PROPOSED RULES

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

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

TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 7. ADMINISTRATION

22 TAC §7.10

The Texas Board of Architectural Examiners (Board) proposes the amendment of §7.10, pertaining to General Fees.

First, the proposed amendment would modify the fee schedule in §7.10(b) to implement a change in the additional cost to pay fees through the internet. Online payment services are provided by Texas.gov, a third-party provider under contract with the Texas Department of Information Resources. The cost of providing and maintaining online payment services is covered by a surcharge which is added to such payments and retained by Texas.gov. These charges apply to payments made by credit card and through the Automated Clearing House Network (commonly referred to as "ACH"). Currently, Texas.gov charges $1.00 to process payments by ACH, but this amount is decreasing to $0.25. Therefore, it is necessary to modify the fee schedule in §7.10, which currently reflects a surcharge of $1.00 to make a payment through ACH.

Additionally, in order to simplify the Board's fee schedule and reduce the need for rulemaking in response to any subsequent changes to the fees charged by Texas.gov, the Board proposes to delete two columns in the fee schedule that identify the total amount charged for payments by credit card and ACH, and instead adopt new subsection (b), which states, "Applicants and registrants who submit payments online through Texas.gov will be subject to convenience fees set by the Department of Information Resources, that are in addition to the fees listed in subsection (b)."

Second, the Board proposes to amend §7.10 to institute a surcharge to fund the examination fee scholarship program. Under Occupations Code §1051.651, the Board is required to administer a scholarship program to offset the cost of the examination fee for qualifying applicants for architectural registration. The law requires this program to be funded through fees collected at the time of renewal for architectural registrations held by Texas residents. To this end, the Board proposes to modify the fee schedule in §7.10(b) to implement an additional $3 fee to renew an active or inactive architectural registration held by a state resident. Additionally, the Board proposes to adopt §7.10(c), which states, "As authorized under §1051.355 and §1051.651 of the Texas Occupations Code, the fee schedule in subsection (b) includes a $3 fee to be collected from each Texas resident who renews an active or inactive registration as an architect, to fund the examination fee scholarship program under § 1051.653, Texas Occupations Code."

FISCAL NOTE

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

PUBLIC BENEFIT/COST OF COMPLIANCE

For the first five-year period the amended rule is in effect, the proposed rule change will result in a benefit to those registrants who utilize ACH transfers to Texas.gov to pay fees to the Board. The charge for such service will drop from $1.00 to $0.25.

Additionally, the expected public benefit includes the Board's satisfaction of a legal requirement to fund the examination fee scholarship program as created by the Texas Legislature. In creating the program, the legislature identified the following public benefits to be served by the program: promoting the professional needs of the state, increasing the number of highly trained and educated architects available to serve the residents of the state, improving the state's business environment and encouraging economic development, and identifying, recognizing, and supporting outstanding applicants who plan to pursue careers in architecture. Individuals who receive a scholarship will benefit from a decrease in the cost to complete the registration examination.

The implementation of the $3 scholarship surcharge will result in an economic cost of $3 per year for in-state active and inactive architects who renew a registration. The rule does not regulate small or micro-businesses, and will have no negative fiscal impact on such business. Therefore, no Economic Impact Statement or Regulatory Flexibility Analysis is required.

PUBLIC COMMENT

Comments may be submitted to Lance Brenton, General Counsel, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, TX 78711-2337. Comments must be received by November 1, 2016.

STATUTORY AUTHORITY

The amendment of §7.10 is proposed under §§1051.202, 1051.302, 1051.305, 1051.355, 1051.357, 1051.651, 1051.653, 1051.705, 1052.054, 1052.154, 1052.155, 1053.052, and 1053.156 of the Texas Occupations Code. The cited statutes provide the Board with obligations and authorizations with respect to collection of fees, as follows:

Section 1051.202 authorizes the Board to adopt reasonable rules as necessary to regulate the practices of architecture, landscape architecture, and interior design.

Section 1051.305 authorizes the Board to set a fee in a reasonable and necessary amount to cover the cost of processing and investigating an application for registration by reciprocity.

Section 1051.355 requires the Board to prescribe a renewal fee for a registrant on inactive status. The law requires the Board to set the fee at an amount determined by the board as reasonable and necessary to cover the costs of administering inactive registrations and, for architect registrants, an additional amount required to fund the examination fee scholarship program as described under §1051.651.

Section 1051.357 requires the Board to set a renewal fee for architect registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

Section 1051.651 authorizes the Board to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering Chapter 1051 (Architects), and requires the Board to set the renewal fee for architect registrants. For residents of Texas, the Board is directed to set the renewal fee the amount determined by the board as reasonable and necessary to cover administrative costs, and an amount determined annually by the board as reasonable and necessary for the administration of the examination fee scholarship program under Section §;1051.653. For non-residents, the Board is directed to set the fee in an amount determined by the Board. Additionally, §1051.651 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1051.653 directs the Board to administer a scholarship program for applicants for architect registration, and to fund the program with the amount added to each renewal fee under §1051.651.

Section 1051.705 requires the Board to set an examination fee in an amount reasonable and necessary to cover the cost of the examination for architect registration, and under §1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Section 1052.054 authorizes the Board to set a fee for a board action involving an administrative expense in an amount that is reasonable and necessary to cover the cost of administering Chapter 1052 (Landscape Architects), and requires the Board to set the renewal fee for landscape architect registrants. Additionally, §1052.054 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1052.154 requires the Board to set an examination fee in an amount reasonable and necessary to cover the cost of the examination for landscape architect registration, and under §1051.302, the board may delegate the collection of any examination fee prescribed by the board to the person who conducts the examination.

Section 1052.155 requires the Board to set a renewal fee for landscape architect registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

Section 1053.052 requires the Board to set certain fees, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053 (Interior Designers), including a registration application fee, an annual registration renewal fee, a reciprocal registration fee and an examination fee. Furthermore, §1053.052 authorizes the Board to set fees for other services, in amounts that are reasonable and necessary to cover the costs of administering Chapter 1053, including providing a duplicate certificate of registration, providing a roster of interior designers, reinstating a revoked or suspended certificate of registration, and performing any other board action involving an administrative expense. Additionally, §1053.052 authorizes the Board to accept payment of a fee by electronic means, and to charge a fee for such collection in an amount that is reasonably related to the expense incurred by the board in processing the payment.

Section 1053.156 requires the Board to set a renewal fee for interior designer registrants on emeritus status in an amount reasonable and necessary to recover the costs to administer such registrations.

CROSS REFERENCE TO STATUTE

The proposed amendments to these rules do not affect any other statutes.

§7.10. General Fees.

(a) FAILURE TO TIMELY PAY A REGISTRATION RENEWAL WILL RESULT IN THE AUTOMATIC CANCELLATION OF REGISTRATION BY OPERATION OF LAW.

(b) The following fees shall apply to services provided by the Board in addition to any fee established elsewhere by the rules and regulations of the Board or by Texas law. [~~Payment of fees through the Internet is an online service provided by Texas.gov, the official Web site of the State of Texas. The following additional payments for the online service are not retained by the Board:~~]
Figure: 22 TAC §7.10(b)

[~~(1) A person who uses the online service to pay fees with a credit card must pay an additional $.25 plus 2.25% of the sum of the fee and $.25.~~]

[~~(2) A person who uses online services to pay fees by utilizing the Automated Clearing House Network ("ACH" sometimes referred to as an "electronic check" or a "direct bank draft") must pay $1.00 per transaction instead of the fee referenced in paragraph (1) of this subsection.~~]
[~~Figure: 22 TAC §7.10(b)(2)~~]

(c) As authorized under §1051.355 and §1051.651 of the Texas Occupations Code, the fee schedule in subsection (b) includes a $3 fee to be collected from each Texas resident who renews an active or inactive registration as an architect, to fund the examination fee scholarship program under §1051.653, Texas Occupations Code.

(d) Applicants and registrants who submit payments online through Texas.gov will be subject to convenience fees set by the Department of Information Resources in addition to the fees listed in subsection (b).

(e) [~~(c)~~] The Board cannot accept cash as payment for any fee.

(f) [~~(d)~~] An official postmark from the U.S. Postal Service or other delivery service receipt may be presented to the Board to demonstrate the timely payment of any fee.

(g) [~~(e)~~] If a check is submitted to the Board to pay a fee and the bank upon which the check is drawn refuses to pay the check due to insufficient funds, errors in routing, or bank account number, the fee shall be considered unpaid and any applicable late fees or other penalties accrue. The Board shall impose a processing fee for any check that is returned unpaid by the bank upon which the check is drawn.

(h) [~~(f)~~] Payment of fees for a military service member, military veteran, or military spouse.

(1) In this subsection, the terms "military service member," "military veteran," and "military spouse" shall have the meanings defined in §§1.29, 3.29, and 5.39 of the Board Rules.

(2) A military service member who is a registrant in Good Standing or was in Good Standing at the time the Registrant entered into military service shall be exempt from the payment of any fee during any period of active duty service. The exemption under this subsection shall continue through the remainder of the fiscal year during which the Registrant's active duty status expires.

(3) A military service member or military veteran whose military service, training, or education substantially meets all requirements of a license shall be exempt from payment of license application and examination fees paid to the state.

(4) A military service member, military veteran or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for registration in this state shall be exempt from payment of license application and examination fees paid to the state.

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 September 13, 2016.

TRD-201604794
Lance Brenton
General Counsel
Texas Board of Architectural Examiners
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 305-8519

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 1. MISCELLANEOUS PROVISIONS SUBCHAPTER K. DEFINITION, TREATMENT, AND DISPOSITION OF SPECIAL WASTE FROM HEALTH CARE-RELATED FACILITIES

25 TAC §§1.132 - 1.137

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes amendments to §§1.132 - 1.137, concerning the definition, treatment, and disposition of special waste from health care-related facilities.

BACKGROUND AND PURPOSE

The rule amendments provide language and offer clarification to enhance the understanding of the rules, as well as to update outdated references, terminology, and disposition methods. Texas Government Code, §2001.039 requires a review of rules, including an assessment of whether the reasons for initially adopting the rules continue to exist. Chapter 1, Subchapter K of Title 25 of the Texas Administrative Code was originally adopted in 1989, and amendments were made in 1991 and 1994. Additionally, the department has reviewed §§1.131 - 1.137 and has determined that the reasons for adopting the rules continues to exist because the rules on this subject are needed. However, there are no changes being proposed to §1.131 in this rulemaking.

SCOPE OF THE PROPOSED RULES

The scope of the proposed rules encompasses the following provisions of the rules in Subchapter K of Chapter 1, Miscellaneous Provisions, relating to special waste from health care-related facilities:

§1.132. Definitions.

§1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously approved by the Texas Department of Health.

§1.134. Application.

§1.135. Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

§1.136. Approved Methods of Treatment and Disposition.

§1.137. Enforcement.

SECTION-BY-SECTION SUMMARY

Amendments to §1.132, Definitions, are proposed to update references to the department; define the terms cremation, executive commissioner, and fetal tissue; remove the definition for the term cremated remains; update references to Texas Commission on Environmental Quality (TCEQ); correct a mathematical unit for "$\log_{10}$;" and necessitates the renumbering of subsections.

Amendments to §1.133, Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of Health, are proposed to update references to the department and a legal reference.

Amendments to §1.134, Application, are proposed to update references to facilities providing mental health and intellectual disability services; and add freestanding emergency medical care facilities to the list of health care-related facilities to which this rule applies.

Amendments to §1.135, Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities, are proposed to update references to the department and correct a mathematical unit to "$\log_{10}$."

Amendments to §1.136, Approved Methods of Treatment and Disposition, are proposed to update references to the department; update terminology regarding the Texas Administrative Code; update references to TCEQ and its rules; clarifying disposition methods for fetal tissue; clarifying disposition methods for fetal tissue and other tissues that are products of spontaneous or induced human abortion; and clarifying that disposition methods for anatomical remains are established in 25 TAC §479.4.

Amendments to §1.137, Enforcement, are proposed to reflect the Executive Commissioner's role in rulemaking; remove home and community support services agencies from the list of the department's regulatory programs; and add end-stage renal disease facilities and freestanding emergency medical centers to the list of the department's regulatory programs.

FISCAL NOTE

Jennifer Sims, Deputy Commissioner, has determined that for each year of the first five years that the sections will be in effect, there will not be fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS AND ECONOMIC COSTS TO PERSONS

Ms. Sims estimates that 236 healthcare facilities that may be small or micro-businesses, and handle tissue resulting from induced or spontaneous abortions, may be affected by these requirements. Based on the current rules and information available to the department, healthcare facilities required to comply with the rules, currently provide for or contract for the disposition of fetal tissue. The proposed rule amendments prescribe alternative methods of disposition of fetal tissue. These proposed alternatives may have a cost but that cost is expected to be off-set by the cost currently being expended for disposition. However, the department does not estimate that the proposed rules will result in increased total costs for healthcare facilities required to comply with the rules. Different costs may arise based on a healthcare facility's decisions regarding the use of burial, cremation or other forms of interment of fetal remains. The proposed rules allow the disposition of remains together, thereby reducing costs to an amount estimated to be commensurate with current methods used for disposition. The department notes that in comments previously submitted, private parties have offered to bury fetal remains without charge. Other parties may also offer discounted or free services associated with the disposition of fetal tissue. For these reasons, the department estimates no fiscal impact.

The purpose of specifying disposition standards for specific types of tissue relates to the protection of the health and safety of the public pursuant to Texas and Health Safety Code, Chapter 81. All healthcare facilities handling that type of tissue, whether a small or micro-business or a larger organization, face the same risks associated with handling this specific type of tissue and as a result, are required to be held to the same standard for disposition. The rules and amendments to the rules, authorize alternative methods among which facilities, including small and micro-businesses can choose for disposition, thereby including regulatory flexibility within the rule. The department considered separate compliance and different standards for small and micro-businesses such as alternative disposition methods or exemption from the disposition requirements, however, because the need to handle disposition consistently for specific types of tissue as required in the rule exists for both small and large businesses, alternative methods or an exemption from the required methods, was not feasible and would be in conflict with the purpose of the requirements. As a result, the department knows of no feasible alternative means by which this purpose could be achieved, other than the requirements and regulatory flexibility set out in the proposed rules, and thus there are no legal alternatives to provide flexibility for small or micro-businesses for the department to consider.

IMPACT ON LOCAL EMPLOYMENT

There is no anticipated impact on local employment.

PUBLIC BENEFIT

Ms. Sims has determined that for each year of the first five years the sections are in effect, the public benefit anticipated as a result of adopting and enforcing these rules will be enhanced protection of the health and safety of the public by ensuring that the disposition methods specified in the rules continue to be limited to methods that prevent the spread of disease.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to the Department of State Health Services, Mail Code 1919, P.O. Box 149347, Austin, Texas 78714, or by email to TissueRules@dshs.texas.gov. Please specify "Comments on special waste from health care-related facilities" in the subject line. The department intends by this section to invite public comment on each of the amendments to the rules. Comments are accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The rule review and amendments are authorized by Texas Government Code, §2001.039, requiring that each agency periodically review its rules to determine that the reason for the rules continue to exist; §531.0055; Texas Health and Safety Code, §12.001, 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 rule review and amendments are also authorized by Texas and Safety Code, §81.004, which authorizes the Executive Commissioner to adopt rules necessary for the effective administration of Texas Health and Safety Code, Chapter 81, concerning the control of communicable disease; by Texas Health and Safety Code, Chapter 241, concerning the licensing of hospitals; by Chapter 243, concerning the licens-

ing of ambulatory surgical centers; by Chapter 244, concerning the licensing of birthing centers; by Chapter 245, concerning the licensing of abortion facilities; by Chapter 251, concerning the licensing of end stage renal disease facilities; by Chapter 254, concerning the licensing of freestanding emergency medical care facilities; and by Chapter 773, concerning the licensing of emergency medical services.

The rule review and amendments implement Texas Government Code, Chapter 531 and §2001.039; and Texas Health and Safety Code, Chapters 12, 81, 241, 243, 244, 245, 251, 254 and 773.

Additional provisions considered include: Texas Penal Code, §1.07(26) relating to criminal penalties for harm to unborn person; Texas Civil Practice and Remedies Code, §71.001(4) relating to civil liability for killing unborn person; Texas Estates Code, §1054.007 relating to guardianship representation for unborn persons in a guardianship proceeding; Texas Estates Code, §1002.002 regarding the definition of "attorney ad litem" which includes representation of an "unborn person;" Texas Property Code, §115.014 relating to authority of a court to appoint a guardian ad litem to represent the interest of an unborn; Texas Health and Safety Code, §241.010 relating to requirement that hospitals release to a parent remains of an unborn child who dies as a result of an unintended, intrauterine death; Preamble of House Bill (HB) 2, 83rd Legislature, Second Called Session, 2013, effective October 29, 2013, relating to the compelling state interest in protecting the lives of unborn children from the stage at which substantial medical evidence indicates that an unborn child is capable of feeling pain is intended to be separate from and independent of the compelling state interest in protecting the lives of unborn children from the stage of viability, and neither state interest is intended to replace the other; Texas Health and Safety Code, §170.002 relating to the prohibition against a person intentionally or knowingly performing an abortion on a woman who is pregnant with a viable unborn child during the third trimester of the pregnancy; and Texas Health and Safety Code, §171.012 relating to requirement for sonograms of pre-viable unborn children before abortion.

§1.132. Definitions.

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

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

(3) Approved alternate treatment process--A process for waste treatment which has been approved by the department [~~Texas Department of Health~~] in accordance with §1.135 of this title (relating to Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities).

(4) - (17) (No change.)

(18) Cremation--The irreversible process of reducing tissue or remains to ashes or bone fragments through extreme heat and evaporation.

[~~(18) Cremated remains--The bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the pathological waste.~~]

(19) - (26) (No change.)

(27) Executive Commissioner--In this title, Executive Commissioner means the Executive Commissioner of the Health and Human Services Commission.

(28) Fetal Tissue--A fetus, body parts, organs or other tissue from a pregnancy. This term does not include the umbilical cord, placenta, gestational sac, blood or body fluids.

(29) [~~(27)~~] Grave--A space of ground in a burial park that is used, or intended to be used for the permanent interment in the ground of pathological waste.

(30) [~~(28)~~] Grinding--That physical process which pulverizes materials, thereby rendering them as unrecognizable, and for sharps, reduces the potential for the material to cause injuries such as puncture wounds.

(31) [~~(29)~~] Immersed--A process in which waste is submerged fully into a liquid chemical agent in a container, or that a sufficient volume of liquid chemical agent is poured over a containerized waste, such that the liquid completely surrounds and covers the waste item(s) in the container.

(32) [~~(30)~~] Incineration--That process of burning SWFHCRF in an incinerator as defined in 30 TAC Chapter 101 under conditions in conformance with standards prescribed in 30 TAC Chapter 111 by the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~].

(33) [~~(31)~~] Interment--The disposition of pathological waste by cremation, entombment, burial, or placement in a niche.

(34) [~~(32)~~] Log_{10} [~~Log[sub]10[/sub]~~]--Logarithm to the base ten.

(35) [~~(33)~~] Log_{10} [~~Log[sub]10[/sub]~~] reduction--A mathematically defined unit used in reference to level or degree of microbial inactivation. A 4 log_{10} [~~log[sub]10[/sub]~~] reduction represents a 99.99% reduction in the numbers of active microorganisms, while a 6 log_{10} [~~log[sub]10[/sub]~~] reduction represents a 99.9999% reduction in the numbers of active microorganisms.

(36) [~~(34)~~] Mausoleum--A structure or building of most durable and lasting fireproof construction used, or intended to be used, for the entombment pathological waste.

(37) [~~(35)~~] Microbial inactivation--Inactivation of vegetative bacteria, fungi, lipophilic/hydrophilic viruses, parasites, and mycobacteria at a 6 log_{10}[~~log[sub]10[/sub]~~] reduction or greater; and inactivation of Bacillus subtilis endospores or Bacillus stearothermophilus endospores at a 4 log_{10} [~~log[sub]10[/sub]~~] reduction or greater.

(38) [~~(36)~~] Microbiological waste--Microbiological waste includes:

(A) discarded cultures and stocks of infectious agents and associated biologicals;

(B) discarded cultures of specimens from medical, pathological, pharmaceutical, research, clinical, commercial, and industrial laboratories;

(C) discarded live and attenuated vaccines, but excluding the empty containers thereof;

(D) discarded, used disposable culture dishes; and

(E) discarded, used disposable devices used to transfer, inoculate or mix cultures.

(39) [~~(37)~~] Moist heat disinfection--The subjection of:

(A) internally shredded waste to moist heat, assisted by microwave radiation under those conditions which effect disinfection; or

(B) unshredded waste in sealed containers to moist heat, assisted by low-frequency radiowaves under those conditions which effect disinfection, followed by shredding of the waste to the extent that the identity of the waste is unrecognizable.

(40) [~~(38)~~] Niche--A recess or space in a columbarium used, or intended to be used, for the permanent interment of the cremated remains of pathological waste.

(41) [~~(39)~~] Parametric controls--Measurable standards of equipment operation appropriate to the treatment equipment including, but not limited to pressure, cycle time, temperature, irradiation dosage, pH, chemical concentrations, or feed rates.

(42) [~~(40)~~] Pathological waste--Pathological waste includes but is not limited to:

(A) human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(B) products of spontaneous or induced human abortions, regardless of the period of gestation, including:

(i) body parts;

(ii) tissues or fetuses;

(iii) organs; and

(iv) bulk blood and body fluids;

(C) laboratory specimens of blood and tissue after completion of laboratory examination; and

(D) anatomical remains.

(43) [~~(41)~~] Saturated--Thoroughly wet such that liquid or fluid flows freely from an item or surface without compression.

(44) [~~(42)~~] Sharps--Sharps include, but are not limited to the following materials:

(A) when contaminated:

(i) hypodermic needles;

(ii) hypodermic syringes with attached needles;

(iii) scalpel blades;

(iv) razor blades, disposable razors, and disposable scissors used in surgery, labor and delivery, or other medical procedures;

(v) intravenous stylets and rigid introducers (e.g., J wires);

(vi) glass pasteur pipettes, glass pipettes, specimen tubes, blood culture bottles, and microscope slides;

(vii) broken glass from laboratories; and

(viii) tattoo needles, acupuncture needles, and electrolysis needles;

(B) regardless of contamination:

(i) hypodermic needles; and

(ii) hypodermic syringes with attached needles.

(45) [~~(43)~~] Shredding--That physical process which cuts, slices, or tears materials into small pieces.

(46) [~~(44)~~] Special waste from health care-related facilities--A solid waste which if improperly treated or handled may serve to transmit an infectious disease(s) and which is comprised of the following:

(A) animal waste;

(B) bulk blood, bulk human blood products, and bulk human body fluids;

(C) microbiological waste;

(D) pathological waste; and

(E) sharps.

(47) [~~(45)~~] Steam disinfection--The act of subjecting waste to steam under pressure under those conditions which effect disinfection. This was previously called steam sterilization.

(48) [~~(46)~~] Thermal inactivation--The act of subjecting waste to dry heat under those conditions which effect disinfection.

(49) [~~(47)~~] Unrecognizable--The original appearance of the waste item has been altered such that neither the waste nor its source can be identified.

§1.133. Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services.

(a) Exemptions.

(1) (No change.)

(2) These sections do not apply to:

(A) (No change.)

(B) human tissue, including fetal tissue, donated for research or teaching purposes, with the consent of the person authorized to consent as otherwise provided by law, to an institution of higher learning, medical school, a teaching hospital affiliated with a medical school, or to a research institution or individual investigator subject to the jurisdiction of an institutional review board required by 42 United States Code [~~Codes~~] 289;

(C) - (F) (No change.)

(b) Minimum parametric standards for waste treatment technologies previously approved by the department [~~Texas Department of Health~~].

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

§1.134. Application.

These sections apply to special waste from health care-related facilities generated by the operation of the following publicly or privately owned or operated health care-related facilities, including but not limited to:

(1) - (11) (No change.)

(12) freestanding emergency medical care facilities;

(13) [~~(12)~~] funeral establishments;

(14) [~~(13)~~] home and community support services agencies;

(15) [~~(14)~~] hospitals;

(16) [~~(15)~~] long term care facilities;

(17) [~~(16)~~] facilities providing mental health and intellectual disability services, [~~mental health and mental retardation facilities,~~] including but not limited to hospitals, schools, and community centers;

(18) [~~(17)~~] minor emergency centers;

(19) [~~(18)~~] occupational health clinics and clinical laboratories;

(20) [~~(19)~~] pharmacies;

(21) [~~(20)~~] pharmaceutical manufacturing plants and research laboratories;

(22) [~~(21)~~] professional offices, including but not limited to the offices of physicians, [~~and~~] dentists, and acupuncturists;

(23) [~~(22)~~] special residential care facilities;

(24) [~~(23)~~] tattoo studios; and

(25) [~~(24)~~] veterinary clinical and research laboratories.

§1.135. Performance Standards for Commercially-Available Alternate Treatment Technologies for Special Waste from Health Care-Related Facilities.

All manufacturers of commercially-available alternate technologies, equipment, or processes designed or intended for the treatment of special waste from health care-related facilities, except those meeting the standards of §1.133(b) of this title (relating to Scope, Covering Exemptions and Minimum Parametric Standards for Waste Treatment Technologies Previously Approved by the Texas Department of State Health Services), shall apply to the department [~~Texas Department of Health (department)~~] on forms prescribed by the department for approval of said technologies, equipment, or processes to ensure that established performance standards are met.

(1) Levels of microbial inactivation.

(A) (No change.)

(B) All manufacturers of commercially-available alternate technologies, equipment, or processes designed and intended for the treatment of special waste from health care-related facilities shall provide specific laboratory evidence that demonstrates:

(i) inactivation of representative samples of vegetative bacteria, mycobacteria, lipophilic/hydrophilic viruses, fungi, and parasites at a level of 6 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction or greater, as determined by the department; and

(ii) inactivation of Bacillus stearothermophilus endospores or Bacillus subtilis endospores at a level of 4 $\log_{10}$ [~~log[sub]10[/sub]~~] reduction or greater, as determined by the department.

(C) - (E) (No change.)

(2) Documentation requirements.

(A) (No change.)

(B) Documentation must be submitted to the department [~~Texas Department of Health, Bureau of Environmental Health~~] on [~~those~~] forms provided by the department.

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

§1.136. Approved Methods of Treatment and Disposition.

(a) Introduction. The following treatment and disposition methods for special waste from health care-related facilities are approved by the department [~~Texas Board of Health (board)~~] for the waste specified. Where a special waste from a health care-related facility is also subject to the sections in Chapter 289 of this title (relating to Radiation Control), the sections in Chapter 289 shall prevail over the sections in this subchapter [~~undesignated head~~]. Disposal of special waste from health care-related facilities in sanitary landfills or otherwise is under the jurisdiction of the Texas Commission on Environmental Quality [~~Texas Natural Resource Conservation Commission~~] and is governed by its rules found in 30 TAC Chapter 326 (relating to Medical Waste Management) and Chapter 330 (relating to Municipal Solid Waste) [~~Title 30, Texas Administrative Code, Chapter 330~~].

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

(3) Microbiological waste. Microbiological waste shall be subjected to one of the following methods of treatment and disposal.

(A) - (C) (No change.)

(D) Discarded disposable culture dishes shall be subjected to one of the following methods of treatment and disposal.

(i) All discarded, unused disposable culture dishes shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [~~Title 30, Texas Administrative Code, Chapter 330~~].

(ii) (No change.)

(E) (No change.)

(4) Pathological waste. Pathological waste shall be subjected to one of the following methods of treatment and disposal.

(A) Human materials removed during surgery, labor and delivery, autopsy, embalming, or biopsy shall be subjected to one of the following methods of treatment and disposal:

(i) body parts, other than fetal tissue:

(I) interment;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) moist heat disinfection, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(V) chlorine disinfection/maceration, provided that the grinding/shredding renders the item as unrecognizable, followed by deposition in a sanitary landfill; or

(VI) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(ii) tissues, other than fetal tissue [~~or fetuses~~]:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) organs, other than fetal tissue:

(I) incineration followed by deposition of the residue in a sanitary landfill;

(II) grinding and discharging to a sanitary sewer system;

(III) interment;

(IV) steam disinfection followed by interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iv) bulk human blood and bulk human body fluids removed during surgery, labor and delivery, autopsy, embalming, or biopsy:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;[~~.~~]

(v) fetal tissue, regardless of the period of gestation:

(I) interment;

(II) cremation;

(III) incineration followed by interment; or

(IV) steam disinfection followed by interment.

(B) The products of spontaneous or induced human abortion shall be subjected to one of the following methods of treatment and disposal:

(i) fetal tissue, [~~body parts, tissues, or organs~~] regardless of the period of gestation:

[~~*(I)* grinding and discharging to a sanitary sewer system;~~]

(I) [~~(II)~~] incineration followed by interment [~~deposition of the residue in a sanitary landfill~~];

(II) [~~(III)~~] steam disinfection followed by interment;

(III) [~~(IV)~~] interment; or

(IV) cremation;

[~~*(V)* moist heat disinfection followed by deposition in a sanitary landfill;~~]

[~~*(VI)* chlorine disinfection/maceration followed by deposition in a sanitary landfill; or~~]

[~~*(VII)* an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;~~]

(ii) blood and body fluids:

(I) discharging into a sanitary sewer system;

(II) steam disinfection followed by deposition in a sanitary landfill;

(III) incineration followed by deposition of the residue in a sanitary landfill;

(IV) thermal inactivation followed by deposition in a sanitary landfill;

(V) thermal inactivation followed by grinding and discharging into a sanitary sewer system;

(VI) chemical disinfection followed by deposition in a sanitary landfill;

(VII) chemical disinfection followed by grinding and discharging into a sanitary sewer system;

(VIII) moist heat disinfection followed by deposition in a sanitary landfill;

(IX) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(X) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill;

(iii) any other tissues, including placenta, umbilical cord and gestational sac:

(I) grinding and discharging to a sanitary sewer system;

(II) incineration followed by deposition of the residue in a sanitary landfill;

(III) steam disinfection followed by interment;

(IV) interment;

(V) moist heat disinfection followed by deposition in a sanitary landfill;

(VI) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(VII) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(C) Discarded laboratory specimens of blood and/or tissues shall be subjected to one of the following methods of treatment and disposal:

(i) grinding and discharging into a sanitary sewer system;

(ii) steam disinfection followed by deposition in a sanitary landfill;

(iii) steam disinfection followed by grinding and discharging into a sanitary sewer system;

(iv) incineration followed by deposition of the residue in a sanitary landfill;

(v) moist heat disinfection followed by deposition in a sanitary landfill;

(vi) chlorine disinfection/maceration followed by deposition in a sanitary landfill; or

(vii) an approved alternate treatment process, provided that the process renders the item as unrecognizable, followed by deposition in a sanitary landfill.

(D) Anatomical remains shall be disposed of in a manner specified by §479.4 of this title (relating to Final Disposition of the Body and Disposition of Remains). [~~subjected to one of the following methods of treatment and disposal:~~]

~~[(i) interment;]~~

~~[(ii) incineration followed by interment; or]~~

~~[(iii) steam disinfection followed by interment].~~

(5) Sharps.

(A) All discarded unused sharps shall be disposed of in accordance with 30 TAC Chapters 326 and 330 [~~Title 30, Texas Administrative Code, Chapter 330~~].

(B) (No change.)

(b) Records. The facility treating the wastes shall maintain records to document the treatment of the special waste from health care-related facilities processed at the facility as to method and conditions of treatment in accordance with 30 TAC [~~Title 30, Texas Administrative Code,~~] Chapter 326 [~~330~~].

(c) (No change.)

§1.137. Enforcement.

The appropriate regulatory programs of the department shall incorporate the definition and methodology contained in these provisions into their respective general program rules and shall formulate and present for the Executive Commissioner's [~~board's~~] consideration such additional rules as are necessary for the internal collection, storage, handling, movement, and treatment of special waste from health care-related facilities generated within or by the following facilities or activities:

(1) abortion clinics;

(2) ambulatory surgical centers;

(3) birthing centers;

(4) emergency medical service providers;

(5) end stage renal disease facilities;

(6) freestanding emergency medical care facilities;

[~~(5) home and community support services agencies;~~]

(7) [~~(6)~~] hospitals;

(8) [~~(7)~~] special residential care facilities; and

(9) [~~(8)~~] tattoo studios.

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 September 19, 2016.

TRD-201604843
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 776-6972

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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 5. PROPERTY AND CASUALTY INSURANCE

SUBCHAPTER E. TEXAS WINDSTORM INSURANCE ASSOCIATION

The Texas Department of Insurance (TDI) proposes amendments to Subchapter E, Division 7 Inspections for Windstorm and Hail Insurance, §5.4603; and new §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, and 5.4642; and the repeal of §§5.4601, 5.4602, 5.4604, and 5.4608. These amendments, new sections, and repeals would implement HB 2439, 84th Legislature, Regular Session (2015).

TDI proposes the repeal of Subchapter E, Division 9 Windstorm Building Code Advisory Committee on Specifications and Maintenance, §5.4800. This repeal would conform TDI rules to HB 4409, 81st Legislature, Regular Session (2009), which abolished the Windstorm Building Code Advisory Committee on Specifications and Maintenance referenced in §5.4800.

EXPLANATION. The proposed amendments, repeals, and new sections would implement HB 2439, which made changes to the inspections process for eligibility for windstorm and hail insurance through the Texas Windstorm Insurance Association (association).

HB 2439 created a two-path system to certify that a structure complies with the applicable windstorm building code. The pre-HB 2439 certification system requires that, to be eligible for association coverage, all construction, alteration, remodeling, enlargement, and repair of, or addition to a structure in the catastrophe area be verified by a qualified inspector as complying with the applicable windstorm building code. Upon receipt of a verification, TDI issues a Certificate of Compliance, Form WPI-8, which certifies the structure's eligibility for windstorm insurance through the association. Qualified inspectors, under the immediate prior version of Insurance Code §2210.254 (Acts 2005, 79th Leg., ch. 727, §2, 2005 Tex. Gen. Laws 1941

(amended 2011)), include persons TDI deemed qualified by training or experience, Texas-licensed professional engineers who qualified for placement on a roster maintained by the Texas Board of Professional Engineers, or persons certified by one of several code councils. Most inspections under the pre-HB 2439 certification system are carried out by Texas-licensed professional engineers who are on the Texas Board of Professional Engineers roster and appointed by TDI as qualified inspectors. A fraction of inspections under the pre-HB 2439 certification system are carried out by TDI-employed inspectors deemed qualified by training or experience to inspect component or cladding items.

HB 2439's two-path system creates different certification procedures for ongoing and completed construction. Ongoing construction is inspected by appointed qualified inspectors who may be Texas-licensed engineers, but need not be. Appointed qualified inspectors may inspect new structures, additions, repairs, alterations, and re-roof applications and submit their findings to TDI for a TDI-issued Certificate of Compliance. TDI must issue a Certificate of Compliance if the appointed qualified inspector has inspected the ongoing improvement in accordance with TDI rules and has affirmed that the ongoing improvement meets one of two criteria. The ongoing improvement must either conform to a design that complies with the applicable building code and that has a seal affixed by a Texas-licensed professional engineer, or, in cases involving ongoing improvements that ordinarily do not call for plans, such as reroofs, must comply with the wind load requirements of the applicable building code. HB 2439 repealed the requirement that Texas-licensed engineers be listed on a roster maintained by the Texas Board of Professional Engineers to be qualified inspectors.

Completed construction is certified only by Texas-licensed engineers who may send either a signed and sealed design or postconstruction evaluation report directly to the association for a Certificate of Compliance to be issued by the association.

Under HB 2439, TDI must adopt and enforce rules on how qualified inspectors conduct windstorm inspections. HB 2439 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors for the purposes of Chapter 2210 and to the physical inspection of ongoing improvements, including determining whether to issue the Certificate of Compliance. But HB 2439 prohibits the adoption or enforcement of a rule that requires Texas-licensed engineers to seal inspection forms submitted to TDI.

Under HB 2439, TDI must prescribe the form on which a person applies to the association for a Certificate of Compliance for a completed improvement. The proposal describes the information Texas-licensed engineers must send to the association when they verify that completed construction meets the applicable windstorm building codes.

Proposed §§5.4609, 5.4610, and 5.4612 describe the requirements for appointment as a qualified inspector and renewal of that appointment. Under the proposed rules, only Texas-licensed professional engineers may apply for appointment as qualified inspectors. Proposed §5.4621 and §5.4623 describe the information that appointed qualified inspectors will be responsible for gathering as they inspect ongoing construction to determine if it conforms to an engineer-sealed design and complies with the applicable windstorm building code. Proposed §5.4642 describes disciplinary proceedings the commissioner of insurance may bring against appointed qualified inspectors. Proposed §5.4608 describes the procedure by which qualified inspectors who are TDI employees may verify the windstorm building code compliance of ongoing improvements to certain components.

HB 2439 requires TDI to adopt rules effective December 31, 2016, to implement the bill. The changes HB 2439 enacts apply to association policies delivered, issued, or renewed on or after January 1, 2017. Current law continues in effect for association policies delivered, issued, or renewed before January 1, 2017. TDI adopted its current rules on qualified inspectors under the authority of pre-HB 2439 statutes. The proposed rules would amend or replace TDI's current rules governing qualified inspectors to implement HB 2439. Because the rules under which qualified inspectors were appointed will be amended or replaced, individuals who are appointed qualified inspectors as of the effective date of rules implementing HB 2439 will not be able to continue their appointment after December 31, 2016. The proposed rules require these individuals to submit a new application for appointment as qualified inspectors. TDI considered proposing rules that would allow the submission of a renewal application, which is shorter, but this would not be appropriate because the individuals would never have held an appointment under the new rules and the changes to these appointments required under HB 2439. One cannot renew an appointment one has never had.

Under proposed §5.4610, qualified inspectors would be appointed for a two-year term. The proposed rule requires appointed qualified inspectors to submit a renewal application before the end of their term. The renewal application in the proposed rules is brief and requiring renewal has the advantage of keeping the list of appointed qualified inspectors-which the public consults when seeking windstorm inspections-current.

FISCAL NOTE AND LOCAL EMPLOYMENT IMPACT STATEMENT. Steve Thompson, chief engineer, Engineering Services Program, has determined that for each year of the first five years the proposed new sections, amendments, and repeals will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of the proposal. There will not be any measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT AND COST NOTE. Mr. Thompson has determined that for each year of the first five years the proposed new sections, amendments, and repeals are in effect, there will be public benefits resulting from the proposal and costs to appointed qualified inspectors, who are required to comply with the proposal.

A. Anticipated Public Benefits.

Adopting amended §5.4603; new §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, and 5.4642; and repealing §§5.4601, 5.4602, 5.4604, and 5.4608 will implement HB 2439. The amended and new sections describe the types of structures appointed qualified inspectors may inspect under the new statute and what information they must gather to certify that a structure meets the wind-load requirements of the applicable building code. The proposed rules will provide a clear inspection process which will benefit consumers.

Repealing §5.4800 will simplify the association rules by removing outdated text.

B. Estimated Costs to Comply with this Proposal.

Costs associated with implementing HB 2439 include the costs to retain information substantiating a verification for five years

from the date of the most recent inspection verification form submitted on an ongoing improvement, the costs to apply for appointment as a qualified inspector or to renew an appointment, costs to provide a notification and a verification of a structure's noncompliance, and the costs to attend or view a TDI orientation program. The proposed rules retain but do not add to the current rule requirements for conducting inspections and gathering substantiating information; therefore, this cost note does not consider these costs.

The costs of storing the substantiating information on an ongoing improvement for five years after the submission of the most recent inspection verification form will vary depending on the amount of substantiating information, the method of storage, and the costs of converting the information into the form in which it will be stored. The amount of substantiating information will vary depending on the size and complexity of the ongoing improvement inspected.

TDI estimates that inspecting a reroof or another ongoing improvement that is a component of a structure will result in approximately 12 to 24 pages of substantiating information. Inspecting an entire structure will likely result in a greater amount of substantiating information; TDI estimates as many as 100 pages of substantiating information for a residential structure and as many as 250 pages for a commercial structure, depending on its size.

TDI anticipates that most appointed qualified inspectors will gather and generate most of the substantiating information in digital form, so storing it in that form will not impose conversion costs. The conversion cost estimates in the following two paragraphs assume all substantiating information will need to be converted from paper to digital form for storage and so represent an upper limit for these costs.

If substantiating information is scanned in portable document format, one gigabyte will hold around 10,000 pages; other formats will allow more pages per gigabyte. Scanners today range in price from around $45 for portable models to around $450 for self-loading models. According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Coastal Plains Region of Texas nonmetropolitan area for civil engineers is $35.45; for civil engineering technicians, $18.99; and for secretaries and administrative assistants, $14.08. *Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Coastal Plains Region of Texas nonmetropolitan area,* accessed July 13, 2016, www.bls.gov/oes/current/oes_4800006.htm. According to the U.S. Bureau of Labor Statistics, the mean hourly wage in the Houston area for civil engineers is $52.96; for civil engineering technicians, $25.10; and for secretaries and administrative assistants, $17.28. *Bureau of Labor Statistics, U.S. Department of Labor, Occupational Employment Statistics, May 2015 Metropolitan and Nonmetropolitan Area Occupational Employment and Wage Estimates, Houston-The Woodlands-Sugarland, Texas metropolitan area,* accessed July 13, 2016, www.bls.gov/oes/current/oes_26420.htm.

The cost of scanning substantiating information for storage will vary depending on who scans the information, the number of pages being scanned, and the scanner speed. TDI estimates that scanning 24 pages of information from a reroof will take an average of less than an hour, while scanning 100 pages from a residential structure will take an average of three hours.

The cost of storing hard copies of substantiating information will depend on where the copies are stored.

The costs of application and renewal will be the costs of mailing and printing several pages, if an applicant chooses to submit the documents through first class U.S. mail, and the time cost of providing the information required. While an applicant could email the application and renewal, TDI uses the cost of first class U.S. mail in its cost analysis because that method is available to everyone interested in applying for appointment as a qualified inspector. TDI anticipates that each person will use the most cost-effective method of compliance. Considering the costs of printing pages containing the information required in proposed §5.4609 or §5.4610, a one-ounce standard envelope, and postage for the envelope, TDI estimates the cost of application or renewal to be less than $1.

TDI also anticipates that providing the information required for application will take approximately an hour and a half of an applicant's time. TDI assumes that the summary of an applicant's education and experience related to windstorm design required for an application can be modified from an existing resume. The proposed rule on appointment renewal requires only a statement affirming the currency and nonrestricted status of the appointed qualified inspector's license with the Texas Board of Professional Engineers, and TDI anticipates that renewal will take half an hour. The proposed rules require that an appointment be renewed every two years.

The costs of notifying a person seeking a certification for an ongoing improvement that the ongoing improvement does not meet the applicable windstorm building code standard will be the costs of mailing and printing several pages, if the notification is through first class U.S. mail, and the cost in time for an appointed qualified inspector to write the notice of noncompliance. The time required to prepare the notice of noncompliance will depend on the type of ongoing improvement and the reasons for its noncompliance. If the ongoing improvement is not brought into compliance, the proposed rules require the appointed qualified inspector to inform TDI by submitting a verification of noncompliance. The costs of submitting the verification of noncompliance will be the costs of postage and printing and the time cost of writing the verification. It is difficult to separate the time necessary to prepare a verification of noncompliance from the time spent performing an inspection because the information needed for the verification is gathered as part of the inspection.

The cost to attend or view a TDI orientation for qualified inspector applicants will be the time costs of doing so and any associated travel costs, which will vary. TDI anticipates that the orientation will be conducted via webinar and will last approximately one hour.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on these businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines "micro

business" similarly to "small business" but specifies that such a business may not have more than 20 employees.

The vast majority of the 306 current qualified inspectors are small or micro businesses. Under HB 2439 and the proposed rules, they and the rest of the over 56,000 Texas-licensed professional engineers will be eligible to apply for appointment as qualified inspectors. Because each of these persons is licensed and appointed in an individual capacity, TDI presumes that each applicant or qualified inspector under the proposed rules is a small business or micro business for the purpose of this analysis.

As stated in the Public Benefit/Cost Note in this proposal, TDI anticipates that each person acting as a qualified inspector or applying for or renewing an appointment as a qualified inspector would incur some costs because of this proposal. Those costs would result from mailing an application, renewal, or notification or verification of noncompliance; from attending or viewing a TDI orientation; or from storing substantiating information.

TDI, in accordance with Government Code §2006.002(c-1), has considered methods of reducing the adverse impact of the proposed rules implementing HB 2439 on small or micro businesses.

One method would be to exempt small or micro businesses from some of the requirements likely to lead to costs. However, because the majority of qualified inspectors qualify as small or micro businesses, the exemptions would apply to most of the regulated entities, defeating the purpose of revising the regulation. For example, TDI could exempt qualified inspector applicants from having to view or attend a TDI orientation if they are employed by small or micro businesses and have previously inspected structures for compliance with windstorm building codes. But this exemption would result in the requirement not being applied to most of the applicants. For this reason, TDI rejected this option.

A second method would be to exempt small or micro businesses from all of the requirements likely to lead to costs. However, again, because the majority of appointed qualified inspectors would qualify as small or micro businesses, the exemptions would apply to most of the regulated entities, defeating the purpose of revising the regulation. It would also lead to uneven enforcement of the certification program, as the few appointed qualified inspectors who would not qualify as small or micro businesses would be held to standards that the rest would not be. For these reasons, TDI rejected this option.

A third method of reducing the adverse impact of the proposed rules implementing HB 2439 on small or micro businesses would be to not adopt rules at all. But not adopting rules would mean that the new certification system that HB 2439 created would go into effect without a framework to implement it. Such a framework is necessary so that the new system can function successfully. The association, potential appointed qualified inspectors, and consumers need to know what is required to certify a structure under the new two-path system. Potential appointed qualified inspectors will need to know their specific responsibilities under the new system. For this reason, TDI rejected this option.

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

REQUEST FOR PUBLIC COMMENT. TDI invites the public to comment on this proposal. Submit your written comments on the proposal no later than 5 p.m., Central time, on October 31, 2016. Send written comments by mail to the Texas Department of Insurance, Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to chiefclerk@tdi.texas.gov. You must simultaneously submit an additional copy of the comment by mail to Steve Thompson, Chief Engineer, MC 104-ENG, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104; or by email to steve.thompson@tdi.texas.gov.

The commissioner will consider the rule proposal in a public hearing under Docket Number 2791, scheduled for 9:30 a.m., Central time, on October 21, 2016, in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. Written comments and public testimony presented at the hearing will be considered.

DIVISION 7. INSPECTIONS FOR WINDSTORM AND HAIL INSURANCE

28 TAC §§5.4601, 5.4602, 5.4604, 5.4608

STATUTORY AUTHORITY. The repeal of §§5.4601, 5.4602, 5.4604, and 5.4608 is proposed under Insurance Code §§36.001, 2210.008, 2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.2515 gives TDI the authority to prescribe a form on which a person may apply to the association for a certificate of compliance for a completed structure and to prescribe a form on which a person may apply to TDI for a certificate of compliance for an ongoing improvement. Under §2210.2515, TDI must issue a certificate of compliance for an ongoing improvement if a qualified inspector inspects it in accordance with TDI rules and affirms that the improvement meets certain standards.

Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with the structural provisions of the *International Residential Code.* Under §2210.252, the commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

Section 2210.254 states that a qualified inspector includes a licensed professional engineer, authorizes TDI to establish an annual renewal period for individuals appointed as qualified inspectors, and states that a qualified inspector must be approved and appointed or employed by TDI.

Section 2210.2551 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and to the physical inspection of structures for the purpose of determining whether to issue a certificate of compliance under §2210.2515(d).

CROSS REFERENCE TO STATUTE. The repeal of §§5.4601, 5.4602, 5.4604, and 5.4608 implements Insurance Code §§2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

§5.4601. Short Title.

§5.4602. Windstorm Inspection Manual.

§5.4604. Appointment of Engineers as Qualified Inspectors.

§5.4608. Texas Board of Professional Engineers Roster.

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 September 19, 2016.

TRD-201604852
Norma Garcia
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 676-6584

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28 TAC §§5.4601, 5.4603, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, 5.4642

STATUTORY AUTHORITY. New §§5.4601, 5.4604, 5.4608 - 5.4610, 5.4612, 5.4615, 5.4620 - 5.4623, 5.4625, 5.4626, 5.4640, and 5.4642 and the amendments to §5.4603 are proposed under Insurance Code §§36.001, 2210.008, 2210.251, 2210.252, 2210.2515, 2210.254, and 2210.2551.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.2515 gives TDI the authority to prescribe a form on which a person may apply to the association for a certificate of compliance for a completed structure and to prescribe a form on which a person may apply to TDI for a certificate of compliance for an ongoing improvement. Under §2210.2515, TDI must issue a certificate of compliance for an ongoing improvement if a qualified inspector inspects it in accordance with TDI rules and affirms that the improvement meets certain standards.

Section 2210.254 states that a qualified inspector includes a licensed professional engineer, authorizes TDI to establish an annual renewal period for individuals appointed as qualified inspectors, and states that a qualified inspector must be approved and appointed or employed by TDI.

Section 2210.2551 gives TDI exclusive authority over all matters relating to the appointment and oversight of qualified inspectors and to the physical inspection of structures for the purpose of determining whether to issue a certificate of compliance under §2210.2515(d).

CROSS REFERENCE TO STATUTE. Proposed §5.4601 implements Insurance Code §§2210.251, 2210.252, and 2210.2515. Proposed §5.4603 implements Insurance Code §§2210.2515, 2210.254, and 2210.2551. Proposed §5.4604 and §5.4608 implement Insurance Code §§2210.2515, 2210.2551, and 2210.258. Proposed §§5.4609, 5.4610, and 5.4612 implement Insurance Code §2210.254 and §2210.2551. Proposed §5.4615 and §5.4620 implement Insurance Code §2210.2551. Proposed §§5.4621 - 5.4623, 5.4625, and 5.4626 implement Insurance Code §2210.2515 and §2210.2551. Proposed §5.4640 implements Insurance Code §2210.2551. Proposed §5.4642 implements Insurance Code §2210.256.

§5.4601. Definitions.

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

(1) Applicant--A person who submits a new or renewal application for appointment as an appointed qualified inspector.

(2) Appointed qualified inspector--An engineer licensed by the Texas Board of Professional Engineers and appointed by TDI as a qualified inspector under Insurance Code §2210.254(a)(2).

(3) Appointed qualified inspector number--A number TDI assigns to each appointed qualified inspector.

(4) Association--The Texas Windstorm Insurance Association.

(5) Constructed or construction--The act of building or erecting a structure or altering, remodeling, enlarging, adding to, or repairing, including reroofing, an existing structure.

(6) Completed improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is substantially completed.

(7) Improvement--The construction of or repair, including reroofing, alteration, remodeling, or enlargement of a structure to which the plan of operation applies.

(8) Ongoing improvement--

(A) An improvement in which the original transfer of title from the builder to the initial owner of the improvement has not occurred; or

(B) if a transfer under subparagraph (A) of this paragraph is not contemplated, an improvement that is not substantially completed.

(9) Substantially completed--An improvement for which the final framing stage, including attachment of component and cladding items and installation of windborne debris protection, has been completed.

(10) TDI inspector--A qualified inspector authorized under Insurance Code §2210.254(a)(1) and employed by TDI.

(11) TDI--The Texas Department of Insurance.

(12) Windstorm building code standards-- The requirements for building construction in §§5.4007 - 5.4011 of this title (relating to Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made Prior to September 1, 1998; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After September 1, 1998, and before February 1, 2003; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After February 1, 2003 and before January 1, 2005; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2005, and before January 1, 2008; Applicable Building Code Standards in Designated Catastrophe Areas for Structures Constructed, Repaired or to Which Additions Are Made On and After January 1, 2008; respectively).

§5.4603. Windstorm Inspection Forms [~~Forms for Windstorm Inspections.~~].

(a) Inspection Verification, Form WPI-2-BC-5. TDI [~~The Texas Department of Insurance~~] adopts by reference the Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008, [~~following forms~~] for use in windstorm inspection.[~~:~~]

[~~(1) Application for Certificate of Compliance, Form WPI-1, effective January 1, 2005];~~

[~~(2) Inspection Verification, Form WPI-2-BC-1, effective January 1, 2008;~~]

[~~(3) Inspection Verification, Form WPI-2-BC-2, effective January 1, 2008;~~]

[~~(4) Inspection Verification, Form WPI-2-BC-3, effective January 1, 2008;~~]

[~~(5) Inspection Verification, Form WPI-2-BC-4, effective January 1, 2008;~~]

[~~(6) Inspection Verification, Form WPI-2-BC-5, effective January 1, 2008;~~]

[~~(7) Design Certification, Form WPI-2D, effective January 1, 2008;~~]

[~~(8) Field Form, Form WPI-7, effective January 1, 2005;~~]

[~~(9) Certificate of Compliance, Form WPI-8, as amended October 1, 1998.~~]

(b) Application, inspection, and renewal forms. TDI will make available the following forms on its website:

(1) Qualified Inspector Appointment Application Form, Form AQI-1, effective XXXXXXX XX, 20XX;

(2) Qualified Inspector Appointment Renewal Application Form, Form AQI-R, effective XXXXXXX XX, 20XX;

(3) Application for Certificate of Compliance, Form WPI-1, effective XXXXXXX XX, 20XX; and

(4) Inspection Verification Form, Form WPI-2-BC-15, effective XXXXXXX XX, 20XX.

[~~(b) These forms are published by and available from the Texas Department of Insurance. Copies of these forms may be obtained from the Windstorm Inspections Section of the Inspections Division, Texas Department of Insurance, 333 Guadalupe, P.O. Box 149104, MC 103-3A, Austin, Texas 78714-9104 and the Texas Department of Insurance website at www.state.tx.us.~~]

(c) TDI inspection and certification forms. When appropriate, TDI will issue the following forms:

(1) Field Form, Form WPI-7, effective XXXXXXX XX, 20XX; and

(2) Certificate of Compliance, Form WPI-8, effective XXXXXXX XX, 20XX.

§5.4604. Certification Form for Completed Improvement.

(a) Professional engineers licensed by the Texas Board of Professional Engineers must submit the following information when applying to the association for a certificate of compliance for a completed improvement on a structure:

(1) the physical address (including street, street number, city, county, and ZIP code);

(2) the wind zone location;

(3) whether the structure is in a Coastal Barrier Resource Zone;

(4) the owner's name and contact information;

(5) the name and contact information of the builder or contractor making the completed improvement;

(6) the name and contact information of the engineer certifying the completed improvement;

(7) the date construction of the completed improvement began;

(8) the date of application for the certificate of compliance for the completed improvement;

(9) the name of the person submitting the application for the certificate of compliance for the completed improvement;

(10) the type of structure to which the completed improvement is being made, including the structure's name or number and number of units, if applicable;

(11) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(12) the building code standard and applicable wind load standard under which the completed improvement was designed or inspected;

(13) an affirmation that the completed improvement complies with the applicable building code standard;

(14) either:

(A) the plan or drawing number for the design of the completed improvement; or

(B) the title, date, and number of the postconstruction evaluation report relied on to certify the completed improvement;

(15) the wind speed conditions that the completed improvement is designed to withstand;

(16) the risk category of the structure;

(17) the exposure category of the structure;

(18) information on the protection of exterior openings from windborne debris;

(19) the dates the completed improvement was inspected; and

(20) the signature and Texas Board of Professional Engineers registration number of the engineer certifying the completed improvement.

(b) The association will make available a form on which the information in subsection (a) of this section may be provided.

§5.4608. Certification by TDI-Employed Windstorm Inspectors. This section describes the procedure for the certification of ongoing improvements to certain components inspected by TDI-employed inspectors.

(1) Eligible components.

(A) TDI-employed inspectors may inspect ongoing construction on certain alterations, repairs, and reroofs including components such as:

(i) roofs;

(ii) exterior wall coverings;

(iii) exterior doors;

(iv) windows;

(v) skylights;

(vi) garage doors; and

(vii) devices protecting exterior openings from windborne debris;

(B) TDI-employed inspectors may inspect components of the kind described in subparagraph (A) of this paragraph for which TDI has received the following information:

(i) the physical address (including street, street number, city, county, and ZIP code);

(ii) the wind zone location;

(iii) the type of structure the improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(iv) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(v) The name and contact information of the builder or contractor making the improvement;

(vi) the storm code, if applicable;

(vii) the date construction of the improvement began;

(viii) the date of application for the certificate of compliance for the improvement;

(ix) the name of the person submitting the application for the certificate of compliance for the improvement;

(x) the owner's name and contact information;

(xi) whether the structure is located inside or outside city limits; and

(xii) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available on its website the Application for Certificate of Compliance, Form WPI-1, on which the information required by paragraph (1)(B) of this section may be provided.

(3) Verification of compliance or noncompliance. After inspecting the improvement, the TDI-employed inspector will document the following information:

(A) the information in paragraph (1)(B)(i) - (vi) of this section;

(B) whether the improvement meets the applicable windstorm building code standard;

(C) the dates and times the improvement was inspected;

(D) the length of the inspection or inspections;

(E) the inspection number;

(F) the structure's roof pitch;

(G) component and cladding loads;

(H) the structure's mean roof height;

(I) roof decking information;

(J) the field office performing the inspection;

(K) the application number from TDI; and

(L) comments.

(4) Field Form, Form WPI-7, effective XXXXXXX XX, 20XX. TDI will use the Field Form, Form WPI-7, on which TDI-employed inspectors will provide the information in paragraph (3) of this section.

(5) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information in paragraph (1)(B)(i) - (iv) of this section;

(B) the building code standard and applicable wind load standard with which the improvement complies;

(C) the date construction of the improvement began;

(D) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(E) the certification date;

(F) TDI's certification number; and

(G) the type of inspector.

(6) Certificate of Compliance, Form WPI-8, effective XXXXXXX XX, 20XX. When appropriate, TDI will issue the Certificate of Compliance, Form WPI-8, with the information in paragraph (5) of this section.

(7) Availability of inspection results. TDI will make the results of inspections under this section available to builders, contractors, and owners.

§5.4609. Application for Qualified Inspector Appointment.

(a) Appointed qualified Inspector application. To apply for appointment as a qualified inspector, an applicant must provide TDI with:

(1) the applicant's name and contact information;

(2) the applicant's Texas Board of Professional Engineers registration number;

(3) a summary of the applicant's education and experience related to windstorm design; and

(4) state whether the applicant has attended an orientation program as described in subsection (d) of this section or is an engineer described in subsection (c) of this section.

(b) Form AQI-1. TDI will make available the Qualified Inspector Appointment Application Form, Form AQI-1, on which applicants can provide the information required by subsection (a) of this section.

(c) Engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2) (Acts 2005, 79th Leg., Ch. 727, §2, 2005 Tex. Gen. Laws 1941 (amended 2011)), must submit the information required by subsection (a) of this section on or before December 31, 2016, to be appointed as qualified inspectors under current Insurance Code §2210.254(a)(2).

(d) Orientation program. Within the 180-day period immediately preceding the date TDI receives the application, an applicant must have attended or viewed a TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections.

(e) Orientation program for engineers appointed as of the effective date of this section. Texas-licensed professional engineers who, as of the effective date of this section, are appointed as qualified inspectors under the immediate prior version of Insurance Code §2210.254(a)(2), must have attended or viewed the TDI-sponsored orientation program on TDI procedures and rules relating to windstorm and hail inspections within the 90-day period immediately following December 31, 2016.

§5.4610. Renewal of Qualified Inspector Appointment.

(a) Appointment term. The commissioner will appoint a qualified inspector to a two-year term.

(b) Renewal timelines.

(1) No less than 30 days before the end of the term, an appointed qualified inspector must submit to TDI an affirmation of the currency and nonrestricted status of the appointed qualified inspector's license with the Texas Board of Professional Engineers.

(2) If an appointed qualified inspector does not submit the renewal information required by this subsection within 30 days after the end of the term, the inspector must submit a new application.

(3) TDI will make available the Qualified Inspector Appointment Renewal Application Form, Form AQI-R, effective XXXXXXX XX, 20XX, on which the inspector can provide the information required by this subsection.

(c) Surrender. An appointed qualified inspector may voluntarily surrender an appointment at any time by giving written notice to TDI. The surrender will be effective on the date that TDI receives the notice or on the date stated in the notice.

(d) Continuation. If an appointed qualified inspector submits the information required by subsection (b)(1) of this section, the appointed qualified inspector's appointment will continue until TDI either grants or denies the renewal application. If an appointed qualified inspector does not submit a renewal application as required by subsection (b)(1) of this section, the appointed qualified inspector's appointment ends at the end of the term.

§5.4612. Appointment as Qualified Inspector.

(a) No deemed appointment. The commissioner must affirmatively appoint an applicant before the appointment is effective. No applicant will be deemed appointed.

(b) Denial. The commissioner may deny an application or a renewal application because:

(1) the application is incomplete;

(2) the applicant is not qualified; or

(3) for any of the reasons described in §5.4642(a) of this title (relating to Disciplinary Action).

(c) Notice.

(1) TDI will notify the applicant whether the commissioner has approved or denied the appointment or renewal application.

(2) Any communication of denial will state the reasons for denial and will notify the applicant that the applicant has 30 days from the date of the communication to make a written request for hearing.

(3) If the applicant makes a timely request for hearing, the request will be granted and the procedures for a contested case under the Government Code, Chapter 2001, Administrative Procedure Act, will apply.

§5.4615. General Responsibilities of Appointed Qualified Inspectors.

An appointed qualified inspector must:

(1) maintain a current license with the Texas Board of Professional Engineers;

(2) notify TDI in writing not later than 30 days after a change in the appointed qualified inspector's:

(A) legal name;

(B) mailing address;

(C) telephone number; or

(D) email address;

(3) notify TDI in writing not later than 30 days after a change in the appointed qualified inspector's employment status. The appointed qualified inspector must include, as applicable, the:

(A) full legal trade or business name of employer;

(B) physical location and mailing address of the employer's business office;

(C) telephone number of the employer's business office;

(D) employer's type of business (corporation, assumed name, partnership, or self-employment through use of own name);

(E) legal relationship to and position in the employer's business; and

(F) effective date of this change in employment status;

(4) respond to TDI requests to authenticate inspection verification forms bearing the appointed qualified inspector's name and appointed qualified inspector number; and

(5) respond to other TDI requests for information made under Insurance Code §38.001.

§5.4620. Accountability of Appointed Qualified Inspector.

(a) Appointed qualified inspector accountability. An appointed qualified inspector is solely accountable for inspections performed under the appointed qualified inspector's name.

(b) Failure to comply. An appointed qualified inspector is strictly accountable for any failure to comply with Insurance Code Chapter 2210 and all of the responsibilities outlined in this chapter without regard to whether the failure to comply is the result of the actions of the appointed qualified inspector or a designated representative of the appointed qualified inspector.

§5.4621. Certification of Ongoing Improvements Inspected by Appointed Qualified Inspectors.

This section describes the procedure for the certification of ongoing improvements inspected by appointed qualified inspectors.

(1) Eligible structures. An appointed qualified inspector or a designated representative of an appointed qualified inspector may only inspect an ongoing improvement for which TDI has received the following information:

(A) the physical address (including street, street number, city, county, and ZIP code);

(B) the wind zone location;

(C) the type of structure the ongoing improvement is or is a part of, including the structure's name or number, and number of units, if applicable;

(D) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(E) the name and contact information of the appointed qualified inspector inspecting the ongoing improvement, or whose designated representative is inspecting the ongoing improvement;

(F) the storm code, if applicable;

(G) the date construction of the ongoing improvement began;

(H) the date of application for the certificate of compliance for the ongoing improvement;

(I) the name of the person submitting the application for the certificate of compliance for the ongoing improvement;

(J) the owner's name and contact information;

(K) the name and contact information of the builder or contractor making the ongoing improvement;

(L) whether the structure is located inside or outside city limits; and

(M) whether the structure is in a Coastal Barrier Resource Zone.

(2) Application for Certificate of Compliance, Form WPI-1. TDI will make available the Application for Certificate of Compliance, Form WPI-1, on which the information in paragraph (1) of this section may be provided.

(3) Inspection. The appointed qualified inspector or a designated representative of the appointed qualified inspector must inspect for compliance with the applicable building code standard each ongoing improvement during each major construction phase, including the foundation stage; rough framing stage; final framing stage, including attachment of component and cladding items and installation of windborne debris protection; and installation of mechanical equipment. The appointed qualified inspector's designated representatives may assist in conducting inspections, but the appointed qualified inspector must closely monitor and provide direct supervision of any designated representative assisting with the inspection process.

(4) Report. The appointed qualified inspector or a designated representative of the appointed qualified inspector must prepare all necessary construction inspection reports under §5.4625 of this title (relating to Inspection Reports).

(5) Verification of compliance. If the appointed qualified inspector determines that the ongoing improvement meets the applicable windstorm building code standard, the appointed qualified inspector must submit the following information to TDI:

(A) the information required by paragraph (1)(A) - (F) of this section;

(B) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(C) the wind speed conditions the ongoing improvement is certified to withstand;

(D) the dates the ongoing improvement was inspected;

(E) the exposure category of the structure;

(F) information on the protection of exterior openings from windborne debris;

(G) the risk category of the structure;

(H) the appointed qualified inspector's appointment number; and

(I) the application number from TDI.

(6) Inspection Verification Form, Form WPI-2. TDI will make available the Inspection Verification Form, Form WPI-2, on which the inspector can provide the information required by paragraph (5) of this section.

(7) Notification of noncompliance. If the appointed qualified inspector determines that the ongoing improvement does not meet the applicable windstorm building code standard, the appointed qualified inspector must inform the person seeking certification in writing. The notice must:

(A) list specific deficiencies in the construction and deviations from the design;

(B) list other items of concern relating to the windstorm inspection and certification; and

(C) describe remedial actions required for compliance.

(8) Verification of noncompliance. If the remedial actions described in the notification of noncompliance in paragraph (7)(C) of this section are not taken, the appointed qualified inspector must submit the information required by paragraph (5) of this section to TDI, certifying that the ongoing improvement does not meet the applicable windstorm building code standard.

(9) Review. TDI will review the submitted information, and any other relevant information including information requested under §5.4626 of this title (relating to Substantiating Information), to determine whether the ongoing improvement meets the applicable windstorm building code standard.

(10) Certification. If TDI determines that the ongoing improvement meets the windstorm building code standards, TDI will issue a form with the following information:

(A) the information described in paragraph (1)(A) - (C) of this section;

(B) the subject of the certification (for example, entire structure, addition, alteration, or repair);

(C) the building code standard and applicable wind load standard with which the ongoing improvement complies;

(D) the date construction of the ongoing improvement began;

(E) whether the occupancy type is considered residential, commercial, agricultural, or religious;

(F) the certification date;

(G) TDI's certification number; and

(H) the type of inspector.

§5.4622. Inspection Verification.

In submitting an Inspection Verification, Form WPI-2, an appointed qualified inspector verifies that:

(1) the ongoing improvement either:

(A) complies with the wind load requirements of the applicable building code; or

(B) conforms to a design of the ongoing improvement that complies with the applicable building code under the plan of operation and that has a seal affixed by a professional engineer licensed by the Texas Board of Professional Engineers; and

(2) the appointed qualified inspector is able to provide TDI with information and evidence substantiating the verification.

§5.4623. Information Required to Inspect to Design Documents.

(a) To verify that a design of an ongoing improvement complies with the applicable building code under the plan of operation, an appointed qualified inspector must review design documents sealed by the engineer of record for the ongoing improvement, including design criteria, wind loads, plans, and building product specifications, which must include the following information:

(1) design criteria, including:

(A) the building code standard applicable to the improvement;

(B) the live loads on the structure's floor and roof;

(C) the basic wind speed the improvement is designed to withstand;

(D) the wind importance factor or risk category of the structure;

(E) the exposure category of the structure;

(F) the structure's mean roof height;

(G) the 'a' distance, measuring the width of a zone of wind pressure; and

(H) the structure's internal pressure coefficient.

(2) a summary of wind loads the structure is designed to withstand, including:

(A) the main wind force-resisting system loads;

(B) the component and cladding loads;

(C) the uplift loads and components used to transfer uplift loads from the roof to the foundation; and

(D) the lateral loads, the type of lateral resisting system used, and the components used to transfer lateral loads from the roof to the foundation;

(3) plans, including:

(A) the details and dimensions of each type of foundation system, including:

(i) for monolithic slab on grade foundations:

(I) details on reinforcement;

(II) the type and size of anchor bolts and washers;

(III) the placement of holddown anchors;

(IV) the dowel requirements for masonry construction; and

(V) any offsets necessary for masonry or masonry veneer walls (proper brick ledge);

(ii) for piling foundations:

(I) the pile embedment depths;

(II) the size and spacing of piles;

(III) details on concrete pile reinforcement;

(IV) details and specifications for wood piles;

(V) details on the anchorage of beams to piles;

(VI) the size and location of beams;

(VII) the span, size, and spacing of floor joists;

(VIII) details on the anchorage of floor joists to beams;

(IX) the height of the structure's lowest structural member;

(X) the elevation of the ground floor, or in an elevated structure, the first floor; and

(XI) whether the ground floor walls are designed as breakaway walls;

(iii) for pier and beam foundations:

(I) the size and depth of footings;

(II) the size of piers;

(III) details of pier reinforcement;

(IV) details of concrete masonry unit reinforcement;

(V) the size and location of beams;

(VI) details on the anchorage of sills- or beams-to-piers and piers-to-footings;

(VII) the span, size, and spacing of floor joists; and

(VIII) details on the anchorage of floor joists to beams and sills or to beams or sills;

(B) details on floor plans, including:

(i) dimensions; and

(ii) door and window opening sizes and locations;

(C) details on roof plans, including:

(i) dimensions; and

(ii) header schedule on plans showing size;

(D) standard notes for windstorm construction; and

(E) additional notes for special construction or special conditions; and

(4) building product specifications, including:

(A) building product information;

(B) model code product evaluation reports;

(C) product evaluations from other agencies;

(D) manufacturers' test reports if product evaluations are not available; and

(E) other data to document compliance with codes and design criteria.

(b) To verify that an ongoing improvement conforms to design documents, an appointed qualified inspector must gather information, including:

(1) the details of connections to transfer wind loads from the roof to the foundation;

(2) the specifications of roof-cladding components, including:

(A) a description of roof coverings (these may include shingles, tile, metal roofs, modified bitumen, and low slope roof assemblies);

(B) the attachment methods of roof anchorages (fastener type and spacing, or other attachment methods); and

(C) the material of which soffits are made and their anchorage method (fastener type and spacing);

(3) the roof and floor diaphragm systems, including:

(A) the roof deck type and anchorage method (fastener type and spacing);

(B) the collectors;

(C) the drag struts;

(D) the diaphragm boundary elements;

(E) the roof-to-wall connections;

(F) the wall-to-floor diaphragms and framing; and

(G) the wall-to-floor connections;

(4) the horizontal wind force-resisting systems, including:

(A) the braced frames;

(B) the moment frames;

(C) the shear walls and hold downs; and

(D) the wind-force-resisting system connections to foundation;

(5) the specifications of exterior wall coverings, including:

(A) the materials of which exterior wall coverings are made (these may include brick veneer, vinyl siding, fiber cement siding, wood siding, stucco, exterior insulation and finish systems, or stone veneer); and

(B) the high-wind-specific installation methods for the exterior wall coverings (anchorage or other attachment methods);

(6) the specifications of exterior opening products;

(A) the exterior opening products (these may include windows, skylights, curtain walls, exterior doors, or garage doors); and

(B) the high wind-specific installation methods for exterior opening products (anchorage or other attachment methods); and

(7) information on the protection of exterior openings from windborne debris, when applicable.

(c) For ongoing improvements without plans, such as roofs or replacement of exterior openings, information necessary for an appointed qualified inspector to verify that the ongoing improvement complies with the wind load requirements of the applicable building code may include information listed in subsections (a) and (b) of this section.

§5.4625. Inspection Reports.

An appointed qualified inspector or a designated representative under the appointed qualified inspector's supervision must prepare a written inspection report for each inspection. All inspection reports must include the following:

(1) the complete physical address of the inspected property (including street, street number, city, county, and ZIP code);

(2) the subject of the inspection (for example, entire structure, addition, alteration, or repair);

(3) the type of construction inspected (for example, commercial tilt wall or residential wood frame);

(4) information indicating where actual inspections occurred, including, at the appointed qualified inspector's discretion:

(A) the plan or sketches, with inspection notes on whichever the appointed qualified inspector chooses; and

(B) the plan or sketches, with notes on whichever the appointed qualified inspector chooses showing the location of photographs taken as part of the inspection;

(5) the wind zone location (Inland I, Inland II, or Seaward) (initial inspection only);

(6) the exposure category of the structure (initial inspection only);

(7) the structure's mean roof height (initial inspection only);

(8) a complete description of the building products used, including:

(A) the manufacturer's name and product name;

(B) product testing information or product evaluation;

(C) the manufacturer's installation instructions, including any special instructions for high wind areas;

(D) fastener type, length, type of corrosion resistance, and placement; and

(E) the contractor's means and methods used to install the product;

(9) all discrepancies between the ongoing improvement's as-built construction and the design documents and specifications;

(10) all discrepancies between the building products specified and the building products installed;

(11) legible copies of labels of all installed components and other manufacturer information, including shingle wrappers;

(12) a description of any action taken to remedy any discrepancies described in paragraphs (9) and (10) of this section;

(13) the status of the inspection, indicating whether the appointed qualified inspector approved or disapproved the structure; and

(14) the date and printed name and signature of the appointed qualified inspector or the designated representative of the appointed qualified inspector.

§5.4626. Substantiating Information.

(a) Upon request from TDI, an appointed qualified inspector must provide information and evidence necessary to substantiate the appointed qualified inspector's verification that an ongoing improvement complies with the wind load requirements of the applicable building code.

(b) The appointed qualified inspector may provide the information and evidence described in subsection (a) of this section to TDI in the form of:

(1) product information on building components including manufacturer name, testing information, installation instructions, and model code evaluation reports or other building information as described in §5.4623 of this title (relating to Information Required to Inspect to Design Documents);

(2) information in windstorm plans, as described in §5.4623 of this title;

(3) inspection verification forms and other documents previously filed with TDI;

(4) as-built drawings;

(5) shop drawings;

(6) building product submittal information;

(7) photographs; and

(8) inspection reports, as described in §5.4625 of this title (relating to Inspection Reports).

(c) For each structure inspected, an appointed qualified inspector must retain the substantiating evidence and information described in this section for five years from the date of the most recent inspection verification form submitted on the structure.

§5.4640. Oversight.

(a) Inspection oversight. An appointed qualified inspector is subject to the regulatory authority of TDI, which includes oversight inspections conducted by TDI. TDI oversees all aspects of the inspection and notification of compliance of ongoing improvements by an appointed qualified inspector under Insurance Code Chapter 2210 and this chapter.

(b) Certificate of compliance oversight. As part of TDI's oversight, TDI may audit the inspections on structures for which it has received an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1, or an Inspection Verification, Form WPI-2, including structures for which TDI has issued a Certificate of Compliance, Form WPI-8. If TDI determines that a structure does not meet the windstorm building code standards, TDI will not issue a Form WPI-8; or if TDI has issued a Form WPI-8 on a structure that is subsequently found not to be in compliance with the windstorm building code standards, TDI may rescind the Form WPI-8.

(c) Types of oversight audits. TDI may conduct an oversight audit of an appointed qualified inspector by any one, or a combination, of the following methods:

(1) TDI may conduct an audit of an appointed qualified inspector based on documents and other information submitted to TDI; or

(2) TDI may conduct an on-site audit at the appointed qualified inspector's place of employment or ongoing improvement for which TDI has received a Form WPI-1, or a Form WPI-2.

(d) Notification of audits.

(1) In conducting oversight audits of new structures and additions, TDI will give appointed qualified inspectors advance notice of no less than 10 business days before beginning the audit.

(2) In conducting oversight audits of components and cladding such as roofs, exterior wall coverings, exterior doors, windows, skylights, garage doors, and devices protecting exterior openings from windborne debris, TDI will give appointed qualified inspectors advance notice of no less than two business days before beginning the audit.

(3) The appointed qualified inspector may request a shorter time frame if a notice period in this subsection would cause a delay in the construction schedule. The notice periods in this subsection do not apply if TDI has received a complaint about a structure on which it has a Form WPI-1.

(e) Information for oversight audits. In the process of conducting an oversight audit, TDI may require the appointed qualified inspector to provide:

(1) documentation described in §5.4626 of this title (relating to Substantiating Information); and

(2) any other information maintained by the appointed qualified inspector that will demonstrate that the ongoing improvement complies with the appropriate windstorm building code standards, and that the ongoing improvement is eligible for association insurance.

(f) Burden of proof. With respect to audits, the appointed qualified inspector bears the burden of verifying, as set forth in §5.4622 of this title (relating to Inspection Verification), that the ongoing improvement complies with the wind load requirements of the applicable building code.

(g) Requirement to provide information. The appointed qualified inspector must provide information related to an audit in the same manner and time frame as required in §5.4615(5) of this title (relating to General Responsibilities of Appointed Qualified Inspectors). Failure to provide the information requested by TDI under this section may result in the nonissuance or rescission of a Form WPI-8 for the subject structure, and the appointed qualified inspector may be subject to disciplinary action by TDI, as described in §5.4642 of this title (relating to Disciplinary Action).

§5.4642. Disciplinary Action.

(a) Revocation or denial of appointment. After notice and opportunity for hearing, the commissioner may revoke an appointed qualified inspector's appointment or deny an appointed qualified inspector's application for appointment if:

(1) the applicant or appointed qualified inspector violates or fails to comply with the Insurance Code or any rule in this chapter;

(2) the applicant has made a material misrepresentation in the appointment application;

(3) the applicant has attempted to obtain an appointment by fraud or misrepresentation; or

(4) the applicant or appointed qualified inspector has made a material misrepresentation in any form or report required to be filed with TDI, including an Application for Windstorm Inspection Certificate of Compliance, Form WPI-1; a construction inspection report; or an Inspection Verification, Form WPI-2.

(b) Cease and desist order. The commissioner, ex parte, may enter an emergency cease and desist order under Insurance Code Chapter 83 against an appointed qualified inspector, or a person acting as an appointed qualified inspector, if:

(1) the commissioner believes that:

(A) the appointed qualified inspector has:

(i) failed to demonstrate, through submitting or failing to submit to TDI substantiating information as described in §5.4626 of this title (relating to Substantiating Information), that an ongoing improvement or a portion of an ongoing improvement subject to inspection meets the requirements of Insurance Code Chapter 2210 and TDI rules; or

(ii) refused to comply with requirements imposed under this chapter or TDI rules; or

(B) a person acting as an appointed qualified inspector is acting without appointment under Insurance Code §2210.254 or §2210.255; and

(2) the commissioner determines that the conduct described by paragraph (1) of this subsection is fraudulent, hazardous, or creates an immediate danger to the public.

(c) Alternative sanctions. Under Insurance Code §2210.2551(b) and §2210.256(b), the commissioner, instead of revocation or denial, may impose one or more of the following sanctions if the commissioner determines from the facts that the alternative sanction would be fair, reasonable, or equitable:

(1) suspension of the appointment for a specific period, not to exceed one year; or

(2) issuance of an order directing the appointed qualified inspector to cease and desist from the specified activity or failure to act determined to be in violation of Insurance Code Chapter 2210, Subchapter F, or rules of the commissioner adopted under Insurance Code Chapter 2210, Subchapter F.

(d) Failure to comply with order. Under Insurance Code §2210.2551(b) and §2210.256(d), if the commissioner finds, after notice and a hearing, that an appointed qualified inspector has failed to comply with an order issued under subsection (a), (b), or (c) of this section, the commissioner will, unless the commissioner's order is lawfully stayed, revoke the appointed qualified inspector's appointment.

(e) Informal disposition. The commissioner may informally dispose of any matter under this section or under §5.4612 of this title (relating to Appointment as Qualified Inspector) by consent order or default.

(f) Automatic cancellation. If the Texas Board of Professional Engineers revokes or suspends an engineer's license, the engineer's appointment as an appointed qualified inspector is automatically canceled.

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

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Norma Garcia
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 676-6584

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DIVISION 9. WINDSTORM BUILDING CODE ADVISORY COMMITTEE ON SPECIFICATIONS AND MAINTENANCE

28 TAC §5.4800

STATUTORY AUTHORITY. The repeal of §5.4800 is proposed under Insurance Code §§36.001, 2210.008(b), 2210.251, and 2210.252.

Section 36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of TDI under the Insurance Code and other laws of this state.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules to implement Chapter 2210.

Section 2210.251(b) states that for geographic areas specified by the commissioner, the commissioner must adopt by rule the 2003 *International Residential Code* and may adopt subsequent editions of that code and amendments to that code. Section 2210.251(g) states that a certificate of compliance issued by TDI or the association under §2210.2515 demonstrates compliance with the applicable building code under the plan of operation.

Section 2210.252 states that for geographic areas specified by the commissioner, the commissioner by rule may supplement the association's plan of operation building specifications with the structural provisions of the *International Residential Code.* Under §2210.252, the commissioner by rule may adopt an edition of the *International Residential Code* and a supplement published by the International Code Council or an amendment to that code.

CROSS REFERENCE TO STATUTE. The proposed repeal of §5.4800 implements Insurance Code §2210.251 and §2210.252.

§5.4800. Form Promulgated for Use in Proposing a Change to Windstorm Building Requirements or Procedures in the Texas Windstorm Insurance Association Plan of Operation.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 51. EXECUTIVE

The Texas Parks and Wildlife Department proposes amendments to §§51.204, 51.208, 51.213, 51.350, 51.304, and 51.750. The proposed amendments are a result of the department's review of its regulations under the provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §51.204, concerning Notice of Claim of Breach of Contract, would replace the reference to a "unit's chief administrative officer" in subsection (b) with the term "division director," which more accurately describes the department's organizational structure. Similarly, the proposed amendment would replace the reference to "unit" in subsection (c) with "department" to more accurately describe the addressee of the required notice.

The proposed amendment to §51.208, concerning Timetable, would replace the references to "unit" in subsections (a) and (c) with "department" to more accurately describe the addressee the process and capitalize the initial word of subsection (c) to maintain grammatical parallelism.

The proposed amendment to §51.213, concerning Request for Contested Case Hearing, would replace the references to "unit" in subsections (a) with "department" to more accurately describe the addressee the process, and would replace the term "chief administrative officer" with "executive director" to more accurately refer to the department's organizational structure.

The proposed amendment to §51.304, concerning Exceptions, would alter subsection (a) by adding language to paragraph (2) to clarify that the department may disclose certain information to governmental entities, including law enforcement entities, to carry out a government purpose and adding new paragraph (5) to clarify that records made or kept by the department under Parks and Wildlife Code, §31.039 and §31.0391 (concerning vessel ownership) are considered public records. The proposed amendment also would eliminate subsection (b), which provides for the verification of certain customer information upon request. The department has determined that the proposed amendments are necessary to protect information about customers as allowed by Parks and Wildlife Code, §11.030.

The proposed amendment to §51.350, concerning Vendor Dispute Resolution, would replace the reference to "Director of Purchasing, Contracting, and Distribution Services" with "Purchasing and Contracting Director" to more accurately reflect the department's organizational structure.

The proposed amendment to §51.750 regarding Promotional Drawings would modify subsection (a)(1) to clarify that the $5,000 limit on the value of prizes does not include items donated to the department.

Ann Bright, General Counsel, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Ms. Bright also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer, better organized, and more accurate regulations governing the processes and entities administered under the provisions of Chapter 51, including the protection of customer information.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposed rules may be submitted to Robert Macdonald, Regulations Coordinator, e-mail: *robert.macdonald@tpwd.texas.gov.* Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

SUBCHAPTER J. CONTRACT DISPUTE RESOLUTION

31 TAC §§51.204, 51.208, 51.213

The amendments are proposed under the authority of Government Code, §2260.052(c), which requires each unit of state government with rulemaking authority to develop rules to govern the negotiation and mediation of contract claims against the state, and Parks and Wildlife Code, §11.0171, which requires the commission to adopt by rule policies and procedures for soliciting and awarding contracts.

The proposed amendments affect Government Code, Chapter 2260 and Parks and Wildlife Code, Chapter 11.

§51.204. Notice of Claim of Breach of Contract.

(a) (No change.)

(b) The notice of claim shall:

(1) (No change.)

(2) be delivered by hand, certified mail return receipt requested, or other verifiable delivery service, to the officer of the depart-

ment designated in the contract to receive a notice of claim of breach of contract under Government Code, Chapter 2260; if no person is designated in the contract, the notice shall be delivered to the division director [~~unit's chief administrative officer~~], and shall state in detail:

(A) - (C) (No change.)

(c) In addition to the mandatory contents of the notice of claim as required by subsection (b) of this section, the contractor may submit supporting documentation or other tangible evidence to facilitate the department's [~~unit's~~] evaluation of the contractor's claim.

(d) (No change.)

§51.208. Timetable.

(a) Following receipt of a contractor's notice of claim, the executive director of the department or other representative designated in the contract shall review the contractor's claim(s) and the department's [~~unit's~~] counterclaim(s), if any, and initiate negotiations with the contractor to attempt to resolve the claim(s) and counterclaim(s).

(b) (No change.)

(c) The [~~the~~] department may delay negotiations until after the 180th day after the date of the event giving rise to the claim of breach of contract by:

(1) (No change.)

(2) delivering written notice to the contractor when the department [~~unit~~] is ready to begin negotiations.

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

(g) The contractor may request a contested case hearing before the State Office of Administrative Hearings ("SOAH") pursuant to §51.213 of this title (relating to Request for Contested Case Hearing) after the 270th day after the department [~~unit~~] receives the contractor's notice of claim, or the expiration of any extension agreed to under subsection (f) of this section.

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

§51.213. Request for Contested Case Hearing.

(a) If a claim for breach of contract is not resolved in its entirety through negotiation, mediation or other assisted negotiation process in accordance with this chapter on or before the 270th day after the department [~~unit~~] receives the notice of claim, or after the expiration of any extension agreed to by the parties pursuant to §51.208(f) of this title (relating to Timetable), the contractor may file a request with the department for a contested case hearing before SOAH.

(b) A request for a contested case hearing shall state the legal and factual basis for the claim, and shall be delivered to the executive director [~~chief administrative officer~~] of the department or other officer designated in the contract to receive notice within a reasonable time after the 270th day or the expiration of any written extension agreed to pursuant to §51.208(f) of this subchapter.

(c) - (d) (No change.)

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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For further information, please call: (512) 389-4775

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SUBCHAPTER K. DISCLOSURE OF CUSTOMER INFORMATION

31 TAC §51.304

The amendment is proposed under Parks and Wildlife Code, §11.030, which requires the commission to adopt policies by rule relating to the release of the customer information; the use of the customer information by the department; and the sale of a mailing list consisting of the names and addresses of persons who purchase customer products, licenses, or services.

The proposed amendment affects Parks and Wildlife Code, Chapter 11.

§51.304. Exceptions.

(a) Unless otherwise prohibited by law, the department may disclose the recreational customer, personal customer information or confidential customer information as follows:

(1) (No change.)

(2) Recreational customer information, personal information or confidential customer information may be disclosed to another governmental body, including, but not limited to a law enforcement entity, as needed to carry out a governmental purpose [~~that agrees to maintain the confidentiality of the information~~].

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

(5) Records made or kept by the department that are considered public records under Parks and Wildlife Code, §31.039 and §31.0391.

[~~(b) If a requestor provides a recreational customer's name or other identifying information, the department may verify information about a recreational customer as specified in this subsection; however, the department may require that the requestor complete and submit a separate written form for each recreational customer about which the department is requested to verify information.~~]

[~~(1) The department may verify whether a recreational customer holds a specified license or permit.~~]

[~~(2) The department may verify whether a recreational customer was a visitor to a state park or other department facility.~~]

[~~(3) The department may verify whether a recreational customer purchased a state parks annual pass or made a reservation at a park or other department facility.~~]

[~~(4) The department may verify whether a recreational customer purchased an item or product from the department.~~]

(b) [~~(c)~~] Information that is rented under this subchapter may be used by the requestor no more than one time. The department will take appropriate steps to verify that rented information is used no more than one time.

(c) [~~(d)~~] The department may follow industry standards, including, but not limited to standards regarding the exclusion or inclusion of magazine customer information on a list of magazine customers that is rented or sold.

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

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General Counsel
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SUBCHAPTER L. VENDOR DISPUTE RESOLUTION

31 TAC §51.350

The amendment is proposed under Government Code, §2155.076, which requires the department as a state agency to adopt rules for resolving vendor protests relating to purchasing issues.

The proposed amendment affects Government Code Chapter 2155.

§51.350. Vendor Dispute Resolution.

(a) Any actual or prospective bidder, offeror, or contractor who is aggrieved in connection with the solicitation, evaluation, or award of a contract may formally protest to the Purchasing and Contracting Director [~~Director of Purchasing, Contracting, and Distribution Services~~]. Such protests must be in writing and received in the director's office within ten working days after such aggrieved person knows, or should have known, of the occurrence of the action which is protested. Copies of the protest must be mailed or delivered by the protesting party to the department and other interested parties. For the purpose of this section "other interested persons" means at least all vendors who have submitted bids or proposals for the contract involved.

(b) - (h) (No change.)

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

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SUBCHAPTER Q. PROMOTIONAL DRAWINGS

31 TAC §51.750

The amendment is proposed under Parks and Wildlife Code, §11.0271, which authorizes the department to conduct public drawings to select applicants for public hunting privileges; §11.0272, which authorizes the department to conduct public drawings to select applicants for special fishing or other special programs, packages, or events; Parks and Wildlife Code, §13.015, which authorizes the commission to establish park user fees; Parks and Wildlife Code, §42.012, which authorizes the commission to waive hunting license fees for a resident who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director; Parks and Wildlife Code, §46.002, which exempts a person who is participating in an event sponsored or co-sponsored by the department with the approval of the executive director from fishing license requirements; Parks and Wildlife Code, §50.001, which requires the commission to establish combination licenses or license packages for hunting, fishing, or other activities and authorizes the commission to establish fees for combination license or license packages, provided the fee is less than the fees for the individual components of the package; and Parks and Wildlife Code, §81.403, which authorizes the department to issue a permit authorizing access to public hunting land or for specific hunting, fishing, recreational, other used of public hunting land or a wildlife management area and requires the commission to prescribe the fees and conditions of the issuance and use of such permits by rule.

The proposed amendment affects Parks and Wildlife Code, Chapters 11, 13, 42, 46, 50, and 81.

§51.750. Promotional Drawings.

(a) The executive director of the department may approve specific promotional event packages to be made available to individual members of the public by means of random drawing as provided in this section. Prior to approval of any promotional event package under this section, the executive director shall ensure that:

(1) the aggregate value of the packages offered does not exceed $5,000 for any fiscal year, excluding items donated to the department;

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

(b) - (g) (No change.)

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

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CHAPTER 52. STOCKING POLICY

31 TAC §52.104, §52.401

The Texas Parks and Wildlife Department proposes amendments to §52.104 and §52.401. The proposed amendments are a result of the department's review of its regulations under the

provisions of Government Code, §2001.039, which requires a state agency to review each of its regulations no less frequently than every four years and to re-adopt, adopt with changes, or repeal each rule as a result of the review.

The proposed amendment to §52.104, concerning Policy of the Department, would alter subsection (b) by eliminating the initial capitalization of the term "annual operational plan." The capitalization suggests that there is a specific document titled "Annual Operational Plan." Eliminating the capitalization more accurately describes the plan.

The proposed amendment to §52.401, concerning Fish Stocking in Private Waters, would alter subsection (b)(4) to clarify that an agreement regarding the stocking of fish in private waters must be signed by the department's executive director. Since fish may be stocked in private waters only as part of a department project associated with investigation, propagation, distribution, scientific, educational, or other valid management purposes, it is appropriate for the executive director to be the signatory on such agreements to ensure that such purposes are being served. Similarly, the amendment would further clarify that the stocking of any private waters not be associated with pay-to-fish operations.

Ken Kurzawski, Program Director, Inland Fisheries Division, has determined that for each of the first five years that the rules as proposed are in effect, there will be no fiscal implications to state or local governments as a result of administering or enforcing the rules.

Mr. Kurzawski also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the proposed rules will be clearer, better organized, and more accurate regulations governing the processes administered under the provisions of Chapter 52.

There will be no adverse economic effect on persons required to comply with the rules as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rules will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, §2001.022, as the agency has determined that the rules as proposed will not impact local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

Comments on the proposal may be submitted to Ken Kurzawski (Inland Fisheries) at (512) 389-4591, e-mail: ken.kurzawski@tpwd.texas.gov. Comments also may be submitted via the department's website at http://www.tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the Parks and Wildlife Code, §§1.012, 12.001, 12.013 - 12.015, and 66.015, which provide the Parks and Wildlife Commission with the authority to promulgate regulations governing the stocking of wildlife in the state.

The proposed amendment affects Parks and Wildlife Code, Chapters 1, 12, and 66.

§52.104. Policy of the Department.

(a) (No change.)

(b) Departmental stocking of fish and wildlife on public lands and in public waters shall be consistent with the annual operational plan [~~Annual Operational Plan~~].

(c) - (e) (No change.)

§52.401. Fish Stocking in Private Waters.

(a) (No change.)

(b) Conditions for stocking fish.

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

(4) A written agreement must be executed and signed by the executive director.

(5) During the time period specified in the written agreement required by paragraph (4) of this subsection, private waters stocked under this subchapter shall not be subject to fishing in exchange for money or anything of value.

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 53. FINANCE
SUBCHAPTER A. FEES
DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.15

The Texas Parks and Wildlife Department proposes an amendment to §53.15, concerning Miscellaneous Fisheries and Wildlife Licenses and Permits. The proposed amendment would eliminate references to fees for certificates of location (oyster lease rentals). In another rulemaking published elsewhere in this issue

of the *Texas Register,* the department proposes rules intended to address deleterious environmental conditions and negative impacts of harvest on oyster populations and habitat. The cumulative impacts of these recent events (hurricanes, drought, etc.) have contributed to the declining trends in oyster resources in Texas. The toll of these events and their impacts make it necessary for the department to take action to protect and restore oysters and oyster habitat, which include a fee increase for areas that the department has issued certificates of location for private oyster beds. That fee increase is addressed in proposed amendments to 31 TAC §58.30, published elsewhere in this issue, and contains an economic and cost analysis of the proposed fee increase, including impacts to small businesses, microbusinesses, and persons required to comply. Because the fees for certificates of location are being addressed by the proposed rulemaking affecting Chapter 58, Subchapter A (Statewide Oyster Fishery Proclamation), it is no longer necessary to refer to them in Chapter 53; thus, the proposed amendment would remove them.

Mr. Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the elimination of potential confusion by placing the fees for certificates of location in a single regulation.

There will be no adverse economic effect on persons required to comply with the rule as proposed.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services. The department has determined that the rule will not directly affect small businesses and/or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006. (Any impact on small or micro-businesses would result from the proposed rules affecting Chapter 58, Subchapter A (Statewide Oyster Fishery Proclamation), published elsewhere in this issue of the *Texas Register.)*

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; tiffany.hopper@tpwd.texas.gov, or via the department's website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under Parks and Wildlife Code, §§76.017, 76.018, and 76.020 which, respectively, authorize the commission to establish the annual rental fee for the areas established under the certificate of location, to determine oyster location renewal procedures, and to require the recovery of oyster shell or other suitable cultch material to maintain or enhance public oyster reefs.

The proposed amendment affects Parks and Wildlife Code, Chapter 76.

§53.15. Miscellaneous Fisheries and Wildlife Licenses and Permits.

(a) - (g) (No change.)

(h) Miscellaneous fees:

(1) - (6) (No change.)

[~~(7) oyster lease rental--$6 per acre of location per year;~~]

(7) [~~(8)~~] oyster lease renewal/transfer/sale--$200; and

(8) [~~(9)~~] double-crested cormorant control permit--$13.

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 September 19, 2016.

TRD-201604845
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 389-4775

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CHAPTER 57. FISHERIES
SUBCHAPTER N. STATEWIDE RECREATIONAL AND COMMERCIAL FISHING PROCLAMATION
DIVISION 3. STATEWIDE COMMERCIAL FISHING PROCLAMATION

31 TAC §57.994

The Texas Parks and Wildlife Department proposes an amendment to §57.994, concerning Individual Fishing Quota (IFQ). The proposed amendment would update references to federal rules adopted by reference and clarify that the federal rules apply in state waters.

The IFQ is a federal regulatory program governing the commercial harvest of certain species of fish in federal waters. Federal rules require a federal permit and a federal Individual Fishing

Quota (IFQ) vessel endorsement for the harvest of Gulf of Mexico Reef Fish. The IFQ is an allocation of a percentage of the total allowable harvest to individuals engaged in commercial fishing for certain species in federal waters, who in turn must comply with certain documentation and reporting requirements. The amendment is necessary to allow enforcement of these requirements in state as well as federal jurisdiction and to insure that fish landed in Texas are landed in compliance with federal limits.

In 2013 the National Oceanic and Atmospheric Administration, the federal agency responsible for regulating fisheries resources and habitats in federal waters, nonsubstantively reorganized the provisions of 50 CFR Part 622 (78 FR 22949). As a result of that reorganization, the references to federal rules in §57.994 are inaccurate and should be updated.

Mr. Robin Riechers, Coastal Fisheries Division Director, has determined that for each of the first five years the rule as proposed is in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the rule.

Mr. Riechers also has determined that for each of the first five years the rule as proposed is in effect, the public benefit anticipated as a result of enforcing or administering the rule as proposed will be a single enforcement standard that eliminates potential confusion in enforcement and compliance.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has determined that since under federal law it is illegal to land red snapper, grouper, or tilefish in Texas that are not harvested, possessed, transported, or landed in compliance with federal law, there is no direct adverse economic effect on small or micro-businesses or persons required to comply as a result of the proposed rule, since it creates a state regulation mirroring the federal regulations that must be complied with anyway.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rule.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rule.

Comments on the proposed rule may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4333; *tiffany.hopper@tpwd.texas.gov,* or via the department's website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under Parks and Wildlife Code, §67.004, which requires the commission to establish any limits on the taking, possession, propagation, transportation, importation, exportation, sale, or offering for sale of nongame fish that the department considers necessary to manage the species.

The proposed amendment affects Parks and Wildlife Code, Chapter 67.

§57.994. Individual Fishing Quota (IFQ).

(a) The Texas Parks and Wildlife Department adopts by reference the provisions of 50 CFR §622.21, 622.22, and 622.30, which shall govern the commercial take, possession, transportation, and landing of red snapper, grouper, and tilefish in Texas waters.

(b) No person for commercial purposes may take, possess, land, or sell red snapper, grouper, or tilefish in or via state waters unless that person possesses a valid federal Commercial Vessel Permit with applicable endorsements (if required) as provided by 50 CFR §622.20. [~~The Texas Parks and Wildlife Department adopts by reference the provisions of 50 CFR §§622.16 and 622.20, which shall govern the take, possession, transportation, and landing of red snapper, grouper, and tilefish in Texas waters.~~]

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

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Ann Bright
General Counsel
Texas Parks and Wildlife Department
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CHAPTER 58. OYSTERS, SHRIMP, AND FINFISH

SUBCHAPTER A. STATEWIDE OYSTER FISHERY PROCLAMATION

31 TAC §§58.10, 58.11, 58.30, 58.40, 58.50, 58.60

The Texas Parks and Wildlife Department proposes amendments to §§58.10, 58.11, 58.30, 58.40, 58.50, and 58.60, concerning the Statewide Oyster Fishery Proclamation.

The proposed amendments are intended, collectively, to maximize oyster production and protect public health by renewing areas under certificates of location and allowing oysters to be translocated from Restricted Areas (areas containing high levels of bacteria) to beds located in Approved Areas to depurate. Oysters feed by filtering large volumes of water. In contaminated waters, this can result in the concentration of harmful toxins and pathogens in the oysters. Relocating oysters to areas free of environmental contamination allows the oysters to purge toxins and pathogens from their systems, a process known as depuration. The proposed amendments will affect 42 certificates of location (leases) totaling 2,300 acres, all located in Galveston Bay. The proposed amendments also standardize terminology, increase fees for acreage under a certificate of location and provide for the adjustment of those fees at three-year intervals, and remove a redundant reporting requirement for harvest information.

Parks and Wildlife Code, §76.006 provides that any citizen of the United States or domestic corporation may file a written application with the department for a certificate authorizing the applicant to plant oysters and make a private oyster bed in the public water of the state ("certificate of location," popularly referred to as a "lease"). The fee for a certificate of location is currently $6.00 per acre. Currently, the term for a certificate of location is 15 years, set to expire on February 28, 2017. Renewal of certifi-

cates of location provides economic value to the state of Texas and the oyster industry by providing a means for oysters to be harvested and sold for human consumption following depuration. An additional benefit is accrued because translocation of oysters prevents them from being unlawfully harvested in areas where harvest is restricted by the Department of State Health Services to protect human health and safety.

The proposed amendments remove the words "lease," "leases," "private oyster lease," "private oyster leases," "leaseholder," and "leaseholders" wherever they occur in §§58.10, 58.11, 58.30, 58.40, 58.50, and 58.60, and where appropriate, replace those terms with more accurate descriptors implicating the certificate of location. The nonsubstantive change is intended to eliminate confusion and ambiguity. Additionally, the proposed amendments remove outdated reference to a shellfish program at the Department of State Health Services and simply replace it with a reference to that agency, as well as replace references to the entire name of that agency with an acronym.

The proposed amendment to §58.11, concerning Definitions, consists of several components.

The proposed amendment to §58.11 would add new paragraph (3) to define the term "Certificate of Location" as "a department-issued certificate authorizing a person or domestic corporation to plant oysters in a specifically delineated area of the public water of the state for the purpose of establishing a private oyster bed." Because the proposed amendments replace references to "lease," "leaseholders," etc., and replace them with references to "certificate of location," which is the technical term used in Parks and Wildlife Code, Chapter 76, a definition of that term is necessary.

The proposed amendment to §58.11 would alter current paragraph (4) to remove an unnecessary reference to the composition of the Texas Parks and Wildlife Commission.

The proposed amendment to §58.11 would alter current paragraph (6) to remove a redundancy. The phrase "refers to" is unnecessary.

The proposed amendment to §58.11 would add new paragraph (7) to define the term "cultch" as "material deposited in order to provide points of attachment for juvenile oysters (spat)." In addition to being the accepted technical term for oyster growth media, employing the word "cultch" reduces the need for repetition of awkward descriptive language.

The proposed amendment to §58.11 would redesignate current paragraphs (16) and (17) as new paragraphs (10) and (9), respectively, in order to preserve the alphabetical order of the terms in the section.

The proposed amendment to §58.11 would add new paragraph (11) to define "location" as "the acreage of public water for which a certificate of location has been issued." As mentioned previously in this preamble, the proposed amendments, collectively, would eliminate references to the term "lease" and replace them with references to the term "certificate of location." Thus, terms such as "location" are invested with a specialized meaning and must be defined for purposes of compliance, administration, and enforcement.

The proposed amendment to §58.11 would add new paragraph (12) to define "location term" as "the 15-year term of a certificate of location," which is necessary to provide a convenient term for ease of reference.

The proposed amendment to §58.11 would add new paragraph (13) to define the term "locator" as "a person or domestic corporation to whom or which a certificate of location has been issued," which is necessary to provide a convenient term for ease of reference.

The proposed amendment to §58.11 would eliminate the definition of "private oyster lease" in current paragraph (11) because, as discussed elsewhere in this preamble, references to "lease" are being eliminated throughout the subchapter.

The proposed amendment to §58.11 would alter current paragraph (14) (redesignated as new paragraph (20)) to remove an outdated reference to a shellfish program at the Department of State Health Services and simply replace it with a reference to that agency.

The proposed amendment to §58.11 would add new paragraph (22) to define "under location" as "an area subject to a certificate of location," which, for reasons previously discussed in this preamble, is necessary to create a convenient reference.

The proposed amendment to §58.30, concerning Private Oyster Leases, would establish minimum activity standards for areas under a certificate of location. Within the first five years of the location term, a locator would be required to deposit a minimum of 25 cubic yards per acre of department-approved cultch onto the location. For years 6-15 of the location term, a locator would be required to deposit, at locations specified by the department, a volume of department-approved cultch equivalent to at least 33-1/3 percent of the volume of oyster shell harvested by the locator during the immediately preceding calendar year. The proposed amendment is intended to address deleterious environmental conditions and negative impacts of harvest on oyster populations and habitat. The cumulative impacts of recent events have contributed to the declining trends in oyster resources in Texas. Hurricane Ike (2008) resulted in the loss of approximately 50% of the oyster reefs in Galveston Bay. Increased salinities during the 2010 and early 2015 drought resulted in increased oyster mortality due to parasites and disease. Coast-wide flooding in 2015 and 2016 further impacted oyster reefs as losses occurred due to low salinity. Coinciding high harvest pressure exacerbated the condition of Texas' oyster reefs. The cumulative toll of these events and their impacts make it necessary for the department to take action to protect and restore oysters and oyster habitat.

The proposed amendment also would increase the acreage-based fee for certificates of location, from the current $6 per acre to $60 per acre, and would provide for automatic proportional adjustment of the fee every three years, based on changes in the Consumer Price Index, updates to the administrative cost-recovery analysis, or both.

The proposed amendment to §58.50, concerning Oyster Harvest Permits, would specify that monthly harvest report forms required by the current rules to be submitted to the department's commercial landings program by the 10th of the month following the month in which harvest occurred. The current rule specifies that the reports be filed with the department by the 15th of the month following the month in which harvest occurred; however, other department rules require all commercial landings of aquatic marine life to be submitted by the 10th of each month, which includes oysters. The removal of the redundant reporting requirement will result in greater administrative efficiency for both the department and the regulated community.

Lance Robinson, Deputy Director of the Coastal Fisheries Division, has determined that for each of the first five years the rules as proposed are in effect there will be fiscal implications to state government as a result of enforcing or administering the rules. The proposed amendment to §58.30 would increase fees for locators and would result in an estimated revenue increase of approximately $125,377.20 per year to the department, assuming the number of locations remains stable.

The rules as proposed will not affect other units of state and local government.

Mr. Robinson also has determined that for each of the first five years that the rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules will be the maintenance of a sustainable and healthy oyster fishery by ensuring that areas under a certificate of location are maximally managed by the department to generate substrate for oyster habitat regeneration for public use and enjoyment.

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), the Office of the Attorney General has prepared guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. Those guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. For that purpose, the department considers "direct economic impact" to mean a requirement that would directly impose recordkeeping or reporting requirements; impose taxes or fees; result in lost sales or profits; adversely affect market competition; or require the purchase or modification of equipment or services.

The department has determined that the rules as proposed will result in adverse economic impacts to small and microbusinesses and persons required to comply. For the purposes of this analysis, the department assumes that all entities to whom certificates of location have been issued qualify as a small or microbusiness. The department also notes that this analysis addresses adverse economic impacts over the 15-year length of a location term, because there are adverse economic impacts that are not manifested in the first five years of the location term.

At the current time the department has issued 42 individual certificates of location, ranging in size from 11 to 100 acres, to a total of 20 locators. Locators may hold multiple certificates of location; thus, the smallest acreage controlled by a single locator is 22.4 acres and the largest acreage controlled by a single locator is 290 acres. The rules as proposed would result in adverse economic impacts for all locators as a result of increased location fees and the costs associated with the required deposition of cultch under the rules.

In determining the appropriate location fees to enable cost-recovery by the department for administering the program, the department used the method provided in the 2000 State Auditor's Report, "A Joint Study Report on the Parks and Wildlife Department's Commercial Fishery Programs and the General Land Office's Leases of State-Owned Lands" (https://www.sao.texas.gov/Reports/Main/01-011.html). For the purposes of this proposal, the estimated costs to the department for managing the private oyster bed program were adjusted to 2015 costs and used to calculate a per acre cost-recovery fee of $60.00 per acre per year. The impact of the proposed per acre location increase from $6.00 to $60.0 would result in an increase of $594 per year for the smallest (location) and an increase of $5,400 per year for the largest (location). In terms of impacts to individual locators, the fee increase would result in a cost of between $1,209.60 (for the locator controlling 22.4 acres) and $15,660 (for the locator controlling 290 acres).

The proposed amendment to §58.30 would require locators to deposit a minimum of 25 cubic yards per acre onto each of the locator's areas under location by the end of the fifth year of the location term. In each year of the remainder of the location term, locators would be required to deposit a minimum amount of cultch, based on the shell harvest data for each location, upon areas designated by the department.

The department estimates that the adverse economic impact of requiring a minimum of 25 cubic yards per acre will be a cost of between $8,960 per year (for the locator controlling 22.4 acres) and $116,000 per year (for the locator controlling 290 acres). These figures were derived based on the current cost to the department for purchasing and deploying cultch materials ($80 per cubic yard) for departmental restoration efforts. The department notes that the practice of placing cultch onto locations is common amongst current locators and frequently exceeds the 25 cubic yards per acre minimum stipulated in the proposed rule, so for those locators who already place more than 25 cubic yards of cultch for each acre under location, the proposed rule would not impose an adverse economic impact in the first five years of the location term. The proposed amendment to §58.30 also would require locators to deposit cultch in department-specified areas annually in years 6-15 of the location term. The department estimates that the adverse economic impacts resulting from this portion of the rule would be between $2,867.20 per year (for the locator controlling 22.4 acres) and $37,120 per year (for the locator controlling 290 acres). The department derived these values by using department harvest data to calculate the average oysters harvested per acre from existing locations over the last nine years (2007-2015), dividing by three (representing a volume equivalent to 33.3 percent of the volume of shell harvested from the location in the previous year, which yields a value of 1.6 cubic yards per acre), and then multiplying that value by $80 (as noted previously, the current cost to the department for purchasing and deploying cultch materials for departmental restoration efforts is approximately $80 per acre).

The department estimates that over the maximum period of a location term (15 years) the total adverse economic impacts to small and microbusinesses and persons required to comply would be between $93,632 (for the locator controlling 22.4 acres) and $1,212,200 (for the locator controlling 290 acres). Again, the department notes that the practice of placing cultch onto locations is common amongst current locators and frequently exceeds the 25 cubic yards per acre minimum stipulated in the proposed rule for the first 5 years of the location term, and thus the amounts presented above represent the maximum impact to current activities if the locater had not been actively placing in material on their location.

The department has not drafted a local employment impact statement under the Administrative Procedures Act, §2001.022, as the agency has determined that the rule as proposed will not impact local economies.

The department has determined that Government Code, §2001.0225 (Regulatory Analysis of Major Environmental Rules), does not apply to the proposed rules.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed rules.

The department has determined that the proposed rules are in compliance with Government Code §505.11 (Actions and Rule Amendments Subject to the Coastal Management Program).

Comments on the proposal may be submitted to Dr. Tiffany Hopper, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-4650; email: tiffany.hopper@tpwd.texas.gov

The amendments are proposed under Parks and Wildlife Code, §§76.017, 76.018, and 76.020 which, respectively, authorize the commission to establish the annual rental fee for the areas established under the certificate of location, to determine oyster location renewal procedures, and to require the recovery of oyster shell or other suitable cultch material to maintain or enhance public oyster reefs.

The proposed amendments affect Parks and Wildlife Code, Chapter 76.

§58.10. Application.

(a) (No change.)

(b) This subchapter also applies to activities authorized under a certificate of location [~~private oyster leases~~] including the permitting and marking of, as well as transplant of oysters to, and harvest of oysters pursuant to a certificate of location [~~from private oyster leases~~].

§58.11. Definitions.

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

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

(3) Certificate of Location--A department-issued certificate authorizing a person or domestic corporation to plant oysters in a specifically delineated area of the public water of the state for the purpose of establishing a private oyster bed.

(4) [~~(3)~~] Conditionally approved area--The classification of a shellfish growing area determined by the Texas Department of State Health Services (TDSHS) to meet approved area criteria for a predictable period. The period is conditional upon established performance standards specified in a management plan. A conditionally approved area is a restricted area when the area does not meet the approved growing area criteria.

(5) [~~(4)~~] Commission--The [~~Refers to the nine member~~] Texas Parks and Wildlife Department Commission.

(6) [~~(5)~~] Culling--The process of separating undersized oysters from oysters that are lawful to possess.

(7) Cultch--Material deposited in order to provide points of attachment for juvenile oysters (spat).

(8) [~~(6)~~] Department--The [~~Refers to the~~] Texas Parks and Wildlife Department.

(9) Director--The executive director of the department.

(10) Harvester/Shell Recovery Tag--An identifying marker that must be affixed to the outside of each sack of oysters at the time of harvest, in the location of harvest, containing information required by the TDSHS under the NSSP, and remain affixed during transportation of the oysters to a dealer.

(11) Location--The acreage of public water for which a certificate of location has been issued.

(12) Location term--The 15-year term of a certificate of location.

(13) Locator--A person or domestic corporation to whom or which a certificate of location has been issued.

(14) [~~(7)~~] Natural oyster bed (reef)--As defined in Parks and Wildlife Code, §76.051, a natural oyster bed is an area where at least five barrels of oysters are found within 2,500 square feet of any position on a reef or bed.

(15) [~~(8)~~] Open season--A period during which it is lawful to take oysters.

(16) [~~(9)~~] Oyster--That species of molluscan shellfish identified as the Eastern oyster, Crassostrea virginica and its subspecies. No other species of molluscan shellfish are included within this proclamation.

(17) [~~(10)~~] Possess--The act of having in possession or control, keeping, detaining, restraining, or holding as owner, or as an agent, bailee, or custodian of another.

[~~(11) Private oyster lease--Those state water bottoms leased from the state for the purpose of producing oysters to individuals or corporations incorporated under the laws of this state.~~]

(18) [~~(12)~~] Prohibited area--The classification of a shellfish growing area determined by the TDSHS to be unacceptable for the transplanting, gathering for depuration, or harvesting of shellfish. The only shellfish removal permitted from a prohibited area is for the purpose of depletion, as defined in the Control of Harvesting Section of Part 1 of the NSSP.

(19) [~~(13)~~] Public oyster bed (reef)--As defined in Parks and Wildlife Code, §76.002, all natural oyster beds (reefs) are public. All oyster beds not designated as private are public.

(20) [~~(14)~~] Restricted area--The classification of a shellfish growing area determined by the TDSHS to be unacceptable for harvesting of shellfish for direct marketing, but which is acceptable for transplanting or gathering for depuration. A restricted area may be closed for transplanting or gathering for depuration when the TDSHS [~~Seafood and Aquatic Life Group~~] determines that the area does not meet the restricted area criteria established in the NSSP.

(21) [~~(15)~~] Sack of oysters--A volume of oysters, including dead oyster shell that weighs no more than 110 pounds including the sack.

[~~(16) Harvester/Shell Recovery Tag--An identifying marker that must be affixed to the outside of each sack of oysters at the time of harvest, in the location of harvest, contain information required by the TDSHS under the NSSP, and remain affixed during transportation of the oysters to a dealer.~~]

[~~(17) Director--The executive director of the department.~~]

(22) Under location--An area subject to a certificate of location.

§58.30. Certificate of Location [~~Private Oyster Leases~~].

(a) General Rules.

(1) No certificate of location [~~lease~~] will be issued for:

(A) a natural oyster bed as prescribed in Parks and Wildlife Code, §76.001;

(B) an area that has been fished as a public reef within eight years of an application of a certificate of location [~~the lease application~~] as prescribed in Parks and Wildlife Code, §76.003;

(C) a bay shore area within 100 yards of the shore as prescribed in Parks and Wildlife Code, §76.004;

(D) an area subject to an exclusive riparian right as provided under Parks and Wildlife Code, §76.004 and §76.005;

(E) an area already under location [~~certification as a private lease~~]; or

(F) an area within 1,000 feet of a location [~~an established lease~~] not owned or controlled by the applicant.

(2) The term of a certificate of location [~~the lease~~] is 15 years as prescribed in Parks and Wildlife Code, §76.018.

(3) In accordance with the Oyster Fishery Management Plan the Department may accept [~~oyster lease~~] applications certificates of location.

(b) Active Use Criteria.

(1) The department shall conduct an annual review of each area under location in order to determine active use during the previous year.

(2) A locator must meet the following criteria for the area under location to be considered in active use:

(A) within the first five years of the location term, a locator must deposit a minimum of 25 cubic yards per acre of department-approved cultch onto the area under location; and

(B) beginning with the sixth year of the location term and continuing annually until the 15th year of the location term, a locator must deposit department-approved cultch equivalent to at least 33-1/3 percent (by volume) of oyster shell taken by the locator holder from each location during the immediately preceding calendar year. The site(s) of a deposit or deposits required under this paragraph shall be specified by the department.

(c) [~~(b)~~] Application For Certificate of Location [~~Oyster Lease~~].

(1) If applications for certificates of location [~~private oyster leases~~] are being accepted by the department, they shall be accompanied by a nonrefundable application fee of $200.

(2) The applicant shall mark the proposed location [~~lease~~] site or sites with temporary poles and/or buoys in such a manner that the outline of the site or sites can be clearly determined.

(3) Each application shall contain:

(A) applicant's name and address;

(B) affirmation that applicant is a United States citizen as prescribed in Parks and Wildlife Code, §76.006;

(C) a description of the acreage to be authorized by the certificate of location [~~lease~~], including a plat showing approximate size and location in relation to state land tracts; and

(D) signed letters each from the U.S. Army Corps of Engineers, General Land Office, and TDSHS [~~the Seafood and Aquatic Life Group of the Texas Department of State Health Services~~] indicating approval for the proposed location [~~lease~~] site.

(4) An authorized employee(s) of the department shall inspect the proposed location [~~lease~~] site or sites to determine its location with respect to:

(A) natural oyster reefs;

(B) shoreline;

(C) areas restricted or prohibited by the TSDHS [~~Texas Department of State Health Services~~];

(D) spoil disposal areas;

(E) other areas subject to a certificate of location [~~private leases~~];

(F) riparian rights;

(G) presence of exposed shell; and

(H) presence of live oysters.

(d) [~~(c)~~] Public Hearing on Application.

(1) After having determined the proposed location [~~lease~~] site meets location and exposed shell requirements, the department shall:

(A) hold a public hearing to determine if the site has been publicly fished within eight years of the [~~lease~~] application for a certificate of location;

(B) publish a notification of the date, time, and purpose of the public hearing at least once in a newspaper of general circulation in the county closest to the proposed location [~~in which the proposed lease site is located~~];

(C) publish the notification between ten and 20 days prior to the public hearing;

(D) make available to the public information about the proposed application for a certificate of location [~~lease site~~] ten days prior to the date of the hearing; and

(E) present the investigation report at the public hearing.

(2) Persons objecting to the proposed certificate of location [~~lease~~] must submit a sworn affidavit or testify under oath at the public hearing stating reasons for the objection.

(3) The department shall review findings of the public hearing and submit recommendations to the Coastal Fisheries Division Director for approval.

(4) The applicant will be notified within ten days after the hearing of either approval or denial of the [~~lease~~] application for a certificate of location.

(5) The application approved by the department will be forwarded to the Coastal Coordination Council for final approval.

(e) [~~(d)~~] Approved [~~Lease~~] Procedures for Applicant.

(1) Applicant shall be responsible for having a final survey of the approved location [~~lease~~] conducted by a registered surveyor who will furnish the department with survey notes and a plat [~~of the lease~~] showing:

(A) the location [~~of the lease~~] in relation to state land tract boundaries; and

(B) latitude and longitude coordinates for all location corner [~~lease~~] markers.

(2) The applicant shall mark the boundaries of the location [~~lease~~] with buoys or other permanent markers at the time of the final survey and maintain buoys or other permanent markers until [~~lease~~] termination of the certificate of location. Supplemental markers may be required along the [~~lease~~] boundaries if one corner marker is not clearly visible from another corner marker.

(A) All marker buoys or other permanent markers must be:

(i) at least six inches in diameter;

(ii) at least three feet out of the water at mean high tide;

(iii) of a shape and color that is visible for at least 1/2 mile under normal weather conditions;

(iv) marked with the certificate of location [~~lease~~] number (Buoys or other permanent markers common to two or more locations [~~leases~~] must be marked with all [~~lease~~] numbers of the certificate of location);

(v) marked with at least two-inch high letters in plain Arabic block letters in a location where it will not be obscured by water or marine growth; and

(vi) marked with all required U.S. Coast Guard markings.

(B) Buoys must be anchored by:

(i) A screw anchor with a minimum one-inch galvanized sucker rod and 12-inch head inserted ten feet into the bottom; or

(ii) two anchors per buoy and each anchor having a minimum weight of 300 pounds.

(C) If replacement of buoys or other permanent markers is necessary, original latitude and longitude coordinates of the final survey must be used to relocate markers.

(3) An authorized employee(s) of the department shall inspect and verify latitude and longitude coordinates.

(4) The department shall return approved application for appropriate registration by applicant with the county clerk in the county of location.

(5) Rental Fee.

(A) The holder of a certificate of location shall pay to the department ($60) [~~$6.00~~] per acre of location per year. The fee established by this subparagraph shall be recalculated at three-year intervals beginning on the effective date of this section and proportionally adjusted to any change in the Consumer Price Index, the department's cost-recovery needs, or both.

(B) Rental fees are due annually by March 1 as prescribed in Parks and Wildlife Code, §76.017.

(C) The holder of a certificate shall pay the department a late penalty fee equal to 10 percent of the amount due for any rental, transfer, sale, or renewal fee that is not paid when due as prescribed in Parks and Wildlife Code, §76.017.

(D) Failure to pay any rental, transfer, sale, renewal, or late penalty fee within 90 days of the due date terminates the (certification of location) [~~lease~~] as prescribed in Parks and Wildlife Code, §76.017.

(6) [~~Lease~~] Renewal of Certificate of Location.

(A) As prescribed in Parks and Wildlife Code, §76.018, at the end of a location [~~lease~~] term the department shall determine the need for continuation of the certificate of location [~~lease~~] based on:

(i) the need for depuration of oysters from non-approved areas; and

(ii) other considerations as specified in §58.12 of this title (relating to Oyster Fishery Management Plan).

(B) If the certificate of location [~~lease~~] is to be renewed under the conditions of the department as prescribed in Parks and Wildlife Code, §76.018, the holder of the certificate of location [~~lease-holder of record~~] shall be offered the first right of refusal for renewal as prescribed in Parks and Wildlife Code, §76.018.

(C) If there is any alteration to the boundaries of a location, the [~~The~~] holder of a certificate of location shall be responsible for having the location [~~lease~~] resurveyed by a registered surveyor who will provide the department with survey notes and a plat of the location [~~lease~~] showing:

(i) the location [~~of the lease~~] in relation to state land tract boundaries; and

(ii) latitude and longitude coordinates for all [~~lease~~] corner markers.

(D) The survey will be conducted and provided to the department within one year of [~~the lease~~] renewal of the certificate of location;

(7) [~~Lease~~] Auction Procedures.

(A) The department may auction a location [~~lease~~] that is not renewed as prescribed by Parks and Wildlife Code, §76.018.

(B) The department may determine a minimum acceptable bid based on:

(i) bid offers from previous auctions;

(ii) established open market prices; and

(iii) other relevant factors.

(C) The department may refuse all bids below the minimum acceptable bid.

(D) The department must follow prescribed bid guidelines for state agencies.

(8) [~~Lease~~] Transfers or Sale as prescribed in Parks and Wildlife Code, §76.019.

(A) A transfer or sale of a location [~~lease~~] does not change location [~~the~~] terms [~~of a lease~~].

(B) A payment of $200 will be due upon transfer or sale of a location [~~lease~~].

(C) A transfer fee will not be required when a location [~~lease~~] is inherited.

(D) A completed transfer form prescribed by the department will be required at time of transfer.

§58.40. Oyster Transplant Permits.

(a) Oysters for transplanting pursuant to certificate of location [~~to a private oyster lease~~] may be taken only under a permit issued by the department.

(b) Oyster Transplant Application.

(1) The application for a transplant permit must include the following information:

(A) oyster certificate of location [~~lease~~] number;

(B) name and address of the holder of the certificate of location [~~lease holder~~] and/or that of his designated agent;

(C) name, if documented, and/or registration number of all boats to be used in transplanting operations;

(D) as prescribed in Parks and Wildlife Code, §76.031, the quantity of unculled oysters requested, and a description of areas from which the oysters are requested to be taken; and

(E) beginning and ending dates of transplant operations.

(2) Written applications for transplant permits must be received by the department two business days prior to the beginning of transplanting operations.

(3) Written applications for transplant permit amendments must be received by the department at least two business days prior to the desired effective date of the amendment.

(4) No more than four transplant permits for a certificate of location [~~lease~~] will be issued during a one month period.

(5) No transplant permit will be issued for an oyster certificate of location [~~lease~~] while a harvest permit for the same certificate of location [~~lease~~] is in effect.

(6) A valid transplant permit must be on the vessel during any transplanting activities.

(7) A transplant permit will not be issued to any certificate of location holder [~~leaseholder~~] who has not paid any rental, transfer, sale, renewal or late penalty fees that are owed to the department.

(8) The number of boats that may be allocated to a certificate of location [~~lease~~] for transplanting oysters shall be based on:

(A) the total number of boats that the department determines may be used to transplant oysters during that specific season, and

(B) the total number of active certificates of location [~~leases~~] during that season.

(9) Boat allocations may be transferred between certificates of location [~~leases~~] so long as those transfers occur before Private Oyster Transplant Permits are issued for those specific certificates of location [~~leases~~] and must be identified and included on the transplant permit request.

(c) Oyster Transplant Season and Times.

(1) The department shall establish the oyster transplant season giving consideration to information furnished to the department by certificate of location holders [~~leaseholders~~].

(2) All transplanting operations shall begin after sunrise and shall be completed before sunset each day.

(3) No transplanting will be permitted on Saturdays, Sundays, major holidays, or on the same days that harvest operations are permitted.

(d) Transplant Restrictions.

(1) Transplanting of oysters is subject to the conditions and provisions described in the permit issued by the department.

(2) Oysters taken for the purposes of transplanting pursuant to a certificate of location [~~to a private oyster lease~~] may be taken only from areas designated by the department as prescribed in Parks and Wildlife Code, §76.033.

(3) Oysters may not normally be taken for the purpose of transplanting from the following areas:

(A) public oyster reefs in areas approved for oyster harvest and which have been subjected to any degree of oyster fishing in recent years;

(B) near-shore reefs around public or private fishing piers where a conflict of interest has arisen or might arise;

(C) reefs or areas in which the incidence of diseases, parasites, and/or predators have been judged potentially dangerous to the public reef fishery if the oysters are transplanted to other areas; or

(D) areas declared to be unsuitable for transplanting by TDSHS [~~the Texas Department of State Health Services~~] because of the presence of persistent chemicals or diseases that might be dangerous to public health.

(4) All oysters obtained under a transplant permit must be deposited upon the acreage under location [~~lease~~] identified in the permit.

(5) The cargo of oysters transplanted will consist of unculled oysters and shell, unless specified otherwise.

(6) The permit may require oysters to be culled on the reef from which they are taken if the department determines that the reef area may be protected or improved by such action.

(7) The permit holder may cull the cargo of oysters harvested pursuant to a certificate of location [~~on his oyster lease~~].

(8) Oysters may be transplanted only to acreage under location [~~a private oyster lease~~] which is properly marked at all corners.

(9) No oysters may be transplanted to acreage under location that is [~~a lease~~] adjacent to or adjoining acreage under location [~~a lease~~] approved for harvest.

(e) Reporting Requirement. Weekly transplant reports must be prepared by the permittee and submitted to the department each Monday following the week of transplant.

§58.50. Oyster Harvest Permits.

(a) Oysters may be harvested pursuant to a certificate of location [~~from a private lease~~] only under a permit issued by the department.

(b) Oyster Harvest Application.

(1) Written application for a harvest permit must be received two business days prior to the requested harvest dates and include the following:

(A) the oyster certificate of location [~~lease~~] number;

(B) the name of the holder of the certificate of location [~~lease holder~~] and/or that of his designated agent;

(C) the name and/or registration number of all boats to be used in harvesting operations; and

(D) beginning and ending dates for the permit.

(2) No more than four harvest permits for a certificate of location [~~lease~~] will be issued during a one month period.

(3) A harvest permit will not be valid until 15 days after expiration of a transplant permit for the same certificate of location [~~lease~~] or certificates of location [~~leases~~] adjacent thereto and with approval of the TDSHS [~~Texas Department of State Health Services~~].

(4) A valid harvest permit must be on the vessel during any harvesting activities.

(c) Harvest of oysters pursuant to a certificate of location [~~from a private lease~~] is subject to conditions as provided in the department issued permit.

(d) Reporting Requirement. Monthly harvest report forms must be prepared by the permittee at the end of each month and supplied to the department's commercial landings program [~~department~~]

by the (10th) [~~15th~~] of the month following the month in which harvest occurred.

(e) A harvest permit will not be issued to any certificate of location holder [~~leaseholder~~] who has not paid any rental, transfer, sale, renewal or late penalty fees that are owed to the department.

§58.60. Transplant or Harvest Permit Cancellation.

(a) Violations of the transplanting or harvesting procedures include, but are not limited to, the following:

(1) harvesting oysters from areas under a certificate of location [~~or leases~~] other than covered under permit;

(2) harvesting oysters from restricted or prohibited areas as designated by TDSHS [~~Texas Department of State Health Services~~];

(3) transplanting oysters from unauthorized areas or to areas not authorized under a certificate of location [~~unauthorized leases~~];

(4) transplanting oysters without a valid transplanting permit;

(5) harvesting oysters without a valid harvesting permit;

(6) transplanting on or harvesting oysters pursuant to a certificate of location from a location [~~from a lease~~] which is not properly marked;

(7) failure to adhere to any conditions of the permit;

(8) failure to amend a transplant or harvest permit to include additions or deletions of boats; or

(9) failure to submit weekly transplant reports or monthly harvest reports.

(10) failure to have a valid permit on the vessel during authorized activities.

(b) Violations of paragraphs (1) and (2) of subsection (a) of this section shall result in a one year cancellation and withholding of all permits for the affected certificates of location [~~leases~~].

(c) Violations of paragraphs (3), (4), and (5) of subsection (a) of this section, shall result in a 45-calendar-day cancellation and withholding of all permits for the affected certificate of location [~~leases~~] beginning on the next approved harvest or transplant day.

(d) Violations of paragraphs (6), (7), (8), (9), and (10) of subsection (a) of this section, or the other provisions in the permits, shall result in a five-calendar-day cancellation and withholding of all permits for the affected certificate of location [~~leases~~] beginning on the next approved harvest or transplant day.

(e) In the event a transplant or harvest permit is canceled, the holder of the certificate of location [~~lease holder~~] may appeal to the executive director within five days, stating, in writing, why the permit should be reinstated.

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 September 19, 2016.

TRD-201604844

Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 389-4775

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER V. FRANCHISE TAX

34 TAC §3.598

The Comptroller of Public Accounts proposes amendments to §3.598, concerning margin: tax credit for certified rehabilitation of certified historic structures. The amendments implement House Bill 3230, 84th Legislature, 2015, and memorialize recent policy determinations made by the comptroller. Additionally, amendments are made to include the titles of statutes referenced in this section.

Subsection (a) is amended to provide that the effective date is January 1, 2015, unless it is otherwise noted.

Subsection (b)(1), which defines the term "Audited cost report," is amended to incorporate the definition of "certified public accountant" in the Occupations Code as someone who holds a certificate issued under Occupations Code, Chapter 901 (Accountants) or who is an out-of-state practitioner with substantially equivalent qualifications, rather than simply referencing the definition.

Subsection (b)(2), which defines a "certificate of eligibility," is amended to identify the information contained in the certificate.

Subsection (b)(4) is amended to capitalize the title "Secretary of the Interior."

Subsection (b)(6) is amended to implement House Bill 3230, which expanded the definition of "eligible costs and expenses" in Tax Code, §171.901(4) (Definitions) to include costs and expenses incurred by a nonprofit entity exempt from federal income tax, effective January 1, 2016. Subsection (b)(6) is also amended to remove the reference to the Texas Historical Commission's definition of "eligible costs and expenses" provided in 13 TAC §13.1. The comptroller has determined that the reference is unnecessary. The Commission's definition, which includes a reference to 26 C.F.R. §1.48 - 12(c) (Definition of Qualified Rehabilitation Expenditures), does not provide any additional information, as the definition of "Internal Revenue Code" in Tax Code, §171.0001(9) (General Definitions) already includes related regulations adopted by the Internal Revenue Service.

Subsection (b)(7) is amended to correct a typographical error.

Subsection (b)(8) is amended to delete the cross-reference to Tax Code, §101.003 (Definitions).

Subsection (h)(2) is amended to provide that a credit for eligible costs and expenses that a pass-through entity allocates to its partners, members, or shareholders may be further allocated, sold, or assigned. This is based on the comptroller's interpretation of Tax Code, §171.908 (Sale or Assignment of Credit).

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by implementing changes in statutes and clarifying the rule's provisions. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

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

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

The amendment implements Tax Code, §171.901 (Definitions).

§3.598. Margin: Tax Credit for Certified Rehabilitation of Certified Historic Structures.

(a) Effective date. The provisions of this section apply to franchise tax reports originally due on or after January 1, 2015, except as otherwise noted.

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

(1) Audited cost report--A report [~~issued by a certified public accountant, as defined by Occupations Code, §901.002,~~]that itemizes the eligible costs and expenses incurred by the entity in the certified rehabilitation of the certified historic structure and that is issued by a certified public accountant who holds a certificate issued under Occupations Code, Chapter 901 (Accountants) or is an out-of-state practitioner with substantially equivalent qualifications as provided by Occupations Code, §901.462 (Practice by Out-of-State Practitioner with Substantially Equivalent Qualifications).

(2) Certificate of eligibility--The certification issued by the commission in accordance with Tax Code, §171.904 (Certification of Eligibility), confirming that the property to which the eligible costs and expenses relate is a certified historic structure and that the rehabilitation qualifies as a certified rehabilitation; and specifying the date the historic structure was first placed in service after the rehabilitation.

(3) Certified historic structure--A property in this state that is:

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

(B) designated as a Recorded Texas Historic Landmark under Government Code, §442.006 (State Historical Marker Program), or as a state archeological landmark under Natural Resources Code, Chapter 191 (Antiquities Code); or

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

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

(ii) a local district certified by the United States Department of the Interior in accordance with 36 Code of Federal Regulations, §67.9 (Certification of State or Local Historic District).

(4) Certified rehabilitation--The rehabilitation of a certified historic structure that the commission has certified as meeting the United States Secretary of the Interior's [~~secretary of the interior's~~] Standards for Rehabilitation as defined in 36 Code of Federal Regulations, §67.7 (Standards of Rehabilitation).

(5) Commission--The Texas Historical Commission.

(6) Eligible costs and expenses--Qualified rehabilitation expenditures, as defined by Internal Revenue Code, §47(c)(2) (Rehabilitation Credit), incurred by the entity establishing the credit. Effective for reports due on or after January 1, 2016, the provisions of Internal Revenue Code, §47(c)(2)(B)(i) (Straight-line depreciation must be used) and (v) (Tax-exempt use property) do not apply to costs and expenses incurred by an entity exempted under Tax Code, §171.063 (Exemptions-Nonprofit Corporation Exempt from Federal Income Tax) if the other provisions of Internal Revenue Code, §47(c)(2) are satisfied. [~~See also 13 TAC §13.1.~~]

(7) Placed-in-service date--The date specified on the certificate of eligibility issued by the commission. See also 13 TAC §13.1.

(8) Year--A calendar year[~~, as assigned by Tax Code, §101.003~~].

(c) Qualifications for credit. An entity may qualify for a credit for eligible costs and expenses incurred by the entity in the rehabilitation of a certified historic structure provided in this section if:

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

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

(3) the total amount of eligible costs and expenses incurred by the entity exceeds $5,000; and

(4) the entity received a Certificate of Eligibility from the commission.

(d) Establishing the credit.

(1) Required documentation. The entity that incurred the eligible costs and expenses in the certified rehabilitation of a certified historic structure must submit the following documentation to the comptroller to establish the credit:

(A) a Texas Franchise Tax Historic Structure Credit Registration, or any successor to the form promulgated by the comptroller, which includes an attestation of the total eligible costs and expenses incurred by the entity on the rehabilitation of the certified historic structure;

(B) a Certificate of Eligibility issued by the commission. The certificate must confirm:

(i) the property to which the eligible costs and expenses relate is a certified historic structure;

(ii) the rehabilitation qualifies as a certified rehabilitation; and

(iii) the date the certified historic structure was first placed in service after the rehabilitation; and

(C) an audited cost report.

(2) Submission of documentation. The documentation required in paragraph (1) of this subsection may be submitted to the comptroller:

(A) on or with the franchise tax report for the period for which the tax credit is claimed; or

(B) upon receipt of the Certificate of Eligibility issued by the commission.

(3) The burden of establishing eligibility for the credit is on the entity incurring the eligible costs and expenses.

(4) The comptroller will rely on the audited cost report. It is the responsibility of the certified public accountant hired by the entity claiming the credit to make a determination on whether items qualify as eligible costs and expenses.

(5) The credit must be established within the statute of limitations based on the due date of the first report on which the credit may be claimed under subsection (f)(1) of this section.

(6) Texas Franchise Tax Historic Structure Credit Certificate. Upon receipt of the required documentation, the comptroller will issue to the entity that incurred the eligible costs and expenses a Texas Franchise Tax Historic Structure Credit Certificate indicating the entity as the owner of the credit and the amount of credit available to that entity.

(e) Amount of credit.

(1) The total amount of the credit that may be claimed with respect to the certified rehabilitation of a single certified historic structure may not exceed 25% of the total eligible costs and expenses incurred in the certified rehabilitation of the certified historic structure. For purposes of approving the credit, the comptroller will rely on the audited cost report provided by the entity that requested the credit.

(2) The total credit claimed for a report, including the amount of any carryforward under subsection (g) of this section, may not exceed the amount of franchise tax due for the report after any other applicable tax credits.

(3) Eligible costs and expenses may only be counted once in determining the amount of the credit available, and more than one entity may not claim a credit for the same eligible costs and expenses.

(f) Claiming the credit.

(1) The first report on which the credit may be claimed is the report based on the accounting period during which the rehabilitated structure is placed in service. Rehabilitated historic structures placed in service between September 1, 2013, and December 31, 2013, are considered to be placed in service January 1, 2014, for purposes of this paragraph only. For example, a 2015 report with an accounting year of January 1 through December 31, 2014, may claim a credit for historic structures placed in service within the 2014 accounting year.

(2) An entity shall file with every report on which the credit is claimed the Texas Franchise Tax Historic Structure Credit Certificate issued to the entity by the comptroller, or any successor to the form promulgated by the comptroller.

(3) The reporting entity for a combined group may claim the credit for each member entity that has established a credit under this section.

(4) The burden of establishing the value of the credit is on the entity claiming the credit.

(g) Carryforward.

(1) If an entity is eligible for a credit that exceeds the limitations under subsection (e)(2) of this section, the entity may carry the unused credit forward and apply the credit to the tax imposed by this chapter in any of the succeeding five report years following the first report year after the certified historic structure is placed in service.

(2) A carryforward is considered the remaining portion of a credit that cannot be claimed in the current year because of the limitation under subsection (e)(2) of this section.

(3) The sale, assignment, or allocation of a credit in accordance with subsection (h) of this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

(4) For example, for a structure placed in service in 2014, a credit may be claimed on the 2015 report and the credit carryforward may be applied to the following five consecutive reports: the 2016, 2017, 2018, 2019, and 2020 reports. The credit expires after the 2020 report.

(h) Sale, assignment, or allocation of credit.

(1) Sale or assignment. An entity that incurs eligible costs and expenses may sell or assign all or part of the credit that may be claimed for those costs and expenses to one or more entities, and any entity to which all or part of the credit is sold or assigned may sell or assign all or part of the credit to another entity. There is no limit on the total number of transactions for the sale or assignment of all or part of the total credit authorized under this section, however, collectively, all transfers are subject to the maximum total limits provided by subsection (e) of this section.

(2) Allocation. A credit earned or purchased by, or assigned to, a partnership, limited liability company, S corporation, or other pass-through entity may be allocated to the partners, members, or shareholders of that entity [~~and claimed under this subchapter~~] in accordance with the provisions of any agreement among the partners, members, or shareholders and without regard to the ownership interest of the partners, members, or shareholders in the rehabilitated certified historic structure. A partner, member, or shareholder to whom a credit is allocated may further allocate all or part of the allocated credit as provided in this paragraph or may sell or assign the allocated credit as provided in paragraph (1) of this subsection. There is no limit on the total number of allocations of all or part of the total credit authorized under this section, however, collectively, all transfers are subject to the maximum credit limits provided by subsection (e) of this section.[~~, provided that the entity that claims the credit must be subject to the tax imposed under this chapter.~~]

(3) Documentation.

(A) An entity that sells, assigns, or allocates a credit under this section to another entity shall provide a copy of the certificate of eligibility, together with the audited cost report, to the recipient of the credit.

(B) An entity that sells, assigns, or allocates a credit under this section and the entity to which the credit is sold, assigned, or allocated shall jointly submit:

(i) written notice of the sale, assignment, or allocation to the comptroller on a Texas Franchise Tax Sale, Assignment or Allocation of Historic Structure Credit form, or any successor to the form promulgated by the comptroller, not later than the 30th day after the date of the sale, assignment, or allocation. The notice must include the date of the sale, assignment, or allocation; the amount of the credit sold, assigned, or allocated; the names and federal identification numbers of the entity that sold, assigned, or allocated the credit or part of

the credit and of the entity to which the credit or part of the credit was sold, assigned, or allocated; and the amount of the credit owned by the selling, assigning, or allocating entity before the sale, assignment, or allocation, and the amount the selling, assigning, or allocating entity retained, if any, after the sale, assignment, or allocation; and

(ii) Texas Franchise Tax Historical Structure Credit Certificate.

(C) Until the required documentation under subparagraph (B) of this paragraph is received by the comptroller's office, the recipient entity will not be allowed to claim the credit.

(4) Carryforwards. The sale, assignment, or allocation of a credit in accordance with this section does not extend the period for which a credit may be carried forward and does not increase the total amount of the credit that may be claimed.

(5) Limitation. After an entity claims a credit for eligible costs and expenses, another entity may not use the same costs and expenses as the basis for claiming a credit.

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 September 13, 2016.

TRD-201604786
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 16. TEXAS CIVIL COMMITMENT OFFICE

CHAPTER 810. CIVIL COMMITMENT

SUBCHAPTER A. CIVIL COMMITMENT GENERAL PROVISIONS

37 TAC §810.121

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.121, concerning Introduction. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would remove a reference to an outpatient program to make conforming changes in accordance with Senate Bill 746, 84th Texas Legislature. The proposed amendment also removes redundant language that is already contained in Chapter 841.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Texas Legislature. Senate Bill 746 provides that TCCO shall develop and implement a tiered program for the treatment and supervision of civilly committed sexually violent predators (SVPs). Senate Bill 746 removes references to outpatient treatment throughout Chapter 841 to instead refer to a tiered program. The removal of redundant language contained in Chapter 841 makes the rules clearer.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.121. Introduction.

(a) General. This [~~The provisions of this~~] chapter governs the policies and [~~govern the~~] procedures relating to the civil commitment of sexually violent predators in the State of Texas [~~and the development of~~

~~a case management system, which provides appropriate and necessary treatment and supervision~~].

(b) Construction. This chapter covers the Texas Civil Commitment Office's (TCCO) requirements to develop and administer policies on the standards of care and case management, and the conditions of supervision and treatment for sexually violent predators. This chapter also describes the tiered program for the supervision and treatment of a committed person. [~~definitions, criteria for case managers, treatment providers, and biennial examination experts; guidelines for the supervised housing of sexually violent predators; outpatient treatment plans and standards of care; civil commitment requirements, supervision and tracking services; the exchange and release of information relating to sexually violent predators; commitment review procedures; petitions for release; and immunity from liability for good faith conduct.~~]

[~~(c) History. The legislature finds that a small but extremely dangerous group of sexually violent predators exist and that those predators have a behavioral abnormality that is not amenable to traditional mental illness treatment modalities and that makes the predators likely to engage in repeated predatory acts of sexual violence. The legislature finds that the existing involuntary commitment provisions of Health and Safety Code § 571.001 et seq., Subtitle C, Title 7, are inadequate to address the risk of repeated predatory behavior that sexually violent predators pose to society. The legislature further finds that treatment modalities for sexually violent predators are different from the traditional treatment modalities for persons appropriate for involuntary commitment under Subtitle C, Title 7. The legislature finds that a civil commitment procedure for the long-term supervision and treatment of sexually violent predators is necessary and in the interest of the state.~~]

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

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TRD-201604825
Jessica Marsh
General Counsel
Texas Civil Commitment Office
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 834-4590

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37 TAC §810.122

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.122, concerning Definitions. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would remove redundant language already contained in Health and Safety Code Chapter 841. The amendment would also define the position of clinical examiner, clarify the qualifications for members of the multidisciplinary team, and to update language to reflect the agency's new name.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to clarify qualifications for membership on the multidisciplinary team. The amendment also removes defined terms already contained in Health and Safety Code Chapter 841.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.122. Definitions.

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

(1) Act--Health and Safety Code Chapter 841, Civil Commitment of Sexually Violent Predators.

[~~(2) Behavioral Abnormality--A congenital or acquired condition that, by affecting a person's emotional or volitional capacity, predisposes the person to commit a sexually violent offense to the~~

~~extent that the person becomes a menace to the health and safety of another person.~~]

[~~(3) Biennial examination expert--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.~~]

[~~(4) Case Manager--A person employed by or under contract with the office to perform duties related to outpatient treatment and supervision of a person committed under this chapter.~~]

(2) [~~(5)~~] Case Management Team--All professionals involved in the assessment, treatment, supervision, monitoring, residential housing of the client, or other approved professionals. The case manager assigned by the office shall act as the chairperson of the team.

(3) Clinical Examiner--A person or persons employed by or under contract with the office to conduct a biennial examination to assess any change in the behavioral abnormality for a person committed under the Act, §841.081.

(4) [~~(6)~~] Multidisciplinary Team (MDT)--Members of the Texas Civil Commitment Office [~~Office of Violent Sex Offender Management~~] (two), a licensed sex offender treatment provider from the Council on Sex Offender Treatment (one), Texas Department of Criminal Justice Rehabilitation Programs Division - sex offender rehabilitation program (one), Texas Department of Criminal Justice - Victim Service Division (one), a licensed peace officer employed by the Texas Department of Public Safety with at least five years' experience working for that department or the officer's designee (one), and a mental health professional from the Texas Department of State Health Services [~~Community Mental Health Division~~] (one). The team assesses whether a person is a repeat sexually violent offender and whether the person is likely to commit a sexually violent offense after release [~~or discharge~~]; gives notice of its findings to the Texas Department of Criminal Justice [~~or to the Department of State Health Services - Community Mental Health Division~~]; and recommends [~~to either agency~~] that the person be assessed for a behavioral abnormality.

(5) [~~(7)~~] Office--The Texas Civil Commitment Office (TCCO) [~~of Violent Sex Offender Management~~] including the Governing Board (Government Code Chapter 420A).

[~~(8) Predatory Act--An act directed toward individuals, including family members, for the primary purpose of victimization.~~]

[~~(9) Sexually Violent Offense~~]

[~~(A) an offense under the Penal Code §§ 21.02, 21.11(a)(1), 22.011, or 22.021~~]

[~~(B) an offense under the Penal Code § 20.04(a)(4), if the defendant committed the offense with the intent to violate or abuse the victim sexually.~~]

[~~(C) an offense under the Penal Code § 30.02 if the offense is punishable under subsection (d) of that section and the defendant committed the offense with the intent to commit an offense listed in subparagraph (A) or (B) of this paragraph;~~]

[~~(D) an offense under Penal Code § 19.02 or § 19.03, that, during the guilt or innocence phase or the punishment phase for the offense, during the adjudication or disposition of delinquent conduct constituting an offense, or subsequently during a civil commitment proceeding under Health and Safety Code Chapter 841 Subchapter D is determined beyond a reasonable doubt to have been based on sexually motivated conduct;~~]

[~~(E) an attempt, conspiracy, or solicitation, as defined by the Penal Code, Chapter 15, to commit an offense listed in subparagraph (A), (B), (C), or (D) of this paragraph;~~]

[~~(F) an offense under prior state law that contains elements substantially similar to the elements of an offense listed in subparagraph (A), (B), (C), (D), or (E) of this paragraph; or~~]

[~~(G) an offense under the law of another state, federal law, or the Uniform Code of Military Justice that contains elements substantially similar to the elements of an offense listed in subparagraph (A), (B), (C), (D), or (E) of this paragraph.~~]

[~~(10) Sexually Violent Predator (SVP)--A person is a sexually violent predator for the purpose of this chapter if the person: is a repeat sexually violent offender; and suffers from a behavioral abnormality that makes the person likely to engage in a predatory act of sexual violence.~~]

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

SUBCHAPTER B. CIVIL COMMITMENT

37 TAC §810.151

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.151, concerning Administration of the Act. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would change language to reflect the change of the agency's name in accordance with Senate Bill 746, 84th Texas Legislature. The proposed amendment also removes superfluous language concerning the agency's rule-making authority.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Texas Legislature. Senate Bill 746 changes the agency's name to the Texas Civil Commitment Office. The removal of superfluous language makes the rules clearer.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Health and Safety Code § 841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.151. Administration of the Act.

The Texas Civil Commitment Office [~~of Violent Sex Offender Management~~] (office) is responsible for providing appropriate and necessary treatment and supervision through the case management system. The office shall hire [~~program specialists and/~~] or contract for the services of case managers, treatment providers, global positioning tracking providers, biennial examination experts, transportation providers, and residential housing providers. [~~The office by rule shall administer this chapter. Rules adopted by the office under this section must be consistent with the purpose of this chapter. The office by rule shall develop standards of care and case management for persons committed under this chapter.~~]

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604828

Jessica Marsh

General Counsel

Texas Civil Commitment Office

Earliest possible date of adoption: October 30, 2016

For further information, please call: (512) 834-4590

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37 TAC §810.152

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.152, concerning Civil Commitment of Sexually Violent Predators. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.081.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.152. Civil Commitment of Sexually Violent Predators.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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37 TAC §810.153

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.153, concerning Outpatient Treatment and Supervision Program. This amendment is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment removes a reference to the annual compensation of a treatment provider to conform to changes in accordance with Senate Bill 746, 84th Texas Legislature. The proposed amendment also removes redundant language concerning the agency's treatment and supervision program that is already contained in Chapter 841.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Texas Legislature. Senate Bill 746 provides that TCCO shall develop and implement a tiered program for the treatment and supervision of civilly committed sexually violent predators (SVPs). Senate Bill 746 removes references to the annual compensation of a treatment provider in Chapter 841. The removal of redundant language already contained in Chapter 841 makes the rules clearer.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no additional fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.153. Tiered [~~Outpatient~~] Treatment and Supervision Program.

The office shall determine the conditions of supervision and treatment [~~by rule shall develop standards of care and case management~~] for persons committed under this chapter.

(1) The office shall develop a tiered program policy for the supervision and treatment of a committed person. The tiered program shall provide for the seamless transition of a committed person from a total confinement facility to less restrictive housing and supervision and eventually release based on the person's behavior and progress in treatment. The policy regarding the movement of committed persons between programming tiers shall be in accordance with Chapter 841 of the Texas Health and Safety Code. [~~approve and contract for the provision of a treatment plan for the committed person to be developed by the treatment provider. A treatment plan may include the monitoring of the person with a polygraph or plethysmograph. The treatment provider may receive annual compensation in an amount not to exceed $10,000 for providing the required treatment.~~]

[~~(2) The case manager shall provide supervision to the person. The provision of supervision shall include a tracking service and, if required by court order, supervised housing.~~]

[~~(3) The office shall enter into appropriate memoranda of understanding with the Texas Department of Public Safety for assistance in the preparation of criminal complaints, warrants, and related documents and in the apprehension and arrest of a person.~~]

(2) [~~(4)~~] The office shall enter into appropriate contracts or memoranda of understanding for the provision of any necessary supervised housing and other related services and may enter into appropriate contracts for medical and mental health services and sex offender treatment. [~~The office shall reimburse the applicable provider for housing costs under this section. The committed person may not be housed for any period of time in a mental health facility, state school, or community center unless the placement results from a commitment of the person to that facility, school, or center by governmental action.~~]

[~~(5) The case manager shall coordinate the outpatient treatment and supervision required by this chapter, including performing a periodic assessment of the success of that treatment and supervision. The case manager shall make timely recommendations to the judge on whether to allow the committed person to change residence or leave the state and on any other appropriate matters. The case manager shall provide a report to the office, semiannually or more frequently as necessary, which must include: any known change in the person's status that affects proper treatment and supervision; and any recommendations made to the judge.~~]

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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SUBCHAPTER C. CIVIL COMMITMENT REVIEW

37 TAC §810.211

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.211, concerning Biennial Examination. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.101.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.211. Biennial Examination.

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

Filed with the Office of the Secretary of State on September 19, 2016.

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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SUBCHAPTER D. PETITION FOR RELEASE

37 TAC §810.241

The Texas Civil Commitment Office (TCCO) proposes to repeal §841.211, concerning Authorized Petition for release. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.121.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be ensuring compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.241. Authorized Petition for Release.

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 September 19, 2016.

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 834-4590

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37 TAC §810.242

The Texas Civil Commitment Office (TCCO) proposes to repeal §841.242, concerning Unauthorized Petition for Release. This repeal is proposed under the authority of Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.122.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be ensuring compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

TCCO has determined that this proposal will not repeal a "major environmental rule" as defined by §2001.0225 of the Texas Government Code. A "major environmental rule" is defined to mean a rule the specific intent of which is to protect the environment or reduce risk to human health from environmental exposure and that may adversely affect, in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environ-

ment or the public health and safety of a state or a sector of the state. This proposal will not repeal a rule specifically intended to protect the environment or reduce risks to human health from environmental exposure.

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.242. Unauthorized Petition for Release.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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SUBCHAPTER E. MISCELLANEOUS PROVISIONS

37 TAC §810.271

The Texas Civil Commitment Office (TCCO) proposes to repeal §841.271, concerning Release or Exchange of Information. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Health and Safety Code §841.142.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 841 of the Texas Health and Safety Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed, there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be ensuring compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.271. Release and Exchange of Information.

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

Filed with the Office of the Secretary of State on September 19, 2016.

TRD-201604834

Jessica Marsh
General Counsel
Texas Civil Commitment Office
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 834-4590

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37 TAC §810.272

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.272, concerning Office Appointment of Multidisciplinary Members. This amendment is proposed under the authority of Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment clarifies the appointment of members to the multidisciplinary team.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to make the rule more clear.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.272. Office Appointment of Multidisciplinary Members.
The office shall appoint members of the office [~~and alternates,~~] to serve as members [~~member(s)~~] of the Multidisciplinary Team (team) as defined in the Health and Safety Code, §841.022. The office members [~~member(s) or designee(s)~~] who serve on the team shall keep the office informed of the actions taken by the team by providing the office's Executive Director with periodic reports as required.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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37 TAC §810.273

The Texas Civil Commitment Office (TCCO) proposes an amendment to §810.273, concerning Cost of Housing, Treatment, and Tracking Services. This amendment is proposed under the authority of Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed amendment would add language requiring the office to create a housing, treatment, and tracking services policy, which reflects changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Legislature.

Background and Justification

TCCO, under its authority to adopt rules administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to amend this rule to reflect changes made to Chapter 841 of the Texas Health and Safety Code by Senate Bill 746, 84th Legislature.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

The amendment is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.273. Cost of Housing, Treatment, and Tracking Services [~~Service~~].

A [~~Notwithstanding Health and Safety Code §841.146(c), a~~] civilly committed person who is not indigent is responsible for the cost of housing and treatment services under Chapter 841 of the Health and Safety Code and the cost of the tracking service required by Health and Safety Code §841.082. The office shall create and administer a policy regarding cost recovery for services. The policy shall include the amount and method of payment for the cost recovery and shall not require payment in an amount that exceeds the actual cost of the services.[~~, and monthly shall pay to the office the amount that the office determines will be necessary to defray the cost of operating the service with respect to the person during the subsequent month. The office immediately shall transfer the money to the appropriate service provider.~~]

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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37 TAC §810.274

The Texas Civil Commitment Office (TCCO) proposes new §810.274, concerning Contracts Requiring Enhanced Monitoring. The new section implements Senate Bill 20 (84th Legislature, Regular Session, 2015) and §2261.253 of the Texas Government Code. Section 2261.253 of the Texas Government Code requires each agency that enters into contracts to develop a rule to determine a method to identify contracts requiring enhanced monitoring and to submit that information to its governing body.

Background and Justification

Senate Bill 20 (84th Legislature, Regular Session, 2015) enacted §2261.253(c) of the Texas Government Code which requires each agency that enters into contracts to develop a rule to determine a method to identify contracts requiring enhanced monitoring and to submit that information to its governing body. TCCO proposes new §810.274, Contracts Requiring Enhanced Monitoring, to comply with the requirement of §2261.253 of the Texas Government Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be negligible fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 2261 of the Texas Government Code.

Regulatory Analysis

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

Takings Impact Analysis

TCCO has determined that this proposal does not restrict or limit an owner's right to his or her property that would otherwise exist

in the absence of government action and, therefore, does not constitute a taking under §2007.043 of the Government Code.

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This new section is proposed under §841.141 of the Texas Health and Safety Code, which provides the Texas Civil Commitment office with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the office. The proposed rule is required by §2261.253 of the Texas Government Code. No other statutes, articles, or codes are affected by this proposal.

§810.274. Contracts Requiring Enhanced Monitoring.

Under §2261.253 of the Texas Government Code, the Texas Civil Commitment Office implements the following procedures for contracts for the purchase of goods or services from private vendors until the contract expires or is completed:

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

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

(B) Risk of loss to the office under the contract;

(C) Resources available for enhanced contract monitoring or performance monitoring;

(D) Vendor past performance; and

(E) Whether the vendor is a foreign or domestic person or entity.

(2) The office shall consider all contracts valued at over $1 million dollars and contracts for the treatment of sexually violent predators to be contracts requiring enhanced monitoring.

(3) If enhanced contract monitoring is appropriate, the Executive Director shall report to the Board:

(A) The basis for the determination that enhanced contract or performance monitoring is appropriate;

(B) Any serious issues or risks identified with the contract; and

(C) The plan for carrying out the enhanced contract or performance monitoring.

(4) This rule applies only to contracts for which the solicitation is made public on or after September 1, 2015; or if the contract is exempt from competitive bidding, where the contract is entered into on or after September 1, 2015. This rule does not apply to memoranda of understanding, interagency contracts, interlocal agreements, or contracts that do not involve a cost to the office.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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37 TAC §810.275

The Texas Civil Commitment Office (TCCO) proposes new §810.275, concerning Contract Monitoring Responsibilities, to implement §2261.202 of the Texas Government Code. Section 2261.202 of the Texas Government Code requires each state agency that enters into contracts to adopt by rule a policy that clearly defines the contract monitoring roles and responsibilities, if any, of internal audit staff and other inspection, investigative, or audit staff.

Background and Justification

Senate Bill 20 (84th Legislature, Regular Session, 2015) enacted §2261.253(c) of the Texas Government Code which requires each agency that enters into contracts to develop a rule to determine a method to identify contracts requiring enhanced monitoring and to submit that information to its governing body. TCCO proposes new §810.274, Contracts Requiring Enhanced Monitoring, to comply with the requirement of §2261.253 of the Texas Government Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule will be in effect there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of implementing the proposed amendments. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendments.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the amendment will be in effect, the public benefits expected as a result of this amendment will be to ensure the adopted rule is in compliance with Chapter 2261 of the Texas Government Code.

Regulatory Analysis

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office, P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This new section is proposed under §841.141 of the Texas Health and Safety Code which provides the Texas Civil Commitment office with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the office. The proposed rule is required by §2261.202 of the Texas Government Code. No other statutes, articles, or codes are affected by this proposal.

§810.275. Contract Monitoring Responsibilities.

Contract monitoring, when applicable, is primarily conducted by the program and administrative staff of the Texas Civil Commitment Office under the authority and direction of §2261.202 of the Texas Government Code. The internal audit function will perform any additional contract monitoring as specifically directed by the Audit Committee of the Texas Civil Commitment Office Board.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 834-4590

SUBCHAPTER F. CRIMINAL BACKGROUND CHECK OF POTENTIAL EMPLOYEES

37 TAC §810.281

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.281, concerning Access to Criminal History Records. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate superfluous language that is already contained in Government Code Chapter 411.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 411 of the Texas Government Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.281. Access to Criminal History Records.

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 September 19, 2016.

TRD-201604839

Jessica Marsh
General Counsel
Texas Civil Commitment Office
Earliest possible date of adoption: October 30, 2016
For further information, please call: (512) 834-4590

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37 TAC §810.282

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.282, concerning Records. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate language concerning the release of public records that is found in Texas Government Code Chapter 552.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapter 552 of the Texas Government Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.282. Records.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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For further information, please call: (512) 834-4590

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37 TAC §810.283

The Texas Civil Commitment Office (TCCO) proposes to repeal §810.283, concerning Destruction of Criminal History Records. This repeal is proposed under the authority of the Health and Safety Code §841.141. Section 841.141 requires TCCO to adopt rules to administer Chapter 841. The proposed repeal would eliminate language concerning the maintenance and disposition of public records that is found in Texas Government Code Chapters 411, 441 and 552.

Background and Justification

TCCO, under its authority to adopt rules to administer and implement the tiered treatment program as required by §841.141 of the Texas Health and Safety Code, is proposing to repeal this rule to remove duplicative language already found in Chapters 411, 441 and 552 of the Texas Government Code.

Fiscal Note

David Flores, TCCO Budget Director, has determined that, for each year of the first five years the proposed rule is repealed there will be no fiscal impact to the State government.

Small Business and Micro-Business Impact Analysis

There is no anticipated significant impact on small businesses, micro-business, or local or state employment as a result of repealing the rule. There is no significant anticipated economic cost to persons who are required to comply with the proposed rule repeal.

Public Benefit

Marsha McLane, TCCO Executive Director, has determined that for each year of the first five years the rule is repealed, the public benefits expected will be in compliance with Chapter 841 of the Texas Health and Safety Code.

Regulatory Analysis:

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

Takings Impact Analysis

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

Public Comment

Written comments on the proposal may be submitted to Jessica Marsh, General Counsel, Texas Civil Commitment Office P.O. Box 149347, MC 4300 Austin, Texas 78714-9347, by fax to (512) 834-4595, or by email to publiccomment@tcco.texas.gov within thirty (30) days after publication of this proposal in the *Texas Register.*

Statutory Authority

This rule repeal is proposed under Texas Health and Safety Code §841.141, which provides TCCO with broad rulemaking authority to administer Chapter 841. The proposal implements Texas Health and Safety Code, Chapter 841. No other statutes, articles, or codes are affected by this proposal.

§810.283. Destruction of Criminal History Records.

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

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Jessica Marsh
General Counsel
Texas Civil Commitment Office
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