ADOPTED RULES

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). If a rule is adopted without change to the text of the proposed rule, then the *Texas Register* does not republish the rule text here. If a rule is adopted with change to the text of the proposed rule, then the final rule text is included here. The final rule text will appear in the Texas Administrative Code on the effective date.

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 47. AUTHORIZED PERSONNEL

SUBCHAPTER C. CHRONIC WASTING DISEASE

4 TAC §§47.21 - 47.24

The Texas Animal Health Commission (commission) adopts amendments to §47.21, concerning Definitions, §47.22, concerning General Requirements and Application Procedures, §47.23, concerning Duration and Additional Training Requirements, and §47.24, concerning Grounds for Suspension or Revocation, without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4133). The text of the rules will not be republished.

The purpose of the amendments is to establish and clarify requirements for persons authorized to perform certain activities related to Chronic Wasting Disease (CWD).

Section 161.047 of the Texas Agriculture Code requires a person, including a veterinarian, to be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals, which includes Chronic Wasting Disease.

Chapter 47, Subchapter C, which is entitled Chronic Wasting Disease, includes standards and requirements for persons authorized by the commission to perform work as a Certified CWD Sample Collector. At the time the existing Subchapter C regulations were adopted, the commission only recognized test results from postmortem CWD sample collection. Since this sampling was not performed on live animals, the commission established standards and authorized non-veterinarians to collect postmortem samples.

In early 2016, the commission implemented CWD antemortem testing in certain situations to assess the disease risk and prevalence in herds known to be infected or exposed to CWD. Antemortem testing, because it involves the diagnosis of a disease in live animals, is considered the practice of veterinary medicine pursuant to Chapter 801 of the Occupations Code. As such, the commission is modifying the CWD authorized personnel requirements to specify that only Certified CWD Veterinarians may collect antemortem CWD samples.

A Certified CWD Veterinarian is defined as a veterinarian who has authorized personnel status for veterinarians as required by §47.1, has completed appropriate training recognized by the commission on the collection, preservation, laboratory submission, and proper recordkeeping of samples for antemortem CWD testing, and who has been certified by the commission to perform these activities. The rules include requirements regarding the application for authorized personnel status, general standards, duration of status, training, recordkeeping and suspension or revocation for Certified CWD Veterinarians.

The amendments also clarify that non-veterinarians may only collect CWD postmortem samples. As such, the commission is changing the title of such individuals from "Certified CWD Sample Collector" to "Certified CWD Postmortem Sample Collector".

No comments were received regarding the proposal.

STATUTORY AUTHORITY

The amendments are adopted under the following statutory authority as found in Chapter 161 of the Texas Agriculture Code. The commission is vested by statute, §161.041(a), with the requirement to protect all livestock, domestic animals, and domestic fowl from disease. The commission is authorized, through §161.041(b), to act to eradicate or control any disease or agent of transmission for any disease that affects livestock.

Pursuant to §161.0417, entitled "Authorized Personnel for Disease Control", a person, including a veterinarian, must be authorized by the commission in order to engage in an activity that is part of a state or federal disease control or eradication program for animals.

Section 161.0417 requires the commission to adopt necessary rules for the authorization of such persons and, after reasonable notice, to suspend or revoke a person's authorization if the commission determines that the person has substantially failed to comply with Chapter 161 or rules adopted under that chapter. Section 161.0417 does not affect the requirement for a license or an exemption under Chapter 801, Occupations Code, to practice veterinary medicine.

Pursuant to §161.005, entitled "Commission Written Instruments", the commission may authorize the executive director or another employee to sign written instruments on behalf of the commission. A written instrument, including a quarantine or written notice signed under that authority, has the same force and effect as if signed by the entire commission.

Pursuant to §161.006, entitled "Documents to Accompany Shipment", if required that a certificate or permit accompany animals or commodities moved in this state, the document must be in the possession of the person in charge of the animals or commodities, if the movement is made by any other means.

Pursuant to §161.0415, entitled "Disposal of Diseased or Exposed Livestock", the commission by order may require the slaughter of livestock, under the direction of the commission, or the sale of livestock for immediate slaughter.

Pursuant to §161.046, entitled "Rules", the commission may adopt rules as necessary for the administration and enforcement of this chapter.

Pursuant to §161.048, entitled "Inspection of Shipment of Animals or Animal Products", the commission may require testing, vaccination, or another epidemiologically sound procedure before or after animals are moved. An agent of the commission is entitled to stop and inspect a shipment of animals or animal products being transported in this state in order to determine if the shipment originated from a quarantined area or herd; or determine if the shipment presents a danger to the public health or livestock industry through insect infestation or through a communicable or noncommunicable disease.

Pursuant to §161.054, entitled "Regulation of Movement of Animals", the commission, by rule, may regulate the movement of animals. The commission may restrict the intrastate movement of animals even though the movement of the animals is unrestricted in interstate or international commerce.

Pursuant to §161.0541, entitled "Elk Disease Surveillance Program", the commission by rule may establish a disease surveillance program for elk.

Pursuant to §161.101, entitled "Duty to Report", a veterinarian, a veterinary diagnostic laboratory, or a person having care, custody, or control of an animal shall report the existence of the diseases, if required by the commission, among livestock, exotic livestock, bison, domestic fowl, or exotic fowl to the commission within 24 hours after diagnosis of the disease.

Pursuant to §161.112, entitled "Rules", the commission shall adopt rules relating to the movement of livestock, exotic livestock, and exotic fowl from livestock markets and shall require tests, immunization, and dipping of those livestock as necessary to protect against the spread of communicable diseases.

Pursuant to §161.113, entitled "Testing or Treatment of Livestock", if the commission requires testing or vaccination under this subchapter, the testing or vaccination must be performed by an accredited veterinarian or qualified person authorized by the commission. The state may not be required to pay the cost of fees charged for the testing or vaccination. And if the commission requires the dipping of livestock under this subchapter, the livestock shall be submerged in a vat, sprayed, or treated in another sanitary manner prescribed by rule 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 August 24, 2016.

TRD-201604352
Gene Snelson
General Counsel
Texas Animal Health Commission
Effective date: September 13, 2016
Proposal publication date: June 10, 2016
For further information, please call: (512) 719-0722

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PART 13. PRESCRIBED BURNING BOARD

CHAPTER 229. CONTINUING FIRE TRAINING

4 TAC §229.1, §229.3

The Board of Directors (Board) of the Prescribed Burning Board (PBB), a board established within the Texas Department of Agriculture (TDA), adopts amendments to Title 4, Part 13, §229.1 of the Texas Administrative Code, relating to individuals with authority to approve training courses and credit hours for Continuing Fire Training (CFT), and §229.3, concerning individuals with the authority to approve training activities eligible for CFT credit. The amendments are adopted without changes to the proposal published in the July 8, 2016 edition of the *Texas Register*(41 TexReg 4917).

The adopted amendments require approval of CFT courses and content by the PBB, the PBB Chairman or a Lead Burn Instructor, and to authorize additional qualified individuals to approve certain training activities for CFT credit.

No comments were received during the comment period.

The amendments are adopted under §153.046 of the Natural Resources Code, which provides that the PBB shall establish standards for prescribed burning, certification, recertification, and training for certified and insured prescribed burn managers, and establish minimum education, professional and insurance requirements for certified and insured prescribed burn managers and instructors.

Chapter 153 of the Natural Resources Code is affected by the adoption.

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

Filed with the Office of the Secretary of State on August 29, 2016.

TRD-201604540
Jessica Escobar
Assistant General Counsel
Prescribed Burning Board
Effective date: September 18, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 463-4075

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §§26.403 - 26.405

The Public Utility Commission of Texas (commission) adopts amendments to §26.403, relating to the Texas High Cost Universal Service Plan (THCUSP); §26.404, relating to the Small

and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan; and §26.405, relating to Financial Need for Continued Support with changes to the proposed text as published in the April 8, 2016 issue of the *Texas Register* (41 TexReg 2555). The proposed amendments will clarify the identification of eligible residential and business lines and will clarify the criteria that define a service location or address. These amendments are adopted under Project Number 42600.

The commission received comments on the proposed amendments from CGKC&H No. 2 Rural, LP, Mid-Tex Cellular, and Texas RSA 15B2, LP (collectively, WCW); DialTone Services, L.P. (DTS); AMA TechTel Communications (AMA TechTel); Texas Windstream, Inc., Windstream Communications Kerrville, LP, and Windstream Sugar Land, Inc., each d/b/a Windstream Communications (collectively, Windstream); and the CenturyLink incumbent local exchange companies (collectively, CenturyLink).

Comments regarding §§26.403(c)(1), 26.404(c)(1), and 26.405(c)(1), relating to the definition of a business line

AMA TechTel commented that the published rule addresses concerns that have previously been expressed by AMA Techtel while also addressing the definition of business and residential lines and without adding unnecessary or unclear terms.

CenturyLink commented that the definition of business line used throughout the published rules does not address a situation in which an incumbent local exchange company (ILEC) provides service pursuant to a customer specific agreement or otherwise under terms not pursuant to a filed tariff because the definition of a business line only refers to tariffed business service. CenturyLink commented that the published rule should be modified to address ILECs that may provide service that is eligible for support under a tariff, a price list, or a customer specific contract. Windstream filed comments indicating it concurs with CenturyLink's comments.

Commission Response

The commission agrees with the comments filed by CenturyLink and Windstream. Specifically, the commission agrees that the definition of business line as published does not account for a situation in which an ILEC serves an eligible line pursuant to a customer specific contract or otherwise under terms not pursuant to a tariff. As a result, the published rule does not clearly indicate whether such a line should be classified as a business or residential line. The commission notes that, under the rule as published, competitive local exchange companies that do not serve eligible lines pursuant to a tariff will look to the customer application, subscriber agreement, or contract entered into by the customer to determine whether a line is a business line or a residential line. For such a line, the relevant factor is the person or entity executing the customer application, subscriber agreement, or contract, regardless of where the line is used and of who uses the line. The commission finds that it is appropriate for an ILEC to also look to the customer application, subscriber agreement, or contract entered into by the customer in such a situation. As a result, the definition of business line used throughout the amended rules is modified so that it includes the following two sentences: "For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device."

Comments regarding §§26.403(c)(6), 26.404(c)(6), and 26.405(c)(6), relating to the definition of a service address

WCW stated that it does not oppose provisions allowing other providers to use GPS coordinates as a service address for customers where a physical street address or 911 address is not available, but WCW requested that the commission allow a provider of mobile services the option of using a customer's billing address to determine a customer's service address for purposes of the TUSF. WCW stated that the Federal Communications Commission (FCC) has determined for the purposes of the federal Universal Service Fund that a customer's billing address is a reasonable surrogate for the customer's location and that the use of customer billing addresses is administratively convenient for certain competitive providers. WCW stated that billing addresses are an administratively efficient mechanism, are simple to audit, and are more likely than not to result in an under-reporting of eligible lines because business customers are more likely to have a corporate office with a billing address in an urban area with lower or zero per-line support amounts.

DTS commented that many of the changes in the rules as published are consistent with the manner in which the TUSF is currently administered. However, DTS commented that the published definition of service address, which appears in each of the published rules, is problematic and should be modified. DTS opposes adoption of the sentences stating: "GPS [Global Positioning System] coordinates shall not be used as a part of or in lieu of a unique physical street address, physical 911 address, or customer billing address. For the purposes of this definition, a physical 911 address is an address transmitted to the emergency service providers by an Eligible Telecommunications Provider (ETP) with respect to a line that is not stated in GPS coordinates." Instead, DTS supports the use of GPS coordinates in the identification of a service address for the purpose of determining the level of support for which a line may be eligible.

DTS explained that many areas in which it serves are rural and frequently do not have a physical address. DTS stated that, presumably, this rule is designed to address instances where businesses, such as oil fields or rural ranches, or individual residential customers living in remote locations can be provided service with the assistance of support from the TUSF based on sound state policy. DTS further stated that an oil field will not have a traditional postal address and may not have a traditional 911 address, and that emergency service providers may prefer to receive GPS addressing information when 911 is called. DTS commented that a billing address, which is often a post office box, may be counties or cities away and not indicative of where service is actually provided. DTS commented that requiring the use of billing addresses, without permitting the use of GPS coordinates, would frustrate the purpose of the TUSF, which is to support service in high cost rural areas where service is actually provided, as opposed to where bills for such service are mailed. DTS also commented that the use of billing addresses instead

of GPS coordinates could lead to unintended consequences, like carriers obtaining billing addresses tied to postal boxes in areas with support rates that differ from the rates lines would be eligible for based on the associated GPS coordinates.

DTS explained that, as part of its business model, it always confirms a physical structure exists at a location before entering into a customer contract. If there is no physical street address, DTS will enter GPS coordinates into its system in addition to the "monument" location, which is a location designated by cross streets, rivers, or some other physical structure. DTS also noted that these practices were approved by the commission as part of its approval of the unanimous stipulation in *Petition of Commission Staff for Determination of Non-Eligibility for Certain Universal Service Fund Disbursements to DialToneServices, L.P. Pursuant to P.U.C. Subst. R. 26.403 and Refund of Disbursements,* Docket No. 41840 (Jun. 6, 2014). DTS stated that using GPS coordinates as a location is a sensible alternative when no physical street address exists and that these concerns exist with respect to residential customers in uncertificated areas as well as business customers.

DTS stated that allowing the use of GPS would still address two particular concerns raised during this project: improving the application of the cap on eligible residential and business lines and ensuring efficient administration of the TUSF. DTS suggested that other provisions in proposed §26.404(d) clearly address the limits on the number of eligible lines regardless of whether GPS is used and further suggested that GPS is an accurate and verifiable technology. DTS stated that several policy reasons support the use of GPS coordinates as the address associated with eligible lines: that GPS coordinates is well-known and reliable, that it is used by other state and federal agencies for determining exact locations, and that it provides precise location information.

As a result, DTS proposes that the following hierarchy be adopted for determining a customer's service address for support purposes. If a physical postal street address exists, use that address. If there is no physical postal street address, use a unique location identification that is associated with the line in the carrier's database for 911 purposes. Finally, if neither of these two is available, identify the location based on GPS coordinates. DTS proposed the following definition of "service address" in its comments:

A business or residential customer's service address will be determined in the following order of hierarchy:

(a) a unique physical postal street addressing including any suite or unit number where a line is served;

(b) where there is no available unique postal street address, a unique location identification for 911 purposes in the carrier's database associated with a line, and

(c) if neither a postal address nor unique 911 identifying location exists in the carrier database, the location shall be identified based on GPS coordinates.

Commission Response

The commission agrees with WCW's comments regarding permitting providers of mobile services to use a customer's billing address as a service address. In particular, the commission finds that it is reasonable and efficient to harmonize reporting requirements for carriers that report billing addresses to the FCC. In the adopted version of the amended rules, the commission inserts the following sentence in the definition of service address: "For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition." The commission further modifies the definition of service address as discussed in more detail below.

The commission agrees with the concerns expressed by DTS but declines to adopt the rule language proposed by DTS. The commission agrees with DTS that the rule as published, by requiring the use of a customer's billing address, may lead to a situation in which the service address used for support purposes will not correspond to the exchange where the service is most frequently used. If a customer does not take service at a location that can be expressed in terms of a physical street address or physical 911 address, that customer's billing address may be in a different exchange from the area in which the service is used. The exchange that is associated with an eligible line will impact the level of support that an ETP receives because different exchanges have different monthly per-line support amounts. Although such a situation is often unavoidable in the case of wireless service because a single device can be taken to and used in different exchanges, the commission finds the modifications discussed below will likely permit the use of service addresses that may better represent the exchange that should be associated with an eligible line.

The commission also addresses two other concerns identified by DTS in its comments: improving the application of the limit on eligible business lines at a business customer's service address and ensuring efficient administration of the TUSF.

As to the first additional concern identified by DTS, the commission finds that it is appropriate for the definition of service address to be modified in order to address the existing limits on eligible business lines per individual business customer at a business customer's service address. With respect to the limit on eligible business lines per individual business customer at a business customer's service address, the commission notes that, for the Small and Rural ILEC Universal Service Plan, there is presently a limit of five eligible business lines per individual business customer at a business customer's service address. Further, for the Texas High-Cost Universal Service Plan, the commission has adopted different limits on eligible business lines per individual business customer at a business customer's service address depending on the ILEC in a given exchange. *Petition for Review of Monthly Per Line Support Amounts From the Texas High Cost Universal Service Plan Pursuant to PURA §56.031 and P.U.C. SUBST. R. 26.403,* Docket No 34723, Order at 9, Ordering Paragraph 3 (Apr. 25, 2008) (adopting the limits on eligible lines set out in the settlement agreement filed by the parties); Docket No. 34723, Motion for Approval of the Unanimous Settlement Agreement, Attachment A at 10-12 (Apr. 8, 2008).

However, the application of these limits on eligible business lines depends on the definition of a service address. As a hypothetical example, if an entire for-profit ranch is a service address, then an ETP could obtain support for only five eligible business lines per individual business customer within the entire ranch. If, instead, each permanent structure within the ranch--or each pair of GPS coordinates corresponding to such a structure--is a service address, then an ETP could obtain support per individual business customer for five eligible business lines provided to each structure within the ranch. A ranch with five structures would contain five or 25 eligible business lines depending on how a service address is defined.

By modifying the definition of service address in this project, the commission clarifies how the limit on eligible business lines at

a business customer's service address should be applied. The rules as adopted state that, in areas not defined by a physical street address or physical 911 address, an area of land under common operation as defined by a state permit, lease name, or field of operation is a single service address. Multiple buildings, including temporary structures, within a single area of land under common operation may not be reported by an ETP as separate service addresses, even if those buildings are defined by different GPS coordinates. By adopting this definition, the commission clarifies that, under the above hypothetical, only the first five business lines would be eligible for support.

Based on the above discussion, the commission amends the definition of "Service Address" in each of the amended rules to read as follows:

For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

The commission finds that this definition as adopted will address the concerns expressed by DTS regarding the rule as published. The commission finds that it is reasonable to allow the use of GPS coordinates while also allowing ETPs providing mobile service to use a customer's billing address, which is discussed above. The commission finds that these modifications will allow ETPs to report service addresses associated with eligible lines that more likely correspond to where the customer uses the service.

As to the second additional concern identified by DTS, the commission also finds that the adopted language is consistent with the efficient administration of the TUSF. The commission finds that the adopted language defines a service address in a manner that can be efficiently administered and audited.

Finally, in order to enhance clarity in the organization of the adopted rules, the commission has moved the definition of a physical 911 address that was included in the published definition of service address into a separate paragraph within the adopted rules.

Comments regarding §26.404

AMA TechTel commented that the commission's proposed revision to §26.404(h)(4) contains a grammatical error which should be corrected.

Commission Response

The commission agrees and, in order to clarify the commission's intent, has revised §26.404(h)(4) to state: "An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF."

All comments, including any not specifically referenced herein, were fully considered by the commission. In addition, the commission adopts non-substantive corrections in order to enhance the consistency and clarity of the adopted amendments. These changes include the re-ordering of §26.403 and §26.404 so that the "Application" subsection appears as subsection (b) of each section, the "Definitions" subsection appears as subsection (c) of each section, and the definition of a physical 911 address appears as a separate definition in the "Definitions" subsections.

These amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2016) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, PURA §56.021 which requires the commission to adopt and enforce rules to establish the Texas Universal Service Fund to assist telecommunications providers in providing basic local telecommunications service at reasonable rates in high cost rural areas.

Cross Reference to Statutes: PURA §14.002 and §56.021.

§26.403. Texas High Cost Universal Service Plan (THCUSP).

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that serve the high cost rural areas of the state, other than study areas of small and rural incumbent local exchange companies (ILECs), so that basic local telecommunications service may be provided at reasonable rates in a competitively neutral manner.

(b) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP

through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title.

(4) Physical 911 address--For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) Service to be supported by the THCUSP. The THCUSP shall support basic local telecommunications services provided by an ETP in high cost rural areas of the state. Local measured residential service, if chosen by the customer and offered by the ETP, shall also be supported.

(1) Initial determination of the definition of basic local telecommunications service. Basic local telecommunications service shall consist of the following:

(A) flat rate, single party residential and business local exchange telephone service, including primary directory listings;

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

(E) access to 911 service where provided by a local authority;

(F) telecommunications relay service;

(G) the ability to report service problems seven days a week;

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline service.

(2) Subsequent determinations.

(A) Initiation of subsequent determinations.

(i) The definition of the services to be supported by the THCUSP shall be reviewed by the commission every three years from September 1, 1999.

(ii) The commission may initiate a review of the definition of the services to be supported on its own motion at any time.

(B) Criteria to be considered in subsequent determinations. In evaluating whether services should be added to or deleted from the list of supported services, the commission may consider the following criteria:

(i) the service is essential for participation in society;

(ii) a substantial majority, 75% of residential customers, subscribe to the service;

(iii) the benefits of adding the service outweigh the costs; and

(iv) the availability of the service, or subscription levels, would not increase without universal service support.

(e) Criteria for determining amount of support under THCUSP. The commission shall determine the amount of per-line support to be made available to ETPs in each eligible wire center. The amount of support available to each ETP shall be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection. As used in this subsection, "basic local telecommunications service" refers to services available to residential customers only, and "exchange" or "wire center" refer to regulated exchanges or wire centers only.

(1) Determining base support amount available to ILEC ETPs. The initial annual base support amount for an ILEC ETP shall be the annualized monthly THCUSP support amount for the month preceding the effective date of this section, less the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support as determined by the Universal Service Administration Company pursuant to 47 C.F.R. §54.312(a). The initial per-line monthly support amount for a wire center shall be the per-line support amount for the wire center for the month preceding the effective date of this section, less each wire center's pro rata share of one-twelfth of the 2011 amount of support disbursed to the ILEC ETP from the federal universal service fund for High Cost Loop, High Cost Model, Safety Net Additive, and Safety Valve components of the frozen high-cost support determined by the Universal Service Administration Company pursuant to 47 C.F.R §54.312(a). The initial annual base support amount shall be reduced annually as described in paragraph (3) of this subsection.

(2) Determination of the reasonable rate. The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. To the extent that an ILEC ETP's existing rate for basic local telecommunications service in any wire center is less than the reasonable rate, the ILEC ETP may, over time, increase its rates for basic local telecommunications service to an amount not to exceed the reasonable rate. The increase to the existing rate shall not in any one year exceed an amount to be determined by the

commission in the contested case proceeding. An ILEC ETP may, in its sole discretion, accelerate its THCUSP reduction in any year by as much as 10% and offset such reduction with a corresponding local rate increase in order to produce rounded rates. In no event shall any such acceleration obligate the ETP to reduce its THCUSP support in excess of the total reduction obligation initially calculated under paragraph (3) of this subsection.

(3) Annual reductions to THCUSP base support and per-line support recalculation. As part of the contested proceeding referenced in paragraph (2) of this subsection, each ILEC ETP shall, using line counts as of the end of the month preceding the effective date of this rule, calculate the amount of additional revenue that would result if the ILEC ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers for those services where the price, or imputed price, are below the reasonable rate. Lines in exchanges for which an application for deregulation is pending as of June 1, 2012 shall not be included in this calculation. If the application for deregulation for any such exchanges subsequently is denied by the commission, the ILEC ETP shall, within 20 days of the final order denying such application, submit revised calculations including the lines in those exchanges for which the application for deregulation was denied. Without regard to whether an ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the ILEC ETP's annual base support shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period. This reduction shall be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) Portability. The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(5) Limitation on availability of THCUSP support.

(A) THCUSP support shall not be provided in a wire center in a deregulated market that has a population of at least 30,000.

(B) An ILEC may receive support from the THCUSP for a wire center in a deregulated market that has a population of less than 30,000 only if the ILEC demonstrates to the commission that the ILEC needs the support to provide basic local telecommunications service at reasonable rates in the affected market. An ILEC may use evidence from outside the wire center at issue to make the demonstration. An ILEC may make the demonstration for a wire center before or after submitting a petition to deregulate the market in which the wire center is located.

(6) Total Support Reduction Plan. Within 10 days of the effective date of this section, an ILEC may elect to participate in a Total Support Reduction Plan (TSRP) as prescribed in this subsection, by filing a notification of such participation with the commission. The TSRP would serve as an alternative to the reduction plan prescribed in paragraph (3) of this subsection. The TSRP will be implemented as follows:

(A) For an ILEC making this election, the ILEC shall reduce its THCUSP funding in accordance with paragraph (3) of this subsection with the exception that THCUSP reductions due to exchange deregulation may be credited against the electing ILEC's annual reduction obligation in the calendar year immediately following such deregulation.

(B) In no event shall an electing ILEC seek or receive THCUSP funding after January 1, 2017 even if it would otherwise be entitled to such funding as of this date.

(f) Support Reduction. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission shall adjust the support to be made available from the THCUSP according to the following criteria.

(1) For each ILEC that is not electing under subsection (e)(6) of this section and that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC is eligible to receive for each exchange on December 31, 2016 from the THCUSP is reduced:

(A) on January 1, 2017, to 75 percent of the level of support the ILEC is eligible to receive on December 31, 2016;

(B) on January 1, 2018, to 50 percent of the level of support the ILEC is eligible to receive on December 31, 2016; and

(C) on January 1, 2019, to 25 percent of the level of support the ILEC is eligible to receive on December 31, 2016.

(2) An ILEC subject to this subsection may file a petition to show financial need for continued support, pursuant to §26.405(f)(1) of this title, on or before January 1, 2019.

(g) Reporting requirements. An ETP that receives support pursuant to this section shall report the following information:

(1) Monthly reporting requirement. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks TUSF support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (d) of this section.

(2) Quarterly filing requirements. An ETP shall file quarterly reports with the commission showing actual THCUSP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the THCUSP.

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

§26.404. Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan.

(a) Purpose. This section establishes guidelines for financial assistance to eligible telecommunications providers (ETPs) that provide service in the study areas of small and rural ILECs in the state so

that basic local telecommunications service or its equivalent may be provided at reasonable rates in a competitively neutral manner.

(b) Application.

(1) Small or rural ILECs. This section applies to small ILECs, as defined in subsection (c) of this section, and to rural ILECs, as defined in §26.5 of this title (relating to Definitions), that have been designated ETPs.

(2) Other ETPs providing service in small or rural ILEC study areas. This section applies to telecommunications providers other than small or rural ILECs that provide service in small or rural ILEC study areas that have been designated ETPs.

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the Small and Rural ILEC Universal Service Plan (SRILEC USP) through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Physical 911 address--For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(7) Small incumbent local exchange company--An incumbent local exchange (ILEC) that qualifies as a "small local exchange company" as defined in the Public Utility Regulatory Act (PURA), §53.304(a)(1).

(d) Service to be supported by the Small and Rural ILEC Universal Service Plan. The Small and Rural ILEC Universal Service Plan shall support the provision by ETPs of basic local telecommunications service as defined in §26.403(d) of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) and is limited to those services carried on all residential lines and the first five single-line business lines at a business customer's service address for which a flat rate plan is an available option.

(e) Criteria for determining amount of support under Small and Rural ILEC Universal Service Plan. The commission shall determine the amount of per-line support to be made available to ETPs in each eligible study area. The amount of support available to each ETP shall be calculated using the small and rural ILEC ETP base support amount and applying the annual reductions as described in this subsection.

(1) Determining base support amount available to ETPs. The initial per-line monthly base support amount for a small or rural ILEC ETP shall be the per-line monthly support amount for each small or rural ILEC ETP study area as specified in Docket Number 18516, annualized by using the small or rural ILEC ETP access line count as of January 1, 2012. The initial per-line monthly base support amount shall be reduced as described in paragraph (3) of this subsection.

(2) Determination of the reasonable rate.

(A) The reasonable rate for basic local telecommunications service shall be determined by the commission in a contested case proceeding. An increase to an existing rate shall not in any one year exceed an amount to be determined by the commission in the contested case proceeding.

(B) The length of the transition period applicable to the reduction in support calculated under paragraph (3) of this subsection shall be determined in the contested case proceeding.

(3) Annual reductions to the Small and Rural ILEC Universal Service Plan per-line support. As part of the contested case proceeding referenced in paragraph (2) of this subsection, for each small or rural ILEC ETP, the commission shall calculate the amount of additional revenue, using the basic telecommunications service rate (the tariffed local service rate plus any additional charges for tone dialing services, mandatory expanded local calling service and mandatory extended area service) and the access line count as of September 1, 2013, would result if the small and rural ILEC ETP were to charge the reasonable rate

for basic local telecommunications service to all residential customers. Without regard to whether a small or rural ILEC ETP increases its rates for basic local telecommunications service to the reasonable rate, the small or rural ILEC ETP's annual base support amount for each study area shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2014. The small or rural ILEC ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period, unless specified otherwise pursuant to paragraph (2)(B) of this subsection. This reduction shall be accomplished by reducing support for each study area proportionally. An ILEC ETP may, in its sole discretion, accelerate its SRILEC USP reduction in any year by as much as 10% and offset such reductions with a corresponding local rate increase in order to produce rounded rates.

(f) Small and Rural ILEC Universal Service Plan support payments to ETPs. The TUSF administrator shall disburse monthly support payments to ETPs qualified to receive support pursuant to this section.

(1) Payments to small or rural ILEC ETPs. The payment to each small or rural ILEC ETP shall be computed by multiplying the per-line amount established in subsection (e) of this section by the number of eligible lines served by the small or rural ILEC ETP for the month.

(2) Payments to ETPs other than small or rural ILECs. The payment to each ETP other than a small or rural ILEC shall be computed by multiplying the per-line amount established in subsection (e) of this section for a given small or rural ILEC study area by the number of eligible lines served by the ETP in such study area for the month.

(g) Support Reduction. Subject to the provisions of §26.405(f)(3) of this title (relating to Financial Need for Continued Support), the commission shall adjust the support to be made available from the SRILEC USP according to the following criteria.

(1) For each ILEC ETP that is electing under PURA, Chapter 58 or 59 or a cooperative that served greater than 31,000 access lines in this state on September 1, 2013, or a company or cooperative that is a successor to such an ILEC, the monthly per-line support that the ILEC ETP is eligible to receive for each exchange on December 31, 2017 from the SRILEC USP is reduced:

(A) on January 1, 2018, to 75 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017;

(B) on January 1, 2019, to 50 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017; and

(C) on January 1, 2020, to 25 percent of the level of support the ILEC ETP is eligible to receive on December 31, 2017.

(2) An ILEC ETP subject to this subsection may file a petition to show financial need for continued support, pursuant to §26.405(f)(1) of this title, on or before January 1, 2020.

(h) Reporting requirements. An ETP eligible to receive support under this section shall report information as required by the commission and the TUSF administrator.

(1) Monthly reporting requirement. An ETP shall report the following to the TUSF administrator on a monthly basis:

(A) the total number of eligible lines for which the ETP seeks SRILEC USP support; and

(B) a calculation of the base support computed in accordance with the requirements of subsection (e) of this section.

(2) Quarterly filing requirements. An ETP shall file quarterly reports with the commission showing actual SRILEC USP receipts by study area.

(A) Reports shall be filed electronically in the project number assigned by the commission's central records office no later than 3:00 p.m. on the 30th calendar day after the end of the calendar quarter reporting period.

(B) Each ETP's reports shall be filed on an individual company basis; reports that aggregate the disbursements received by two or more ETPs will not be accepted as complying with the requirements of this paragraph.

(C) All reports filed pursuant to paragraph (3) of this subsection shall be publicly available.

(3) Annual reporting requirements. An ETP shall report annually to the TUSF administrator that it is qualified to participate in the Small and Rural ILEC Universal Service Plan.

(4) Other reporting requirements. An ETP shall report any other information that is required by the commission or the TUSF administrator, including any information necessary to assess contributions and disbursements from the TUSF.

§26.405. Financial Need for Continued Support.

(a) Purpose. This section establishes criteria to demonstrate financial need for continued support for the provision of basic local telecommunications service under the Texas High Cost Universal Service Plan (THCUSP) and the Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP). This section also establishes the process by which the commission will evaluate petitions to show financial need and will set new monthly per-line support amounts.

(b) Application. This section applies to an incumbent local exchange company (ILEC) that is subject to §26.403(f) of this title (relating to the Texas High Cost Universal Service Plan (THCUSP)) or §26.404(g) of this title (relating to the Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

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

(1) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply. For a line served by an ILEC, a business line is a line served pursuant to the ILEC's business service tariff or a package that includes such a tariffed service. For a line served by an ILEC pursuant to a customer specific contract or that is otherwise not served pursuant to a tariff, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device. For a line that is served by an ETP other than an ILEC, to qualify as a business line, the service must be provided pursuant to a customer application, subscriber agreement, or contract entered into by a public or private organization of any character, or a representative or agent of such entity, irrespective of the person or entity in actual possession of the telephone device.

(2) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP or SRILEC USP through its own facilities, purchase of unbundled net-

work elements (UNEs), or a combination of its own facilities and purchase of UNEs. An eligible line may be a business line or a residential line but shall not be both.

(3) Eligible telecommunications provider (ETP)--A telecommunications provider designated by the commission pursuant to §26.417 of this title (relating to Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF)).

(4) Physical 911 address--For the purposes of this section, a physical 911 address is an address transmitted to the applicable emergency service providers by an ETP with respect to a line that is not stated in GPS coordinates.

(5) Residential line--The telecommunications facilities providing the communications channel that serves a residential customer's service address. For the purpose of this definition, a residential line is one to which multi-line hunting, trunking, or other special capabilities do not apply. A line that qualifies as a business line shall not qualify as a residential line.

(6) Service Address--For the purposes of this section, a business or residential customer's service address is defined using the following criteria:

(A) A service address is the unique physical street address, including any suite or unit number, where a line is provided to a customer, except as provided in clauses (i) - (ii) and subparagraph (B) of this paragraph.

(i) If no unique physical street address is available, a physical 911 address shall be used.

(ii) If no unique physical street address and no physical 911 address are available, the business or residential customer's service address shall be an area of land under common operation or use as defined by a deed, state permit, lease name, or licensed or registered field of operation, which shall be described by an ETP using GPS coordinates. Multiple buildings within a single area of land under common operation or use shall not qualify as separate service addresses, even if the GPS coordinates for each building are different.

(B) For eligible lines served using commercial mobile radio service, a service address for such a line may be the customer's billing address for the purposes of this definition.

(d) Determination of financial need.

(1) Criteria to determine financial need. For each exchange that is served by an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section, the commission shall determine whether an ILEC ETP has a financial need for continued support. An ILEC ETP has a financial need for continued support within an exchange if the exchange does not contain an unsubsidized wireline voice provider competitor as set forth in paragraph (2) of this subsection.

(2) Establishing the existence of an unsubsidized wireline voice provider competitor. For the purposes of this section, an exchange contains an unsubsidized wireline voice provider competitor if the percentage of square miles served by an unsubsidized wireline voice provider competitor exceeds 75% of the square miles within the exchange. The commission shall determine whether an exchange contains an unsubsidized wireline voice provider competitor using the following criteria.

(A) For the purposes of this section, an entity is an unsubsidized wireline voice provider competitor within an exchange if it:

(i) does not receive THCUSP support, SRILEC USP support, Federal Communications Commission (FCC) Connect America Fund (CAF) support, or FCC Legacy High Cost support for service provided within that exchange; and

(ii) offers basic local service or broadband service of 3 megabits per second down and 768 kilobits per second up using wireline-based technology using either its own facilities or a combination of its own facilities and purchased unbundled network elements (UNEs).

(B) Using Version 7 of the National Broadband Map, the commission shall determine the census blocks served by an unsubsidized wireline voice provider competitor within a specific exchange and the total number of square miles represented by those census blocks using the following criteria.

(i) The number of square miles served by an unsubsidized wireline voice provider competitor within an exchange shall be equal to the total square mileage covered by census blocks in the exchange in which an unsubsidized wireline voice provider competitor offers service to any customer or customers.

(ii) The commission shall determine the percentage of square miles served by an unsubsidized wireline voice provider competitor within an exchange by dividing the number of square miles served by an unsubsidized wireline voice provider competitor within the exchange by the number of square miles within the exchange.

(C) The data provided by the National Broadband Map creates a rebuttable presumption regarding the presence of an unsubsidized wireline voice provider competitor within a specific census block. However, nothing in this rule is intended to preclude a party from providing evidence as to the accuracy of individual census block data within the National Broadband Map with regard to whether an unsubsidized wireline voice provider competitor offers service within a particular census block.

(e) Criteria for determining amount of continued support. In a proceeding conducted pursuant to subsection (f) of this section, the commission shall set new monthly per-line support amounts for each exchange served by a petitioning ILEC ETP. The new monthly per-line support amounts shall be effective beginning with the first disbursement following a commission order entered pursuant to subsection (f)(2) of this section, except that they shall not be effective earlier than January 1, 2017 for an exchange with service supported by the THCUSP or earlier than January 1, 2018 for an exchange with service supported by the SRILEC USP.

(1) Exchanges in which the ILEC ETP does not have a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has not determined that the ILEC ETP has a financial need for continued support, the commission shall reduce the monthly per-line support amount to zero. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and which is not included in the petition, the commission shall reduce the monthly per-line support amount to zero.

(2) Exchanges in which the ILEC ETP has a financial need for continued support. For each exchange that is served by an ILEC ETP that has filed a petition pursuant to subsection (f)(1) of this section and for which the commission has determined the ILEC ETP has a financial need for continued support, the commission shall set a monthly per-line support amount according to the following criteria.

(A) The initial monthly per-line support amounts for each exchange shall be equal to:

(i) the amount that the ILEC ETP was eligible to receive on December 31, 2016 for an ILEC ETP that receives support from the THCUSP;

(ii) the amount that the ILEC ETP was eligible to receive on December 31, 2017 for an ILEC ETP that receives support from the SRILEC USP and that has not filed a request pursuant to subsection (g) of this section; or

(iii) the new monthly per-line support amounts calculated pursuant to subsection (g) of this section for an ILEC ETP that has filed a request pursuant to subsection (g) of this section.

(B) Initial monthly per-line support amounts for each exchange shall be reduced by the extent to which the disbursements received by an ILEC ETP from the THCUSP or SRILEC USP in the twelve month period ending with the most recently completed calendar quarter prior to the filing of a petition pursuant to subsection (f)(1) of this section are greater than 80% of the total amount of expenses reflected in the summary of expenses filed pursuant to subsection (f)(1)(C) of this section. In establishing any reductions to the initial monthly per-line support amounts, the commission may consider any appropriate factor, including the residential line density per square mile of any affected exchanges.

(C) For each exchange with service supported by the THCUSP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed before January 1, 2016;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2016, and before January 1, 2017;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2017, and before January 1, 2018; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2016, if the petition was filed on or after January 1, 2018, and before January 1, 2019.

(D) For each exchange with service supported by the SRILEC USP, monthly per-line support shall not exceed:

(i) the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed before January 1, 2017;

(ii) 75 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2017, and before January 1, 2018;

(iii) 50 percent of the monthly per-line support the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2018, and before January 1, 2019; or

(iv) 25 percent of the monthly per-line support that the ILEC ETP was eligible to receive on December 31, 2017, if the petition was filed on or after January 1, 2019, and before January 1, 2020.

(E) An ILEC ETP may only be awarded continued support for the provision of service in exchanges with service that is eligible for support from the THCUSP or SRILEC USP at the time of filing of a petition pursuant to subsection (f)(1) of this section.

(F) Portability of support. The support amounts established pursuant to this section are applicable to all ETPs and are portable with the customer.

(f) Proceeding to Determine Financial Need and Amount of Support.

(1) Petition to determine financial need. An ILEC ETP that is subject to §26.403(f) or §26.404(g) of this title may petition the commission to initiate a contested case proceeding to demonstrate that it has a financial need for continued support for the provision of basic local telecommunications service.

(A) An ILEC ETP may only file one petition pursuant to this subsection. A petition filed pursuant to this subsection shall include the information necessary to reach the determinations specified in this subsection.

(B) An ILEC ETP filing a petition pursuant to this subsection shall provide notice as required by the presiding officer pursuant to §22.55 of this title (relating to Notice in Other Proceedings). At a minimum, notice shall be published in the *Texas Register*.

(C) A petition filed pursuant to this subsection shall include a summary of the following total Texas regulated expenses and property categories, including supporting workpapers, attributable to the ILEC ETP's exchanges with service supported by the THCUSP or SRILEC USP during the twelve month period ending with the most recently completed calendar quarter prior to the filing of the petition:

(i) Plant-specific operations expense;

(ii) Plant non-specific operations expense;

(iii) Customer operations expense;

(iv) Corporate operations expense;

(v) Depreciation and amortization expenses;

(vi) Other operating expenses;

(vii) Total telecom plant in service;

(viii) Total property held for future use; and

(ix) Total telecom plant under construction.

(D) A summary filed pursuant to this subsection shall be filed publicly. Workpapers filed pursuant to this subsection may be filed publicly or under seal.

(E) Upon receipt of a petition pursuant to this section, the commission shall initiate a contested case proceeding to determine whether the ILEC ETP has a financial need for continued support under this section for the exchanges identified in the petition. In the same proceeding, the commission shall set a new monthly per-line support amount for all exchanges served by the ILEC ETP.

(2) The commission shall issue a final order in the proceeding not later than the 330th day after the date the petition is filed with the commission. Until the commission issues a final order on the proceeding, the ILEC ETP shall continue to receive the total amount of support it was eligible to receive on the date the ILEC ETP filed a petition under this subsection.

(3) An ILEC ETP shall not be subject to §26.403(f) or §26.404(g) of this title after the commission issues a final order on the petition.

(4) The ILEC ETP filing a petition pursuant to this subsection shall bear the burden of proof with respect to all issues that are in the scope of the proceeding.

(g) De-averaging of the support received by ILEC ETPs from the SRILEC USP. On or before January 1, 2017, an ILEC ETP filing a petition pursuant to subsection (f)(1) of this section and that receives support from the SRILEC USP may include in its petition a request that the commission determine for each exchange served by the ILEC ETP new monthly per-line support amounts that the ILEC ETP will be eligible to receive on December 31, 2017. The new monthly per-line support amounts will be calculated using the following methodology.

(1) The commission shall use per-line proxy support levels based on the following ranges of average residential line density per square mile within an individual exchange. These proxies are used specifically for the purpose of de-averaging and do not indicate a preference that support at these levels be provided from the SRILEC USP. Figure: 16 TAC §26.405(g)(1) (No change.)

(2) Using the per-line proxy support amount levels set forth in this subsection, the commission shall create a benchmark support amount for each exchange of a requesting ILEC ETP. The benchmark support amount for each individual supported exchange of a company or cooperative is calculated by multiplying the number of total eligible lines as of December 31, 2016 served by the ILEC ETP within each exchange by the corresponding proxy support amount for that individual exchange based on the average residential line density per square mile of the exchange as of December 31, 2016.

(3) To the extent that the total sum of the benchmark support amounts for all of the supported exchanges of a company or cooperative is greater than or less than the targeted total support amount a company or cooperative would be eligible to receive on December 31, 2017 as a result of the final order in Docket No. 41097, the benchmark per-line support amount for each exchange shall be proportionally reduced or increased by the same percentage amount so that the total support amount a company or cooperative is eligible to receive on December 31, 2017, as a result of the final order in Docket No. 41097, is unaffected by the de-averaging process.

(4) The per-line support amount that a company or cooperative is eligible to receive in a specific exchange on December 31, 2017, for purposes of a petition filed pursuant to subsection (f)(1) of this section, is the per-line support amount for each exchange determined through the de-averaging process set forth in this subsection.

(h) Reporting requirements. An ILEC ETP that receives support pursuant to this section shall remain subject to the reporting requirements of §26.403(g) or §26.404(h) of this title.

(i) Additional Financial Assistance. Nothing in this section shall be interpreted to prohibit an ILEC or cooperative that is not an electing company under Chapter 58, 59, or 65 of PURA to apply for Additional Financial Assistance pursuant to §26.408 of this title (relating to Additional Financial Assistance (AFA)).

(j) Service to be supported. The services to be supported pursuant to the section are subject to the same definitions and limitations as those set out in §26.403(d) and §26.404(d) of this title, in addition to any limitation ordered by the commission in a contested case proceeding.

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 August 25, 2016.

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 89. ADAPTATIONS FOR SPECIAL POPULATIONS

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

The Texas Education Agency (TEA) adopts amendments to §§89.1501, 89.1503-89.1505, 89.1507, and 89.1511 and the repeal of §89.1509, concerning the Communities In Schools (CIS) program. The amendments to §§89.1501, 89.1503-89.1505, and 89.1507, and the repeal of §89.1509 are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3228) and will not be republished. The amendment to §89.1511 is adopted with changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3228). The sections establish policies concerning the CIS program. The adopted revisions reflect updates in program management and more closely match current practice.

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

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

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

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

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

Section 89.1504, Demonstration of Community Participation, was amended to clarify requirements for a developing program.

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

Section 89.1507, Case-Managed Students, was amended to align the section with revised §89.1501 and current practice.

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

Section 89.1511, Performance Standards and Revocation of Grant Award, was amended to align the section with current practice. In response to public comment, a change was made at adoption to include language in subsection (b)(2) relating to a school district sharing authorized student information with the local CIS program. The language was repealed from §89.1509(b) and moved to §89.1511(b)(2) without any changes to the rule text.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began May 6, 2016, and ended June 6, 2016. Following is a summary of public comments received and corresponding agency responses regarding the proposed revisions to 19 TAC Chapter 89, Adaptations for Special Populations, Subchapter EE, Commissioner's Rules Concerning the Communities In Schools Program.

Comment. One CIS employee inquired about the financial resource allocation section of the funding formula, noting that this section benefits some programs but not others. The commenter also noted that the CIS programs that receive funding from the financial resource allocation section will most likely support the funding formula.

Agency Response. The agency provides the following clarification. The financial resource allocation considers the financial resources of individual communities as stated in TEC, §33.156.

Comment. Eleven CIS staff members, two campus and school district personnel, and one individual commented that the funding formula should remain the same.

Agency Response. The agency agrees and has maintained language as proposed.

Comment. One CIS employee commented that §89.1503(c)(2)(C) is a flawed method of funding local programs and that providing funding to a local agency based on the weighted financial resources of an individual community or school district without requiring the local agency to provide services to additional students is an inequitable distribution of funds. The commenter added that presently, 13 of the 28 programs do not receive money based on the distribution of funding through the weighted financial resources and 3 of the 28 receive 87% of that funding.

Agency Response. The agency disagrees and maintains that the current resource allocation is equitably structured. TEC, §33.156, states that the formula must consider the financial resources of individual communities and school districts. The method used in §89.1503(c)(2)(C) meets this requirement. Additionally, amended §89.1507 clarifies the number of students a program must serve.

Comment. One CIS employee recommended that the financial resource allocation in §89.1503(c)(2)(C) be based on and allocated only to those campuses that have a full-time CIS site (campus) coordinator and not to campuses that have one full-time site coordinator serving multiple campuses.

Agency Response. The agency disagrees and maintains that the current resource allocation is equitably structured. Additionally, amended §89.1507 clarifies the number of students a program must serve.

Comment. One CIS employee recommended maintaining §89.1503(e)(1) to allow any outside entity to fairly contribute funding to all programs to serve more students through expansion or replication.

Agency Response. The agency offers the following clarification. The language in TEC, §33.158, allows the agency to accept donations of services or money to further the lawful objectives of the agency in connection with the CIS program. It is not necessary to repeat this authority in rule.

Comment. One CIS employee recommended that TEA not authorize any CIS program to communicate any TEA-funded outputs or outcomes to any outside entity without remuneration to the funding formula for the benefit of all Texas students. The commenter further stated that outside entities should not benefit from case-managed numbers, services, outputs, or outcomes that are paid for by Texas citizens.

Agency Response. The comment is outside of the scope of the proposed rulemaking.

Comment. One CIS employee applauded TEA for taking corrective measures in §89.1507(c) for CIS programs to correctly size their organizations to serve a reasonable amount of students per campus with a full-time CIS site coordinator to provide students with exemplary case-managed services.

Agency Response. The agency agrees and has maintained language as proposed.

Comment. One CIS employee recommended that TEA maintain §89.1509(b) relating to a school district sharing authorized student information with the local CIS program because the information is necessary for CIS programs to comply with all TEA-mandated recordkeeping and inputs to the TEA CIS database. Several CIS program staff members requested that the paragraph remain in rule to inform school districts that they must share parent-consented educational records with TEA and their CIS programs.

Agency Response. The agency agrees that §89.1509(b) further clarifies the TEC, §33.154(3), and has included the language from repealed §89.1509(b) in §89.1511(b)(2) at adoption.

Comment. One CIS employee applauded TEA for taking corrective measures in §89.1511 to assure that all CIS programs are meeting their contracted numbers and obligations to serve their required number of students with full-time CIS site coordinators delivering exemplary services.

Agency Response. The agency agrees.

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

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

authorizes the local CIS programs to accept other funding from federal, state, school, or other sources.

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

§89.1511. Performance Standards and Revocation of Grant Award.

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

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

(2) Following the end of a given school year, a local CIS program that fails to serve the number of case-managed students identified in its grant application must submit to the Texas Education Agency (TEA) a Program Improvement Plan (PIP) detailing how the CIS program will reach the case-managed student target as required. The PIP must include the following:

(A) local program contact information;

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

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

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

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

(F) timelines for each proposed strategy and initiative; and

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

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

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

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

(2) Each local CIS program shall report data to the TEA that indicates performance on the established standards. Pursuant to the TEC, §33.154(a)(7)(B), each school district that participates in a CIS program shall provide to the local CIS or developing program necessary student information and data for each student whose parent or legal guardian has authorized in writing that educational records be shared with the CIS program and the TEA. Such information and data may include records on a student's academic achievement, promotion, attendance, disciplinary referrals, free/reduced-price lunch status, at-risk status, or health-related information in accordance with the written authorization obtained by the local CIS program from the student's parent or legal guardian. A local CIS program or developing program may provide this information and data to the TEA in accordance with the grant application.

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

(4) A local CIS program that fails to meet performance standard(s) in any area within a 5.0% variance must submit to the TEA a PIP detailing how the CIS program will improve in the performance standard by the end of the next grant year period. The PIP shall include the following:

(A) local program contact information;

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

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

(D) timelines for each proposed strategy and initiative; and

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

(5) The TEA will review and provide feedback on PIPs.

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

(d) Revocation of grant award.

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

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

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

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

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

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

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

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

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

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

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

The agency certifies that legal counsel has reviewed the 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 August 24, 2016.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: May 6, 2016
For further information, please call: (512) 475-1497

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19 TAC §89.1509

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

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

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

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CHAPTER 102. EDUCATIONAL PROGRAMS
SUBCHAPTER JJ. COMMISSIONER'S RULES CONCERNING INNOVATION DISTRICT

19 TAC §§102.1301, 102.1303, 102.1305, 102.1307, 102.1309, 102.1311, 102.1313, 102.1315

The Texas Education Agency (TEA) adopts new §§102.1301, 102.1303, 102.1305, 102.1307, 102.1309, 102.1311, 102.1313, and 102.1315, concerning districts of innovation. New §§102.1301, 102.1303, 102.1305, 102.1307, 102.1309, and 102.1313 are adopted with changes to the proposed text as published in the April 1, 2016 issue of the *Texas Register* (41 TexReg 2380). New §102.1311 and §103.1315 are adopted without changes to the proposed text as published in the April 1, 2016 issue of the *Texas Register* (41 TexReg 2380) and will not be republished. The adopted new sections outline the applicable processes and procedures related to an Innovation District to reflect the changes in statute made by House Bill (HB) 1842, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. The 84th Texas Legislature, Regular Session, 2015, passed HB 1842, which amended the Texas Education Code (TEC) by adding Chapter 12A, Districts of Innovation, authorizing an eligible school district to be designated as a district of innovation following adoption of a local innovation plan that exempts the district from certain TEC requirements that inhibit the goals of the plan. The local innovation plan must be reported to the TEA. The adopted new rules would provide the applicable processes and procedures related to innovation districts. The adopted rules include a non-comprehensive list of allowable exemptions. A list of prohibited exemptions is also included. TEC, §12A.009, authorizes the commissioner to adopt rules to implement the TEC, Chapter 12A.

Adopted new 19 TAC §102.1301, Definitions, defines terms for implementation of the subchapter. In accordance with the TEC, §§12A.001, 12A.005, and 12A.007, paragraph (1) defines the district-level committee as the committee established under the TEC, §11.251. TEC, Chapter 12A, does not define the composition of the committee to develop the local innovation plan, so adopted new paragraph (2) addresses the composition of that committee. TEC, Chapter 12A, does not define what constitutes a "public hearing" but does distinguish between a public hearing and a public meeting. Adopted new paragraph (3) defines a public hearing as an open meeting that allows the public an opportunity to provide comments and opinions. Accordingly, adopted new paragraph (4) defines a public meeting as an open meeting that provides the public an opportunity to hear facts about a proposed plan. TEC, Chapter 12A, focuses on unacceptable performance for both academic and financial accountability purposes. Adopted new paragraphs (5) and (6) clarify the meaning of "unacceptable performance" by linking with the corresponding ratings adopted by the TEA under the accountability statutes. Based on public comments, two definitions in paragraph (1) were modified at adoption. *District-level committee* was amended to include a comparable committee. *Innovation plan committee* was amended to clarify the role of the committee and specify that the district-level committee may also serve in this role.

Adopted new 19 TAC §102.1303, Eligibility, clarifies that a district cannot be designated as a district of innovation if it receives either a preliminary or final rating of below "acceptable performance." TEC, §12A.001, authorizes districts to be designated as a district of innovation only if the district's most recent performance rating under TEC, §39.054, is at least "acceptable performance." Based on public comments, subsection (b) has been modified at adoption to state that the board may not vote on final approval of the plan if the district rating is below acceptable performance and to address the successful appeal of a preliminary rating.

Adopted new 19 TAC §102.1305, Process Timeline, recognizes the statutory methods for designating a district of innovation and the requirement that the district hold a public hearing if one of those methods is realized in accordance with the TEC, §12A.001 and §12A.002. As the statutory provisions lack a requisite timeline for action and to ensure a timely review process, adopted new subsection (b) requires the board of trustees to either decline to pursue a district of innovation or to appoint an innovation committee to develop an innovation plan not later than 30 days after the public hearing. Adopted new subsection (d) requires a district's innovation plan to meet the requirements imposed by the TEC, §12A.003.

Statutory provisions under the TEC, §12A.005, authorize the board of trustees to adopt or reject the plan after meeting certain procedural requirements. However, statutory provisions do not define a planning committee's authority when pursuing the creation of a plan; therefore, the adopted new rule would make clear that when pursuing a district of innovation plan, the board of trustees may establish parameters in which the planning committee must operate. As various statutory provisions, including TEC, §§12A.002, 12A.004 and 12A.005, emphasize public awareness and the necessity for the commissioner to maintain a list of exempted provisions and report to the legislature, adopted new subsection (e) requires the district to clearly post the innovation plan on the district website for the term of the designation as an innovation district in order to promote transparency to the public. Based on public comments, subsection (a) has been modified to clarify the reference to a petition signed by a majority of the members of the district-level committee, specify that the public hearing must be held not later than 30 days after a resolution is adopted or a petition has been received, and move language relating to the parameters for developing the plan from subsection (a) to new subsection (c). In addition, subsection (d) has been modified to clarify that the plan must meet the requirements outlined in statute and the new rules.

Adopted new 19 TAC §102.1307, Adoption of Local Innovation Plan, implements the requirements imposed by the TEC, §12A.005, which include actions necessary prior to a board of trustee's vote on adopting the proposed innovation plan, voting requirement for adoption, status of the district once the plan is adopted, and the extent of the exemptions should future requirements be amended or redesignated.

As the TEC, §12A.003(b)(2), requires a district to identify the requirements from which it seeks to be exempted and the TEC, §12A.004(b), requires the commissioner to maintain a list of TEC provisions from which innovation districts are exempt and to notify the legislature of these provisions for districts enrolling a majority of students, adopted new 19 TAC §102.1307 requires, in addition to the notification of the commissioner of approval of the plan as required by the TEC, §12A.005, that the district report exemptions to the commissioner using a form developed by the commissioner. The reporting form, adopted as Figure: 19 TAC §102.1307(d), would emphasize the non-exclusive major TEC items from which an innovation district may exempt itself and would also provide a method to include items not specifically designated on the form. In response to public comment, the agency has modified Figure: 19 TAC §102.1307(d) to add an area for the district to note if the innovation plan applies to the entire district, specific campuses, or other; the term; and added programs the educational plan may include as currently provided for in TEC, §12A.003.

Adopted new 19 TAC §102.1309, Prohibited Exemptions, provides clarity regarding the statutory provisions from which districts of innovation may not exempt themselves in accordance with the TEC, §12A.004, and the commissioner's rulemaking authority. Prohibited exemptions are as follows. In response to public comment, the organizational structure of subsection (a) has been modified at adoption to clarify that the specific exemptions are applied to open-enrollment charter schools, and subsection (b)(3) has been removed at adoption as it was found to be duplicative. In addition, subsection (b)(1) was modified to clarify that an innovation district may not be exempted from a state program in which the district voluntarily participates.

19 TAC §102.1309(a)(1)(A), (B), (E), (F), (G), and (H), (a)(6), and (a)(7)

TEC, §12A.004(a)(1), prohibits exemption of a district of innovation from any state or federal requirement applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, which, among others, prohibits exemption from statutory sections imposed on an open-enrollment charter under the TEC, Chapter 12, including the requirements listed in the TEC, §§12.104(b), 25.001, 25.002, 25.0021, 25.0031, and 25.004; Chapter 30, Subchapter A; §30.104; Chapter 34; §§37.006(l), 37.007(e), and 37.020; §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054; and 45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, and 45.203. This list is not comprehensive; several additional statutes reference charters. In response to public comment, TEC, Chapter 22, Subchapter B, was added at adoption to clarify the civil immunity protections and procedures related to districts of innovation.

19 TAC §§102.1309(a)(3), (a)(1)(H), (a)(4), (a)(5), (a)(6), (a)(7), and (a)(8)

TEC, §12A.004(a)(1), establishes a floor for exemptions for a district seeking to be a district of innovation. Several provisions of the TEC are inapplicable to an open-enrollment charter school, not because the legislature has intentionally limited the requirement, but because the inherent nature of an open-enrollment charter school makes application of the provision non-sensical. As the legislature clearly intended a floor to apply to the exemptions, consequently, districts may not seek an exemption from certain statutory provisions that lack a charter analog. As such, a district seeking to be a district of innovation may not seek an exemption from: TEC, Chapter 13, as open-enrollment charters have no exclusive boundaries vis-à-vis other charter schools nor are open-enrollment charters as a group required to cover all geographic boundaries of the state; TEC, §§37.011, 37.012, and 37.013, because a district must allow an open-enrollment charter school student to be served at a Juvenile Justice Alternative Education program; TEC, Chapters 41 and 42, because open-enrollment charters have no taxing capacity, and HB 1842 contained no textual indication or legislative intent demonstrating that the legislature intended to alter current funding mechanisms; TEC, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054; TEC, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and TEC, Chapter 46, as open-enrollment charters have no taxing capacity for interest and sinking purposes and, therefore, have no access to facility assistance.

19 TAC §102.1309(a)(2)

TEC, §12A.004(a)(2), prohibits an exemption from a requirement imposed by the TEC, Chapter 11, Subchapters A, C, D, and E, with exception of §11.1511(b)(5) and (14) and §11.162.

19 TAC §102.1309(a)(1)(C)

TEC, §12A.004(a)(3), prohibits an exemption from a provision regarding state curriculum and graduation requirements adopted under the TEC, Chapter 28. A district of innovation may not seek an exemption from the TEC, §§28.002, 28.0021, 28.0023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.0255, 28.0258, 28.0259 and 28.026, as those provisions constitute a state curriculum and graduation re-

quirement under the TEC, Chapter 28. A district may not seek an exemption from the TEC, §30.104, because this provision implements the graduation requirements adopted under the TEC, Chapter 28.

19 TAC §102.1309(a)(1)(D)

Some provisions of the TEC supersede the provisions of the TEC, Chapter 12A, and a district of innovation may not seek an exemption from those provisions. TEC, §29.201, applies the provisions of the TEC, Chapter 29, Subchapter G, notwithstanding any other law, which prohibits a district from seeking an exemption from the TEC, Chapter 29, Subchapter G.

19 TAC §102.1309(a)(1)(I)

TEC, §12A.004(a)(4), prohibits an exemption from provisions of academic and financial accountability and sanctions under the TEC, Chapter 39. A district of innovation may not be exempt from any provision of the TEC, Chapter 39.

19 TAC §102.1309(b)(1)

TEC, §12A.004(a)(1), prohibits exemption from any state or federal requirement applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D. TEC, §12.104(d), imposes a requirement on open-enrollment charters to comply with all requirements of a state program in which the charter voluntarily participates. Consequently, a school district may not seek an exemption from a requirement of a grant or other voluntary benefit.

19 TAC §102.1309(b)(2)

TEC, §12A.003(b)(2), requires a district to identify requirements imposed by the TEC from which the district should be exempt on adoption of an innovation plan. Several provisions of the TEC do not impose a requirement on districts but authorize discretionary participation by a district. However, a district that chooses to participate must meet certain conditions imposed by statute on the operation of that authority. As those provisions only apply if a district chooses to operate under those provisions, those provisions do not constitute a requirement from which the district may seek an exemption under the TEC, Chapter 12A.

19 TAC §102.1309(b)(3)

TEC, §12A.003(b)(2), limits an innovation district to identifying requirements of the TEC. Requirements imposed by provisions outside the TEC may not be exempted, including requirements under the Texas Government Code, Chapter 822.

Adopted new 19 TAC §102.1311, Term, implements the TEC, §12A.006, requirement that the term of designation as an innovation district may not exceed five years. As various provisions discuss a local innovation plan as singular, and the plan, under the TEC, §12A.003, must be "comprehensive," and multiple innovation plans would thwart the necessity for amendments under the TEC, §12A.007, adopted new 19 TAC §102.1311 would, therefore, limit a district to one innovation plan at a time. In accordance with the TEC, §12A.007, changes to a plan shall be handled through the amendment process rather than adopting multiple plans.

Adopted new 19 TAC §102.1313, Amendment, Rescission, or Renewal, implements the TEC, §12A.007, which authorizes a local innovation plan to be amended, rescinded, or renewed if approved by vote of the district-level committee and board of trustees. The adopted new rule clarifies that the requirement of the TEC, §12A.007, stating "in the same manner as required for initial adoption" imposes a two-thirds voting requirement of the board of trustees. As statute authorizes an amendment process but does not impose a requirement for total plan review, adopted new subsection (a)(1) clarifies in rule that exemptions already approved need not be reviewed during an amendment. To ensure proper notice and orderly return to statutory compliance and to allow the TEA to accurately comply with reporting requirements, adopted new subsection (a)(2) requires a district that rescinds its plan to notify the TEA of the rescission within five business days of the approved vote and provide a date for compliance with the TEC provisions, which may not be later than the following school year. To ensure orderly transition and ensure proper public notice, adopted new subsection (a)(3) clarifies in rule that all sections of the plan must be reviewed during renewal. In response to public comment, the six-month timeframe on the renewal of the plan was removed at adoption, and subsection (b) was added to clarify that any amendment, rescission, or renewal action requires notification to the commissioner.

Adopted new 19 TAC §102.1315, Termination, reflects the statutory authorization under the TEC, §12A.008, for the commissioner to terminate an innovation district designation or permit a district to amend its innovation plan after two consecutive years of unacceptable academic or financial performance ratings. The adopted new rule requires the commissioner to terminate an innovation district designation after three consecutive years of unacceptable academic or financial performance ratings, or any combination of the two rating systems. The adopted new rule also implements the statutory provision making the related commissioner decision final and not appealable.

The TEA has determined that there are no fiscal implications for persons required to comply with the new rules; however, there are implications for state and local government. The TEA will incur additional personnel costs to fulfill the reporting requirements of statute. The estimated cost is $100,000 each year for fiscal years 2016 and 2017. School districts could potentially save money depending upon the exemptions claimed and how they would be implemented, but the estimated savings cannot be determined at this time.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required. There is no effect on local economy; therefore, no local employment impact statement is required under Texas Government Code, §2001.022.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began April 1, 2016, and ended May 2, 2016. Following is a summary of public comments received and corresponding agency responses regarding Proposed New 19 TAC Chapter 102, Educational Programs, Subchapter JJ, Innovation District.

Comment. The Association of Texas Professional Educators (ATPE) recommended including in §102.1301, Definitions, a definition of *comparable* as it relates to the requirement that an amendment, rescission, or renewal of a district of innovation plan be approved by the district-level committee established under TEC, §11.251, or a comparable committee.

Agency Response. The agency disagrees. *Comparable* has its ordinary meaning and does not require further clarification.

Comment. ATPE recommended adding a definition for the term *requirement* as it applies to TEC, §12A.003(b) and §12A.004(a)(1).

Agency Response. The agency disagrees. Section 102.1309(b) addresses requirements and voluntary participation in state programs.

Comment. The Texas Charter Schools Association (TCSA) commented that in addition to the greater flexibility outlined in the proposed rules, it encouraged the commissioner to consider clarifying the scope of applicability to independent school districts. TCSA urged the commissioner to allow local innovation plans to apply to only portions of school districts as needed to meet their specific needs in order to allow districts to create the most innovative programs.

Agency Response. The agency provides the following clarification. Section 102.1305(c) states that a board may outline the parameters around which the innovation committee may develop the plan. This allows a district to draft the innovation plan to apply to the district in whole or parts as needed to meet its specific educational needs. At adoption, the agency has added to the reporting form an area for the district to note if the innovation plan applies to the entire district, specific campuses, or other.

Comment. Raise Your Hand Texas (RYHT) recommended the definition of *district-level committee* be expanded to include a comparable committee designated in an innovation plan as contemplated by TEC, §12A.007.

RYHT commented that in §102.1301(2), *innovation plan committee* does not appear to be defined but instead appears to address the manner of selecting the committee. RYHT recommended that the definition refer to the committee's role of drafting an innovation plan under TEC, §12A.002, and that the definition as proposed be moved to §102.1305(b).

Agency Response. The agency agrees and has modified the definition of innovation plan committee.

Comment. Texas Classroom Teachers Association (TCTA) recommended the definition of *district-level committee* include more details regarding the proper formation of the committee by including language that the district-level committee is "the legally constituted committee, including elected professional staff representatives as required by TEC, §11.251."

TCTA also noted that, since a separate definition for *innovation plan committee* is included, it is important to address the composition of the district-level committee in its definition as the enabling statute does not necessarily clearly contemplate that the committee developing the local innovation plan be different from the district-level committee, nor does it prohibit the district-level committee from serving both purposes. TCTA suggested language be added to paragraph (2) that clarifies that "the board of trustees could appoint the district-level committee as defined in subdivision (1) to serve as the Innovation Plan committee," which would alert districts to this option and potentially provide a more efficient and time-saving process for districts to use.

Agency Response. The agency agrees that the district-level committee can serve in the role of the innovation plan committee and has modified §102.1301(2) at adoption to provide that clarification. The agency disagrees with including the suggested language to the definition of *district-level committee* since a district-level committee is already defined in statute.

Comment. Texas State Teachers Association (TSTA) recommended the commissioner adopt a definition of *comprehensive educational program* in §102.1301 that requires an explanation and justification for exempted statutes to be included in any program adopted. TSTA recommended that the commissioner also include a requirement to that effect in §102.1307(d), which requires a district to notify the commissioner of the plan with the list of exemptions.

Agency Response. The agency disagrees. The TEC, §12A.003, outlines what an innovation plan must include, and it is left to the district to make an individualized determination of its comprehensive educational program based on its individualized needs.

Comment. RYHT commented that in §102.1303(b), the phrase "begin operation" is ambiguous. RYHT stated that TEC, §12A.001, provides that a district is eligible for designation if the most recent performance rating under TEC, §39.054, is acceptable and that the subsection appears to sanction a district on the basis of a preliminary accountability rating. RYHT believes it is inappropriate to deny district of innovation status based on a preliminary rating since it understands the "most recent performance rating" referenced in TEC, §12A.001, to be the current final rating. RYHT commented that if a preliminary rating can prevent district of innovation designation, it would be helpful to address the effect of a successful appeal of a preliminary rating. RYHT also stated that sanctions for consecutive years of unacceptable performance should be limited to final ratings in the same manner as §102.1315.

Agency Response. The agency agrees in part and has modified §102.1303 at adoption to specify that the board may not vote on the final approval of the innovation plan if the district is assigned either a final or preliminary rating below acceptable performance. The agency disagrees that a preliminary rating cannot be used as a determinative rating, but has modified the rule to address the effect of a successful appeal related to a preliminary rating.

Comment. Texas Association of School Boards (TASB) commented that §102.1305 speaks to consideration of a plan only following a resolution when the statute also anticipates the possibility of a petition. TASB suggested adding "or received a petition at a board meeting" to subsection (a). TASB recommended moving the provision relating to outlining the parameters around which the innovation plan committee may develop the plan from §102.1305(a) to a new subsection (c). TASB agreed that the board should be able to set parameters for the development of a local plan but was concerned that the initial resolution is the wrong time and way to express the parameters. TASB stated that since a district may begin its process with a petition rather than a resolution, limiting the parameter to the initial resolution may not fit every district. TASB commented that the initial resolution is adopted before public input at the public hearing and that the better time to set parameters is after public input, perhaps as a charge to the committee at the time the board creates the committee.

TASB also commented that the timeline requiring a public hearing no later than the next scheduled board meeting may be impossible, both practically in terms of the opportunity to spread the word and raise community interest and legally in terms of the Texas Open Meetings Act notice requirements. TASB suggested replacing "but not later than the next scheduled board of trustees meeting" with "but not later than 30 days."

Agency Response. The agency agrees and has modified §102.1305 at adoption to clarify the reference to a petition, move provisions related to setting parameters for the development of a local plan from subsection (a) to new subsection (c), and specify that the public hearing must be held not later than 30 days after a resolution is adopted or a petition is received.

Comment. ATPE suggested adding "as described by these rules" at the end of §102.1305(c) to indicate that the plan must meet the requirements in rule as well as statute.

Agency Response. The agency agrees and has modified §102.1305(d) to specify that the plan must meet the requirements in rule.

Comment. A representative from North East Independent School District (ISD) requested that the word "regular" be inserted before "board of trustees meeting" in §102.1035(a) to avoid scheduling the consideration of a local innovation plan on a special board meeting night, which may be used for training or addressing a grievance.

Agency Response. The agency disagrees. A district should have maximum flexibility as long as the board complies with the Texas Open Meetings Act notice requirements.

Comment. RYHT suggested that in §102.1305(a), a district be required to hold a public hearing at the next board meeting that occurs more than 15 days after a majority of the district committee has signed a petition to avoid the potential for a district being unable to properly post notice on the agenda item. RYHT also recommended that the requirement to hold a hearing be calculated from delivery of the petition to the superintendent or board president to avoid ambiguity as to when signatures were made and account for any delay in notification of the district leadership.

Agency Response. In response to other comments, the rule has been modified at adoption to state that the public hearing must be held not later than 30 days after receipt of the petition.

Comment. Texas AFT recommended amending §102.1307(a) to make clear that the required "final version" of a local innovation plan proposed for adoption and published by a district under the TEC, §12A.005, must, as specified in the TEC, §12A.003(b)(2), "identify requirements imposed by this code that inhibit the goals of the plan and from which the district should be exempt on adoption of the plan..."

Agency Response. The agency disagrees as it is currently articulated in both statute and rule that the final version is voted on by the board. In addition, the commissioner has no approval authority of the plan, so additional clarification is unnecessary.

Comment. RYHT suggested that in §102.1307(c), it would be appropriate to recognize that a district innovation plan could implement different exemptions at different points in time through effective dates within the plan itself.

Agency Response. The agency disagrees that further clarification is required as there is no provision within §102.1307(c) that prohibits a district from specifying various effective dates. Section 102.1305 states that a board may outline the parameters around which the innovation committee may develop the plan, which may include effective dates.

Comment. The Texas Travel Industry Association, joined by Representative Ryan Guillen, the Texas Hotel & Lodging Association, SeptStart Inc., and representatives from Camp Mystic, Natural Bridge Caverns, Schlitterbahn, and Camp Longhorn, stated opposition to the exemption allowing modification of the school year start date due to the economic impact.

In addition, some commented that under House Bill (HB) 1842, 84th Texas Legislature, 2015, instead of terminating a district's designation, the commissioner has discretion and may permit the district to amend its plan to address concerns specified by the commissioner.

A representative from Camp Mystic also suggested the exemption was in conflict with the Texas Administrative Code and licensing requirements under the Department of State Health Services (DSHS).

Agency Response. The agency provides the following clarification. The TEC, §12A.003(b)(1)(B), specifically allows for modifications to the school day or year. The comment related to licensing requirements under the DSHS is outside the scope of the proposed rulemaking.

Comment. TASB commented that the TEA does not have authority to approve exemptions in innovation plans and recommended replacing §102.1307(d) with "The district shall notify the commissioner of approval of the plan by providing the commissioner a list of exemptions provided for in the plan by completing the agency form. See Figure."

Agency Response. The agency agrees that it does not approve the plans but disagrees with the suggested changes and has determined that the language is sufficient as proposed.

Comment. TASB commented that the figure in §102.1307(d) is intended to facilitate agency reporting but is likely to be understood as an agency-approved list of possible exemptions despite disclaimer. TASB also commented that listing subchapters rather that individual sections reflects an all-or-nothing approach to exemptions.

TASB suggested the figure reflect the TEC, §12A.003(b)(1)(B)-(E), by adding the following to the list of provisions a local plan may include: "6) modifications to the school day or year; 7) provisions regarding the district budget and sustainable program funding; 8) accountability and assessment measures that exceed the requirements of state and federal law; and 9) any other innovations prescribed by the board of trustees."

TASB further suggested including in paragraph 3 on page 1 of the figure even stronger disclaimers such as: "A local innovation plan must identify requirements imposed by the Education Code that inhibit the goals of the plan from which the district should be exempted on adoption of the plan in accordance with Chapter 12A. The local innovation plan controls with regard to the specific exemptions adopted by a district. Please use the form below to report the statutes identified for exemption in your local plan. The form is provided for reporting purposes only. The list of exemptions in the form is not exhaustive, nor is the presence of a statute on this form a guarantee that all sections of a listed code are available for exemption. In its local plan, a district may claim exemption from all or only a portion of any section or subchapter listed on the form or otherwise available for exemption under Chapter 12A. Each district should consult its legal counsel in developing its innovation plan."

Agency Response. The agency agrees with adding to Figure: 19 TAC §102.1307(d) the additional provisions the plan may include as reflected in TEC, §12A.003(b)(1)(B)-(E), and has modified the figure at adoption to include the suggestion. The agency disagrees with modifying the language in paragraph 3 on page 1 of the figure and has determined that the language is sufficient as proposed. Finally, the agency provides clarification that the reporting list in the figure does not include an exhaustive list of exemptions. The agency has provided an avenue to pursue specific exemptions and provide the details to the agency via the form through the "other" section as the statute requires the agency to report exemptions to the legislature.

Comment. RYHT commented that the organization of the figure appears to reflect a legal conclusion that districts may only identify a "requirement" as a complete TEC section or, in some cases, a complete subchapter of the TEC. RYHT commented that if that is the purpose, the agency has exceeded its rulemaking authority, and if that is not the purpose, the organization of the figure is misleading and should not be adopted as a rule when it has no legal effect of controlling the determination of a "requirement" under the statute. RYHT recommended that the agency limit itself to explicit identification of provisions that may not be exempted (as in §102.1309) and not attempt to organize the reporting requirements in a manner that could be construed as indirectly limiting a district's options without legal authority.

Agency Response. The agency disagrees. The figure is organized for reporting purposes, and districts may pursue specific exemptions and provide the details to the agency via the form through the "other" section.

Comment. TCTA commented that Figure: 19 TAC §102.1307(d) requests that a district submit to the commissioner the date the board of trustees adopted a resolution to develop a local innovation plan. TCTA commented that because the proposed rule clearly contemplates that districts will be submitting the agency form upon approval of the local innovation plan and the enabling statute clearly requires more for approval, including the approval of the plan by a majority vote of the district-level committee under TEC, §11.251, and the adoption of the plan by the board of trustees by an affirmative two-thirds vote of its membership, TCTA suggested that the figure require districts to submit the dates of both of these actions as well.

TCTA also recommended that the list of statutory groupings identified by the agency as possible statutes from which innovation districts could indicate their exemption be eliminated because it has the potential to do more harm than good, is arbitrary and inappropriate, and most importantly, does not fulfill the agency's statutory reporting requirements. TCTA recommended that the agency just require districts to list on the form the specific provisions specifically identified in their district's local innovation plan as inhibiting a goal of the plan and how it inhibits a goal. TCTA also stated that the list of statutes compiled and listed by the agency in the figure is arbitrary and capricious and that by identifying certain statutory provisions to the exclusion of others, whether intended or not, the agency appears to be putting its imprimatur on which statutory provisions are of importance from which innovation districts should consider being exempt.

Agency Response. The agency provides the following clarification. Since the agency has a duty to report the exemptions per statute, the reporting list is intended to aid reporting for the agency and districts and provide commonality across the state. The agency has determined it is unnecessary to require the submission dates of approval and adoption of the plan on the form as the notification requirements are already stated in the rules.

Comment. ATPE commented that a district needs to specifically identify TEC sections from which it is exempting itself and that the rules should specify that a district developing an innovation plan is required to affirmatively list the sections of TEC from which it intends to exempt itself and state how compliance with those provisions would inhibit the goals of its plan. ATPE also stated that the check-off list in Figure: 19 TAC §102.1307(d) is inadequate to meet the requirement of TEC, Chapter 12A; provide due notice of the district's plan; or promote thoughtful consideration of the district's actions. ATPE further commented that the commissioner should maintain an exhaustive list of TEC provisions from which a district may exempt itself.

Agency Response. The agency provides the following clarification. The requirement that the plan identify the requirements of the TEC that inhibit the goals of the plan and from which the district should be exempted is already included under §102.1305(b)(2), which states that the local innovation plan shall be developed in accordance with TEC, §12A.003. Additionally, the checklist in the figure is a reporting function for the agency as required in TEC, §12A.004(b)(1), and not intended to be a substitute for the district innovation plan. Lastly, the agency disagrees that the commissioner should maintain an exhaustive list of TEC provisions from which a district may exempt itself and has determined that the current list provides a practical reporting mechanism for ease of meeting the statutory requirements for the districts and agency.

Comment. TASB commented that it understands §102.1309 as a clarification and agrees that it is helpful to districts in the preparation of their local plans. TASB also commented that the commissioner's rulemaking authority would not authorize the agency to include any item in §102.1309(a) that was not already excluded by TEC, Chapter 12A.

Agency Response. The agency agrees that TEC, Chapter 12A, establishes the parameters and prohibitions regarding a district of innovation designation and provides the commissioner rulemaking authority. The agency also notes that the case of *Miami ISD vs. Moses* provides guidance regarding the inclusion or exclusion of certain statutory provisions not specified by the legislature in its enactments. Section 102.1309 provides necessary guidance to districts regarding how the agency will recognize interaction of a district of innovation with the agency's other regulatory responsibilities.

Comment. TSTA commented that TEC, §12A.001, implies that a district is prohibited from exempting itself from any provision of TEC, Chapter 12A, to be authorized and eligible as a district of innovation. TSTA also commented that the commissioner is prohibited from listing any provision of TEC, Chapter 12A, in the list of provisions it shall maintain pursuant to TEC, §12A.004(b)(l), and suggested the commissioner could include in the "Prohibited Exemptions" list under §102.1309 a specific line item referencing TEC, Chapter 12A.

Agency Response. The agency has determined that statute and rule language already address this issue.

Comment. Texas AFT commented that amendment of a district's local innovation plan must comply with TEC, §12A.007. Texas AFT stated that if a district proposes a plan that purports to exempt the district from compliance with TEC, §12A.007, this proposed self-exemption would defeat the purpose of the district of innovation statute, which is to authorize specified exemptions from TEC mandates based on compliance with the conditions for the exercise of this new power granted to districts as set out in TEC, Chapter 12A. Texas AFT also commented that to allow this purported self-exemption from the amendment statute calling for participation in decision-making about amendments by the district-level committee under TEC, §11.251, or a comparable committee would necessarily imply that a local innovation plan could similarly exempt a district from other provisions of TEC, Chapter 12A. Texas AFT lastly commented that §102.1309(b)(2) rightly prohibits any purported self-exemption by a district from meeting conditions imposed by TEC, Chapter 12A, on the district's discretionary exercise of district of innovation authority.

Agency Response. The agency has determined that statute and rule language already address this issue.

Comment. ATPE commented that the prohibited exemption list in §102.1309 is beyond legislative intent.

Agency Response. The agency provides the following clarification. TEC, Chapter 12A, establishes the parameters and prohibitions regarding district of innovation designation and provides the commissioner rulemaking authority. The agency also notes that the case of *Miami ISD vs. Moses* provides guidance regarding the inclusion or exclusion of certain statutory provisions not specified by the legislature in its enactments. Section 102.1309 provides necessary guidance to districts regarding how the agency will recognize interaction of a district of innovation with the agency's other regulatory responsibilities.

Comment. TASB commented that proposed §102.1309(b)(3) is duplicative and recommended deleting the paragraph. TASB commented that it does not agree that the commissioner's rulemaking authority encompasses the power to rewrite TEC, Chapter 12A, by picking and choosing from possible statutory exemptions. TASB commented that it is also unclear on the meaning of the terms *voluntary benefit* and *execution of power* found in §102.1309(b)(1) and (2).

Agency Response. The agency agrees that proposed §102.1309(b)(3) is duplicative and has modified the rule at adoption to delete the paragraph. In addition, §102.1309(b)(1) has been modified at adoption to clarify that an innovation district may not be exempted from a state program in which the district voluntarily participates. Finally, the agency has determined that the term *execution of power* provides the necessary explanation.

Comment. RYHT expressed its concern about language in §102.1309(b)(2) and (3) and asked that both paragraphs be removed or that clearer language be used andstatutory authority be cited. RYHT suggested that §102.1309(b)(2) should at a minimum be rewritten to be limited to "duties" under statutes creating exemptions from requirements that themselves cannot be subject to the innovation plan process. RYHT also commented that §102.1309(b)(3) is vague and inappropriate in the context of this rulemaking as it appears to contemplate the commissioner having the authority to reject an innovation plan or limit its scope by fiat, which clearly exceeds the statutory grant of authority and contemplates rulemaking outside of the required notice and comment process. RYHT commented that this paragraph adds nothing to the existing hearings and federal program authority and should be removed.

RYHT also commented that the organizational structure of proposed §102.1309(a) creates an implication that the agency may define "requirements" and pick and choose which are allowable under the statute. RYHT suggested that §102.1309(a)(4)-(11) could be better organized as a subset of subsection (a)(1) to provide clarity since they are applied to open-enrollment charter schools. RYHT agreed that subsection (a)(12), (13), and (16) and TEC, §45.0031, are part of the system that applies to charters and are not subject to the innovation plan process. RYHT also generally agreed with subsection (a)(14) and (15) but suggested the paragraphs be clarified as to the authority under which they are adopted. RYHT also commented that it understands subsection (a)(14) and TEC, §§45.105, 45.106, 45.202, and 45.203, in subsection (a)(15) to be proposed by virtue of financial accountability in TEC, §12A.004(a)(4). Finally, RYHT commented that TEC, §45.003 and §45.005, in subsection (a)(15) are appropriately implemented constitutional requirements.

Agency Response. The agency agrees that §102.1309(a) should be reorganized for clarity and has modified the rule at adoption to include subsection (a)(4)-(11) as a subset of subsection (a)(1). The agency also agrees that proposed §102.1309(b)(3) should be removed and has modified the rule at adoption to delete the paragraph. The agency disagrees in part and has determined that 19 TAC §102.1309(b)(2) applies to charters should they choose to implement an optional power.

Comment. TASA commented that any changes in rule made by TEA that seek to limit the exemptions available to a district of innovation would be contrary to the clear letter of the law and exceed the agency's rulemaking authority. TASA also commented that the statute clearly states that a local plan may include "modifications to the school day or year" (TEC, §12A.003(b)(1)(B)). TASA stated that if the legislature wanted to exclude the start date, or other provisions in the code, then they would have included those provisions in the delineated list of those sections not subject to exemption or expressly given the agency additional authority to further limit acceptable exemptions.

Agency Response. The agency agrees that a district may modify the school day or year as it is clearly provided for in statute.

Comment. TCTA suggested that the list of prohibited exemptions in §102.1309 include TEC, Chapter 12A, to make clear that innovation districts cannot, as part of being designated as an innovation district under TEC, Chapter 12A, exempt themselves from TEC, Chapter 12A, as part of their local innovation plan or in future amendments to or renewals of the plan. TCTA also commented that the statute provides that innovation districts cannot be exempt from "state curriculum and graduation requirements adopted under Chapter 28" and accordingly, the agency has developed a list of provisions under TEC, Chapter 28, that it has included in the proposed rule from which innovation districts cannot be exempt. TCTA suggested that the list include TEC, §28.021, Student Advancement, since the enabling statute provides that innovation districts cannot be exempt from state curriculum and graduation requirements and TEC, §28.021, addresses student promotion, which is a term encompassing advancement to the next grade level and graduation. TCTA commented that TEC, §§28.0214, Finality of Grade; 28.0216, District Grading Policy; and 28.022, Notice to Parents of Unsatisfactory Performance, should also be included among the list of provisions from which innovation districts cannot be exempt.

Agency Response. The agency has determined that statute and rule language already address a district of innovation being unable to exempt itself from TEC, Chapter 12A. The agency disagrees that the suggested statutes in TEC, Chapter 28, should be included as the sections fall outside the agency's interpretation of graduation requirements.

Comment. TCTA commented that it appreciates the fact that the agency has identified provisions in TEC, Chapter 37, from which innovation districts cannot be exempt but that it is unsure what rational basis the agency has for selecting these particular provisions as opposed to others. TCTA gave an example that while TEC, §37.006 and §37.007, are included in the list and specifically reference TEC, §37.008, the list does not include TEC, §37.008. TCTA suggested that the list include TEC, §37.008, and, for similar reasons, §§37.002, 37.008, 37.123, 37.124, 37.125, and 37.126.

Agency Response. The agency disagrees. The proposed rule primarily provides necessary guidance to districts regarding how the agency will recognize interaction of a district of innovation with the agency's other regulatory responsibilities. While some additional guidance has been provided, §102.1309 does not address every single nuance in specificity.

Comment. TCTA encouraged the inclusion of several chapters of the TEC in the list of laws that are identified in the rules from which innovation districts cannot be exempt, including TEC, Chapter 26, regarding parental rights and responsibilities. TCTA stated that the exclusion of TEC, Chapter 26, is contrary to the premise of parental and community involvement in the development of, and participation in, districts of innovation and strongly recommended that it be included. TCTA commented that, on the similar premise of educator involvement in the development of, and participation in, districts of innovation, it strongly recommended that TEC, Chapter 21, regarding educators, and TEC, Chapter 22, regarding school district employees and volunteers, be included in the list of statutory provisions from which innovation districts cannot be exempt.

Agency Response. The agency disagrees. The proposed rule primarily provides necessary guidance to districts regarding how the agency will recognize interaction of a district of innovation with the agency's other regulatory responsibilities. While some additional guidance has been provided, §102.1309 does not address every single nuance in specificity. TEC, Chapter 26, does not deal with the agency's regulatory oversight of the school district and, therefore, additional guidance at this time is not recommended. In addition, a blanket prohibition for a district of innovation from TEC, Chapters 21 and 22, would exceed the legislative enactment because charter schools are not subject to many provisions in those chapters.

Comment. RYHT commented that the commissioner may only collect information, not reject or limit requirements. RYHT commented that the commissioner approval in the header of TEC, §12A.005, was a drafting error and has no legal right of approval.

Agency Response. The agency agrees that it does not approve the plans.

Comment. A representative from Spring Branch ISD commented that TEC, Chapter 12A, is clear in its attempt to statutorily establish significant local control for districts that are willing to be innovative. The commenter stated that TEC, §12A.004, Limitation of Permissible Exemptions, lists only four areas that districts are not permitted to exempt: state or federal laws applicable to open-enrollment charter schools; certain subchapters of TEC, Chapter 11; state curriculum and graduation requirements in TEC, Chapter 28; and academic and financial accountability in TEC, Chapter 39. The commenter stated that the proposed rules seem to create new limits, restrictions, and layers of complexity that only serve to constrain and inhibit innovation for school districts that are pushing for real school reform. The commenter encouraged the agency to remove from the proposed rules any language that establishes new or tighter constraints for districts of innovation, including additional impermissible exemptions, further restrictions on amending or renewing local innovation plans, and further specificity on the manner in which a particular exemption inhibits goals of a local innovation plan.

Agency Response. The agency disagrees. The broadness of the statute called for clarification specifically related to requirements imposed for charter schools.

Comment. Texas AFT commented that the commissioner, in §102.1309(b)(2) regarding prohibited exemptions, has rightly rejected the notion that a district could secure district of innovation status without demonstrating that it has met the requirements imposed by TEC, Chapter 12A, on the district's discretionary exercise of this extraordinary power. Texas AFT also commented that the rules reflect a sensible construction of the district of innovation statute. Texas AFT lastly commented that to deny the commissioner's authority to determine compliance with the preconditions set out in TEC, Chapter 12A, would violate well-established rules of statutory construction.

Agency Response. The agency has determined that statute and rule language already address this issue.

Comment. Texas AFT commented that a school district may not exempt itself from TEC, §12A.007, as correctly reflected in §102.1309(b)(2). Texas AFT commented that it would violate several well-established rules of statutory construction for the commissioner to permit non-compliance with the amendment provisions of TEC, §12A.007, through the adoption of an exemption from its requirements.

Texas AFT also commented that none of the provisions of TEC, Chapter 12A, are included in the mandatory, non-dischargeable provisions listed in TEC, §12A.004. Texas AFT stated that construing the statute to allow districts to exempt themselves from the statute's operative language through the exemption mechanism in TEC, §12A.004, would permit a district to exempt itself from any of its provisions, including TEC, §12A.006, limiting the term of a district of innovation, and TEC, §12A.008, providing for the commissioner's termination of the designation. Texas AFT stated that a district could even exempt itself from the requirement for board approval of amendments, not just the committee's approval of amendments.

Agency Response. The agency has determined that statute and rule language already address this issue.

Comment. ATPE commented that the commissioner should consider making non-exemptible statutes dealing with teacher and educator quality (TEC, Chapters 21 and 22), school safety (TEC, Chapter 37), and parents' rights (TEC, Chapter 26) as school districts are the primary option for enrollment for Texas children, and the public needs assurances that the primary provider of education in their districts will uphold the school laws of the state of Texas.

Agency Response. The agency disagrees. Section 102.1309 primarily provides necessary guidance to districts regarding how the agency will recognize interaction of a district of innovation with the agency's other regulatory responsibilities. While some additional guidance has been provided, §102.1309 does not address every single nuance in specificity. TEC, Chapter 26, does not deal with the agency's regulatory oversight of the school district and, therefore, additional guidance at this time is not recommended. In addition, a blanket prohibition for a district of innovation from TEC, Chapters 21 and 22, would exceed the legislative enactment because charter schools are not subject to many provisions in those chapters.

Comment. RYHT commented that the maximum term of an innovation plan as five calendar years is unclear and suggested that the plan be allowed to operate for five school years if so designated by the board. RYHT stated that calculating expiration from the agency's receipt of an adopted plan could deprive a district of at least one full school year to implement its decision and potentially create an incentive to delay notification to

the agency. RYHT recommended that a plan be in effect for no more than five years from an effective date set in the plan that is no later than the beginning of the following school year, allowing a district to adopt a plan in the spring to take effect the next school year and have time to thoughtfully plan implementation.

Agency Response. The agency partially agrees as it is currently articulated in both statute and rule that the final version must be voted on by the board, and TEC, §12A.005(c), states that on adoption of the plan a district is designated as a district of innovation for the term as specified in the plan, subject to the five-year term limit. Further, at adoption the agency has added a section to the reporting form in Figure: 19 TAC §102.1307(d) for a district to identify the term of the innovation plan. Since the commissioner has no approval authority of the plan, additional clarification is unnecessary.

Comment. An individual commented that when submitting plans, it would help if the district could specify the plan start date and have the five-year window begin on that date. The commenter stated that allowing districts to renew at any time would also maximize benefits of the legislation. The individual also commented that the current exemptions listed allow districts to create personalized learning options for many students but that removing some of the prohibited exemptions (such as public virtual school) would give even more students those opportunities and broaden the way students can receive curriculum and instruction.

Agency Response. The agency agrees that districts should be allowed to renew at any time and has modified §102.1313(a)(3) at adoption to remove time limits on the renewal period. The agency provides the following clarification regarding the term of designation as a district of innovation. The TEC, §12A.005(c), states that on adoption of the plan a district is designated as a district of innovation for the term as specified in the plan, subject to the five-year term limit. In addition, at adoption the agency has added a section to the reporting form in Figure: 19 TAC §102.1307(d) for a district to identify the term of the innovation plan. The agency disagrees with removing the prohibited exemption related to virtual schools since charter schools are subject to the requirements of virtual schools and under TEC, §12A.004(1), innovation districts are subject to the same requirements as a charter school.

Comment. ATPE recommended a clarification that TEC, §12A.007, is not exemptible either in whole or in part. ATPE also recommended that the rules provide that a district of innovation is prohibited from exempting itself from any provision in TEC, Chapter 12A.

Agency Response. The agency disagrees. Statute and rule language already address this issue.

Comment. RYHT expressed concern with the limitation on renewing an innovation plan to a six-month window every 5 years in proposed §102.1313(3). RYHT strongly recommended that the agency acknowledge the ability of a district under the statute to renew an innovation plan as needed, so long as the district complies with the process for doing so. RYHT stated that at the very least a district needs to be able to renew a plan every two years to respond to legislative changes while maintaining an ability to hire and contract for multiple years to implement the entire plan.

Agency Response. The agency agrees and has modified §102.1313(a)(3) at adoption to remove time limits on the renewal period.

Comment. TCTA commented that since proposed §102.1307 reflects the statutory requirements of TEC, §12A.005, the opening paragraph of proposed §102.1313 should state that "A district innovation plan may be amended, rescinded, or renewed if the action is approved by a majority vote of the district-level committee established under the TEC, §11.251, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees in the same manner as required for initial adoption of a local innovation plan under §102.1307."

Next, TCTA commented that §102.1307 includes a requirement that "The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection." TCTA stated that, given the wording in the three paragraphs following the opening paragraph of proposed §102.1313, it believes the intent of the agency is to appropriately apply the notification requirement in §102.1307 to all three situations: amendments, rescissions, and renewals.

TCTA also commented that the language in proposed §102.1313(1) relating to amendments is ambiguous regarding the term *reviewed.* TCTA suggested that the language needs to be clarified if the agency's intent is that if an amendment does not change exemptions that were already in place in the original approved plan, the amended plan is not required to be submitted to the commissioner. TCTA also suggested that, if this is indeed the agency's intent, then language needs to be added to address the fact that if amendments do change or add exemptions to the original approved plan, they are required to be submitted to the commissioner.

TCTA lastly commented that the clarification would align with TEC, §12A.004(b), which requires the commissioner to maintain a list of provisions from which school districts designated as districts of innovation are exempt and notify the legislature of each provision from which districts enrolling a majority of students in this state are exempt.

Agency Response. The agency agrees that districts should notify the commissioner of any amendment, rescission, or renewal of the plan and has added §102.1313(b) at adoption to include a requirement of notification.

The agency agrees that the voting requirement to amend, rescind, or renew a plan is the same as initial adoption. The agency disagrees that the process to amend, rescind, or renew a plan should be the same as initial adoption and has maintained language in §102.1313(a) as proposed. The agency has determined that the phrase "in the same manner" in TEC, §12A.007, refers to the vote by the committee and board, not to the complete development process.

Comment. TASA commented that §102.1313 includes additional limits on the power of district flexibility in the renewal process but that limits should be only as stated in statute.

Agency Response. The agency agrees and has modified §102.1313(a)(3) at adoption to remove time limits on the renewal period.

Comment. TASA commented that proposed §102.1313(3) requires a district of innovation seeking renewal to review all exemptions and go through the full process of adopting a local innovation plan under §102.1307 but that statute only requires that the renewal of an innovation plan be approved by a vote of the district-level committee or a comparable committee if the district of innovation is exempt from TEC, §11.251. TASA rec-

ommended that the language relating to the renewal of a district of innovation align with statute.

Agency Response. The agency disagrees. To ensure orderly transition and proper public notice, the rule clarifies that all sections of the plan must be reviewed during renewal.

Comment. TASB commented that proposed §102.1313(3), which limits the renewal period to the last six months of a five-year plan, is unnecessarily restrictive. TASB commented that districts may want to include their innovation plans in their ongoing strategic planning and may want to overhaul their innovation plans more frequently or in response to new legislation. TASB also stated that limiting the renewal period to the six months before the end of a plan may lead to an unnecessarily rushed process without adequate public input or even gamesmanship as the deadline for renewal approaches. TASB recommended allowing renewal at any time so long as the district complies with the full adoption process.

Agency Response. The agency agrees and has modified §102.1313(a)(3) at adoption to remove time limits on the renewal period.

Comment. Texans for Education Reform commented that as communities explore the option of a district of innovation, it is critical that core principles afforded in HB 1842 are retained by rule. By freeing districts of innovation from top-down compliance, local school districts can provide timely solutions to local education demands that meet both state expectations and are more custom-tailored in line with local community values and needs.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

Comment. Bullard ISD requested clarification as to the timeline and if May 2, 2016 - June 9, 2016 was the window of opportunity to declare a district as a district of innovation for the 2016-2017 school year.

Agency Response. The agency provides the following clarification. The dates of May 2, 2016, and June 9, 2016, as provided in the item describing the proposed rules, are the earliest possible date of rule adoption and proposed effective date, respectively. A district may at any time, while following the statute and rules, become a district of innovation.

Comment. A representative from San Antonio ISD commented that there are three flexibilities that the individual's board and district leadership team are currently pursuing that will help improve student achievement and make it more likely that families will choose the district to educate their children. The individual commented in support of the rules on HB 1842 and implored the agency to approve these rules and allow districts to become districts of innovation in time for the 2016-2017 school year.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

Comment. ATPE recommended that the rules clearly state that the civil immunity protections and procedures of TEC, Chapter 22, Subchapter B, apply to districts of innovation in order to deter plaintiffs' lawsuits without the need for costly litigation to determine the definition of "requirement" as it applies to districts of innovation and civil immunity from protections and procedures.

Agency Response. The agency agrees and has added the TEC, Chapter 22, Subchapter B, to the prohibited exemptions list in §102.1309(a)(1).

Comment. One hundred eight individuals commented that the commissioner should enforce compliance with TEC, Chapter 12A, and that a district of innovation cannot exempt itself from compliance with the conditions set out in the district of innovation statute. The commenters also stated that, since a district of innovation plan must identify each requirement of law from which the district claims exemption and indicate how it inhibits the goals of the local innovation plan, a plan is legally insufficient if it claims "all permissible" exemptions without identifying each specific exemption and intends to "activate" exemptions later without meeting the conditions for amending a plan. The individuals commented that the commissioner should also reinforce the public notification provision of the statute by expressly stating that the "final version" of the local innovation plan must identify the requirements of the TEC that inhibit the goals of the plan and from which the district would be exempt on adoption of the plan.

Agency Response. The agency has determined that statute and rule language already address this issue. The agency has determined that the identification requirements are already included under §102.1305(b)(2), as the rule states that the local innovation plan shall be developed in accordance with TEC, §12A.003, which requires that the plan identify the requirements of the TEC that inhibit the goals of the plan and from which the district should be exempted. The agency disagrees with clarifying the public notification provision as public notification is a matter to be handled at the local level.

Comment. Spring Branch ISD commented that the agency should consider rules that maximize local control because decisions for a district's students should be made by the local community. The commenter also stated that the agency should follow the laws that are specifically stated.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

Comment. Dripping Springs ISD commented that the rules are clear and reflect legislative intent as local control is critical, especially for rural districts, since each district faces its own challenges. The commenter further stated that districts need to have multiple years to implement innovation plans and then the rules may need to be modified as necessary to provide more control to the districts.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

Comment. A representative from Round Rock ISD commented that the district is currently exploring how the districts of innovation initiative can empower the district to design and implement teaching and learning that meets the needs of the 21st century as well as the flexibilities to be prepared for the next century. The commenter stated that the district plans to use designation as a district of innovation to pursue the goals of day and year flexibility, career and technical education and language instruction, enhanced learning, and the hiring of high-quality instructors.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

Comment. A representative from Pasadena ISD commented that the district plans to use designation as a district of innovation to expand a personalized learning pilot and maximize flexibility to take students to the next level.

Agency Response. Although the comment does not request a change to the proposed rules, the agency acknowledges the input on the process.

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §12A.001, which authorizes districts to be designated as a district of innovation if the district's most recent performance rating under TEC, §39.054, is at least acceptable performance. The designation as a district of innovation may be initiated by a resolution adopted by the board of trustees or a petition signed by a majority of the members of the district-level committee established under TEC, §11.251; TEC, §12A.002, which requires a board of trustees to hold a public hearing to consider if the district should develop a plan for the designation as a district of innovation after adopting a resolution or receiving a petition; TEC, §12A.003, which requires the development of a plan prior to a designation as a district of innovation. This section requires the local innovation plan to provide for a comprehensive educational program and to identify requirements of the TEC that inhibit the plan's goals and from which the district should be exempted. The section provides specific examples of the considerations the plan may include; and TEC, §12A.004, which prohibits a district of innovation from being exempt from requirements that apply to open-enrollment charters; from certain sections of the TEC, Chapter 11; from state curriculum and graduation requirements adopted under the TEC, Chapter 28; and from academic and financial accountability and sanctions under the TEC, Chapter 39. The section requires the commissioner to maintain a list of the exempted provisions and provide notice to the legislature of provisions where districts enrolling a majority of students are exempt; TEC, §12A.005, which imposes requirements related to the local innovation plan that must be met prior to a board of trustees' vote on adopting the proposed innovation plan; TEC, §12A.006, which limits the term of designation as an innovation district to no more than five years; TEC, §12A.007, which authorizes a local innovation plan to be amended, rescinded, or renewed if approved by vote of the district-level committee and board of trustees; TEC, §12A.008, which authorizes the commissioner to terminate an innovation district designation or permit the district to amend its innovation plan after two consecutive years of unacceptable academic or financial performance ratings. The section requires termination after three consecutive years of unacceptable academic or financial performance ratings, or any combination of the two rating systems. This provision makes the commissioner's decision final and not appealable; and TEC, §12A.009, which authorizes the commissioner to adopt rules to implement districts of innovation.

CROSS REFERENCE TO STATUTE. The new sections implement the TEC, §§12A.001-12A.009, as added by HB 1842, 84th Texas Legislature, 2015.

§102.1301. Definitions.

For purposes under this subchapter, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) District-level committee--This term has the meaning assigned by the Texas Education Code (TEC), §11.251, or a comparable committee if the district is exempted (or has exempted itself) from this provision.

(2) Innovation plan committee--A committee appointed by the board of trustees to develop the innovation plan in accordance with statutory requirements. The district-level committee, as described in paragraph (1), may also serve in this role.

(3) Public hearing--An open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation and provides the opportunity for the public to give opinions and comments on the proposed actions.

(4) Public meeting--An open meeting held by the board of trustees that allows members of the public to hear facts about the proposed plan and designation.

(5) Unacceptable academic performance rating--For the purposes of this chapter, the term "unacceptable academic" performance rating means a rating of Improvement Required or Unacceptable Performance or as otherwise indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).

(6) Unacceptable financial accountability rating--For the purposes of this chapter, the term "unacceptable financial" performance rating means a Financial Integrity Rating System of Texas (FIRST) rating of Substandard Achievement as indicated in the applicable year's financial accountability system manual adopted under §109.1001 of this title (relating to Financial Accountability Rating).

§102.1303. Eligibility.

(a) A district is eligible for designation as an innovation district if the district's most recent performance rating under the Texas Education Code (TEC), §39.054, is at least acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title (relating to Accountability Rating System).

(b) A board of trustees may not vote on the final approval of the innovation plan if the district is assigned either a final or preliminary rating below acceptable performance, as indicated in the applicable year's academic accountability manual adopted under §97.1001 of this title. In the event the preliminary rating is changed, the board of trustees may then vote to become an innovation district.

§102.1305. Process Timeline.

(a) If a resolution is adopted by the board of trustees or upon receipt of a petition signed by a majority of the members of the district-level committee, the board of trustees shall hold a public hearing as soon as possible, but not later than 30 days, to consider if the district should develop a local innovation plan for the designation of the district as an innovation district.

(b) At the conclusion of the public hearing, or within 30 days after conclusion of the public hearing, the board of trustees may:

(1) decline to pursue designation of the district as an innovation district; or

(2) appoint an innovation plan committee to develop a local innovation plan in accordance with the TEC, §12A.003.

(c) The board of trustees may outline the parameters around which the innovation plan committee may develop the plan.

(d) Prior to the designation as an innovation district, a local innovation plan must be developed for the school district and shall meet the plan requirements as outlined in the TEC, §12A.003, and described in this subchapter.

(e) The plan must be clearly posted on the district's website for the term of the designation as an innovation district.

§102.1307. Adoption of Local Innovation Plan.

(a) The board of trustees may not vote on adoption of a proposed local innovation plan unless:

(1) the final version of the proposed plan has been available on the district's website for at least 30 days;

(2) the board of trustees has notified the commissioner of education of the board's intention to vote on adoption of the proposed plan; and

(3) the district-level committee established under the Texas Education Code (TEC), §11.251, has held a public meeting to consider the final version of the proposed plan and has approved the plan by a majority vote of the committee members. This public meeting may occur at any time, including up to or on the same date at which the board intends to vote on final adoption of the proposed plan.

(b) A board of trustees may adopt a proposed local innovation plan by an affirmative vote of two-thirds of the membership of the board.

(c) On adoption of a local innovation plan, the district:

(1) is designated as a district of innovation under this subchapter for the term specified in the plan but no longer than five calendar years, subject to the TEC, §12A.006;

(2) shall begin operation in accordance with the plan; and

(3) is exempt from state requirements identified under the TEC, §12A.003(b)(2).

(d) The district shall notify the commissioner of approval of the plan along with a list of approved TEC exemptions by completing the agency form provided in the figure in this subsection.
Figure: 19 TAC §102.1307(d)

(e) A district's exemption described by subsection (c)(3) of this section includes any subsequent amendment or redesignation of an identified state requirement, unless the subsequent amendment or redesignation specifically applies to an innovation district.

§102.1309. Prohibited Exemptions.

(a) An innovation district may not be exempted from the following sections of the Texas Education Code (TEC) and the rules adopted thereunder:

(1) a state or federal requirement, imposed by statute or rule, applicable to an open-enrollment charter school operating under the TEC, Chapter 12, Subchapter D, including, but not limited to, the requirements listed in the TEC, §12.104(b), and:

(A) TEC, Chapter 22, Subchapter B;

(B) TEC, Chapter 25, Subchapter A, §§25.001, 25.002, 25.0021, 25.0031, and 25.004;

(C) TEC, Chapter 28, §§28.002, 28.0021, 28.0023, 28.005, 28.0051, 28.006, 28.016, 28.0211, 28.0213, 28.0217, 28.025, 28.0254, 28.0255, 28.0258, 28.0259, and 28.026;

(D) TEC, Chapter 29, Subchapter G;

(E) TEC, Chapter 30, Subchapter A;

(F) TEC, §30.104;

(G) TEC, Chapter 34;

(H) TEC, Chapter 37, §§37.006(l), 37.007(e), 37.011, 37.012, 37.013, and 37.020; and

(I) TEC, Chapter 39;

(2) TEC, Chapter 11, Subchapters A, C, D, and E, except that a district may be exempt from the TEC, §11.1511(b)(5) and (14) and §11.162;

(3) TEC, Chapter 13;

(4) TEC, Chapter 41;

(5) TEC, Chapter 42;

(6) TEC, Chapter 44, §§44.0011, 44.002, 44.003, 44.004, 44.0041, 44.005, 44.0051, 44.006, 44.007, 44.0071, 44.008, 44.009, 44.011, 44.0312, 44.032, 44.051, 44.052, 44.053, and 44.054;

(7) TEC, Chapter 45, §§45.003, 45.0031, 45.005, 45.105, 45.106, 45.202, 45.203; and

(8) TEC, Chapter 46.

(b) In addition to the prohibited exemptions specified in subsection (a) of this section, an innovation district may not be exempted from:

(1) a requirement of a grant or other state program in which the district voluntarily participates;

(2) duties that the statute applies to the execution of that power if a district chooses to implement an authorized power that is optional under the terms of the statute; and

(3) requirements imposed by provisions outside the TEC, including requirements under the Texas Government Code, Chapter 822.

§102.1313. Amendment, Rescission, or Renewal.

(a) A district innovation plan may be amended, rescinded, or renewed if the action is approved by a majority vote of the district-level committee established under the Texas Education Code (TEC), §11.251, or a comparable committee if the district is exempt from that section, and a two-thirds majority vote of the board of trustees.

(1) Amendment. An amendment to an approved plan does not change the date of the term of designation as an innovation district. Exemptions that were already formally approved are not required to be reviewed.

(2) Rescission. A district must notify the Texas Education Agency within five business days of rescission and provide a date at which time it will be in compliance with all sections of the TEC, but no later than the start of the following school year.

(3) Renewal. During renewal, all sections of the plan and exemptions shall be reviewed and the district must follow all components outlined in §102.1307 of this title (relating to Adoption of Local Innovation Plan).

(b) The district shall notify the commissioner of education of any actions taken pursuant to subsection (a) of this section along with the associated TEC exemptions and local approval dates.

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 August 24, 2016.

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Texas Education Agency
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Proposal publication date: April 1, 2016
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 3. LANDSCAPE ARCHITECTS

The Texas Board of Architectural Examiners (Board) adopts amendments to §3.174, concerning Complaint Process; §3.177, concerning Administrative Penalty Schedule; and §3.232, concerning Board Responsibilities. The amendments are adopted without changes to the proposed text published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4925).

Reasoned Justification. The amendments to §3.174 update the Board's requirements relating to the issuance of warnings in disciplinary matters involving violations of the Board's laws and rules concerning the practice of landscape architecture. The adopted rule clarifies that a warning is available only if the violation in question is the sole violation of the Board's laws and rules, and the respondent has not previously been subject to a Board warning or order. The purpose of these amendments is to provide greater clarity of the long-standing practice of the Board, and to give the executive director more definite guidance in the issuance of warnings.

Additionally, adopted subsection (j)(4) identifies the specific violations of the Board's laws and rules that may be resolved with a warning. Previously, the rule stated that a warning could be issued if the guidelines in §3.232 recommended an administrative penalty or reprimand as an appropriate sanction. This language created some confusion about whether the rule could be interpreted to mean that a warning was available if the guidelines recommended an administrative penalty but not a reprimand, or the guidelines recommended other penalties in addition to an administrative penalty or reprimand. This was not the interpretation of the Board, and the rule change will eliminate this issue by specifically identifying violations of the Board's rules that are appropriate for the issuance of a warning. The adopted rule will provide more definite guidance for the executive director and aligns with current Board practices in issuing warnings.

Additionally, the adopted rule clarifies that the issuance of a warning is at the sole discretion of the executive director and is not an available sanction following a contested case under the Administrative Procedure Act. This is consistent with current Board practice and the Board's interpretation of the previous rule.

Additionally, former §3.174(j)(1) has been repealed. This subsection required the Board, prior to approval of a proposed settlement agreement, to notify a complainant of the terms of any agreement, and the date, time, and location of the meeting during which the Board would consider the agreement. The previous rule implemented procedures that were more strenuous than the statutory requirement under Texas Occupational Code §1051.253, which requires the Board to provide all complainants with a quarterly status update of the Board's investigation until disposition of the complaint. The repealed rule is unnecessary to protect the complainant's role in the investigative process, in that, in addition to quarterly status updates, each complainant is given an opportunity to provide documentary evidence and testimony regarding any alleged violation, and under §3.174(m), any complainant may file a request for reconsideration of any dismissed complaint. Furthermore, in situations where a complainant sought to provide testimony on a proposed settlement, application of the repealed rule could have led to the Board's inappropriate consideration of evidence outside of the administrative record, if the settlement was rejected by the Board and the case referred to SOAH for formal adjudication. The determination of the appropriate sanction in a disciplinary action is a matter of law that is wholly within the purview of the Board, and any marginal benefit of complainant testimony during the consideration of a proposed settlement is outweighed by the danger presented by potential violations of the Administrative Procedure Act, as described.

The adopted amendments to §3.177 revise the Board's rule relating to the imposition of administrative penalties due to violations of the Board's laws and rules concerning the practice of landscape architecture. First, the adopted rule alters the Board's process for imposing a minor, moderate, or major penalty. Previously, the rule directed the Board to identify a given violation as minor, moderate, or major based upon an analysis of three factors: seriousness of misconduct, economic harm, and sanction history. The consideration of "seriousness of misconduct" under the previous rule was heavily dependent on proving the state of mind of the respondent. The determination of negligence, gross negligence, or recklessness is subjective, and could result in an unpredictable battle of experts at hearing. Uncertainty regarding penalty recommendations following a hearing inhibits informed consideration of proposed settlement by staff, the Board, and respondents. Furthermore, the precedence placed on disciplinary history and economic harm in recommending a sanction level under the previous rule could have resulted in an otherwise serious violation being considered minor if the respondent did not have disciplinary history or the Board lacked evidence on economic harm, which is often the case. In light of these concerns, paragraph (1) of the adopted rule repeals the three-factor analysis, and instead states that particular violations of the Board's laws and rules are appropriate for minor, moderate, or major penalties, as identified. The Board has determined that the adopted rule will result in more predictable determinations of penalty amounts, and that these determinations will be more consistent with the Board's understanding of the severity of any given violation.

Additionally, the adopted rule increases the maximum penalties for minor and moderate penalties from $500 to $1,000, and $2,000 to $3,000, respectively. This allows the Board greater flexibility in determining the appropriate administrative penalty, and, along with the maximum penalty of $5,000 for major violations, results in a more even distribution of minor, moderate, and major penalties within the $0 - $5,000 administrative penalty range established under Texas Occupational Code §1051.452(a).

Additionally, the adopted rule directs the Board to consider the factors in §3.141(c) and/or §3.165(f) in determining the specific amount of an administrative penalty within the minor, moderate, or major penalty range, or in determining the appropriate administrative penalty for a violation of the Board's laws or rules that has not been specifically defined as a minor, moderate, or major

violation. The adopted rule enables the Board to impose an increased administrative penalty if the respondent has previously been found to have violated the Board's laws or rules, or if the respondent has committed multiple violations of the Board's laws or rules, and to consider each sheet of plans issued in violation of the Board's laws as a separate violation. Finally, the adopted rule clarifies the Board's authority to impose administrative penalties in addition to other sanctions, such as revocation, suspension, or a refusal to renew a registration. These amendments provide greater notice to the public of the Board's processes in determining administrative penalties, allows case-by-case analysis of relevant facts to determine appropriate administrative penalties in disciplinary matters, and provides greater guidance to the Board that will promote more predictable and consistent determinations of administrative penalty amounts.

The adopted amendments to §3.232 revise the Board's guidelines that are used to identify the range of sanctions, in addition to administrative penalties, that are appropriate for certain violations of the Board's laws and rules concerning the practice of landscape architecture. These sanctions include suspension, probated suspension, revocation, denial of registration, denial of reapplication, and probationary initial registration. The adopted amendments eliminate a reprimand as a potential ground for discipline. This amendment updates the Board rules to become more consistent with current Board practices, given that a reprimand has not been imposed since 2004.

Additionally, the adopted amendments include the addition of statutory and rule violations that were not previously included in the guidelines. This will allow the guidelines to be more comprehensive, and result in greater predictability in the imposition of disciplinary action.

Additionally, the adopted amendments delete procedural information relating to filing of exceptions and replies to exceptions. The former rule provided twenty days to file exceptions and fifteen days to file replies. This differs from the rule at the State Office of Administrative Hearings (1 Texas Administrative Code §155.507), which allows 15 days for each. In order to simplify the Board's regulations and procedures, the rule has been deleted, and the Board will rely upon SOAH's rule.

Additionally, the adopted rule implements Government Code §2001.141, which requires a final decision or order to include a ruling on each proposed finding of fact or conclusion of law submitted by a party under an agency rule. This rule change will allow the Board or respondent to submit particular issues to a SOAH judge, thereby providing focus on matters that are most relevant to any given case.

Finally, the adopted amendment clarifies the Board's authority to impose administrative penalties in addition to other sanctions, such as revocation, suspension, or a refusal to renew a registration, and to impose a more severe sanction for a respondent who has previous disciplinary history with the Board. This allows the Board greater flexibility in making determinations relating to sanctions, and is consistent with historical Board practices.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §3.174, §3.177

Statutory Authority.

The amendments are adopted under the Occupations Code §§1051.202, 1051.252, 1051.401, 1051.451, 1051.452, 1051.501, 1052.251, and 1052.252.

Section 1051.202 provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

Section 1051.252 requires the board to adopt rules to establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients, including procedures regarding sanctions.

Section 1051.401 requires the Board to establish procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by the board.

Section 1051.451 authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053, regardless of whether the person holds a certificate of registration.

Section 1051.452 requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Section 1051.501 grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053.

Section 1052.251, authorizes the Board to revoke, suspend, or refuse to renew a certificate of registration; reprimand a certificate holder; or impose an administrative penalty on a person following a determination that a ground for discipline exists under §1052.252. Additionally, the Board is authorized to place a registrant on probated suspension, which could include regular reports to the Board, practice limitations, or remedial education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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

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

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §3.232

Statutory Authority.

The amendments are adopted under the Occupations Code §§1051.202, 1051.252, 1051.401, 1051.451, 1051.452, 1051.501, 1052.251, and 1052.252.

Section 1051.202 provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

Section 1051.252 requires the board to adopt rules to establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients, including procedures regarding sanctions.

Section 1051.401 requires the Board to establish procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by the board.

Section 1051.451 authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053, regardless of whether the person holds a certificate of registration.

Section 1051.452 requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Section 1051.501 grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053.

Section 1052.251, authorizes the Board to revoke, suspend, or refuse to renew a certificate of registration; reprimand a certificate holder; or impose an administrative penalty on a person following a determination that a ground for discipline exists under §1052.252. Additionally, the Board is authorized to place a registrant on probated suspension, which could include regular reports to the Board, practice limitations, or remedial education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER I. DISCIPLINARY ACTION

22 TAC §5.184, §5.187

Introduction. The Texas Board of Architectural Examiners (Board) adopts amendments to §5.184, concerning Complaint Process; §5.187, concerning Administrative Penalty Schedule; and §5.242, concerning Board Responsibilities. Section 5.187 is adopted with one change to the proposed text as published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4930) and will be republished.

Reasoned Justification. The amendments to §5.184 update the Board's requirements relating to the issuance of warnings in disciplinary matters involving violations of the Board's laws and rules concerning the practice of registered interior design. The adopted rule clarifies that a warning is available only if the violation in question is the sole violation of the Board's laws and rules, and the respondent has not previously been subject to a Board warning or order. The purpose of these amendments is to provide greater clarity of the longstanding practice of the Board, and to give the executive director more definite guidance in the issuance of warnings.

Additionally, adopted subsection (j)(4) identifies the specific violations of the Board's laws and rules that may be resolved with a warning. Previously, the rule stated that a warning could be issued if the guidelines in §5.242 recommended an administrative penalty or reprimand as an appropriate sanction. This language created some confusion about whether the rule could be interpreted to mean that a warning was available if the guidelines recommended an administrative penalty but not a reprimand, or the guidelines recommended other penalties in addition to an administrative penalty or reprimand. This was not the interpretation of the Board, and the rule change will eliminate this issue by specifically identifying violations of the Board's rules that are appropriate for the issuance of a warning. The adopted rule will provide more definite guidance for the executive director and aligns with current Board practices in issuing warnings.

Additionally, the adopted rule clarifies that the issuance of a warning is at the sole discretion of the executive director and is not an available sanction following a contested case under the Administrative Procedure Act. This is consistent with current Board practice and the Board's interpretation of the previous rule.

Additionally, former §5.184(j)(1) has been repealed. This subsection required the Board, prior to approval of a proposed settlement agreement, to notify a complainant of the terms of any agreement, and the date, time, and location of the meeting during which the Board would consider the agreement. The previous rule implemented procedures that were more strenuous than the statutory requirement under Tex. Occ. Code Sec. 1051.253, which requires the Board to provide all complainants with a quarterly status update of the Board's investigation until disposition of the complaint. The repealed rule is unnecessary to protect the complainant's role in the investigative process, in that, in addition to quarterly status updates, each complainant is given an opportunity to provide documentary evidence and testimony regarding any alleged violation, and under §5.184(m), any complainant may file a request for reconsideration of any dismissed complaint. Furthermore, in situations where a complainant sought to provide testimony on a proposed settlement, application of the repealed rule could have led to the Board's inappropriate consideration of evidence outside of the administrative record, if the settlement was rejected by the Board and the case referred to SOAH for formal adjudication. The determination of the appropriate sanction in a disciplinary action is a matter of law that is wholly within the purview of the Board, and any marginal benefit of complainant testimony during the consideration of a proposed settlement is outweighed by the danger presented by potential violations of the Administrative Procedure Act, as described.

The adopted amendments to §5.187 revise the Board's rule relating to the imposition of administrative penalties due to violations of the Board's laws and rules concerning the practice of registered interior design. First, the adopted rule alters the Board's

process for imposing a minor, moderate, or major penalty. Previously, the rule directed the Board to identify a given violation as minor, moderate, or major based upon an analysis of three factors: seriousness of misconduct, economic harm, and sanction history. The consideration of "seriousness of misconduct" under the previous rule was heavily dependent on proving the state of mind of the respondent. The determination of negligence, gross negligence, or recklessness is subjective, and could result in an unpredictable battle of experts at hearing. Uncertainty regarding penalty recommendations following a hearing inhibits informed consideration of proposed settlement by staff, the Board, and respondents. Furthermore, the precedence placed on disciplinary history and economic harm in recommending a sanction level under the previous rule could have resulted in an otherwise serious violation being considered minor if the respondent did not have disciplinary history or the Board lacked evidence on economic harm, which is often the case. In light of these concerns, paragraph (1) of the adopted rule repeals the three-factor analysis, and instead states that particular violations of the Board's laws and rules are appropriate for minor, moderate, or major penalties, as identified. The Board has determined that the adopted rule will result in more predictable determinations of penalty amounts, and that these determinations will be more consistent with the Board's understanding of the severity of any given violation.

Additionally, the adopted rule increases the maximum penalties for minor and moderate penalties from $500 to $1,000, and $2,000 to $3,000, respectively. This allows the Board greater flexibility in determining the appropriate administrative penalty, and, along with the maximum penalty of $5,000 for major violations, results in a more even distribution of minor, moderate, and major penalties within the $0 - $5,000 administrative penalty range established under Tex. Occ. Code Sec. 1051.452(a).

Additionally, the adopted rule directs the Board to consider the factors in §5.151(c) and/or §5.175(f) in determining the specific amount of an administrative penalty within the minor, moderate, or major penalty range, or in determining the appropriate administrative penalty for a violation of the Board's laws or rules that has not been specifically defined as a minor, moderate, or major violation. The adopted rule enables the Board to impose an increased administrative penalty if the respondent has previously been found to have violated the Board's laws or rules, or if the respondent has committed multiple violations of the Board's laws or rules, and to consider each sheet of plans issued in violation of the Board's laws as a separate violation. Note that paragraph (6)(B) of the proposed rule stated that "each sheet of *architectural* plans and specifications created or issued in violation of the Board's laws and rules shall be considered a separate violation." The inclusion of the term "architectural" in this submission was in error, because plans issued under the authority of Occupations Code Chapter 1053 and Chapter 5 of the Board's rules are not "architectural" plans. For this reason, the term "architectural" has been omitted in the adopted rule. Finally, the adopted rule clarifies the Board's authority to impose administrative penalties in addition to other sanctions, such as revocation, suspension, or a refusal to renew a registration. These amendments provide greater notice to the public of the Board's processes in determining administrative penalties, allows case-by-case analysis of relevant facts to determine appropriate administrative penalties in disciplinary matters, and provides greater guidance to the Board that will promote more predictable and consistent determinations of administrative penalty amounts.

The adopted amendments to §5.242 revise the Board's guidelines that are used to identify the range of sanctions, in addition to administrative penalties, that are appropriate for certain violations of the Board's laws and rules concerning the practice of registered interior design. These sanctions include suspension, probated suspension, revocation, denial of registration, denial of reapplication, and probationary initial registration. The adopted amendments eliminate a reprimand as a potential ground for discipline. This amendment updates the Board rules to become more consistent with current Board practices, given that a reprimand has not been imposed since 2004.

Additionally, the adopted amendments include the addition of statutory and rule violations that were not previously included in the guidelines. This will allow the guidelines to be more comprehensive, and result in greater predictability in the imposition of disciplinary action.

Additionally, the adopted amendments delete procedural information relating to filing of exceptions and replies to exceptions. The former rule provided twenty days to file exceptions and fifteen days to file replies. This differs from the rule at the State Office of Administrative Hearings (1 Tex. Admin. Code §155.507), which allows 15 days for each. In order to simplify the Board's regulations and procedures, the rule has been deleted, and the Board will rely upon SOAH's rule.

Additionally, the adopted rule implements Government Code §2001.141, which requires a final decision or order to include a ruling on each proposed finding of fact or conclusion of law submitted by a party under an agency rule. This rule change will allow the Board or respondent to submit particular issues to a SOAH judge, thereby providing focus on matters that are most relevant to any given case.

Finally, the adopted amendment clarifies the Board's authority to impose administrative penalties in addition to other sanctions, such as revocation, suspension, or a refusal to renew a registration, and to impose a more severe sanction for a respondent who has previous disciplinary history with the Board. This allows the Board greater flexibility in making determinations relating to sanctions, and is consistent with historical Board practices.

Summary of Comments and Agency Response. The Board did not receive any comments on the proposed rule.

Statutory Authority.

The amendments are adopted under the Occupations Code §§1051.202, 1051.252, 1051.401, 1051.451, 1051.452, 1051.501, 1053.251, and 1053.252.

Section 1051.202 provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

Section 1051.252 requires the board to adopt rules to establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients, including procedures regarding sanctions.

Section 1051.401 requires the Board to establish procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by the board.

Section 1051.451 authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051, 1052, or 1053, regardless of whether the person holds a certificate of registration.

Section 1051.452 requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Section 1051.501 grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053.

Section 1053.251 authorizes the Board to revoke, suspend, or refuse to renew a certificate of registration; reprimand a certificate holder; or impose an administrative penalty on a person following a determination that a ground for discipline exists under §1053.252. Additionally, the Board is authorized to place a registrant on probated suspension, which could include regular reports to the Board, practice limitations, or remedial education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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

§5.187. Administrative Penalty Schedule.

If the Board determines that an administrative penalty is the appropriate sanction for a violation of any of the statutory provisions or rules enforced by the Board, the following guidelines shall be applied to guide the Board's assessment of an appropriate administrative penalty:

(1) In determining whether a minor, moderate, or major penalty is imposed under subsection (2) of this rule, the following classifications shall apply:

Figure 22 TAC §5.187(1) (No change.)

(2) After determining whether the violation is minor, moderate, or major, the Board shall impose an administrative penalty as follows:

(A) Minor violations-an administrative penalty of not more than $1,000 shall be imposed.

(B) Moderate violations-an administrative penalty of not more than $3,000 shall be imposed.

(C) Major violations-an administrative penalty of not more than $5,000 shall be imposed.

(3) In determining the specific amount of an administrative penalty within the minor, moderate, or major range, the Board shall consider the factors outlined in Board Rules 5.151(c) and/or 5.175(f).

(4) If a violation of the Board's laws or rules is not specifically defined in subsection (1) as a minor, moderate, or major violation, the Board shall consider the factors outlined in Board Rules 5.151(c) and/or 5.175(f) in determining an appropriate administrative penalty.

(5) Previous Disciplinary History - If the respondent was previously found to have violated the Board's laws or rules in a warning or Order of the Board, then any subsequent disciplinary action may be considered at the next higher level of severity.

(6) Multiple Violations

(A) The administrative penalty ranges discussed in subsection (2) are to be applied to each individual violation of the Board's laws and rules. If a respondent has violated multiple laws and/or rules, or has committed multiple violations of a single law or rule, the Respondent shall be subject to a separate administrative penalty for each violation.

(B) Each sheet of plans and specifications created or issued in violation of the Board's laws and rules shall be considered a separate violation for purposes of calculating the total administrative penalty under subsection (6)(A).

(C) In the case of a continuing violation, each day a violation continues or occurs shall be considered a separate violation for purposes of calculating the total administrative penalty under subsection (6)(A).

(7) The administrative penalties set out in this section may be considered in addition to any other disciplinary actions, such as revocation, suspension, or refusal to renew a registration.

(8) If the facts of a case are unique or unusual, the Board may suspend the guidelines described in this section.

(9) A Registered Interior Designer, a Candidate, or an Applicant who fails, without good cause, to provide information to the Board under §5.181 of this subchapter (relating to Responding to Request for Information) is presumed to be interfering with and preventing the Board from fulfilling its responsibilities. A violation of §5.181 of this subchapter shall be considered a moderate violation if a complete response is not received within 30 days after receipt of the Board's written inquiry. An additional 15 day delay constitutes a moderate violation, and each 15 day delay thereafter shall be considered a separate major violation of these rules.

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

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

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SUBCHAPTER K. HEARINGS--CONTESTED CASES

22 TAC §5.242

Statutory Authority.

The amendments are adopted under the Occupations Code §§1051.202, 1051.252, 1051.401, 1051.451, 1051.452, 1051.501, 1053.251, and 1053.252.

Section 1051.202 provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapters 1051, 1052, and 1053 of the Texas Occupations Code.

Section 1051.252 requires the board to adopt rules to establish a comprehensive procedure for receiving and adjudicating complaints from consumers and service recipients, including procedures regarding sanctions.

Section 1051.401 requires the Board to establish procedures by which a decision to suspend or revoke or a refusal to renew a certificate of registration is made by the board.

Section 1051.451 authorizes the Board to impose an administrative penalty on a person who engages in conduct for which the person is subject to disciplinary action under Chapters 1051,

1052, or 1053, regardless of whether the person holds a certificate of registration.

Section 1051.452 requires the Board to adopt an administrative penalty schedule for violations of Board laws and rules to ensure that the amounts of penalties imposed are appropriate to the violation.

Section 1051.501 grants the board general enforcement authority to ensure that enforcement action is taken against a person who violates Chapters 1051, 1052, or 1053.

Section 1053.251 authorizes the Board to revoke, suspend, or refuse to renew a certificate of registration; reprimand a certificate holder; or impose an administrative penalty on a person following a determination that a ground for discipline exists under §1053.252. Additionally, the Board is authorized to place a registrant on probated suspension, which could include regular reports to the Board, practice limitations, or remedial education until the person attains a degree of skill satisfactory to the board in those areas that are the basis of the probation.

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

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PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

CHAPTER 153. RULES RELATING TO PROVISIONS OF THE TEXAS APPRAISER LICENSING AND CERTIFICATION ACT

22 TAC §153.5

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.5, Fees, without changes to the proposed text as published in the May 27, 2016 issue of the *Texas Register* (41 TexReg 3809). The amendments add a reference to the fee for voluntary appraiser trainee experience reviews previously adopted by the Board in 22 TAC §153.22. The amendments also add a new fee for fingerprint-based criminal history checks or other related services as recommended by the Working Group for AQB Criminal History Check Criteria.

The reasoned justification for the amendments is to align this rule with 22 TAC §153.22 previously adopted by TALCB at its meeting on February 19, 2016, and to allow TALCB to recover the costs of fingerprint-based criminal history checks from license holders as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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22 TAC §153.9

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.9, Applications, without changes to the proposed text as published in the May 27, 2016 issue of the *Texas Register* (41 TexReg 3810). The amendments implement fingerprint-based criminal history checks for license applicants and clarify when the Board may terminate an application.

The reasoned justification for the amendments is to provide clarity to license holders and to implement fingerprint-based criminal history checks as required by the Appraiser Qualifications Board (AQB) and as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §§1103.151 - 1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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22 TAC §153.12

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts new 22 TAC §153.12, Criminal History Checks, without changes to the text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3812). This new rule implements fingerprint-based criminal history checks for applicants and license holders to comply with criteria adopted by the Appraiser Qualifications Board (AQB).

No comments were received on the new rule as proposed.

The reasoned justification for the rule is to implement fingerprint-based criminal history checks as required by the Appraiser Qualifications Board (AQB) and as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

This rule is adopted under Texas Occupations Code §1103.151 and §1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by this rule is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the rule.

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

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22 TAC §153.16

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.16, Licensing Reinstatement, without changes to the text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3814). The amendments implement fingerprint-based criminal history checks for applicants who apply for license reinstatement.

No comments were received on the amendments as proposed.

The reasoned justification for the amendments is to implement fingerprint-based criminal history checks as required by the Appraiser Qualifications Board (AQB) and as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

The amendments are adopted under Texas Occupations Code §1103.151 and §1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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22 TAC §153.17

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.17, Renewal or Extension of License, without changes to the text as published in the May 27, 2016, issue of the *Texas Register* (41 TexReg 3816). The amendments implement fingerprint-based criminal history checks for license holders when renewing their license.

No comments were received on the amendments as proposed.

The reasoned justification for the amendments is to implement fingerprint-based criminal history checks as required by the Appraiser Qualifications Board (AQB) and as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

The amendments are adopted under Texas Occupations Code §1103.151 and §1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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22 TAC §153.23

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.23, Inactive Status, without changes to the proposed text as published in the May 27, 2016 issue of the *Texas Register* (41 TexReg 3817). The amendments implement fingerprint-based criminal history checks for license holders with an inactive license and license holders who seek to renew an expired license on inactive status.

No comments were received on the amendments as proposed.

The reasoned justification for the amendments is to implement fingerprint-based criminal history checks as required by the Appraiser Qualifications Board (AQB) and as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

The amendments are adopted under Texas Occupations Code §§1103.151 -.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

The amendments are adopted under Texas Occupations Code §§1103.151 - 1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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22 TAC §153.25

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.25, Temporary Out-of-State Appraiser License, without changes to the proposed text as published in the May 27, 2016 issue of the *Texas Register* (41 TexReg 3818). The amendments clarify the requirements an applicant must satisfy when applying for a temporary out-of-state license.

No comments were received on the amendments as proposed.

The reasoned justification for the amendments is to align this rule with federal law and criteria adopted by the Appraiser Qualifications Board (AQB) and to provide clarity for applicants.

The amendments are adopted under Texas Occupations Code §§1103.151 - 1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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22 TAC §153.27

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.27, License by Reciprocity, without changes to the text as published in the May 27, 2016 issue of the *Texas Register* (41 TexReg 3819). The amendments implement fingerprint-based criminal history checks for applicants who apply for a license by reciprocity.

No comments were received on the amendments as proposed.

The reasoned justification for the amendments is to implement fingerprint-based criminal history checks as required by the Appraiser Qualifications Board (AQB) and as authorized by the 84th Legislature and recommended by the Working Group for AQB Criminal History Check Criteria.

The amendments are adopted under Texas Occupations Code §§1103.151 - 1103.152, which authorize TALCB to adopt rules relating to certificates and licenses and prescribe qualifications for license holders that are consistent with the qualifications established by the AQB, and Texas Occupations Code §1103.2031, which authorizes TALCB to adopt rules implementing fingerprint-based background checks.

The statute affected by these amendments is Chapter 1103, Texas Occupations Code. No other statute, code or article is affected by the amendments.

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

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH STATE SERVICES

CHAPTER 73. LABORATORIES

25 TAC §73.54, §73.55

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §73.54 and §73.55, concerning the laboratory fees for clinical and newborn screening and chemical analysis. Sections 73.54 and 73.55 are adopted without changes to the proposed text as published in the June 3, 2016, issue of the *Texas Register* (41 TexReg 3972) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The amendments are necessary to comply with Texas Health and Safety Code, §12.032(c), which requires the department to adopt fees to be collected by the department from a person who receives public health services from the department. The amendments update the laboratory fee schedule to incorporate new laboratory tests, adjust fees associated with testing, and delete low volume laboratory tests. A low volume test is defined as a test that was ordered less than 100 times in fiscal year 2015, and is not considered a core public health test. These low volume tests are readily available at commercial laboratories.

The department uses a standardized formula to set fees to reflect the current actual costs. Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011, required that the department: (1) develop, document, and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for the provision of laboratory tests; and (2) analyze the department's costs and update the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). In a past rulemaking action (adopted October 2012), the Laboratory Services Section (LSS) developed and documented a cost accounting methodology and determined the costs for each test listed in the fee schedule. The methodology for determining the cost per test included calculating the specific costs of performing a test or analysis, and the administrative and overhead costs necessary to operate the state laboratories in question. It is these figures together which determined the fee amount for each of the tests in these fee schedules. In order to determine the specific cost for each test or analysis, the LSS performed a work load unit study for every procedure or test offered by the laboratory. A "work load unit" is defined as a measurement of staff time, consumables, and testing reagents required to perform each procedure from the time the sample enters the laboratory until the time the results are reported. More than 3,000 procedures performed by the department's LSS were included in this analysis. These procedures translated to approximately 700 different tests listed in the department fee schedule. It was understood at that time that the department would need to make periodic subsequent changes to its fee schedule in the rules in order to reflect changes in actual cost over time. Whenever such rulemaking actions are proposed, LSS employs the same fee calculation methodology mandated by law in 2011. In the current rulemaking adoption, this same approach was employed on a much smaller number of tests.

Currently, the Newborn Screening (NBS) Program is not able to recover the cost of testing and follow-up on abnormal screens because the cost to perform these activities is far more than is represented by the current fee of $33.60, the 10th lowest fee in the United States. The increase of the NBS fee to $55.24 would make Texas' fee the 13th lowest in the nation.

The NBS fee is composed of LSS and clinical care coordination costs. In addition to the components included in the cost accounting module reference in the Background and Purpose, clinical care coordination costs for care coordination at the department's central office, case management in health service regions, and client benefits are also included in the fee for NBS.

The LSS portion of the fee is $48.67, and the clinical care coordination portion is $6.57.

There are many factors that contributed to the need for an increased fee for the NBS panel.

-NBS testing panel costs have not been reviewed since 2011.

-Cost to add severe combined immunodeficiency (SCID) screening in 2012 was an estimate. A work-load unit study was done recently to determine the exact direct cost.

-Increase in testing reagents and consumables costs for NBS testing.

-Contract with the vendor has increased 9.88% since 2011.

-Costs for SCID screening reagents/consumables have increased up to 22.30% since implementation in 2012.

-Correction of a previous calculation error for tandem mass spectrometry screening reagent costs and addition of costs for tandem mass spectrometry instrument replacement consumables: an increase of $3.25 per specimen.

-Inclusion of the cost for 2nd tier DNA analysis tests: an increase of $1.50 per specimen.

-Addition of secondary targets to the NBS panel.

-Increase in overall operating costs, including salary, fringe, charity testing, server, and indirect costs.

-The NBS Program uses public health services fees to fund clinical care coordination at the department's central office, case management in Health Service Regions, and client benefits. The expenditures have increased over 75% from $1,007,394 in Fiscal Year 2011 to $1,770,253 in Fiscal Year 2015. The NBS Program has consulted with the department's Budget Section staff to identify that $1.8 million in the public health service fees will be needed to continue existing services.

The adopted amendments comport with Texas Health and Safety Code, §12.031, §12.032, and §12.0122 that allow the department to charge fees to a person who receives public health services from the department, with fee amounts set to recover the department's costs for performing laboratory services.

SECTION-BY-SECTION SUMMARY

Section 73.54(a)(1)(A)(i) was amended by updating the fee from $33.60 to $55.24. There are several factors that contributed to this fee increase as described in the Background and Purpose Section of this preamble.

The low volume tests in §73.54(a)(1)(B)(ii), (II) glucose post prandial (1 hour), (III) glucose post prandial (2 hour), (V) glucose tolerance test 1 hour, (VI) glucose tolerance test 2 hour, and (VII) glucose tolerance test 3 hour, were deleted to make more efficient use of the LSS staff as the tests are no longer offered and will lower operational costs. The remaining subclause was renumbered accordingly.

Section 73.54(a)(1)(C)(i) was amended by increasing the fee for Cystic fibrosis mutation panel from $147.22 to $175.19. This increase was due to increased costs associated with testing.

Section 73.54(a)(1)(C)(ii) was amended by increasing the fees for (I) HbS, HbC, HbE, HbD, or HbO-Arab from $186.84 to $255.72; (II) common beta-thalassemia mutation from $213.21 to $287.66; and (III) beta-globin gene sequencing from $783.42 to $1054.24. This increase was due to increased costs associated with testing.

Section 73.54(a)(1)(C)(iii) was amended by updating the fee for Galactosemia common mutation panel from $383.21 to $529.03. This increase was due to increased costs associated with testing.

Section 73.54(a)(1)(C)(iv) was amended by increasing the fee for Medium chain acyl-CoA dehydrogenase deficiency (MCAD), common mutation panel from $280.79 to $374.95. This increase was due to increased costs associated with testing.

New §73.54(a)(2)(A)(xviii) Whole Genome Sequencing was amended by adding new subclause (I) Gram Negative with a fee of $318.64 and subclause (II) Gram Positive with a fee of $329.37.

Section 73.54(a)(2)(B)(ii)(II), (VI), (VII) and (IX) were renamed. Subclause (II) Arsenic in urine, ICP-DRC-MS (Dynamic reaction cell), MS was moved from the end of the test name and added to the method for better clarity. Subclauses (VI) Metals in blood and (VII) Metals in urine removed the metals list from the name of the tests. The testing platform for both tests allow for multiple metals to be tested without a fee change. This change allows the LSS to add metals or remove metals to meet customer needs in real time. Subclause (IX) was amended by updating the name to Tetramine, gas chromatography/mass selection detector (GC/MS). These updates accurately reflect the current testing method.

In §73.54(a)(2)(C)(i)(I)(-a-), the blood culture text was deleted because it was a low volume test, and the instrument for the testing is no longer operational. This low volume test was deleted to make more efficient use of the LSS staff and to lower operational costs. The existing items were renumbered accordingly.

In §73.54(a)(2)(D)(v), a new test was added for Microfilariae identification, with a fee of $46.52.

In §73.54(a)(2)(D)(v)(IV),the low volume tissue preparation test was deleted to make more efficient use of the LSS staff and to lower operational costs. The remaining clauses and subclauses were renumbered accordingly.

In §73.54(a)(2)(E)(iv), (v), and (viii), three new tests were added in (iv) Chagas, IgG with a fee of $27.68, (v) Chikungunya, IgM with a fee of $74.72, and (viii) Emerging Disease, IgM with a fee of $74.72. These tests were added to support the department's public health efforts. The remaining clauses were renumbered accordingly.

In §73.54(a)(2)(E)(xiv)(I), the name of the test was updated to "serum, confirmation" to more accurately identify the test and updated the fee from $40.74 to $83.74. This price increase was due to a change in testing methodology.

In §73.54(a)(2)(F), two low volume tests were deleted, (i) Adenoviruses, PCR and (ix)(II) PCR. Section 73.54(a)(2)(F) was restructured to read (ix) Enterovirus, DFA with its current fee of $162.96. A new test was added in §73.54(a)(2)(F)(ii) Chikungunya real time, RT-PCR, with a fee of $145.02. An amendment to §73.54(a)(2)(F) also increased the fees for (viii) Emerging Disease, PCR from $116.22 to $137.31 and (xii) Norovirus (Norwalk-like virus) PCR from $55.77 to $162.96. The fee for (xvi) Respiratory viral panel, PCR was decreased from $167.13 to $149.82. These fees reflect the true costs to perform the tests.

Section 73.54(b)(6)(A)(vi) was amended to add a new test Nucleic acid amplification for *Mycobacterium tuberculosis (M. tuberculosis)* complex with a fee of $166.70.

Section §73.54(c)(3)(A)(i) was restructured to read (i) Bacillus identification with the current fee of $101.16. This corrected the spelling of the test name and removed a low volume test (II) enumeration, most probable number (MPN). Also deleted due to low volume were §73.54(c)(3)(C) Yeast and mold and (D) enumeration and standard plate count. These low volume tests were deleted to make more efficient use of LSS staff and to lower operational costs.

In §73.54(c)(6)(A)(iii) and (iv), two new tests were added, (iii) PCR Emerging, Non-clinical testing Aedes with a fee of $17.20 and (iv) PCR Emerging, Non-clinical testing Culex with a fee of $16.58. The remaining clauses were renumbered accordingly.

Section 73.55(2)(A)(i)(XV) was amended to include a new test for (XV) cyanide, free, SM, 20th edition, 4500-CN-F with a fee of $113.43.

In §73.55(2)(A)(ii), the name of the test was updated to Routine water mineral group, EPA methods 300.0, and 353.2, and SM, 19th edition, 2320B, 2510B and 2540C, and decreasing the fee from $106.39 to $102.25. This change removed the pH test from the method. The pH test is now performed in the field and is no longer performed at the LSS.

In §73.55(2)(C), new tests were added in clauses (viii) haloacetic acids, EPA method 552.3 with a fee of $45.34, (xiii) semi-volatile organic compounds by GC-MS, EPA method 525.3 with a fee of $120.88, and (xvii) volatile organic compounds VOCs by GC-MS, EPA method 524.3 with a fee of $56.42.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared a response to the comments received regarding the proposed rules during the 30-day comment period, which the commission has reviewed and accepts. All comments received by the department concerned §73.54(a)(1)(A)(i), relating to the

fee increase to the NBS panel. The commenters included March of Dimes, Texas Hospital Association (THA), Texas Pediatric Society (TPS), Texas Medical Association (TMA) and Texas Department of Insurance (TDI). The commenters were not against the rules as proposed, but requested that the department play a role in communicating the fee changed of the NBS Clinical Testing and NBS Specimen Collection Kits to private insurance companies.

COMMENT: March of Dimes submitted a comment in support of the language in the rule amendments in their entirety.

COMMENT: THA submitted a comment in support of the language in the rules, but requested that the department play a substantial role in coordinating with health plans to ensure that the reimbursement rate for the NBS Program fee be increased by private insurance by the September 1, 2016, anticipated change.

COMMENT: TMA and TPS submitted a comment in support of the language in the rules, but requested that the department, in coordination with TDI, notify all insurers and third party payers of the state's new NBS Program fee schedule for the Clinical Testing and NBS Specimen Collection Kits and adjust their reimbursement payments in accordance with that new schedule.

RESPONSE: The commission appreciates the support of the amendments to the rules. In response to the comments, the department did not revise the proposed language.

The department held a stakeholder meeting in advance of the publication of the proposed rules in the *Texas Register.* Representatives from the TDI and the Texas Association of Health Plans attended a department sponsored stakeholder meeting held on May 15, 2016. The fee increase to the NBS panel was discussed at this meeting. The department continues to communicate progress of the rulemaking action with TDI and the Texas Association of Health Plans. However, the department does not have the statutory authority to force compliance with private insurance groups to modify their rates to match the adopted fees.

LEGAL CERTIFICATION

The Department of State Health Services, General Counsel, Lisa Hernandez, certifies that the rules, as adopted, has been reviewed by legal counsel and found to be a valid exercise of the agencies' legal authority.

STATUTORY AUTHORITY

The amendments will be adopted under Texas Health and Safety Code, §12.031 and §12.032, which provides the department with the authority to charge fees to a person who receives public health services from the department; §12.034 which requires the department to establish a collection procedures; §12.035 which requires the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the department's public health service fee fund; and §12.0122 which allows the department to enter into a contract for laboratory services; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

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

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 7. PREPAID HIGHER EDUCATION TUITION PROGRAM

SUBCHAPTER N. TEXAS ACHIEVING A BETTER LIFE EXPERIENCE (ABLE) PROGRAM

34 TAC §§7.181 - 7.197

The Comptroller of Public Accounts adopts new §7.183, concerning participation agreement; §7.185, concerning participant; §7.186, concerning fees and other charges; §7.188, concerning distributions; §7.189, concerning rollovers; §7.190, concerning change of beneficiary; §7.191, concerning change of participant; §7.194, concerning investments; §7.195, concerning refunds; §7.196, concerning termination or modification of program; and §7.197, concerning program limitations, without changes to the proposed text published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4954).

The Comptroller of Public Accounts adopts new §7.181, concerning definitions; §7.182, concerning tax exempt status requirements; §7.184, concerning designated beneficiary and eligible individual; §7.187, concerning contributions; §7.192, concerning reporting; and §7.193, concerning account termination, with changes to the proposed text published in the July 8, 2016, issue of the *Texas Register* (41 TexReg 4954).

The new sections will be under Chapter 7, Prepaid Higher Education Tuition Program, new Subchapter N, Texas Achieving a Better Life Experience (ABLE) Program.

The new sections implement Senate Bill 1664, 84th Legislature, 2015. Senate Bill 1664 amends Education Code, Chapter 54, by adding Subchapter J, Texas Achieving a Better Life Experience (ABLE) Program (hereinafter referred to as the "Texas ABLE Program" or "Program"). Senate Bill 1664 directs the Texas Prepaid Higher Education Tuition Board ("Board") to administer the new Texas ABLE℠ Program. Under the new law, the Program allows certain people with disabilities to have special savings accounts for disability-related expenses without losing eligibility for certain benefits under Supplemental Security Income, Medicaid, and other public benefits.

New §7.181 sets out definitions to be used in the Texas ABLE Program.

New §7.182 details the tax exempt status requirements of the Texas ABLE Program.

New §7.183 details the criteria to be included in the Texas ABLE Program's participation agreement and the information that must

be provided by the participant on the agreement upon enrollment in the Texas ABLE Program.

New §7.184 details the requirements of a designated beneficiary and eligible individual for the Texas ABLE Program.

New §7.185 details the requirements of a participant for the Texas ABLE Program.

New §7.186 provides that fees and other charges may be assessed to administer the Texas ABLE Program.

New §7.187 explains the type of and limitations on contributions that will be accepted by the Texas ABLE Program.

New §7.188 details criteria related to distributions of the Texas ABLE Program.

New §7.189 provides details about the Texas ABLE Program's acceptance or transfer of rollover funds to or from other qualified ABLE Programs.

New §7.190 provides information about a change of beneficiary of a Texas ABLE Program account.

New §7.191 provides information about a change of participant of a Texas ABLE Program account.

New §7.192 provides information on the Texas ABLE Program's reporting requirements.

New §7.193 lists information on voluntary and involuntary terminations of Texas ABLE Program accounts.

New §7.194 provides information on investment of funds in a Texas ABLE Program account.

New §7.195 details criteria for refund of available funds in a Texas ABLE Program account.

New §7.196 provides information on termination or modification of the Texas ABLE Program.

New §7.197 details limitations of the Texas ABLE Program.

The comptroller received comments on the Texas ABLE Program proposed rules from the Texas ABLE Advisory Committee (the "Advisory Committee") and others interested in the Texas ABLE Program.

The Advisory Committee asked whether §7.181(a)(7) applies to out-of-state residents. The adopted rules do not currently allow out-of-state residents to participate in the Texas ABLE Program, but the rules do allow the Board to act to accept out-of-state residents into the program to the extent allowed by law. The Board makes no change based on this comment.

The Advisory Committee inquired as to the process of disability certification and recertification requirements in response to §7.181(a)(8). Details regarding certification and recertification will be addressed in program documents prior to implementation of the Texas ABLE Program. The Board makes no change based on this comment.

The Advisory Committee suggests adding language to increase the age limit in §7.181(a)(8), (a)(10)(A) and §7.184(a)(1) from 26 to 46 years of age due to pending federal legislation. The Advisory Committee believes that this change would allow more participants in the Texas ABLE Program. The Board is concerned that making this change in the rules prior to a change at the federal level would cause confusion. However, the Board has amended the sections to add "subject to any future changes or modifications in eligibility criteria in Internal Revenue Code, §529A" to be clear that the eligibility criteria is subject to change by federal legislative amendment.

A commenter suggested adding additional expense categories to the definition of "Qualified disability expenses" in §7.181(a)(20). The Board declines to make a change, as the listing of expenses included in that definition is consistent with Internal Revenue Code, §529A and the definition states that it will include "any other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin or by amendments to Internal Revenue Code, §529A."

The Health and Human Services Commission (HHSC) provided a comment regarding references to the Medicaid Estate Recovery Program (MERP) in §7.181(a)(21) and §7.182(16). The commenter states that MERP was not referenced in the federal or state ABLE legislation and, to their knowledge, no decision has been made by their agency on what area in HHSC will pursue the pay back provision. In light of HHSC's comment, the Board removes all references to MERP to alleviate any confusion on whether MERP applies to ABLE accounts.

The Advisory Committee suggests that adding a definition for rollovers in §7.181(a) would be helpful for consumers and that language allowing for rollovers from different sources should be included to reflect pending federal legislative amendments. The Board declines to make this change as there is detailed information in §7.189 related to rollovers, including the current federal requirements related to rollovers, and the Board is concerned that amending the rules now to reflect possible future changes in permissible rollovers might cause confusion. Also, the program documents will contain detailed information about rollovers.

With respect to §7.182(6), a commenter expressed concern regarding the limitation of having only one Texas ABLE account. Internal Revenue Code, §529A(b)(1)(B) limits a designated beneficiary to one ABLE account for purposes of a qualified ABLE Program; therefore, the Texas ABLE Program will be limited to one ABLE account per designated beneficiary in compliance with federal law. The Board declines to make any change in response to this comment.

The Advisory Committee suggested removing the comma after the term "Unless" in §7.182(6). The Board agrees with the commenter and corrects this typographical error.

Two commenters asked whether §7.182(11) means that an ABLE account cannot be used to save and make a down payment for a home or vehicle or whether the provision is really about money collateral. The commenters requested clarification on this paragraph. Internal Revenue Code, §529A(b)(5), states that a program will not be treated as a qualified ABLE Program if it allows any interest in the program or any portion thereof to be used as security for a loan. This restriction includes, but is not limited to, a prohibition on the use of any interest in the ABLE Program as security for a loan to purchase such interest in the program. The Board amends §7.182(11) in response to these comments to clarify that funds in a beneficiary's ABLE account can be used as a down payment for a home or vehicle, to the extent it is a qualified disability expense.

The Advisory Committee recommended removing §7.183(d) entirely stating that there is no delineated procedure to evaluate or appeal a decision to terminate or refund an ABLE account and suggested replacing this paragraph with language for involuntary termination of an ABLE account upon notification from the U.S. Treasury. The Advisory Committee also stated that there are no methods or processes to investigate or decide if the designated

beneficiary made a material misrepresentation. The Advisory Committee opined that the eligibility determination is not designated to the Board, Program manager or comptroller. The Board declines to make any changes in the proposed rule in response to this comment. Section 7.183(d) is authorized by Texas Education Code §54.908, one of the provisions in the state statute that created the Texas ABLE Program. While the Board will not make an independent determination of eligibility, a notification from the Social Security Administration that a beneficiary is not eligible could lead to the discovery that a participant made a material misrepresentation regarding eligibility. Also, Texas Education Code, Chapter 54, Subchapter F, §54.617 requires the Board to "maintain a system to promptly and efficiently act on complaints filed with the Board." To help alleviate the concern of the Advisory Committee, the staff will present proposed amendments to the Board's complaint procedures for the Board's consideration to adopt changes to extend the procedures to the Texas ABLE Program prior to program start-up.

The Advisory Committee suggested amending §7.187(d) to include language that would allow written or electronic notification to a beneficiary or participant prior to issuance of a refund related to termination for material misrepresentation or refund of excess contributions to provide time for the recipient to make arrangements regarding the refund's impact on SSI or SSDI. The Board agrees and has added language as recommended by the commenter.

The Board amends the term Program in §7.184(b) and §7.188(c) to make clear that these subsections are referring to the Texas ABLE Program.

The Advisory Committee suggested amending §7.184(c) by adding "if applicable" after "residency requirements" or removing the residency exclusion altogether. The Board agrees and has amended the section to include "if applicable" as recommended by the commenter.

The Advisory Committee suggested amending §7.184(e) and §7.188(e) by adding language regarding reporting to the U.S. Treasury of any ABLE distributions made to an individual after that individual no longer meets eligibility requirements. The Board makes no change in response to these comments. The program will report all distributions to the Internal Revenue Service on Form 1099QA as instructed. The individual receiving an ABLE distribution should obtain and retain records to substantiate that a distribution is for a qualified disability expense.

Advisory Committee suggested adding language to §7.187(b)(1) referencing SSI and SSDI electronic deposits to the automatic contribution plan and ACH in the paragraph. The Board agrees and has added this language.

The Advisory Committee stated that pending federal legislation may amend Internal Revenue Code, §529A to allow rollovers from 529 qualified education programs. The Advisory Committee suggested that §7.189 and any reference to rollovers in the adopted rules reflect the pending federal law. The Board declines to amend the adopted rules to include this language as it could cause confusion.

The Advisory Committee suggested adding language in §7.192(a) that the periodic statement of account to the participant include program fees. The Board agrees and has added "fees" to the language.

The Advisory Committee recommended adding language to §7.193(b) for account termination due to death of the designated beneficiary. The Board agrees to clarify §7.193(b) and revises the adopted rule accordingly.

The Advisory Committee asked for clarification in §7.195(b) regarding use of the phrase calculation method. The Board determines that clarification is not needed in the adopted rules since the calculation method or amount determined for refunds will be detailed in Texas ABLE Program documents.

With respect to §§7.184, 7.195 and 7.196, the Advisory Committee recommended limiting the class of persons that may act as a participant on behalf of the designated beneficiary. The Advisory Committee opined that having a custodian or fiduciary acting on behalf of the beneficiary puts them in an awkward position to receive funds that are not their own and may be considered income by the Internal Revenue Service. Unlike 529 prepaid tuition and college savings plans, the owner of an account is the designated beneficiary. Per Internal Revenue Service guidance, if an eligible individual cannot establish the account, the eligible individual's agent under a power of attorney may establish an ABLE account for that eligible individual. Furthermore, a person other than the designated beneficiary with signature authority over the account of the designated beneficiary may neither have, nor acquire, any beneficial interest in the account during the designated beneficiary's lifetime and must administer the account for the benefit of the designated beneficiary. The adopted rules align with U.S. Treasury guidance and the Board declines to make the suggested changes to these sections as proposed by the Advisory Committee.

The Advisory Committee asked that the adopted rules, specifically in §7.193(b) and §7.196(c), include processes for suspension, investigation and appeal prior to account termination. The Advisory Committee requested that a new section be added with respect to beneficiary protections that expands and clarifies account terminations and refund procedures with clear guidance to the beneficiaries and appropriate consumer protection during the process. The Board declines to amend the rules as accounts will only be terminated upon receipt of evidence of misrepresentation or fraud. The rules require the Program to provide advance written or electronic notification to the participant of a pending refund within a reasonable time, but not less than thirty (30) days if allowed by state or federal law, prior to the refund by the Program, allowing sufficient time for the participant to challenge the determination. As noted above, staff will present proposed amendments to the Board's complaint procedures for the Board's consideration to adopt changes to extend the procedures to the Texas ABLE Program prior to program start-up.

The new sections are adopted under Senate Bill 1664, 84th Legislature, 2015, which requires the Board to administer the Texas Achieving a Better Life Experience Program and Education Code, §54.904(a)(2), which authorizes the Board to adopt rules to implement the Program.

The new sections implement Education Code, Chapter 54, Subchapter J (Texas Achieving a Better Life Experience (ABLE) Program).

§7.181. Definitions.

(a) The following words, terms, and phrases, when used in this subchapter, shall have the following meanings. In addition, definitions set forth in Internal Revenue Code, §529A and Senate Bill 1664, 84th Legislature, 2015 are incorporated in these rules.

(1) ABLE account or "account"--Has the meaning assigned by Internal Revenue Code, §529A and means an account in the Texas ABLE Program.

(2) ABLE Program or "Program"--The Texas Achieving a Better Life Experience Program created under Education Code, Chapter 54, Subchapter J.

(3) Available funds--The balance of funds held in an ABLE account, after deducting any holds, fees or expenses, or pending transactions, including funeral expenses that may be incurred following the death of a designated beneficiary.

(4) Board--Prepaid Higher Education Tuition Board established under Education Code, §54.602.

(5) Contribution--Amounts paid by contributors to an ABLE account.

(6) Contributor--Any person who makes a contribution to an ABLE account.

(7) Designated beneficiary--A resident of this state with a disability who is an eligible individual and named as the beneficiary of an ABLE account. The term may also include out-of-state residents to the extent allowed by law.

(8) Disability certification--With respect to the individual who is the eligible individual, a certification to the satisfaction of the Secretary of the United States Treasury by the individual or the parent or custodian, or other authorized fiduciary of the individual, that certifies that the individual has a medically determinable physical or mental impairment, which results in marked and severe functional limitations, and which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months, or is blind within the meaning of Social Security Act, §1614(a)(2) and such blindness or disability occurred before the date on which the individual attained age 26, subject to any future changes or modifications in eligibility criteria in Internal Revenue Code, §529A.

(9) Distribution--Any amounts paid by the ABLE Program to or on behalf of an eligible individual.

(10) Eligibility affidavit--The participant's self-verification under oath in a format acceptable to the Board or as required by state or federal regulations that the designated beneficiary of the account is currently an eligible individual as defined by Internal Revenue Code, §529A because:

(A) the designated beneficiary of the account is currently entitled to benefits based on blindness or disability under Social Security Act, Title II or XVI and such blindness or disability occurred before the date on which the individual attained age 26, subject to any future changes or modifications in eligibility criteria in Internal Revenue Code, §529A; or

(B) a disability certification with respect to the designated beneficiary that meets the requirements of Internal Revenue Code, §529A(e)(2) has been filed with the Secretary of the United States Treasury for such taxable year.

(11) Eligible individual--A person who meets the requirements of Internal Revenue Code, §529A and is certified by an eligibility affidavit to the Board as eligible to participate in the ABLE Program.

(12) Eligible member of the family--An eligible individual and a member of the family of the former beneficiary to the extent provided by Internal Revenue Code, §529A.

(13) Excess contribution--Contributions that would cause an ABLE account to exceed:

(A) the amount established by the Board in accordance with Internal Revenue Code, Title 26, §529(b)(6); or

(B) the amount in effect under Internal Revenue Code, Title 26, §2503(b) for the calendar year in which the taxable year begins in accordance with Internal Revenue Code, §529A.

(14) Financial institution--A bank, a trust company, a depository trust company, an insurance company, a broker-dealer, a registered investment company or investment manager, the Texas Treasury Safekeeping Trust Company, or another similar financial institution authorized to transact business in this state.

(15) Internal Revenue Code--The Internal Revenue Code of 1986.

(16) Investment options--Investment options offered by the Program for selection by the participant.

(17) Participant--A designated beneficiary or the parent or custodian or other fiduciary of the beneficiary who has entered into a participation agreement.

(18) Participation agreement--A contract between a participant and the Board under this subchapter that conforms to the requirements prescribed by this subchapter and Internal Revenue Code, §529A and includes the application for enrollment submitted in good order.

(19) Plan manager--An entity, including a financial institution, any state or federal agency, contractor or state or multi-state consortium engaged by the Board to carry out certain duties as specified and delegated by the Board for administration of the Program.

(20) Qualified disability expenses--Any expenses related to the eligible individual's blindness or disability that are made for the benefit of the eligible individual who is the designated beneficiary, and includes expenses for education, housing, transportation, employment training and support, assistive technology and personal support services, health, prevention and wellness, financial management and administrative services, legal fees, expenses for oversight and monitoring, funeral and burial expenses, and any other expenses that may be identified from time to time in future guidance published in the Internal Revenue Bulletin or by amendments to Internal Revenue Code, §529A.

(21) Transfer to state--The reimbursement that may be paid to the state Medicaid program upon the designated beneficiary's death. After timely claim submitted in good order, the reimbursement will be made from any available funds and will be calculated according to Internal Revenue Code, §529A(f).

(b) In the event of a conflict in the definitions, the Program definitions shall be governed by Internal Revenue Code, §529A, Education Code, Chapter 54, Subchapter J, and these rules, in that order.

§7.182. Tax Exempt Status Requirements.

The provisions of this section are intended to meet the requirements of Internal Revenue Code, §529A.

(1) The Board, to the extent allowed by law, may contract with another state, including a state or multi-state consortium, that administers a qualified ABLE program as authorized by Internal Revenue Code, §529A to act as plan manager, provide certain services under a contractual arrangement or provide residents of this state with access to a qualified ABLE program.

(2) A contribution to an ABLE account must be made in cash or cash equivalent.

(3) The Board will monitor contributions to an ABLE account so that total contributions to an ABLE account for a designated beneficiary do not result in aggregate contributions from all contributors exceeding the limitation in effect under Internal Revenue Code, §529A(b)(2)(B).

(4) The Board will monitor contributions to an ABLE account so that contributions will not be accepted if the aggregate balance, including the contribution amount and any earnings, of an ABLE account for a designated beneficiary would exceed an excess contribution as defined in these rules.

(5) The Board shall provide separate accounting for each designated beneficiary.

(6) A designated beneficiary is limited to one ABLE account, and each ABLE account may have only one owner, who will be the designated beneficiary. Unless the participant is also the designated beneficiary, the participant may not have and will not acquire a beneficial interest in the ABLE account, and the participant will administer the account for the benefit of the designated beneficiary.

(7) A designated beneficiary must be a Texas resident at the time of establishing and maintaining an active account in the Texas ABLE Program. The Board may act to accept out-of-state residents into the Program to the extent allowed by law.

(8) A designated beneficiary may, directly or indirectly, direct the investment of any contributions to an ABLE account, only to the extent allowed by Internal Revenue Code, §529A.

(9) The Board shall determine the earnings portion of each distribution, if any, in accordance with methods that are consistent with Internal Revenue Code, §529A; any earnings on contributions included in distributions for qualified disability expenses shall not be includible in gross income to the extent provided by Internal Revenue Code, §529A.

(10) The Board shall report distributions of the designated beneficiary to the Secretary of the United States Treasury, as required by Internal Revenue Code, §529A.

(11) The participant, designated beneficiary, and any other contributor, may not use any interest in or portion of an ABLE account as security for a loan. This paragraph does not prohibit the use of funds in an ABLE account as down payment for a home or vehicle to the extent it is a qualified disability expense.

(12) Available funds may be rolled over to the extent allowed by Internal Revenue Code, §529A and United States Treasury regulations as described in §7.189 of this title (relating to Rollovers).

(13) A change in the designated beneficiary of an ABLE account during a taxable year shall not be treated as a taxable distribution on Internal Revenue Service Form 1099QA for that taxable year for purposes of paragraph (9) of this section if the new beneficiary is an eligible member of the family.

(14) Except as provided by the Secretary of the United States Treasury, and for the purpose of applying Internal Revenue Code, §72, all distributions during a taxable year shall be treated as one distribution and the value of the account shall be computed and reported on Internal Revenue Service Form 1099QA as of the close of the calendar year in which the taxable year begins.

(15) The Board shall submit notices, statements, and reports as required to maintain compliance with Internal Revenue Code, §529A and any other state and federal requirements.

(16) The Board will make any transfers to state in compliance with Internal Revenue Code, §529A.

§7.184. Designated Beneficiary and Eligible Individual.

(a) Subject to any changes in federal or state laws, an individual is an eligible individual for a taxable year if during such taxable year:

(1) the individual is entitled to benefits based on blindness or disability under Social Security Act, Title II or XVI and such blindness or disability occurred before the date on which the individual attained age 26, subject to any future changes or modifications in eligibility criteria in Internal Revenue Code, §529A; or

(2) a disability certification with respect to such individual that meets the requirements of Internal Revenue Code, §529A(e)(2) has been filed with the Secretary of the United States Treasury for such taxable year.

(b) Further, an individual is an eligible individual only if the individual is a resident of Texas at the time the ABLE account is established. The Board may act to accept out-of-state residents into the Program to the extent allowed by law.

(c) If at any time, the Program becomes aware that the eligible individual no longer meets any residency requirements, if applicable, or no longer meets the requirements of Internal Revenue Code, §529A, the individual's ABLE account will be closed and any available funds will be refunded to the participant on behalf of the designated beneficiary. In the event that available funds are refunded by the Program because of failure to meet residency requirements or failure to meet the requirements of Internal Revenue Code, §529A, the Program will provide advance written or electronic notification to the participant of a pending refund within a reasonable time, but not less than thirty (30) days, prior to the refund by the Program.

(d) The participant shall recertify that the designated beneficiary is an eligible individual:

(1) periodically as required by the Board in a form acceptable to the Board, or

(2) upon request to reestablish a closed account.

(e) Beginning on the first day of the following calendar year that a beneficiary ceases to be an eligible individual, the Texas ABLE Program will no longer accept contributions to the beneficiary's ABLE account.

§7.187. Contributions.

(a) Any person may make contributions to an ABLE account for a taxable year, for the benefit of a designated beneficiary who is an eligible individual for such taxable year. Any contributions to an ABLE account, excluding any excess contributions, are an asset of the account for the benefit of the designated beneficiary.

(b) No contributions will be accepted for an ABLE account unless:

(1) the contribution is in U.S. dollars in the form of a check, money order, cashier's check, automatic contribution plan, ACH, including SSI or SSDI electronic deposits to the extent allowable by law, or payroll deduction;

(2) the designated beneficiary is an eligible individual during the taxable year; or

(3) if such contribution would result in contributions from all contributors to an ABLE account for the taxable year to exceed an excess contribution as defined in these rules.

(c) Any contributions to an ABLE account on behalf of a designated beneficiary may be subject to any applicable Internal Revenue Service gift tax rules in effect at the time of the contribution, as provided by Internal Revenue Code, §529A.

(d) Excess contributions to an ABLE account will be rejected and refunded automatically to the contributor making the excess contribution after obtaining the taxpayer identification number of the contrib-

utor. In the event that excess contributions are refunded by the Program to the beneficiary or to the participant on behalf of the beneficiary, the Program will provide advance written or electronic notification to the beneficiary or participant of a pending refund within a reasonable time, but not less than thirty (30) days if allowed by state or federal law, prior to the refund by the Program.

(e) Any contributions returned for any of the above reasons will not include earnings or interest.

(f) Informational materials used in connection with a contribution to an ABLE account must clearly indicate that the account is not insured by this state and that neither the principal deposited nor the investment return is guaranteed by the state.

§7.192. Reporting.

(a) The Program will provide a periodic statement of account to the participant no less than annually. The statement will include, but not be limited to, the following information related to the account for the period reported:

(1) contributions;

(2) distributions;

(3) fees;

(4) value of the account as of the report ending date; and

(5) any earnings or losses during the period reported.

(b) The Program will report account information to the Internal Revenue Service, Social Security Administration, or other state or federal regulatory bodies as required by Internal Revenue Code, §529A, United States Treasury regulations or guidance, or other state or federal reporting requirements.

(c) The Program will issue Internal Revenue Service Forms 1099-QA and 5498-QA and any other forms mandated in accordance with Internal Revenue Service instructions for ABLE programs for the calendar year in which any distribution is made from an account.

(d) Participants may request a statement of the balance in their ABLE account at any time subject to any fees that may be charged by the Program or plan manager.

§7.193. Account Termination.

(a) Voluntary termination. A participant may voluntarily terminate an ABLE account in accordance with the terms of the participation agreement and by using the procedures approved by the Board.

(b) Involuntary termination. If the Board finds a participant has made a material misrepresentation regarding personal information or eligibility on the participation agreement or in any communication regarding the Texas ABLE Program, or if the designated beneficiary is deceased, the Board may involuntarily terminate and refund any available funds of the ABLE account subject to any unpaid expenses or fees due the Program, and, if applicable, for transfer to state following the designated beneficiary's death. A material misrepresentation includes, but is not limited to, providing a false taxpayer identification number or a false certification that an individual is an eligible individual or eligible member of the family.

(c) A distribution related to account termination will be reported to the Internal Revenue Service and other state and federal agencies as required and may have adverse tax or benefit consequences to the beneficiary.

(d) In the event that available funds are refunded by the Program for involuntary account termination, to include but not limited to material misrepresentation, the Program will provide advance written or electronic notification to the participant of a pending refund within a reasonable time, but not less than thirty (30) days if allowed by state or federal law, prior to the refund by the Program.

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

Filed with the Office of the Secretary of State on August 23, 2016.

TRD-201604321
Don Neal
Chief Deputy General Counsel
Comptroller of Public Accounts
Effective date: September 12, 2016
Proposal publication date: July 8, 2016
For further information, please call: (512) 475-0387

TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 16. COMMERCIAL DRIVER LICENSE

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

37 TAC §§16.1 - 16.15

The Texas Department of Public Safety (the department) adopts the repeal of §§16.1 - 16.15, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. This repeal is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3253) and will not be republished.

The repeal of §§16.1 - 16.15 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

No comments were received regarding the adoption of this repeal.

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

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 August 25, 2016.

TRD-201604448

D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 14, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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37 TAC §§16.1 - 16.7

The Texas Department of Public Safety (the department) adopts new §§16.1 - 16.7, concerning Licensing Requirements, Qualifications, Restrictions, and Endorsements. The department initially published proposed new §§16.1 - 16.7 in the May 6, 2016 issue of the *Texas Register* (41 TexReg 3254). In response to comments received, the department withdrew the May 6th proposal and republished proposed new §§16.1 - 16.7 in the July 15, 2016 issue of the *Texas Register* (41 TexReg 5138). The new sections are adopted without changes to the proposed text as published in the July 15, 2016 issue of the *Texas Register* (41 TexReg 5138) and will not be republished.

These new rules are necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

The department accepted comments on the proposed rules through August 15, 2016. Written comments were submitted by John Esparza, President and CEO of Texas Trucking Association (TXTA). Substantive comments received, as well as the department's responses, thereto, are summarized below:

COMMENT: TXTA is requesting that the department modify §16.7 to allow students from out-of-state to fulfill a student's skills testing requirements in the State of Texas in accordance with 49 CFR Part 383.79.

RESPONSE: §16.7 only addresses domicile requirements for those applying for a Texas commercial driver license and does not enforce domicile requirements for out-of-state students completing skills training in Texas. Additionally, Texas Transportation Code, §522.023(j) already authorizes the department to administer a skills test to a person who holds a commercial learner's permit issued by another state or jurisdiction. It is therefore unnecessary to restate this provision in the department's rules. Both the federal regulation and state statutory provision give discretion to the department on whether to test out-of-state commercial driver students. From a business operation standpoint, the department has opted not to conduct testing on out-of-state commercial driver students at this time due to the negative impact the additional customers would have in our driver license offices regarding to service times and testing of Texas residents. No changes were made to the proposal based on the comments received from TXTA.

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

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

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TRD-201604445
D. Phillip Adkins
General Counsel
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Proposal publication date: July 15, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER B. APPLICATION REQUIREMENTS AND EXAMINATIONS

37 TAC §§16.21 - 16.30

The Texas Department of Public Safety (the department) adopts new §§16.21 - 16.30, concerning Application Requirements and Examinations. These new sections are adopted without changes to the proposed text as published in the May 6, 2016 issue of the *Texas Register* (41 TexReg 3257) and will not be republished.

The new sections are necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

No comments were received regarding the adoption.

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

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 August 25, 2016.

TRD-201604446
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 14, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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37 TAC §§16.31 - 16.56

The Texas Department of Public Safety (the department) adopts the repeal of §§16.31 - 16.56, concerning Application Requirements and Examinations. This repeal is adopted without changes to the proposed text as published in the May 6, 2016 issue of the *Texas Register* (41 TexReg 3260) and will not be republished.

The repeal of §§16.31 - 16.56 is filed simultaneously with new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

No comments were received regarding the adoption of this repeal.

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

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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SUBCHAPTER C. SANCTIONS AND DISQUALIFICATIONS

37 TAC §§16.61 - 16.67

The Texas Department of Public Safety (the department) adopts new §§16.61 - 16.67, concerning Sanctions and Disqualifications. The new rules are adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3261) and will not be republished.

The new rules are necessary to align commercial driver licensing requirements with existing federal regulations governing commercial drivers.

No comments were received regarding the adoption of this proposal.

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

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

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D. Phillip Adkins
General Counsel
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Effective date: September 14, 2016
Proposal publication date: May 6, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER C. CHANGE OF LICENSE STATUS, RENEWALS, SURRENDER OF LICENSE, FEES

37 TAC §§16.71 - 16.73, 16.75 - 16.78

The Texas Department of Public Safety (the department) adopts the repeal of §§16.71 - 16.73, 16.75 - 16.78, concerning Change of License Status, Renewals, Surrender of License, Fees. This repeal is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3262) and will not be republished.

The repeal of §§16.71 - 16.73 and 16.75 - 16.78 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

No comments were received regarding the adoption of this repeal.

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

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 August 25, 2016.

TRD-201604450
D. Phillip Adkins
General Counsel
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Proposal publication date: May 6, 2016
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SUBCHAPTER D. SANCTIONS AND DISQUALIFICATIONS

37 TAC §§16.92 - 16.95, 16.97 - 16.106

The Texas Department of Public Safety (the department) adopts the repeal of §§16.92 - 16.95, 16.97 - 16.106, concerning Sanctions and Disqualifications. This repeal is adopted without changes to the proposed text as published in the May 6, 2016, issue of the *Texas Register* (41 TexReg 3263) and will not be republished.

The repeal of §§16.92 - 16.95 and 16.97 - 16.106 is filed simultaneously with proposed new Chapter 16. This repeal is necessary so that the adoption of new commercial driver license rules will align with federal regulations governing commercial drivers.

No comments were received regarding the adoption of this repeal.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the depart-

ment's work, and Texas Transportation Code, §522.005 which authorizes the department to adopt rules necessary to carry out Chapter 522 and the federal act and to maintain compliance with 49 CFR Parts 383 and 384.

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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CHAPTER 23. VEHICLE INSPECTION

SUBCHAPTER A. VEHICLE INSPECTION STATION AND VEHICLE INSPECTOR CERTIFICATION

37 TAC §§23.1, 23.3, 23.5

The Texas Department of Public Safety (the department) adopts amendments to §§23.1, 23.3, and 23.5, concerning Vehicle Inspection Station and Vehicle Inspector Certification. The amendments are adopted without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4783) and will not be republished.

The amendments to §23.1 and §23.3 are intended to clarify that the issuance of a certification is conditional upon the criminal background check. The amendment to §23.5 addresses the rule's reference to Article 42.12(3g), Code of Criminal Procedure, which is repealed by House Bill 2299, 84th Legislative Session, effective January 1, 2017. The bill creates new Article 42A.054 to replace 42.12(3g).

No comments were received regarding the adoption of this proposal.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 August 26, 2016.

TRD-201604468
D. Phillip Adkins
General Counsel
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Proposal publication date: July 1, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER F. VIOLATIONS AND ADMINISTRATIVE PENALTIES

37 TAC §23.62

The Texas Department of Public Safety (the department) adopts amendments to §23.62, concerning Violations and Penalty Schedule. The amended section is adopted without changes to the proposed text as published in the July 1, 2016, issue of the *Texas Register* (41 TexReg 4787) and will not be republished.

The amendments reflect updates to language relating to Denial, Revocation, or Suspension of Certificate required by Transportation Code, §548.405.

No comments were received regarding the amendments.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548.

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 August 26, 2016.

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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SUBCHAPTER H. MISCELLANEOUS VEHICLE INSPECTION PROVISIONS

37 TAC §23.82

The Texas Department of Public Safety (the department) adopts the repeal of §23.82, concerning Acceptance of Out-of-State Vehicle Inspection Certificates. This repeal is adopted without changes to the proposed text as published in the July 1, 2016 issue of the *Texas Register* (41 TexReg 4789) and will not be republished.

This provision was rendered unnecessary by Transportation Code, §548.256 as amended by House Bill 1888, 84th Legislative Session.

No comments were received regarding the adoption.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §548.002, which authorizes the department to adopt rules to administer and enforce Chapter 548 and §548.256.

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 August 26, 2016.

TRD-201604471
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 15, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 424-5848

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SUBCHAPTER I. MILITARY SERVICE MEMBERS, VETERANS, AND SPOUSES--SPECIAL CONDITIONS

37 TAC §§23.91 - 23.94

The Texas Department of Public Safety (the department) adopts new §§23.91 - 23.94, concerning Military Service Members, Veterans, and Spouses--Special Conditions. These new rules are adopted without changes to the proposed text as published in the July 1, 2016 issue of the *Texas Register* (41 TexReg 4790) and will not be republished.

The adoption implements the requirements of Occupations Code, Chapter 55, as amended by Senate Bill 1307, 84th Legislative Session, requiring the creation of exemptions and extensions for occupational license applications and renewals for military service members, military veterans, and military spouses.

No comments were received regarding the adoption.

These new rules are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Occupations Code, §55.02 which authorizes a state agency that issues a license to adopt rules to exempt an individual who holds a license issued by the agency from an increased fee or other penalty imposed by the agency for failing to renew the license in a timely manner if the individual establishes to the satisfaction of the agency that the individual failed to renew the license in a timely manner because the individual was serving as a military service member.

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 August 26, 2016.

TRD-201604472
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Effective date: September 15, 2016
Proposal publication date: July 1, 2016
For further information, please call: (512) 424-5848

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CHAPTER 27. CRIME RECORDS
SUBCHAPTER A. REVIEW OF PERSONAL CRIMINAL HISTORY RECORD

37 TAC §27.1

The Texas Department of Public Safety (the department) adopts amendments to §27.1, concerning Right of Review. The amendments are adopted with changes to the proposed text as published in the July 1, 2016 issue of the *Texas Register* (41 TexReg 4791) and will be republished. Punctuation errors were corrected.

These amendments are necessary to reflect current procedures for the personal review of criminal history record information.

No comments were received regarding the adoption.

These amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work; §411.083(b)(3), which requires the department to grant access to criminal history record information to the person who is the subject of the information; and §411.086, which requires the department to adopt rules that provide for a uniform method of requesting criminal history record information from the department.

§27.1. Right of Review.

(a) It is the policy of the Texas Department of Public Safety (the department) that a person may access and receive a copy of criminal history record information maintained by the department that relates to the person upon payment of a fee as authorized by Texas Government Code, §411.088. In this section, "criminal history record information" means information collected about a person by a criminal justice agency that consists of identifiable descriptions and notations of arrests, detentions, indictments, informations and other formal criminal charges and their dispositions. This term does not include identification information, including fingerprint records, to the extent that the identification information does not indicate involvement of the person in the criminal justice system or driving record information maintained by the department under Texas Transportation Code, Chapter 521, Subchapter C. A person with criminal history record information on file with the Federal Bureau of Investigation (FBI) must contact the FBI's Special Correspondence Bureau at (304) 625-3878 to request a copy of their national criminal history record information to review.

(b) A person may schedule a fingerprinting appointment by visiting www.dps.texas.gov/administration/crime_records/pages/applicantfingerprintservices.htm.

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized.

(2) Fee. The person must pay the $25 fee via credit card, business check or money order at the time services are rendered. Personal checks and cash are not accepted.

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveIdForFingerprinting.pdf.

(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days.

(c) A person may appear at 108 Denson Drive, Austin, Texas 78752 during department business hours and request to be fingerprinted to obtain their criminal history record information.

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized.

(2) Fee. The person must pay the $25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted.

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveIdForFingerprinting.pdf.

(4) Results. Criminal history results will be delivered to the designated address within 7 to 10 business days.

(d) A person residing out of state can submit their fingerprints by completing the forms and following the instructions for "Fingerprints Submitted By Mail" at www.dps.texas.gov/internetforms/Forms/CR-63.pdf.

(1) Biographical Data. Biographical data to further help in the positive identification of the subject being fingerprinted must be provided. This data is confidential and may not be released by the department unless authorized.

(2) Fee. The person must pay the $25 fee via credit card, business check or money order at the time services are rendered. Personal Checks and cash are not accepted.

(3) Identification. A person must present an approved government issued photo identification document and be fingerprinted by the department's designee. For a list of approved identification documents please visit http://www.txdps.state.tx.us/administration/crime_records/docs/ProveIdForFingerprinting.pdf.

(4) Results. Criminal history results will be delivered to the designated address within 10 to 14 business days.

(e) If a person believes criminal history record information maintained by the department is incorrect or incomplete, the person may visit: www.dps.texas.gov /administration/crime_records/pages/errorresolution.htm and complete the required forms.

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

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TRD-201604473
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
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Proposal publication date: July 1, 2016
For further information, please call: (512) 424-5848

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CHAPTER 35. PRIVATE SECURITY
SUBCHAPTER A. GENERAL PROVISIONS

37 TAC §35.3

The Texas Department of Public Safety (the department) adopts the repeal of §35.3, concerning Registration Applicant Pre-employment Check. This repeal is adopted without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3980) and will not be republished.

The repeal of §35.3 is filed simultaneously with new §35.3 which was made necessary by HB 4030 (84th Legislative Session). The bill renders the current rule's background check redundant in some cases, as it requires a more substantial background check for applicants under certain conditions. The department is adopting new language to clarify the bill's requirements.

No comments were received regarding the adoption.

This repeal is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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

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37 TAC §35.3

The Texas Department of Public Safety (the department) adopts new §35.3, concerning Registration Applicant Pre-Employment Check. This new rule is adopted without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3981) and will not be republished.

New §35.3 was made necessary by HB 4030 (84th Legislative Session). The bill renders the current rule's background check redundant in some cases, as it requires a more substantial background check for applicants under certain conditions. The department is adopting new language to clarify the bill's requirements.

No comments were received regarding the adoption.

This new rule is adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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37 TAC §35.4

The Texas Department of Public Safety (the department) adopts amendments to §35.4, concerning Guidelines for Disqualifying Criminal Offenses. The amendments are adopted without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3982) and will not be republished.

Amendments to §35.4 address the rule's reference to Article 42.12(3g), Code of Criminal Procedure, which is repealed by House Bill 2299, 84th Legislative Session, effective January 1, 2017. The bill creates new Article 42A.054 to replace 42.12(3g). The amendments are necessary to ensure any convictions for listed offenses occurring after January 1, 2017 will be disqualifying under the rule.

No comments were received regarding the adoption.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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SUBCHAPTER B. REGISTRATION AND LICENSING

37 TAC §§35.21, 35.22, 35.25

The Texas Department of Public Safety (the department) adopts amendments to §§35.21, 35.22, and 35.25, concerning Registration and Licensing. The amendments are adopted without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3984) and will not be republished.

Section 35.21 is amended in response to HB 4030 (84th Legislative Session). The bill amends §1702.230 of the Private Security Act, "Application for Registration or Endorsement." Section 35.21, relating to Registration Applications, is based on the requirements of §1702.230. HB 4030 therefore necessitates the updating of §35.21. Additionally, the requirements of an alien registration card and copy of a current work authorization card are being removed: the former is only applicable to applicants for a commission; the latter is not a requirement for licensure under Chapter 1702. Section 35.22 is also amended to remove the requirements of an alien registration card and copy of a current work authorization.

The amendments to §35.25 are intended to bring this rule line with the statutory requirements relating to the use of assumed names.

No comments were received regarding the adoption.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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SUBCHAPTER D. DISCIPLINARY ACTIONS

37 TAC §35.52

The Texas Department of Public Safety (the department) adopts amendments to §35.52, concerning Administrative Penalties. The amendments are adopted without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3985) and will not be republished.

These amendments are necessary to update the fine schedule to accurately reflect current statutory and rule violations.

No comments were received regarding the adoption.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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SUBCHAPTER F. COMMISSIONED SECURITY OFFICERS

37 TAC §35.81

The Texas Department of Public Safety (the department) adopts amendments to §35.81, concerning Application for a Security Officer Commission. The amendments are adopted without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3986) and will not be republished.

Amendments to §35.81 are necessary to remove the requirement of a current work authorization card which is not a requirement for licensure under Chapter 1702.

No comments were received regarding the adoption.

This amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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D. Phillip Adkins
General Counsel
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For further information, please call: (512) 424-5848

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SUBCHAPTER I. COMPANY RECORDS

37 TAC §35.112

The Texas Department of Public Safety (the department) adopts amendments to §35.112, concerning Business Records without changes to the proposed text as published in the June 3, 2016 issue of the *Texas Register* (41 TexReg 3986) and will not be republished.

Amendments to §35.112 are necessary to comply with Occupations Code, §1702.110(b), which requires the board to adopt rules to enable an out-of-state license holder to comply with the Act's requirement that license holders maintain a physical address in this state.

No comments were received regarding the adoption.

The amendments are adopted pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Occupations Code, §1702.061(b), which authorizes the department to adopt rules to administer Texas Occupations Code, Chapter 1702.

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

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

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PART 11. TEXAS JUVENILE JUSTICE DEPARTMENT

CHAPTER 385. AGENCY MANAGEMENT AND OPERATIONS

The Texas Juvenile Justice Department (TJJD) adopts amendments to the following rules without changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1348): §§385.8101 (Public Information Request), 385.8107 (Petition for Adoption of a Rule), 385.8136 (Notices to Public and Private Schools), 385.8170 (Acceptance of Gifts of $500 or More), 385.9951 (Death of a Youth), and 385.9990 (Vehicle Fleet Management).

TJJD also adopts amendments to the following rules with changes to the proposed text as published in the February 26, 2016, issue of the *Texas Register* (41 TexReg 1348): §§385.8111 (Complaints from the Public), 385.8137 (Public and Media), 385.8141 (Confidentiality), 385.8161 (Notification of Facility Opening or Relocating), 385.8163 (Decentralization), 385.8165 (Site Selection for Juvenile Facility Construction), 385.8181 (Background Checks), 385.9941 (Response to Ombudsman Reports), 385.9969 (Collection of Delinquent Obligations), and 385.9971 (Student Benefit Fund). These amended rules are re-published below.

Changes to the proposed text of §385.8111 consist of minor grammatical corrections and changing "Austin Office" to "Central Office."

Changes to the proposed text of §385.8137 consist of a minor grammatical correction.

Changes to the proposed text of §385.8141 consist of correcting a reference to TJJD by using the acronym rather than the full name.

Changes to the proposed text of §§385.8161, 385.8163, §385.8165, and §385.8181 consist of minor grammatical corrections.

Changes to the proposed text of §385.9941 consist of correcting a typographical error and replacing "3rd" with "third."

Changes to the proposed text of §385.9969 consist of minor grammatical corrections and replacing "his" with "his/her."

Changes to the proposed text of §385.9971 consist of minor grammatical corrections.

JUSTIFICATION FOR CHANGES

The public benefit anticipated as a result of administering the sections will be the availability of rules that have been updated to conform to current laws and regulations and to more accurately reflect TJJD's current organizational structure and practices.

SUMMARY OF CHANGES

The amended §385.8101: 1) removes a reference to another TJJD rule that does not directly relate to processing requests for public information; and 2) updates state agency names.

The amended §385.8107: 1) clarifies the types of persons and organizations, as specified in Texas Government Code §2001.003(5), who may petition TJJD to adopt a rule; 2) removes a provision relating to TJJD's ability to grant or deny *portions* of a petition; and 3) clarifies that after TJJD makes a decision on a petition to adopt a rule, TJJD may refuse to consider subsequent petitions to adopt the *same* rule, but may not refuse to consider petitions to adopt a *similar* rule.

The amended §385.8111 makes the following changes regarding complaints involving the Americans with Disabilities Act (ADA): 1) designates the TJJD human resources director as the agency's ADA compliance officer; 2) changes the deadline for a field administrator to forward an ADA complaint to the ADA compliance officer from one working day to two working days; 3) adds that a designee of the ADA compliance officer may perform some duties of the ADA compliance officer; 4) adds a requirement for the assigned TJJD investigator to keep the complainant informed of any adjustments to the time line for completing the investigation; 5) removes provisions relating to standards of proof and rules of evidence used by the investigator and ability to present information to the investigator; 6) removes a provision that indicated the final decision will not be released until the TJJD Legal Department has approved it; 7) clarifies that appeal decisions should be reviewed by the Legal Department *regardless of whether the decision is adverse to the complainant;* 7) removes some procedures relating to internal communication between TJJD staff; and 8) replaces a reference to TJJD's mailing and physical address with a reference to the availability of that information on TJJD's website.

The amended §385.8111 makes the following changes regarding non-ADA complaints: 1) removes the provision that required the complainant to file the complaint within 180 days after he/she s*hould have become aware* of the reason for the complaint. The deadline now applies only to when the complainant actually became aware of the reason for the complaint; 2) specifies that complaints may be submitted by mail, by email, or in person; 3) clarifies that when a field administrator receives the original complaint, he/she must notify the TJJD public complaint coordinator immediately and forward the written complaint within two working days; 4) clarifies that the administrator assigned to resolve the complaint must copy the TJJD public complaint coordinator on the monthly updates sent to the complainant, but not on every communication with the complainant.

The amended §385.8136 includes only minor, non-substantive clarifications and terminology updates.

The amended §385.8137: 1) removes a reference to the TJJD rule about basic youth rights. That rule addresses regular visitation procedures, which do not apply to media visits; 2) clarifies that parental consent is not required for general news media visits that do not involve the interviewing of youth; 3) deletes the provision that allowed observation of treatment sessions for purposes of training staff or other clinical professionals. This provision does not relate to media visits; 4) deletes the requirement for the facility administrator to consult with the director of rehabilitation services when the news media requests to interview youth; 5) clarifies that the recommendation to the youth and parent/guardian regarding whether granting the interview would be advisable is made by the facility administrator *in consultation with the communications director;* 6) clarifies that if the youth is under 18 years of age, the wishes of the youth's parent or guardian are honored as to whether the youth will participate in an interview or be filmed; and 7) clarifies that before a youth who is under 18 years of age may participate in an interview or be filmed, the TJJD publicity release form must be explained to the youth *and to the youth's parent or guardian* and signed by the youth *and the youth's parent or guardian.*

The amended §385.8141 removes all provisions except those that establish the duty to follow all laws, rules, and ethical standards relating to the confidentiality of youth and personnel information. The deleted provisions have been removed because they repeat requirements of law, refer to information addressed in other TJJD rules, or contain internal procedural information.

The amended §385.8161: 1) removes the provision that made this rule apply to contract facilities; 2) clarifies that this rule applies also to TJJD parole offices; 3) adds that this rule does not apply to a facility that was in operation prior to the establishment of a residential area within 1000 feet of the facility; 4) removes foster homes from the list of facility types that are exempt from this rule; 5) adds that this rule does not apply to any other facility described in Texas Local Government Code §244.006; 6) specifies the type of information that must be included in the notice to municipal officials when the site is within 1000 feet of designated places (i.e., residential area, school, park, or place of worship); and 7) clarifies that TJJD must post an outdoor sign at the proposed location of the facility or office stating that a correctional or *rehabilitation* facility is intended to be located on the premises.

The amended §385.8163 updates the agency name and makes minor wording changes.

The amended §385.8165: 1) removes the provision that exempted TJJD from following this rule when the only sites under consideration are near an existing TJJD or contracted facility; 2) clarifies that this rule applies only when the new facility will be *solely* owned and operated by TJJD; 3) adds that a designee of the executive director may select the staff members who will prepare the request for proposal (RFP); and 4) clarifies that the geographical areas identified in the RFP are based on a projection of the number of youth committed to TJJD from those areas.

The amended §385.8170: 1) clarifies that this rule applies when the actual *or estimated* value of a gift is $500 or more. When the actual value cannot be ascertained, the donor, the chief local administrator, or the chief financial officer or designee may assign an estimated value; and 2) adds that TJJD's written notice to the donor following action by the TJJD board must indicate that the gift has an actual or estimated value of $500 or more but may not assign a specific value to the item unless the donor has provided suitable documentation of that value.

The amended §385.8181: 1) clarifies that TJJD's criminal history check includes information from the Federal Bureau of Investigation in addition to the Texas Department of Public Safety; 2) makes several changes to the definition of *Covered Person* to more closely follow the language of the authorizing statute [e.g., contractors *with direct access to youth in TJJD facilities* are now defined as covered persons; and any person who provides direct delivery of services to youth *in TJJD custody* is now defined as a covered person]; 3) clarifies that a person who participates in more than four special events in a 12-month period is considered a volunteer; 4) clarifies that information obtained from a criminal history check may be released in accordance with applicable law; and 5) adds that TJJD will provide written notice to an employee or volunteer whose employment or enrollment is terminated or denied due to the results of a background check.

The amended §385.9941 includes only minor updates to terminology and to statutory references.

The amended §385.9951: 1) specifies that TJJD attempts to notify the parent/guardian *in person* whenever possible in the event of a youth's death; 2) adds that TJJD makes a staff member available to assist the parent/guardian with coordinating necessary matters such as returning the youth's belongings and coordinating funeral arrangements; 3) adds that the TJJD Office of Inspector General conducts a criminal investigation into every death occurring in a TJJD or contract residential facility; 4) removes the 25-day deadline for conducting an administrative investigation; 5) adds that the TJJD medical director may convene a morbidity and mortality review; and 6) adds that for a death occurring while a youth is on parole in a home, TJJD conducts a criminal and/or administrative investigation *as determined on a case-by-case basis* (instead of stating that TJJD will generally not investigate unless the youth was under the supervision of residential or contract staff at the time of death).

The amended §385.9969: 1) clarifies that *all* delinquent child support payments owed to TJJD (not just child support payments over $500) are processed under a different TJJD rule; 2) removes the statement indicating that the Office of the Attorney General (OAG) has reviewed TJJD's criteria for determining when a debt will not be referred to the OAG for further collection; 3) makes several updates to conform to the OAG's published guidelines relating to state agencies' policies on collection of delinquent obligations; and 4) changes most occurrences of "should" to "shall" to reflect that TJJD is required to take the action.

The amended §385.9971: 1) removes the statement that indicated student benefit funds may be used for youth in contract facilities; and 2) removes the statement that indicated funds donated for a specific purpose may be used to reward individual youth for their work or public activities performed off campus.

The amended §385.9990: 1) clarifies that although the executive director or chief inspector general may assign a state vehicle to an individual employee, only the executive director may sign the documentation indicating that the individual assignment is critical to the mission of the agency; 2) removes information relating to specific staff responsibilities and sub-pools within the TJJD motor pool; and 3) removes the requirement to submit an annual Fleet Operations Indirect Cost Report to the Texas Comptroller of Public Accounts.

SUMMARY OF PUBLIC COMMENTS

TJJD did not receive any public comments on the proposed rulemaking actions.

RULE REVIEW

In the Proposed Rules section of the February 26, 2016, issue of the *Texas Register* (41 TexReg 1348), TJJD published a notice of intent to review §§385.8101, 385.8107, 385.8111, 385.8136, 385.8137, 385.8141, 385.8161, 385.8163, 385.8165, 385.8170, 385.8181, 385.9941, 385.9951, 385.9969, 385.9971, 385.9981, and 385.9990 as required by Texas Government Code §2001.039. TJJD did not receive any public comments regarding the rule review.

TJJD has determined that the reasons for adopting §385.9981 continue to exist. Accordingly, this rule is readopted without amendments.

TJJD has also determined that the reasons for adopting the following rules continue to exist: §§385.8101, 385.8107, 385.8111, 385.8136, 385.8137, 385.8141, 385.8161, 385.8163, 385.8165, 385.8170, 385.8181, 385.9941, 385.9951, 385.9969, 385.9971, and 385.9990. Accordingly, these rules are readopted with amendments as described in this notice.

SUBCHAPTER B. INTERACTION WITH THE PUBLIC

37 TAC §§385.8101, 385.8107, 385.8111, 385.8136, 385.8137, 385.8141, 385.8161, 385.8163, 385.8165, 385.8170, 385.8181

STATUTORY AUTHORITY

The amended §§385.8101, 385.8111, 385.8136, 385.8137, 385.8141, 385.8161, and 385.8163 are adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended §385.8107 is adopted under Texas Government Code §2001.021, which requires each state agency to prescribe by rule the form for an interested person to submit a rulemaking petition and the procedure for submission, consideration, and disposition of the petition.

The amended §385.8181 is adopted under Texas Human Resources Code §242.010, which requires TJJD to adopt rules regarding background and criminal history checks of employees, volunteers, ombudsman staff, and advocates as well as certain individuals who provide services to youth in TJJD's custody or who have access to records in TJJD facilities or offices.

§385.8111. Complaints from the Public.

(a) Purpose. This rule establishes a process through which the Texas Juvenile Justice Department (TJJD) resolves public complaints about TJJD operations and services, including complaints that allege violations of the Americans with Disabilities Act of 1990 (ADA). Members of the public are entitled to and shall receive timely and responsive resolutions to their complaints.

(b) Public Complaint That Does Not Involve an ADA Violation.

(1) How to File a Public Non-ADA Complaint.

(A) Complaints must be filed in writing within 180 calendar days after the complainant became aware of the circumstances that are the basis of the complaint. TJJD may refuse to consider the complaint if it is not filed within the 180-day deadline.

(B) No particular format is required for a complaint. However, the complaint should contain at least the following information:

(i) name, address, and telephone number of the person filing the complaint; and

(ii) the nature of the complaint and a brief description of the circumstances surrounding the complaint to include location, names, and dates.

(2) Where to File a Public Non-ADA Complaint.

(A) The complaint may be mailed, emailed, or submitted in person to:

(i) the public complaint coordinator in TJJD's Central Office; or

(ii) the administrator of a TJJD field office or facility. That administrator immediately notifies the public complaint coordinator and forwards the written complaint to the public complaint coordinator within two working days from the date the complaint was received.

(B) The mailing addresses and physical addresses of TJJD facilities and offices are available on TJJD's website.

(3) Processing Procedures for Public Non-ADA Complaints.

(A) The public complaint coordinator is notified of all complaints received and maintains a record of each complaint.

(B) The public complaint coordinator assigns each complaint to the most appropriate administrator for response.

(C) The administrator assigned to respond to a complaint:

(i) attempts to resolve the complaint in a timely and effective manner;

(ii) reports the status of efforts to resolve the complaint to the complainant at least monthly until and including final disposition;

(iii) sends copies of the monthly status updates to the public complaint coordinator.

(c) Public Complaint That Involves an ADA Violation.

(1) ADA Compliance Officer. TJJD complies with the Americans with Disabilities Act of 1990 (ADA). The executive director has appointed the agency's human resources director as the ADA compliance officer. The human resources director is located in the agency's Central Office. The address of the Central Office is available on TJJD's website.

(2) How to File a Public ADA Complaint.

(A) Complaints may be filed in writing or verbally. If the complaint is initially filed verbally, it must subsequently be reduced to writing and received by the ADA compliance officer not later than 15 calendar days after the ADA compliance officer was notified of the initial verbal filing. The complaint must be filed within 180 calendar days after the complainant became aware of, or should have become aware of, the alleged violation. TJJD may refuse to consider the complaint if it is not filed within the 180-day deadline.

(B) No particular format is required for an ADA complaint. However, the complaint should contain at least the following information:

(i) name, address, and telephone number of the person filing the complaint; and

(ii) the nature of the complaint and a brief description of the circumstances surrounding the complaint to include location, names, and dates.

(3) Where to File a Public ADA Complaint. The complaint may be filed by any of the following means:

(A) directly, either verbally or in writing, with the ADA compliance officer in the Central Office; or

(B) in writing with the administrator of any TJJD field office or facility. That administrator immediately notifies the ADA compliance officer and forwards the written complaint to the ADA compliance officer within two working days from the date the complaint was received.

(4) Processing Procedures for Public ADA Complaints.

(A) ADA Compliance Officer and Employee Grievance Administrator Responsibilities. Within five calendar days after the ADA compliance officer receives the written complaint, the ADA compliance officer or designee and the employee grievance administrator jointly identify the appropriate decision authority and establish a date the complainant is due receipt of the decision. As soon as possible after identification of the decision authority, the ADA compliance officer or designee notifies the complainant of receipt of the complaint, the name of the decision authority (i.e., the TJJD administrator appointed to resolve the complaint), and the date a decision is due.

(B) Decision Authority's Responsibilities.

(i) Assignment. Immediately upon receipt of the complaint, the decision authority reviews it to ensure that he/she has the authority to grant the requested relief. If the decision authority does not have the authority to at least take the first steps towards granting relief (if the requested relief involves a lengthy, multi-step process), he/she forwards the complaint to the next-level administrator who has the authority to act on the complaint.

(ii) Time Lines. The decision authority has 25 calendar days from the date he/she received the complaint to conduct an investigation, resolve the complaint, prepare a written decision, obtain a legal review of the decision, and notify the complainant in writing of the decision. If for good cause the decision authority requires additional time for investigation and resolution of the complaint, he/she notifies the ADA compliance officer, employee grievance administrator, and the complainant of the reasons for the delay and provides an estimated decision date.

(iii) Investigation. The decision authority conducts the investigation or appoints an employee to conduct the investigation and provide the decision authority with non-binding recommendations. Prior to commencing the investigation, the investigator (i.e., the employee who will actually conduct the investigation) reviews the complaint with the TJJD legal department. During the course of the investigation, the investigator keeps the complainant informed of adjustments to his/her time line.

(iv) Report of Investigation.

(I) Prior to release of the written decision to the complainant or to any other person or entity, the decision authority submits the proposed decision to the TJJD legal department for review. Within five working days after receiving the proposed decision, the legal department reviews the proposed decision for legal sufficiency and informs the decision authority accordingly.

(II) Upon finalization of the written decision, the decision authority provides the written decision to the complainant, the complainant's representative (if any), the ADA compliance officer, the employee grievance coordinator, and the TJJD general counsel. If the decision is adverse to the complainant, the decision authority includes the reasons for the adverse decision.

(5) Request for Review of Public ADA Complaint Decision.

(A) If the complainant is dissatisfied with the decision, he/she may request a review of the decision by the TJJD executive director. The request must:

(i) be submitted within ten calendar days after the date of receipt of the decision;

(ii) include a copy of the written decision and a written statement specifically outlining the reasons for disagreement; and

(iii) be addressed to the TJJD executive director at the agency's Central Office. The address of the Central Office is available on TJJD's website.

(B) The executive director or designee notifies the complainant in writing of the result of the review within 20 calendar days after receipt of the request for review. Prior to releasing his/her decision, the executive director should submit the complaint record to the TJJD legal department for review and advice. If the executive director's decision upholds the initial ruling, the written notification need only state that the issue has been considered and no valid reason has been found to warrant reversing the decision.

(C) The decision is distributed to the parties identified in paragraph (4)(B)(iv)(II) of this subsection.

(D) The decision by the executive director finalizes the complaint process within TJJD and exhausts the complainant's administrative remedies.

(6) Record Repository for Public ADA Complaints. The ADA compliance officer or designee maintains the files and records of all ADA complaints. Upon completion of processing the complaint, the original decision authority ensures that the original complaint, all correspondence, and any other relevant materials are forwarded to the ADA compliance officer for filing. The ADA compliance officer ensures that any appeals are similarly filed.

§385.8137. Media Access.

(a) Purpose. This rule allows for communication between a Texas Juvenile Justice Department (TJJD) youth and the media subject to rules established by TJJD in the interest of order and safety and within limitations of confidentiality rules.

(b) General Provisions.

(1) The news media are granted access to TJJD facilities, as is any visitor, consistent with the preservation of a youth's privacy and the maintenance of order and security in the facility. TJJD supports media contact that serves the interest of public awareness and encourages the youth to contribute productively to the community.

(2) Release of records or divulgence of information that identifies individual youth or that is otherwise confidential by law is strictly prohibited.

(3) Parental consent is not required for general news media visits that do not involve any interviewing of youth.

(4) Non-TJJD personnel are not permitted to make audio or visual recordings of any treatment session(s) addressing personal or confidential information.

(5) When the news media requests to interview or to film youth, the facility administrator must consult with TJJD's communications director to review the purpose and to determine parameters for filming and/or interviews.

(6) When the news media requests an interview or to film specific youth, the facility administrator, in consultation with the TJJD communications director or designee, makes a recommendation to the youth, and to the youth's parent or guardian if the youth is under 18 years of age, regarding the advisability of the youth granting the request. When the recommendation is against allowing an interview or filming, the request is denied by the administrator unless the youth, and the youth's parent or guardian if the youth is under 18 years of age, signs a written statement acknowledging the recommendation and electing to go forward with the interview or filming despite the recommendation. If the youth is under 18 years of age, the wishes of the youth's parent or guardian are honored. If the youth is 18 years of age or older, the wishes of the youth are honored.

(7) Prior to each interview or filming:

(A) the TJJD publicity release form must be explained to the youth and to the youth's parent or guardian if the youth is under 18 years of age;

(B) the youth must indicate on the publicity release form whether he/she wants his/her primary therapist or designee to be present during the interview or filming;

(C) the youth, and parent or guardian if the youth is under 18 years of age, must sign the publicity release form; and

(D) the youth must be informed that:

(i) the interview is voluntary;

(ii) he/she may refuse to answer any questions during the interview; and

(iii) he/she may stop the interview at any time.

§385.8141. Confidentiality.

(a) The Texas Juvenile Justice Department (TJJD) ensures that all confidential information or data obtained or created in any medium is kept confidential as required by applicable statutes, rules, policies, and ethical standards.

(b) Employees, agents, consultants, volunteers, and any other persons associated with TJJD will not release or divulge confidential information about TJJD youth or confidential information from personnel or other files except as required or permitted by law.

§385.8161. Notification of a Facility Opening or Relocating.

(a) Purpose. This rule provides for notification to the public and certain elected officials of the opening or relocation of certain residential facilities and parole offices operated by the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule does not apply to:

(1) facilities that were in operation, under construction, under contract for operation or construction, or planned for operation on land owned or leased for that purpose on September 1, 1997;

(2) facilities that were in operation prior to the establishment of a residential area as described in subsection (e)(1) of this section;

(3) temporary facilities that will operate less than one year at the location;

(4) expansion of existing facilities;

(5) facilities that will not operate primarily for use as a correctional or rehabilitation facility, but will house TJJD youth only for a treatment or educational purpose;

(6) facilities that require, before operation, special or conditional use permits from the municipality in which the facility will operate; and

(7) parole offices located in commercial use areas; and

(8) any other facility described in §244.006 of the Texas Local Government Code.

(c) Notice. Except as provided in subsection (e) of this section, TJJD will provide notice as soon as practical before beginning operation or construction of a TJJD residential facility or parole office. The notice must:

(1) include the proposed address and a general description of the facility or office;

(2) be published in a newspaper of general circulation in the county in which the proposed facility or office is to be located and include where public comment on the proposal may be sent for review; and

(3) be mailed to each city council member, county commissioner, state representative, and state senator who represents the area in which the proposed facility or office is to be located.

(d) Public Meeting. Upon request by one of the elected officials identified in subsection (c)(3) of this section, TJJD will hold a public meeting to inform the public about the proposed residential facility or parole office and to receive public comment.

(e) Sixty-Day Notice for Sites 1,000 Feet from Designated Places and When Written Notice is Received by a Local Governmental Entity.

(1) Pursuant to §244.002 of the Local Government Code, 60 days before beginning construction or operation, whichever occurs first, of a TJJD residential facility or parole office within 1,000 feet of a residential area, primary or secondary school, park or public recreation area, or place of worship, TJJD will mail notice of the proposed location to the commissioners court and governing body of the municipality. The notice must:

(A) state TJJD's intent to construct or operate a correctional or rehabilitation facility within the area described in subsection (e)(1) of this section;

(B) describe the proposed location of the facility; and

(C) state that Chapter 244, Subchapter A, of the Texas Local Government Code governs the procedures for the notice of and consent to the operation of the facility.

(2) TJJD must prominently post an outdoor sign at the proposed location of the facility stating that a correctional or rehabilitation facility is intended to be located on the premises and providing the name and business address of the entity. The sign must be at least 24 by 36 inches in size and must be written in lettering at least two inches in size. The sign may be in both English and a language other than English if required by the municipality or county.

(f) Denial of Consent to Operate. A residential facility or parole office operated by TJJD that is subject to the 60-day notice requirement of subsection (e) of this section may not be operated at the proposed location if not later than the 60th day after the date on which notice is received by a commissioners court or governing body as provided for in subsection (e) of this section, the commissioners court or governing body determines by resolution after a public hearing that the operation of the TJJD residential facility or parole office at the proposed location is not in the best interest of the county or municipality.

§385.8163. Decentralization.

(a) Purpose. This rule provides for Texas Juvenile Justice Department (TJJD) interaction with regional planning commissions when TJJD decentralizes a service to a multi-county region.

(b) Use of State Planning Region.

(1) When a service or program is decentralized to a multi-county region, TJJD must use the services of a state planning region or combination of regions for the decentralization.

(2) In planning for decentralization of a service or program in a region, TJJD must consider using a regional planning commission for the purposes described in Local Government Code §391.0091, related to achieving efficiencies through shared costs, coordinating the location of services, increasing accountability, and improving financial oversight.

(3) The rule, order, or guide relating to decentralization of a service or program must state that TJJD complied with Local Government Code §391.0091 in the issuance of the rule, order, or guide.

(4) This rule does not apply to a service or program that continues to be operated by TJJD through a regional or district office or to a service or program whose location in a single county or adjacent counties of the state is determined more appropriate than decentralization as a matter of law or agency policy.

§385.8165. Site Selection for Juvenile Facility Construction.

(a) Purpose. This rule establishes a systematic process for selecting sites for the construction of juvenile facilities that will be solely owned and operated by the Texas Juvenile Justice Department (TJJD).

(b) Applicability. This rule does not apply when the only sites under consideration are adjacent to:

(1) existing residential facilities owned or leased by TJJD; or

(2) contracted residential facilities.

(c) General Provisions.

(1) Sites should facilitate settings that provide safe environments for staff and youth, meet applicable security requirements, and provide reasonable protection for the public.

(2) TJJD selects a site through a Request-for-Proposal (RFP) process unless otherwise directed by the TJJD board or Texas Legislature.

(d) Request for Proposals.

(1) An RFP for the site selection of a facility to be solely owned and operated by TJJD must be prepared by staff selected by the executive director or designee.

(2) The RFP must:

(A) identify the minimum requirements for the site and improvements that are necessary to accommodate the facility described in the RFP or contemplated by TJJD; and

(B) include criteria to be used to evaluate the site and improvements.

(3) The geographical area(s) identified in the RFP are based on a projection of the number of youth committed to TJJD in the area(s).

(4) All government entities and private groups or individuals within an identified area are encouraged to submit proposals. It is the responsibility of each proponent to obtain a copy of the RFP.

(5) The general criteria in the RFP must include, at a minimum, the following general categories:

(A) availability of a labor force that is capable of meeting the operational needs of the facility and that represents the cultural diversity of the youth served;

(B) availability of adequate medical facilities nearby;

(C) availability of academic and educational support;

(D) availability of fire and police service in the immediate area;

(E) location of the site in relation to existing properties (e.g., schools, churches, residential developments, etc.);

(F) suitability of the site for ease of construction and cost effectiveness;

(G) availability and accessibility of utilities and appropriate infrastructure; and

(H) social impact and level of community support.

(e) Selection Process.

(1) The executive director selects a review committee composed of TJJD staff. The TJJD board chair appoints a TJJD board member to chair the committee.

(2) The review committee:

(A) reviews all proposals received;

(B) evaluates the proposals based on the criteria stated in the RFPs; and

(C) ranks the proposals based on the evaluations.

(3) The chair of the review committee presents the results of the review to the TJJD board.

(4) Final site selection is made by the TJJD board unless otherwise directed by the Texas Legislature.

§385.8181. Background Checks.

(a) Policy. The Texas Juvenile Justice Department (TJJD) reviews criminal histories and employment references for certain persons as required under §242.010 of the Texas Human Resources Code.

(b) Applicability. This rule does not apply to:

(1) youth access to a personal attorney under §380.9311 of this title;

(2) youth access to a personal clergy member under §380.9317 of this title;

(3) youth access to visitors under §380.9312 of this title; or

(4) special event visitors, as defined in this rule.

(c) Definitions. The following terms have the following meanings when used in this rule:

(1) Advocate--a person employed by or otherwise officially associated with an organization registered with TJJD as an advocacy or support group under §385.8183 of this title.

(2) Background Check--obtaining certain information, including, at a minimum:

(A) Criminal History Check--a compilation of the national and state criminal history information maintained by the Federal Bureau of Investigation and the Texas Department of Public Safety; and

(B) Employment Reference Check--references from previous and current employers.

(3) Contractor--a person under contract with TJJD individually, or an employee or subcontractor of an organization under contract with TJJD.

(4) Covered Person--

(A) an employee, volunteer, ombudsman, or advocate as defined in this rule working for TJJD, in a TJJD facility, or in a facility under contract with TJJD;

(B) a contractor who has direct access to youth in TJJD facilities;

(C) any person not described in paragraphs (4)(A) or (4)(B) of this subsection who provides direct delivery of services to youth in TJJD custody;

(D) any person not described in paragraphs (4)(A) or (4)(B) of this subsection who is authorized to have unsupervised access within TJJD facilities or offices to records of identifiable TJJD youth; or

(E) any person who is an applicant for a position described in paragraphs (4)(A)-(D) of this subsection.

(5) Employee--a person employed by TJJD.

(6) Ombudsman--a person employed by the Office of Independent Ombudsman.

(7) Special Event Visitor--a person who:

(A) is invited by TJJD to participate in a special event for the benefit of youth;

(B) does not participate in more than four special events in any 12-month period;

(C) does not provide direct delivery of services to youth;

(D) does not have access to youth records; and

(E) does not meet the definition of advocate, contractor, employee, or ombudsman.

(8) Volunteer--a person registered in a position that renders services for or on behalf of TJJD that does not receive compensation in excess of reimbursement for expenses incurred in that position, or a person who participates in more than four special events in a 12-month period. For purposes of this rule, volunteer does not include special event visitors.

(d) General Provisions.

(1) Except as described in paragraph (2) of this subsection, TJJD's executive director or his/her designee:

(A) conducts a background check on each covered person prior to granting the person access to youth, youth records, or any residential facility operated by or under contract with TJJD; and

(B) conducts a criminal history check on each covered person at least once per year thereafter.

(2) The TJJD executive director or his/her designee may waive the background check:

(A) for a contractor when physical or procedural barriers are in place to prevent the contractor from having contact with or access to TJJD youth, and the scope of services to be performed does not involve access to youth records;

(B) for a contractor who has an independent legal obligation to protect the confidentiality of youth records, and the scope of services to be performed does not involve access to youth;

(C) for a covered person who provides direct delivery of off-site services to youth assigned to residential facilities when the person is required to submit to a background check as a condition of professional licensure or employment (e.g., health care specialist referrals);

(D) for a covered person providing necessary services in an emergency situation when no appropriately screened service providers offering the same or similar service are immediately available and a delay in providing the service would risk significant harm to a youth (e.g., emergency room visits or rape crisis counseling); or

(E) for a covered person, other than a TJJD employee, providing services in his/her official capacity as an employee of a federal, state, or local governmental entity.

(3) TJJD does not assess a fee in connection with the administrative costs incurred in conducting a background check as described in this rule.

(4) As part of the initial criminal history background check, a covered person must electronically provide a complete set of fingerprints to TJJD in the manner determined by TJJD.

(5) A covered person must provide employment history information in a form and manner determined by TJJD.

(6) All criminal history information obtained from the National Crime Information Center or any state crime information database is confidential and may be released only in accordance with applicable law.

(e) Standards for Evaluating Background Information.

(1) Background check results for covered persons are evaluated according to standards established in TJJD's policies addressing eligibility for employment or assignment in effect at the time the background check is conducted.

(2) When a background check reveals criminal or employment history that is unacceptable for the position or service to be performed by an employee or volunteer, TJJD terminates or denies that employee's or volunteer's employment or enrollment. TJJD provides written notice to the employee or volunteer whose employment or enrollment is terminated or denied.

(3) When a background check reveals criminal or employment history that is unacceptable for the position or service to be performed by a contractor, advocate, or ombudsman, TJJD denies the person access to any or all of the following, as appropriate: youth, youth information, and TJJD facilities. TJJD provides written notice to the contractor, advocate, or ombudsman whose access is denied.

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

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SUBCHAPTER C. MISCELLANEOUS

37 TAC §§385.9941, 385.9951, 385.9969, 385.9971, 385.9990

STATUTORY AUTHORITY

The amended §385.9941 is adopted under Texas Human Resources Code §261.058, which requires TJJD to adopt rules that establish procedures for reviewing and commenting on reports issued by the Office of Independent Ombudsman and for expediting or eliminating the review of and comment on reports that are issued due to an emergency or a serious or flagrant circumstance.

The amended §385.9951 is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs. Section §385.9951 is also adopted under Texas Family Code §261.409, which requires TJJD to adopt standards by rule for the investigation of suspected abuse, neglect, or exploitation in a facility under TJJD's jurisdiction.

The amended §385.9969 is adopted under Texas Government Code §2107.002, which requires each state agency that collects delinquent obligations owed to the agency to establish procedures by rule for collecting a delinquent obligation.

The amended §385.9971 is adopted under Texas Human Resources Code §242.003, which authorizes TJJD to adopt rules appropriate to the proper accomplishment of its functions and to adopt rules for governing TJJD schools, facilities, and programs.

The amended §385.9990 is adopted under Texas Government Code §2171.1045, which requires each state agency to adopt rules, consistent with the management plan adopted by the Office of Vehicle Fleet Management, relating to the assignment and use of agency vehicles.

§385.9941. Response to Ombudsman Reports.

(a) Purpose. The purpose of this rule is to establish procedures for the Texas Juvenile Justice Department (TJJD) to review and comment on reports issued by the Office of the Independent Ombudsman (OIO).

(b) Applicability. This rule applies to the following types of reports issued by OIO:

(1) quarterly reports issued under Human Resources Code §261.055(a);

(2) reports concerning serious or flagrant circumstances issued under Human Resources Code §261.055(b); and

(3) any other formal reports containing findings and making recommendations concerning systemic issues that affect TJJD.

(c) Prior to Publication of an OIO Report.

(1) Upon receipt of an OIO report prior to the report's publication, the TJJD executive director or his/her designee:

(A) assigns the report for review and comment to appropriate staff members; and

(B) drafts a formal response to the OIO report.

(2) TJJD's formal response to the draft report shall be provided to OIO no later than 14 days after receipt of the draft report.

(3) If the OIO report addresses serious or flagrant circumstances as described in Human Resources Code §261.055(b), TJJD shall expedite or eliminate its review of and comment on the report. The TJJD executive director or his/her designee:

(A) determines whether to expedite or eliminate the review and comment process;

(B) within one business day, notifies OIO of TJJD's intention to expedite or eliminate the review and comment process; and

(C) in cases of expedited review, provides TJJD's formal comments to OIO no later than the third business day after the date TJJD receives the report.

(d) After Publication of an OIO Report.

(1) Upon publication of an OIO report, the TJJD executive director or his/her designee determines whether TJJD will make comments on the published report.

(2) In cases where TJJD will make comments on a published OIO report, TJJD's formal response shall be submitted to OIO no later than the 30th day after the date the report is published.

(3) If the published report addresses serious or flagrant circumstances as described in Human Resources Code §261.055(b), TJJD shall follow the procedures and deadlines established in subsection (c)(3) of this section.

§385.9969. Collection of Delinquent Obligations.

(a) Purpose. This rule sets forth procedures to establish and determine the liability of each person responsible for an obligation to the Texas Juvenile Justice Department (TJJD), whether that liability can be established by statutory or common law. This rule also establishes procedures for collecting delinquent obligations pursuant to §2107.002 of the Texas Government Code.

(b) Applicability. This rule does not apply to delinquent obligations for child support, which are processed according to §385.9967 of this title.

(c) Definitions. The following words and terms have the following meanings when used in this rule.

(1) Attorney general - The Office of the Attorney General of Texas, acting through its Bankruptcy and Collections Division.

(2) Debtor - Any person or entity liable or potentially liable for an obligation owed to TJJD or against whom a claim or demand for payment has been made.

(3) Delinquent - Payment is past due by law or by customary business practice, and all conditions precedent to payment have occurred or been performed.

(4) Make demand - To deliver or cause to be delivered by first class United States mail a writing setting forth the nature and amount of the obligation owed to TJJD.

(5) Demand letter - A writing making demand.

(6) Obligation - A debt, judgment, claim, account, fee, fine, tax, penalty, interest, loan, charge, or grant.

(7) Security - Any right to have property owned by an entity with an obligation to TJJD sold or forfeited in satisfaction of the obligation; and any instrument granting a cause of action in favor of the State of Texas and/or TJJD against another entity and/or that entity's property, such as a bond, letter of credit, or other collateral that has been pledged to TJJD to secure an obligation.

(d) Procedures for Collecting Delinquent Obligations.

(1) When TJJD determines the liability of each person responsible for an obligation, whether that liability can be established by statutory or common law, TJJD's collection procedures shall apply to every debtor, subject to reasonable tolerances established by TJJD.

(2) TJJD records shall contain and reflect the identity of all persons liable on the obligation or any part thereof.

(3) TJJD records shall reflect the correct physical address of the debtor's place of business, and, where applicable, the debtor's residence. Where a fiduciary or trust relationship exists between TJJD (or the state) as principal and the debtor as trustee, an accurate physical address shall be maintained. A post office box address should not be used unless it is impractical to obtain a physical address or the post office box address is in addition to a correct physical address maintained on TJJD's books and records.

(4) Demand letters shall be mailed in an envelope bearing the notation "address correction requested" in conformity with 39 Code of Federal Regulations, Chapter III, Subchapter A, Part 3001, Subpart C, Appendix A, §911. If an address correction is provided by the United States Postal Service, the demand letter shall be re-sent to that address prior to the referral procedures described herein. Demand shall be made upon every debtor prior to referral of the account to the attorney general. The final demand letter shall include a statement, where practical, that the debt, if not paid, will be referred to the attorney general.

(5) Where state law allows TJJD to record a lien securing the obligation, TJJD shall file the lien in the appropriate records of the county where the debtor's principal place of business, or, where appropriate, the debtor's residence, is located or in such county as may be required by law. The lien shall be filed as soon as the obligation becomes delinquent or as soon as is practicable. After referral of the delinquency to the attorney general, any lien securing the indebtedness may not be released, except on full payment of the obligation, without the approval of the attorney representing TJJD in the matter.

(6) Where practicable, TJJD shall maintain individual collection histories of each account in order to document attempted contacts with the debtor, the substance of communications with the debtor, efforts to locate the debtor and his/her assets, and other information pertinent to collection of the delinquent account.

(7) Prior to referral of the obligation to the attorney general, TJJD shall:

(A) verify the debtor's address and telephone number;

(B) transmit no more than two demand letters to the debtor at the debtor's verified address. The first demand letter shall be sent no later than 30 days after the obligation becomes delinquent. The second demand letter shall be sent no sooner than 30 days, but not more than 60 days, after the first demand letter. Where TJJD procedures, statutory mandates, or the requirements of this section indicate that a lawsuit on the account may be filed by the attorney general, the demand letters shall so indicate;

(C) verify that the obligation is not legally uncollectible or uncollectible as a practical matter, as follows:

(i) Bankruptcy. TJJD shall prepare and timely file a proof of claim, when appropriate, in the bankruptcy case of each debtor, subject to reasonable tolerances adopted by TJJD. Copies of all such proofs of claims filed shall be sent to the attorney general absent the granting of a variance. TJJD shall maintain records of notices of bankruptcy filings, dismissals and discharge orders received from the United States bankruptcy courts to enable TJJD to ascertain whether the collection of the claim is subject to the automatic stay provisions of the bankruptcy code or whether the debt has been discharged. TJJD may seek the assistance of the attorney general in bankruptcy collection matters where necessary, including the filing of a notice of appearance and preparation of a proof of claim.

(ii) Limitations. If the obligation is subject to an applicable limitations provision that would prevent suit as a matter of law, the obligation shall not be referred unless circumstances indicate that limitations have been tolled or are otherwise inapplicable.

(iii) Corporations. If a corporation has been dissolved, has been in liquidation under Chapter 7 of the United States Bankruptcy Code, or has forfeited its corporate privileges or charter, or, in the case of a foreign corporation had its certificate of authority revoked, the obligation shall not be referred unless circumstances indicate that the account is clearly uncollectible.

(iv) Out-of-State Debtors. If the debtor is an individual and is located out-of-state, or outside the United States, the matter shall not be referred unless a determination is made that the domestication of a Texas judgment in the foreign forum would more likely than not result in collection of the obligation, or that the expenditure of TJJD funds to retain foreign counsel to domesticate the judgment and proceed with collection attempts is justified.

(v) Deceased Debtors. If the debtor is deceased, TJJD shall file a claim in each probate proceeding administering the decedent's estate. If such probate proceeding has concluded and there are no remaining assets of the decedent available for distribution, the delinquent obligation shall be classified as uncollectible and not be referred. In cases where a probate administration is pending, or where no administration has been opened, all referred obligations shall include an explanation of any circumstances indicating that the decedent has assets available to apply toward satisfaction of the obligation.

(8) Not later than the 90th day after the date an obligation becomes delinquent, TJJD shall report the uncollected and delinquent obligation to the attorney general for further collection efforts as hereinafter provided.

(9) Reasonable tolerances adopted by the TJJD Finance Division are listed below and determine when an obligation shall not be referred to the attorney general for further collection. They are:

(A) amount of the obligation is less than $500;

(B) existence of any security;

(C) likelihood of collection through passive means such as the filing of a lien where applicable;

(D) expense to TJJD and to the attorney general in attempting to collect the obligation;

(E) availability of resources both within TJJD and within the Office of the Attorney General to devote to the collection of the obligation; or

(F) debt is uncollectible as set forth in paragraph (7) of this subsection.

(10) TJJD may utilize the "warrant hold" procedures of the Comptroller of Public Accounts authorized by the Texas Government Code, §403.055, to ensure that no treasury warrants are issued to debtors until the debt is paid.

(e) Referral to Attorneys for Collection.

(1) Suit on the Obligation by In-House Attorneys.

(A) If TJJD seeks to use in-house attorneys to collect delinquent obligations through court proceedings, TJJD must submit a written request to the attorney general's Bankruptcy and Collections Division.

(B) Upon the written approval of the attorney general, TJJD may file suit to collect a delinquent obligation through an attorney serving as a full-time employee of TJJD. Where circumstances make it impractical to secure attorney general approval for every delinquent obligation upon which a lawsuit is to be filed, TJJD may apply to the attorney general for an authorization to bring suit on particular types of obligations through attorneys employed full-time by TJJD. Such authorization, if given, must be renewed at the beginning of each fiscal year.

(C) After an obligation is referred to TJJD's attorneys employed as in-house counsel, the obligation shall be reduced to judgment against all entities legally responsible for the obligation where the lawsuit and judgment will make collection of the obligation more likely and the expenditure of TJJD resources in recovering judgment on the obligation is justified.

(D) Where authorized by law, TJJD shall plead for and recover attorney's fees, investigative costs, and court costs in addition to the obligation.

(E) Every judgment taken on a delinquent obligation shall be abstracted and recorded by TJJD in every county where the debtor owns real property, operates an active business, is likely to inherit real property, owns any mineral interest, or has maintained a residence for more than one year.

(2) Referral to the Attorney General.

(A) TJJD may explore the exchange of accounts with the attorney general by computer tape or other electronic data transfer and discuss any variances as may be appropriate. TJJD and the attorney general may agree upon an exchange of certain minimum account information necessary for collection efforts by the attorney general.

(B) TJJD may refer individual accounts to the attorney general after the procedures set forth in subsection (d)(7)-(10) of this section. Individual accounts referred to the attorney general shall include the following:

(i) copies of all correspondence between TJJD and the debtor;

(ii) a log sheet (see subsection (d)(6) of this section) documenting all attempted contacts with the debtor and the result of such attempts;

(iii) a record of all payments made by the debtor and, where practicable, copies of all checks tendered as payment;

(iv) any information pertaining to the debtor's residence and his/her assets; and

(v) copies of any permit application, security, final orders, contracts, grants, or instrument giving rise to the obligation.

(C) Delinquent accounts upon which a bond or other security is held shall be referred to the attorney general no later than 60 days after becoming delinquent. All such accounts where the principal has filed for relief under federal bankruptcy laws shall be referred im-

mediately, since collection of the security may obviate the need to file a claim or to appear in the bankruptcy case.

(D) The attorney general may decide that a particular obligation or class of obligations may be assigned after referral to the appropriate division within the Office of the Attorney General.

(3) Referral to Collection Firms or Private Attorneys.

(A) Prior Approval of Attorney General. Except as provided by §2107.003, Texas Government Code, TJJD may not contract with, retain, or employ any person other than a full-time employee of TJJD to collect a delinquent obligation without prior written approval of the attorney general. Any existing arrangements must receive the written approval of the attorney general to be renewed or extended in any fashion.

(i) Approval of Contract with Private Firm or Attorney.
Prior to contracting with, retaining, or employing a person other than a full-time employee of TJJD to collect a delinquent obligation, TJJD must submit a proposal to the attorney general requesting the attorney general to collect the obligation(s).

(ii) TJJD must submit the proposed contract to the attorney general for written approval. The proposal must disclose any fee that TJJD proposes to pay the private collection firm or attorney. The attorney general may elect to undertake representation of TJJD on the same or similar terms as contained in the proposed contract. If the attorney general declines or is unable to perform the services requested, the attorney general may approve the contract. If the attorney general decides that TJJD has not complied with this subsection, the attorney general may:

(I) decline to approve the contract; or

(II) require TJJD to submit or resubmit a proposal to the attorney general for collection of the obligation in accordance with this subsection.

(iii) If the attorney general fails to act as set forth in clause (i) of this subparagraph within 60 days of receipt of the proposed contract or receipt of additional information requested, the attorney general is deemed to have approved the contract in accordance with this rule.

(B) Requirements of Proposed Contracts with Private Persons Presented for Attorney General's Approval. In addition to information required by other state laws, all contracts for collection of delinquent obligations must contain or be supported by a proposal containing the following:

(i) a description of the obligations to be collected sufficient to enable the attorney general to determine what measures are necessary to attempt to collect the obligation(s);

(ii) explicit terms of the basis of any fee or payment for the collection of the obligation(s);

(iii) a description of the individual accounts to be collected in the following respects:

(I) the total number of delinquent accounts;

(II) the dollar range;

(III) the total dollar amount;

(IV) a summary of the collection efforts previously made by TJJD; and

(V) the legal basis of the delinquent obligations to be collected.

(C) Additional Requirements of Proposed Contracts with Private Persons Presented for Attorney General Approval. All contracts for collection of delinquent obligations shall contain provisions stating the following:

(i) Litigation on the delinquent account is prohibited unless the private person obtains specific written authorization from TJJD and the attorney general and complies with the requirements of this rule;

(ii) The person shall place any funds collected in an interest bearing account with amounts collected, plus interest, less collections costs, payable to TJJD on a monthly basis or by direct deposit to TJJD's account on a weekly basis with TJJD billing once a month; in either case a listing of the accounts and amounts collected per account shall be submitted to TJJD upon deposit of the funds;

(iii) The person shall refer any bankruptcy notice to TJJD within three working days of receipt;

(iv) TJJD may recall any account without charge;

(v) The person may not settle or compromise the account for less than the full amount owed (including collection costs where authorized by statute or terms of the obligation) without written authority from TJJD;

(vi) The person is not an agent of TJJD but is an independent contractor, and the person will indemnify TJJD for any loss incurred by his/her violation of state and federal debt collection statutes or by the negligence of the person, his/her employees, or his/her agents; and

(vii) Any dispute arising under the contract shall be submitted to a court of competent jurisdiction in Texas, unless any other venue is statutorily mandated, in which case the specific venue statute will apply, subject to any alternative dispute resolution procedures adopted by TJJD pursuant to Chapter 2009, Texas Government Code.

§385.9971. Student Benefit Fund.

(a) Purpose. This rule establishes procedures for the deposit of funds into the student benefit fund. The student benefit fund is used only for the education, recreation, or entertainment of the youth in residential facilities operated by the Texas Juvenile Justice Department (TJJD).

(b) General Provisions.

(1) Funds from the following sources are designated as student benefit funds:

(A) proceeds from canteens or vending machines at TJJD facilities in excess of the amount required to pay the expense of operating those canteens or vending machines;

(B) donations for youth activities;

(C) proceeds from youth fund-raising projects; and

(D) contraband money deposited as a consequence of a Level II due process hearing.

(2) Funds that cannot be accepted in compliance with state law and this rule must be returned to the donor.

(3) For acceptance of gifts that have an actual or estimated value of $500 or more, see §385.8170 of this title, relating to acceptance of gifts of $500 or more.

(4) Student benefit funds may be used only to:

(A) provide education, recreation, or entertainment to youth committed to TJJD; and

(B) reimburse youth for personal property lost or damaged as a result of staff negligence in accordance with §380.9107 of this title.

(5) Expenditures must be justified to show no preferential treatment of certain individuals or groups of youth. However, expenditures are not required to benefit every youth each time.

(6) Donations must be used for the purpose designated by the donor unless state law prohibits such expenditure.

(7) Student benefit funds are maintained in the Comptroller of Public Accounts - Treasury Operations. All expenditures must conform to state purchasing rules and regulations and other laws and regulations regarding general revenue fund expenditures except as necessary to reimburse youth under paragraph (4) of this subsection.

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

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Jill Mata
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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 9. CONTRACT AND GRANT MANAGEMENT

SUBCHAPTER I. DESIGN-BUILD CONTRACTS

43 TAC §§9.150 - 9.153, 9.155

The Texas Department of Transportation (department) adopts amendments to §§9.150 - 9.153 and 9.155, concerning Design-Build Contracts. The amendments to §§9.150 - 9.153 and 9.155 are adopted without changes to the proposed text as published in the May 13, 2016 issue of the *Texas Register* (41 TexReg 3457) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

House Bill 20, 84th Legislature, 2015, amended Transportation Code, Chapter 223, Subchapter F, which authorizes the department to enter into a design-build contract for a highway project, and prescribes the procurement process to be followed by the department for a design-build contract.

House Bill 20 made permanent the limitation to entering into no more than three design-build contracts each fiscal year and increased to $150 million the minimum construction cost estimate for a project to be eligible for delivery under a design-build contract. The bill defined a highway project eligible for delivery under a design-build contract to mean a single highway between two defined points in a corridor or two or more contiguous highway facilities, and precluded the department from including in the procurement documents for a design-build project a schematic design that is more than approximately 30% complete. If maintenance of the project is required, House Bill 20 requires the department to require proposers to provide pricing for the maintenance work for each maintenance term.

In a separate rulemaking, §10.5 of the department's rules, relating to ethical conduct by entities doing business with the department, is being amended to expand the definition of impermissible benefits an entity is prohibited from offering, giving, or agreeing to give to a member of the commission or to a department employee. Those changes, and the amendments to §9.155 in this rulemaking, are consistent with the provisions in the department's Ethics Policy that prohibit a department employee from accepting any gift, favor, or service that the employee knows or should know is being offered with the intent to influence the employee's official conduct.

The amendments to §§9.150 - 9.153 and §9.155 implement changes made by House Bill 20 and implement current department practices regarding gifts and benefits to department officials and employees.

Section §9.150 is amended because of the changes made in HB 20 to the minimum construction cost estimate for a project eligible for delivery under a design-build contract.

Transportation Code, Chapter 223, Subchapter F, as amended by House Bill 20, authorizes a design-build contract entered into by the department to include a maintenance agreement requiring a design-build contractor to maintain a project for an initial term of not longer than five years, and authorizing the department, in its sole discretion, to exercise options extending the term of the maintenance agreement for additional periods beyond the initial maintenance term, with each additional period being not longer than five years. That subchapter does not limit the maintenance services that may be included in a maintenance agreement.

Amendments to §9.151 amend the definition of design-build contract to clarify that inclusion of maintenance services is permissive, and to maintenance services other than capital maintenance may be required. The amendments also add the definition of highway project required by House Bill 20.

Amendments to §9.152 clarify that maintenance services other than capital maintenance may be required.

Amendments to §9.153 implement changes required by House Bill 20 by providing that if maintenance of a highway project is required, the request for proposals must require a proposal to include pricing for the maintenance work for each maintenance term.

Section 9.155 prohibits a proposer, design-build contractor, consultant, or subconsultant participating in the design-build program, or an affiliate of any of those entities, from, except as provided in that section, offering, giving, or agreeing to give a gift or benefit to a member of the commission or to a department employee whose work for the department includes the performance of procurement services relating to a project under this subchapter, or who participates in the administration of a design-build contract. The amendments to §9.155 remove the exception to that prohibition that allow a consultant or subconsultant, unless a member of a proposer or design-build contractor team, to pay for certain working meals.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 223, Subchapter F.

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

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Joanne Wright
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Texas Department of Transportation
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CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §10.5

The Texas Department of Transportation (department) adopts amendments to §10.5, concerning Benefit. The amendments to §10.5 are adopted without changes to the proposed text as published in the May 13, 2016 issue of the *Texas Register* (41 TexReg 3465) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

Amendments to §10.5, Benefit, revise the definition of "benefit" by deleting the exclusion for ordinary working meals. The department expects entities doing business with the department to adhere to ethical standards of conduct. Section 10.101, Required Conduct, requires that an entity that does business with the department refrain from offering, giving, or agreeing to give a benefit to a member of the commission or to a department employee. The amendments align the definition of benefit in §10.5 with the department's ethics policy, which requires that a department employee not accept or solicit any gift, favor, or service that might reasonably tend to influence the employee in the discharge of official duties, or that the employee knows or should know is being offered with the intent to influence the employee's official conduct.

COMMENTS

Comments on the proposed amendments were received from two interested groups.

Comment: The Associated General Contractors (AGC) of Texas expressed a desire to continue to engage with the department in joint meetings and work sessions that on occasion are scheduled to include working lunches and dinners. The AGC of Texas position is that the Chapter 10 rules do not apply to AGC of Texas and department joint functions that involve meals because Title 43, Part 1, Chapter 10, *Ethical Conduct by Entities Doing Business with the Department,* does not include a trade association like the AGC of Texas in the definition of "entity" found in §10.2.

Response: The department agrees that Title 43, Part 1, Chapter 10, *Ethical Conduct by Entities Doing Business with the Department,* does not include a trade association, such as the AGC of Texas, in the definition of "entity." As such, the amendments to Chapter 10 do not apply to a trade association.

Comment: The American Council of Engineering Companies of Texas (ACEC Texas) opposes the proposed changes to Chapter 10 as unnecessary and inconsistent with recent legislative policy governing relationship between vendors and certain public officials. ACEC Texas believes that working lunches are a standard and customary part of communication in business and would never rise to the point of impacting the judgment of a department professional.

Response: The department disagrees with the commenter. The Local Government Code provision referenced by the commenter relates to disclosures for local government officers and does not apply to the department or other state agencies. Additionally, the referenced code includes food in the definition of "gift." The amendments to Chapter 10 are necessary to align the definition of "benefit" in §10.5 with the department's internal ethics policy, which applies to department employees.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

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

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CHAPTER 27. TOLL PROJECTS

The Texas Department of Transportation (department) proposes amendments to §27.8, Conflict of Interest and Ethics Policies, concerning Comprehensive Development Agreements, and to §27.91, Definitions, and §27.92, Financial Terms, concerning Determination of Terms for Certain Toll Projects. The amendments to §§27.8, 27.91, and 27.92 are adopted without changes to the proposed text as published in the May 13, 2016, issue of the *Texas Register* (41 TexReg 3466) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

In a separate rulemaking, §10.5 of the department's rules, relating to ethical conduct by entities doing business with the department, is being amended to expand the definition of impermissible benefits an entity is prohibited from offering, giving, or agreeing to give to a member of the commission or to a department employee. Those changes, and the amendments to §27.8 in this rulemaking, are consistent with the provisions in the department's Ethics Policy that prohibit a department employee from accepting any gift, favor, or service that the employee knows or should know is being offered with the intent to influence the employee's official conduct. The amendments to §27.8 implement current department practices regarding gifts and benefits to department officials and employees.

The department does not currently have the statutory authority to enter into availability payment contracts. The amendments to §27.91 and §27.92 implement changes necessary to align those rules with the department's existing contracting authority.

Section 27.8 prohibits a proposer, developer, consultant, or subconsultant participating in the comprehensive development agreement program, or an affiliate of any of those entities, from, except as provided in that section, offering, giving, or agreeing to give a gift or benefit to a member of the commission or to a department employee whose work for the department includes the performance of procurement services relating to a comprehensive development agreement project, or who participates in the administration of a comprehensive development agreement. The amendments to §27.8 remove the exception to that prohibition that allows a consultant or subconsultant, unless a member of a proposer or developer team, to pay for an ordinary business lunch.

Amendments to §27.91 remove the definition for availability payment contract. Amendments to §27.92 remove references in that section to an availability payment contract.

COMMENTS

No comments on the proposed amendments were received.

SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

43 TAC §27.8

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing the selection and negotiation process for comprehensive development agreements.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 223 and 228.

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

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SUBCHAPTER H. DETERMINATION OF TERMS FOR CERTAIN TOLL PROJECTS

43 TAC §27.91, §27.92

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission (commission) with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing the selection and negotiation process for comprehensive development agreements.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 223 and 228.

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SUBCHAPTER G. OPERATION OF DEPARTMENT TOLL PROJECTS

43 TAC §§27.83 - 27.85

The Texas Department of Transportation (department) adopts amendments to §27.83, Contracts to Operate Department Toll Projects, new §27.84, No-Cost Contracts for Services to Support the Operation of Department Toll Projects, and new §27.85, Service Charge for Payment Transactions, concerning Operation of Department Toll Projects. The amendments and new sections are adopted without changes to the proposed text as published in the June 10, 2016, issue of the *Texas Register* (41 TexReg 4237) and will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Transportation Code, §228.052(a) authorizes the department to enter into an agreement with one or more persons to provide, on terms approved by the department, personnel, equipment, systems, facilities, and services necessary to operate a toll project or system. Transportation Code, §228.052(b) provides that a

person that enters into an agreement with the department to provide services for a customer to pay an amount on an electronic toll collection customer account at a location other than a department office may collect from the customer a service charge in addition to the amount paid on the account. Transportation Code, §228.052(c) provides that the Texas Transportation Commission (commission) by rule shall set the maximum amount of the service charge, which may not exceed $3 for a payment transaction.

The commission adopted §27.83 in 2006. The rule describes the process for soliciting proposals to operate a department toll project or system and provides for selection of the private entity whose proposal offers the apparent best value to the department. The department has determined that opportunities exist for private entities to provide certain services in support of toll operations at no cost to the department.

Amendments to §27.83, Contracts to Operate Department Toll Projects, clarify that the requirements of that section do not apply to no-cost contracts.

New §27.84, No-Cost Contracts for Services to Support the Operation of Department Toll Projects, prescribes the requirements for soliciting proposals for services to support the operation of a department toll project or system that will be provided by a private entity at no cost to the department. The new section identifies the types of services that may be solicited by the department, including: (1) establishing fleet account programs to manage the payment of tolls; (2) providing account maintenance services, including accepting payments, updating customer account information, and selling and registering tags; and (3) any other activities that the department considers necessary to enhance customer service and promote the efficient and effective operation of its toll projects and systems. The new section also addresses the solicitation process, evaluation and selection procedures, and execution of the agreement.

New §27.85, Service Charge for Payment Transactions, sets the maximum amount of the service charge that may be collected from a customer for a payment transaction conducted at a location other than a department office, and describes the circumstances under which the service charge may be assessed. The new section provides that a person may collect a service charge, not to exceed $2.00, for accepting a payment due on an invoice or violation notice, accepting a payment to establish, or replenishing the minimum balance on a tag or accepting a payment for the sale of a tag. A separate service charge may be collected for each payment transaction. The service charge may not be assessed unless the underlying agreement with the department specifically authorizes such a charge.

The department contacted multiple retailers regarding bill payment services currently available to their customers. Service charges range between $.75 and $3.50, depending on the retailer and the type and amount of the payment. The department has determined that $2.00 is a reasonable charge for an individual payment transaction.

COMMENTS

No comments concerning §§27.83 - 27.85 were received.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.052, which requires the commission by rule to set the maximum amount that a person may collect as a service charge under that section.

CROSS REFERENCE TO STATUTE

Transportation Code, §228.052.

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

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