the true impacts of this disease on the population in Texas, the continuity, applicability, and practicality within a once-prosperous business environment, and should account for the economic burden they place on the producer, permit holder, or release site registrant." The department agrees with the comment, with the caveat that the assertion of a "once-prosperous business environment" is an unsubstantiated comparative. No changes were made as a result of the comments.

Rules Not Stringent Enough

Twelve commenters opposed adoption and stated that deer breeding should not be legal. The department disagrees with the comment and responds that pursuant to Parks and Wildlife Code, §43.352(a), the department is required to issue a permit to a qualified person to possess live breeder deer in captivity. No changes were made as a result of the comments.

Nine commenters opposed adoption and stated that all released breeder deer should bear visible tags or other means of ready identification and released only to double-fenced release sites. The department disagrees with the comments and responds that the rules as adopted require only Triple T deer and breeder deer being released from a TC 3 breeding facility to be eartagged. The department also believes that the current standard for release-site fencing, which requires a fence to be at least seven feet in height, and more importantly, capable of retaining deer at all times, to be sufficient for keeping liberated deer from commingling with free-ranging deer. The department notes that Parks and Wildlife Code, §43.3561, does include identification requirements associated with breeder deer. No changes were made as a result of the comments.

Four commenters opposed adoption and stated that the fence requirement should be eight feet, not seven feet. The department disagrees with the comments and responds that the rules as adopted require release-site fencing to be at least seven feet in height, which the department believes is sufficient to reasonably retain breeder deer on the release site under ordinary circumstances. The department also notes that the rules as adopted do not prevent a landowner from erecting a fence of greater than seven feet in height. No changes were made as a result of the comments.

One commenter opposed adoption and stated that the rules do not require notification of neighboring landowners when a CWD-positive deer is found. The department acknowledges that the rules do not require adjoining landowners to be notified if CWD is discovered on a property, but disagrees that such a requirement would increase the department's ability to detect and contain CWD. The department reasons that because it notifies the public when CWD is discovered and under other rules may designate any area of the state as a Containment Zone or Surveillance Zone for purposes of CWD management, landowners of property surrounding a site where CWD is discovered will quickly learn of the disease's emergence, if it occurs. No changes were made as a result of the comment.

One commenter opposed adoption and stated that the rules should not allow release to low-fenced property. The department agrees with the comment and responds that the rules prohibit the release of deer to low-fenced acreage. No changes were made as a result of the comment.

One commenter opposed adoption and stated that ante-mortem testing at 25 percent will allow young animals that have CWD that is not yet detectable to be moved, thus spreading the disease. The department disagrees with the comment and responds that the 25 percent ante-mortem test value is a preliminary testing requirement to temporarily achieve TC 1 status during the initial year of the new rules effectiveness; to maintain TC 1 status, another 25 percent of the source facility's inventory would have to be ante-mortem tested by May 1. The department is attempting to allow as many TC 2 facilities as possible to "test up" to TC 1 status and reasons that some facilities might not be able to ante-mortem test 50 percent of their inventory immediately; therefore, the 25 percent value was selected. It should also be noted that irrespective of the testing level, young animals could be moved with CWD because it is not normally yet detectable, even with 100% ante-mortem testing. The department also notes that if CWD is present in a breeding facility it will be discovered through time, and because breeder deer can be liberated only to high-fenced release sites, if CWD is discovered in a breeding facility after it has met an initial 25 percent "not detected" ante-mortem standard, the department will know the exact location where deer from the facility have been transferred or liberated and will be able to take immediate steps to address the situation. No changes were made as a result of the comment.

The department received a total of 422 comments supporting adoption of the proposed rules. Between April 22, 2016 and May 26, 2016 the department received 178 comments supporting adoption: 111 comments via the department's website and 67 written comments. At the June 20, 2016, special Commission meeting, the department received 244 comments supporting adoption of the rules.

The Texas Deer Association, Exotic Wildlife Association, AgriSense Texas, and the Deer Breeder Corporation commented against adoption of the rules as proposed.

The following groups and associations commented in support of adoption of the rules: Texas Farm Bureau, King Ranch, Texas and Southwestern Cattle Raisers Association, Ducks Unlimited, Archery Trade Association, Caesar Kleberg Wildlife Management Institute, Plateau Land and Wildlife Management, Audubon Texas, Pope and Young Club, Austin Woods and Waters Club, Quality Deer Management Association, Bexar Audubon Society, Rocky Mountain Elk Foundation, Boone and Crockett Club, Safari Club International - Houston Chapter, Coastal Bend Bays and Estuaries Program, Sierra Club - Lone Star Chapter, Hill Country Alliance, Mule Deer Foundation, Shikar Safari Club International, Texans For Saving Our Hunting Heritage, Hill Country Conservancy, Texas Bighorn Society, Texas Agricultural Land Trust, Texas Cattle Feeders Association, Lone Star Bow Hunters Association, Texas Chapter of The Wildlife Society, National Wild Turkey Federation, Texas Sportsman's Association, National Wildlife Federation, Texas Wildlife Association, Orion - The Hunters Institute, Native American Seed, Association of Fish and Wildlife Agencies, Bear Trust, Catch a Dream Foundation, Council to Advance Hunting and the Shooting Sports, National Shooting Sports Foundation, National Trappers Association, North American Grouse Partnership, Pheasants Forever - Quail Forever, Tennessee Wildlife Foundation, Theodore Roosevelt Conservation Partnership, Tread Lightly!, Wildlife Management Institute, Wildlife Mississippi, Wildlife Forever, Texas Conservation Alliance, Nina Sinclair Trust, Whitetails Unlimited, Wild Sheep Foundation, and the East Texas Woods and Waters Club.

31 TAC §§65.90 - 65.94

The repeals are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

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 25, 2016.

TRD-201603643
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 15, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 389-4775

♦ ♦ ♦

31 TAC §§65.90 - 65.99

The new rules are adopted under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, and sale of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing laboratory--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Ante-mortem test--A CWD test performed on a live deer.

(3) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(4) Confirmed--A CWD test result of "positive" received from the National Veterinary Service Laboratories of the United States Department of Agriculture.

(5) CWD--Chronic wasting disease.

(6) CWD-positive facility--Any facility in or on which CWD has been confirmed.

(7) Deer breeder--A person who holds a deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(8) Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder's Permit).

(9) Department (department)--Texas Parks and Wildlife Department.

(10) Deer Management Permit (DMP)--A permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation.

(11) Eligible-aged deer--

(A) if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older; or

(B) for any other deer, 16 months of age or older.

(12) Eligible mortality--An eligible-aged deer that has died.

(13) Exposed deer--Unless the department determines through an epidemiological investigation that a specific deer has not been exposed, an exposed deer is a white-tailed deer or mule deer that:

(A) is in a CWD-positive facility; or

(B) was in a CWD-positive facility within the five years preceding the confirmation of CWD in the CWD-positive facility.

(14) Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, or DMP, including release sites and/or trap sites.

(15) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(16) Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(17) Interim Breeder Rules--31 TAC §§65.90 - 65.93, concerning Chronic Wasting Disease - Movement of Deer, adopted by the Texas Parks and Wildlife Commission on November 5, 2015, and published in the January 29, 2016 issue of the *Texas Register* (41 TexReg 815).

(18) Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(19) Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(20) Liberated deer--A free-ranging deer that bears evidence of having been liberated including, but not limited to a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue).

(21) Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(22) Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

(23) NUES tag--An ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES).

(24) Originating facility--Any facility from which deer have been transported, transferred, or released, as provided in this definition or as determined by an investigation of the department, including:

(A) for breeder deer, the source facility identified on a transfer permit; and

(B) for deer being moved under a Triple T permit, the trap site.

(25) Post-mortem test--A CWD test performed on a dead deer.

(26) Properly executed--A form or report required by this division on which all required information has been entered.

(27) Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer in the previous reporting year has been accurately reported.

(28) Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(29) Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(30) RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(31) Status--A level assigned under this division for any given facility on the basis of testing performance and the source of the deer. For the transfer categories established in §65.95(b) of this title (relating to Movement of Breeder Deer), the highest status is Transfer Category 1 (TC 1) and the lowest status is Transfer Category 3 (TC 3). For the release site classes established in §65.95(c) of this title, Class I is the highest status and Class III is the lowest.

(32) Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(33) Suspect--An initial CWD test result of "detected" that has not been confirmed.

(34) TAHC--Texas Animal Health Commission.

(35) TAHC CWD Herd Certification Program--The disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).

(36) TAHC Herd Plan--A set of requirements for disease testing and management developed by TAHC for a specific facility.

(37) Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(38) Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(39) Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds),

(40) Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(41) TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.91. General Provisions.

(a) To the extent that any provision of this subchapter conflicts with any provision of this chapter other than Division 1 of this subchapter, this subchapter prevails.

(b) Except as provided in this division, no live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP may be transferred anywhere for any purpose.

(c) Except as provided in this division, no person shall introduce into or remove deer from or allow or authorize deer to be introduced into or removed from any facility for which a CWD test result

of "suspect" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. The provisions of this subsection take effect immediately upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) Notwithstanding any provision of this division, no person may cause or allow breeder deer to be moved from a facility for any purpose if such movement is prohibited by a TAHC Herd Plan associated with a TAHC hold order or TAHC quarantine.

(e) A facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of this division at that status for:

(1) a minimum of two years, if the facility is a breeding facility; or

(2) for the period specified in §65.95(c) of this title (relating to Movement of Breeder Deer), if the facility is a release site.

(f) A deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received.

(g) The designation of status by the department in and of itself does not authorize the transfer or movement of deer. No person may remove or cause the removal of deer from a facility that has been designated NMQ by the department pursuant to this division.

(h) Unless expressly provided otherwise in this division, all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(i) In the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division.

§65.92. CWD Testing.

(a) All CWD test samples at the time of submission for testing shall be accompanied by a properly executed, department-prescribed form provided for that purpose.

(b) For the purposes of this division, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue with at least 6 lymphoid follicles collected within six months of submission by a licensed veterinarian authorized pursuant to statutes and regulations governing the practice of veterinary medicine in Texas and regulations of the TAHC from a live deer that:

(1) is at least 16 months of age; and

(2) has not been the source of a "not detected" ante-mortem test result submitted within the previous 24 months.

(c) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex or medial retropharyngeal lymph node of an eligible mortality, and may be collected only by a qualified licensed veterinarian, TAHC-certified CWD sample collector, or other person approved by the department.

(d) To meet the requirements of §65.94(a)(1)(A) and (B) of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title (relating to Movement of Breeder Deer), ante-mortem test results may be substituted for post-mortem test results at a ratio of three "not detected" ante-mortem test results for each required "not detected" post-mortem test result.

(e) Except as provided in this section, an ante-mortem test result may not be used more than once to satisfy any testing requirement of this division.

(f) The testing requirements of this division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division.

(g) The owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division.

§65.94. Breeding Facility Minimum Movement Qualification.

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) has not:

(A) met the provisions of this subparagraph:

(i) had less than five eligible mortalities from May 23, 2006 through March 31, 2016; or

(ii) submitted CWD "not detected" test results for at least 20% of the total number of eligible mortalities that occurred in the facility since May 23, 2006; and

(B) beginning with the report year that starts April 1, 2017, and each April 1 thereafter

(i) achieved "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program; or

(ii) submitted CWD "not detected" test results for at least 80% of eligible mortalities occurring in the facility during the previous reporting year; provided, however, if the facility has been permitted for six months or more, the number of "not detected" test results submitted during the previous reporting year must be equal to or greater than the following number: the sum of the eligible-aged deer reported in the breeding facility inventory on March 31 of the previous reporting year, plus the sum of the eligible mortalities that occurred within the breeding facility for the previous reporting year, multiplied by 3.6 percent;

(2) is not authorized pursuant to a TAHC Herd Plan associated with a TAHC hold order or TAHC quarantine;

(3) does not have a reconciled herd inventory; or

(4) is not in compliance with the reporting and recordkeeping provisions of this division and §65.608 of this title (relating to Annual Reports and Records).

(b) A breeding facility that has been designated as NMQ for failure to comply with the testing requirements specified in subsection (a) of this section will be restored to MQ when the required "not detected" test results prescribed by subsection (a) of this section are submitted.

(c) A breeding facility designated NMQ shall report all mortalities within the facility to the department immediately upon discovery of the mortality.

(d) Immediately upon the notification that a facility has received a CWD "suspect" test result (a CWD suspect facility), all facilities that have been in possession of a deer that was held in the CWD

suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a TC 1 or TC 2 breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department as provided in §65.610(e) of this title (relating to Transfer of Deer) to:

(1) another breeding facility;

(2) an approved release site as provided in paragraph (3) of this subsection;

(3) a DMP facility; or

(4) to another person for nursing purposes.

(b) Breeder Facilities.

(1) TC 1. Except as may be otherwise provided in this division, a breeding facility that is in compliance with the requirements in 65.94(a) of this title(relating to Breeding Facility Minimum Movement Qualification) is a TC 1 facility if:

(A) the breeding facility has "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program; or

(B) the breeding facility has submitted one of the following:

(i) "not detected" post-mortem test results for at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility over the previous five consecutive reporting years, so long as the total number of "not detected" post-mortem test results submitted during the previous five consecutive reporting years is equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 3.6 percent; or

(ii) "not detected" ante-mortem test results for at least 50 percent of eligible-aged deer in the facility's inventory as of the date the facility initiates the ante-mortem testing process. For the report year beginning April 1, 2016, a breeding facility will be construed to have temporarily complied with this item upon submission of "not detected" ante-mortem test results for at least 25 percent of eligible-aged deer in the facility as of the date the facility initiates the ante-mortem testing process; however, the breeding facility must submit the remaining ante-mortem tests results to achieve 50% testing by May 15, 2017.

(2) TC 2.

(A) A breeding facility is a TC 2 facility if:

(i) it is not a TC 1 facility; and

(ii) it is not a TC 3 facility.

(B) The testing requirements for a TC 2 facility are the minimum testing requirements established for MQ designation in §65.94(a)(1) of this title (relating to Breeding Facility Minimum Movement Qualification).

(3) TC 3.

(A) A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order, quarantine, and/or herd plan and meets any of the following criteria:

(i) received an exposed deer within the previous five years;

(ii) transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or

(iii) possessed a deer that was in a CWD-positive facility within the previous five years.

(B) No deer from a TC 3 facility may be transferred or liberated unless expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan.

(C) A TC 3 breeding facility remains a TC 3 breeding facility until the TAHC hold order or quarantine in effect at the breeding facility has been lifted.

(D) A TC 3 breeding facility may not transfer a breeder deer for any purpose unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

(c) Release Sites.

(1) General.

(A) An approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS. A release site owner may modify the acreage registered as the release site to recognize changes in acreage (such as the removal of cross-fencing or the purchase of adjoining land), so long as the release site owner notifies the department of such modifications prior to the acreage modification. The release site requirements set forth in this division apply to the entire acreage modified under the provisions of this subparagraph.

(B) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site; provided, however, deer may be excluded from areas for safety reasons (such as airstrips) or for the purpose of protecting areas such as crops, orchards, ornamental plants, and lawns from depredation.

(C) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times under reasonable and ordinary circumstances. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer under reasonable and ordinary circumstances.

(D) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted as required by this subsection. A release site that is not in compliance with the requirements of this subsection is ineligible to receive deer and must continue to submit test results until the testing requirements of this subsection are satisfied.

(E) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(F) The owner of a Class II or Class III release site shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(2) Class I Release Site. Except as provided in §65.98, a release site is a Class I release site and is not required to perform CWD testing if the release site

(A) is not a Class II or Class III release site; and

(B) after August 15, 2016, the release site has received deer only from TC 1 facilities

(3) Class II Release Site.

(A) A release site that is not a Class III release site and receives deer from a TC 2 breeding facility is a Class II release site.

(B) Beginning the first hunting year following the release of deer from any TC 2 breeding facility and continuing for each hunting year thereafter, the owner of a Class II release site must submit "not detected" post-mortem test results for the first deer harvested and each deer harvested thereafter at the release site; however, no release site owner is required to submit more than 15 "not detected" post-mortem test results in any hunting year.

(C) The requirements of subparagraph (B) cease as follows:

(i) for release sites that have submitted all test results required by this division, the requirements of subparagraph (B) cease on March 1, 2019;

(ii) for release sites that have not submitted all the test results required by this division, the requirements of subparagraph (B) shall cease upon submission of all required test results.

(4) Class III Release Site.

(A) A release site is a Class III release site if:

(i) it has:

(I) received deer from an originating facility that is a TC 3 facility; or

(II) received an exposed deer within the previous five years or has transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; and

(ii) it has not been released from a TAHC hold order or quarantine related to activity described in clause (i) of this subparagraph.

(B) The landowner of a Class III release site must submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(i) 100 percent of all hunter-harvested deer; or

(ii) one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release site in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a TAHC herd plan.

(C) No breeder deer may be transferred to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

§65.96. Movement of DMP Deer.

This section applies to the movement of deer under a DMP.

(1) Testing Requirements.

(A) There are no CWD testing requirements for a DMP facility that:

(i) does not receive breeder deer; or

(ii) receives breeder deer solely from TC 1 deer breeding facilities.

(B) Beginning the first hunting year after the release of deer from the following facilities, and continuing for each hunting year thereafter, the owner of the release site must submit "not detected" post-mortem test results for the first deer harvested and each deer harvested thereafter at the release site; however, no release site owner is required to submit more than 15 "not detected" post-mortem test results in any hunting year:

(i) deer from a DMP facility that receives breeder deer from a TC 2 deer breeding facility; or

(ii) deer from a DMP facility that receives deer trapped deer from a Class II release site.

(C) The requirements of subparagraph (B) cease as follows:

(i) for release sites that have submitted all test results required by this division, the requirements of subparagraph (B) cease on March 1, 2019;

(ii) for release sites that have not submitted all the test results required by this division, the requirements of subparagraph (B) shall cease upon submission of all required test results.

(2) The department will not authorize the transfer of deer to a DMP facility from a TC 3 breeding facility, a Class III release site, or from a release site or deer breeding facility that is not in compliance with the requirements of this division.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) General.

(1) Unless expressly provided otherwise in this section, the provisions of §65.102 of this title (relating to Disease Detection Requirements) cease effect upon the effective date of this section.

(2) The department may require a map of any Triple T trap site to be submitted as part of the application process.

(3) The department will not issue a Triple T permit authorizing deer to be trapped at a:

(A) release site that has received breeder deer within five years of the application for a Triple T permit;

(B) release site that has failed to fulfill testing requirements;

(C) any site where a deer has been confirmed positive for CWD;

(D) any site where a deer has tested "suspect" for CWD; or

(E) any site under a TAHC hold order or quarantine.

(4) In addition to the reasons for denying a Triple T permit listed in §65.103(c) of this title (relating to Trap, Transport, and Transplant Permit), the department will not issue a Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD.

(5) All deer released under the provisions of this section must be tagged prior to release in one ear with a button-type RFID tag approved by the department, in addition to the marking required by §65.102 of this title (relating to Disease Detection Requirements). RFID tag information must be submitted to the department.

(6) Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(7) Except for a permit issued for the removal of urban deer, a test result is not valid unless the sample was collected and tested after the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(8) For permits issued for the removal of urban deer, test samples may be collected between April 1 and the time of application.

(b) Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 eligible-aged deer from the trap site.

(2) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(c) Testing Requirements for TTP Permit.

(1) "Not detected" test results for at least 15 eligible-aged deer from the trap site must be submitted.

(2) The landowner of a Class III release site must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.

(3) Test results related to a TTP permit must be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

§65.98. Transition Provisions.

(a) This division does not apply to an offense committed before the effective date of this division. An offense committed before the effective date of this division is governed by the regulations that existed on the date the offense was committed, including, but not limited to the following:

(1) Deer Breeder: published in the *Texas Register* September 4, 2015 (40 TexReg 5566); January 1, 2016 (41 TexReg 9); January 29, 2016 (41 TexReg 815);

(2) DMP: published in the *Texas Register* October 23, 2015 (40 TexReg 7305); February 12, 2016 (41 TexReg 1049); February 19, 2016 (41 TexReg 1250); and,

(3) Triple T/TTP: published in the *Texas Register* October 23, 2015 (40 TexReg 7307); January 1, 2016 (41 TexReg 9).

(b) A release site that as of August 15, 2016, is in compliance with the Interim Deer Breeder Rules shall be not subject to testing requirements of this division until deer are liberated or released onto the release site under the provisions of this division.

(c) A release site that becomes a Class II release site as a result of the receipt of deer on or after August 15, 2016 from a TC 2 breeding facility will be designated as a Class I release site if the release site is in compliance with all Class II requirements as provided in §65.95(c) of this title (relating to Movement of Breeder Deer) in that season; and

(1) all TC 2 breeding facilities that provided deer to the release site achieve TC 1 status by May 15, 2017, as provided in 65.95(b)(1) of this title (relating to Movement of Breeder Deer); or

(2) all breeder deer liberated to the release site after August 15, 2016 and prior to October 1, 2016:

(A) are harvested and CWD-tested during the 2016-2017 hunting year; and

(B) no additional deer are received from a TC 2 or TC 3 facility during the 2016-2017 hunting year.

(d) A release site that was not in compliance with the Interim Deer Breeder Rules shall be:

(1) required to comply with the applicable provisions of this division regarding Class II or Class III sites for a period of three consecutive years beginning on the first day of lawful hunting for the 2016-2017 hunting year; and

(2) ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit or DMP until the release site has complied with paragraph (1) of this subsection.

(e) The department's executive director shall develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations. The transition plan shall include, but is not limited to, provision addressing a mechanism for classifying facilities that have obtained "not detected" ante-mortem test results at a level that meets or exceeds that required in this division prior to the effective date of this division.

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 25, 2016.

TRD-201603644
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Effective date: August 15, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 389-4775

♦ ♦ ♦

TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.286

The Comptroller of Public Accounts adopts amendments to §3.286, concerning seller's and purchaser's responsibilities, including nexus, permits, returns and reporting periods, and collection and exemption rules, without changes to the proposed text as published in the June 17, 2016, issue of the *Texas Register* (41 TexReg 4383). The amendments implement statutory changes enacted in 2015 by the 84th Legislature and clarify agency policy regarding direct payment permit holders and prepayment discounts. House Bill 2358, 84th Legislature, 2015, added Tax Code, §151.0241 (Persons Performing Disaster- or Emergency-Related Work).

A new defined term is added to subsection (a) to implement House Bill 2358, 84th Legislature, 2015. New subsection (a)(3) is added to define the term "disaster- or emergency-related

work." This definition is taken from Business & Commerce Code, §112.003, and incorporates the definitions of the terms "critical infrastructure" and "disaster- or emergency-related work." Subsequent paragraphs are renumbered accordingly. In addition, renumbered subsection (a)(4), defining the term "engaged in business," is amended to add new subparagraph (J) to implement House Bill 2358. New subparagraph (J) provides that certain out-of-state business entities who come to Texas for the sole purpose of repairing or replacing critical infrastructure damaged in a disaster or emergency are not engaged in business in this state. This provision is effective June 16, 2015.

Subsection (c)(1), relating to obtaining a sales and use tax permit, is amended to implement Senate Bill 853, 84th Legislature, 2015, which provides that a sales tax permit application filed electronically on a form prescribed by the comptroller is deemed to be signed by the applicant for purposes of Tax Code, §151.202(b)(5).

Subsection (d)(2)(B) is amended to reinstate the requirement that out-of-state sellers identify the tax on their bills or invoices as Texas tax. The following sentence was first added to the section in 1988: "Out-of-state sellers must identify the tax as Texas sales or use tax." See 13 TexReg 3988 (1988). During the drafting of the amendments to the section that were adopted effective June 3, 2015, the sentence was inadvertently deleted. Because the deletion was inadvertent, it was not explained or addressed in the preamble to the 2015 amendment. See 40 TexReg 3183 (2015) (addressing revisions to subsection (d)(2)(A) but not subsection (d)(2)(B)). The language is revised to describe out-of-state sellers as sellers who do not maintain a physical location in Texas.

Subsection (d)(2)(B) is further amended to memorialize current comptroller procedure that when an invoice or bill does not identify tax as Texas tax, it is presumed that the seller did not collect Texas tax. The subsection further explains that the presumption is rebuttable.

Subsection (f)(3), relating to extensions for persons located in a disaster area, is amended to use terminology consistent with House Bill 2358 and amended subsection (a). For example, the term "natural disaster area" is replaced with the phrase "an area designated in a state of disaster or emergency declaration."

Subsection (g)(8), relating to direct payment permit holders, is also revised. This subsection states that "prepayment procedures and discounts for timely filing, as discussed in subsection (h) of this section, do not apply to holders of direct payment permits." Because subsection (h) addresses discounts for timely filing and for prepayment, subsection (g)(8) is amended to replace the phrase "prepayment procedures" with the more accurate phrase "prepayment discounts."

No comments were received regarding adoption of the amendment.

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

The amendment implements Tax Code, §151.0241 ("Persons Performing Disaster Or Emergency-Related Work") and Business & Commerce Code, Chapter 112 et seq.

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

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

TRD-201603658
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: August 14, 2016
Proposal publication date: June 17, 2016
For further information, please call: (512) 475-0387

♦ ♦ ♦

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 5. TEXAS BOARD OF PARDONS AND PAROLES

CHAPTER 147. HEARINGS

SUBCHAPTER A. GENERAL RULES FOR HEARINGS

37 TAC §§147.1 - 147.6

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 147, Subchapter A, §§147.1 - 147.6, concerning general rules for hearings. The rules are adopted without change to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3266). The text of the rules will not be republished.

The amended rules are adopted to capitalize titles throughout the rules, change the section symbol to the word "Section" in 147.5 and update the language in 147.6 to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §§508.036 508.0441, 508.281, and 508.283, Government Code. Section 508.036 authorizes the Board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 relates to the board members' and parole commissioners' release and revocation duties. Sections 508.281 and 508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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 22, 2016.

TRD-201603628
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: August 11, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 406-5388

♦ ♦ ♦

SUBCHAPTER B. EVIDENCE

37 TAC §§147.21 - 147.24, 147.27

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 147, Subchapter B, §§147.21 - 147.24 and 147.27, concerning evidence. The amendments are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3267). The text of the rules will not be republished.

The amended rules are adopted to capitalize hearing officer throughout the rules.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under §§508.0441, 508.045, 508.281, and 508.283, Government Code. Section 508.0441 relates to the board members' and parole commissioners' release and revocation duties. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision. Section 508.281 and §508.283 relate to hearings to determine violations of the releasee's parole or mandatory supervision.

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 22, 2016.

TRD-201603629
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: August 11, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 406-5388

♦ ♦ ♦

CHAPTER 148. SEX OFFENDER CONDITIONS OF PAROLE OR MANDATORY SUPERVISION

37 TAC §148.48

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 148, §148.48, concerning record. The rule is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3268). The text of the rule will not be republished.

The amended rule is adopted to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record.

No public comments were received regarding adoption of these amendments.

The amended rule is adopted under §§508.036, 508.0441, 508.045, 508.141 and 508.147, Government Code. Section 508.036 authorizes the board to adopt rules relating to the decision-making processes used by the board and parole panels. Section 508.0441 and §508.045 authorize the Board to adopt reasonable rules as proper or necessary relating to the eligibility of an offender for release to mandatory supervision and to act on matters of release to mandatory supervision. Section 508.0441 provides the board with the authority to adopt reasonable rules as proper or necessary relating to the eligibility of an inmate for release on parole or release to mandatory supervision. Section 508.147 authorizes parole panels to determine the conditions of release to mandatory supervision.

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 22, 2016.

TRD-201603632
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: August 11, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 406-5388

♦ ♦ ♦

CHAPTER 149. MANDATORY SUPERVISION
SUBCHAPTER B. SELECTION FOR MANDATORY SUPERVISION

37 TAC §149.16

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 149, Subchapter B, §149.16, concerning selection for mandatory supervision. The rule is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3269). The text of the rule will not be republished.

The amended rule is adopted to capitalize chair within §149.16.

No public comments were received regarding adoption of this amendment.

The amended rule is adopted under §508.0441 and §508.045, Government Code. Section 508.0441 vests the Board with the authority to determine the continuation, modification, and revocation of parole or mandatory supervision. Section 508.045 provides parole panels with the authority to grant, deny, revoke parole, or revoke mandatory supervision.

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 22, 2016.

TRD-201603630
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: August 11, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 406-5388

♦ ♦ ♦

CHAPTER 150. MEMORANDUM OF UNDERSTANDING AND BOARD POLICY STATEMENTS
SUBCHAPTER A. PUBLISHED POLICIES OF THE BOARD

37 TAC §150.55, §150.56

The Texas Board of Pardons and Paroles adopts amendments to 37 TAC Chapter 150, Subchapter A, §150.55 and §150.56, concerning published policies of the board. The rules are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3269). The text of the rules will not be republished.

The amended rules are adopted to capitalize titles throughout the rules.

No public comments were received regarding adoption of these amendments.

The amended rules are adopted under Subtitle B, Ethics, Chapter 572 and §508.0441, Government Code. Subtitle B, Ethics, Chapter 572, is the ethics policy of this state for state officers or state employees. Section 508.0441 requires the board to implement a policy under which a board member or parole commissioner should disqualify himself or herself on parole or mandatory supervision decisions.

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 22, 2016.

TRD-201603631
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Effective date: August 11, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 406-5388

♦ ♦ ♦

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 437. FEES

37 TAC §437.13, §437.17

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 437, Fees, concerning, §437.13, Processing Fees for Test Application, and §437.17, Records Review Fees.

The amendments are adopted without changes to the proposed text as published in the June 3, 2016, *Texas Register* (41 TexReg 3987) and will not be republished.

The amendments are adopted to adjust the fee charged for sectional exams, which are typically administered as retests following an initial exam failure; and to adjust fees charged for records review.

The adopted amendments will assure that all individuals will have passed each section of a multiple-section exam in order to qualify for certification. The records review fee increase reflects the amount of staff time committed to the review of the records.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set examination fees for certification of fire protection personnel.

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

Filed with the Office of the Secretary of State on July 20, 2016.

TRD-201603597
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: January 1, 2017
Proposal publication date: June 3, 2016
For further information, please call: (512) 936-3812

♦ ♦ ♦

CHAPTER 439. EXAMINATIONS FOR CERTIFICATION

SUBCHAPTER A. EXAMINATIONS FOR ON-SITE DELIVERY TRAINING

37 TAC §§439.1, 439.3, 439.7, 439.9, 439.11, 439.19

The Texas Commission on Fire Protection (the commission) adopts amendments to Chapter 439, Examinations For Certification, Subchapter A, Examinations For On-Site Delivery Training, concerning, §439.1, Requirements - General; §439.3, Definitions; §439.7, Eligibility; §439.9, Grading; §439.11, Commission-Designated Performance Skill Evaluations; and §439.19, Number of Test Questions. The amendments are adopted without changes to the proposed text as published in the June 3, 2016, *Texas Register* (41 TexReg 3988) and will not be republished.

The amendments are adopted to require an individual to pass all sections of a multiple-section examination, define sectional exam, place an expiration on certificates of completion, place a limit on the amount of time required for a person to complete skills evaluations and adjust the number of questions on certain state examinations.

The adopted amendments will ensure that all individuals tested to become certified fire protection personnel will have passed each section of a multiple examination with at least seventy percent.

No comments were received from the public regarding adoption of the amendments.

The amendments are adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.026, which allows the commission to set examination fees for certification.

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 20, 2016.

TRD-201603598

Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: January 1, 2017
Proposal publication date: June 3, 2016
For further information, please call: (512) 936-3812

♦ ♦ ♦

CHAPTER 451. FIRE OFFICER

The Texas Commission on Fire Protection (the commission) adopts new sections to Chapter 451, Fire Officer, Subchapter C, Minimum Standards For Fire Officer III, §451.307, International Fire Service Accreditation Congress (IFSAC) Seal; and Subchapter D, Minimum Standards For Fire Officer IV, §451.407, International Fire Service Accreditation Congress (IFSAC) Seal. The new sections are adopted with changes to the text as proposed in the June 3, 2016, *Texas Register* (41 TexReg 3991). The changes from the proposed text consists of added language requiring an individual to have a current examination on file in order to qualify for an IFSAC seal and to submit an application for that seal prior to the expiration of their examination.

The proposal is adopted to add language and new requirements for the issuance of IFSAC seals for Fire Officer III and Fire Officer IV.

The adopted new sections will assure that individuals seeking to acquire IFSAC seals are in compliance with the requirements of the International Fire Service Accreditation Congress.

No comments from the public were received regarding the adoption of the new sections.

SUBCHAPTER C. MINIMUM STANDARDS FOR FIRE OFFICER III

37 TAC §451.307

The new section is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

§451.307. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals holding a current commission Fire Officer III certification that was issued from a commission examination and received prior to September 1, 2016, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer III by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 31, 2017.

(b) Individuals completing a commission approved Fire Officer III program; documenting IFSAC seals for Fire Fighter II, Instructor II and Fire Officer II; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer III by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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 20, 2016.

TRD-201603599
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: August 9, 2016
Proposal publication date: June 3, 2016
For further information, please call: (512) 936-3812

♦ ♦ ♦

SUBCHAPTER D. MINIMUM STANDARDS FOR FIRE OFFICER IV

37 TAC §451.407

The new section is adopted under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to adopt rules for the administration of its powers and duties; and §419.032, which allows the commission to establish qualifications for certifying individuals as fire protection personnel.

§451.407. International Fire Service Accreditation Congress (IFSAC) Seal.

(a) Individuals holding a current commission Fire Officer IV certification that was issued from a commission examination and received prior to September 1, 2016, may be granted an International Fire Service Accreditation Congress (IFSAC) seal as a Fire Officer IV by making application to the commission for the IFSAC seal and paying applicable fees. This subsection will expire on August 31, 2017.

(b) Individuals completing a commission approved Fire Officer IV program; documenting IFSAC seals for Fire Fighter II, Instructor II and Fire Officer III; and passing the applicable state examination, may be granted an IFSAC seal as a Fire Officer IV by making application to the commission for the IFSAC seal and paying applicable fees. In order to qualify for an IFSAC seal, an individual must submit the application for the seal prior to the expiration of the examination.

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 20, 2016.

TRD-201603600
Tim Rutland
Executive Director
Texas Commission on Fire Protection
Effective date: August 9, 2016
Proposal publication date: June 3, 2016
For further information, please call: (512) 936-3812

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Subchapter A, §217.2, Defini-

tions; §217.3, Motor Vehicle Titles; §217.4, Initial Application for Title; §217.5, Evidence of Motor Vehicle Ownership; §217.7, Replacement of Title; Subchapter B, §217.26, Identification Required; §217.33, Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers; §217.40, Special Registration Permits; §217.43, Military Specialty License Plates; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.46, Commercial Vehicle Registration; §217.54, Registration of Fleet Vehicles; §217.55, Exempt and Alias Vehicle Registration; Subchapter D, §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle; and Subchapter F, §217.123, Access to Motor Vehicle Records. The amendments to §§217.3, 217.33, 217.40, 217.43, 217.45, 217.46, and 217.54 are adopted without changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2895) and will not be republished. The amendments to §§217.2, 217.4, 217.5, 217.7, 217.26, 217.55, 217.88, and 217.123 are adopted with changes to the proposed text and will be republished. Changes in the adopted amendments respond to public comments or otherwise reflect nonsubstantive variations from the proposed amendments.

Several bills from the 84th Legislature, Regular Session, 2015, amended sections of the Transportation Code. Because of these statutory changes, several rules required amendment to maintain consistency with the amended statutes. Amendments throughout Chapter 217, Subchapters A, B, D, and F reflect the statutory changes and correct statutory citations; delete unnecessary language, including language that repeats statute; and update and clarify various requirements and procedures.

COMMENT

The following individuals or entities furnished written comments opposed to the proposed amendment to §217.4 prescribing requirements applicable to "even trade" title transactions: Linda Bridge, Bee County Tax Assessor-Collector (TAC); Sharon Long, Bell County TAC; Ro'Vin Garrett, Brazoria County TAC; Jackie Moore, Carson County TAC; Becky Watson Fant, Cass County TAC; Cathy C. Talcott, Comal County TAC; Michelle French, Denton County TAC; Gaye Whitehead, Gray County TAC; Bruce Stidham, Grayson County TAC; Linda Cummings, Hansford County TAC; Debra L. Ford, Hemphill County TAC; Mary Ann Lovelady, Jones County TAC; Deborah A. Sevcik, Lavaca County TAC; Ronnie Keister, Lubbock County TAC; Karen M. Lane, Madison County TAC; Randy Riggs, McLennan County TAC; Karen Hood, Midland County TAC; Tammy McRae, Montgomery County TAC; Nikki McDonald, Moore County TAC; Gail Smith, Navarro County TAC; Linda Brown, Oldham County TAC; Sherri Aylor, Potter County TAC; Tonya Martin, Red River County TAC; Ida M. Turner, Refugio County TAC; Dalia Sanchez, San Patricio County TAC; Patrick L. Kubala, Wharton County TAC; Deborah M. Hunt, Williamson County TAC; Monte S. Shaw, Wise County TAC; and Thelma "Midget" Sherman, President, Tax Assessor-Collectors Association of Texas (TACA).

The TACs for Bee, Brazoria, Grayson, Hemphill, Hansford, Madison, Red River, San Patricio, Wharton, and Williamson Counties, and TACA commented that the amendment was too onerous, too burdensome a process for the public, and would create a hardship for individuals wishing to conduct an "even trade."

RESPONSE

While the proposed amendment related to even trade transactions may create a more onerous or burdensome process for the public, the department does not agree that this is a compelling reason not to adopt the amendment. Even trade transactions are more susceptible to fraud since no sales taxes are paid. The proposed rules had the potential to more effectively deter fraudulent actors from committing a crime.

COMMENT

The TACs for Bee, Bell, Brazoria, Denton, Potter, San Patricio, Wharton, and Wise Counties and TACA commented that the amendment did not provide any guidance for motor vehicle dealers.

RESPONSE

The department disagrees that guidance is necessary for motor vehicle dealers. Dealers are expressly authorized to deduct the trade-in value of a vehicle from the purchase price for the purposes of calculating sales tax owed. If a dealer accepts a vehicle as a trade-in for a new or used motor vehicle, a sale has still occurred, and consideration has passed from the buyer to the dealer for that vehicle. An "even trade," as defined by proposed amended §217.2, is a "transaction involving the even exchange of two automobiles with comparable standard presumptive value."

COMMENT

The TACs for Bee, Bell, Brazoria, Carson, Cass, Gray, Jones, Madison, Moore, Oldham, Potter, Red River, Refugio, San Patricio and Wharton Counties, and TACA commented that the proposed amendment could be a violation of the Health Insurance Portability and Accountability Act (HIPAA).

RESPONSE

HIPAA protects individuals' identifiable health information held by covered entities and their business associates (called "protected health information" or "PHI"). Covered entities under HIPAA are health care clearinghouses, health plans, and most health care providers. Business associates generally are persons or entities that perform functions or activities on behalf of, or provide certain services to, a covered entity that involve access to PHI. *See generally http://www.hhs.gov/hipaa/for-professionals/privacy/guidance/index.html.* As such, the department disagrees that a TAC is a covered entity or a business associate under HIPAA and disagrees that a TAC is covered by the HIPAA privacy rule.

COMMENT

The Jones County TAC also commented that the amendment would be a violation of privacy.

RESPONSE

The department would point out that the proposed amendment does not require detailed medical information, but rather documentation from the applicant's physician attesting that the applicant is unable to be physically present.

COMMENT

The TACs from Bee, Bell, Brazoria, Cass, Comal, Denton, Hansford, Lavaca, Madison, Montgomery, Refugio, San Patricio, Wharton and Williamson County suggested that instead of adopting the amendments for an even trade transaction, the process should be similar to the "gift affidavit" process.

RESPONSE

The department notes that the "gift affidavit" statement is specifically authorized by Tax Code, §152.062(b-2) and is applicable only to the transfer of ownership of a motor vehicle as the result of a gift. As such, the "gift affidavit" may not be used for an even trade.

COMMENT

The TACs from Bee, Bell, Brazoria, Carson, Cass, Denton, Gray, Hansford, Hemphill, Lavaca, Lubbock, McLennan, Midland, Montgomery, Moore, Navarro, Potter, Red River, Wharton, Williamson, and Wise Counties and TACA commented that the proposed amendment is a sales tax issue, and that the Comptroller of the State of Texas should be consulted.

RESPONSE

The department responds that while the issue does relate to the proper payment of sales tax, it involves the transfer of ownership of motor vehicles, and, as such, is within the department's statutory authority to "adopt rules to administer the Certificate of Title Act, Chapter 501 of the Texas Transportation Code." *See* Transportation Code, §501.0041.

Despite the above responses to comments, the department has determined that the proposed definition for "even trade" and the requirements applicable to an even trade transaction will not be added to Chapter 217, Subtitle A, at this time. The department intends to either propose a similar rule in the future, or pursue other avenues for addressing the risks associated with even trade transactions. As such, proposed amendments to §217.2 and §217.4 related to even trade transactions will not be adopted.

COMMENT

Insurance Auto Auctions (IAA) commented on §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle, recommending that the section be further amended to comply with Transportation Code, §501.095 by eliminating the limitations on sales by insurance companies, including a reference to electronic titling, and including out-of-state documents.

RESPONSE

Having reviewed the comment and Transportation Code, §501.095, the department agrees that the rule and statute are not consistent, and amended the rule to align with the language of the Transportation Code.

Lastly, proposed amendments to §217.5, Evidence of Motor Vehicle Ownership; §217.7, Replacement of Title; §217.26, Identification Required; and §217.123, Access to Motor Vehicle Records, added a concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H as an acceptable form of identification to support an application for a title, replacement title, initial registration, or a request for personal information. House Bill 910, 84th Legislature, Regular Session, 2015, amended Government Code, Chapter 411, Subchapter H, to change the term "concealed handgun license" to "license to carry a handgun" in most sections. To maintain consistency with statute, the department is adding "license to carry a handgun" to the proposed rule text, in addition to "concealed handgun license." This change is nonsubstantive and made only to align with the Government Code.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.2 - 217.5, 217.7

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also adopted under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a title, when the name on the title is different from the name of the legal owner of the vehicle.

(2) Alias title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

(4) Title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Division director--The director of the department's Vehicle Titles and Registration Division.

(7) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(8) Exempt agency--A governmental body exempt by law from paying title or registration fees for motor vehicles.

(9) Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

(10) House moving dolly--An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form large semitrailers.

(11) Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, Chapter 548.

(12) Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck. This term does include a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; or a motor vehicle designed and adapted to deliver feed to livestock.

(13) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(14) Moped--A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

(15) Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(16) Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(17) Obligor--An individual who is required to make payments under the terms of a support order for a child.

(18) Person--An individual, firm, corporation, company, partnership, or other entity.

(19) Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(20) Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(21) Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a title.

(A) Individual applicant. If the applicant is an individual, verifiable proof consists of a copy of a current photo identification issued by this state or by the United States or foreign passport.

(B) Business applicant. If the applicant is a business, verifiable proof consists of an original or copy of a letter of signature authority on letterhead, a business card, or employee identification and a copy of current photo identification issued by this state or by the United States or foreign passport.

(C) Power of attorney. If the applicant is a person in whose favor a power of attorney has been executed by the owner or lienholder, verifiable proof consists of the documentation required under subparagraph (A) or (B) of this paragraph both for the owner or lienholder and for the person in whose favor the power of attorney is executed.

§217.4. Initial Application for Title.

(a) Time for application. A person must apply for the title not later than the 30th day after the date of assignment, except:

(1) in a seller-financed sale, the title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser;

(2) a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership; or

(3) as otherwise provided by Transportation Code, Chapter 501.

(b) Place of application. When motor vehicle ownership is transferred, a title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant, except:

(1) as provided by Transportation Code, Chapters 501 and 502 and by §217.84(a) of this title (relating to Application for Non-repairable or Salvage Vehicle Title);

(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or

(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.

(c) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

(1) motor vehicle description including, but not limited to, the motor vehicle:

(A) year;

(B) make;

(C) identification number;

(D) body style; and

(E) empty weight;

(2) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(3) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(4) previous owner's legal name and complete mailing address, if available;

(5) legal name as stated on the identification presented and complete address of the applicant;

(6) name and mailing address of any lienholder and the date of lien, if applicable;

(7) signature of the seller of the motor vehicle or the seller's authorized agent and the date the title application was signed; and

(8) signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(d) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

(1) evidence of vehicle ownership, as described in §217.5 of this title (relating to Evidence of Motor Vehicle Ownership);

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(3) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.046, unless otherwise exempted by law;

(4) an identification certificate if required by Transportation Code, Chapter 548, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only;

(5) a release of any liens, provided that if any liens are not released, they will be carried forward on the new title application with the following limitations:

(A) A lien recorded on out-of-state evidence as described in §217.5 cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached; and

(B) A lien recorded on out-of-state evidence as described in §217.5 is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title; and

(6) any documents required by §217.9 of this title (relating to Bonded Titles).

§217.5. Evidence of Motor Vehicle Ownership.

(a) Evidence of motor vehicle ownership properly assigned to the applicant must accompany the title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle year, make, identification number, and body style;

(ii) the empty or shipping weight;

(iii) the gross vehicle weight when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iv) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(v) if the vehicle is a "neighborhood electric vehicle," a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A title issued by the department, a title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the title application for any used motor vehicle. A registration receipt is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) unless the applicant is an active duty member of the U.S. Armed Forces or is from the immediate family of such a member returning to Texas with proof of the active duty status of the family member, verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(b) Alterations to documentation. An alteration to a registration receipt, title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(1) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(2) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(3) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(A) incomplete or altered vehicle identification number;

(B) alteration or strikeover of the vehicle's model year;

(C) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(D) alteration or strikeover to the weight.

(4) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(A) in which the date of sale on an assignment has been erased or altered in any manner; or

(B) of alteration or erasure on a Dealer's Reassignment of Title.

(c) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Identification required.

(1) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement;

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or

(F) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification of one owner must be presented;

(B) the name of a leasing company, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(ii) the leasing company may submit:

(I) a government issued photo identification, required under paragraph (1) of this subsection, of the lessee listed as the registrant; or

(II) a government issued photo identification, required under paragraph (1) of this subsection, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(ii) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(iii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney; or

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity.

(4) Within this subchapter, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(6) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301 is exempt from submitting to the county tax assessor-collector, but must retain:

(A) the owner's identification, as required under paragraph (1) of this subsection; and

(B) authorization to sign, as required under paragraph (2) of this subsection.

(7) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

§217.7. Replacement of Title.

(a) Lost or destroyed title. If a title is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(b) Identification required.

(1) An owner or lienholder may not apply for a certified copy of title unless the applicant presents a current photo identification of the owner or lienholder containing a unique identification number and expiration date. The identification document must be a:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement;

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or

(F) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification for each owner must be presented;

(B) the name of a leasing company, then the lessor's employee or authorized agent who signed the application for the leasing company must present:

(i) a government issued photo identification, required under paragraph (1) of this subsection; and

(ii) employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(ii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney;

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity; or

(C) identification, required under paragraph (1) of this subsection, of the owner or lienholder.

(4) Within this subchapter, "current" is defined as within 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document, such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(c) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof of the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail. A certified copy will not be issued until after the 14th day that the original title was issued.

(d) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in accordance with Transportation Code, §501.052 and §501.053.

(e) Additional copies. An additional certified copy will not be issued until 30 days after issuance of the previous certified copy.

(f) Fees. The fee for obtaining a certified copy of a title is $2 if the application is submitted to the department by mail and $5.45 if the application is submitted in person for expedited processing at one of the department's regional offices.

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 19, 2016.

TRD-201603562
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.26, 217.33, 217.40, 217.43, 217.45, 217.46, 217.54, 217.55

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also adopted under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.26. Identification Required.

(a) An application for initial registration is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(1) driver's license or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement;

(5) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or

(6) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(b) If the motor vehicle is titled in:

(1) more than one name, then the identification of one owner must be presented;

(2) the name of a leasing company, then:

(A) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(B) the leasing company may submit:

(i) a government issued photo identification, required under this section, of the lessee listed as the registrant; or

(ii) a government issued photo identification, required under this section, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(3) the name of a trust, then a government issued photo identification, required under this section, of a trustee must be presented; or

(4) the name of a business, government entity, or organization, then:

(A) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(B) the employee or authorized agent must present a government issued photo identification, required under this section; and

(C) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(c) Within this section, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(d) Within this section, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or photocopy.

(e) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is exempt from submitting to the county tax assessor-collector, but must retain:

(1) the owner's identification, as required under this section; and

(2) authorization to sign, as required under this section.

(f) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

(g) This section does not apply to non-titled vehicles.

§217.55. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles owned by and used exclusively in the

service of a governmental agency, owned by a commercial transportation company and used exclusively for public school transportation services, designed and used for fire-fighting or owned by a volunteer fire department and used in the conduct of department business, privately owned and used in volunteer county marine law enforcement activities, used by law enforcement under an alias for covert criminal investigations, owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operations, or owned or leased by a non-profit emergency medical service provider is exempt from payment of a registration fee and is eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency medical service vehicle.

(i) The application for exempt registration must contain the vehicle description, the name of the emergency medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456.

(ii) A copy of an emergency medical service provider license issued by the Department of State Health Services must accompany the application.

(C) Fire-fighting vehicle. The application for exempt registration of a fire-fighting vehicle or vehicle owned privately by a volunteer fire department and used exclusively in the conduct of department business must contain the vehicle description, including a description of any fire-fighting equipment mounted on the vehicle if the vehicle is a fire-fighting vehicle. The affidavit must be executed by the person who has the proper authority and shall state either:

(i) the vehicle is designed and used exclusively for fire-fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(D) County marine law enforcement vehicle. The application for exempt registration of a privately owned vehicle used by a volunteer exclusively in county marine law enforcement activities, including rescue operations, under the direction of the sheriff's department must include a statement signed by a person having the authority to act for a sheriff's department verifying that fact.

(E) United States Coast Guard Auxiliary vehicle. The application for exempt registration of a vehicle owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operation, including search and rescue, emergency communications, and disaster operations, must include a statement by a person having authority to act for the United States Coast Guard Auxiliary that the vehicle or trailer is used exclusively in fulfillment of an authorized mission of the United States Coast Guard or Coast Guard Auxiliary, including search and rescue, emergency communications, or disaster operations.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a title application under §217.103 of this title (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If an exempt plate is lost, stolen, or mutilated, a properly executed application for exempt plates must be submitted to the county tax assessor-collector.

(2) An application for replacement exempt plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

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 19, 2016.

TRD-201603563
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.88

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also adopted under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.88. Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle.

(a) With a non-repairable or salvage motor vehicle title. The ownership of a motor vehicle for which a non-repairable vehicle title, non-repairable record of title, salvage vehicle title, salvage record of title, or a comparable out-of-state ownership document has been issued, including a motor vehicle that has a "Flood Damage" notation on the title, may be sold, transferred, or released to anyone.

(b) Without a non-repairable or salvage motor vehicle title. If a non-repairable vehicle title, non-repairable record of title, salvage vehicle title, salvage record of title, or a comparable out-of-state ownership document has not been issued for a non-repairable or salvage motor vehicle, only a salvage vehicle dealer, used automotive parts recycler, metal recycler, insurance company, or governmental entity may sell, transfer, or otherwise release ownership of the motor vehicle. Such person may only sell, transfer, or otherwise release ownership of a motor vehicle to which this subsection applies to:

(1) a salvage vehicle dealer;

(2) a used automotive parts recycler;

(3) a metal recycler;

(4) a governmental entity; or

(5) an insurance company.

(c) Sale of self-insured non-repairable or salvage motor vehicle. The owner of a self-insured non-repairable or salvage motor vehicle that has been damaged and removed from normal operation shall obtain a non-repairable or salvage vehicle title before selling or otherwise transferring ownership of the motor vehicle.

(d) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company may sell up to five non-repairable or salvage motor vehicles, for which non-repairable or salvage vehicle titles have been issued, to a person in a casual sale during a calendar year.

(e) Records of casual sales.

(1) A salvage vehicle dealer, salvage pool operator, or insurance company must maintain records of each casual sale made during the previous 36 months, in accordance with Transportation Code, §501.108, that at a minimum contain:

(A) the date of sale;

(B) the sales price;

(C) the name and address of the purchaser;

(D) a legible photocopy of the purchaser's government-issued photo identification;

(E) the form of identification provided, the identification document number, and the name of the jurisdiction that issued the identification document;

(F) the description of the motor vehicle, including the vehicle identification number, model year, make, body style, and model;

(G) a photocopy of the front and back of the properly assigned ownership document provided to the purchaser; and

(H) the purchaser's certification, on a form provided by the department, that the purchase of motor vehicles in a casual sale is not intended to circumvent the provisions of Transportation Code, Chapter 501 (relating to Certificates of Title) and Occupations Code, Chapter 2302 (relating to Salvage Vehicle Dealers).

(2) Records may be maintained on a form provided by the department or in an electronic format.

(3) Records must be maintained on the business premises of the seller, and shall be made available for inspection upon request.

(f) Export-only sales.

(1) In accordance with Transportation Code, §501.099, only a licensed salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity may sell a non-repairable or salvage motor vehicle to a person who resides outside the United States, and only:

(A) when a non-repairable or salvage vehicle title has been issued for the motor vehicle prior to offering it for export-only sale; and

(B) prior to the sale, the seller obtains a legible photocopy of a government-issued photo identification of the purchaser that can be verified by law enforcement, issued by the jurisdiction in which the purchaser resides that may consist of:

(i) a passport;

(ii) a driver's license;

(iii) consular identity document;

(iv) national identification certificate or identity document; or

(v) other government-issued identification that includes the name of the jurisdiction issuing the document, the purchaser's full name, foreign address, date of birth, photograph, and signature.

(2) The seller must obtain the purchaser's certification, on a form prescribed by the department, that the purchaser will remove the motor vehicle from the United States and will not return the motor vehicle to any state of the United States as a motor vehicle titled or registered under its manufacturer's vehicle identification number.

(3) The seller must provide the buyer with a properly assigned non-repairable or salvage vehicle title.

(4) The seller must stamp FOR EXPORT ONLY and the seller's salvage vehicle dealer license number or the governmental entity's name, whichever applies, on the face of the title and on any unused reassignments on the back of the title.

(g) Records of export-only sales.

(1) A salvage vehicle dealer or governmental entity that sells a non-repairable or salvage motor vehicle for export-only must maintain records of all export-only sales.

(2) Records of each sale must include:

(A) a legible copy of the stamped and properly assigned non-repairable or salvage vehicle title;

(B) the buyer's certified statement required by subsection (f)(2) of this section;

(C) a legible copy of the buyer's photo identification document;

(D) a legible copy of any other documents related to the sale of the motor vehicle; and

(E) a listing of each motor vehicle sold for export-only that states the:

(i) date of sale;

(ii) name and address of the seller;

(iii) name and address of the purchaser;

(iv) purchaser's identification document number;

(v) name of the country that issued the identification document;

(vi) the form of identification provided by the purchaser; and

(vii) description of the motor vehicle that includes the year, make, model, and vehicle identification number of the motor vehicle.

(3) The listing required by paragraph (2)(E) of this subsection must be maintained either on a form provided by the department or in an electronic format approved by the department.

(4) The salvage vehicle dealer or governmental entity shall submit the listing prescribed by paragraph (2)(E) of this subsection to the department within 30 days from the date of sale.

(5) Upon receipt of the listing prescribed by paragraph (2)(E) of this subsection, the department will place an appropriate notation on the motor vehicle record to identify it as a motor vehicle sold for export-only that may not be operated, retitled, or registered 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.

Filed with the Office of the Secretary of State on July 19, 2016.

TRD-201603564
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §217.123

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also adopted under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.123. Access to Motor Vehicle Records.

(a) Request for records. A person seeking motor vehicle record information shall submit a written request on the form required by the department. Information will be released in accordance with Title 18 U.S.C. §2721 et seq., Transportation Code, Chapter 730, and

Government Code, §552.130. A completed and properly executed form must include, at a minimum:

(1) the name and address of the requestor;

(2) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) a photocopy of the requestor's identification;

(4) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for a permitted use as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) Identification required. A person may not apply for receipt of personal information unless the person presents current photo identification containing a unique identification number. The identification document must be a:

(1) driver's license or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or

(5) concealed handgun license or license to carry a handgun issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(c) Electronic access. The department may make motor vehicle record information available under the terms of a written service agreement.

(1) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in the amount of:

(i) $200 for an on-line access account; or

(ii) $1,000 for a prepaid account for batch purchase of motor vehicle record information;

(C) termination and default provisions;

(D) service hours for access to motor vehicle records for on-line access;

(E) the contractor's signature;

(F) a statement that the use of motor vehicle record information obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730; and

(ii) only for the purposes defined in the agreement; and

(G) the statements required by subsection (a) of this section.

(2) Agreements with governmental agencies.

(A) The written service agreement with an agency must contain:

(i) the specified purpose of the agreement;

(ii) method of payment;

(iii) notification regarding the charges;

(iv) a statement that the use of motor vehicle record information obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq. and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;

(v) the statements required by subsection (a) of this section;

(vi) the signature of an authorized official; and

(vii) an attached statement citing the agency's authority to obtain social security number information, if applicable.

(B) Texas Law Enforcement Telecommunication System access is exempt from the payment of fees.

(d) Ineligibility to receive personal information. The department may prohibit a person, business, or agency from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (c) of this 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 19, 2016.

TRD-201603565
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) adopts amendments to §217.23, Initial Application for Vehicle Registration; §217.24, Vehicle Last Registered in Another Jurisdiction; §217.29, Vehicle Registration Renewal via Internet; §217.32, Replacement of License Plates, Symbols, Tabs, and Other Devices; §217.52, Marketing of Specialty License Plates through a Private Vendor; §217.53, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle; and §217.72, Automated Equipment. The department also adopts new Subchapter I, Fees; §217.181, Purpose and Scope; §217.182, Registration Transaction; §217.183, Fee Amount; §217.184, Exclusions; and §217.185, Allocation of Processing and Handling Fee. In addition, the department adopts the repeal of §217.31, License Plate Reissuance Program. The amendments to §217.29 and §217.52, and new §§217.183 - 217.185 are adopted with changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2920). The amendments

to §§217.23, 217.24, 217.32, 217.53, and 217.72; new §217.181 and §217.182; and the repeal of §217.31 are adopted without changes to the proposed text, and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS, NEW SUBCHAPTER AND REPEAL

House Bill 2202, 83rd Legislature, Regular Session, 2013, added new §502.1911 to the Transportation Code, which authorizes the department to establish a processing and handling fee to be collected to cover the expenses of collecting registration fees. House Bill 2202 further directs the Board of the Texas Department of Motor Vehicles (board) to "set the fee in an amount that . . ., is sufficient to cover the expenses associated with collecting registration fees[.]" The proposed rules set the processing and handling at $5 and allocated the fee to the department, county tax assessor-collectors, and deputies. The rules also define the scope of a registration transaction and those transactions that are exempt from the processing and handling fee.

The rules also shift responsibilities related to renewal registrations from the county tax assessor-collectors and transfers these obligations to the department. The rules provide for replacement of a license plate if the license plate needs to be replaced for cosmetic or readability reasons, and eliminate no-charge replacement of specialty plates if the plate is at least seven years old. The rules reduce the automated registration and titling system fee required by Transportation Code, §502.356 from $1 to $.50.

COMMENTS

The department received comments from Sen. Robert Nichols and Sen. Charles Perry requesting that the department carefully consider the effect of the rules on counties. Sen. Don Huffines commented that the department should reexamine the processing and handling fee. Rep. Joe Pickett asked the department to look carefully at the percentage splits. Rep. Ken King commented that the rules will have adverse consequences for rural counties and expressed concern that the county would face reduced revenues and increased customer volumes. Rep. James White expressed support for the cost-saving efficiencies contained in the proposed rule, and asked the department to consider the impact of the fee changes on working class families. Rep. Dawnna Dukes expressed opposition to the proposed rules and asked the department to withdraw the proposed changes. Rep. Dukes commented that the rules shift duties to the counties without providing resources. The Travis County Legislative delegation commented that the rules as proposed increase costs for vehicle owners while providing less funding to perform titling and registration transactions.

The department received a letter from the Office of the Governor, Greg Abbott, urging the board to reduce the processing handling fee if possible.

The Travis County Commissioners Court opposes rule changes that will add to county administrative duties without providing necessary resources, and asks that the proposal be shelved. The Dallas County Commissioners Court and the Dallas County Tax Assessor-Collector (TAC), and the Ochiltree County Commissioners Court and the Ochiltree County TAC commented that they are opposed to the fee schedule, as it unfairly burdens walk-in customers with an increased fee burden, and reduces revenues to the counties. In addition, they oppose the shift in responsibilities for online registration renewals from the counties to the department, and oppose the removal of the requirement to replace license plates every seven years, raising concerns about reflectivity and readability. Brazoria County Judge L.M. "Matt" Sebesta, Jr. opposed the rule changes as they would adversely affect the county's revenue stream, increase county costs and reduce local control. Samuel Neal Jr., Nueces County Judge opposed the rule in the current (proposed) form because of reduced revenues to the county. Keith Mitchell, Lamar County Commissioner expressed concern that the rules reduce the amount of local retained revenue.

The Texas Conference of Urban Counties (TCUC) expressed concern that the rules result in decreased county revenues. TCUC also opposed the fee schedule because it deprives counties of revenue from online transactions and requires counties to perform high-cost in person transactions for a fee that is below the actual average cost to counties as determined by the Texas Transportation Institute (TTI) study. TCUC contends that the rules violate Transportation Code, §502.1911(b)(2) because the fee is insufficient to cover the cost of providing vehicle registration services. The Texas Association of Counties (TAC) expressed concerns that the rules, as proposed, will cost counties significant revenue. The Tax Assessor-Collectors Association of Texas (TACA) opposed the proposed changes to §217.29 as lacking statutory authority to remove any part of the online renewal process from the office of the TAC. TACA also commented that there should be no reduction in the current fees received for processing any vehicle registration or renewal. David Brooks, on behalf of TACA, contends that the changes to §217.29 are not authorized by Transportation Code, §520.005(d), which states that "[e]ach county assessor-collector shall process a registration renewal through an online system designated by the department."

The Harris County Toll Authority supported the rule changes that require plate replacement when there is reduced plate readability or reflectivity. The 3M Company (3M) commented on the rules affecting license plate replacement, expressing concerns about declines in license plate reflectivity, readability and toll revenue. 3M also expressed concerns about the effect of the rule changes on red light cameras and registration revenue.

The department also received comments from the following group of full service deputies (the "Deputies") from Bexar and Travis Counties, represented by attorney Bill Aleshire: Auto Title Express; GM&N Auto Title Service; San Antonio Auto Title, Inc.; Tisdale LLC; Texas Auto Title; Texas Tag and Title; River City Auto Title; Auto Title Service; Auto Title Service of Oakhill; Fry Auto Title Service; and Universal Auto Title Service. The comments noted that the proposed fees were not sufficient for the Deputies to cover the expenses associated with titling and registration, and therefore violate Transportation Code, §502.1911(b)(2). The Deputies also oppose the prohibition on charges for certain transactions in proposed §217.184, such as temporary permits, which the FSDs have been charging for years. The Deputies also expressed concern that the TTI study was not independently conducted and contains understated, false and incomplete data regarding deputy costs. The Deputies also contend that §217.29 conflicts with Transportation Code, §520.005.

The department received comments opposed to the proposed rule from the following Tax Assessor-Collectors (TAC): Jeri D. Cox, Aransas County; Gwenda Tschirhart, Bandera County; Linda G. Bridge, Bee County; Sharon Long, Bell County; Albert Uresti, Bexar County; Ro'Vin Garrett, Brazoria County; Kristeen Roe, Brazos County; Christine Pentecost, Brown County; Jackie Moore, Carson County; Becky Watson Fant,

Cass County; Cathy C. Talcott, Comal County; John R. Ames, Dallas County; Michelle French, Denton County; Sandra Cagle, Eastland County; Ruben P. Gonzalez, El Paso County; Jennifer Schlicke-Carey, Erath County; Gail Young, Fannin County; Gaye Whitehead, Gray County; Bruce Stidham, Grayson County; Linda Cummings, Hansford County; Mike Sullivan, Harris County; Debra L. Ford, Hemphill County; Pablo (Paul) Villarreal Jr., Hidalgo County; Scott Porter, Johnson County; Mary Ann Lovelady, Jones County; Tonya Ratcliff, Kaufman County; Deborah A. Sevcik, Lavaca County; Ronnie Keister, Lubbock County; Karen M. Lane, Madison County; Randy H. Riggs, McLennan County; Karen Hood, Midland County; Tammy McRae, Montgomery County; Nikki McDonald, Moore County; Kim Morton, Nacogdoches County; Gail Smith, Navarro County; Kevin Kieschnick, Nueces County; Linda Womble, Ochiltree County; Linda Brown, Oldham County; Sherri Aylor, Potter County; Tonya Martin, Red River County; Ida Turner, Refugio County; Dalia Sanchez, San Patricio County; Gary B. Barber, Smith County; Darlene Chambers, Somervell County; Ron Wright, Tarrant County; Becky Robles, Tom Green County; Bruce Elfant, Travis County; Patrick L. Kubala, Wharton County; Deborah M. Hunt, Williamson County; and Monte S. Shaw, Wise County. The comments from the TACs contend that the proposed changes to §217.29 are not authorized or allowed by Transportation Code, §520.005, and that the rules reduce the amount of revenue counties receive from registration transactions by encouraging online renewals. The comments from the TACs also expressed concern about driver safety as a result of ending mandatory plate replacement at seven years, and that TACs were personally liable for dollars that are required to flow through their offices. Some TACs expressed a concern that walk-in customers are subject to a higher fee for vehicle registration.

The department also received comments from 46 individuals who submitted letters or e-mails. Most, but not all, of the individual commenters were opposed to the rule as proposed.

The department received resolutions in opposition adopted by the Commissioners Courts of Bee, Bexar, Brown, Castro, Collin, Denton, DeWitt, El Paso, Grayson, Jackson, Kaufman, Lamar, Lynn, Lubbock, Midland, Panola, San Patricio, and Sutton Counties. The resolutions opposed the rules because of a revenue loss to the counties, an increase in county costs and a loss of local control.

The department did not receive a request for a public hearing pursuant to Government Code, §2001.029(b).

GENERAL COMMENTS

Several of the individual commenters expressed opposition to the proposed rules in general, with some opposing the plan for its emphasis on increasing online registration renewal. Others opposed the "outsourcing" of vehicle registration with a private vendor, and moving registration processing from local county offices to Austin. Other comments opposed dedicating more funds to roads and bridges.

RESPONSE

The board is statutorily required by the Transportation Code, §502.1911 and §520.004 to adopt a processing and handling fee by rule, and to provide services that are reasonable, adequate and efficient. The department has determined that the process for renewing registrations online can be made more efficient by contracting with a private vendor for the fulfillment part of the registration renewal process. Only part of the vehicle registration renewal process will be moved to Austin. Texas citizens will continue to visit in person or mail in their registrations to their local TACs, and TACs will retain authority to review and reject online transactions. The decision to dedicate additional funds to roads and bridges is not made by the department or board, but by the Texas Legislature.

COMMENTS TO SPECIFIC RULE SECTIONS

§217.29, Vehicle Registration Renewal via Internet

COMMENT

The Texas Association of Counties comments that the regulation is invalid because it conflicts with the Transportation Code. Many of the comments from individual TACs articulate an argument similar to the TACA comment, and the response covers those comments. More specifically, TACA argues that the changes to §217.29, which eliminate some of the duties of the TAC and transfer those duties to the department, conflict with Transportation Code, §520.005, which states that: "Each county assessor-collector shall process a registration renewal through an online system designated by the department." TACA also argues that the proposed rule is in conflict with Transportation Code, §502.040(b)(1), which states that an application for vehicle registration is made "through the county assessor-collector of the county in which the owner resides[.]"

RESPONSE

The department disagrees with the TACA comment. Transportation Code, §520.004 gives the department jurisdiction over vehicle registrations, and requires the department to provide by rule services that are "reasonable, adequate, and efficient." The proposed changes to §217.29 reflect the department's efforts to fulfill its statutory duty to provide reasonable, adequate and efficient registration renewal services. Both §520.005(d) and §502.040 use almost identical language when referring to the county's role in the registration of vehicles: - "process . . . through an online system" and "application must be . . . made in a manner prescribed by the department . . . through the county assessor-collector." There is no definition of the term "through" in either statutory section. The department, in light of its role in the efficient and orderly processing of registrations, and consistent with the Legislature's directives in HB 2202 (83rd RS, 2013), is creating a more efficient method of fulfilling the online transactions, which is only one aspect of the process of registration renewal, and includes printing, assembling and mailing renewal stickers. The department's interpretation of §520.005 and §502.040 is entitled to "serious consideration" by the courts of the state. Railroad Comm'n v. Texas Citizens for a Safe Future & Clean Water, 336 S.W.3d 619, 624 (Tex. 2011). If "there is an ambiguity in the governing framework, '[a court] will generally uphold an agency's interpretation of' an ambiguous statute that it is charged with enforcing provided that the construction is reasonable and 'in accord with the plain language of the statute.'" Id. at 625. The department has consistently maintained that the county tax assessor-collectors will have some part in "processing" the online transactions, whereas much of the work of fulfillment will be satisfied by the department. This is consistent with current applications for registration in International Registration Plan (IRP) registrations, token trailers, and forestry vehicles where the department has long performed the registration work and routed compensation for the entire registration plus the county portion to the county of registration in spite of the TAC performing no work on these registrations.

TACA also misreads the meaning and effect of Transportation Code, §520.005(d). That section requires a TAC to process a registration renewal through an online system designated by the department. Section 520.005(d) does not say "all registration renewals," but instead speaks of "a registration renewal" meaning a registration renewal received by the TAC. Section 520.005(d) does not require all aspects of registration renewals be processed by a TAC; it merely requires a TAC process those that it receives. Moreover, even if one interprets §520.005(d) as requiring TACs to process all registration renewals, payments for online registration renewals will be processed through each county TAC as they currently are processed. The proposed rule merely takes part of the registration renewal process and moves it from the TAC to the department, meeting the requirement of Transportation Code, §520.004 that the department provide efficient registration services.

The effect of TACA's argument is to interpret §520.005 as prohibiting the department from processing or approving vehicle registration renewals. Such an interpretation conflicts with several Transportation Code sections that clearly establish the department's lead role in processing and approving vehicle registration and registration renewal applications. For example, Transportation Code, §502.042 identifies the department, not a county tax assessor-collector, as the entity that "may not register or renew the registration of a motor vehicle" unless certain requirements are met. In addition, Transportation Code, §502.191 identifies the department and its employees, along with TACs, as being authorized to collect registration fees. TACA's statutory interpretation ignores other Transportation Code sections that give the department primary jurisdiction over vehicle registrations.

TACA also argues that the proposed changes to §217.29 conflict with Transportation Code, §502.040(b), which it argues requires a registration application be made "through" the county tax assessor-collector. This section of the Transportation Code applies to an initial registration application, and not to vehicle registration renewals, and therefore does not conflict with the proposed changes to §217.29, which only applies to vehicle registration renewals.

The department has made changes to the rule as proposed to clarify the timing and applicability of the shift in responsibilities as it relates to vehicle registration renewals.

Additional comments from several of the TACs emphasize that the county TAC is personally liable for every dollar that is required to flow through their office. The Hidalgo County TAC, Pablo (Paul) Villarreal, Jr., commented that county deputies must check an internal scofflaw database of individuals that have citations due to local municipalities, justice of the peace courts, and county and district courts.

In response to the comments relating to personal liability and scofflaw checks, the department has added language back to the county responsibilities section in §217.29 giving the counties the ability to reject applications that do not meet the requirements of Chapter 217 or Transportation Code, Chapter 502. The online registration renewal process will be designed to automatically put a system hold on an application to give TACs the opportunity to decline or reject a registration renewal transaction. Circumstances that may result in a TAC rejecting an application for renewal include the discovery of fees or other amounts owed to the county by the applicant (scofflaw). After the hold is released, the application will be automatically approved, and the remaining work of fulfilling the registration (printing the sticker, stuffing the envelope and mailing) will be performed by the department at its expense.

§217.31, License Plate Reissuance Program

COMMENT

The 3M Company (3M) commented on the rules affecting license plate replacement, expressing concerns about declines in license plate reflectivity and readability, and the effect on law enforcement. 3M also expressed concerns about the effect of the rule changes on toll revenue, red light camera programs, and registration revenue. A commenter opposed extending license plate renewal beyond seven years. The Harris County Toll Road Authority expresses support for the proposed rules affecting license plate replacement, and asked that improvement be sought in license plate fonts.

RESPONSE

The elimination of mandatory plate replacement at seven years affects only a small percentage of Texas motorists, and the requirement that license plates be legible with proper reflectivity remains in effect. The department received no comments from law enforcement entities expressing concern with the rule as proposed. The changes to the plate replacement do not relieve a motorist of the requirement to comply with Transportation Code, §502.475.

§217.183, Fee Amount

COMMENT

State Sen. Don Huffines commented that the fee structure that encourages online registration was misguided and unwarranted. Sen. Huffines also expressed his concern that the department was burdening Texas drivers with increased fees, and should work within its existing budgeting capabilities.

RESPONSE

The board is required by Transportation Code, §502.1911 to set the processing and handling fee at a level sufficient to cover the costs associated with collecting registration fees. The department interprets the passage of HB 2202 by the 83rd Texas Legislature as a mandate to establish a processing and handling fee. The department will continue to eliminate redundancies, inefficiencies and misallocations consistent with Transportation Code, §520.004, which requires the department to provide efficient registration services.

COMMENT

State Rep. Ken King expressed concern that the additional fee would burden farmers and oil and gas companies.

RESPONSE

While the department acknowledges that the cost to renew registrations by mail and in-person will increase, the overall increase was mandated by HB 2202. The fee structure seeks to encourage all Texans to renew registrations online and pay less than they currently pay.

COMMENT

TCUC and other commenters contend that the proposed rules violate Transportation Code, §502.1911(b)(2), which directs the board to set the processing and handling fee in an amount that is sufficient to cover the expenses associated with collecting registration fees by the department, TACs, and deputies. TCUC argues that the department will be depriving counties of revenue

from online registrations, leaving counties with high-cost in-person transactions without the benefit of revenue from online registrations. TCUC contends that its member counties will all see annual revenue losses, and that the efficiencies the department offsets the revenue losses with are overstated.

RESPONSE

The department disagrees with the TCUC comment. The processing and handling fee, and the allocation to the TACs of a portion of that fee, are set at amounts that compensate the TACS for their expenses in collecting registration fees. Costs for collecting registration fees vary depending on the type of transaction and from county to county. In some cases, the fee allocation to a TAC may not entirely compensate the TAC for a specific transaction. However, when considering the variety of registration transactions covered by this rule, the department contends that the allocations fairly compensate the TACs for their work, comply with the requirement of Transportation Code, §502.1911(b)(2), and encourage the efficient processing of registration transactions at the county level, consistent with the department's statutory duty to provide for reasonable, adequate, and efficient registration and titling services, along with county standards for uniformity and service quality, in compliance with Transportation Code, §520.004(1) and (2). The TACs also receive revenue from transactions where they are not involved in processing an application or collecting a registration fee. Those transactions include International Registration Plan registrations under Transportation Code, §502.091, token trailer registrations under Transportation Code, §502.255, and commercial fleet registrations under Transportation Code, §502.0023. TACs will receive $2.30 for those transactions even though the transaction is processed by the department. TACs also receive compensation for certain transactions that require a minimal amount of staff time, such as duplicate receipts, inquiry receipts, and replacement registration stickers. The TACs will also benefit from lower costs, including postage, from the elimination of mandatory plate replacement at seven years.

The TAC comments which contained arguments regarding reductions due to the rules did so in light of revenues, not based on the expenses associated with collecting registration fees by the county TACs. The department cannot extrapolate the county cost of performing registration services solely from a comparison of county revenue per transaction before and after the rule change. TACs will be see a significant reduction in the amount of work performed for online transactions, and consequently, county costs will decrease. TACs will no longer will be printing, assembling and mailing online renewal registrations, as that function will be completed by the department. The department calculated the reduced costs for TACs based on worker time in processing online renewals, combined with postage and envelope costs. The estimates for reduced costs are not understated, and represent real costs that will no longer be incurred by TACs.

COMMENT

The Office of Texas Governor Greg Abbott submitted a comment that urges the department to allocate any additional funding identified since the proposal to reduce the processing and handling fee paid by consumers.

RESPONSE

The department agrees with the comment from the Governor's Office. Setting the processing and handling fee at $4.75 will minimize the financial impact of the fee on Texas drivers to the greatest extent possible, drive greater efficiency in the state's registration system, and provide sufficient funding for the department and TACs to cover the expenses associated with collecting the registration fees.

§217.185, Allocation of the Processing and Handling Fee

COMMENT

State Sen. Robert Nichols requested that the board carefully consider the full effect of the proposed rules on all Texas counties. State Sen. Charles Perry expressed concern about the impact of the proposed rule on local tax assessor-collectors and taxpayers. State Rep. Joseph Pickett asked that the board look carefully at the decrease in revenue to the counties and the allocation of the processing and handling fee. State Rep. Ken King expressed concern that the proposed rules will have an adverse effect on rural areas. State Rep. Dawnna Dukes expressed concern that the proposed rules shift administrative duties to the counties without providing necessary resources to fulfill county obligations.

The department received resolutions from several Texas counties, and comments from Texas county judges. The resolutions from the commissioner's courts of Bee, Brown, Castro, DeWitt, Donley, Jackson, Kaufman, Lamar, Lynn, Midland, Panola, San Patricio and Sutton counties state that the rules as proposed will decrease county revenues, increase county costs and reduce local control. Brazoria County Judge L.M. "Matt" Sebesta, Jr. submitted a comment similar to those counties listed above. The resolutions from the commissioner's courts of Collin, Denton, El Paso, Grayson and Lubbock counties state that the proposed rules will result in a revenue loss to counties. Nueces County Judge Samuel L. Neal, Jr. suggested that counties be allowed to voluntarily "opt-out" of turning over online registrations to the state. The Travis County Commissioners Court commented that the proposal will reduce county fee revenue and increase costs to county vehicle owners. The department also received comments from many TACs concerned about the loss of revenue to the counties from registration transactions. The Harris County TAC, Mike Sullivan, commented that the rules as proposed fail to sufficiently cover the expenses associated with collecting registration fees, as required by Transportation Code, §502.1911. The Harris County comments also contends that the amount of "cost savings" in the proposed rule is overestimated and leave the county with a revenue shortfall. The comments also question the results of the TTI study and contend that the study neglected to consider certain cost factors, such as an increase in average transaction time due to the implementation of "single-sticker," increased transaction time due to the October 2015 Registration and Title System (RTS) refactoring, overtime costs, and other factors. In addition, the comments question some of the assumptions that the department used in the fiscal note for the proposed rules, such as the yearly increase in registration transactions and the yearly increase in online registration renewals. The comments also contend that the allocation of $.25 to the TACs for online registration renewals is not equitable or reflective of actual costs. Travis County TAC Bruce Elfant commented that the TTI study does not take into account the consequences of Two Steps One Sticker and National Motor Vehicle Title Information System (NMVTIS) compliance and that the department is not authorized to shift the responsibility for online registration renewals from the counties.

RESPONSE

The department agrees that the proposed rules will result in a loss of revenue to counties. The department disagrees that the

proposed rules will result in increased county costs. The proposed rules shift the responsibility for fulfilling internet vehicle registration renewals from counties to the department, resulting in decreased expenses for the counties, not increased costs. The department has also made changes to the rule as proposed to clarify the timing and applicability of the changes to fee allocation.

There is a limited effect on local control for internet registration renewals, and that is necessary to achieve efficiency in the processing of vehicle registrations, as required by Transportation Code, §520.004(2), which requires the department to provide reasonable, adequate and efficient registration and titling services. TACs will continue to administer in person and mail-in registration transactions, and will continue to have the authority to reject online registration renewals. In addition, revenue from online registration renewals will continue to flow through local TACs, not a private vendor. In response to Nueces County Judge Neal, the department disagrees with the comment, as allowing counties to "opt-out" of the proposed online renewal registration would reduce the projected efficiencies. In response to the Travis County Commissioners Court, the department notes that Travis County vehicle owners who renew their registrations online will pay less to renew their registrations.

The department disagrees with the comments from the Harris County TAC. The TTI study represents the most comprehensive compilation of costs incurred in processing registration transactions, and is an estimate. The department's assumption relating to yearly registration transaction volume and online transaction increases are based on statewide data, and it is entirely plausible that Harris County data will vary from the department's data. Regarding the allocation of $.25 for online transactions, the department disagrees with the comment, as most of the TAC's responsibilities for these transactions are shifted to the department.

The department disagrees with the comments from the Travis County TAC. The department contends that TAC assistance with Two Steps One Sticker and NMVTIS compliance provides a great benefit to Texans in safety, efficiency and fraud prevention, and that the impact on TACs is overstated. The Two Steps One Sticker and NMVTIS programs are also mandated by law and cannot be affected by this rulemaking.

COMMENT

One commenter noted that the proposed rules are not clear as to whether they apply to vehicle registrations for commercial vehicles or vehicles registered under the International Registration Plan (IRP).

RESPONSE

The department agrees with the comment, and has made changes to §217.183 and §217.185 to clarify the applicability of the rules to commercial vehicles and those registered under the IRP.

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.23, 217.24, 217.29, 217.32, 217.52, 217.53

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091 - 502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

§217.29. Vehicle Registration Renewal via Internet.

(a) Internet registration renewal program. The department will maintain a uniform Internet registration renewal process. This process will provide for the renewal of vehicle registrations via the Internet and will be in addition to vehicle registration procedures provided for in §217.28 of this title (relating to Vehicle Registration Renewal). The Internet registration renewal program will be facilitated by a third-party vendor.

(b) County participation in program. All county tax assessor-collectors shall process registration renewals through an online system designated by the department.

(c) Eligibility of individuals for participation. To be eligible to renew a vehicle's registration via the Internet, the vehicle owner must meet all criteria for registration renewal outlined in this subchapter and in Transportation Code, Chapter 502.

(d) Fees. This subsection applies to vehicle registrations expiring prior to January 1, 2017 that are submitted for renewal prior to July 1, 2017. A vehicle owner who renews registration via the Internet must pay:

(1) registration fees prescribed by law;

(2) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(3) a fee of $1 for the processing of a registration renewal by mail in accordance with Transportation Code, §502.197(a); and

(4) a convenience fee of $2 for the processing of an electronic registration renewal paid by a credit card payment in accordance with Transportation Code, §1001.009.

(e) Information to be submitted by vehicle owner. A vehicle owner who renews registration via the Internet must submit or verify the following information:

(1) registrant information, including the vehicle owner's name and county of residence;

(2) vehicle information, including the license plate number of the vehicle to be registered;

(3) insurance information, including the name of the insurance company, the name of the insurance company's agent (if applicable), the telephone number of the insurance company or agent (local or toll free number serviced Monday through Friday 8:00 a.m. to 5:00 p.m.), the insurance policy number, and representation that the policy meets all applicable legal standards;

(4) credit card information, including the type of credit card, the name appearing on the credit card, the credit card number, and the expiration date; and

(5) other information prescribed by rule or statute.

(f) Duties of the county. For vehicle registrations that expire prior to January 1, 2017 that are submitted for renewal prior to July 1, 2017, a county tax assessor-collector shall:

(1) accept electronic payment for vehicle registration renewal via the Internet;

(2) execute an agreement with the department as provided by the director;

(3) process qualified Internet registration renewal transactions as submitted by the third-party vendor;

(4) communicate with the third-party vendor and applicants via email, regular mail, or other means, as specified by the director;

(5) promptly mail renewal registration validation stickers and license plates to applicants;

(6) ensure that all requirements for registration renewal are met, including all requirements set forth in this subchapter, and in Transportation Code, Chapter 502;

(7) reject applications that do not meet all requirements set forth in this chapter, and in Transportation Code, Chapter 502; and

(8) register each vehicle for a 12-month period.

(g) Duties of the county. For vehicle registrations that expire on or after January 1, 2017, and registrations that expired prior to January 1, 2017 that are submitted for renewal on or after July 1, 2017, a county tax assessor-collector shall:

(1) accept electronic payment for vehicle registration renewal via the Internet;

(2) execute an agreement with the department as provided by the director;

(3) process qualified Internet registration renewal transactions as submitted by the third-party vendor;

(4) communicate with the third-party vendor and applicants via email, regular mail, or other means, as specified by the director;

(5) reject applications that do not meet all requirements set forth in this chapter, and in Transportation Code, Chapter 502; and

(6) register each vehicle for a 12-month period.

(h) Duties of the department. For vehicle registrations that expire on or after January 1, 2017, and registrations that expired prior to January 1, 2017 that are submitted for renewal on or after July 1, 2017, the department shall promptly mail renewal registration validation stickers and license plates to applicants.

§217.52. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the Board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the Board to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The Board will review vendor specialty license plate applications. The Board:

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the Board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration

of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $195 for one year, $445 for three years, and $495 for five years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $50 for one year, $130 for three years, and $175 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for one, three, or five year terms with options to renew indefinitely at the current price established for a one, three, or five year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2) or (3) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

(3) Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.

(4) Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $50.

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 19, 2016.

TRD-201603572
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

43 TAC §217.31

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091-502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

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 19, 2016.

TRD-201603573
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §217.72

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091-502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

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 19, 2016.

TRD-201603575
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER I. FEES

43 TAC §§217.181 - 217.185

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.0023, 502.010, 502.011, 502.040, 502.042, 502.060, 502.091 - 502.095, 502.191, 502.1911, 502.197, 502.255, 502.356, 504.002, 504.007, and 520.0071.

§217.183. Fee Amount.

Except as limited by §217.184 of this title (relating to Exclusions), a processing and handling fee in the amount of $4.75 shall be collected with each registration transaction processed by the department, the county tax assessor-collector, or a deputy appointed by the county tax assessor-collector. For registrations processed through the TxIRP system, the applicant shall pay any applicable service charge. If a transaction includes both registration and issuance of a license plate or specialty plate, the processing and handling fee shall be collected on the registration transaction only.

§217.184. Exclusions.

The following transactions are exempt from the processing and handling fee established by §217.183 of this title (relating to Fee Amount), but are subject to any applicable service charge set pursuant to Government Code, §2054.2591, Fees. The processing and handling fee may not be assessed or collected on the following transactions:

(1) a replacement registration sticker under Transportation Code, §502.060;

(2) a registration transfer under Transportation Code, §502.192;

(3) an exempt registration under Transportation Code, §502.451;

(4) a vehicle transit permit under Transportation Code, §502.492;

(5) a replacement license plate under Transportation Code, §504.007;

(6) a registration correction receipt, duplicate receipt, or inquiry receipt;

(7) an inspection fee receipt; or

(8) an exchange of license plate for which no registration fees are collected.

§217.185. Allocation of Processing and Handling Fee.

(a) For registrations that expire on or after January 1, 2017 and registrations that expired prior to January 1, 2017 that are submitted for renewal on or after July 1, 2017, except as provided in subsection (b) of this section, the fee amount established in §217.183 of this title (relating to Fee Amount) shall be allocated as follows:

(1) If the registration transaction was processed in person at the office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(2) If the registration transaction was mailed to office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(3) If the registration transaction was processed through the department or the TxIRP system or is a registration processed under Transportation Code, §§502.0023, 502.091, or 502.255; or §217.46(b)(5) or (d)(1)(B)(i) of this title (relating to Commercial Vehicle Registration):

(A) $2.30 will be remitted to the county tax assessor-collector; and

(B) the remaining amount shall be retained by the department.

(4) If the registration transaction was processed through the department's online registration portal, the fee established in §217.183 is discounted by $1:

(A) Texas Online receives the amount set pursuant to Government Code, §2054.2591, Fees;

(B) the county tax assessor-collector may retain $.25; and

(C) the remaining amount shall be remitted to the department.

(5) If the registration transaction was processed by a deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy may retain:

(i) the amount specified in §217.168(c) of this title (relating to Deputy Fee Amounts). The deputy must remit the remainder of the processing and handling fee to the county tax assessor-collector; and

(ii) the convenience fee established in §217.168, if the registration transaction is processed by a full service deputy;

(B) the county tax assessor-collector may retain $1.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(b) For transactions under Transportation Code, §§502.092-502.095, the entity receiving the application and processing the transaction collects and retains the entire processing and handling fee established in §217.183. A full service deputy processing a temporary permit transaction may not charge a convenience fee for that transaction.

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 19, 2016.

TRD-201603576
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER H. DEPUTIES

43 TAC §§217.161 - 217.164, 217.166 - 217.168

The Texas Department of Motor Vehicles (department) adopts amendments to §217.161, Deputies. The department also adopts new sections §217.162, Definitions; §217.163, Full Service Deputies; §217.164, Limited Service Deputies; §217.166, Dealer Deputies; §217.167, Bonding Requirements; and §217.168, Deputy Fee Amounts. The amendments to §217.161 and §217.164 are adopted without changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2930) and will not be republished. New §§217.162, 217.163, and 217.166 - 217.168 are adopted with changes to the proposed text and will be republished. The proposal included new §217.165, Inspection Deputies. However, as further detailed below, the department withdraws this section.

Changes in the new sections respond to public comments and/or reflect nonsubstantive variations from the proposed new sections.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

House Bill 2202 and House Bill 2741, 83rd Legislature, Regular Session, 2013, added Transportation Code, §520.0071 and repealed Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092. As a result, the legislature directed the department to prescribe rules governing deputies performing titling and registration duties. The legislation authorized deputies to continue to perform services under §§520.008, 520.009, 520.0091, and 520.0092 until the effective date of the rules adopted by the board of the Texas Department of Motor Vehicles (board) regarding the types of deputies authorized to perform titling and registration duties under §520.0071. The amendments and new sections implement the legislative directive of House Bills 2202 and 2741.

As required by Transportation Code, §520.0071, the amendments and new sections establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that

may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies. The rules authorize deputies to continue to operate under the repealed statutes, as prescribed by current §217.161, through December 31, 2016. Beginning January 1, 2017, all deputies must be deputized in accordance with and comply with Subchapter H in full.

The rules proposed for adoption follow at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by the Texas A&M Transportation Institute (TTI), additional data gathered by department staff, and information from multiple conversations and meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership. The rules proposed for adoption reflect the department's effort to establish the appropriate classification types of deputies, to prescribe the duties and obligations of deputies in a useful and meaningful way, to set bonds in an amount that adequately protect the level of state property inventory that may be at risk, and to set the fees that may be charged or retained by deputies in amounts that comply with the statute. Full service deputies are unique in that their business model includes the provision of government services under contract, and they are operating in a changing business environment. As such, the adopted rules reflect a balance between what is an appropriate amount for private citizens to pay for government services with what is an appropriate amount for these private businesses to charge for the provision of government services.

COMMENTS

The department received comments from Rep. Joe Pickett; Rep. Dawnna Dukes; the Travis County Legislative delegation (consisting of Sen. Donna Campbell, Sen. Kirk Watson, Sen. Judith Zaffirini, Rep. Donna Howard, Rep. Celia Israel, Rep. Elliott Naishtat, Rep. Eddie Rodriguez, and Rep. Paul Workman); the Travis County Commissioners Court; L.M. "Matt" Sebesta, Jr., Brazoria County Judge; Samuel L. Neal, Jr., Nueces County Judge; the Tax Assessor-Collectors Association of Texas (TACA); the Texas Association of Counties; the Texas Conference of Urban Counties; the North Central Texas Council of Governments (NCTCOG) and the Regional Transportation Council, the Metropolitan Planning Organization for the Dallas-Fort Worth area; EAN Holdings, LLC (dba Enterprise, Alamo, and National rental car brands); Kroger; Food Town; and Clearwater Transportation (dba Dollar, Thrifty, and Hertz Car Rental).

The department also received comments from the following group of full service deputies (the "Deputies") from Bexar and Travis Counties, represented by attorney Bill Aleshire: Auto Title Express; GM&N Auto Title Service; San Antonio Auto Title, Inc.; Tisdale LLC; Texas Auto Title; Texas Tag and Title; River City Auto Title; Auto Title Service; Auto Title Service of Oakhill; Fry Auto Title Service; and Universal Auto Title Service.

The department received comments from the following Tax Assessor Collectors (TAC): Jeri D. Cox, Aransas County; Linda G. Bridge, Bee County; Albert Uresti, Bexar County; Ro'Vin Garrett, Brazoria County; Kristeen Roe, Brazos County; Becky Watson Fant, Cass County; Ruben P. Gonzalez, El Paso County; Jennifer Schlicke-Carey, Erath County; Bruce Stidham, Grayson County; Pablo (Paul) Villarreal Jr., Hidalgo County; Mary Ann Lovelady, Jones County; Tonya Ratcliff, Kaufman County; Deborah A. Sevcik, Lavaca County; Ronnie Keister, Lubbock County; Randy H. Riggs, McLennan County; Tammy McRae, Montgomery County; Kim Morton, Nacogdoches County; Gail Smith, Navarro County; Kevin Kieschnick, Nueces County; Dalia Sanchez, San Patricio County; Bruce Elfant, Travis County; Patrick L. Kubala, Wharton County; and Deborah M. Hunt, Williamson County.

The department also received comments from 1,184 individuals, as follows: 32 individuals submitted letters or e-mails; 552 individuals signed pre-printed forms, some with additional hand-written notes; 256 individuals submitted pre-printed postcards; and the department received a petition with 341 signatures in response to the proposed rules.

The department received resolutions adopted by the Commissioners Courts of Bee, Bexar, Brown, Castro, Collin, Denton, DeWitt, Donley, El Paso, Grayson, Jackson, Lamar, Lynn, Lubbock, Midland, Moore, Panola, San Patricio, and Sutton Counties opposing the rules to the extent they decrease county revenues, increase county costs, and reduce local control.

The department received four comments from individuals related to annual safety inspections of motor vehicles. One individual expressed support for eliminating mandatory safety inspections; three individuals expressed opposition to eliminating mandatory safety inspections. The adopted rules do not relate to mandatory safety inspections, which are required under Transportation Code, Chapter 548. The Texas Department of Public Safety administers and enforces requirements related to motor vehicle safety inspections. As such, comments for or against mandatory safety inspections do not relate to the proposed rules regarding the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies.

The department also received multiple pages of signatures of individuals acknowledging support for private title service companies. These signature pages were forwarded to the department by Bill Aleshire, who explains they are "from customers of full-service deputies (FSD) in Bexar County and Travis County . . . collected by the FSDs from their customers in response to TxDMV's rule proposal to limit the price FSDs can charge their customers to $5 per registration and $15 per title transactions." The department would note, however, that only 341 of these signatures are dated on or after the April 7, 2016 board meeting at which the board voted to publish the proposed rules. In fact, many of the signatures are from August of 2015, and several pages are photo-copied duplicates. Any signature that predates the April 7 board meeting cannot be considered a comment to the proposed amendments and new sections. Even so, the department acknowledges the support private title service companies have from their customer base and does not seek to diminish the value of title service companies to their customers.

The department did not receive a request for a public hearing.

GENERAL POSITION OF COMMENTERS

In general, most of the commenters oppose the proposed new sections. Most of the commenters expressed support for the private title service companies who operate as full service deputies, including the prices they charge. The individuals submitting comments generally expressed their support for private title service companies, many by name; commented that they do not mind the fees they pay to use these companies; and asked the department to not shut these companies down.

RESPONSE

The department in no way seeks to shut down private title service companies, and believes they can provide a valuable service to those counties that choose to use them. However, the department has a legislative mandate to prescribe rules that establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies.

COMMENT

The Texas Association of Counties submitted a general comment encouraging the department to consider seriously each comment provided by county officials and other county official associations regarding the impact of the proposed rule changes. The Texas Association of Counties also offered to assist the department with outreach efforts to county officials.

The Travis County Legislative delegation, Aransas and El Paso Counties, and the Brazoria and Nueces County Judges submitted comments opposing rule changes that would cause private title service companies to close, that set limits on what private title services may charge, and that will add to the duties of the counties without providing the necessary resources to accomplish them or otherwise generally increasing the burden on the counties. Representative Dawnna Dukes and the Texas Conference of Urban Counties submitted similar comments, requesting that the department withdraw the proposed rules and develop a new proposal to include fees that are sufficient to cover the costs of providing the services.

The Travis County Commissioners Court similarly commented that it opposes any rule changes that will add to the administrative duties counties perform on behalf of the department without providing the necessary resources to accomplish them, and that the proposed rules should be shelved so that department staff can work with tax offices and other stakeholders to fashion a more reasonable proposal.

RESPONSE

The department disagrees that the proposed rules will add to the duties of the counties. Counties have a responsibility to process registration and title transactions. The department, through this rulemaking, has provided the counties with various ways to fulfill these obligations. The rules do not specify which method of fulfilling these obligations a county must choose.

The Transportation Code, Chapters 501, 502, and 520, and current Texas Administrative Code, Title 43, Part 10, Chapter 217, require the department and the county to perform certain title and registration transactions. *See, e.g.,* Transp. Code, §§501.023, Application for Title; 501.145, Filing by Purchaser; Application for Transfer of Title; 502.041, Initial Registration; 502.057, Registration Receipt; 520.005, Duty and Responsibilities of County Assessor-Collector; 43 TAC §217.23, Initial Application for Vehicle Registration, §217.28, Vehicle Registration Renewal.

On the other hand, no statute or rule requires a county to utilize a deputy authorized under Transportation Code, §520.0071. Thus, a county's duties have clearly been provided for by statute and administrative rule; a county's election to deputize private entities to perform services is entirely at a county's discretion.

Furthermore, in developing the proposed fee amounts, the department considered information gathered over the past two years from multiple conversations and meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership, in an effort to propose fee amounts that comply with the statute and legislative intent. With the increased fee amounts in the adopted rule, the department believes that all full service deputies should be able to maintain operations. This is based on a review of the current charges as reported by all of the deputy offices, noting that the adopted fee is at or above what at least half of the deputies currently charge for their services and within $10 of those that currently charge more, as well as an analysis of impact performed against the confidential financial information submitted by the full service deputies, including those that charge more, represented by Mr. Aleshire.

COMMENTS TO SPECIFIC RULE SECTIONS.

SECTION 217.162 - DEFINITIONS

COMMENT

EAN Holdings provided comment explaining that EAN business units hold General Distinguishing Numbers with the department and are also classified as commercial fleet buyers pursuant to Transportation Code, §501.0234(b)(4). EAN Holdings explains that these relationships are mutually beneficial, in that they allow EAN business units to manage titling and registration while relieving tax offices of processing burdens associated with a large vehicle fleet. EAN Holdings recommends including commercial fleet buyers, as defined by Transportation Code, §501.0234(b)(4), in the definition of dealer deputy to accurately reflect the current classification provided by statute. This will allow commercial fleet buyers to qualify under the Dealer Deputy category in §217.166.

RESPONSE

The department agrees that a commercial fleet buyer should be eligible to serve as a dealer deputy. The department added a definition of commercial fleet buyer and amended the definition of dealer deputy to include a commercial fleet buyer.

SECTION 217.163(j) - FULL SERVICE DEPUTIES

COMMENT

The department received many comments opposing the three-party agreement proposed in subsection 217.163(j). TACA, and Bee, Brazoria, Brazos, Cass, Erath, Grayson, Hidalgo, Jones, Kaufman, Lubbock, McLennan, Montgomery, Nacogdoches, Navarro, San Patricio, and Wharton Counties each submitted individual comments generally opposing department involvement in the agreement between the TACs and full service deputies, including the ability for the department to approve or terminate the agreement. Many of these comments expressed a preference that the department notify the TAC should the department receive knowledge of a bad actor.

Travis County commented that the three-party agreement is unnecessary and would usurp county authority to be able to determine for themselves who they may contract with for services. Travis County also commented that the department's authority to terminate a full service deputy's access to the department's registration and titling system (RTS) should require the department to first work with TACs to attempt to address the issues, an administrative appeal process, or the filing of criminal charges.

The Deputies commented that the proposed rules give the department the authority to directly interfere in the relationship be-

tween the TACs and the full service deputies, asserting instead that the department's authority is limited to "merely setting and allocating fees and authorizing a lease of RTS terminals."

RESPONSE

Initially, the department disagrees that its authority is so limited as stated by the Deputies. In 2013, the legislature added §520.0071 to the Transportation Code (HB 2202 by Pickett/McClendon and HB 2741 by Phillips). Section 520.0071(a) requires the board to adopt rules that prescribe: (1) the classification types of deputies performing titling and registration duties; (2) the duties and obligations of deputies; (3) the type and amount of any bonds that may be required by a TAC for a deputy to perform titling and registration duties; and (4) the fees that may be charged or retained by deputies. That same statute, in subsection (b), permits a TAC, with approval of the county commissioners court, to deputize an individual or business entity to perform titling and registration services in accordance with rules adopted under subsection (a). Subsection (b) ties together all three entities - the department, who outlines the duties and obligations of deputies; the TAC, who chooses who to deputize with commissioners court approval; and the deputy, who agrees to adhere to the duties and obligations required under rules adopted by the board, in addition to any additional obligations a TAC may wish to impose.

In addition, Transportation Code, §520.004, Department Responsibilities, states that the department has jurisdiction over the registration and titling of, and the issuance of license plates to, motor vehicles in compliance with the applicable statutes. Further, Transportation Code, §1001.002 requires the department to administer and enforce Transportation Code, Title 7, Subtitle A (which includes Chapters 501, 502, 503, 504, and 520) in addition to other chapters of the Transportation Code and Occupations Code.

The department does not seek, by this rule, to select who a county chooses to deputize. However, the department is aware of instances where full service deputies have processed questionable vehicle titling transactions through the RTS system. This has resulted in the service of criminal search warrants in at least two cases. The department must maintain appropriate controls over the processing of transactions through its system, and must take measures to ensure that all transactions follow legal requirements in order to appropriately administer and enforce Transportation Code, Title 7, Subtitle A.

The department appreciates the concerns that have been raised by commenters regarding a three-party agreement and modified the rule to instead require an addendum that sets forth the limitations and responsibilities of having access to RTS. A full service deputy's access to RTS will be dependent on acknowledgment of the addendum and its inclusion into the full service deputy's contract or agreement with a county.

The addendum will be drafted by the department, must be signed by a full service deputy, and must be specifically incorporated by reference into the county's contract or agreement with the full service deputy. The addendum will include some, but not all, of the terms originally proposed for the three-party agreement, including: (1) the full service deputy must identify owners; (2) the full service deputy must identify all personnel who will be given access to the department's registration and titling system (RTS); (3) the full service deputy agrees to cooperate with any investigation by law enforcement; (4) access to RTS may be terminated if a full service deputy is the subject of a criminal investigation involving a crime of moral turpitude, but the department will provide for an appeal process to adequately address any due process concerns; (5) a full service deputy must reject any transaction that appears irregular on its face; (6) the department may conduct an inventory of state assets and accountable items provided by the state via the county; and (7) the department may conduct an audit of the full service deputy's operations governed by the Transportation Code and department rules.

COMMENT

The Deputies commented that paragraphs 217.163(j)(1) - (9) should be eliminated entirely or amended to require the department to provide information to a TAC to support a request that the TAC suspend or cancel deputy status of any person the department believes should not be operating as the TAC's deputy, but ultimately leave the decision to the TAC. The Deputies also contend that the department has no direct enforcement authority over a TAC's deputies, but that the department is limited to merely providing equipment or adopting forms. The Deputies question the department's authority to promulgate each requirement in subsection 217.163(j), asserting that the department has only general rulemaking authority, and only authority for rules that are "necessary and appropriate," citing Transportation Code, §1002.001. The Deputies suggest that at most, §217.163(j) should require the TAC to collect the information the department proposes to collect, and require the TAC to perform audits of full service deputies, not the department.

RESPONSE

The department agrees that Transportation Code, §1002.001 gives the department general rulemaking authority. The department was also given clear rulemaking authority by the legislature in Transportation Code, §520.0071, which specifically mandated that the department adopt rules that establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies. The legislative bill analyses on both HB 2202 and HB 2741 acknowledge the express grant of rulemaking authority to the board in Transportation Code, §520.0071. The rules are clearly within this specific statutory grant of authority.

COMMENT

TACA commented that the record retention portion of the rule should require full service deputies to follow the retention schedules as directed by the Texas Library and State Archives Commission since a full service deputy's records are governmental records.

RESPONSE

The department agrees with this comment, and has amended the rule accordingly. The records retention requirement was originally proposed as part of the three-party agreement between the TAC, full service deputy, and the department. However, since the rule will not require a three-party agreement, the department has made the record retention requirement an individual subsection of §217.163.

COMMENT

The Deputies comment that each provision of §217.163(j) increases the full services deputies' costs of doing business.

RESPONSE

The department disagrees that identifying owners, identifying personnel with access to RTS, cooperating with law enforcement, rejecting irregular transactions, and allowing the state to conduct an inventory of its assets or audit a full service deputy's operations or similar requirements could increase an entity's costs of doing business. Full service deputies should already be performing many if not all of these requirements. Furthermore, the Deputies have provided no data reflecting how these requirements will increase their costs.

COMMENT

NCTCOG commented that participants in the Mobile Emissions Enforcement Working Group, which includes law enforcement representatives from emissions enforcement task forces throughout Texas, have reported increased fraud in certain areas surrounding vehicle inspection and registration, and therefore is concerned about the potential for increased fraudulent activity with the deputy structure without adequate oversight. NCTCOG suggest that registration renewals issued by deputies be audited in a timely manner to ensure the emissions inspection was properly performed prior to registration issuance, and that the department should perform these audits in consultation with the Texas Commission on Environmental Quality and the Texas Department of Public Safety.

RESPONSE

The department agrees with the need for adequate oversight and works with the other named state agencies to review transactions that were unable to be electronically verified. As such, no rule change is needed at this time.

SECTION 217.165 - INSPECTION DEPUTIES

COMMENT

Rep. Pickett, TACA, and Aransas, Bee, Brazoria, Hidalgo, Jones, Lavaca, McLennan, Montgomery, Nacogdoches, and San Patricio Counties each submitted comments expressing general opposition to the creation of an Inspection Deputy. Several of the commenters expressed that the proposed category of Inspection Deputy was redundant of limited service deputy and unnecessary.

RESPONSE

The department does not agree that an Inspection Deputy would be redundant, as an Inspection Deputy would have to be certified as an inspection station under Transportation Code, Chapter 548, and could be subject to additional requirements as specified by the TAC. However, the department will not adopt §217.165, Inspection Deputies at this time, and is withdrawing that section.

SECTION 217.167 - BONDING REQUIREMENTS

COMMENT

EAN Holdings commented requesting that the maximum permissible bonding limit for dealer deputies be increased from $2,000,000 to $5,000,000. EAN Holdings explained that the current EAN bond in force in Dallas County and Harris County exceeds the maximum amount in the proposed rule, and if adopted as proposed, the rule would conflict with the agreements currently in place with local tax offices. EAN Holdings explains that if the current bonding level is reduced to match the proposed rule, their ability to keep vehicles in service will be significantly reduced. The suggested increased maximum amount would accommodate what is in place today, which is an amount that is a function of the number of outstanding titling and registration authorizations allowed by each tax office, with an additional allowance to address the foreseeable need to increase initial titling and registration authorizations.

RESPONSE

The department agrees with this comment and amended the rule accordingly.

COMMENT

Hidalgo County commented that the proposed minimum bond amount required of dealer deputies is too high, explaining that their office only enters agreements with franchise dealerships, and the current bond amount required is $5,000. Hidalgo County comments that higher bond amounts will discourage participation in the webDEALER program.

RESPONSE

The department disagrees that a $5,000 bond is a sufficient amount for the state property inventory a franchise dealer might hold. The department also disagrees that a higher bond amount will discourage participation in webDEALER. A dealer is only required to be deputized if the dealer maintains inventory and issues license plates and registration stickers through the webDEALER application.

COMMENT

Bexar County commented that bonding requirements for limited and full service deputies should be set by the TAC according to value and length of time that inventory is held.

RESPONSE

The rule as proposed gives the TAC the authority to set the amount of the required bond, subject to a minimum and maximum amount set in rule. As such, the department is complying with the legislative directive to prescribe the bonding amount by rule, but giving the counties some flexibility within the established guidelines.

SECTION 217.168 - DEPUTY FEE AMOUNTS

SECTION 217.168(b)(1) AND (c)(1)

COMMENT

The Deputies assert that the price limits on full service deputies are too low, citing the many years they have been in business without complaint to the department, that no one is required to use a full service deputy, and explaining that their prices are based on the competitive market for their services and their necessary expenses to operate profitably. The Deputies also point out there are two distinct markets for their services with differing dynamics affecting prices and costs: (1) car dealers and other high-volume customers (who usually get a discount); and (2) walk-in customers who often require a lot of time and attention. The Deputies assert the proposed price limits would affect each full service deputy differently depending on the customer and transaction mix.

RESPONSE

The assertion that the department has not received complaints against full service deputies is not instructive, as the department would not necessarily be the entity to receive any such complaints. The department is not aware that any existing title service company provides department contact information to its customers or any information regarding complaints in general.

Further, it would seem more logical for a customer to complain about a full service deputy to the county that deputized the entity.

The department appreciates that private title service companies have been operating under a particular business model for many years. However, a private company's business model does not provide the legal justification for adopting a rule one way or another in light of the specific statutory authority granted to the department, especially when those businesses may not have been charging fees consistent with statute. The department set the fee amounts after reviewing financial data provided by several full service deputies as well as data gathered by TTI. The fee amounts appear to be more than sufficient for full service deputies to maintain their operations statewide.

With the increased fee amounts in the adopted rule, the department believes that all full service deputies should be able to maintain operations. This is based on a review of the current charges as reported by all of the deputy offices, noting that the adopted fee is at or above what at least half of the deputies currently charge for their services and within $10 of those that currently charge more, as well as an analysis of impact performed against the confidential financial information submitted by the full service deputies, including those that charge more, represented by Mr. Aleshire.

COMMENT

The Deputies commented that during all of the decades they have been in business, no state rule or law has set the prices they could charge for their services.

RESPONSE

The department disagrees with this comment. At least as far back as 1995, the Transportation Code authorized a full service deputy to charge an additional fee not to exceed $5 for each motor vehicle registration issued. *See* former Transp. Code, §502.114, Acts 1995, 74th Leg., ch. 165, (S.B. 971), eff. Sept. 1, 1995; transferred, redesignated, and amended as former Transp. Code, §520.008 by Acts 2011, 82nd Leg., Ch. 1296 (H.B. 2357), eff. January 1, 2012. As noted above, the legislation authorized deputies to continue to perform services under §§520.008, 520.009, 520.0091, and 520.0092 until the effective date of the rules adopted by the board regarding the types of deputies authorized to perform titling and registration duties under §520.0071.

The language of former §520.008 and §502.114, subsection (b), is as follows: "A full-service deputy may charge and retain an additional motor vehicle registration fee not to exceed $5 for each motor vehicle registration issued." By way of example, a regular registration fee for a vehicle with a gross weight of 6,000 pounds or less is $50.75, unless otherwise provided in Transportation Code, Chapter 502. Applying the former statute, a full service deputy would have been permitted by law to charge an additional $5 to the regular registration fee.

As to charges for title transactions, the deputies are correct in that the department is also not aware of any statute that authorized a charge for full service deputies. The department would caution full service deputies in relying on silence in the law as a basis for charging any amount they deem appropriate. *See, e.g.,* Texas Attorney General Opinion JM-348 (1985) ("It has long been established that unless a fee is provided by law for an official service required to be performed and the amount is fixed by law, a fee may not be charged."). The Transportation Code authorizes fees for various title transactions. *See, e.g.,* Transportation Code, §501.097, authorizing $8 application fee for nonrepairable or salvage vehicle title; §501.100, authorizing $65 rebuilder fee for rebuilt salvage title; and §501.138, authorizing $28 or $33 title application fees.

COMMENT

The Deputies also commented that all of the "fees" they collect have been turned over daily to the TACs, including the "$5 registration fee." They charge a "voluntary service charge" which their customers choose to pay.

RESPONSE

The proposed fee amounts in the rules apply to services specific to processing a registration or title transaction. The rule specifically excludes related transactions by a full service deputy that are not transactions performed through the department's automated vehicle registration and title system, such as fees for copying, faxing, transporting, or delivering documents required to obtain or correct a motor vehicle title or registration. A full service deputy may charge any "voluntary service charge" it deems appropriate for such services.

COMMENT

The Deputies commented that the proposed rules will cause each full service deputy to become unprofitable.

RESPONSE

The department has reviewed the information provided by the Deputies and believes the proposed fee amounts would provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. However, in response to the comments, the department has modified the rule by increasing the amounts to $10 for a registration or registration renewal transaction ($1 retained from the processing and handling fee in §217.183 of this title and a $9 convenience fee) and up to $20 for a title transaction. As stated elsewhere in this preamble, the department believes these amounts are sufficient for current full service deputies to continue operation based on their current charges and historical income statements.

COMMENT

The Deputies commented that the study performed by TTI was flawed and contained unsubstantiated and false, incomplete data as to what it cost deputies to be available for, and to provide, the registration and titling services they provide.

RESPONSE

The department contracted with TTI to conduct research regarding the costs associated with processing vehicle registration and title transactions. The TTI report was one of several pieces of information used by the department in proposing the fees in this chapter. TTI reviewed a statistically significant sample of all transaction types and conducted its study using established internal methodologies. The full service deputies were given the opportunity to participate in the study and provide relevant data and information. TTI used what was provided by the deputies in conducting the study.

COMMENT

The Deputies commented that the proposed rule has no mechanism adjusting the price in the future.

RESPONSE

The department believes the adopted fee amounts are sufficient for the full service deputies to continue business operations. The board has the discretion to amend the rule when necessary, consistent with the requirements of the Administrative Procedure Act, Government Code, Chapter 2001. The board is also committed to reviewing the fee amounts after six months of implementation (January 1, 2017) to ensure the rules are still appropriate as adopted.

COMMENT

The Deputies suggest that the final rule include a clause grandfathering the rates full service deputies currently charge.

RESPONSE

The department disagrees with this comment. Allowing full service deputies to charge any amount the full service deputy deems appropriate would be contrary to the legislative mandate that the department set the amounts a deputy may charge for registration and title transactions. As stated above, the department has reviewed the information provided by the Deputies and believes the fee amounts will provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model.

COMMENT

The Deputies suggest that the department delay the effective date of the rules to September 1, 2016, to give the legislature time to amend the statutes.

RESPONSE

The department assumes that the Deputies mean to suggest that the effective date of the rules be amended to September 1, 2017. However, the department does not agree that it should delay its mandate established by the legislature in 2013 any longer based on legislation that may or may not be passed in the future. Should the legislature amend the Transportation Code so as to render the adopted rules unnecessary, the statutes would control and the department would amend or repeal rules, as necessary. The rules clearly indicate that deputies must be in compliance beginning January 1, 2017. Assuming the rules are effective no later than September 1, 2016, the deputies will have at least four months to prepare for the upcoming changes, and the deputies are already on notice of the rule contents. As stated before, this proposal follows at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by TTI, additional data gathered by department staff, and information from multiple conversations and meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership.

COMMENT

The Deputies suggest that the rules allow the TACs to determine the maximum amount a full service deputy may charge and retain. Bexar County commented that the full and limited service deputies should be allowed to charge the fees they currently charge, or that the fee amounts in the rules be modified to avoid any negative impact to the deputies, because the department deviated from the TTI Report and the department has no record of complaints against any full service title company in Texas.

RESPONSE

The department disagrees with this suggestion. The statute mandates that the department set the fee amounts, and does not give the department the discretion to delegate this duty. By setting a maximum authorized fee amount, the department is complying with the legislative directive to prescribe the fee amount by rule, but giving the counties some flexibility to work with full service deputies within the established guidelines.

COMMENT

Travis County commented that the proposed fee amounts for full service deputies are too low; the department should consider an alternative since the proposal was based in part on the TTI Report; there are no provisions to adjust fees periodically; capping fees runs contrary to free market principles; and if the full service deputies are closed, Tax Office employees would have to immediately begin processing about 100,000 additional vehicle titles at an estimated cost to local taxpayers of about $1 million plus space for 17 new employees. Travis County recommends that the department delegate setting auto title service fees to counties or set a broad fee range for registration and title fees as was done with bonds and authorize tax assessors to establish fee caps within the range.

Bexar County commented that the proposed fee of $5 for a registration and $15 for a title transaction will cause full service deputies to close and will therefore increase costs to Bexar County taxpayers. The closing of full service title companies would require a minimum of three additional tax offices in Bexar County plus personnel staffing, with estimated start-up costs between three and six million dollars and annual operational costs between two and three million dollars. The closure of full service deputies would also reduce options to the citizens of Bexar County by eliminating the availability of 21 additional locations for citizens to choose from, while impacting established small businesses and causing the layoff of their employees.

RESPONSE

As stated above, the department has reviewed information provided by the Deputies and believes the proposed fee amounts would provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. However, in response to the comments, the department has modified the rule by increasing the amounts to $10 for a registration or registration renewal transaction ($1 retained from the processing and handling fee in §217.183 of this title and a $9 convenience fee) and up to $20 for a title transaction.

Counties have a responsibility to process registration and title transactions. The department, through this rulemaking, has provided the counties with various ways to fulfill these obligations. The rules do not specify which method of fulfilling these obligations a county must choose.

COMMENT

Williamson County commented that it would be preferable to see a range of fees allowed for full service deputies instead of the proposed $15, and that the fee should be reflective of the current market and agreed upon, contractually, by the full service deputy and the TAC. Nueces County commented that there should be no rule dictating what a full service deputy is allowed to charge. Instead, Nueces County commented that the open market and what people are willing to pay should determine what they should charge.

The Texas Conference of Urban Counties (TCUC) commented that arbitrary price caps on the amount that title service providers can recover threatens a successful public-private partnership, and will increase costs to counties. TCUC requested that the department conduct a "serious, data intensive examination of the impact of these proposed rules in collaboration with [their] association and other impacted stakeholders - including each major urban county."

RESPONSE

As discussed above, the legislature has mandated that the department set the fee amounts a deputy may charge or retain, and did not give the department the authority to delegate this duty. Furthermore, the department would note that based on comments received during its April 7, 2016 Board Meeting, significant barriers to entry may exist in counties currently utilizing full service deputies -- markets may not be open to competition in the form of new entrants and the department is not aware of any county that awards full service deputy contracts through competitive bidding processes.

The department has reviewed information provided by the Deputies and believes the proposed fee amounts would provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. However, in response to the comments, the department has modified the rule by increasing the amounts to $10 for a registration or registration renewal transaction ($1 retained from the processing and handling fee in §217.183 of this title and a $9 convenience fee) and up to $20 for a title transaction.

Counties have a responsibility to process registration and title transactions. The department, through this rulemaking, has provided the counties with various ways to fulfill these obligations. The rules do not specify which method of fulfilling these obligations a county must choose.

COMMENT

Bee County commented that no deputy, whether a full service, limited service, or dealer deputy, should be allowed to retain any amount from the processing and handling fee referenced in the proposed rules. Bee County recommends that in order to allow for proper disbursement of fees and allow counties to continue to receive current revenue levels, §217.168(a) should be deleted, and the remainder of the rule should allow a full service deputy to charge a convenience fee of $5 and allow a limited service deputy to charge a fee of $1. TACA also submitted a comment recommending that a limited service deputy be allowed to charge the customer a convenience fee of $1 so there is no reduction in fees paid to the county.

RESPONSE

The department disagrees with this comment. The proposed fee structure and fee amounts follow at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by the TTI, additional data gathered by department staff, and information from multiple conversations and meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership.

SECTION 217.168(b)(2)

COMMENT

The Deputies commented that there is no factual basis why the proposed rule permits dealer deputies to charge the same amount for title transactions as a full service deputy, and noted that the department charges $15 for a bonded title rejection letter.

Jones and Lubbock Counties submitted comments opposing allowing dealer deputies to charge for title transactions as proposed by the rule. Jones and Lubbock Counties each commented generally that a dealer should not be permitted to charge for title transactions, as they have the authority to charge a documentary fee for the handling and processing of documents for the sale of the motor vehicle and allowing a fee for title transactions would amount to allowing a dealer deputy to charge customers twice. Lubbock County also commented that dealers should not be paid to perform a job function that is required and for which they are already reimbursed.

TACA and Bee County commented that a dealer deputy should only be allowed to retain $10 from the $15 fee for title transactions, and the remaining $5 should be remitted to the TAC to compensate the TAC for their continued service in reviewing and accepting the title transaction.

RESPONSE

Initially, the department addresses the Deputies' comment regarding compensation amounts for different entities or transaction types. The objective in setting the fees for deputies was to recognize the costs involved in providing the service and set the appropriate fee. While the department has strived to standardize fees for customers, a uniform fee among deputy types is not a requirement under Transportation Code, §520.0071. In addition, the department would note that under these rules, full service deputies are compensated at a higher rate than counties for title transactions.

The amount the department charges for a bonded title rejection letter, authorized by Transportation Code, §501.053, was established in Texas Administrative Code, §217.3(g), later renumbered as §217.9, following publication in the *Texas Register* for public comment and final adoption at a department board meeting.

The department does not agree with the comments that suggest a dealer deputy not be allowed to charge for a title transaction or that the dealer deputy should remit a portion of the fee to the counties. Transportation Code, §520.0071 authorizes the department to prescribe an amount a dealer deputy may charge or retain for title transactions. A dealer deputy may not wish to charge any amount for a title transaction and cover its costs for such work with the documentary fee. The documentary fee a dealer deputy may charge is authorized by Finance Code, §348.006. The Texas Office of Consumer Credit Commissioner has jurisdiction over the filing of documentary fees by motor vehicle dealers.

However, in response to the remaining comments regarding the fee amount for dealer deputies for title transactions, the department reduced the maximum amount that a dealer deputy may charge for such transaction to $10.

SECTION 217.168(c)(2)

COMMENT

Kroger and Food Town both submitted comments recommending that the fee amount a limited service deputy be permitted to retain be increased from $1 to $2 to cover increased expenses.

Kroger also recommended the increased fee amount to assist with covering increased labor time for transactions that require verification of safety inspections.

RESPONSE

The department disagrees with this comment and will not amend the amount a limited service deputy is permitted to retain. The amount proposed for adoption was developed based on at least two years of work by department staff analyzing the legislation, previous and existing statute, the data gathered and analyzed by the TTI, additional data gathered by department staff, and information from multiple conversations and meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership.

COMMENT

Travis County commented that it disagrees with the department's conclusion that the rules would have no adverse impact on local government or small and micro-businesses, because the fee limits would force full service deputies to close, and the department appears to assume the counties could cover the shortfall full service deputies may experience.

RESPONSE

The department disagrees with the contention that the rules will have an adverse impact on local government or small and micro-businesses. The department has reviewed the information provided by the Deputies and believes the fee amounts will provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. In addition, the adopted rules increase compensation for full service deputies. Until the effective date of these rules, statute authorizes full service deputies to charge $5 for a registration transaction and does not authorize a fee for title transactions. Adoption of these rules, authorized by Transportation Code, §520.0071, increases compensation by $5 for a registration transaction and $20 for a title transaction.

COMMENT

The Deputies assert that the rule proposal fails to comply with Government Code, Chapter 2006. They assert specifically that alleging the full service deputies' prices have been previously regulated at $5 for a registration transaction is false, and regardless, the department's justification admits the full service deputies almost universally have been charging $10 to $15 for registration transactions. The Deputies also commented that the proposal fails to provide the required assessment and fails to provide a means by which to mitigate the harm the rules will have on small business.

RESPONSE

As discussed above, former Transportation Code, §520.008, and former §502.114 before that, authorized a full service deputy to charge an additional $5 for a registration transaction. No statute authorized a full service deputy to charge an additional fee for a title transaction. The fee amounts proposed were developed following at least two years of work by department staff analyzing all relevant legislation, previous and existing statute, the data gathered and analyzed by the TTI, additional data gathered by department staff, and information from multiple conversations and meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership. Additional information provided by the deputies confirms the fee amounts will provide sufficient revenue for the full service deputies to stay in business, cover costs, and make a profit, depending on the full service deputy's business model. In addition, the adopted rules increase compensation amounts for full service deputies.

Government Code, §2006.002 requires a state agency considering adoption of a rule that would have an adverse economic impact on small businesses or micro-businesses to reduce the effect if doing so is legal and feasible considering the purpose of the statute under which the rule is to be adopted. The department has stated multiple reasons why the proposed rules would not have an adverse economic impact on small or micro-businesses, including the increase in allowable charges by the adoption of these rules. While the Deputies may disagree with the department's reasons, the department complied with Government Code, Chapter 2006 by analyzing any potential for impact against the statutory standards applicable to full service deputies prior to the rule proposal, and by adopting the rules based on data provided by deputies, data gathered by TTI, public comment and feedback, and its review of the legislation authorizing the rules.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; Transportation Code, §520.003, which provides the department may adopt rules to administer Chapter 520, Miscellaneous Provisions; and more specifically, Transportation Code, §520.004, which provides the department by rule shall establish standards for uniformity and service quality for counties and dealers; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§501.076, 502.191, 502.1911, 502.197, and 520.007.

§217.162. Definitions.

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

(1) Board--Board of the Texas Department of Motor Vehicles.

(2) Commercial fleet buyer--An entity that, in compliance with Transportation Code, §501.0234(b), is deputized under this subchapter, utilizes the dealer title application process developed to provide a method to submit title transactions to the county in which the commercial fleet buyer is a deputy, and has authority to accept an ap-

plication for registration and application for title transfer that the county tax assessor-collector may accept.

(3) Dealer deputy--A motor vehicle dealer, as defined by Transportation Code, §503.001(4), including a commercial fleet buyer, who is deputized to process motor vehicle titling and registration transactions, and who may be authorized to provide registration renewal services. Dealer deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the dealer deputy to serve as the deputy's agent in performing motor vehicle titling, registration or registration renewal services.

(4) Department--Texas Department of Motor Vehicles.

(5) Deputy--A person appointed to serve in an official government capacity to perform, under the provisions of this subchapter, designated motor vehicle titling, registration, and registration renewal services as a deputy assessor-collector. The term "deputy" does not include an employee of a county tax assessor-collector.

(6) Full service deputy--A deputy appointed to accept and process applications for motor vehicle title transfers and initial registrations, and process registration renewals and other transactions related to titling and registration. Full service deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the full service deputy to serve as the deputy's agent in performing motor vehicle titling, registration or registration renewal services.

(7) Limited service deputy--A deputy appointed to accept and process motor vehicle registration renewals. Limited service deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the limited service deputy to serve as the deputy's agent in performing motor vehicle registration renewals.

(8) Person--An individual, business organization, governmental subdivision or agency, or any other legal entity.

§217.163. Full Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a full service deputy in the same manner and with the same authority as though done in the office of the county tax assessor-collector, subject to the criteria and limitations of this section, including entering into the agreement specified in subsection (j) of this section.

(b) A full service deputy must offer and provide titling and registration services to the general public, and must accept any application for registration, registration renewal, or title transfer that the county tax assessor-collector would accept and process, unless otherwise limited by the county.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a full service deputy in addition to those set forth in this section. The additional obligations or requirements must be reflected in the agreement specified in subsection (j) of this section.

(d) To be eligible to serve as a full service deputy, a person must be trained, as approved by the county tax assessor-collector, to perform motor vehicle titling, registration, and registration renewal services, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(e) To be eligible to serve as a full service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(f) A person applying to be a full service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title, registration, or registration renewal applications may occur.

(g) A full service deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(h) A full service deputy shall keep a separate accounting of the fees collected and remitted to the county and a record of daily receipts.

(i) A full service deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(j) A full service deputy must maintain records in compliance with the State of Texas Records Retention Schedule as promulgated by the Texas State Library and Archives Commission.

(k) Beginning January 1, 2017, a full service deputy must sign an addendum provided by the department outlining the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. Any contract or agreement, or renewal of the contract or agreement, between the county and the full service deputy that authorizes the full service deputy to provide registration and titling services in the county must specifically incorporate the addendum by reference, and the contract or agreement may not supersede or contradict any term within the addendum. An addendum described by this subsection is required for each location at which the full service deputy operates. The addendum must be incorporated into any agreement or contract between the full service deputy and the county beginning January 1, 2017. The county must provide the department a current copy of each contract or agreement, including any amendments, with a full service deputy within 60 days of execution.

§217.166. Dealer Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a motor vehicle dealer to act as a dealer deputy to provide motor vehicle titling and registration services in the same manner and with the same authority as though done in the office of the county tax assessor-collector, except as limited by this section.

(b) A dealer deputy must hold a valid general distinguishing number (GDN) under Transportation Code, Chapter 503, Subchapter B, and may act as a dealer deputy only for a type of motor vehicle for which the dealer holds a GDN. A dealer may not continue to act as a dealer deputy if the GDN is cancelled or suspended.

(c) A county tax assessor-collector may impose reasonable obligations or requirements upon a dealer deputy in addition to those set forth in this section. The county tax assessor-collector may, at the time of deputation or upon renewal of deputation, impose specified restrictions or limitations on a dealer deputy's authority to provide certain titling or registration services.

(d) Upon the transfer of ownership of motor vehicles purchased, sold or exchanged by the dealer deputy, the dealer deputy may process titling transactions in the same manner and with the same authority as though done in the office of the county tax assessor-collector. The dealer deputy may not otherwise provide titling services to the general public.

(e) Upon the transfer of ownership of a motor vehicle purchased, sold or exchanged by the dealer deputy, the dealer deputy may process initial registration transactions in the same manner and with the same authority as though done in the office of the county tax assessor-collector. The dealer deputy may not otherwise offer initial registration services to the general public.

(f) The county tax assessor-collector may authorize a dealer deputy to provide motor vehicle registration renewal services. A dealer deputy offering registration renewal services must offer such services to the general public, and must accept and process any proper application for registration renewal that the county tax assessor-collector would accept and process.

(g) To be eligible to serve as a dealer deputy, a person must be trained to perform motor vehicle titling and registration services, as approved by the county tax assessor-collector, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(h) To be eligible to serve as a dealer deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(i) A person applying to be a dealer deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title or registration transactions may occur.

(j) If a dealer deputy offers registration renewal services to the general public, the deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(k) A dealer deputy shall keep a separate accounting of the fees collected and remitted to the county, and a record of daily receipts.

(l) A dealer deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(m) This section does not prevent a county tax assessor-collector from deputizing a dealer as a full service deputy under §217.163 of this title (relating to Full Service Deputies) or a limited service deputy under §217.164 of this title (relating to Limited Service Deputies) instead of a dealer deputy under this section.

§217.167. Bonding Requirements.

(a) A deputy appointed under this subchapter shall post a surety bond payable to the county tax assessor-collector.

(b) A deputy is required to post a single bond for a county in which the deputy performs titling, registration, or registration renewal services, regardless of the number of locations in that county from which that deputy may provide these services.

(c) A full service deputy or dealer deputy must post a bond in an amount between $100,000 and $5,000,000, as determined by the county tax assessor-collector.

(d) A limited service deputy must post a bond in an amount between $2,500 and $1,000,000, as determined by the county tax assessor-collector.

(e) A deputy that is an agency or subdivision of a governmental jurisdiction of the State of Texas is not required to post a bond pursuant to this section, unless the county tax assessor-collector determines that a bond should be required in an amount consistent with subsection (d) of this section.

§217.168. Deputy Fee Amounts.

(a) Fees. A county tax assessor-collector may authorize a deputy to charge or retain the fee amounts prescribed by this section according to the type of deputy and transaction type.

(b) Title transactions. For each motor vehicle title transaction processed:

(1) A full service deputy may charge the customer a fee of up to $20, as determined by the full service deputy and approved by the tax assessor-collector. The full service deputy retains the entire fee charged to the customer.

(2) A dealer deputy may charge the customer a fee of up to $10, as determined by the dealer deputy and approved by the tax assessor-collector. The dealer deputy retains the entire fee charged to the customer. This section does not preclude a dealer deputy from charging a documentary fee authorized by Finance Code, §348.006.

(c) Registration and registration renewals. For each registration transaction processed:

(1) A full service deputy may:

(A) retain $1 from the processing and handling fee established by §217.183 of this title (relating to Fee Amount); and

(B) charge a convenience fee of $9, except as limited by §217.184 of this title (relating to Exclusions).

(2) A limited service deputy may retain $1 from the processing and handling fee established by §217.183.

(3) A dealer deputy may retain $1 from the processing and handling fee established by §217.183. This section does not preclude a dealer deputy from charging a documentary fee authorized by Finance Code, §348.006.

(d) Temporary permit transactions under Transportation Code, §502.094 or §502.095. For each temporary permit transaction processed by a full service deputy, the full service deputy may retain the entire processing and handling fee established by §217.183.

(e) Full service deputy convenience fee. The convenience fee authorized by this section is collected by the full service deputy directly from the customer and is in addition to the processing and handling fee established by §217.183. A full service deputy may not charge any additional fee for a registration or registration renewal transaction.

(f) Related transactions by a full service deputy. The limitations of subsections (b), (c), (d), and (e) of this section do not apply to other services that a full service deputy may perform that are related to titles or registrations, but are not transactions that must be performed through the department's automated vehicle registration and title system. Services that are not transactions performed through the department's automated vehicle registration and title system include, but are not limited to, the additional fees a full service deputy may charge for copying, faxing, or transporting documents required to obtain or correct a motor vehicle title or registration. However, the additional fees that a full service deputy may charge for these other services may be limited by the terms of the county tax assessor-collector's authorization to act as deputy.

(g) Posting of fees. At each location where a full service deputy provides titling or registration services, the deputy must

prominently post a list stating all fees charged for each service related to titling or registration. The fee list must specifically state each service, including the additional fee charged for that service, that is subject to subsections (b), (c), (d), or (e) of this section. The fee list must also state that each service subject to an additional fee under subsection (b), (c), (d), or (e) of this section may be obtained from the county tax assessor-collector without the additional fee. If the full service deputy maintains a website advertising or offering titling or registration services, the deputy must post the fee list described by this subsection on the website.

(h) Additional compensation. The fee amounts set forth in this section do not preclude or limit the ability of a county to provide additional compensation to a deputy out of county funds.

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 19, 2016.

TRD-201603569
David D. Duncan
General Counsel
Texas Department of Motor Vehicle
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

♦ ♦ ♦

SUBCHAPTER J. PERFORMANCE QUALITY RECOGNITION PROGRAM

43 TAC §§217.201 - 217.207

The Texas Department of Motor Vehicles (department) adopts new Subchapter J, Performance Quality Recognition Program: §217.201, Purpose and Scope; §217.202, Definitions; §217.203, Recognition Criteria; §217.204, Applications; §217.205, Department Decision to Award, Deny, Revoke, or Demote a Recognition Level; §217.206, Term of Recognition Level; and §217.207, Review Process. Sections 217.203, 217.204, 217.205, and 217.206 are adopted with changes to the proposed text as published in the April 22, 2016, issue of the *Texas Register* (41 TexReg 2937) and will be republished. The department amended §217.206 to clarify the language, and the amendments to §§217.203, 217.204, and 217.205 were made in response to comments. Sections 217.201, 217.202, and 217.207 are adopted without changes to the proposed text as published and will not be republished.

EXPLANATION OF ADOPTED NEW SUBCHAPTER

Transportation Code, §520.004 requires the department to establish standards for uniformity and service quality for county tax assessor-collectors regarding vehicle titles and registration. New Subchapter J prescribes the procedures and general criteria the department will use to establish and administer a voluntary program called the Performance Quality Recognition Program (Recognition Program).

The department will use the Recognition Program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions. The recognition criteria contain the standards for uniformity and service quality, such as processing transactions in a timely fashion and consistently applying statutes, rules, and policies governing motor vehicle transactions.

The department drafted Subchapter J after doing the following: 1) conducting an audit of the department's administration of statutes and rules through the county tax assessor-collectors; 2) reviewing recognition or accountability programs created by other state agencies; and 3) meeting with the Performance Quality Recognition Program Working Group (Working Group).

The department's internal audit division audited the department's administration of statutes and rules through county tax assessor-collectors. The audit report presented information and ideas, which the department used as a starting point to draft Subchapter J. The audit methodology for compiling information and ideas included the following: 1) conducting research into achievement programs, such as the Ohio Environmental Protection Agency Encouraging Environmental Excellence Program; 2) obtaining feedback from the Tax Assessor-Collectors Association of Texas (TACA); 3) interviewing senior managers at the department; and 4) conducting a survey of 50 county tax assessor-collector offices that are geographically dispersed and of various sizes to gain a better understanding of current practices and how these practices could relate to a recognition program. The department received 44 (88 percent) responses; however, the respondents skipped some questions.

The department reviewed recognition or accountability programs created by other Texas state agencies, such as the following programs: 1) the Job Corps Diploma Program, 19 Tex. Admin. Code §97.2001 (2009) (Tex. Educ. Agency, Job Corps Diploma Program Accountability Procedures); and 2) the Nursing Education Performance Recognition Program, 19 Tex. Admin. Code §4.183 (2007) (Tex. Higher Educ. Coordinating Bd., Nursing Education Performance Recognition Program).

The department created the Working Group, which is made up of department employees and nine county tax assessor-collectors from counties that are geographically dispersed and of various sizes. The Working Group was charged with providing input on the development of a program and rules to recognize outstanding performance and efficiency in processing title and registration transactions in a county tax assessor-collector office. In addition to reviewing the audit report and discussing the reason for the Recognition Program, the Working Group reviewed, discussed, and provided input on the draft of Subchapter J at three meetings.

Subchapter J provides standards for the uniformity and service quality for counties by establishing objective criteria for the different levels of recognition. Most of the current recognition criteria for the minimum recognition level contain the standards for uniformity because the factors indicate whether the county tax assessor-collector complied with statutes, rules, and policies governing motor vehicle transactions. Most of the current recognition criteria for a higher recognition level are based on factors that indicate service quality, such as low error rates and whether transactions are processed in a timely manner.

Subchapter J also states the nature and requirements of the procedures for the Recognition Program, as required by Government Code, §2001.004. For example, Subchapter J provides when an application can be submitted and how a county tax assessor-collector can request the department to review its decision to deny an application or to demote or revoke a recognition level.

COMMENTS AND RESPONSES

The department received written comments from TACA and from county tax assessor-collectors from certain counties, which are referenced by county.

COMMENT

Hansford County commented that the Recognition Program would: 1) enforce the department's and the county's office policies; and 2) help encourage the county with its quality of service to the public.

Hemphill County commented that it does not favor the Recognition Program because: 1) it is just an additional form of spending money when the county doesn't need to be spending money; and 2) their customers are the ones who show the county tax assessor-collectors how they are doing. Wharton County objects to the Recognition Program because: 1) county tax assessor-collectors take their responsibility and their constitutional liability very seriously; 2) the county doesn't see the benefit of having the Recognition Program; and 3) each county tax assessor-collector should implement their own incentive program, rather than having another program regulated by the state. Lubbock County commented that: 1) the Recognition Program must remain voluntary because the criteria require the county to maintain an excessive amount of recordkeeping, and the Recognition Program will require a huge amount of man hours to track, document, and maintain; and 2) the same criteria should be applied to the department.

RESPONSE

The department will proceed with adopting the proposed new Subchapter J to implement the voluntary Recognition Program. The department is adopting this subchapter to comply with Transportation Code, §520.004, which requires the department by rule to establish standards for uniformity and service quality for counties.

COMMENT

Williamson County commented that criteria in §217.203(c) should include the criteria in §217.203(b) because the Recognition Program was intended to build on each level of recognition.

RESPONSE

The department made the suggested change in §217.203(c), as well as a conforming change in §217.203(d).

COMMENT

Brazoria County commented that §217.204(d) should be deleted and the language in §217.204(c)(2) should be amended because a county tax assessor-collector who is exonerated after their recognition level has been revoked should not have to wait to be re-elected to be eligible for reinstatement of their previously awarded recognition level. They should be allowed to follow the same procedure as the county tax assessor-collector whose recognition level was demoted to a lower level. Bee County, Cass County, Midland County, Montgomery County, Moore County, Navarro County, Refugio County, San Patricio County, and TACA made similar comments.

RESPONSE

The department amended §217.204(d) to allow a county tax assessor-collector whose recognition has been revoked to follow the same procedure as a county tax assessor-collector whose recognition was demoted to a lower level. However, when a recognition level is demoted or revoked, the county tax assessor-collector must wait an entire state fiscal year before applying for: 1) a higher recognition level if the recognition level was demoted; or 2) a recognition level if the recognition level was revoked. The recognition level is not reinstated. Any recognition level will be based on the county tax assessor-collector's performance during the state fiscal year immediately preceding the application, regardless of the reason for the demotion or revocation.

If a county tax assessor-collector's recognition level is demoted or revoked, §217.207 provides a review process that allows a county tax assessor-collector to request the department to review its decision. In addition, the decision to demote or revoke will be made based on the same criteria that is used to award the recognition level. Some of the comments talked about a situation in which the county tax assessor-collector is exonerated, which means a conviction for a crime is reversed. The burden of proof in a criminal case is much higher than the burden of proof used for the Recognition Program. Also, the elements of a crime in a criminal case are different than the criteria used in the Recognition Program.

COMMENT

Hansford County and Hemphill County object to the requirement for the county to timely pay registration fee collections because the COGNOS system does not timely provide the county with the report and does not work properly. Also, Hansford County stated the county may have to wait for funds from any IRP registrations.

RESPONSE

The department will not hold it against a county tax assessor-collector if the department or a department system is responsible for the county tax assessor-collector's failure to comply with the recognition criteria.

COMMENT

Aransas County commented that §217.205 is not specific enough regarding when the department would revoke or demote a recognition level if the department discovers information that shows the county tax assessor-collector no longer complies with the criteria for the recognition level.

RESPONSE

The department amended §217.205(c) to clarify when the department may revoke a recognition level and when the department may demote a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for the recognition level.

STATUTORY AUTHORITY

The new subchapter is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §520.003, which states the department may adopt rules to administer Chapter 520, Miscellaneous Provisions; and more specifically, Transportation Code, §520.004, which states the department by rule shall establish standards for uniformity and service quality for counties; and Government Code, §2001.004, which requires a state agency to adopt rules of practice stating the nature and requirements of all available formal and informal procedures.

CROSS REFERENCE TO STATUTE

Government Code, §2001.004; and Transportation Code, §520.004.

§217.203. Recognition Criteria.

(a) Levels of recognition. The department will establish criteria for multiple levels of recognition for performance.

(b) Recognition criteria for minimum recognition level. The recognition criteria shall include, but are not limited to, factors that indicate whether the office:

(1) timely remits registration fee collections;

(2) timely remits motor vehicle sales tax and penalties;

(3) consistently applies statutes, rules, and policies governing motor vehicle transactions; and

(4) maintains bonds as required by statute or administrative rule.

(c) Recognition criteria for a higher recognition level. In addition to the recognition criteria listed in subsection (b) of this section, the recognition criteria shall include, but are not limited to, factors that indicate whether the office:

(1) performs efficiently and with low error rates;

(2) processes transactions in a timely fashion;

(3) has customer feedback programs; and

(4) has fraud, waste, and abuse awareness and prevention programs.

(d) Possible additional criteria for a higher recognition level. In addition to the recognition criteria listed in subsections (b) and (c) of this section, the department may include recognition criteria, such as the following, that indicate whether the office:

(1) implements cost-saving measures; and

(2) has customer feedback metrics to measure customer satisfaction.

(e) Posting recognition criteria. The department shall post the recognition criteria on its website.

§217.204. Applications.

(a) Application deadline. If a county tax assessor-collector chooses to apply for a recognition level or to apply for a higher level of recognition under the Performance Quality Recognition Program, the county tax assessor-collector must submit an application to the department during any year of the county tax assessor-collector's term of office. The application must be received by the department or postmarked no later than October 31st.

(b) Application from a successor county tax assessor-collector. A successor county tax assessor-collector is not eligible for a recognition level until after serving as the county tax assessor-collector during an entire state fiscal year, which is September 1st through August 31st.

(c) Application for a higher level of recognition.

(1) If a county tax assessor-collector obtains a recognition level and chooses to apply for a higher level of recognition during the term of the existing recognition level, the county tax assessor-collector is not eligible to apply for a higher level until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year for which the existing recognition level was awarded.

(2) If the department demotes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a higher level of recognition until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the existing recognition level was demoted.

(d) Application for a recognition level after revocation of recognition level. If the department revokes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a recognition level until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the recognition level was revoked.

(e) Application form. The application must be submitted on a form prescribed by the department.

(f) Signature on application. The county tax assessor-collector must sign the application.

(g) Additional information, documentation, or clarification. At the department's discretion, the department may request additional information, documentation, or clarification from the county tax assessor-collector after the department receives an application. The department shall provide the county tax assessor-collector with a deadline to respond to the request.

§217.205. Department Decision to Award, Deny, Revoke, or Demote a Recognition Level.

(a) Award of recognition level. The department may award a recognition level based on the following for the time frame of September 1st through August 31st immediately preceding the application deadline:

(1) information and documents contained in the application;

(2) any additional information, documentation, or clarification requested by the department; and

(3) information and documentation from department records.

(b) Denial of recognition level. The department may deny an award of recognition if:

(1) the application contains any incomplete or inaccurate information;

(2) the applicant fails to provide requested documents;

(3) the application contains incomplete documents;

(4) the application was not received by the department or postmarked by the department's deadline;

(5) the county tax assessor-collector who applied for recognition no longer holds the office of county tax assessor-collector;

(6) the county tax assessor-collector did not sign the application; or

(7) the department discovers information which shows the applicant does not comply with the criteria to receive a recognition level.

(c) Revocation of recognition level or demotion of recognition level.

(1) The department may revoke a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for any recognition level.

(2) The department may demote a recognition level if the department discovers information which shows the county tax assessor-collector no longer complies with the criteria for the current recog-

nition level, but still complies with the criteria for a recognition level. The recognition level will be demoted to the highest recognition level for which the county tax assessor-collector qualifies.

(d) Notice of department decision to award, deny, revoke, or demote a recognition level. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.

(e) Deadline for department decision to award or to deny a recognition level. No later than 90 calendar days after receiving the application for recognition, the department shall send a written notice to the applicant stating:

(1) the department's decision to award or to deny a recognition level; or

(2) there will be a delay in the department's decision.

§217.206. Term of Recognition Level.

(a) Expiration of recognition level. Except as provided in subsections (b), (c), (d), and (e) of this section, the recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition was awarded or the one-year anniversary of the start of their re-election term of office.

(b) Demoted recognition level. If a recognition level is demoted during the term of a recognition level, the demoted recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition level was demoted or the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c), (d), and (e) of this section. If a recognition level is demoted during the first year of the county tax assessor-collector's re-election term of office and the recognition level was awarded during the county tax assessor-collector's prior term of office, the demoted recognition level expires on the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c) and (e) of this section.

(c) Revoked recognition level. A recognition level that is revoked will terminate on the effective date of the revocation.

(d) Decision on application for a higher level of recognition. If a county tax assessor-collector chooses to apply for a higher level of recognition, the existing recognition level terminates once the department makes a decision on the application for a higher level of recognition.

(e) County tax assessor-collector no longer holds office. The recognition level awarded to a county tax assessor-collector expires when the county tax assessor-collector no longer holds the office of county tax assessor-collector.

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 19, 2016.

TRD-201603558
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: August 8, 2016
Proposal publication date: April 22, 2016
For further information, please call: (512) 465-5665

Caroline Kirsch
11th Grade

Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Texas Alcoholic Beverage Commission

Title 16, Part 3

The Texas Alcoholic Beverage Commission proposes to review 16 Texas Administrative Code §33.10, Citizenship and Status, in accordance with Texas Government Code §2001.039. An assessment will be made by the Commission as to whether the reasons for adopting the rule continue to exist. The review will examine whether the rule is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Commission.

Comments on the review may be submitted in writing to Martin Wilson, Assistant General Counsel, Texas Alcoholic Beverage Commission, at P.O. Box 13127, Austin, Texas 78711-3127, or by facsimile transmission to (512) 206-3280. Comments will be accepted for 30 days following publication in the *Texas Register*.

The staff of the commission will hold a public hearing to receive oral comments on the review on Thursday, August 25, 2016, at 1:30 p.m. in the commission meeting room at the commission's headquarters, which is located at 5806 Mesa Drive in Austin, Texas.

TRD-201603703
Martin Wilson
Assistant General Counsel
Texas Alcoholic Beverage Commission
Filed: July 27, 2016

♦ ♦ ♦

Adopted Rule Reviews

Texas Education Agency

Title 19, Part 2

The Texas Education Agency (TEA) adopts the review of 19 TAC Chapter 100, Charters, Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools, pursuant to the Texas Government Code, §2001.039. The TEA proposed the review of 19 TAC Chapter 100, Subchapter AA, in the January 22, 2016 issue of the *Texas Register* (41 TexReg 685).

The TEA finds that the reasons for adopting Subchapter AA continue to exist and readopts the rules. The TEA received comments related to the review. Following is a summary of the public comments received and corresponding agency responses.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein, LLP, which also represents the Texas League of Community Charter Schools, commented that the reasons for adopting §100.1013, Filing of Documents, do not continue to exist based on the maturation of charter schools generally and changes in TEA's internal procedures and practices. The firm commented that these requirements are unique to charter schools and there is no equivalent rule applicable to traditional school districts.

Agency Response. The agency disagrees as this provision mirrors grant submission language that is applicable to all local education agencies.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the reasons for adopting subsection (b)(1)(C) in §100.1015, Applicants for an Open-Enrollment Charter, Public Senior College or University Charter, or Public Junior College Charter, do not continue to exist based on the language in Texas Education Code (TEC), §12.101(b-8). The firm recommended that the rule be amended to align with statute by deleting the language, "Loans and lines of credit are liabilities that must be repaid..." and adding the language, "Loans and lines of credit will be considered as available funding."

Agency Response. The agency disagrees with the recommendation. Section 100.1015(b)(1)(C) currently specifies that loans and lines of credit will be considered as available funding. While loans and lines of credit are a type of liability that must be repaid, that does not negate the fact that they will be considered as available funding. Further, loans and lines of credit will not exclude a sponsoring entity's funding from consideration during the vetting process of open-enrollment charter schools.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that §100.1015(b)(1)(F)(i) no longer serves a purpose given the current Request for Application (RFA) process. The firm stated that the current financial plan workbook in the RFA document limits charter applicants to the agency's Summary of Finances (SOF) template, which calculates the amount per student references in the rule to the amount calculated by the SOF template. The firm recommended that the rule be revised to reflect the current practices.

Agency Response. The agency disagrees. An applicant could petition the agency to alter the SOF template to include a Foundation School Program (FSP) funding amount that is higher than the amount designated in the RFA if the applicant provided compelling evidence as to the reason for the suggested FSP funding amount.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the reasons for adopting §100.1015(b)(1)(G) no longer exist based on the language in the Financial Integrity Rating System of Texas (FIRST), Indicator 11, and the manner in which FIRST points are allocated under this indicator. The firm recommended that the rule be amended to reference the applicable indicator in FIRST relating to administrative cost ratio.

Agency Response. The agency disagrees with the recommendation. The provision exists to maximize points on FIRST once an entity has been approved for a charter and reflects Indicator 11. Due to high-stakes decision-making associated with financial ratings, the agency has determined that applicants should be prepared to meet this ratio once the entity is an approved charter.

Comment. The law firm of Schulman, Lopez, Hoffer & Adelstein commented that the reasons for adopting subsection (d) of §100.1063, Use of Public Property by a Charter Holder, continue to exist based on the language in TEC, §12.128, clarifying the nature of charter school property. The firm cited the pending Attorney General opinion that has been requested on this matter and stated that this rule reflects a major aspect to the legal framework for Texas charters.

Agency Response. The agency agrees that the reasons for adopting §100.1063 continue to exist.

At a later date, the TEA may propose amendments to Subchapter AA to conform to federal and legislative updates and current division practices.

This concludes the review of 19 TAC Chapter 100.

TRD-201603621
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: July 21, 2016

Texas Board of Pardons and Paroles

Title 37, Part 5

The Texas Board of Pardons and Paroles files this notice of readoption of 37 TAC, Part 5, Chapter 147 (Hearings), Chapter 149 (Mandatory Supervision) and Chapter 150 (Memorandum of Understanding and Board Policy Statements). The adopted amendments are proposed to capitalize titles throughout the rules, change the section symbol to the word "Section" in 147.5 and update the language in 147.6 to reflect the Texas Department of Criminal Justice Parole Division as the custodian of record. The amendment in Chapter 149, Subchapter B, §149.16 capitalizes chair within the rule.

The assessment of Chapter 147 (Hearings), Chapter 149 (Mandatory Supervision) and Chapter 150 (Memorandum of Understanding and Board Policy Statements) indicates that the original justifications for these rules continue to exist, and the Board is readopting the rules in accordance with Texas Government Code, §2001.039. This concludes the review of 37 TAC Chapters 147, 149 and 150.

TRD-201603627
Bettie Wells
General Counsel
Texas Board of Pardons and Paroles
Filed: July 22, 2016

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

Notice of Request for Proposals

Pursuant to Chapter 403 and Chapter 2254, Subchapter B, of the Texas Government Code, the Texas Comptroller of Public Accounts ("Comptroller") announces its Request for Proposals No. 219a ("RFP") to solicit proposals from qualified, independent consultants to assist Comptroller in preparing fiscal notes for property-tax related legislation and to provide related services (the "Services") for the upcoming session of the 85th Texas Legislature in 2016. The selected consultant(s) ("Consultant") will assist Comptroller in accurately estimating the fiscal impacts to state property tax-related legislation and related tasks for the upcoming session of the Texas Legislature. Comptroller reserves the right to award more than one contract under the RFP. The Consultant will be expected to begin performance of the contract on or about October 1, 2016, or as soon thereafter as practical.

Contact: Parties interested in submitting a proposal should contact Carolyn Greenwalt, 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, August 5, 2016.

Questions: All questions regarding the RFP must be received in the Issuing Office no later than 2:00 p.m. CT on Friday, August 12, 2016. Prospective proposers are encouraged to e-mail Questions to *contracts@cpa.texas.gov* to ensure timely receipt. On or about Friday, August 19, 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 26, 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 reserves the right to accept or reject any or all proposals submitted. Comptroller is not obligated to execute a contract on the basis of this notice or the distribution of any RFP. Comptroller 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 - August 5, 2016, after 10:00 a.m. CT; Questions Due - August 12, 2016, 2:00 p.m. CT; Official Responses to Questions posted - August 19, 2016; Proposals Due - August 26, 2016, 2:00 p.m. CT; Contract Execution - September 15, 2016, or as soon thereafter as practical; Commencement of Work - September 15, 2016, or as soon thereafter as practical. 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-201603695
Carolyn Greenwalt
Assistant General Counsel, Contracts
Comptroller of Public Accounts
Filed: July 27, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/16 - 08/07/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/01/16 - 08/07/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201603674
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: July 26, 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 September 6, 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 September 6, 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: 786 K and H LLC dba S Mart; DOCKET NUMBER: 2016-0571-PST-E; IDENTIFIER: RN102232196; LOCATION: Omaha, Morris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline and diesel fuel; RULES VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the UST system; 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: $10,125; ENFORCEMENT COORDINATOR: James Baldwin, (512) 239-1337; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(2) COMPANY: Beacon Estates Water Supply Corporation; DOCKET NUMBER: 2015-1612-MWD-E; IDENTIFIER: RN101917573; LOCATION: Brookshire, Waller County; TYPE OF FACILITY: wastewater treatment plant; RULES VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1) and (5) and Texas Pollutant Discharge Elimination System Permit Number WQ0014963001, Operational Requirements Number 1 and Permit Conditions Number 2.d, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal and take all reasonable steps to minimize or prevent any discharge that has a reasonable likelihood of adversely affecting human health or the environment; PENALTY: $31,500; ENFORCEMENT COORDINATOR: Farhaud Abbaszadeh, (512) 239-0779; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: BELLVILLE SHELL, INCORPORATED dba Bellville Shell Food Court; DOCKET NUMBER: 2016-0519-PST-E; IDENTIFIER: RN102780095; LOCATION: Bellville, Austin County; TYPE OF FACILITY: underground storage tank system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2)(A)(i) and TWC, §26.3475(a), by failing to equip each pressurized line with an automatic line leak detector; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: BLUE BELL CREAMERIES, L.P.; DOCKET NUMBER: 2016-0890-PST-E; IDENTIFIER: RN102789260; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: fleet refueling facility; 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.

(5) COMPANY: BRAZOS VALLEY PETROLEUM CORPORATION dba Pirate Stop; DOCKET NUMBER: 2016-0193-PST-E; IDENTIFIER: RN106150311; LOCATION: Vidor, Orange 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 tank for releases at a frequency of at least once every month; PENALTY: $6,750; ENFORCEMENT COORDINATOR: John Fennell, (512) 239-2616; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(6) COMPANY: Chevron Phillips Chemical Company LP; DOCKET NUMBER: 2016-0289-AIR-E; IDENTIFIER: RN103919817; LOCATION: Baytown, Harris County; TYPE OF FACILITY: petrochemicals manufacturing plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O2114, Special Terms and Conditions Number 18, and New Source Review Permit Numbers 37063 and N178, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(7) COMPANY: CIRCLE K STORES INCORPORATED dba Circle K 2704031 and Circle K 2704035; DOCKET NUMBER: 2016-0617-PST-E; IDENTIFIER: RN102347465 and RN102016367; LOCATIONS: Bastrop, Bastrop County and Yoakum, DeWitt, County; TYPE OF FACILITY: underground storage tanks (USTs) system and 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 USTs 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 a regulated substance within 30 days of discovery; PENALTY: $20,100; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753 (512) 339-2929.

(8) COMPANY: City of Alpine; DOCKET NUMBER: 2016-0317-MWD-E; IDENTIFIER: RN103114690; LOCATION: Alpine, Brewster 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 WQ0014349001, Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limitations; PENALTY: $4,125; Supplemental Environmental Project offset amount of $3,300; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(9) COMPANY: City of Megargel; DOCKET NUMBER: 2016-0747-PWS-E; IDENTIFIER: RN101386605; LOCATION: Megargel, Archer County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1), Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.060 milligrams per liter for haloacetic acids, based on the locational running annual average; PENALTY: $195; ENFORCEMENT COORDINATOR: Sandra Douglas, (512) 239-2549; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(10) COMPANY: DCP Midstream, LP; DOCKET NUMBER: 2016-0699-AIR-E; IDENTIFIER: RN100542794; LOCATION: George West, Live Oak County; TYPE OF FACILITY: gas plant; RULES VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 Code of Federal Regulations (CFR) §63.6625(b) and §63.6630(a), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O2803, Special Terms and Conditions (STC) Number 1.E., by failing to install the continuous parameter monitoring system before commencing operations; and 30 TAC §§101.20(2), 113.1090, and 122.143(4), 40 CFR §63.6610(a), THSC,

§382.085(b), and FOP Number O2803, STC Number 1.E., by failing to conduct the initial performance test within 180 days after commencing operations; PENALTY: $2,696; ENFORCEMENT COORDINATOR: Kingsley Coppinger, (512) 239-6581; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(11) COMPANY: DENNIS PORTER, INCORPORATED dba Porters Shell; DOCKET NUMBER: 2016-0526-PST-E; IDENTIFIER: RN101879534; LOCATION: Andrews, Andrews County; TYPE OF FACILITY: underground storage tanks (USTs) system and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; 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: $76,730; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(12) COMPANY: East Central Independent School District; DOCKET NUMBER: 2016-0804-PST-E; IDENTIFIER: RN101740454; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: underground storage tanks (USTs) system and fleet refueling station; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and (b)(2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(13) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2016-0100-AIR-E; IDENTIFIER: RN102528197; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: petrochemical storage plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), New Source Review Permit Number 7278, Special Conditions Number 1, Federal Operating Permit Number O1429, Special Terms and Conditions Number 12, and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum allowable emission rates (MAER) for the Marine Vapor Combustor System Loading, Emission Point Number (EPN) VCSTK, and by failing to comply with the MAER for Boiler 2, EPN BLR-2; PENALTY: $40,950; Supplemental Environmental Project offset amount of $16,380; ENFORCEMENT COORDINATOR: Raime Hayes-Falero, (713) 767-3567; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: Intertek USA Incorporated; DOCKET NUMBER: 2016-0191-MLM-E; IDENTIFIER: RN105768170; LOCATION: Corpus Christi, Nueces County; TYPE OF FACILITY: chemical testing facility; RULES VIOLATED: 30 TAC §§335.62, 335.503(a), and 335.504 and 40 Code of Federal Regulations (CFR) §262.11, by failing to conduct hazardous waste determinations and waste classifications; 30 TAC §335.6(c), by failing to update the facility's Notice of Registration; 30 TAC §335.13(k) and 40 CFR §262.42(a)(2), by failing to submit an exception report for not receiving a copy of a manifest with the handwritten signature of the owner or operator of the designated facility within 45 days of the date the waste was accepted by the initial transporter; 30 TAC §335.69(a)(2) and (d)(2) and 40 CFR §262.34(a)(2) and (c)(1)(ii), by failing to label hazardous waste containers with the beginning date of accumulation and failing to clearly label all hazardous waste containers with the words "Hazardous Waste" or with other words that identify the contents of the containers; 30 TAC §335.69(a)(1)(A) and 40 CFR §265.173(a), by failing to keep a container holding hazardous waste closed except when adding or removing waste; 30 TAC §335.69(a)(4)(A) and §335.112(a)(3), and 40 CFR §262.34(a)(4) and §265.53, by failing to submit a copy of the contingency plan and all revisions to the plan to all local police departments, fire departments, hospitals, and State and local emergency response teams that may be called upon to provide emergency services; and 30 TAC §324.1 and 40 CFR §279.22(c)(1), by failing to mark or clearly label used oil storage containers with the words "Used Oil;" PENALTY: $7,691; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(15) COMPANY: Kevin Copeland dba Kevin Copeland Sand and Gravel; DOCKET NUMBER: 2014-1031-WQ-E; IDENTIFIER: RN104849294; LOCATION: Hutto, Williamson County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25, by failing to register the site as an APO by October 30, 2012; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities; PENALTY: $10,000; ENFORCEMENT COORDINATOR: Ronica Rodriguez, (512) 239-2601; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(16) COMPANY: LBM and M LLC dba CJs Convenience; DOCKET NUMBER: 2016-0701-PST-E; IDENTIFIER: RN101826576; LOCATION: Gun Barrel City, Henderson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $4,254; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(17) COMPANY: MANISCALCO, LIMITED dba J.A.M. Distributing Company; DOCKET NUMBER: 2016-0792-PST-E; IDENTIFIER: RN100241967; LOCATION: Houston, Harris County; TYPE OF FACILITY: common carrier; RULES VIOLATED: 30 TAC §334.5(b)(1)(A) and TWC, §26.3467(d), by failing to deposited a regulated substance into a regulated underground storage tank system that was covered by a valid, current TCEQ delivery certificate; PENALTY: $3,475; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Mohammed Nadeem dba Stop N Drive; DOCKET NUMBER: 2016-0509-PST-E; IDENTIFIER: RN103045969; LOCATION: Point Blank, San Jacinto County; TYPE OF FACILITY: underground storage tank (UST) and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,692; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(19) COMPANY: MT. VERNON ENTERPRISES, INCORPORATED dba Food Mart; DOCKET NUMBER: 2016-0799-PST-E; IDENTIFIER: RN102866118; LOCATION: Mount Vernon, Franklin County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records

and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,380; ENFORCEMENT COORDINATOR: Catherine Grutsch, (512) 239-2607; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: RAKIN, LLC dba TRI-STOP; DOCKET NUMBER: 2016-0727-PST-E; IDENTIFIER: RN102433505; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $2,807; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: RAM-RAHIM LLC dba Stop N Save; DOCKET NUMBER: 2016-0582-PST-E; IDENTIFIER: RN101431435; LOCATION: Richwood, Brazoria County; TYPE OF FACILITY: underground storage tank (UST) system and a 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 UST for releases at a frequency of at least once every month; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Steven Stump, (512) 239-1343; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Randy O'Neal; DOCKET NUMBER: 2016-0273-MSW-E; IDENTIFIER: RN105855597; LOCATION: Hamilton, Hamilton 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: $1,312; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(23) COMPANY: RIVER RIDGE APARTMENTS, INCORPORATED; DOCKET NUMBER: 2016-0314-PWS-E; IDENTIFIER: RN101177442; LOCATION: McQueeney, Guadalupe County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(2) and Texas Health and Safety Code, §341.031(a), by failing to comply with the acute maximum contaminant level of 10 milligrams per liter for nitrate; PENALTY: $672; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(24) COMPANY: ROAD RANGER, L.L.C.; DOCKET NUMBER: 2016-0631-PWS-E; IDENTIFIER: RN105187181; LOCATION: Moore, Frio County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis, and failing to issue public notification and submit a copy of the public notification to the executive director regarding the failure to collect routine coliform samples; PENALTY: $2,944; ENFORCEMENT COORDINATOR: Steven Hall, (512) 239-2569; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480,.

(25) COMPANY: SAM RAYBURN WATER, INCORPORATED; DOCKET NUMBER: 2016-0363-PWS-E; IDENTIFIER: RN101256949; LOCATION: Pineland, San Augustine County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM), based on a locational running annual average; 30 TAC §290.117(i)(6) and (j), by failing to provide a consumer notification of lead tap water monitoring results to persons served at the sites that were tested and failing to mail a copy of the consumer notification of tap results to the executive director (ED) along with certification that the consumer notification has been distributed for the 2015 monitoring period; 30 TAC §290.122(b)(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 comply with the MCL for TTHM for the third quarter of 2013 and the third quarter of 2014; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification or submit a copy of the public notification to the ED regarding the failure to collect lead and copper tap samples for the 2014 monitoring period; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 11707 for calendar years 2008 - 2012, 2014, and 2015; PENALTY: $525; ENFORCEMENT COORDINATOR: Yuliya Dunaway, (210) 403-4077; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(26) COMPANY: Sara Fortune, Incorporated dba Kwik Check Drive In Groceries; DOCKET NUMBER: 2016-0372-PST-E; IDENTIFIER: RN101381796; LOCATION: Needville, Fort Bend County; TYPE OF FACILITY: underground storage tanks (USTs) and convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.7(d)(3), by failing to provide an amended registration for any change or additional information regarding the USTs to the TCEQ within 30 days from the date of occurrence of the change or addition; 30 TAC §334.49(c)(2)(C) and (4) and TWC, §26.3475(d), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and system components are operating properly and failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.50(b)(1)(A), (d)(1)(B)(ii), and (iii)(I) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month, and failing to conduct reconciliation of detailed inventory control records at least once each month, sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow-through for the month plus 130 gallons, and failing to record inventory volume measurement for regulated substance inputs, withdrawals, and the amount still remaining in the tanks each operating day; 30 TAC §334.42(i) and TWC, §26.3475(c)(2), by failing to inspect all sumps, manways, overspill containers, or catchment basins associated with a UST system at least once every 60 days to assure that their sides, bottoms, and any penetration points are maintained liquid tight; 30 TAC §334.45(c)(3)(A), by failing to install a secure anchor at the base of the dispenser in each pressurized delivery or product line, a UL-listed emergency shutoff valve in piping systems in which regulated substances are conveyed under pressure to an aboveground dispensing unit; 30 TAC §115.241(b)(3) and Texas Health and Safety Code, §382.085(b), by failing to perform and complete all decommissioning activities, as applicable for the particular Stage II vapor recovery system equipment installed at the station; 30 TAC §334.48(a) and (b), by failing to ensure that the UST systems are operated, maintained, and managed in a manner that will prevent releases of regulated substances; and 30 TAC §334.8(c)(5)(C), by failing to ensure that a legible tag, label, or marking is permanently applied upon or affixed to either the top of the fill tube or to a non-removable point in the immediate area of the fill tube for each regulated UST at the station; PENALTY: $12,563; ENFORCEMENT COORDINATOR: Jonathan Nguyen, (512) 239-1661; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(27) COMPANY: STRAUS SYSTEMS, INCORPORATED; DOCKET NUMBER: 2016-0712-PST-E; IDENTIFIER: RN100664671; LOCATION: Stafford, Fort Bend County; TYPE OF FACILITY: underground storage tank (UST) and a fleet refueling facility; RULES VIOLATED: 30 TAC §§334.7(d)(3) and (e)(2), 334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to provide an amended registration for any change or additional information regarding the USTs within 30 days from the date of the occurrence of the change or addition and failing to renew a previously issued UST delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to test the corrosion protection system for operability and adequacy of protection at a frequency of at least once every three years; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $8,922; ENFORCEMENT COORDINATOR: Holly Kneisley, (817) 588-5856; REGIONAL OFFICE: 5425 Polk Street, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(28) COMPANY: WATER NECESSITIES, INCORPORATED dba Countrywood Water System; DOCKET NUMBER: 2016-0322-PWS-E; IDENTIFIER: RN101250850; LOCATION: Vidor, Hardin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(d)(2)(A) and §290.110(b)(4) and Texas Health and Safety Code, §341.0315(c), by failing to maintain a minimum disinfectant residual of 0.2 milligrams per liter free chlorine throughout the distribution system at all times; and 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(c); PENALTY: $388; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(29) COMPANY: WRIGHT SAND CORPORATION, INCORPORATED aka Wright Sand Corporation Big Sandy Sand Co.; DOCKET NUMBER: 2016-0287-WQ-E; IDENTIFIER: RN101864890; LOCATION: Hawkins, Wood County; TYPE OF FACILITY: aggregate production operation (APO); RULES VIOLATED: 30 TAC §342.25(b), by failing to register the site as an APO no later than the 10th business day before commencing regulated activities; and 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization under Texas Pollutant Discharge Elimination System General Permit Number TXR050000 to discharge storm water associated with industrial activities; PENALTY: $6,250; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201603662
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: July 26, 2016

♦ ♦ ♦

Notice of Public Hearing

On assessment of administrative penalties and requiring certain actions of AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart

SOAH Docket No. 582-16-5286

TCEQ Docket No. 2015-1336-PST-E

The Texas Commission on Environmental Quality (TCEQ or the Commission) has referred this matter to the State Office of Administrative Hearings (SOAH). An Administrative Law Judge with the State Office of Administrative Hearings will conduct a public hearing at:

10:00 a.m. - August 25, 2016

William P. Clements Building

300 West 15th Street, 4th Floor

Austin, Texas 78701

The purpose of the hearing will be to consider the Executive Director's Preliminary Report and Petition mailed January 29, 2016 concerning assessing administrative penalties against and requiring certain actions of AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, for violations in Harris County, Texas, of: Tex. Health & Safety Code §382.085(b), Tex. Water Code §26.3475(c)(1), and 30 Tex. Admin. Code §§115.242(d)(3) and 334.50(b)(1)(A).

The hearing will allow AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, the Executive Director, and the Commission's Public Interest Counsel to present evidence on whether a violation has occurred, whether an administrative penalty should be assessed, and the amount of such penalty, if any. The first convened session of the hearing will be to establish jurisdiction, afford AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel an opportunity to negotiate and to establish a discovery and procedural schedule for an evidentiary hearing. Unless agreed to by all parties in attendance at the preliminary hearing, an evidentiary hearing will not be held on the date of this preliminary hearing. Upon failure of **AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart** to appear at the preliminary hearing or evidentiary hearing, the factual allegations in the notice will be deemed admitted as true, and the relief sought in the notice of hearing may be granted by default. The specific allegations included in the notice are those set forth in the Executive Director's Preliminary Report and Petition, attached hereto and incorporated herein for all purposes. AZEL H CORP. and HK MIAN BUSINESS, INC. d/b/a Moon Mart, the Executive Director of the Commission, and the Commission's Public Interest Counsel are the only designated parties to this proceeding.

Legal Authority: Tex. Water Code §7.054 and Chs. 7 and 26, Tex. Health & Safety Code Ch. 382, and 30 Tex. Admin. Code Chs. 70, 115, and 334; Tex. Water Code §7.058, and the Rules of Procedure of the Texas Commission on Environmental Quality and the State Office of Administrative Hearings, including 30 Tex. Admin. Code §§70.108 and 70.109 and ch. 80, and 1 Tex. Admin. Code ch. 155.

Further information regarding this hearing may be obtained by contacting Jake Marx, Staff Attorney, Texas Commission on Environmental Quality, Litigation Division, Mail Code 175, P.O. Box 13087, Austin, Texas 78711-3087, telephone (512) 239-3400. Information concerning your participation in this hearing may be obtained by contacting Vic McWherter, Public Interest Counsel, Mail Code 103, at the same P.O. Box address given above, or by telephone at (512) 239-6363.

Any document filed prior to the hearing must be filed with TCEQ's Office of the Chief Clerk and SOAH. Documents filed with the Office of the Chief Clerk may be filed electronically at *http://www.tceq.texas.gov/goto/eFilings* or sent to the following address: TCEQ Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087. Documents filed with SOAH may be filed via fax at (512) 322-2061 or sent to the following address: SOAH, 300 West 15th Street, Suite 504, Austin, Texas 78701. When

contacting the Commission or SOAH regarding this matter, reference the SOAH docket number given at the top of this notice.

Persons who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week before the hearing.

Issued: July 26, 2016

TRD-201603694
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2016

♦ ♦ ♦

Notice of Receipt of Application for Land Use Compatibility Determination for a New Municipal Solid Waste Permit

Proposed Permit No. 2391

APPLICATION. Pintail Landfill, LLC, 134 Riverstone Terrace, Suite 203, Canton, Cherokee County, Georgia, 30114-1705, the owner and operator of a municipal solid waste disposal facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a separate land use compatibility determination on a permit to authorize the acceptance of municipal solid waste, special waste, and Class 2 and 3 industrial waste. The facility is located approximately 860 feet east of State Highway 6 between Wendt Road and Kelley Road which is approximately 1 mile North of US Highway 290 Waller County, Texas 77445. The TCEQ received the land use compatibility portion of the application on July 5, 2016. This application is available for viewing and copying at the Waller County Library, 2331 11th Street, Hempstead, Waller County, Texas 77445, and may be viewed online at *http://www.biggsandmathews.com/permits.php*. The following website which provides an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: *https://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.136944&lng=-96.068611&zoom=13&type=r*. For exact location, refer to application.

ADDITIONAL NOTICE. The TCEQ Executive Director has determined that the land use compatibility portion of the application is administratively complete and will conduct a substantive technical review of this portion of the application. Following completion of that substantive technical review, the TCEQ will make a separate determination on the question of land use compatibility, including review of whether any local ordinance or order prohibits the processing or disposal of municipal solid waste in the area of the proposed landfill. If the site is determined to be compatible with the surrounding land uses, the TCEQ may at another time consider conformity with other regulatory requirements. After completing the land use compatibility review, the TCEQ will issue a Notice of Application and Preliminary Decision. Notice of the Application and Preliminary Decision will be published and mailed to those who are on the county-wide mailing list and to those who are on the mailing list for this application. That notice will contain the deadline for submitting public comments.

PUBLIC COMMENT/PUBLIC MEETING. You may submit public comments or request a public meeting on this application. The purpose of a public meeting is to provide the opportunity to submit comments or to ask questions about the application. TCEQ will hold a public meeting if the Executive Director determines that there is a significant degree of public interest in the application or if requested by a local legislator. A public meeting is not a contested case hearing.

OPPORTUNITY FOR A CONTESTED CASE HEARING. After the deadline for submitting public comments, the Executive Director will consider all timely comments and prepare a response to all relevant and material, or significant public comments. Unless the application is directly referred for a contested case hearing, the response to comments, and the Executive Director's decision on the application, will be mailed to everyone who submitted public comments and to those persons who are on the mailing list for this application. If comments are received, the mailing will also provide instructions for requesting reconsideration of the Executive Director's decision and for requesting a contested case hearing. A person who may be affected by the facility is entitled to request a contested case hearing from the commission. A contested case hearing is a legal proceeding similar to a civil trial in state district court.

TO REQUEST A CONTESTED CASE HEARING, YOU MUST INCLUDE THE FOLLOWING ITEMS IN YOUR REQUEST: your name, address, phone number; applicant's name and permit number; the location and distance of your property/activities relative to the facility; a specific description of how you would be adversely affected by the facility in a way not common to the general public; a list of all disputed issues of fact that you submit during the comment period, and the statement "(I/we) request a contested case hearing." If the request for contested case hearing is filed on behalf of a group or association, the request must designate the group's representative for receiving future correspondence; identify by name and physical address an individual member of the group who would be adversely affected by the facility or activity; provide the information discussed above regarding the affected member's location and distance from the facility or activity; explain how and why the member would be affected; and explain how the interests the group seeks to protect are relevant to the group's purpose.

Following the close of all applicable comment and request periods, the Executive Director will forward the application and any requests for reconsideration or for a contested case hearing to the TCEQ Commissioners for their consideration at a scheduled Commission meeting. The Commission may only grant a request for a contested case hearing on issues the requestor submitted in their timely comments that were not subsequently withdrawn.

If a hearing is granted, the subject of a hearing will be limited to disputed issues of fact or mixed questions of fact and law that are relevant and material to the Commission's decision on the application submitted during the comment period.

MAILING LIST. If you submit public comments, a request for a contested case hearing or a reconsideration of the Executive Director's decision, you will be added to the mailing list for this application to receive future public notices mailed by the Office of the Chief Clerk. In addition, you may request to be placed on: (1) the permanent mailing list for a specific applicant name and permit number; and/or (2) the mailing list for a specific county. To be placed on the permanent and/or the county mailing list, clearly specify which list(s) and send your request to TCEQ Office of the Chief Clerk at the address below.

AGENCY CONTACTS AND INFORMATION. All public comments and requests must be submitted either electronically at *www.tceq.texas.gov/about/comments.html* or in writing to the Texas Commission on Environmental Quality, Office of the Chief Clerk, MC-105, P.O. Box 13087, Austin, Texas 78711-3087. If you choose to communicate with the TCEQ electronically, please be aware that your email address, like your physical mailing address, will become part of the agency's public record. For more information about this permit application or the permitting process, please call the TCEQ's Public Education Program, toll free, at (800) 687-4040. Si desea información en español, puede llamar al (800) 687-4040.

Further information may also be obtained from Pintail Landfill, LLC at the address stated above or by calling Mr. David Green, Vice President at (770) 720-2717.

TRD-201603696
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: July 27, 2016

♦ ♦ ♦

Update to the Water Quality Management Plan (WQMP)

The Texas Commission on Environmental Quality (TCEQ or commission) requests comments from the public on the draft July 2016 Update to the WQMP for the State of Texas.

Download the draft July 2016 WQMP Update at *http://www.tceq.texas.gov/permitting/wqmp/WQmanagement_comment.html* or view a printed copy at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

The WQMP is developed and promulgated in accordance with the requirements of Federal Clean Water Act, §208. The draft update includes projected effluent limits of specific domestic dischargers, which may be useful for planning in future permit actions. The draft update may also contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) revisions.

Once the commission certifies a WQMP update, it is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission.

Deadline

All comments must be received at the TCEQ no later than **5:00 p.m. on September 6, 2016.**

How to Submit Comments

Comments must be submitted in writing to:

Nancy Vignali

Texas Commission on Environmental Quality

Water Quality Division, MC 150

P.O. Box 13087

Austin, Texas 78711-3087

Comments may also be faxed to (512) 239-4420, but must be followed up with written comments by mail within three working days of the fax date or by the comment deadline, whichever is sooner.

For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201603679
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: July 26, 2016

♦ ♦ ♦

Texas Ethics Commission

List of Late Filers

Below is a list from the Texas Ethics Commission of names of filers who did not file a report or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Michelle Gonzales at (512) 463-5800.

Deadline: Semiannual Report due January 15, 2016, for Candidates

Wesley Shane Nelson, 5943 Ivy Glen Dr., Grand Prairie, Texas 75052

Deadline: 30-Day Pre-Election Report due February 1, 2016, for Candidates

Wesley Shane Nelson, 5943 Ivy Glen Dr., Grand Prairie, Texas 75052

Thomas J. Oliverson, 1 E. Greenway Plz., Ste. 225, Houston, Texas 77046

Deadline: 8-Day Pre-Election Report due February 22, 2016, for Candidates

Wesley Shane Nelson, 5943 Ivy Glen Dr., Grand Prairie, Texas 75052

Deadline: Monthly Report due February 5, 2016, for Committees

Martha A. Brabham, Dallas County Texas Democratic Women, 6927 E. Grand Ave., Dallas, Texas 75223

Deadline: Monthly Report due April 5, 2016, for Committees

Ronnie Smitherman, Ironworkers State COPE Fund, 3003 Dawn Dr., #104, Georgetown, Texas 78628-2800

Stephan Galland, We The People of Texas PAC, 103 Blackjack Ln., Burleson, Texas 76028

Keith A. Houser, Citizens for Property Rights, P.O. Box 93476, Southlake, Texas 76092-0114

Deadline: Monthly Report due May 5, 2016, for Committees

Keith A. Houser, Citizens for Property Rights, P.O. Box 93476, Southlake, Texas 76092-0114

Deadline: Runoff Report due May 16, 2016, for Committees

Kane Wilt, Dallas Fire Fighters Public Safety Committee, 10956 Audelia Rd., Dallas, Texas 75243

Deadline: 30-day Pre-Election Report due April 7, 2016, for Committees

Sandra Collins-Tarla, Georgetown Area Republican Women PAC, 150 Canyon Oak Lp, Georgetown, Texas 78633

Deadline: 8-day Pre-Election Report due April 29, 2016, for Committees

Sandra Collins-Tarla, Georgetown Area Republican Women PAC, 150 Canyon Oak Lp, Georgetown, Texas 78633

Kane Wilt, Dallas Fire Fighters Public Safety Committee, 10956 Audelia Rd., Dallas, Texas 75243

Deadline: Personal Financial Statement due February 12, 2016

Wesley Shane Nelson, 5943 Ivy Glen, Grand Prairie, Texas 75052 ($500)

Deadline: Personal Financial Statement due May 2, 2016

Oliver John Bell, P.O. Box 79710, Houston, Texas 77279

Charles Jason Hubbard., 2207 Tower Dr., Austin, Texas 78703

Molly Hipp Hubbard, 2520 Robinhood No. 1612, Houston, Texas 77005

Michael P. Jones, 3541 Flora Vista Loop, Round Rock, Texas 78681

Judith G. Wells, P.O. Box 173001, Arlington, Texas 76003

TRD-201603620
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: July 21, 2016

♦ ♦ ♦

Texas Facilities Commission

Request for Proposals #303-7-20577

The Texas Facilities Commission (TFC), on behalf of the Comptroller of Public Accounts - Enforcement Division (CPA), announces the issuance of Request for Proposals (RFP) #303-7-20577. TFC seeks a five (5) or ten (10) year lease of approximately 3,027 square feet of office space in Brownsville, Texas.

The deadline for questions is August 15, 2016 and the deadline for proposals is August 29, 2016 at 3:00 p.m. The award date is September 21, 2016. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Program Specialist, Evelyn Esquivel, at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=126040.*

TRD-201603619
Kay Molina
General Counsel
Texas Facilities Commission
Filed: July 20, 2016

♦ ♦ ♦

Texas Department of Housing and Community Affairs

Temporary Emergency Housing Services #332-RFP17-1001

The Texas Department of Housing and Community Affairs has posted a Request for Proposal **#332-RFP17-1001** for **Temporary Emergency Housing Services.** If you are interested in providing a response to this proposal, please view the RFP posting on the Electronic State Business Daily ("ESBD"). The website for the ESBD is: http://esbd.cpa.state.tx.us/ and you can search by the proposal number listed above.

You may also click on the link below to directly access the ESBD without having to search:

http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=126043

-or-

View our Department website at www.tdhca.state.tx.us under "What's New" on our homepage. Should you have any difficulty accessing either website, please contact Julie M. Dumbeck CTP, CTPM, CTCM at (512) 475-3991 or julie.dumbeck@tdhca.state.tx.us for further information.

Deadlines: The Department must receive proposals prepared according to instructions in the RFP package on or before Wednesday, August 17, 2016, at 2:00 p.m. Austin local time.

To Obtain a Copy of the RFP: Requests for a copy of the RFP should be submitted to Julie Dumbeck, P.O. Box 13941, Capitol Station, Austin, Texas 78711. Email: julie.dumbeck@tdhca.state.tx.us, telephone number (512) 475-3991, and fax (512) 475-2672. Copies are also available on the Electronic State Business Daily (ESBD) at http://esbd.cpa.state.tx.us/.

TRD-201603617
Timothy K. Irvine
Executive Director
Texas Department of Housing and Community Affairs
Filed: July 20, 2016

♦ ♦ ♦

Texas Department of Insurance

Company Licensing

Application for admission to the state of Texas by TOWER HILL PRIME INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Gainesville, Florida.

Application for admission to the state of Texas by GPM HEALTH AND LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Spokane, Washington.

Application for LYNDON PROPERTY INSURANCE COMPANY, a foreign fire and/or casualty company, to change its name to PROTECTIVE PROPERTY & CASUALTY INSURANCE COMPANY. The home office is in St. Louis, Missouri.

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-201603700
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: July 27, 2016

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1809 "Texas A&M University"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1809 is "TEXAS A&M UNIVERSITY". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1809 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1809.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, GOAL-

POST SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $3,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1 GAME NO. 1809 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
GOALPOST SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$3,000	THTH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1809), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1809-0000001-001.

K. Pack - A Pack of "TEXAS A&M UNIVERSITY" Scratch Game Tickets contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of the Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - A Texas Lottery "TEXAS A&M UNIVERSITY" Scratch Ticket Game No. 1809.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TEXAS A&M UNIVERSITY" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the PRIZE for that number. If a player reveals a "GOALPOST" Play Symbol, the player wins DOUBLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 11 (eleven) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 1 and $1).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

G. The "GOALPOST" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS A&M UNIVERSITY" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TEXAS A&M UNIVERSITY" Scratch Ticket Game prize of $3,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS A&M UNIVERSITY" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TEXAS A&M UNIVERSITY" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TEXAS A&M UNIVERSITY" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature

appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in the Scratch Ticket Game No. 1809. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1809 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,008,000	10.00
$2	739,200	13.64
$5	268,800	37.50
$10	100,800	100.00
$20	23,184	434.78
$50	2,520	4,000.00
$100	672	15,000.00
$500	126	80,000.00
$3,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1809 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1809, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201603687
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 26, 2016

♦ ♦ ♦

Scratch Ticket Game Number 1810 "The University of Texas"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1810 is "THE UNIVERSITY OF TEXAS". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. Tickets for Scratch Ticket Game No. 1810 shall be $1.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1810.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, GOALPOST SYMBOL, $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $3,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink

in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1810 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
GOALPOST SYMBOL	DBL
$1.00	ONE$
$2.00	TWO$
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$3,000	THTH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $3,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1810), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 150 within each Pack. The format will be: 1810-0000001-001.

K. Pack - A Pack of "THE UNIVERSITY OF TEXAS" Scratch Game Tickets contains 150 Scratch Tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; Tickets 006 to 010 on the next page; etc.; and Tickets 146 to 150 will be on the last page with backs exposed. Ticket 001 will be folded over so the front of the Ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Game Ticket, Scratch Ticket or Ticket - A Texas Lottery "THE UNIVERSITY OF TEXAS" Scratch Ticket Game No. 1810.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "THE UNIVERSITY OF TEXAS" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 11 (eleven) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to the WINNING NUMBER Play Symbol, the player wins the PRIZE for that number. If a player reveals a "GOALPOST" Play Symbol, the player wins DOUBLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 11 (eleven) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 1 and $1).

D. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

E. A non-winning Prize Symbol will never be the same as a winning Prize Symbol.

F. No matching non-winning Prize Symbols unless restricted by other parameters, play action or prize structure.

G. The "GOALPOST" (DBL) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "THE UNIVERSITY OF TEXAS" Scratch Ticket Game prize of $1.00, $2.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "THE UNIVERSITY OF TEXAS" Scratch Ticket Game prize of $3,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "THE UNIVERSITY OF TEXAS" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "THE UNIVERSITY OF TEXAS" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "THE UNIVERSITY OF TEXAS" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Prizes. There will be approximately 10,080,000 Scratch Tickets in the Scratch Ticket Game No. 1810. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1810 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in **
$1	1,008,000	10.00
$2	739,200	13.64
$5	268,800	37.50
$10	100,800	100.00
$20	23,184	434.78
$50	2,520	4,000.00
$100	672	15,000.00
$500	126	80,000.00
$3,000	20	504,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.70. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1810 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket Game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1810, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201603688
Bob Biard
General Counsel
Texas Lottery Commission
Filed: July 26, 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 July 19, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of CP Limited Partnership and AMC Creekside LLC for Sale, Transfer, or Merger of Facilities and Certificate Rights in Denton County, Docket Number 46183.

The Application. CP Limited Partnership and AMC Creekside LLC (AMC Creekside) filed an application for sale, transfer, or merger of facilities and certificate of convenience and necessity rights in Denton County. Specifically, AMC Creekside seeks approval to acquire all of the water and sewer system assets of CP Limited Partnership held under water Certificate of Convenience and Necessity (CCN) No. 12032 and sewer CCN No. 20670. The total area being requested is approximately 109.62 acres, and serves 553 current customers, and includes Creekside Mobile Home Community. Rates will not change for the affected customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46183.

TRD-201603675

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 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 21, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of SWWC Utilities, Inc. dba Diamond Water Company and SWWC Utilities, Inc. dba Water Services, Inc. For Sale, Transfer, or Merger of Facilities and Certificate Rights in Bandera, Comal, and Gillespie Counties, Docket Number 46198.

The Application: SWWC Utilities, Inc. dba Diamond Water Company (Diamond Water) and SWWC Utilities, Inc. dba Water Services, Inc. (Water Services) filed an application for approval of the sale, transfer, or merger of facilities and certificate rights in Bandera, Comal and Gillespie Counties. Specifically, Water Services seeks approval to purchase the water assets of Diamond Water, certificate of convenience and necessity number 12865, and retain the seller's current water certificated service areas. Rates will not change for the affected customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46198.

TRD-201603676
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 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 22, 2016, pursuant to the Texas Water Code.

Docket Style and Number: Application of John Frias Waste Water Utility and Olmito Water Supply Corporation for Sale, Transfer, or Merger of Facilities and Certificate Rights in Cameron County, Docket Number 46205.

The Application: John Frias Waste Water Utility and Olmito Water Supply Corporation filed an application for the sale, transfer, or merger of facilities and certificate rights in Cameron County. Specifically, Olmito WSC seeks approval to acquire all of the sewer system assets of John Frias held under sewer certificate of convenience and necessity number 20714. The total area being requested includes approximately 36 acres and serves 79 current customers.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 46205.

TRD-201603678
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2016

♦ ♦ ♦

Notice of Application for Service Area Exception

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on July 22, 2016, to amend a certificated service area for a service area exception within Llano County, Texas.

Docket Style and Number: Application of Pedernales Electric Cooperative, Inc. to Amend a Certificate of Convenience and Necessity for a Service Area Exception within Llano County. Docket Number 46202.

The Application: Pedernales Electric Cooperative, Inc. (PEC) filed an application for a service area boundary exception to allow PEC to provide service to a specific customer located within the certificated service area of Central Texas Electric Cooperative, Inc. (CTEC). CTEC 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 August 12, 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 telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46202.

TRD-201603677
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 26, 2016

♦ ♦ ♦

Notice of Application for Termination of Waiver from Requirements

Notice is given to the public of an application filed on July 19, 2016 with the Public Utility Commission of Texas for termination of waiver from the requirements in 16 Tex. Admin. Code §26.420(f)(3)(B).

Docket Style and Number: Application of Nortex Communications to Terminate Commission-Approved Safe-Harbor Waiver Pursuant to 16 TAC §26.420(f)(3)(B)(v), Docket Number 46185.

The Application: Nortex Communications (Nortex) seeks to change the methodology it uses to calculate its intrastate taxable telecommunications receipts. On December 20, 2006, pursuant 16 Tex. Admin. Code §26.420(f)(3)(B), Nortex was granted a waiver to apply the Commission approved safe harbor percentage to calculate their intrastate taxable revenues. At that time, Nortex did not have the capability to calculate actual monthly intrastate revenues from the company's nationwide calling plans based on actual intrastate telecommunications service receipts as required by 16 TAC §26.420(f)(3). Nortex now has the technical capability to identify actual intrastate, interstate and international usage to determine its Texas universal service fund (TUSF)

assessment. Pursuant to 16 TAC §26.420(f)(3)(B)(v), Nortex seeks to terminate its waiver and change its methodology to assess actual intrastate telecommunications service receipts.

Persons wishing to comment on the action sought or intervene 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. Hearing and speech-impaired individuals with text telephone (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 46185.

TRD-201603636
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: July 22, 2016

♦ ♦ ♦

Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Engineering Services

The City of Fort Worth, through its agent, the Texas Department of Transportation (TxDOT), intends to engage a Professional Engineering Firm for services pursuant to Chapter 2254, Subchapter A, of the Government Code. TxDOT Aviation Division will solicit and receive qualifications for the current aviation project as described below.

Current Project: City of Fort Worth; TxDOT CSJ No.: 1702MEACH. Scope: Provide engineering/design services, including construction administration, to

1. Rehabilitate/reconstruct and mark Taxilane E and object free area;
2. Rehabilitate/reconstruct and mark pass-through hangar row taxilane;
3. Match grade and repair shoulders for pass-through taxilane.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal for the design phase of the current project is 6%. The goal will be re-set for the construction phase. The TxDOT Project Manager is Stephanie Kleiber.

Utilizing multiple engineering/design and construction grants over the course of the next five years, future scope of work items at the Fort Worth Meacham International Airport may include the following:

Provide engineering/design services, including construction administration, to update pavement management plan; rehabilitate, repair, and/or reconstruct Taxiway/Taxilane Golf; rehabilitate, repair, and/or reconstruct Taxiway/Taxilane Kilo; realign, repair, modify, alter, and construct taxiway system along the former Runway 09/27 corridor for new hangar development areas; rehabilitate and repair Runway 16/34 pavement, electrical, and signage systems; rehabilitate and repair Apron C; rehabilitate and repair Apron D and Taxiway J; rehabilitate and repair Apron B Taxilane; construct new partial parallel Taxiway Tango; construct new hangar and Apron E; rehabilitate and repair Taxiway Alpha; relocate run-up areas for Runway 16/34; rehabilitate and repair north service road; install perimeter fence; rehabilitate, repair and/or reconstruct Taxiway Bravo; upgrade airfield lighting to LED; construct connecting taxiway between Helipads H1 and H2; and realign Taxiways A2, F and K.

The City of Fort Worth reserves the right to determine which of the above services may or may not be awarded to the successful firm and to initiate additional procurement action for any of the services above.

To assist in your qualification statement preparation the criteria, 5010 drawing, project diagram, and most recent Airport Layout Plan are available online at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* by selecting "Fort Worth Meacham International Airport." The qualification statement should address a technical approach for the current scope only. Firms shall use page 4, Recent Airport Experience, to list relevant past projects for both current and future scope.

Interested firms shall utilize the latest version of Form AVN-550, titled "Qualifications for Aviation Architectural/Engineering Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-550 template. The AVN-550 consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-550. If a prime provider submits more than one AVN-550, that provider will be disqualified. AVN-550s shall be stapled but not bound or folded in any other fashion. AVN-550s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-550, firms are encouraged to download Form AVN-550 from the TxDOT website as addressed above. Utilization of Form AVN-550 from a previous download may not be the exact same format. Form AVN-550 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-550 **must be received** by TxDOT Aviation Division no later than August 30, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of GM using one of the delivery methods below:

Overnight Delivery

TxDOT- Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier*

TxDOT Riverside Campus, Bldg.150

150 East Riverside Drive, 1st Floor

(MUST check in at guard's desk)

Austin, Texas 78704

*If hand delivering your response, you must check in with the guard on the 1st floor main visitor's entrance on the east side of Building 150.

The guard will contact the Aviation Division's reception desk to announce your arrival. If the guard contacts the Aviation Division's reception desk by the due date and time specified in the RFQ, your response will be considered on time. An Aviation Division representative will meet you downstairs to accept your submittal. Please plan to arrive at least 30 minutes before the due date and time in order to accommodate any wait time while others are checking in with the guard.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-550s. The committee will review all AVN-550s and rate and rank each. The Evaluation Criteria for Engineering Qualifications can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations for the design and bidding phases. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions, please contact Stephanie Kleiber, Project Manager.

TRD-201603625
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 21, 2016

♦ ♦ ♦

Aviation Division - Request for Qualifications for Professional Services

The City of Brady through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Brady, TxDOT CSJ No. 16MPBRADY. Scope: Prepare an Airport Master Plan which includes, but is not limited to, information regarding existing and future conditions, proposed facility development to meet existing and future demand, constraints to develop, anticipated capital needs, financial considerations, management structure and options, as well as an updated Airport Layout Plan. The Airport Master Plan should be tailored to the individual needs of Curtis Field in Brady, Texas.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal is set at 0%. The TxDOT Project Manager is Megan McLellan.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division, no later than August 30, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow, using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier*

TxDOT Riverside Campus, Bldg. 150

150 East Riverside Drive, 1st Floor

(MUST check in at guard's desk)

Austin, Texas 78704

*If hand delivering your response, you must check in with the guard on the first floor main visitor's entrance on the east side of Building 150. The guard will contact the Aviation Division's reception desk to announce your arrival. If the guard contacts the Aviation Division's reception desk by the due date and time specified in the RFQ, your response will be considered on time. An Aviation Division representative will meet you downstairs to accept your submittal. Please plan to arrive at least 30 minutes before the due date and time in order to accommodate any wait time while others are checking in with the guard.

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Beverly Longfellow, Grant Manager. For technical questions please contact Megan McLellan, Project Manager.

TRD-201603623
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 21, 2016

♦ ♦ ♦

Aviation Division - Request for Qualifications for Professional Services

The Town of Pecos City through its agent, the Texas Department of Transportation (TxDOT), intends to engage a qualified firm for services. This solicitation is subject to 49 U.S.C. §47107(a)(17) and will be administered in the same manner as a solicitation conducted under Chapter 2254, Subchapter A, of the Texas Government Code. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: Town of Pecos City; Pecos Municipal Airport, TxDOT CSJ No. 16MPPECOS. Scope: Prepare an Airport Master Plan Update.

The Agent, in accordance with the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252, 42 U.S.C. §§2000d to 2000d-4) and the Regulations, hereby notifies all respondents that it will affirmatively ensure that any contract entered into pursuant to this advertisement, that disadvantaged business enterprises will be afforded full and fair opportunity to submit in response to this solicitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

The proposed contract is subject to 49 CFR Part 26 concerning the participation of Disadvantaged Business Enterprises.

The DBE goal is set at 0%. TxDOT Project Manager is Megan McLellan.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT, Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT website at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html.* The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight 8 1/2" x 11" pages of data plus one optional illustration page. The optional illustration page shall be no larger than 11" x 17" and may be folded to an 8 1/2" x 11" size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

SEVEN completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division no later than August 30, 2016, 4:00 p.m. (CDST). Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Kelle Chancey using one of the delivery methods below:

Overnight Delivery

TxDOT - Aviation

200 East Riverside Drive

Austin, Texas 78704

Hand Delivery or Courier*

TxDOT Riverside Campus, Building 150

150 East Riverside Drive, 1st Floor (Check in at the guard's desk)

Austin, Texas 78704

*If hand delivering your response, you must check in with the guard at the 1st floor visitor's entrance on the east side of Building 150. The guard will contact the Aviation Division's reception desk to announce your arrival. If the guard contacts the Aviation Division's reception desk by the due date and time specified in the RFQ, your response will be considered on time. An Aviation Division representative will meet you downstairs to accept your submittal. **Please plan to arrive at least 30 minutes before the due date and time in order to accommodate any wait time while others are checking in with the guard.**

The consultant selection committee will be composed of local government representatives. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at *http://www.txdot.gov/inside-txdot/division/aviation/projects.html* under Information for Consultants. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

Please contact TxDOT Aviation for any technical or procedural questions at 1-800-68-PILOT (74568). For procedural questions, please contact Kelle Chancey, Grant Manager. For technical questions please contact Megan McLellan, Project Manager.

TRD-201603624
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 21, 2016

♦ ♦ ♦

Public Hearing - SH 121

Public Notice - Public Hearing for the Proposed Removal and Transfer to the North Texas Tollway Authority of a Portion of SH 121 in Collin County.

Pursuant to Transportation Code, §228.151 and 43 TAC §27.13, the Texas Department of Transportation (TxDOT) will conduct a public hearing on Tuesday, August 23, 2016 at 6:00 p.m., at the TxDOT Collin County Area Office, 2205 South State Highway 5, McKinney, Texas 75069, to receive comments from interested persons concerning the proposed removal from the state highway system and transfer to the North Texas Tollway Authority (NTTA) of a portion of State Highway 121 from the west side of Watters Road overpass through the north, east, and south limits of the construction required to complete

the United States Highway (US) 75/SH 121 Interchange (which has been constructed and is operational) in Collin County, to be utilized by NTTA under Transportation Code, Chapter 366 for the design, financing, construction, operation, and maintenance of a turnpike project.

Transportation Code, §228.151 authorizes TxDOT to lease, sell, or transfer in another manner a toll project or system that is part of the state highway system, including a nontolled state highway or a segment of a nontolled state highway converted to a toll project, to a governmental entity that has the authority to operate a tolled highway. A lease, sale, or transfer is subject to a prior public hearing in each county in which the project is located, and is subject to the Texas Transportation Commission (commission) and the Governor approving the transfer of the toll project or system as being in the best interests of the state and the entity receiving the project or system. Transportation Code, §228.153 requires NTTA to reimburse TxDOT for any expenditures of TxDOT for the financing, design, development, construction, operation, or maintenance of the highway that have not been reimbursed with the proceeds of bonds issued for the highway, unless the commission finds that the transfer will result in substantial net benefits to the state, TxDOT, and the public that equal or exceed that cost.

Criteria and guidelines for the approval of the transfer have been adopted by rule by the commission in 43 TAC §27.13, and specify that the commission may, after considering public comments received, approve the transfer of a toll project to NTTA, if:

(1) NTTA agrees, through a written commitment, to:

(A) assume all liability and responsibility for the safe and effective maintenance and operation of the highway on its transfer;

(B) assume all liability and responsibility for existing and future environmental permits, issues, and commitments, including obtaining all environmental permits and approvals, and for compliance with all federal and state environmental laws, regulations, and policies applicable to the highway and related improvements;

(C) provide for public involvement and conduct a study of the social and environmental impact of all proposed improvements to the toll project; and

(D) if applicable, comply with the design and construction standards of 43 TAC §27.15 when developing projects on the transferred highway; and

(2) the commission finds that the transfer:

(A) is in the best interests of the state;

(B) is in the best interests of the entity receiving the project; and

(C) will not adversely affect:

(i) the financial viability of the project; or

(ii) regional mobility.

The commission may not approve the transfer unless the governor approves the transfer as being in the best interests of the state and the entity receiving the project.

Maps and drawings showing the proposed portion of State Highway 121 to be transferred and other information concerning the proposed transfer are on file and available for public inspection and copying by contacting Jim Dobbins, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, Texas 75150-6643, telephone (214) 320-6282.

All interested citizens are invited to attend this public hearing, which will be conducted in accordance with the procedures specified in 43 TAC §1.5. Speakers will be recognized in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of those making presentations will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any person with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time and repetitive comment. Groups, organizations, or associations are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible. Presentations must remain pertinent to the issue being discussed. A person may not assign a portion of his or her time to another speaker. A person who disrupts a public hearing must leave the hearing room if ordered to do so by the presiding officer.

Persons with disabilities who plan to attend the hearing and who may need auxiliary aids or services such as interpreters for persons who are deaf or hearing impaired, readers, large print or Braille, are requested to contact the Dallas District Public Information Office, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, Texas 75150-6643, telephone (214) 320-6100 at least two work days prior to the hearing so that appropriate arrangements can be made.

Written comments may be submitted following the public hearing to Jim Dobbins, Texas Department of Transportation, 4777 E. Hwy 80, Mesquite, Texas 75150-6643. The deadline for submitting written comments is 5:00 p.m. on Friday, September 2, 2016.

TRD-201603702
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 27, 2016

♦ ♦ ♦

Public Notice - Aviation

Pursuant to Transportation Code, §21.111, and Title 43, Texas Administrative Code, §30.209, the Texas Department of Transportation conducts public hearings to receive comments from interested parties concerning proposed approval of various aviation projects.

For information regarding actions and times for aviation public hearings, please go to the following website:

www.txdot.gov/inside-txdot/get-involved/about/hearings-meetings.html.

Or visit www.txdot.gov, How Do I Find Hearings and Meetings, choose Hearings and Meetings, and then choose Schedule.

Or contact Texas Department of Transportation, Aviation Division, 150 East Riverside, Austin, Texas 78704, (512) 416-4500 or 1-800-68-PILOT.

TRD-201603626
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: July 22, 2016

♦ ♦ ♦

Texas Workforce Investment Council

Notice of Request for Redesignation of the Alamo Workforce Development Area

Pursuant to Texas Administrative Code Title 40, Part 22, Chapter 901, Designation and Redesignation of Local Workforce Development Areas, the Texas Workforce Investment Council (Council) hereby provides notice of its receipt of a request for redesignation of the Alamo

Workforce Development Area (WDA). The requested redesignation would result in the transfer of McMullen County from the Coastal Bend WDA to the Alamo WDA.

Written comments on this request may be submitted by mail to Lee Rector, Director, Texas Workforce Investment Council, Post Office Box 2241, Austin, Texas 78768-2241; by facsimile at (512) 936-8118; or by email to *twic@gov.texas.gov.* The deadline for written comments is 30 days after publication of this notice in the *Texas Register*.

A public hearing will be conducted by the Council on September 8, 2016, to receive oral comments on the request. The hearing will commence at 2:00 p.m. in the Senate Finance Committee Room, room number E1.012, of the Texas State Capitol, 100 Congress Avenue, Austin, Texas 78701. Testimony at the hearing will be limited to three minutes. An individual providing oral comments must fill out a witness form prior to the start of the hearing and should therefore arrive early. The Council encourages individuals who provide oral comments to also provide written comments to supplement their testimony. An individual who wishes to register his or her opinion but does not want to provide oral testimony should fill out a witness form, indicating *for* or *against* the requested redesignation. Written testimony may also be submitted with a witness form.

TRD-201603622
Lee Rector
Director
Texas Workforce Investment Council
Filed: July 21, 2016

♦ ♦ ♦

Workforce Solutions for the Heart of Texas

Notice of Request for Proposal for Lease Space in Marlin, Texas for Workforce Solutions Center

The Heart of Texas Workforce Development Board, Inc. (dba) Workforce Solutions for the Heart of Texas is soliciting proposals for lease space in Marlin, Texas, for the Workforce Solutions for the Heart of Texas Falls County Workforce Center. Proposals are due on August 31, 2016 by 4:30 p.m. Any proposal received after that time and date will not be considered.

For bid specifications and submission requirements, the Request for Proposal is available on the Workforce Solutions for the Heart of Texas website at www.hotworkforce.com.

The Heart of Texas Workforce Development Board, Inc. reserves the right to reject any and/or all bids, and to make awards as they may appear to be advantageous to HOTWDB.

The Heart of Texas Workforce Board, Inc. is an equal opportunity employer. Programs and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1-800-735-2989/1-800-735-2988 (voice).

www.hotworkforce.com

801 Washington, Suite 700; Waco, Texas 76701; Phone: (254) 296-5300; Fax: (254) 753-3173

The Heart of Texas Workforce Development Board, Inc. is an equal opportunity employer/program and auxiliary aids and services are available upon request to include individuals with disabilities. TTY/TDD via RELAY Texas service at 711 or (TDD) 1-800-735-2989 / 1-800-735-2988 (voice)

TRD-201603634
Anthony Billings
Executive Director
Workforce Solutions for the Heart of Texas
Filed: July 22, 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)*

SALES AND CUSTOMER SUPPORT

Sales - To purchase subscriptions or back issues, you may contact LexisNexis Sales at 1-800-223-1940 from 7am to 7pm, Central Time, Monday through Friday. Subscription cost is $382 annually for first-class mail delivery and $259 annually for second-class mail delivery.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

Phone: (800) 833-9844
Fax: (518) 487-3584
E-mail: customer.support@lexisnexis.com
Website: www.lexisnexis.com/printcdsc

LexisNexis®
It's how you know™