

ADOPTED RULES

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

TITLE 4. AGRICULTURE

PART 2. TEXAS ANIMAL HEALTH COMMISSION

CHAPTER 33. FEES

4 TAC §33.4, §33.5

The Texas Animal Health Commission (commission) adopts the repeal of §33.4, concerning Laboratory Fees, and §33.5, concerning Herd Status/Certification Fees, in Chapter 33, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7322). The text of the rules will not be republished.

The agency had fee authority for these rules under §161.060(b) of the Texas Agriculture Code, which is entitled "Authority to Set and Collect Fees". The authority allowed the commission by rule to set and collect a fee for any service provided by the commission, including: (1) the inspection of animals or facilities; (2) the testing of animals for disease; (3) obtaining samples from animals for disease testing; (4) disease prevention, control or eradication, and treatment efforts; (5) services related to the transport of livestock; (6) control and eradication of ticks and other pests; and (7) any other service for which the commission incurs a cost. Subsection 161.060(b) expired on August 31, 2015, and as such the agency is repealing certain fee rules that are no longer authorized by statute.

No comments were received regarding adoption of the repeal.

STATUTORY AUTHORITY

The repeal is authorized by the Texas Agriculture Code §161.046, which provides the commission with authority to adopt rules relating to the protection of livestock, exotic livestock, domestic fowl or exotic fowl, as well as Texas Government Code §2001.039, which authorizes a state agency to repeal a rule.

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

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600737

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: March 8, 2016

Proposal publication date: October 23, 2015

For further information, please call: (512) 719-0722

CHAPTER 49. EQUINE

4 TAC §49.7

The Texas Animal Health Commission (commission) adopts new §49.7, concerning Persons or Laboratories Performing Equine Infectious Anemia Tests, without changes to the proposed text as published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7323). The text of the rule will not be republished.

The purpose of the new section is to add a requirement that a person or laboratory who performs an official Equine Infectious Anemia (EIA) test in the State of Texas must meet and be in compliance with the requirements found in Title 9, Code of Federal Regulations §75.4(c), which is entitled "*Approval of Laboratories, and Diagnostic or Research Facilities*".

House Bill 3738 was passed during the 84th Regular Texas Legislative Session amending the Texas Agriculture Code to require the commission to adopt rules that require a person or laboratory to be approved by the commission if the person or laboratory performs an official EIA test. The bill requires the rules to include approval requirements; provisions governing the issuance, renewal, and revocation of an approval; inspection requirements; recordkeeping requirements; equine infectious anemia testing methods approved by the commission; and proficiency standards.

The commission has certain EIA testing requirements for equine. The United States Department of Agriculture has a process for the approval of diagnostic laboratories which conduct EIA tests. This amendment proposes to adopt these same requirements for intrastate testing by reference to 9 CFR §75.4(c). There is discussion at the federal level that may alter the current federal role in regulating diagnostic laboratories which test for EIA and potentially leave the responsibility of approving such laboratories to the states. If the federal program is abandoned, the commission will propose and enact state standards.

No comments were received regarding adoption of the new rule.

STATUTORY AUTHORITY

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

Pursuant to §161.0602, entitled "Persons or Laboratories Performing Equine Infectious Anemia Tests", the commission shall adopt rules that require a person or laboratory to be approved

by the commission if the person or laboratory performs an official equine infectious anemia test.

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

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

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

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

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

Pursuant to §161.114, entitled "Inspection of Livestock", an authorized inspector may examine livestock consigned to and delivered on the premises of a livestock market before the livestock are offered for sale. If the inspector considers it necessary, the inspector may have an animal tested or vaccinated. Any testing or vaccination must occur before the animal is removed from the livestock market.

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

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600738

Gene Snelson

General Counsel

Texas Animal Health Commission

Effective date: March 8, 2016

Proposal publication date: October 23, 2015

For further information, please call: (512) 719-0722



TITLE 7. BANKING AND SECURITIES

PART 1. FINANCE COMMISSION OF TEXAS

CHAPTER 5. ADMINISTRATION OF FINANCE AGENCIES

7 TAC §5.101

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking, the Department of Savings and Mortgage Lending, and the Office of Consumer Credit Commissioner (collectively, the finance agencies) adopts the amendment to §5.101, concerning employee training and education assistance programs without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 15). The amended rule will not be republished.

Government Code §656.048 was amended effective September 1, 2015, by Section 3 of H.B. 3337 (Acts 2015, 84th Leg., R.S., Ch. 366, §3), to establish certain requirements for agency tuition reimbursement programs. This amendment is adopted to reflect the new statutory requirement that the agency head authorize tuition reimbursement payment for an employee who has successfully completed a course at an institution of higher education.

The finance agencies received no comments regarding the proposed amendment.

The amendment is adopted pursuant to Finance Code, §5.101, which provides for training and education assistance to employees of the finance agencies.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600759

Catherine Reyer

General Counsel

Finance Commission of Texas

Effective date: March 10, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 475-1301



PART 2. TEXAS DEPARTMENT OF BANKING

CHAPTER 33. MONEY SERVICES BUSINESSES

7 TAC §33.13

The Finance Commission of Texas (the commission), on behalf of the Texas Department of Banking (the department), adopts amendments to §33.13, concerning how to obtain a new money services business license without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16). The amended rule will not be republished.

These amendments establish that the deadlines to respond to new license applications for money transmitter and currency exchange licenses also apply to a request for approval of a proposed change of control of a money services business.

In accordance with Texas Finance Code §151.605(b), a person may not directly or indirectly acquire control of a license holder or a person in control of a license holder without the prior written approval of the commissioner. The remaining subsections of §151.605 explain the requirements for obtaining such approval from the commissioner and the criteria used by him or her in making a final determination. However, it does not currently set timelines for the commissioner's and department's response to a proposed change of control.

The department adopts two amendments to §33.13 to provide internal deadlines for the commissioner and department and provide clarity to license holders seeking change of control approval. Currently, §33.13(a) explains that the section applies to applicants seeking a new money transmission or currency exchange license under Finance Code, Chapter 151. The first change establishes that the time tables and deadlines discussed in §33.13 also apply to a request for approval of a proposed change of control of a money services business licensed under Finance Code, Chapter 151. The department also adopts an amendment to the title of §33.13 to clarify that it pertains to proposed change of control deadlines. This change will enable license holders to easily locate the time tables imposed.

The department received no comments regarding the proposed amendments.

The amendments are adopted under Finance Code, §151.102(a)(1), which provides that the commission may adopt rules to administer and enforce Chapter 151, including rules necessary or appropriate to implement and clarify Chapter 151.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600760

Catherine Reyer

General Counsel

Texas Department of Banking

Effective date: March 10, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 475-1301



PART 5. OFFICE OF CONSUMER CREDIT COMMISSIONER

CHAPTER 83. REGULATED LENDERS AND CREDIT ACCESS BUSINESSES

SUBCHAPTER B. RULES FOR CREDIT ACCESS BUSINESSES

The Finance Commission of Texas (commission) adopts new §83.3003 (repeal and replace); adopts amendments to §§83.3004, 83.5001, 83.6003, 83.6006, 83.6007, and 83.6008; and adopts the repeal of §83.3003 (repeal and replace), in 7 TAC Chapter 83, Subchapter B, concerning Rules for Credit Access Businesses.

The commission adopts the amendments to §§83.3004, 83.6003, 83.6006, 83.6007, and 83.6008; and adopts the repeal of §83.3003 (repeal and replace) without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16).

The commission adopts new §83.3003 (repeal and replace) and the amendments to §83.5001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 16). These changes are being made in order to address the official comment received, as discussed in the following paragraph.

The commission received one written comment on the proposal from the Consumer Service Alliance of Texas. The comment included recommendations relating to the license transfer issues of permission to operate and transferee's authority to engage in business as provided in §83.3003. Additionally, the comment offered suggestions related to the data reporting requirements contained in §83.5001 and the implementation period of these rule changes. The commission's response to the official comment is included after the purpose discussions following each respective rule provision receiving comments.

In general, the purpose of the adoption regarding these rules for credit access businesses is to implement changes resulting from the commission's review of Chapter 83, Subchapter B under Texas Government Code, §2001.039.

The adopted rule changes clarify three main areas: (1) consumer disclosures, (2) reporting requirements, and (3) license transfers.

This is the second of two anticipated rule actions for credit access businesses. In the January 1, 2016, issue of the *Texas Register*, the commission adopted the first rule action, including rule changes relating to definitions, license applications, fees, examination authority, and recordkeeping requirements.

The notice of intention to review 7 TAC Chapter 83, Subchapter B was published in the September 11, 2015, issue of the *Texas Register* (40 TexReg 6165). The commission received no comments in response to that notice.

The individual purposes of the adopted rule changes are outlined in the paragraphs to follow.

Section 83.3003 has been repealed and replaced with a new rule, with the intent to clarify the requirements when a licensee transfers ownership. Both the prior and new versions of §83.3003 describe what constitutes a transfer of ownership requiring the filing of a transfer application. The new rule largely maintains the requirements under the former rule, but it provides two different paths the transferee can take for a transfer of ownership: either an application to transfer the license, or a new license application on transfer of ownership. The amendments outline what the application has to include, the timing requirements, and which parties are responsible at different points in the transfer process. Subsection (a) describes the purpose of the new section. Subsection (b) defines terms used throughout the subsection. In particular, subsection (b)(3) defines the phrase "transfer of ownership," listing different types of changes in acquisition or control of the licensed location. In response to a precomment, this definition includes technical changes to the definition of "transfer of ownership" previously codified at §83.3003(a). These changes include placing the reference to acquisition by gift, devise, or descent in the general language at the beginning of the definition, and removing the current rule's

statement that a transfer of ownership includes an acquisition where the OCCC "has reason to believe that proper regulation of the licensee dictates that a transfer must be processed."

Subsection (c) specifies that a license may not be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. Subsection (d) provides a timing requirement, stating that a complete license transfer application or new license application on transfer of ownership must be filed no later than 30 days after the transfer of ownership. Subsection (e) outlines the requirements for the license transfer application or new license application on transfer of ownership. These requirements include complete documentation of the transfer of ownership, as well as a complete license application for transferees that do not hold an existing credit access business license. Subsection (e)(5) explains that the application may include a request for permission to operate.

Subsection (f) provides that the OCCC may issue a permission to operate to the transferee. A permission to operate is a temporary authorization from the OCCC allowing a transferee to operate while final approval is pending for an application. The subsection's second sentence states: "A request for permission to operate may be denied even if the application contains all of the required information." This sentence is similar to a sentence in the former rule at §83.3003(d). The commenter objected to this sentence, stating: "No guidelines are given for a denial. Reasons for denying a request for permission to operate fall into broad categories, such as current enforcement problems, issues with management or ownership, etc.... Those categories should be spelled out in the proposed rule." The commission believes that listing the categories for denying a permission to operate, such as enforcement and management issues, is unnecessary. The permission to operate is a temporary authorization, and denial of the request is not a final denial of the license application. The OCCC allows the permission-to-operate procedure in order to accommodate transferees that wish to begin doing business after a routine transfer of ownership. The alternative would be to prohibit the transferee from engaging in business until after the license application is approved. It is important to maintain the current rule's flexibility to ensure that the OCCC can respond to unanticipated situations that require a closer review of the application before the transferee begins business. Prudent parties can address potential problems in several ways. They can submit application materials well in advance of the transfer of ownership. By doing this, the parties can ensure that they have resolved outstanding issues without having to rely on the temporary permission to operate. Alternatively, the transferee could wait until approval of the permission to operate to begin operating the business. Either of these practices would seem to address the commenter's concerns. Thus, the commission maintains the language proposed in §83.3003(f) for this adoption, with the addition of this clarifying statement: "The denial of a request for permission to operate does not create a right to a hearing."

Subsection (g) specifies the transferee's authority to engage in business if the transferee has filed a complete application including a request for permission to operate. It also requires the transferee to immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. The commenter requested a "time frame where the agency either makes a decision before the deadline, or tacitly approves the request by not making the decision before the deadline." The commission believes that a time frame for the permission to operate is unnecessary. As discussed above, denial of the request is not a final denial of the license application. Although the

agency has occasionally denied requests for permission to operate in certain situations in the past, the agency would generally deny the application if there were a significant issue preventing approval. Regarding the requirement that the transferee immediately cease doing business if the OCCC denies the permission to operate, the same commenter stated: "It is disruptive for consumers with outstanding loan transactions to have the buyer's employees assume operational responsibility for a store, only to have a subsequent decision by the agency require the seller to 're-staff' the store temporarily." As discussed above, prudent transferees can address this issue by submitting application materials in advance of the transfer of ownership, or by waiting until approval of the permission to operate to begin operating the business. Accordingly, the commission declines to add a time frame for agency decision on the permission to operate as it is unnecessary.

Subsection (h) describes the situations where the transferor is responsible for business activity at the licensed location, situations where the transferee is responsible, and situations where the transferor and transferee share joint and several responsibility.

In §83.3004, concerning Change in Form or Proportionate Ownership, conforming changes are adopted corresponding to new §83.3003. Throughout subsections (b) and (c), references have been added to the second path a transferee may take, i.e., a new license application on transfer of ownership.

Section 83.5001 relates to quarterly and annual reports that credit access businesses are required to file with the OCCC. In the proposal, an amendment to subsection (a) stated: "All information provided on each quarterly or annual report must be accurate." Regarding this requirement, the commenter suggested adding the following phrase at the end of this provision: "and consistent with all requirements in this section notwithstanding other requirements imposed by other authorities." The commenter explained: "Recent amendments to municipal ordinances indicate cities may implement their own credit access business data reports. The Consumer Financial Protection Bureau has announced it will be publishing comprehensive payday and motor vehicle title rules in the first calendar quarter of 2016 that will likely include data reporting. Local and federal rules may conflict with state reporting instructions. We seek to avoid difficulties with overlapping regulatory structures by clarifying that the Texas statutes and rules are designed for its data collection purposes."

In response to this comment, the amended text in §83.5001(a) states: "Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions." This is intended to clarify that the annual and quarterly reports submitted to the OCCC must comply with the OCCC's instructions. Any additional reports required under a municipal ordinance or federal law are separate from the quarterly and annual reports submitted to the OCCC under Texas Finance Code, §393.627 and §83.5001.

Subsection (e) codifies the administrative penalty structure currently used by the agency, where the penalties increase the more times a credit access business fails to send in a timely, accurate report within a reporting year. Subsection (e)(2) provides a \$100 administrative penalty per licensed location for the first violation, \$500 for the second violation, and \$1,000 for the third and subsequent violations. In addition, subsection (e)(3)

provides for license suspension or revocation for the fourth or subsequent violation. These amendments are based on three sections: Texas Finance Code, §14.208, which authorizes the OCCC to issue injunctions and assess an administrative penalty against a licensee that violates an injunction; Texas Finance Code, §14.251(a-1), which authorizes the agency to assess an administrative penalty against a credit access business that knowingly and wilfully violates Chapter 393; and Texas Finance Code, §393.614(a), which authorizes the agency to suspend or revoke a credit access business license if the licensee knowingly violates Chapter 393.

Section 83.5001(e) includes a change from the proposal to specify the OCCC's authority to assess an administrative penalty for violating an injunction.

In §83.6003, concerning Posting of Fee Schedule and Notices, the adopted amendments update the in-store notice with the OCCC's contact information. Under Texas Finance Code, §393.222(a)(2), a credit access business must post a notice containing the OCCC's contact information in a conspicuous location. The amendment to subsection (a)(2) includes the OCCC's updated website and the updated email address for consumer complaints. The amendment also includes updated language regarding how to file a complaint. The amendment to subsection (b)(2) contains a conforming change describing the notice as the "OCCC notice."

In §83.6006, concerning Format, the amendment to subsection (c) specifies that the consumer cost disclosure must fit on one page, printed on one side. This replaces the former language stating that the disclosure must be printed on two pages. The adopted amendment conforms to the amended figures in §83.6007, which are shortened from two pages to one.

In §83.6007, concerning Consumer Disclosures, amendments adopted throughout subsections (a) through (d) make a technical correction to replace the word "or" with "and." The amendments require the credit access business to provide the consumer cost disclosure "before a credit application is provided and before a financial evaluation occurs." One precommenter requested clarification that the disclosure must be provided only once. To clarify, the credit access business must provide the disclosure once, at a time that is both before a credit application is provided and before a financial evaluation occurs. This provision is based on Texas Finance Code, §393.222(a), which requires the credit access business to provide the disclosure "[b]efore providing services described by Section 393.221(1)," that is, before the credit access business assists the consumer in obtaining a payday or title loan.

The adoption also includes amendments to the figures accompanying §83.6007, which are the model forms for the consumer cost disclosure. The amendments implement Texas Finance Code, §393.223(a), which authorizes the commission to adopt rules including the disclosure. There are two primary purposes to the adopted amendments to the disclosures. First, the amendments streamline the disclosures to simplify layout and remove redundant information. Second, the amendments include updated information regarding the cost of comparable forms of consumer credit, as well as updated information on patterns of repayment based on 2014 quarterly and annual reports provided by credit access businesses to the OCCC.

In addition, the adopted amendments to the consumer disclosures include information required by state and federal law. Texas Finance Code, §393.223(a), requires the consumer dis-

closure to include "(1) the interest, fees, and annual percentage rates, as applicable, to be charged on a deferred presentment transaction or on a motor vehicle title loan, as applicable, in comparison to interest, fees, and annual percentage rates to be charged on other alternative forms of consumer debt; (2) the amount of accumulated fees a consumer would incur by renewing or refinancing a deferred presentment transaction or motor vehicle title loan that remains outstanding for a period of two weeks, one month, two months, and three months; and (3) information regarding the typical pattern of repayment of deferred presentment transactions and motor vehicle title loans." The consumer disclosure must also include additional items to comply with the advertising provisions of the Truth in Lending Act, 15 U.S.C. §1664, and Regulation Z, 12 C.F.R. §1026.24. In particular, Regulation Z, 12 C.F.R. §1026.24(d)(2), requires disclosure of the annual percentage rate and terms of repayment. Also, 12 C.F.R. §1026.24(c) provides that if a simple rate of interest other than the annual percentage rate is disclosed, it must be "stated in conjunction with, but not more conspicuously than, the annual percentage rate."

The commenter requested a delayed implementation date for providing the amended credit access business disclosures under §83.6007. The commenter recommended a 30-day delay for licensees that do not use preprinted forms, and a delayed date of September 1, 2016, for licensees that use preprinted forms. In response to this comment, the agency will allow a delayed implementation date of September 1, 2016, for all licensees to provide the amended versions of the disclosures under §83.6007. From the rule's effective date until September 1, 2016, licensees may provide consumers with either the previous versions of the disclosures or the amended versions. Starting on September 1, 2016, licensees must provide the amended versions. Regardless of which version of the forms they use, licensees must ensure that their disclosures comply with all requirements in Texas Finance Code, §393.223 and the amended rule text of §83.6007 and §83.6008. In particular, licensees must ensure that they: (1) use the disclosure corresponding to the correct product (e.g., multiple payment payday loan), (2) provide the disclosure at a time that is both before a credit application is provided and before a financial evaluation occurs, and (3) ensure that the disclosure is completed with all required information.

The adopted amendments to the consumer disclosures include changes based on oral precomments made at the stakeholders meeting on the proposed rules. Two precommenters suggested that the annual percentage rate should be more prominent than the interest rate paid to the third-party lender, and that the interest rate should be disclosed below the dollar amount of interest. In response to this precomment, the interest rate has been placed near the dollar amount of interest. One precommenter also suggested that for the multiple-payment disclosures, the disclosure should include the total amount of fees and interest the consumer would pay at the end of the term of the loan, in addition to the amounts for two weeks, one month, two months, and three months. In response to this precomment, the multiple-payment disclosures include an additional row with this information. Credit access businesses may omit this extra row if the loan term is two weeks, one month, two months, or three months, and they may move the extra row if the loan term falls in between one of the other periods.

In §83.6008, concerning Permissible Changes, the adopted amendments include an updated citation to Regulation Z. In addition, new subsection (a)(6) specifies that the disclosure may include a form number, and new subsection (b) specifies that

the credit access business may make changes to the consumer disclosure that the OCCC approves in writing.

DIVISION 3. APPLICATION PROCEDURES

7 TAC §83.3003

This repeal is adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G.

The statutory provisions affected by the adopted repeal are contained in Texas Finance Code, Chapter 393.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600791

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

Effective date: March 10, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 936-7621



7 TAC §83.3003, §83.3004

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are adopted under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting. The amendments to §83.6005 are adopted under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are adopted under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.3003. *Transfer of License; New License Application on Transfer of Ownership.*

(a) Purpose. This section describes the license application requirements when a licensed entity transfers its license or ownership of the entity. If a transfer of ownership occurs, the transferee must submit either a license transfer application or a new license application on transfer of ownership under this section.

(b) Definitions. The following words and terms, when used in this section, will have the following meanings:

(1) License transfer--A sale, assignment, or transfer of a credit access business license.

(2) Permission to operate--A temporary authorization from the OCCC, allowing a transferee to operate under a transferor's license while final approval is pending for a license transfer application or a new license application on transfer of ownership.

(3) Transfer of ownership--Any purchase or acquisition of control of a licensed entity (including acquisition by gift, devise, or descent), or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs. The term does not include a change in proportionate ownership as defined in §83.3004 of this title (relating to Change in Form or Proportionate Ownership). Transfer of ownership includes the following:

(A) an existing owner of a sole proprietorship relinquishes that owner's entire interest in a license or an entirely new entity has obtained an ownership interest in a sole proprietorship license;

(B) any purchase or acquisition of control of a licensed general partnership, in which a partner relinquishes that owner's entire interest or a new general partner obtains an ownership interest;

(C) any change in ownership of a licensed limited partnership interest in which:

(i) a limited partner owning 10% or more relinquishes that owner's entire interest;

(ii) a new limited partner obtains an ownership interest of 10% or more;

(iii) a general partner relinquishes that owner's entire interest; or

(iv) a new general partner obtains an ownership interest (transfer of ownership occurs regardless of the percentage of ownership exchanged of the general partner);

(D) any change in ownership of a licensed corporation in which:

(i) a new stockholder obtains 10% or more of the outstanding voting stock in a privately held corporation;

(ii) an existing stockholder owning 10% or more relinquishes that owner's entire interest in a privately held corporation;

(iii) any purchase or acquisition of control of 51% or more of a company that is the parent or controlling stockholder of a licensed privately held corporation occurs; or

(iv) any stock ownership changes that result in a change of control (i.e., 51% or more) for a licensed publicly held corporation occur;

(E) any change in the membership interest of a licensed limited liability company:

(i) in which a new member obtains an ownership interest of 10% or more;

(ii) in which an existing member owning 10% or more relinquishes that member's entire interest; or

(iii) in which a purchase or acquisition of control of 51% or more of any company that is the parent or controlling member of a licensed limited liability company occurs;

(F) any transfer of a substantial portion of the assets of a licensed entity under which a new entity controls business at a licensed location; and

(G) any other purchase or acquisition of control of a licensed entity, or a substantial portion of a licensed entity's assets, where a substantial change in management or control of the business occurs.

(4) Transferee--The entity that controls business at a licensed location after a transfer of ownership.

(5) Transferor--The licensed entity that controls business at a licensed location before a transfer of ownership.

(c) License transfer approval. No credit access business license may be sold, transferred, or assigned without the written approval of the OCCC, as provided by Texas Finance Code, §393.620. A license transfer is approved when the OCCC issues its final written approval of a license transfer application.

(d) Timing. No later than 30 days after the event of a transfer of ownership, the transferee must file a complete license transfer application or new license application on transfer of ownership in accordance with subsection (e). A transferee may file an application before this date.

(e) Application requirements.

(1) Generally. This subsection describes the application requirements for a license transfer application or a new license application on transfer of ownership. A transferee must submit the application in a format prescribed by the OCCC. The OCCC may accept prescribed alternative formats to facilitate multistate uniformity of applications or in order to accept approved electronic submissions. The transferee must pay appropriate fees in connection with the application.

(2) Documentation of transfer of ownership. The application must include documentation evidencing the transfer of ownership. The documentation should include one or more of the following:

(A) a copy of the asset purchase agreement when only the assets have been purchased;

(B) a copy of the purchase agreement or other evidence relating to the acquisition of the equity interest of a licensee that has been purchased or otherwise acquired;

(C) any document that transferred ownership by gift, devise, or descent, such as a probated will or a court order; or

(D) any other documentation evidencing the transfer event.

(3) Application information for new licensee. If the transferee does not hold a credit access business license at the time of the application, then the application must include the information required for new license applications under §83.3002 of this title (relating to Filing of New Application). The instructions in §83.3002 of this title apply to these filings.

(4) Application information for transferee that holds a license. If the transferee holds a credit access business license at the time of the application, then the application must include amendments to the transferee's original license application describing the information that is unique to the transfer event, including disclosure questions, owners and principal parties, and a new financial statement, as provided in §83.3002 of this title. The instructions in §83.3002 of this title apply to these filings. The responsible person at the new location must file a personal affidavit, personal questionnaire, and employment history, if not previously filed. Other information required by §83.3002 of this title need not be filed if the information on file with the OCCC is current and valid.

(5) Request for permission to operate. The application may include a request for permission to operate. The request must be in writing and signed by the transferor and transferee. The request must include all of the following:

(A) a statement by the transferor granting authority to the transferee to operate under the transferor's license while final approval of the application is pending;

(B) an acknowledgement that the transferor and transferee each accept joint and several responsibility to any consumer and to the OCCC for any acts performed under the license while the permission to operate is in effect; and

(C) if the application is a new license application on transfer of ownership, an acknowledgement that the transferor will immediately surrender or inactivate its license if the OCCC approves the application.

(f) Permission to operate. If the application described by subsection (e) includes a request for permission to operate and all required information, and the transferee has paid all fees required for the application, then the OCCC may issue a permission to operate to the transferee. A request for permission to operate may be denied even if the application contains all of the required information. The denial of a request for permission to operate does not create a right to a hearing. If the OCCC grants a permission to operate, the transferor must cease operating under the authority of the license. Two companies may not simultaneously operate under a single license. A permission to operate terminates if the OCCC denies an application described by subsection (e).

(g) Transferee's authority to engage in business. If a transferee has filed a complete application including a request for permission to operate as described by subsection (e), by the deadline described by subsection (d), then the transferee may engage in business as a credit access business. However, the transferee must immediately cease doing business if the OCCC denies the request for permission to operate or denies the application. If the OCCC denies the application, then the transferee has a right to a hearing on the denial, as provided by §83.3007(d) of this title (relating to Processing of Application).

(h) Responsibility.

(1) Responsibility of transferor. Before the OCCC's final approval of an application described by subsection (e), the transferor is responsible to any consumer and to the OCCC for all credit access business activity performed under the license.

(2) Responsibility of transferee. After a transferee begins performing credit access business activity under a license, the transferee is responsible to any consumer and to the OCCC for all credit access business activity performed under the license. In addition, a transferee is responsible for any transactions that it purchases from the transferor.

(3) Joint and several responsibility. If a transferee begins performing credit access business activity under a license before the OCCC's final approval of an application described by subsection (e) (including activity performed under a permission to operate), then the transferor and transferee are jointly and severally responsible to any consumer and to the OCCC. This responsibility applies to any acts performed under the license after the transferee begins performing credit access business activity and before the OCCC's final approval of the license transfer.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600779

Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621



DIVISION 5. OPERATIONAL REQUIREMENTS

7 TAC §83.5001

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to enforce and administer Chapter 393, Subchapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. In addition, the amendments to §83.5001 are adopted under Texas Finance Code, §393.622(a)(2), which authorizes the commission to adopt rules relating to reporting.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

§83.5001. *Data Reporting Requirements.*

(a) Generally. Each licensee must file the required reports described by this section for the prior period's credit access business activity in a form prescribed by the commissioner and must comply with all instructions relating to submitting the reports. During each calendar year, licensees are required to submit four quarterly reports as provided by Texas Finance Code, §393.627. Additionally, certain quarterly data will be collected by the OCCC on an annual basis under Texas Finance Code, §393.622(a)(1). For purposes of this section, the term "annual report" refers to the quarterly data submitted on an annual basis. Each quarterly or annual report must be completed in accordance with the OCCC's instructions. All information provided on each quarterly or annual report must be accurate and calculated in accordance with the OCCC's instructions.

(b) Due dates.

(1) Quarterly reports. The quarterly reports are due on:

(A) April 30, for transactions conducted during January through March;

(B) July 31, for transactions conducted during April through June;

(C) October 31, for transactions conducted during July through September; and

(D) January 31, for transactions conducted during October through December.

(2) Annual report. The annual report is due on January 31 for transactions conducted during the preceding January through December.

(c) Confidentiality. All individual licensee submissions of data, whether submitted on a quarterly or annual basis, are confidential in their entirety under the provisions of Texas Finance Code, §393.622(b).

(d) Aggregated public information. The OCCC will publish aggregated data on its website within a reasonable time after each quarterly report and annual report is due.

(e) Enforcement actions. The OCCC may take enforcement actions described by this subsection if a licensee violates this section by failing to file a complete and accurate quarterly or annual report by the applicable deadline.

(1) Injunction. As provided by Texas Finance Code, §14.208(a), if the OCCC has reasonable cause to believe that a licensee has violated this section, it may issue an injunction ordering the licensee to file one or more complete, accurate, and timely quarterly or annual reports.

(2) Administrative penalty. As provided by Texas Finance Code, §14.251, the OCCC may assess an administrative penalty against a licensee that knowingly and willfully violates Texas Finance Code, §393.627 or this section. In addition, as provided by Texas Finance Code, §14.208(c), the OCCC may assess an administrative penalty against a licensee that violates an injunction described by paragraph (1).

(A) First violation. If the licensee violates this section and has not violated this section during any of the four quarters preceding the violation, then the administrative penalty is \$100 for each licensed location.

(B) Second violation. If the licensee violates this section during any of the four quarters following a first violation described by subparagraph (A), then the administrative penalty is \$500 for each licensed location.

(C) Third and subsequent violations. If the licensee violates this section during any of the four quarters following a second violation described by subparagraph (B), then the administrative penalty is \$1,000 for each licensed location. The \$1,000 administrative penalty applies to subsequent violations that occur during any of the four quarters following a third or subsequent violation described by this subparagraph.

(3) Suspension or revocation for fourth or subsequent violation. If the licensee violates this section during any of the four quarters following a third or subsequent violation described by subsection (e)(2)(C), then the OCCC may suspend or revoke the licensee's license, as provided by Texas Finance Code, §393.614.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600785
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Effective date: March 10, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 936-7621



DIVISION 6. CONSUMER DISCLOSURES AND NOTICES

7 TAC §§83.6003, 83.6006 - 83.6008

These rule changes are adopted under Texas Finance Code, §393.622(a), which authorizes the Finance Commission to adopt rules to necessary to enforce and administer Chapter 393, Sub-

chapter G. Ensuring compliance with Chapter 393 is necessary to the enforcement and administration of Chapter 393, Subchapter G. The amendments to §83.6005 are adopted under Texas Finance Code, §393.222(b), which authorizes the commission to adopt rules to implement the requirement to provide a notice containing the OCCC's contact information. The amendments to §83.6006, §83.6007, and §83.6008 are adopted under Texas Finance Code, §393.223(c), which authorizes the commission to adopt rules to implement the requirement to provide the consumer cost disclosure.

The statutory provisions affected by the adoption are contained in Texas Finance Code, Chapter 393.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600788

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: March 10, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 936-7621



CHAPTER 85. PAWNSHOPS AND CRAFTED PRECIOUS METAL DEALERS SUBCHAPTER B. RULES FOR CRAFTED PRECIOUS METAL DEALERS

The Finance Commission of Texas (commission) adopts amendments to §§85.1001, 85.1009, and 85.2001 in Subchapter B of 7 TAC Chapter 85, concerning the registration and reporting of crafted precious metal dealers.

The commission adopts the amendments to §85.1001 with changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23). These changes are being made in order to make a technical correction to a citation contained in a definition.

The commission adopts the amendments to §85.1009 and §85.2001 without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 23).

The commission received no written comments on the proposal.

In general, the purpose of the amendments is to implement changes resulting from the commission's review of Chapter 85, Subchapter B under Texas Government Code, §2001.039. The notice of intention to review 7 TAC Chapter 85, Subchapter B was published in the *Texas Register* on November 13, 2015 (40 TexReg 8035). The agency did not receive any comments on the notice of intention to review.

The adopted amendments are technical in nature, providing clarification and conforming changes in accordance with a revised rule, recent legislation, and updated agency contact information. The individual purposes of the amendments to each section are provided in the following paragraphs.

In §85.1001, concerning Definitions, a technical correction has been made to clarify the definition of "Local law enforcement." In §85.1001(4)(B)(ii)(II), the word "not" has been inserted before the phrase "in a municipality that maintains a police department." The agency believes that the inclusion of "not" clarifies the original intent of this provision, and that this word had been inadvertently omitted at the time the rule was initially adopted. Section 85.1001(4)(B)(ii)(II) defines local law enforcement to be the local county sheriff of the dealer's permanent registered location, for mail order or Internet sales where a non-resident seller enters a transaction with a dealer located in a municipality without a police department. The amendment's language is based on Texas Occupations Code, §1956.063(b), which provides that required reports must be sent to the chief of police if the transaction occurs in a municipality that maintains a police department, and to the sheriff of the county if the transaction occurs in another location.

Since the proposal, a technical correction has been made in §85.1001(2), amending the Texas Occupations Code citation contained in the definition of "Crafted precious metal." The revised citation refers to §1956.051(3) in order to correct an accidental transposition of two numbers.

In §85.1009, concerning Revocation, an amendment is provided in subsection (b) to update an internal rule reference to 7 TAC §9.1(a), relating to contested case procedure.

The commission previously adopted amendments to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions; former title: Definitions and Interpretation; Severability) to clarify which rules of procedure apply to a contested case hearing conducted by an administrative law judge contracted by a finance agency, and which rules apply to a hearing conducted by the State Office of Administrative Hearings. Amended subsection (a) in §9.1 as adopted reads: "This chapter governs contested case hearings conducted by an administrative law judge employed or contracted by an agency. All contested case hearings conducted by the State Office of Administrative Hearings (SOAH) are governed by SOAH's procedural rules found at Title 1, Chapter 155 of the Texas Administrative Code."

Section 85.1009(b) identifies the rules of procedure applicable to a contested case hearing regarding a notice to revoke a crafted precious metal dealer's registration for alleged violations of Texas Occupations Code, Chapter 1956. The amendment replaces the reference in this subsection to Chapter 9 with a reference to §9.1(a) of Title 7 (relating to Application, Construction, and Definitions).

Section §85.2001, concerning Transaction Report Form and Records, contains two amendments regarding recently revised information. The first amendment in subsection (a)(8) corresponds to 2015 legislation, and the second in subsection (a)(13) provides updated agency contact information.

First, crafted precious metal dealers must accept a Texas handgun license as a valid form of identification for purchases of crafted precious metal as of September 1, 2015. During the most recent legislative session, the Texas Legislature passed HB 2739. This new law added Section 506.001(a) to the Texas Business and Commerce Code stating: "A person may not deny the holder of a concealed handgun license issued under Subchapter H, Chapter 411, Government Code, access to goods, services, or facilities...because the holder has or presents a concealed handgun license rather than a driver's license or other acceptable form of personal identification." This means that dealers

must now accept handgun licenses as a valid form of identification, in addition to the other forms of identification listed in Section 1956.062(c) of the Texas Occupations Code. The amendment uses the phrase "handgun license" in accordance with HB 910, the open-carry law passed by the Texas Legislature during the most recent session. HB 910 replaces the phrase "concealed handgun license" with "handgun license" throughout the statutes governing handgun licenses. HB 910 went into effect on January 1, 2016.

As a result, the amendments to §85.2001(a)(8) add the phrase "or handgun license number" to the list of identification numbers to be recorded on the transaction report form by crafted precious metal dealers.

Second, in accordance with instructions from the Texas Department of Information Resources, the Office of Consumer Credit Commissioner (OCCC) has updated its website and e-mail address with the "texas.gov" extension: occc.texas.gov and consumer.complaints@occc.texas.gov. In order to provide consumers with the best contact information for the agency, this adoption amends §85.2001(a)(13) with the OCCC's updated contact information.

DIVISION 1. REGISTRATION PROCEDURES

7 TAC §85.1001, §85.1009

The amendments are adopted under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

§85.1001. Definitions.

The following terms, when used in this subchapter, have the following meanings:

(1) Broken item--An item that has been damaged so that it cannot be used for its original purpose without substantial repair.

(2) Crafted precious metal--Has the meaning provided by Texas Occupations Code, §1956.051(3). The term does not include a coin, a bar, a commemorative medallion, an item that contains incidental or trace amounts of precious metal, or an item that is purchased by a dealer for 105% or more of the item's scrap value.

(3) Date of purchase.

(A) For in-person sales, the date of purchase is the date the seller transfers the crafted precious metal to the dealer.

(B) For mail order or Internet sales, the date of purchase is the earlier of:

(i) the date the dealer sends payment for the crafted precious metal; or

(ii) the date the seller agrees by phone or written communication to a price offered by the dealer.

(4) Local law enforcement.

(A) For in-person sales, local law enforcement is:

(i) the chief of police of the municipality where the sale occurs, if the sale occurs in a municipality that maintains a police department; or

(ii) the sheriff of the county where the sale occurs, if the sale does not occur in a municipality that maintains a police department.

(B) For mail order or Internet sales, local law enforcement is:

(i) if the seller resides in Texas:

(I) the chief of police of the municipality where the seller resides, if the seller resides in a municipality that maintains a police department; or

(II) the sheriff of the county where the seller resides, if the seller does not reside in a municipality that maintains a police department; or

(ii) if the seller does not reside in Texas and the dealer's permanent registered location is in Texas:

(I) the chief of police of the municipality of the dealer's permanent registered location, if the dealer's permanent registered location is in a municipality that maintains a police department; or

(II) the sheriff of the county of the dealer's permanent registered location, if the dealer's permanent registered location is not in a municipality that maintains a police department.

(5) OCCC--The Office of Consumer Credit Commissioner of the State of Texas.

(6) Permanent registered location--A location where a crafted precious metal dealer engages in the business of buying crafted precious metal for one year or longer.

(7) Scrap--An item that is intended to be melted down or otherwise transformed so that it will not be used for its original purpose.

(8) Scrap value--The value at which an item would be purchased by a person who will melt the item or otherwise transform it so that it will not be used for its original purpose.

(9) Seller--An individual selling crafted precious metal to a dealer, including a transferor.

(10) Temporary location--A location where a crafted precious metal dealer engages in the business of buying crafted precious metal for less than one year.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600793

Leslie L. Pettijohn

Commissioner

Office of Consumer Credit Commissioner

Effective date: March 10, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 936-7621



DIVISION 2. OPERATIONAL REQUIREMENTS

7 TAC §85.2001

The amendments are adopted under Texas Occupations Code, §1956.0611, which authorizes the Finance Commission to adopt rules necessary to implement and enforce Texas Occupations Code, Chapter 1956, Subchapter B, regarding Sale of Crafted Precious Metal to Dealers. Additionally, §1956.063(c) states that for each regulated transaction, dealers must submit a report on a form prescribed by the commissioner.

The statutory provisions affected by the adopted amendments are contained in Texas Occupations Code, Chapter 1956, Subchapter B, concerning Sale of Crafted Precious Metal to Dealers.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600795

Leslie L. Pettijohn
Commissioner

Office of Consumer Credit Commissioner

Effective date: March 10, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 936-7621



TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts amendments to §25.24, relating to Credit Requirements and Deposits, and §25.478, relating to Credit Requirements and Deposits, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8087). The proposed amendments will implement legislative changes made by Senate Bill 734 of the 84th Legislature, Regular Session. The amendments will make clear that the annual interest rate shall be set by the commission on or before December 1 of each calendar year to be used for the next calendar year. Project Number 45133 is assigned to this proceeding.

The commission did not receive comments on the proposed amendments. The commission did not receive a request for a public hearing.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.24

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and

Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600757

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 10, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 936-7293



SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.478

This amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600758

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 10, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 936-7293



CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §26.24, §26.27

The Public Utility Commission of Texas (commission) adopts amendments to §26.24, relating to Credit Requirements and Deposits, and §26.27, relating to Bill Payment and Adjustments, without changes to the proposed text as published in the November 20, 2015, issue of the *Texas Register* (40 TexReg 8088). The proposed amendments will implement legislative changes made by Senate Bill 734 of the 84th Legislature, Regular Session. The amendments will make clear that the annual interest rate shall be set by the commission on or before December 1 of each calendar year to be used for the next calendar year. Project Number 45132 is assigned to this proceeding.

The commission did not receive comments on the proposed amendments. The commission did not receive a request for a public hearing.

The amendments are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2015) (PURA), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction: and specifically, the amendments made to §183.003 of the Utilities Code, by Senate Bill 734 of the 84th Legislature, Regular Session, which directs the commission on when to set the rate of interest for the following calendar year.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002, Senate Bill 734, and Utilities Code §183.003.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600756

Adriana Gonzales

Rules Coordinator

Public Utility Commission of Texas

Effective date: March 10, 2016

Proposal publication date: November 20, 2015

For further information, please call: (512) 936-7293



PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 61. COMBATIVE SPORTS

The Texas Commission of Licensing and Regulation (Commission) adopts a new rule at 16 Texas Administrative Code (TAC) Chapter 61, §61.120 and the repeal of current §61.120 without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8712). The rule will not be republished.

The adopted new rule and repeal implement House Bill 3315 (H.B. 3315), 84th Legislature, Regular Session (2015), which allows the Commission to establish a Combative Sports Advisory Board (Board) to address a wider range of issues.

The adopted new §61.120 provides that the Combative Sports Advisory Board consist of four physicians, one boxing promoter, one mixed martial arts promoter, one sports referee or judge, one former combative sports contestant and one public member to make up the composition of the board.

The adopted repeal of current §61.120 is replaced with new §61.120.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8712). The deadline for public comments was January 4, 2016. The Department received one comment on the proposed rules during the 30-day public comment period.

Comment--The Texas Chiropractic Association (TCA) requested that the Department consider allowing Doctors of Chiropractic to be eligible for Advisory Board membership. TCA also described the areas of expertise Doctors of Chiropractic may specialize in that may assist in the broader range of issues the Combative Sports Advisory Board may discuss and make recommendations on.

Department Response--The Department disagrees due to the nature of this program and injuries, Doctors of Chiropractic are not trained or equipped to treat trauma in general and head trauma in particular. These injury types are most common in the sport and need specialized medical treatment. Therefore, the Department did not make any changes to the proposed rule based on this comment.

The Board was scheduled to meet on January 15, 2016, to discuss the proposed rules and the public comment received. However, the Board lacked a quorum, therefore no recommendations were made, but the Department did receive input from the present Board members. Since a quorum of the Board was not present, no votes were taken at the January 15, 2016, meeting. At its meeting on February 10, 2016, the Commission adopted the proposed rules without changes to the rule as published.

16 TAC §61.120

The repeal is adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600720

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: March 15, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 463-8179

◆ ◆ ◆
16 TAC §61.120

The new rule is adopted under Texas Occupations Code, Chapters 51 and 2052, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2052. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600721

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: March 15, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 463-8179

◆ ◆ ◆
CHAPTER 86. VEHICLE TOWING AND BOOTING

16 TAC §§86.225 - 86.228

The Texas Commission of Licensing and Regulation (Commission) adopts new rules at 16 TAC Chapter 86, §§86.225 - 86.228 without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8713). The rules will not be republished.

The adopted new rules establish a process that expedites tow truck permits, consent tow operator licenses and tow company licenses in areas that are included in an Emergency Disaster Proclamation by the Governor of the State of Texas and the Executive Director finds the emergency rules necessary to implement in the disaster area. The adopted new rules are necessary to implement this process and allow the towing industry to quickly respond to an emergency disaster.

The adopted new §86.225 establishes the general guidelines for issuing an emergency consent tow truck permit, consent tow operator license and tow company license.

The adopted new §86.226 creates the requirements for the emergency consent tow permit.

The adopted new §86.227 creates the requirements for the emergency consent tow operator license.

The adopted new §86.228 creates the requirements for the emergency tow company license.

The Texas Department of Licensing and Regulation (Department) drafted and distributed the proposed rules to persons internal and external to the agency. The proposed rules were published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8713). The deadline for public comments was

January 4, 2016. The Department received one comment on the proposed rules during the 30-day public comment period.

Comment--AAA Texas supports the proposed rules and described the challenges the industry faced during the May 2015 flood in Houston.

Department Response--The Department appreciates this comment and did not make any changes to the proposed rules based on this comment.

The Towing, Storage and Booting Advisory Board (Board) met on January 14, 2015, to discuss the proposed rules and the public comment received. The Board recommended that the Commission adopt the proposed rules as published in the *Texas Register* without changes. At its meeting on February 10, 2016, the Commission adopted the proposed rules without changes as recommended by the Board.

The new rules are adopted under Texas Occupations Code, Chapters 51 and 2308, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51 and 2308. No other statutes, articles, or codes are affected by the adoption.

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

Filed with the Office of the Secretary of State on February 17, 2016.

TRD-201600722

William H. Kuntz, Jr.

Executive Director

Texas Department of Licensing and Regulation

Effective date: March 15, 2016

Proposal publication date: December 4, 2015

For further information, please call: (512) 463-8179

◆ ◆ ◆
PART 8. TEXAS RACING COMMISSION

CHAPTER 301. DEFINITIONS

16 TAC §301.1

The Texas Racing Commission adopts an amendment to 16 TAC §301.1, concerning Definitions, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 60).

The section sets out definitions for terms that are used elsewhere within the rules. The amendment removes the definition for "historical racing". This change is adopted in conjunction with the adoption of the repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*. Since the rules that authorized historical racing are being repealed, the definition of historical racing should also be repealed. The amendment also renumbers the subsequent definitions in the list in order to accommodate the removal of this definition.

No comments were received regarding adoption of this specific amendment. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

The amendment is adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; and §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering.

The amendment implements Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600843

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: March 13, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 833-6699



CHAPTER 303. GENERAL PROVISIONS

SUBCHAPTER B. POWERS AND DUTIES OF THE COMMISSION

16 TAC §303.31, §303.42

The Texas Racing Commission adopts amendments to 16 TAC §303.31, concerning the regulation of racing, and §303.42, concerning the approval of charity race days, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 63).

Section 303.31 sets out the Commission's broad responsibility to regulate each race meeting conducted in this state. Section 303.42 sets out the requirements for each racing association to conduct charity race days and the criteria the Commission will review in approving those race days. The amendment to §303.31 inserts the phrase "live and simulcast" into the rule and the amendments to §303.42 eliminate all references related to historical racing. The purpose of the amendments is to restore the rules to the language that existed prior to the adoption of the historical racing rules. These amendments are adopted in conjunction with the repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

No comments were received regarding adoption of these specific amendments. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

The amendments are adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races. The amendment to §303.42 is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §8.02 and §10.01, which require the Commission to adopt rules relating to the conduct of race days.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600844

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: March 13, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 833-6699



CHAPTER 309. RACETRACK LICENSES AND OPERATIONS

The Texas Racing Commission adopts amendments to 16 TAC §309.8, concerning racetrack license fees, §309.297, concerning purse accounts, §309.299, concerning the horsemen's representative, and §309.361, concerning the Greyhound Purse Account and Kennel Account, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 65).

Section 309.8 sets out the purpose of racetrack license fees, the amounts and due dates for the fees, and describes how the fees may be adjusted. Section 309.297 sets out the requirements governing how horse purse accounts are administered and paid out. Section 309.299 sets out the purpose of the horsemen's representative, the process by which the horsemen's representative is recognized, and the authority and responsibilities of the horsemen's representative. Section 309.361 sets out the requirements governing how greyhound purse and kennel accounts are administered and paid out. The adopted amend-

ments to each of these rules restore them to the language that existed within them prior to the adoption of the historical racing rules. The amendments accomplish this goal by deleting all references to historical racing and reinserting previously deleted language that limited the application of the rules to only live and simulcast racing. These changes are adopted in conjunction with the adopted repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

No comments were received regarding adoption of these specific amendments. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

SUBCHAPTER A. RACETRACK LICENSES DIVISION 1. GENERAL PROVISIONS

16 TAC §309.8

The amendment to §309.8 is adopted under Texas Revised Civil Statutes Annotated, Article 179e §5.01, which requires the Commission to set fees to cover the costs of regulating, overseeing and licensing live and simulcast racing at racetracks, and §6.18, which allows the Commission prescribe a reasonable annual fee to be paid by each racetrack licensee.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600845
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699



SUBCHAPTER C. HORSE RACETRACKS DIVISION 4. OPERATIONS

16 TAC §309.297, §309.299

The amendments are adopted under Texas Revised Civil Statutes Annotated, Article 179e, §6.08, which provides that legal title to purse accounts at a horse racing association is vested in the horsemen's organization, and §1.03(77), which establishes that the horsemen's organization is recognized by the commission to represent horse owners and trainers in negotiating and contracting with associations on subjects relating to racing.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600846
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699



SUBCHAPTER D. GREYHOUND RACETRACKS DIVISION 2. OPERATIONS

16 TAC §309.361

The amendment is adopted under Texas Revised Civil Statutes Annotated, Article 179e, §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering, §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering, and §10.05, which recognizes the Texas Greyhound Association as the officially designated state greyhound breed registry.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600848
Mark Fenner
General Counsel
Texas Racing Commission
Effective date: March 13, 2016
Proposal publication date: January 1, 2016
For further information, please call: (512) 833-6699



CHAPTER 321. PARI-MUTUEL WAGERING SUBCHAPTER A. MUTUEL OPERATIONS

The Texas Racing Commission adopts amendments to 16 TAC §321.5, concerning the pari-mutuel auditor, §321.12, concerning time synchronization, §321.13, concerning the pari-mutuel track report, §321.23, concerning wagering explanations, §321.25, concerning wagering information, and §321.27, concerning the posting of race results, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 69).

Section 321.5 establishes the role and responsibilities of the pari-mutuel auditor. Section 321.12 sets out synchronization requirements in order to ensure accurate verification of off times with the close of betting on live and simulcast races. Section 321.13 describes the requirements for an association's record keeping of wagering activities at the racetrack. Section 321.23 describes the wagering explanations an association must include in its official live and simulcast programs. Section 321.25 requires an association to provide accurate wagering information for handicapping purposes. Section 321.27 requires that an association submit a plan for posting race results to the wagering public and sets out the minimum requirements for the plan. The adopted amendments to each of these rules restore them to the language that existed within them prior to the adoption of the historical racing rules. The amendments accomplish this goal by deleting all references to historical racing and reinserting previously deleted language that limited the application of the rules to only live and simulcast racing. These changes are adopted in conjunction with the adopted repeal of rules authorizing and regulating historical racing under Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

No comments were received regarding adoption of these specific amendments. The Commission did receive comments regarding the overall repeal of the rules authorizing historical racing, and those comments are addressed in the preamble to the adopted repeal of Chapter 321, Subchapter F, Regulation of Historical Racing, which is published elsewhere within this issue of the *Texas Register*.

DIVISION 1. GENERAL PROVISIONS

16 TAC §§321.5, 321.12, 321.13

The amendments are adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600851

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: March 13, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 833-6699

DIVISION 2. WAGERING INFORMATION AND RESULTS

16 TAC §§321.23, 321.25, 321.27

The amendments are adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

The amendments implement Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600852

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: March 13, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 833-6699

SUBCHAPTER F. REGULATION OF HISTORICAL RACING

16 TAC §§321.701, 321.703, 321.705, 321.707, 321.709, 321.711, 321.713, 321.715, 321.717, 321.719

The Texas Racing Commission adopts the repeal of 16 TAC §321.701, concerning the purpose of historical racing, §321.703, concerning historical racing, §321.705, concerning requests to conduct historical racing, §321.707, concerning the requirements for operating a historical racing totalisator system, §321.709, concerning types of pari-mutuel wagers for historical racing, §321.711, concerning historical racing pool and seed pools, §321.713, concerning deductions from pari-mutuel pools, §321.715, concerning contract retention and pari-mutuel wagering record retention, §321.717, effect of conflict, and §321.719, severability, without changes to the proposed text as published in the January 1, 2016, issue of the *Texas Register* (41 TexReg 70).

Section 321.701 sets out the purpose of initially adopting the historical racing rules. Section 321.703 describes the license to conduct historical racing, requires associations to enter into contracts that establish the portion of each association's commission that will be set aside for purses and breeder incentives, provides

for the allocation of these deductions among the breeds. Section 321.705 describes the process and requirements by which associations request approval to conduct historical racing. Section 321.707 describes the minimum operational requirements of a historical racing totalisator system. Section 321.709 describes the types of pari-mutuel wagers that may be offered through a historical racing system. Section 321.711 provides the minimum requirements for the seed pool and prohibits associations from conducting historical racing in a manner that allows patrons to wager against the association. Section 321.713 permits associations to deduct a portion of each historical racing pool as its commission. Section 321.715 requires associations to retain copies of all historical racing contracts and records of all wagering on historical races. Section 321.717 provides that the provisions of Subchapter F controls in the event that the provisions conflict with Subchapter A of Chapter 321. Section 321.719 provides that if any part of Subchapter F is held invalid, that part is severable and its invalidity does not affect other parts that can be given effect without the invalid part. The repeal of Chapter 321, Subchapter F, repeals each of these rules.

REASONED JUSTIFICATION. The repeal of these rules is necessary to bring the Commission's rules into conformity with the decision by the 261st District Court of Travis County that the rules relating to historical racing exceeded the Commission's authority. Texas Racing Act §3.02 requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act. Since the Commission has not appealed the decision of the District Court, it must repeal the historical racing rules in order to comply with the statutory requirement that its rules be consistent with the Act.

SUMMARY OF COMMENTS AND AGENCY RESPONSES.

The Commission received approximately 1,000 comments in response to the publication of these proposed repeals. Of these comments, only one supported the repeal. The remaining comments all opposed repeal of the historical racing rules.

Comment: The Kickapoo Texas Traditional Tribe of Texas observed that a Travis County District Court had found that the rules exceeded the Commission's authority and that the Commission had not appealed that decision, therefore it was appropriate for the Commission to repeal the rules in order to rid the Texas Administrative Code of void rules.

Agency Response: The agency agrees.

Comment: Sam Houston Race Park (SHRP) commented that the entire racing industry supported the adoption of the historical racing rules and provided a compilation of prior comments as evidence of the hope that historical racing provided to the industry. SHRP also commented that the legality of historical racing was still on appeal and requested that the Commission await the outcome of the legal process before making any changes. SHRP pointed out that individual legislators had expressed support for the Commission and/or historical racing during prior comment periods. SHRP closed by again pointing to the extensive support the industry had shown for the historical racing rules.

Agency Response: The agency agrees that the racing industry has shown broad and consistent support for the historical racing rules. However, broad support does not outweigh the District Court's decision.

Comment: The Texas Horsemen's Partnership (THP) commented that the Commission is being coerced by an unconsti-

tutional action by a legislative body and urges the Commission to reject the repeal of the historical racing rules pending the outcome of the industry's appeal of the District Court's decision.

Agency Response: The agency disagrees with THP's conclusion that the Commission is being coerced by an unconstitutional action. The agency is acting to bring its rules in compliance with a court order. The THP has asserted this claim before a Travis County District Court and on emergency appeal to the Third Court of Appeals, and has yet to obtain a court order that validates this assertion.

Comment: Representatives of the Texas Paint Horse Association and the American Paint Horse Association wrote in opposition to the repeal and expressed hope that historical racing would provide economic support to the racing industry.

Agency Response: The agency appreciates the association's position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Texas Quarter Horse Association urged the Commission to not repeal the rules and observed that it had not been successful in scheduling meeting with state leaders to persuade them to release appropriations to the Commission.

Agency Response: The agency appreciates the association's position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Texas Thoroughbred Association wrote in opposition to the repeal, observed that the prospect of historical racing is the only thing providing hope to the industry, and requested that the Commission await the outcome of the industry's appeal before making any changes.

Agency Response: The agency appreciates the association's position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Commission received 983 form letters and emails expressing opposition to repeal. These comments observed that historical racing would provide economic support to the industry and protested about the appearance of undue influence by out-of-state casino interests. The comments also requested that the Commission await the outcome of the industry's appeal before making any changes.

Agency Response: The agency appreciates the commenters' position but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

Comment: The Commission received a number of comments from individual industry participants and business people who opposed repeal of the rules. These individuals pointed out the poor economic condition of the industry and their avid interest in it. They requested that the Commission support the industry by not repealing the rules and awaiting the outcome of the industry's appeal.

Agency Response: The agency appreciates the commenters' positions but concludes that the District Court's decision requires that the historical racing rules be repealed in order to comply with the Act's requirement that the rules be consistent with the Act.

STATUTORY AUTHORITY. The repeal of these rules is adopted under the following provisions of Texas Revised Civil Statutes Annotated, Article 179e: §3.02, which requires the Commission to adopt rules for conducting greyhound or horse racing in this state involving wagering and other rules to administer the Act that are consistent with the Act; §3.021, which authorizes the Commission to license and regulate all aspects of greyhound racing and horse racing in this state, whether or not that racing involves pari-mutuel wagering; §11.01, which requires the Commission to adopt rules to regulate wagering on greyhound races and horse races under the system known as pari-mutuel wagering; and §11.011, which requires the Commission to adopt rules to license and regulate pari-mutuel wagering on simulcast races.

The repeal of these rules implements Texas Revised Civil Statutes Annotated, Article 179e.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600853

Mark Fenner

General Counsel

Texas Racing Commission

Effective date: March 13, 2016

Proposal publication date: January 1, 2016

For further information, please call: (512) 833-6699



TITLE 22. EXAMINING BOARDS

PART 8. TEXAS APPRAISER LICENSING AND CERTIFICATION BOARD

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

22 TAC §153.18

The Texas Appraiser Licensing and Certification Board (TALCB) adopts amendments to 22 TAC §153.18, Appraiser Continuing Education, without changes as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8863). The amendments add additional opportunities for appraiser license holders to obtain continuing education credits consistent with criteria established by the Appraiser Qualifications Board (AQB) and statutory changes to Chapter 1103, Texas Occupations Code, adopted by the 84th Legislature.

The reasoned justification for the amendments is to provide additional opportunities for appraiser license holders to earn continuing education credits as allowed by the AQB and to align the rule with statutory changes adopted by the 84th Legislature.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.153, which authorizes

TALCB to adopt rules relating to continuing education requirements for license holders.

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

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600847

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: March 13, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 936-3652



22 TAC §153.22

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts new 22 TAC §153.22, Voluntary Appraiser Trainee Experience Reviews, without changes as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8864). This rule establishes a voluntary program through which an appraiser trainee may receive feedback about their appraisal work product from the Board before submitting an application for licensure.

The reasoned justification for this rule is to provide an opportunity for appraiser trainees to receive feedback from the Board regarding the trainee's work product before the trainee submits an application for licensure.

No comments were received on the rule as proposed.

This rule is adopted under Texas Occupations Code §1103.151, which authorizes the TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

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

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600849

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: March 13, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 936-3652



22 TAC §153.27

The Texas Appraiser Licensing and Certification Board (TALCB or Board) adopts amendments to 22 TAC §153.27, License by Reciprocity, without changes as published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8865). These amendments streamline the Board's process for verifying an applicant's licensure in another state and will lower the cost and simplify the application process for applicants who apply for a license under this section.

The reasoned justification for the amendments is to simplify the Board's process for verifying an applicant's licensure in another state, improve efficiency, and lower costs for license holders.

No comments were received on the amendments as proposed.

The amendments are adopted under Texas Occupations Code §1103.151, which authorizes TALCB to adopt rules relating to certificates and licenses, and §1103.152, which authorizes TALCB to prescribe qualifications for appraisers that are consistent with the qualifications established by the Appraiser Qualifications Board.

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

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600850

Kristen Worman

General Counsel

Texas Appraiser Licensing and Certification Board

Effective date: March 13, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 936-3652



PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 281. ADMINISTRATIVE PRACTICE AND PROCEDURES

SUBCHAPTER A. GENERAL PROVISIONS

22 TAC §281.8

The Texas State Board of Pharmacy adopts amendments to §281.8 concerning Grounds for Discipline for a Pharmacy License. The amendments are adopted without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9063). The rule will not be republished.

The amendments to §281.8 update the grounds for discipline for a pharmacy to include abusive, intimidating, or threatening behavior toward a board member or employee during the performance of such member or employee's lawful duties.

No comments were received.

The amendments are adopted under §§551.002 and 554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600768

Gay Dodson, R. Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: March 10, 2016

Proposal publication date: December 18, 2015

For further information, please call: (512) 305-8026



CHAPTER 283. LICENSING REQUIREMENTS FOR PHARMACISTS

22 TAC §283.2, §283.5

The Texas State Board of Pharmacy adopts amendments to §283.2 concerning Definitions and §283.5 concerning Pharmacist-Intern Duties. The amendments are adopted without changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9064).

The amendments to §283.2 update the definition of a health-care professional to include dentists, podiatrists, veterinarians, advanced practice registered nurses, and physician assistants. The amendments to §283.5 allow intern-trainees to perform the duties of a pharmacist while under the supervision of a pharmacist preceptor at a site assigned by the college/school of pharmacy, correct references to pharmacist-interns, and clarify that only individuals engaged in sterile compounding are required to meet the training requirements.

No comments were received.

The amendments are adopted under §§551.002, 554.051, and 558.057 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act. The Board interprets §558.057 as authorizing the agency to adopt rules regarding individuals serving as healthcare professional preceptors.

The statutes affected by the amendments: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600769

Gay Dodson, R. Ph.

Executive Director

Texas State Board of Pharmacy

Effective date: March 10, 2016

Proposal publication date: December 18, 2015

For further information, please call: (512) 305-8026



CHAPTER 315. CONTROLLED SUBSTANCES

22 TAC §§315.1 - 315.14

The Texas State Board of Pharmacy adopts new §315.1 regarding Definitions, §315.2 regarding Official Prescription Form, §315.3 regarding Prescriptions, §315.4 regarding Exceptions to Use of Form, §315.5 regarding Pharmacy Responsibility - Generally, §315.6 regarding Pharmacy Responsibility - Electronic Reporting, §315.7 regarding Pharmacy Responsibility - Oral, Telephonic, or Emergency Prescription, §315.8 regarding Pharmacy Responsibility - Modification of Prescription, §315.9 regarding Pharmacy Responsibility - Out-of-State Practitioner, §315.10 regarding Return of Unused Official Prescription Form, §315.11 regarding Release of Prescription Data, §315.12 regarding Schedule III through V Prescription Forms, §315.13 regarding Official Prescription Form, and §315.14 regarding Official Prescription. The new rules are adopted with changes to the proposed text as published in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9067).

These new rules implement Senate Bill 195 passed by the 84th Texas Legislature which transfers the Prescription Monitoring Program from the Texas Department of Public Safety to the Texas State Board of Pharmacy, effective September 1, 2016.

The National Association of Chain Drug Stores (NACDS) provided comments as follows: The general recordkeeping requirements in §315.5 should be changed to reference from "enter" to "record." The Board agrees with the comment and adopted the rule with the change. Section 315.6 should be changed to clearly specify that pharmacies must report dispensed controlled substance information within 7 days. The Board agrees with the comment and adopted the rule with the change. The requirement to report the office prescription control number should be eliminated. The Board disagrees with the comment in that the control number validates the schedule II prescriptions and reduces fraudulent prescriptions.

The APRN Strategic Alliance commented that the definition of mid-level was not appropriate and recommended that a definition for advanced practice registered nurse be added to the definitions. The Board agrees with the comment and adopted the rules with the definition added to the rules.

The new rules are adopted under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by the new rules: Texas Pharmacy Act, Chapters 551 - 569, Texas Occupations Code.

§315.1. Definitions - Effective September 1, 2016.

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

(1) TCSA--The Texas Controlled Substances Act (Texas Health and Safety Code, Chapter 481).

(2) Advanced practice registered nurse--A registered nurse licensed by the Texas Board of Nursing to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

(3) Day--A calendar day unless the context clearly indicates a business day.

(4) Drug Enforcement Administration (DEA)--The Federal Drug Enforcement Administration.

(5) Electronic transmission--The transmission of information in electronic form such as computer to computer, electronic device to computer, e-mail, or the transmission of the exact visual image of a document by way of electronic media.

(6) Emergency situation--A situation described in the Code of Federal Regulations, Title 21, §1306.11(d).

(7) Individual practitioner--A physician, dentist, veterinarian, optometrist, podiatrist, or other individual licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacist, a pharmacy, or an institutional practitioner.

(8) Institutional practitioner--A hospital or other person (other than an individual practitioner) licensed, registered, or otherwise permitted to dispense a controlled substance in the course of professional practice, but does not include a pharmacy.

(9) Locum tenen--An individual practitioner who practices in a temporary position in this state and licensed by the appropriate Texas state licensing board.

(10) Long-term care facility (LTCF)--An establishment licensed as such by the Texas Department of Aging and Disability Services.

(11) NDC #--A National Drug Code number.

(12) Physician assistant--An individual licensed as such by the Texas Physician Assistant Board.

(13) Record--A notification, order form, statement, invoice, prescription, inventory information, or other document for the acquisition or disposal of a controlled substance, precursor, or apparatus in any manner by a registrant or permit holder under a record keeping or inventory requirement of federal law, the TCSA, or this chapter.

(14) Reportable prescription--A prescription for a controlled substance:

(A) listed in Schedule II through V; and

(B) not excluded from this chapter by a rule adopted under the TCSA, §481.0761(b).

(15) Temporary controlled substances registration (TCSR)--A controlled substances registration issued to a locum tenen or a health practitioner for a period of time not to exceed 90 days.

§315.2. Official Prescription Form - Effective September 1, 2016.

(a) A practitioner may order official prescription forms from the board only if the practitioner is registered by the DEA to prescribe a Schedule II controlled substance.

(b) The board is the sole source for the official prescription forms. However, official prescription forms issued prior to September 1, 2016, by the Texas Department of Public Safety are valid forms.

(c) This subsection applies only to an institutional practitioner who is employed by a hospital or other training institution. An institutional practitioner authorized by a hospital or institution to prescribe a Schedule II controlled substance under the DEA registration of the hospital or institution may order official prescription forms under this section if:

(1) the practitioner prescribes a controlled substance in the usual course of the practitioner's training, teaching program, or employment at the hospital or institution;

(2) the appropriate state health regulatory agency has assigned an institutional permit or similar number to the practitioner; and

(3) the hospital or institution:

(A) maintains a current list of each institutional practitioner and each assigned institutional permit number; and

(B) makes the list available to another registrant or a member of a state health regulatory or law enforcement agency for the purpose of verifying the authority of the practitioner to prescribe the substance.

(d) An advanced practice registered nurse or physician assistant operating under a prescriptive authority agreement pursuant to Texas Occupations Code, Chapter 157 may order official prescription forms under this section if authority to prescribe has been delegated by a physician. Upon withdrawal of the delegating physician's authority such forms are void and must be returned to the board.

§315.3. Prescriptions - Effective September 1, 2016.

(a) Schedule II Prescriptions.

(1) Except as provided by subsection (e) of this section, a practitioner, as defined in the TCSA, §481.002(39)(A), must issue a written prescription for a Schedule II controlled substance only on an official Texas prescription form or through an electronic prescription that meets all requirements of the TCSA. This subsection also applies to a prescription issued in an emergency situation.

(2) A practitioner who issues a written prescription for any quantity of a Schedule II controlled substance must complete an official prescription form by legibly completing the spaces provided.

(3) A practitioner may issue multiple written prescriptions authorizing a patient to receive up to a 90-day supply of a Schedule II controlled substance provided:

(A) each prescription is issued for a legitimate medical purpose while practitioner is acting in the usual course of professional practice;

(B) the practitioner provides written instructions on each prescription, other than the first prescription that is to be dispensed within 21 days of issuance, indicating the earliest date on which a pharmacy may dispense each prescription; and

(C) the practitioner concludes that providing the patient with multiple prescriptions in this manner does not create an undue risk of diversion or abuse.

(b) Schedules III through V Prescriptions.

(1) A practitioner, as defined in the TCSA, §481.002(39)(A), (C), (D), may use prescription forms and order forms through individual sources. A practitioner may issue, or allow to be issued by a person under the practitioner's direction or supervision, a Schedule III through V controlled substance on a prescription form for a valid medical purpose and in the course of medical practice.

(2) Schedule III through V prescriptions may be refilled up to five times within six months after date of issuance.

(c) Electronic prescription. A practitioner is permitted to issue and to dispense an electronic controlled substance prescription only in accordance with the requirements of the Code of Federal Regulations, Title 21, Part 1311.

(d) Controlled Substance prescriptions may not be postdated.

(e) Advanced practice registered nurses or physician assistants may only use the official prescription forms issued with their name, address, phone number, and DEA numbers, and the delegating physician's name and DEA number. The official prescription order form must be signed by the requesting advanced practice registered nurse or physician assistant, and by the delegating physician.

§315.4. Exceptions to Use of Form - Effective September 1, 2016.

(a) An official prescription form is not required for a medication order written for a patient who is admitted to a hospital at the time the medication order is written and dispensed.

(1) A practitioner may dispense or cause to be dispensed a Schedule II controlled substance to a patient who:

(A) is admitted to the hospital; and

(B) will require an emergency quantity of a controlled substance upon release from the hospital.

(2) Under paragraph (1) of this subsection, the controlled substance:

(A) may only be dispensed in a properly labeled container; and

(B) may not be more than a seven-day supply or the minimum amount needed for proper treatment of the patient until the patient can obtain access to a pharmacy, whichever is less.

(b) Subsection (a) of this section applies to a patient who is admitted to a hospital, including a patient:

(1) admitted to:

(A) a general hospital, special hospital, licensed ambulatory surgical center, surgical suite in a dental school, or veterinary medical school; or

(B) a hospital clinic or emergency room, if the clinic or emergency room is under the control, direction, and administration as an integral part of a general or special hospital;

(2) receiving treatment with a Schedule II controlled substance from a member of a Life Flight or similar medical team or an emergency medical ambulance crew or a paramedic-emergency medical technician operating as an extension of an emergency room of a general or special hospital; or

(3) receiving treatment with a Schedule II controlled substance while the patient is an inmate incarcerated in a correctional facility operated by the Texas Department of Criminal Justice or a correctional facility operating in accordance with the Health Services Plan adopted by the Texas Commission on Jail Standards.

(c) Subsection (a) of this section applies to an animal admitted to an animal hospital, including an animal that is a permanent resident of a zoo, wildlife park, exotic game ranch, wildlife management program, or state or federal research facility.

(d) An official prescription form is not required in a long-term care facility (LTCF) if:

- (1) an individual administers the substance to an inpatient from the facility's medical emergency kit;
- (2) the individual administering the substance is an authorized practitioner or an agent acting under the practitioner's order; and
- (3) the facility maintains the proper records as required for an emergency medical kit in an LTCF.

(e) An official prescription form is not required when a therapeutic optometrist administers a topical ocular pharmaceutical agent in compliance with:

- (1) the Texas Optometry Act; and
- (2) a rule adopted by the Texas Optometry Board under the authority of the Texas Optometry Act.

§315.5. Pharmacy Responsibility - Generally - Effective September 1, 2016.

(a) Upon receipt of a properly completed prescription form, a dispensing pharmacist must:

- (1) if the prescription is for a Schedule II controlled substance, ensure the date the prescription is presented is not later than 21 days after the date of issuance;
- (2) if multiple prescriptions are issued by the prescribing practitioner allowing up to a 90-day supply of Schedule II controlled substances, ensure each prescription is neither dispensed prior to the earliest date intended by the practitioner nor dispensed beyond 21 days from the earliest date the prescription may be dispensed;
- (3) record the date dispensed and the pharmacy prescription number;
- (4) indicate whether the pharmacy dispensed to the patient a quantity less than the quantity prescribed; and
- (5) if issued on an official prescription form, record the following information, if different from the prescribing practitioner's information:
 - (A) the brand name or, if none, the generic name of the controlled substance dispensed; or
 - (B) the strength, quantity, and dosage form of the Schedule II controlled substance used to prepare the mixture or compound.

(b) The prescription presented for dispensing is void, and a new prescription is required, if:

- (1) the prescription is for a Schedule II controlled substance, 21 days after issuance, or 21 days after any earliest dispense date; or
- (2) the prescription is for a Schedule III, IV, or V controlled substance, more than six months after issuance or has been dispensed five times during the six months after issuance.

§315.6. Pharmacy Responsibility - Electronic Reporting - Effective September 1, 2016.

Within seven days after the date a controlled substance prescription is dispensed, a pharmacy must electronically submit to the board the

following data elements from all dispensed controlled substance prescriptions:

- (1) the prescribing practitioner's DEA registration number including the prescriber's identifying suffix of the authorizing hospital or other institution's DEA number when applicable;
- (2) the official prescription form control number if dispensed from a written official prescription form, unless the prescription is electronic and meets the requirements of Code of Federal Regulations, Title 21, Part 1311;
- (3) the board's designated placeholder entered into the control number field if the prescription is electronic;
- (4) the patient's name, age or date of birth, and address including city, state, and zip code; or such information on the animal's owner if the prescription is for veterinarian services;
- (5) the date the prescription was issued and dispensed;
- (6) the NDC # of the controlled substance dispensed;
- (7) the quantity of controlled substance dispensed;
- (8) the pharmacy's prescription number; and
- (9) the pharmacy's DEA registration number.

§315.7. Pharmacy Responsibility - Oral, Telephonic, or Emergency Prescription - Effective September 1, 2016.

(a) If a pharmacy dispenses a controlled substance pursuant to an orally or telephonically communicated prescription from a practitioner or the practitioner's designated agent, the prescription must be promptly reduced to writing, including the information required:

- (1) by law for a standard prescription; and
 - (2) by law and this subchapter for an official prescription, if issued for a Schedule II controlled substance in an emergency situation.
- (b) After dispensing a Schedule II controlled substance pursuant to an orally or telephonically communicated prescription, the dispensing pharmacy must:
- (1) maintain the written record created under subsection (a) of this section;
 - (2) note the emergency nature of the prescription;
 - (3) upon receipt from the practitioner, attach the original official prescription to the orally or telephonically communicated prescription; and
 - (4) retain both documents in the pharmacy records.

(c) A pharmacy that dispenses Schedule III, IV, or V controlled substances pursuant to an orally or telephonically communicated prescription must inform the prescribing practitioner in the event of an emergency refill of the prescription.

(d) All records generated under this section must be maintained for two years from the date the substance was dispensed.

§315.8. Pharmacy Responsibility - Modification of Prescription - Effective September 1, 2016.

The pharmacy is responsible for documenting the following information regarding a modified prescription:

- (1) date the change or adding of information was authorized;
- (2) information that was authorized to be added or changed;

- (3) name of the prescribing practitioner granting the authorization; and
- (4) initials or identification code of the pharmacist.

§315.9. Pharmacy Responsibility - Out-of-State Practitioner - Effective September 1, 2016.

(a) A Schedule II controlled substance prescription issued by a practitioner in another state not on the board's official prescription form may be dispensed if:

- (1) the practitioner is authorized by the other state to prescribe the substance;
- (2) the pharmacy has a plan approved by and on file with the board allowing the activity; and
- (3) the pharmacy processes and submits the prescription according to the reporting requirements approved in the plan.

(b) The pharmacy may dispense a prescription for a Schedule III through V controlled substance issued by a practitioner in another state if the practitioner is authorized by the other state to prescribe the substance.

§315.10. Return of Unused Official Prescription Form - Effective September 1, 2016.

(a) An unused official prescription form is invalid and the practitioner or another person acting on behalf of the practitioner must return the unused form to the board with an appropriate explanation not later than the 30th day after the date:

- (1) the practitioner's license to practice, DEA number is canceled, revoked, suspended, denied, or surrendered or amended to exclude the handling of all Schedule II controlled substances; or
- (2) the practitioner is deceased.

(b) An individual who is an institutional practitioner must return an unused official prescription form to the administrator of the hospital or other training institution upon completion or termination of the individual's training at the hospital or institution. The administrator must return an unused official prescription form to the board not later than the 30th day after the date the individual completes or terminates all training programs.

(c) No individual may continue to use an official prescription form issued under an institutional practitioner's DEA number or similar number after the individual has been properly and individually licensed as a practitioner by the appropriate state health regulatory agency.

§315.11. Release of Prescription Data - Effective September 1, 2016.

(a) A person listed under §481.076(a) of the TCSA must show proper need for the information when requesting the release of prescription data. The showing of proper need is ongoing.

(b) A pharmacist may delegate access to prescription data to a pharmacy technician as defined by Texas Occupations Code, §551.003, employed at the pharmacy and acting under the direction of the pharmacist.

(c) A practitioner may delegate access to prescription data to an employee or other agent of the practitioner and acting at the direction of the practitioner.

§315.12. Schedule III through V Prescription Forms - Effective September 1, 2016.

(a) A practitioner, as defined in the TCSA, §481.002(39)(A), (C), and (D), may use prescription forms ordered through individual sources or through an electronic prescription that includes the controlled substances registration number issued by the board and meets all requirements of the TCSA.

(b) If a written prescription form is to be used to prescribe a controlled substance the dispensing practitioner must be registered with the DEA under both state and federal law to prescribe controlled substances.

§315.13. Official Prescription Form - Effective September 1, 2016.

(a) Accountability. A practitioner who obtains from the board an official prescription form is accountable for each numbered form.

(b) Prohibited acts. A practitioner may not:

- (1) allow another practitioner to use the individual practitioner's official prescription form;
- (2) pre-sign an official prescription blank;
- (3) post-date an official prescription; or
- (4) leave an official prescription blank in a location where the practitioner should reasonably believe another could steal or misuse a prescription.

(c) While not in use. While an official prescription blank is not in immediate use, a practitioner may not maintain or store the book at a location so the book is easily accessible for theft or other misuse.

(d) Voided. A practitioner must account for each voided official prescription form by sending the voided form to the board.

(e) Types of forms. Forms may be single or multiple copy forms as provided by the board.

(f) Faxed forms. Faxed official prescription forms will be accounted for as in the TCSA, §481.074(o).

§315.14. Official Prescription - Effective September 1, 2016.

(a) Report lost forms. Not later than close of business on the day of discovery, a practitioner must report a lost or stolen official prescription form to:

- (1) the local police department or sheriff's office in an effective manner; and
- (2) the board.

(b) Recovery report. Not later than close of business on the day of recovery of an official prescription form previously reported lost or stolen, a practitioner must, before using the recovered form, notify:

- (1) the local law enforcement agency to which the matter was originally reported; and
- (2) the board.

(c) Replacement/lost form. Not later than the close of business on the day that an official prescription is replaced or reported lost, with or without a replacement, the prescribing practitioner, or designated agent, shall report to the board the following:

- (1) patient name, address, date of birth or age;
- (2) all drug information; and
- (3) official prescription form control number.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600770

Gay Dodson, R.Ph.
Executive Director
Texas State Board of Pharmacy
Effective date: March 10, 2016
Proposal publication date: December 18, 2015
For further information, please call: (512) 305-8026

◆ ◆ ◆
TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.3, 703.11, 703.12, 703.14, 703.20, 703.21

The Cancer Prevention and Research Institute of Texas ("CPRIT" or "the Institute") adopts amendments to §§703.3, 703.11, 703.12, 703.14, 703.20, and 703.21 regarding requests for applications, clarification on grant applications, matching form due dates, the prevention percentage of overall grant funds, no cost extensions, tobacco free policy waivers, report due dates, and report approval rules. CPRIT adopts §§703.3, 703.11, 703.14, and 703.20 without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8721). CPRIT adopts §703.21 with changes to the proposed text to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8721) and the rule will be republished. CPRIT adopts the amendment to §703.12 without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9459). After consideration of the public comments responsive to the rule change proposed for §703.13, CPRIT will not adopt a rule change to §703.13 as proposed in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8721).

Reasoned Justification

The proposed amendments affect various aspects of the processes related to grants for cancer prevention and research. One proposed amendment removes the requirement that requests for applications (RFAs) be published in the *Texas Register* which eliminates a duplicative step when RFAs are announced on the CPRIT website and listserv. Another proposed amendment clarifies that CPRIT staff or CPRIT's third party grants administrator may contact the grant applicant to seek clarification on information provided in a grant application. The proposed amendments also change the due date of matching verification forms, clarify the annual ten percent cap on the allocation of grant award funds to cancer prevention grants, and directs the CEO to announce the full amount of grant award funds that are available to be awarded for the fiscal year. A proposed amendment to the "no cost extension" request process allows CPRIT's Chief Executive Officer to review and approve a request that is submitted outside of the specified deadline. Another proposed amendment allows grantees to request a waiver to the tobacco free policy; this is applicable to research projects that require tobacco and are conducted at the grantee's institution. The last series of proposed amendments affect grantee reports. One proposed amendment allows a grantee to receive more time in submitting required reports that are

due before the execution date of a contract. Another proposed amendment requires matching fund reports, progress reports, and Financial Status Reports (FSRs) be approved by, rather than simply submitted to, the Institute in order for a grantee to receive disbursement of grant funds.

A typographical error to the proposed amendment §703.21(b)(2)(C) must be corrected. The subsection should read: "Notwithstanding subsection (2), in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Program Officer may approve additional time for the Grant Recipient to prepare and submit the outstanding FSR(s). The Program Officer's approval may cover more than one FSR and more than one fiscal quarter." The word "one" was omitted from the last sentence of the subsection. This correction does not substantially change the meaning of the subsection as it was originally proposed.

Summary of Public Comments and Staff Recommendation

CPRIT received public comments from Kimberly F. Turner, Chief Audit Executive, Texas Tech University (Texas Tech) regarding proposed changes to §703.13 and from Wesley Harrott, Associate Vice President, Research Administration, The University of Texas M.D. Anderson Cancer Center (M.D. Anderson) regarding the proposed changes to §703.21.

Texas Tech submitted comments in reference to the proposed change to §703.13, which eliminates a program specific independent audit from the options a grantee may use to fulfill the audit requirement. Texas Tech contends that the program specific independent audit should remain a choice for grantees. In its public comment, Texas Tech asserts that a program specific independent audit is different from an agreed upon procedures audit. It is Texas Tech's opinion that retaining the option for a program specific independent audit, "provides a higher level of assurance as to the proper expenditure of CPRIT funds." While the agency does not concede the qualitative comparison made between the program specific independent audit and the agreed upon procedures option, CPRIT is persuaded that the program specific independent audit should remain an option for grantees at this time. The change originally proposed by the CPRIT will not be made. Texas Tech also comments suggesting that CPRIT obtain an annual audit of all expenditures for all grants made to institutions of higher education as defined by Texas Education Code §61.003. Texas Tech contends that, "This statewide engagement could be obtained at a much lower cost than the combined cost of multiple engagements the various higher education grant recipients must currently obtain." CPRIT declines to make this change to the rule because it is outside the scope of this proposed rulemaking.

M.D. Anderson submitted comments regarding proposed changes to §703.21. M.D. Anderson makes a general request that the rule be changed "to add a reasonable timeline for the CPRIT approval process e.g. 30 days for all reports and documents so that the disbursement of funds will be received in a timely manner." CPRIT declines to make this change to the rule because it is outside of the scope of the proposed rulemaking.

M.D. Anderson also comments with regard to the proposed change to §703.21(b)(2)(C), seeking clarity on how CPRIT will inform the grant recipient of the approval for additional time to prepare and submit additional FSRs. CPRIT has made a clarifying change to the proposed amendment to make clear that the Program Officer's approval will be in writing and maintained

in CPRIT's grant management system. While it is likely that CPRIT staff and the grant recipient will be communicating contemporaneously about the pending approval for additional time to prepare and submit outstanding FSRs, this non-substantive change ensures that the grant recipient will be notified of the Program Officer's approval via CPRIT's grant management system. Additionally, the same non-substantive change has been added to §703.21(b)(3)(C) to provide the same clarity.

The amendment originally proposed to §703.13 and published in the December 4, 2015, issue of the *Texas Register* will not be made. The proposed amendments to §703.21 will be republished to reflect the correction of the typographical error and the non-substantive change in the proposed amendment to §703.21(b)(2)(C). The remaining amendments to Chapter 703 will be adopted as published in the December 4, and December 25, 2015, issues of the *Texas Register* and will not be republished.

The rule changes are adopted under the authority of the Texas Health and Safety Code Annotated, §102.108 and §102.251, which provides the Institute with broad rule-making authority to administer the chapter, including rules for awarding grants.

§703.21. Monitoring Grant Award Performance and Expenditures.

(a) The Institute, under the direction of the Chief Executive Officer, shall monitor Grant Awards to ensure that Grant Recipients comply with applicable financial, administrative, and programmatic terms and conditions and exercise proper stewardship over Grant Award funds. Such terms and conditions include requirements set forth in statute, administrative rules, and the Grant Contract.

(b) Methods used by the Institute to monitor a Grant Recipient's performance and expenditures may include:

(1) Financial Status Reports Review - Quarterly financial status reports shall be submitted to the Institute within 90 days of the end of the state fiscal quarter (based upon a September 1 - August 31 fiscal year). The Institute shall review expenditures and supporting documents to determine whether expenses charged to the Grant Award are:

(A) Allowable, allocable, reasonable, necessary, and consistently applied regardless of the source of funds; and

(B) Adequately supported with documentation such as cost reports, receipts, third party invoices for expenses, or payroll information.

(2) Timely submission of Financial Status Reports - The Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the financial status report for that quarter is not submitted to the Institute within 30 days of the FSR due date. Waiver of reimbursement of project costs incurred during the reporting period also applies to Grant Recipients that have received advancement of Grant Award funds.

(A) For purposes of this rule, the "FSR due date" is 90 days following the end of the state fiscal quarter.

(B) The Chief Executive Officer may approve a Grant Recipient's request to defer submission of the reimbursement request for the current fiscal quarter until the next fiscal quarter if, on or before the original FSR due date, the Grant Recipient submits a written explanation for the Grant Recipient's inability to complete a timely submission of the FSR.

(C) Notwithstanding subsection (2), in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may ap-

prove additional time for the Grant Recipient to prepare and submit the outstanding FSR(s). The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one FSR and more than one fiscal quarter.

(D) In order to receive disbursement of grant funds, the most recently due FSR must be approved by CPRIT.

(3) Grant Progress Reports - The Institute shall review Grant Progress Reports to determine whether sufficient progress is made consistent with the scope of work and timeline set forth in the Grant Contract.

(A) The Grant Progress Reports shall be submitted at least annually, but may be required more frequently pursuant to Grant Contract terms or upon request and reasonable notice of the Institute.

(B) The annual Grant Progress Report shall be submitted within sixty (60) days after the anniversary of the effective date of the Grant Contract. The annual Grant Progress Report shall include at least the following information:

(i) An affirmative verification by the Grant Recipient of compliance with the terms and conditions of the Grant Contract;

(ii) A description of the Grant Recipient's progress made toward completing the scope of work specified by the Grant Contract, including information, data, and program metrics regarding the achievement of project goals and timelines;

(iii) The number of new jobs created and the number of jobs maintained for the preceding twelve month period as a result of Grant Award funds awarded to the Grant Recipient for the project;

(iv) An inventory of the equipment purchased for the project in the preceding twelve month period using Grant Award funds;

(v) A verification of the Grant Recipient's efforts to purchase from suppliers in this state more than 50 percent goods and services purchased for the project with grant funds;

(vi) A Historically Underutilized Businesses report;

(vii) Scholarly articles, presentations, and educational materials produced for the public addressing the project funded by the Institute;

(viii) The number of patents applied for or issued addressing discoveries resulting from the research project funded by the Institute;

(ix) A statement of the identities of the funding sources, including amounts and dates for all funding sources supporting the project;

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report, which shall be submitted pursuant to the timeline in §703.11. In order to receive disbursement of grant funds, the most recently due verification of the amount of Matching Funds must be approved by CPRIT;

(xi) All financial information necessary to support the calculation of the Institute's share of revenues, if any, received by the Grant Recipient resulting from the project; and

(xii) A single audit determination form.

(C) Notwithstanding subsection (B), in the event that the Grant Recipient and Institute execute the Grant Contract after the effective date of the Grant Contract, the Chief Program Officer may approve additional time for the Grant Recipient to prepare and submit the

outstanding reports. The approval shall be in writing and maintained in the Institute's electronic Grants Management System. The Chief Program Officer's approval may cover more than one report and more than one fiscal quarter.

(D) In addition to annual Grant Progress Reports, a final Grant Progress Report shall be filed no more than ninety (90) days after the termination date of the Grant Contract. The final Grant Progress Report shall include a comprehensive description of the Grant Recipient's progress made toward completing the scope of work specified by the Grant Contract, as well as other information specified by the Institute.

(E) The Grant Progress Report will be evaluated by a grant manager pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant Progress Report will be reviewed by the Institute's financial staff. In order to receive disbursement of grant funds, the final progress report must be approved by CPRIT.

(F) If the Grant Progress Report evaluation indicates that the Grant Recipient has not demonstrated progress in accordance with the Grant Contract, then the Chief Program Officer shall notify the Chief Executive Officer and the General Counsel for further action.

(i) The Chief Program Officer shall submit written recommendations to the Chief Executive Officer and General Counsel for actions to be taken, if any, to address the issue.

(ii) The recommended action may include termination of the Grant Award pursuant to the process described in §703.14 of this chapter (relating to Termination, Extension, and Close Out of Grant Contracts).

(G) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

(H) In order to receive disbursement of grant funds, the most recently due progress report must be approved by CPRIT.

(I) If a Grant Recipient fails to submit the Grant Progress Report within 60 days of the anniversary of the effective date of the Grant Contract, then the Institute shall not disburse any Grant Award funds as reimbursement or advancement of Grant Award funds until such time that the delinquent Grant Progress Report is approved.

(J) In addition to annual Grant Progress Reports, Product Development Grant Recipients shall submit a Grant Progress Report at the completion of specific tranches of funding specified in the Award Contract. For the purpose of this subsection, a Grant Progress Report submitted at the completion of a tranche of funding shall be known as "Tranche Grant Progress Report."

(i) The Institute may specify other required reports, if any, that are required to be submitted at the time of the Tranche Grant Progress Report.

(ii) Grant Funds for the next tranche of funding specified in the Grant Contract shall not be disbursed until the Tranche Grant Progress Report has been reviewed and approved pursuant to the process described in this section.

(4) Desk Reviews - The Institute may conduct a desk review for a Grant Award to review and compare individual source documentation and materials to summary data provided during the Financial Status Report review for compliance with financial requirements set forth in the statute, administrative rules, and the Grant Contract.

(5) Site Visits and Inspection Reviews - The Institute may conduct a scheduled site visit to a Grant Recipient's place of business to review Grant Contract compliance and Grant Award performance issues. Such site visits may be comprehensive or limited in scope.

(6) Audit Reports - The Institute shall review audit reports submitted pursuant to §703.13 of this chapter (relating to Audits and Investigations).

(A) If the audit report findings indicate action to be taken related to the Grant Award funds expended by the Grant Recipient or for the Grant Recipient's fiscal processes that may impact Grant Award expenditures, the Institute and the Grant Recipient shall develop a written plan and timeline to address identified deficiencies, including any necessary Grant Contract amendments.

(B) The written plan shall be retained by the Institute as part of the Grant Contract record.

(c) All required Grant Recipient reports and submissions described in this section shall be made via an electronic grant portal designated by the Institute, unless specifically directed to the contrary in writing by the Institute.

(d) The Institute shall document the actions taken to monitor Grant Award performance and expenditures, including the review, approvals, and necessary remedial steps, if any.

(1) To the extent that the methods described in subsection (b) of this section are applied to a sample of the Grant Recipients or Grant Awards, then the Institute shall document the Grant Contracts reviewed and the selection criteria for the sample reviewed.

(2) Records will be maintained in the electronic Grant Management System as described in §703.4 of this chapter (relating to Grants Management System).

(e) The Chief Compliance Officer shall be engaged in the Institute's Grant Award monitoring activities and shall notify the General Counsel and Oversight Committee if a Grant Recipient fails to meaningfully comply with the Grant Contract reporting requirements and deadlines, including Matching Funds requirements.

(f) The Chief Executive Officer shall report to the Oversight Committee at least annually on the progress and continued merit of each Grant Program funded by the Institute. The written report shall also be included in the Annual Public Report. The report should be presented to the Oversight Committee at the first meeting following the publication of the Annual Public Report.

(g) The Institute may rely upon third parties to conduct Grant Award monitoring services independently or in conjunction with Institute staff.

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600747

Heidi McConnell
Chief Operating Officer
Cancer Prevention and Research Institute of Texas
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
Proposal publication date: December 25, 2015
For further information, please call: (512) 463-3190



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 adopts amendments to 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190; the repeal of existing 28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149; and new 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, 5.4145, and 5.4912. These amendments, repeals, and new sections implement the funding portions of SB 900, 84th Legislature, Regular Session (2015). Amended §§5.4101, 5.4102, 5.4124, 5.4125, 5.4135, 5.4161, 5.4171, 5.4172, 5.4173, 5.4185, and 5.4187 and new §5.4912 are adopted with changes to the proposed text as published in the October 9, 2015, issue of the *Texas Register* (40 TexReg 7020). The other amendments, repeals and new sections are adopted without changes and will not be republished.

REASONED JUSTIFICATION. SB 900 changed the funding structure of the Texas Windstorm Insurance Association (association), the residual insurer of last resort for windstorm and hail insurance in the designated catastrophe area along the Texas coast. The association provides windstorm and hail insurance coverage to those who are unable to obtain that coverage in the private market. The adoption of the amendments, repeals, and new sections in this order are necessary to implement the changed funding structure. These sections concern funding for losses and operating expenses in excess of the association's net premium and other revenue and amounts available in the catastrophe reserve trust fund. These sections also concern procedures for ordering premium surcharges and assessments of association member insurers under Insurance Code Chapter 2210, Subchapters B-1 and M.

Since 2009, the Insurance Code has provided that the association must pay for losses that exceed its premium and other revenue and amounts available in the catastrophe reserve trust fund with the proceeds of three classes of public securities, issued on the association's behalf by the Texas Public Finance Authority (TPFA). Statute provided for the payment of the public securities from the association's net premium and other revenue, assessments on association member insurers, premium surcharges on certain property and casualty insurance policies in the catastrophe area, or a combination thereof, depending on the class of public security. TDI adopted rules in 2011 to implement the statute and adopted new and amended rules in 2014

to implement statutory changes, including changes in the lines of insurance subject to a premium surcharge and the creation of an alternative source of payment for certain public securities.

Under SB 900, losses that are greater than the association's net premium and other revenue and amounts in the catastrophe reserve trust fund are no longer paid from the proceeds of three classes of public securities. Instead, these losses must be paid with proceeds of alternating classes of public securities and member insurer assessments, beginning with class 1 public securities and ending with class 3 assessments. All three classes of public securities are to be paid for with the association's net premium and other revenue and, if that is insufficient, with a premium surcharge on association policies. If issuing class 2 or class 3 public securities payable from these sources is not possible or the commissioner of insurance determines that issuance is financially unreasonable, TPFA may issue class 2 or class 3 public securities paid for from a contingent source: a premium surcharge on certain property and casualty policies and all association and Texas FAIR Plan Association policies insuring property located in the catastrophe area.

Sections 5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149 are repealed under Insurance Code §§2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001. These sections were previously adopted to implement HB 3, 82nd Legislature, 1st Called Session (2011). Under HB 3 and its predecessor, HB 4409, 81st Legislature, Regular Session (2009), losses in excess of the association's net premium and other revenue were paid from the proceeds of three classes of public securities. HB 3 amended Insurance Code Chapter 2210 to include §2210.6136, which allowed the commissioner to authorize the issuance of certain class 2 public securities in the event the association's class 1 public securities were not marketable.

TDI adopted §§5.4126 - 5.4128, 5.4148 and 5.4149 to establish processes for the issuance and repayment of class 2 public securities under Insurance Code §2210.6136. Because SB 900, in addition to changing the association's funding structure, repealed Insurance Code §2210.6136, §§5.4126 - 5.4128, 5.4148 and 5.4149 are obsolete. SB 900 amended Insurance Code §2210.613 to change the payment source for class 2 public securities paid under that section from a combination of premium surcharges on certain property and casualty policies in the catastrophe area and member assessments to premium surcharges on association policies. TDI adopted §5.4143 and §§5.4145 - 5.4147 to address the deposit of amounts collected from member assessments and the handling of excess member assessment revenue. Because member assessments are no longer used to pay for public securities, these sections are obsolete. TDI repeals of §5.4142, which addressed excess obligation revenue fund amounts, because SB 900 amended Insurance Code §2210.609 to remove the obligation revenue fund. Excess funds are addressed in amended §5.4144 and replacement §5.4145.

The amendments, repeals, and new sections conform TDI rules to current law. The repealed sections implemented Insurance Code §2210.6136, which provided for an alternative source of payment for certain class 2 public securities and which SB 900 repealed. The amended, replacement, and new sections establish procedures for the approval and determination of premium surcharges on association policies and procedures for the issuance of class 2 or class 3 public securities paid from the contingent source. The amendments also contain conforming changes for clarity and agency style.

TDI accepted written comments on the proposed amendments, replacements, and repealed and new sections from October 9, 2015, to November 9, 2015, and heard testimony at a public hearing on October 28, 2015. In response to comments on the proposal, TDI has adopted changes to the proposed text in §§5.4124, 5.4125, 5.4172, 5.4185, and 5.4187. None of the changes introduce new subject matter, create additional costs, or affect persons other than those previously on notice from the proposal.

The following paragraphs explain amended 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4190; replacement 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145 and new 28 TAC §5.4912 in greater detail.

§5.4101. Applicability. The association operates under a plan of operation. Section 5.4001 contains the association's plan of operation, but over time that plan has been augmented by the adoption of other sections. Section 5.4101(a) is amended to reflect the addition or deletion of sections. Sections listed here will be part of the association's plan of operation and will control over any conflicting provision in §5.4001 of Division 3.

Section 5.4101(a) as adopted is revised from the proposed text to add two section headings and correct a third section heading in the parenthetical describing the sections listed in the applicability statement.

§5.4102. Definitions. Section 5.4102 has been amended to delete definitions relating to the implementation of Insurance Code §2210.6136, which SB 900 repealed, and to add new definitions related to implementation of the new funding structure under SB 900. New terms that are defined in this section include: "association surcharge," "association surcharge percentage," "authorized representative of the department," "class 2 payment obligation," "class 3 payment obligation," "contingent surcharge," "net investment income," and "net premium payment obligations." Existing definitions for "class 1 payment obligation," "contractual coverage amount," "net gain from operations," "net revenues," "other revenue," "premium," and "premium surcharge trust funds" have also been changed to conform to the new funding structure. The definition of "insured property" is moved from §5.4172 of Division 3 to this section. Other terms are amended nonsubstantively to conform to agency style.

§5.4121. Financing Arrangements. Insurance Code §2210.072 and §2210.612 permit the association to enter into financing arrangements directly with a market source to enable the association to pay losses or obtain public securities under Insurance Code §2210.072. Conforming changes are made to §5.4121 to reflect that under SB 900, net premium and other revenue of the association is pledged for the payment of class 1, class 2, and class 3 public securities issued under Insurance Code §§2210.612, 2210.613, and 2210.6131, respectively. The association may pay a financing arrangement with, among other sources, net premium or other revenue that is not required for payment of class 1, class 2, or class 3 payment obligations. The section is also changed to reflect that, due to the repeal of Insurance Code §2210.6136, the association will not have premium surcharge or member assessment repayment obligations.

§5.4123. Public Securities Request, Approval, and Issuance. Before public securities may be issued, Insurance Code §2210.604 requires the association to submit a request for the issuance of public securities. The commissioner must

approve that request before TPFA may issue public securities on behalf of the association. Section 5.4123 is amended to delete references to existing §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities) of Division 3. Existing §5.4126 implements Insurance Code §2210.6136, which SB 900 repealed. TDI repeals and replaces §5.4126. This section is also amended to remove reinsurance proceeds from the list of information the commissioner may rely on in considering the association's request for the issuance of public securities. Reinsurance proceeds are no longer applicable in this determination because SB 900 amended Insurance Code §2210.453 to require that reinsurance attach at a point that is not less than the aggregate amount of all funding available to the association under Subchapter B-1.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event. Class 1 public securities may be issued before or after a catastrophic event. Conforming changes are made to §5.4124 to reflect that under SB 900, the maximum amount of pre-event class 1 public securities that TPFA may issue is changed from \$1 billion to \$500 million. The section is also amended to make clear that, for the purposes of determining the amount of pre-event public securities that can be issued, the Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law are pre-event class 1 public securities under the new law.

Amended §5.4124(e) also clarifies when certain pre-event public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catastrophe year. Under §5.4124 as amended, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum authorized amount of outstanding class 1 public securities.

In response to a comment, amended §5.4124(e) differs from the proposed version to clarify that in that subsection, the word "proceeds" refers to "public security proceeds."

§5.4125. Issuance of Public Securities after a Catastrophic Event. Conforming changes are made to Section 5.4125 to reflect that under SB 900, the Series 2014 Pre-Event Class 1 Public Securities that TPFA issued under the previous law are considered pre-event class 1 public securities when determining the amount of post-event class 1 public securities that may be issued. Conforming changes are also made to reflect the new funding structure under SB 900, which provides six layers of alternating public securities and assessments on association members, instead of three layers of public securities. The section is also amended to clarify that for the issuance of class 2 or class 3 public securities under Insurance Code §2210.6132, the association must make a separate request under §5.4127 of Division 3.

Amended §5.4125(d) also clarifies when certain public security proceeds are considered depleted. Except as provided in §5.4161, the maximum amount of class 1 public securities that may be outstanding must be issued and the proceeds spent before class 1 assessments may be accessed for the same catas-

trophe year. Under §5.4125 as amended, public security proceeds used to pay issuance costs, establish a reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year the remaining principal is depleted to pay for a catastrophe or used to retire the public securities. The amounts of those proceeds that are considered depleted would then need to be counted in determining the amount of class 1 public securities that must be issued to reach the maximum amount of outstanding class 1 public securities.

In response to a comment, amended §5.4125(d) differs from the proposed version to clarify that in that subsection, the word "proceeds" refers to public security proceeds.

§5.4126. Determination of the Association Surcharge Percentage. This order repeals and replaces §5.4126 (relating to Alternative for Issuing Class 2 and Class 3 Public Securities). The repealed section implemented Insurance Code §2210.6136, which SB 900 repealed.

The replacement section implements provisions in Insurance Code §§2210.612, 2210.613, and 2210.6131, which provide that class 1, class 2, and class 3 public securities may be payable from premium surcharges on association policies (association surcharges). While public securities are outstanding, the association is required to quarterly determine if its net premium and other revenue are sufficient for payment of its payment obligations for any outstanding class 1, class 2, and class 3 public securities. If the association determines its net premium and other revenue are not sufficient, it must promptly request that the commissioner approve association surcharges. The replacement section also requires the association to request an association surcharge any time, including before the public securities have been issued, if it determines its premium and revenue is not sufficient.

The replacement §5.4126 specifies the information that the association must provide to the commissioner in a request to implement an association surcharge and it allows the commissioner to independently determine that an association surcharge is necessary. The commissioner will make a surcharge determination within 10 business days. The section contemplates that the association will surcharge all association policies effective on a specified surcharge date, and not monthly as the policies renew.

§5.4127. Contingent Sources of Payment for Class 2 and Class 3 Public Securities. This order repeals and replaces §5.4127 (relating to Payment of Class 2 Public Securities Issued Under §5.4126 and Repayment of Premium Surcharge and Member Assessments). The repealed section implemented Insurance Code §2210.6136, which SB 900 repealed.

The replacement section implements new Insurance Code §2210.6132, which SB 900 added. Insurance Code §2210.6132 provides that if the commissioner, after consultation with TPFA, determines that class 2 or class 3 public securities payable from the association's premium and association surcharges cannot be issued or it is "financially unreasonable to do so," then the commissioner must order that class 2 and class 3 public securities are payable from premium surcharges on coastal property and automobile policies (contingent surcharges). The replacement §5.4127 specifies the information the association must provide to the commissioner in order to obtain approval for the repayment of public securities from contingent surcharges.

§5.4134. Excess Public Security Proceeds. Section 5.4134 states how excess public security proceeds may be used and

the conditions under which public securities may be paid before their full term. This section is amended with minor conforming and stylistic changes.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis. Section 5.4135 is amended to add the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, which SB 900 added, to the list of items the association must consider when determining the amount of class 1 public securities that cannot be issued. The section is also amended to reflect TDI's current writing style guidelines, and to delete references to the association's premium surcharge and member assessment repayment obligations because these relate to the implementation of Insurance Code §2210.6136, which SB 900 repealed. The section also deletes references to reinsurance or alternative risk financing as alternatives to funding through public securities because SB 900 requires that reinsurance and alternative risk financing be used to provide funding only after all funding provided for under Subchapter B-1 of Chapter 2210 has been accessed.

§5.4136. Association Rate Filing. Section 5.4136 outlines what the association's rates must consider while public securities payable from the association's net premium and other revenue are outstanding. Conforming changes are made to this section to reflect changes SB 900 made to the association's funding structure. Under the new funding structure, class 1, class 2, or class 3 public securities may be paid from the association's net premium and other revenue. Under the pre-SB 900 funding structure, only class 1 public securities could be paid from the association's net premium and other revenue. The section is also amended to make clear that the section's requirements apply to the Series 2014 Pre-Event Class 1 Public Securities issued before the enactment of SB 900.

§5.4141. Class 1 Public Security Trust Fund. The association must deposit revenues pledged for the payment of class 1 public securities into a trust fund. Section 5.4141 is amended to conform it to changes made by SB 900 regarding this fund. SB 900 eliminated the "Obligation Revenue Fund" into which the association deposited net premium and other revenue for the payment of class 1 public securities, and created the "Class 1 Public Security Trust Fund" into which the association must deposit new premium, other revenue, and association surcharges for the payment of class 1 public securities. The section is also amended to state that the association may not use or encumber association surcharges used to pay for class 1 public securities.

§5.4142. Class 2 and Class 3 Public Security Trust Funds. This order repeals and replaces §5.4142 (relating to Excess Obligation Revenue Fund Amounts). Excess funds are addressed in amended §5.4144 and replacement §5.4145 (relating to Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue, respectively). The replacement §5.4142 implements SB 900's amendments to Insurance Code §2210.609, which create the class 2 and class 3 public security trust funds for the deposit of the association's net premium, other revenue, and association surcharges.

§5.4143. Premium Surcharge Trust Fund. This order repeals and replaces §5.4143 (relating to Trust Fund for the Payment of Class 2 Public Securities). The repealed §5.4143 addressed the deposit of premium surcharges collected under Insurance Code §2210.613, which SB 900 amended. The replacement §5.4143 provides for the trust fund, or funds, where the association and other insurers must deposit contingent surcharges,

which may be required to pay for class 2 or class 3 public securities. This replacement section incorporates large sections of existing §5.4143, as both address the deposit of surcharges on non-association, coastal policies by insurers.

§5.4144. Excess Premium Surcharge Revenue. Conforming changes are made to Section 5.4144 to reflect that under SB 900, the association may impose association surcharges to help pay for class 1, class 2, or class 3 public securities, and the commissioner may order contingent surcharges to pay for class 2 or class 3 public securities.

§5.4145. Excess Net Premium and Other Revenue. This order repeals and replaces §5.4145 (relating to Excess Class 2 Member Assessment Revenue). The repealed §5.4145 is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M, so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities. The replacement §5.4145 addresses what may be done with excess net premium and other revenue because the statute does not address this directly. Under replacement §5.4145, excess net premium and other revenue collected in the public security trust funds is an association asset and may be used for any purpose authorized in Insurance Code §2210.056 or deposited in the Catastrophe Revenue Trust Fund (CRTF). The replacement section largely follows existing §5.4142 (Excess Obligation Revenue Fund Amounts), which addresses what happens to excess net premium and other revenue used to pay for class 1 public securities under pre-SB 900 law.

§5.4146. Member Assessment Trust Fund for the Repayment of Class 3 Public Securities. This order repeals, without replacing, §5.4146. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M, so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4147. Excess Class 3 Member Assessment Revenue. This order repeals, without replacing, §5.4147. This section is no longer necessary because SB 900 amended Insurance Code Chapter 2210, Subchapter M, so that insurer member assessments are used to pay for association losses directly, rather than being used to pay for public securities.

§5.4148. Repayment Obligation Trust Fund for the Payment of Amounts Owed Under §5.4127. This order repeals, without replacing, §5.4148. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4149. Excess Repayment Obligation Trust Fund Amounts. This order repeals, without replacing, §5.4149. This section is no longer necessary because it relates to the implementation of Insurance Code §2210.6136, which SB 900 repealed.

§5.4161. Member Assessments. Amendments to §5.4161 reflect changes SB 900 made to the association's funding structure. SB 900 amended the association's funding provisions to provide loss funding through six alternating layers of public securities and assessments on association member insurers. The amendments specify the information the association must provide when requesting the commissioner approve a member insurer assessment.

Section 5.4161(c) provides that if TPFA cannot issue all or any portion of the authorized amount of class 1 public securities, the association may request and the commissioner may approve the imposition of a class 1 assessment on the association's member

insurance companies under Insurance Code §2210.0725. This addresses what happens if, for a catastrophe year, TPFA cannot issue all of the class 1 public securities authorized by Insurance Code §2210.072. The amendments also make clear that if the commissioner approves a class 1 assessment under subsection (c), subsequent layers of public securities and assessments must be issued and ordered as provided for in statute.

Section 5.4161(i) is revised from the text as proposed by inserting the words "Insurance Code" before a citation to "Chapter 2210." This revision is necessary to clarify which code the cited chapter is in.

§5.4171. Premium Surcharge Requirements. Amendments to this section reflect the fact that SB 900 created two distinct types of premium surcharges. One type, association surcharges, may be assessed on association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131. The other type, contingent surcharges, may be assessed under Insurance Code §2210.6132 on certain property and casualty policies, and all association and Texas FAIR Plan Association policies, insuring property located in the catastrophe area. The amendments distinguish between the two types of premium surcharges.

Section 5.4171(c) as adopted is revised from the proposed text to add the words "of this section" following a reference to "subsection (a)." In addition, subsection (c) is revised from the proposed text to add a section heading in the parenthetical listing of sections cited in the subsection.

§5.4172. Premium Surcharge Definitions. Amendments to §5.4172 include new definitions to distinguish between the two distinct types of premium surcharges created by SB 900. Some definitions for terms that are used in §§5.4121 - 5.4167 of Division 3 are also moved from §5.4172 to §5.4102.

In response to a comment, the definition of "association-insured property" is amended to mean immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the association's plan of operation.

§5.4173. Determination of the Contingent Surcharge Percentage. Amendments to §5.4173 address the determination of only the contingent surcharge percentage, which the commissioner will determine if approving a contingent surcharge as authorized under Insurance Code §2210.6132. Replacement §5.4126 addresses the determination of the association surcharge percentage.

Section 5.4173(c) as adopted is revised from the proposed text to correct a reference to the section heading for §5.4188 (Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions).

§5.4181. Premiums to be Surcharged. Amendments to §5.4181 reflect that SB 900 created two distinct types of premium surcharges.

§5.4182. Method for Determining the Premium Surcharges. Section 5.4182 describes the method for determining the premium surcharges and lists the policies to which the method will apply. Amendments to this section reflect that SB 900 created two distinct types of premium surcharges and to add the method for determining the contingent surcharge.

§5.4184. Application of the Premium Surcharges. Amendments to §5.4184 reflect that SB 900 created two distinct types of premium surcharges.

The amendments also describe how association surcharges must be applied to association policies depending on whether the policies have been updated as required by newly adopted §5.4912. Under the amendments, association policies that are in effect on the surcharge date specified in the commissioner's order in §5.4126(d) and that meet the requirements of newly adopted §5.4912-and which therefore are immediately subject to any surcharge the commissioner may order under §5.4126-are subject to a premium surcharge on the date specified in the commissioner's order. Association policies that do not meet the requirements of newly adopted §5.4912 are subject to surcharge when they are issued or renewed during the surcharge period described in paragraphs (9) and (10) of §5.4126(b).

The amendments also state that only contingent surcharges are refundable; association surcharges are nonrefundable.

§5.4185. Mandatory Premium Surcharge Collection. Amendments to §5.4185 reflect that SB 900 created two distinct types of premium surcharges and remove references to repealed §5.4127. The amendments also describe how the association must collect association surcharges depending on whether association policies have been updated as required by newly adopted §5.4912. The association must collect association surcharges in full when due for policies compliant with §5.4912. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

Section 5.4185 is also amended to state that failure to pay an association surcharge constitutes failure to pay premium for purposes of policy cancellation.

In response to comments, the adopted amendments in §5.4185 differ from the proposed amendments in that subsection (e) is revised to require insurers to either: 1) apply funds in a given payment to any contingent surcharges due in that payment before the insurer may apply funds in the same payment to premiums; or 2) apply funds in a given payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment, before the insurer may apply funds in the same payment to premiums. For example, if an insurer choosing to apply 1) above received \$250 for a payment in which \$250 was due for premium and \$10 was due for a surcharge, the insurer would apply \$10 to surcharges and \$240 to premium. If that same insurer chose to apply 2), the insurer would apply \$9.62 $\{ \$9.62 = (10/260) \times \$250 \}$ to surcharges and \$240.38 $\{ \$240.38 = (250/260) \times \$250 \}$ to premium. This is because surcharges represent 10/260, or 1/26th of the total payment due and \$9.62 is 1/26th of the total payment received.

§5.4186. Remittance of Contingent Surcharges. Amendments to §5.4186 reflect that SB 900 created two distinct types of premium surcharges and remove the section heading of repealed §5.4143, and replace it with the section heading of the replacement §5.4143.

§5.4187. Offsets. Amendments to §5.4187 reflect that SB 900 created two distinct types of premium surcharges.

In response to comments, §5.4187 is amended to allow an insurer to refund surcharges, and offset those refunded surcharges, if the insurer rescinds a policy for fraud.

§5.4188. Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions. Amendments to §5.4188 reflect that SB 900 created two distinct types of premium surcharges. The amendments state

that the association may not increase association surcharges to pay for premium taxes or agent commissions, but that insurers may increase contingent surcharges in an amount equal to any premium or maintenance tax attributable to the contingent surcharge and owed to the comptroller.

§5.4189. Notification Requirements. Amendments to §5.4189 reflect that SB 900 created two distinct types of premium surcharges. The amendments require the association to provide a notice to policyholders receiving an association surcharge. The notice is similar to the one insurers must provide to policyholders receiving a contingent surcharge, but states that an association surcharge will not be refunded in the event of policy cancellation.

§5.4190. Annual Premium Surcharge Report. Amendments to §5.4190 reflect that SB 900 created two distinct types of premium surcharges. One of the amendments requires the association to provide TDI with an annual premium surcharge report following the end of a calendar year in which an association surcharge was in effect. This requirement is the same as the existing requirement for other insurers.

§5.4912. Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131. New §5.4912 appears in Division 10 of Subchapter E of Chapter 5, Title 28, Texas Administrative Code. The section requires the association to file new policy forms that provide that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 and the deadline by which policyholders must pay the surcharge. The declarations page must notify the policyholder of the possibility of surcharge and that failure to pay any surcharge will result in policy cancellation.

Section 5.4912(b) as adopted is revised from the proposed text to add the words "of this section" following two references to "subsection (a)."

SUMMARY OF COMMENTS AND AGENCY RESPONSE.

Commenters: TDI received written comments from the Hartford Financial Services Group, Inc., the Insurance Council of Texas (ICT), and the Texas Windstorm Insurance Association and oral comments from the Insurance Council of Texas. ICT's comments were in support of the proposal, with changes; comments from the Hartford and the association recommended changes, but did not specify support or opposition.

Comment on §5.4124 and §5.4125. A commenter suggests amending proposed §5.4124(e) and §5.4125(d) to clarify that in these subsections, the word "proceeds" refers to "public security proceeds."

Agency Response. The adopted amendments clarify §5.4124(e) and §5.4125(d) as suggested.

Comment on §5.4172. A commenter suggests amending the definition of "association-insured property" in proposed §5.4172(3) to mean "immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property, as designated in the association's plan of operation," to be consistent with Insurance Code §2210.004.

Agency Response. The adopted §5.4172(3) defines "association-insured property" as suggested.

Comment on §5.4184. A commenter notes that under proposed §5.4184, contingent surcharges are refundable, but that association surcharges are not. The commenter states that nothing in the statute requires that contingent surcharges be refundable

and suggests that if contingent surcharges are refundable, then association surcharges should also be refundable.

The commenter expresses concern over the fact that proposed §5.4184 requires insurers to refund contingent surcharges to policyholders after the insurer has remitted the funds to the association or the public security trust fund. Although the rules allow insurers to claim an "offset" for surcharges that were refunded to policyholders after the funds were remitted to the association, there can be cases where insurers cannot recoup these amounts through offsets. In these cases, the insurer will have to refund a policyholder from its own funds. The commenter suggests that §5.4184 either provide for insurers to remit premium surcharges as they are earned, or require the association or the applicable trust fund to make refunds to the insurer if the insurer cannot offset.

Agency Response. TDI declines to make changes to the proposed rule. While TDI agrees that under the rule as proposed and adopted there may be instances where offsets are unavailable to insurers, TDI expects unrecoverable amounts to be small. This is because these instances will involve insurers with small numbers of policies and surcharges near the end of the lifespan of the public securities.

In addition, both options the commenter suggests as solutions present problems. Requiring insurers to remit surcharges as they are earned would require insurers to calculate the earned portion of each surcharge each month. These costs are not described in the proposal's cost note. Requiring the association or trust fund to refund the insurer would give insurers a claim to funds in the public security trust fund while the public securities are outstanding, and it would impose costs on the association not contemplated in the proposed rules.

As to the refundability of surcharges, the commenter is correct that the statute does not state that contingent surcharges must be refundable. TDI amended §5.4184 to provide for refunds of premium surcharges because HB 3, 82nd Legislature, First Called Session (2011), removed a prohibition on refunds in Insurance Code §2210.613. Now that SB 900 has created two distinct types of surcharges, with association surcharges, along with net premium and other revenue, as the first source of repayment for all classes of public securities, the rules are amended so that association surcharges are collected in full when due. This process of collection is easier for the association to implement when association surcharges are nonrefundable.

Comment on §5.4185. A commenter suggests that proposed §5.4185 should be amended to provide that failure to pay contingent surcharges would also constitute failure to pay premium for purposes of policy cancellation. The commenter also states that proposed §5.4185(e), which states that all policyholder payments must be applied to surcharges, before being applied to premium, appears to contradict proposed §5.4185(b), which states that surcharges must be collected proportionately as the insurer collects premium. The commenter suggests that TDI either delete or clarify subsection (e).

Agency Response. TDI declines the commenter's first suggestion because there is no indication that the legislature intended that failure to pay contingent surcharges constitute failure to pay premium for purposes of policy cancellation. Insurance Code §2210.6132 does not include such a provision, while the statutes on association surcharges, Insurance Code §§2210.612, 2210.613, and 2210.6131, explicitly do.

In response to the commenter's second suggestion, the adopted amendments in §5.4185 differ from the proposed amendments in that subsection (e) is amended to require insurers to either: 1) apply funds in a given payment to any contingent surcharges due in that payment before the insurer may apply funds in the same payment to premiums; or 2) apply funds in a given payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment, before the insurer may apply funds in the same payment to premiums.

Comment on §5.4186. A commenter suggests amending proposed §5.4186 so that instead of remitting contingent surcharges "not later than the last day of the month following the month in which the corresponding written premium transaction was effective," insurers must remit monthly only the earned portion of surcharges collected during the month.

Agency Response. TDI declines to amend proposed §5.4186. In cases where surcharges are collected in full up front (because that is how premium is collected), it is not clear how earned surcharges could be remitted as collected. When surcharges are collected in full, they are still earned over the policy period. In addition, as discussed in response to comments on §5.4184, requiring insurers to remit surcharges as they are earned will require insurers to track how each surcharge is earned each month, and may impose additional costs to insurers not contemplated in the rule proposal.

Comment on §5.4187. A commenter suggests that proposed §5.4187 be amended to allow an insurer to refund contingent surcharges, and offset those refunded surcharges, if the insurer rescinds a policy for fraud.

Agency Response. Amended §5.4187 allows insurers to refund and offset contingent surcharges in instances where the policy is rescinded for fraud.

Comment on §5.4188. A commenter suggests that proposed §5.4188(d) be amended to state that contingent surcharges are not subject to premium or maintenance taxes. The commenter states that contingent surcharges are not taxable premiums under Insurance Code §221.002. Under Insurance Code §§252.003, 253.003, and 254.003, maintenance taxes are based on correctly reported gross premiums, and contingent surcharges should not be reported as gross premiums. Finally, the commenter states that because SB 900 did not originate in the Texas House of Representatives, treating the premium surcharges as part of a revenue-raising measure would be unconstitutional.

Agency Response. TDI declines to amend proposed §5.4188(d). The adopted subsection does not state or imply that contingent surcharges will be subject to premium and maintenance taxes. Instead, the rule provides a means for insurers to recoup any premium taxes due on the surcharges if the comptroller determines that the surcharges are subject to premium or maintenance taxes.

Comment. A commenter suggests amending the rules to give insurers specific instruction as to how to determine the surcharge when the insurer is unable to reasonably determine whether automobiles insured under a commercial automobile policy are garaged within the catastrophe area. The commenter clarified that garaging location may be difficult to determine when a vehicle is garaged in a ZIP code that is not completely within, or completely outside, a Tier 1 county. The commenter requested that in these situations the rules allow insurers to surcharge policies based on the insured's address.

Agency Response. TDI declines to amend the proposed rules according to this suggestion because insurers will have the same problem if the insured's address is in a split ZIP code. In addition, insurers must report rating territory for territorially rated risks under the Texas Commercial Lines Statistical Plan, so they must determine territory for risks located in ZIP codes divided by two counties. Further, this issue exists for all ZIP code-rated risks, not only commercial automobile. Finally, §5.4192 has required insurers to make this determination since it became effective on February 16, 2011.

DIVISION 3. LOSS FUNDING, INCLUDING CATASTROPHE RESERVE TRUST FUND, FINANCING ARRANGEMENTS, AND PUBLIC SECURITIES

28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4127, 5.4134 - 5.4136, 5.4141 - 5.4145, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190

STATUTORY AUTHORITY. TDI amends 28 TAC §§5.4101, 5.4102, 5.4121, 5.4123 - 5.4125, 5.4134 - 5.4136, 5.4141, 5.4144, 5.4161, 5.4171 - 5.4173, 5.4181, 5.4182, 5.4184 - 5.4190, and replaces 28 TAC §§5.4126, 5.4127, 5.4142, 5.4143, and 5.4145. The amendments and replacement sections are adopted under Insurance Code §§2210.008, 2210.056, 2210.071, 2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, 2210.0741, 2210.0742, 2210.151, 2210.152, 2210.602, 2210.604, 2210.608 - 2210.613, 2210.6131, 2210.6132, and 36.001.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

Section 2210.056 establishes allowable uses for the association's assets.

Section 2210.071 provides that if an occurrence or series of occurrences in a catastrophe area results in insured losses and operating expenses of the association in excess of premium and other revenue of the association, the excess losses and operating expenses must be paid as provided by Insurance Code Chapter 2210, Subchapter B-1. Section 2210.0715(a) requires the association to pay losses in excess of premium and other revenue from available reserves and available amounts in the catastrophe reserve trust fund. Section 2210.0715(b) provides that the proceeds of class 1 public securities issued before the date of any occurrence or series of occurrences resulting in insured losses may not be included in available reserves for the purposes of §2210.0715.

Section 2210.072 authorizes the association to use the proceeds of class 1 public securities before, on, or after an occurrence or series of occurrences and establishes \$500 million as the maximum principal amount of class 1 public securities that may be issued before, on, or after an occurrence or series of occurrences to pay losses not paid under Insurance Code §2210.0715. Section 2210.072 requires that the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, be depleted before the proceeds of any securities issued after an occurrence or series of occurrences may be used, and that those proceeds count against the limit on class 1 public securities in the catastrophe year in which the proceeds must be depleted. Section 2210.0725 authorizes the association, with the approval of the commissioner, to pay for losses in

a catastrophe year not paid under §2210.0715 and §2210.072 from class 1 member assessments, establishes \$500 million as the maximum amount of class 1 member assessments for a catastrophe year, and provides the manner by which each member's assessment is determined.

Section 2210.073 authorizes the association to use the proceeds of class 2 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, and 2210.0725, and establishes \$250 million as the maximum principal amount of class 2 public securities. Section 2210.074 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, and 2210.073 from class 2 member assessments; establishes \$250 million as the maximum amount of class 2 member assessments for a catastrophe year; and provides the manner by which each member's assessment is determined.

Section 2210.0741 authorizes the association to use the proceeds of class 3 public securities issued on or after the date of an occurrence or series of occurrences to pay for losses not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, and 2210.074, and it establishes \$250 million as the maximum principal amount of class 3 public securities.

Section 2210.0742 authorizes the association, with the approval of the commissioner, to pay for losses in a catastrophe year not paid under §§2210.0715, 2210.072, 2210.0725, 2210.073, 2210.074, and 2210.0741 from class 3 member assessments; establishes \$250 million as the maximum amount of class 3 member assessments for a catastrophe year; and provides the manner by which each member's assessment is determined.

Section 2210.151 authorizes the commissioner to adopt the association's plan of operation by rule to provide windstorm and hail insurance coverage in the catastrophe area.

Section 2210.152 requires that the association's plan of operation provide for the efficient, economical, fair, and nondiscriminatory administration of the association and include both underwriting standards and other provisions that TDI considers necessary to implement the purposes of Insurance Code Chapter 2210.

Section 2210.602 provides that the TPFA board must establish, with the Texas Treasury Safekeeping Trust Company, dedicated public security trust funds into which premium surcharges collected under §§2210.612, 2210.613, and 2210.6131, for the purpose of paying class 1, class 2, and class 3 public securities, respectively, must be deposited.

Section 2210.604 requires commissioner approval of the association's request to TPFA to issue class 1, class 2, or class 3 public securities prior to issuance. The association must submit a cost-benefit analysis of various financing methods and funding structures with its request.

Section 2210.608 provides for how the association may use public security proceeds and excess public security proceeds.

Section 2210.609 provides that the association must pay all public security obligations from available funds and, if the association determines the funds are insufficient, it must pay these obligations and expenses in accordance with Insurance Code §§2210.612, 2210.613, and 2210.6131, as applicable. Section 2210.609 further provides that the association must deposit all premium surcharge revenues collected under §§2210.612, 2210.613, and 2210.6131 for the purpose of paying class 1, class 2, and class 3 public securities into the respective

public security trust funds dedicated for this purpose. Section 2210.609 requires the association to provide for payment of public security obligations and public security administrative expenses by irrevocably pledging revenues received from premiums, premium surcharges, and amounts on deposit in the dedicated public security trust funds and any public security reserve funds.

Section 2210.610 provides that revenues received by the association from premium surcharges collected under §§2210.612, 2210.613, and 2210.6131 may be applied only as provided by Insurance Code Chapter 2210, Subchapter M.

Section 2210.611 authorizes the association to use premium surcharges collected under §§2210.612, 2210.613, and 2210.6131 for the purpose of paying class 1, class 2, and class 3 public securities, respectively. Section 2210.611 provides that if, in any calendar year, the premium surcharge revenue collected for class 1, class 2, or class 3 public securities exceeds the amount of the public security obligations and public security administrative expenses payable in that calendar year and interest earned on those funds for each respective class, the association may use the excess to: (i) pay the applicable public security obligations for the class payable in the subsequent year; (ii) redeem or purchase outstanding public securities of the class; or (iii) make a deposit in the CRTF.

Section 2210.612 provides that the association must pay class 1 public securities issued under §2210.072 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.613 provides that the association must pay class 2 public securities issued under §2210.073 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6131 provides that the association shall pay class 3 public securities issued under §2210.0741 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a catastrophe area premium surcharge to each policyholder on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6132 provides that the commissioner, in consultation with the board and TPFA, may determine that the authority is unable to issue class 2 or class 3 public securities, to be payable under §2210.613 or §2210.6131, as applicable, or may determine that the issuance of class 2 or class 3 public securities payable under §2210.613 or §2210.6131 is financially unreasonable. Following either determination, the commissioner must order the issuance of class 2 or class 3 public securities to be paid by a premium surcharge assessed on certain property and casualty policies, and all association and Texas FAIR Plan Association policies, insuring property located in the catastrophe area.

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

§5.4101. *Applicability.*

(a) This section and §§5.4102, 5.4111 - 5.4114, 5.4121, 5.4123 - 5.4127, 5.4133 - 5.4136, and 5.4141 - 5.4145 (relating to Definitions, Operation of the Catastrophe Reserve Trust Fund, Termination of the Catastrophe Reserve Trust Fund, Investments of Catastrophe Reserve Trust Fund, Duties and Responsibilities, Financing Arrangements, Public Securities Request, Approval, and Issuance, Issuance of Class 1 Public Securities before a Catastrophic Event, Issuance of Public Securities after a Catastrophic Event, Determination of the Association Surcharge Percentage, Contingent Sources of Payment for Class 2 and Class 3 Public Securities, Public Security Proceeds, Excess Public Security Proceeds, Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis, Association Rate Filings, Class 1 Public Securities Trust Fund, Class 2 and Class 3 Public Securities Trust Funds, Premium Surcharge Trust Fund, Excess Premium Surcharge Revenue, and Excess Net Premium and Other Revenue) of this division are a part of the Texas Windstorm Insurance Association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation). If a court of competent jurisdiction holds that any provision of this division is inconsistent with any statutes of this state, is unconstitutional, or is invalid for any reason, the remaining provisions of the sections in this division will remain in effect.

(b) Notwithstanding any provision in this subchapter, the department retains regulatory oversight of the association as required by Insurance Code Chapter 2210, including periodic examinations of the accounts, books, and records of the association, and no provision in this subchapter should be interpreted as negating or limiting the department's regulatory oversight of the association.

§5.4102. *Definitions.*

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

- (1) Association--Texas Windstorm Insurance Association.
- (2) Association program--The funding of any or all of the purposes authorized to be funded with the public securities under Insurance Code Chapter 2210, Subchapter M.
- (3) Association surcharge--Premium surcharges on policyholders of association policies under Insurance Code §§2210.612, 2210.613, or 2210.6131.
- (4) Association surcharge percentage--The percentage amount determined by the commissioner under §5.4127(c) or (d) of this division (relating to Determination of the Association Surcharge Percentage).
- (5) Authorized representative of the department--Any officer or employee of the department, empowered to execute instructions and take other necessary actions on behalf of the department as designated in writing by the commissioner.
- (6) Authorized representative of the trust company--Any officer or employee of the comptroller or the trust company who is designated in writing by the comptroller as an authorized representative.
- (7) Budgeted operating expenses--All operating expenses as budgeted for and approved by the association's board of directors, excluding expenses related to catastrophic losses.
- (8) Catastrophe area--A municipality, a part of a municipality, a county, or a part of a county designated by the commissioner under Insurance Code §2210.005.
- (9) CRTF--Catastrophe Reserve Trust Fund. A statutorily created trust fund established with the trust company under Insurance Code Chapter 2210, Subchapter J.

(10) Catastrophic event--An occurrence or a series of occurrences in a catastrophe area resulting in insured losses and operating expenses of the association in excess of premium and other revenue of the association.

(11) Catastrophic losses--Losses resulting from a catastrophic event.

(12) Class 1 payment obligation--The contractual amount of net premium and other revenue and association surcharges that the association must deposit in the class 1 public security trust fund at specified periods for the payment of class 1 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 1 public security agreements.

(13) Class 2 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 2 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 2 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 2 public security agreements.

(14) Class 3 payment obligation--The contractual amount of net premium and other revenue and either association surcharges or contingent surcharges that the association must deposit in the class 3 public security trust fund, or in the case of contingent surcharges, the premium surcharge trust fund, at specified periods for the payment of class 3 public security obligations, public security administrative expenses, and contractual coverage amount as required by class 3 public security agreements.

(15) Class 1 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.072 and Insurance Code Chapter 2210, Subchapter M.

(16) Class 2 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.073 and Insurance Code Chapter 2210, Subchapter M.

(17) Class 3 public securities--A debt instrument or other public security that TPFA may issue as authorized under Insurance Code §2210.0741 and Insurance Code Chapter 2210, Subchapter M.

(18) Commercial paper notes--A debt instrument that the association may issue as a financing arrangement or that TPFA may issue as any class of public security.

(19) Commissioner--The Commissioner of Insurance.

(20) Comptroller--The Comptroller of the State of Texas.

(21) Contingent surcharge--Premium surcharges on policyholders of policies that cover insured property that is located in a catastrophe area and which may be necessary as provided under Insurance Code §2210.6132.

(22) Contractual coverage amount--Minimum amount over scheduled debt service that the association is required to deposit in the applicable public security trust fund or premium surcharge trust fund, as security for the payment of debt service on the public securities, administrative expenses on public securities, or other payments the association must pay in connection with public securities.

(23) Credit agreement--An agreement described by Government Code Chapter 1371 that TPFA may enter into as authorized under Insurance Code Chapter 2210, Subchapter M.

(24) Department--The Texas Department of Insurance.

(25) Earned premium--That portion of gross premium that the association has earned because of the portion of time during which the insurance policy has been in effect.

(26) Financing arrangement--An agreement between the association and any market source under which the market source makes interest-bearing loans or provides other financial instruments to the association to enable the association to pay losses or obtain public securities under Insurance Code §2210.072.

(27) Gross premium--The amount of premium the association receives, less premium returned to policyholders for canceled or reduced policies.

(28) Insured property--Real property, or tangible or intangible personal property including automobiles, covered under an insurance policy issued by an insurer. Insured property includes motorcycles, recreational vehicles, and all other vehicles eligible for coverage under a private passenger automobile or commercial automobile policy.

(29) Investment income--Income from the investment of funds.

(30) Letter of instruction--The commissioner's or authorized department representative's signed written authorization and direction to an authorized representative of the trust company.

(31) Losses--Amounts paid or expected to be paid on association insurance policy claims, including adjustment expenses, litigation expenses, other claims expenses, and other amounts that are incurred in resolving a claim for indemnification under an association insurance policy.

(32) Net gain from operations--Net income reported during a calendar year equal to the amount of all earned premium, other revenue of the association, and distributions of excess net premium and other revenue from the class 1, class 2, and class 3 public security trust funds that are in excess of: incurred losses; operating expenses; reinsurance premium; current year financial arrangement obligations; current year net premium payment obligations; and current year public security administrative expenses.

(33) Net investment income--Investment income less associated fees and expenses charged by the trust company, or others, for managing or investing the assets.

(34) Net premium--Gross premium less unearned premium. Following the issuance of public securities, net premium may be pledged for the payment of class 1, class 2, and class 3 payment obligations.

(35) Net premium payment obligations--Public security obligations that are paid in whole or in part from net premium and other revenue for public securities repayable under Insurance Code §§2210.612, 2210.613, and 2210.6131. The term does not include public security obligations, or the portion of public security obligations that are paid from association surcharges.

(36) Net revenues--Net premium plus other revenue, less scheduled policy claims, less budgeted operating expenses, less net premium payment obligations for that calendar year, less amounts necessary to fund or replenish any reserve fund required by a public security agreement.

(37) Operating reserve fund--Association or trust company held fund for the payment of budgeted scheduled policy claims and budgeted operating expenses.

(38) Other revenue--Revenue of the association from any source other than premium. Other revenue includes net investment

income on association assets. Other revenue does not include premium surcharges collected under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, or 2210.6132 or member assessments collected under Insurance Code §§2210.0725, 2210.074, or 2210.0742, and interest income on those amounts.

(39) Plan of operation--The association's plan of operation as adopted by the commissioner under Insurance Code §2210.151 and §2210.152.

(40) Premium--Amounts received in consideration for the issuance of association insurance coverage. The term does not include premium surcharges collected by the association under Insurance Code §§2210.259, 2210.612, 2210.613, 2210.6131, and 2210.6132.

(41) Premium surcharge trust fund(s)--The dedicated trust fund or funds established by TPFA and held by the trust company in which the association or insurers must deposit contingent surcharges. TPFA may establish separate trust funds or separate accounts for class 2 and class 3 contingent surcharges.

(42) Public securities--Collective reference to class 1 public securities, class 2 public securities, and class 3 public securities.

(43) Public security administrative expenses--Expenses incurred by the association, TPFA, or TPFA consultants to administer public securities issued under Insurance Code Chapter 2210, including fees for credit enhancement, paying agents, trustees, attorneys, and other professional services.

(44) Public security obligations--The principal of a public security and any premium and interest on a public security issued under Insurance Code Chapter 2210, Subchapter M, together with any amount owed under a related credit agreement.

(45) Scheduled policy claims--That portion of the association's earned premium and other revenue expected to be paid in connection with the disposition of losses that do not result from a catastrophic event.

(46) Trust company--The Texas Treasury Safekeeping Trust Company managed by the comptroller under Government Code §404.101, et seq.

(47) Trust company representative--Any individual employed by the trust company who is designated by the trust company as its authorized representative for purposes of any agreement related to the CRTF or the public securities.

(48) TPFA--The Texas Public Finance Authority.

(49) Unearned premium--That portion of gross premium that has been collected in advance for insurance that the association has not yet earned because of the unexpired portion of the time for which the insurance policy has been in effect.

§5.4124. Issuance of Class 1 Public Securities before a Catastrophic Event.

(a) The association's board of directors may request that TPFA issue class 1 public securities before a catastrophic event, if the association's board of directors determines that class 1 public security proceeds may become necessary and the commissioner approves the request.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) the reason why the requested class 1 public securities may become necessary;

(2) the amount of premium and other revenue that the association expects will be available to pay loss claims in the current calendar year;

(3) reinsurance coverage that the association expects will be available to pay claims in the current calendar year;

(4) the amount in the CRTF that the association expects will be available to pay loss claims in the current calendar year;

(5) the principal amount of class 1 public securities that are authorized and available to be issued before a catastrophic event, and that are requested;

(6) the estimated amount of debt service for the public securities, including any contractual coverage amount and public security administrative expenses;

(7) the structure and terms of the public securities, including any terms that may change as a result of a catastrophic event or the use of any proceeds of class 1 public securities issued before a catastrophic event;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis);

(10) a three-year pro forma financial statement consisting of a balance sheet, income statement, and a statement of cash flow, reflecting the financial impact of issuing class 1 public securities before a catastrophic event that assumes the proceeds will be used in the event of a catastrophe; and

(11) any other relevant information requested by the commissioner.

(c) The association may make one or more requests under this section.

(d) The association may request class 1 public securities up to an aggregate principal amount not to exceed \$500 million outstanding at any one time, regardless of the calendar year or years in which the securities are issued, except that class 1 public securities that are issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, and that have been depleted to pay for the association program will not continue to count against the combined \$500 million aggregate limit described in this subsection. This section does not authorize the association to request class 1 public securities in an amount in excess of the catastrophe year limit prescribed in §5.4125(c) of this division (relating to Issuance of Public Securities after a Catastrophic Event).

(e) For the purposes of determining the authorized amount of class 1 public securities, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the public security proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

§5.4125. Issuance of Public Securities after a Catastrophic Event.

(a) As provided in §5.4123 of this division (relating to Public Securities Request, Approval, and Issuance) and subject to the commissioner's approval, the association's board of directors may request that TPFA issue public securities after a catastrophic event has occurred. The association's board of directors may make the request:

(1) after the catastrophic event if the association's board of directors determines that actual catastrophic losses are estimated to exceed currently available net premium, other revenue, and money in the CRTF; or

(2) before the catastrophic event if the association's board of directors determines that public security proceeds may become necessary to fund potential catastrophic losses. This paragraph does not affect the requirements for issuing public securities that are issued after a catastrophic event or the use of proceeds from public securities issued after a catastrophic event.

(b) The association must submit its board of directors' written request under subsection (a) of this section to the commissioner. The request must include the following information:

(1) an estimate of the actual or potential losses and expenses from the catastrophic event;

(2) the association's current premium and other revenue;

(3) the association's current net revenues;

(4) the sources and amount of loss funding other than public securities, including:

(A) the amount of the loss paid from premium and other revenue;

(B) the amount requested from the CRTF; and

(C) amounts available from other financing arrangements and the association's obligations for other financing arrangements, including whether the amounts must be repaid from public security proceeds or from other means;

(5) the principal amount of each requested class of public securities that is authorized and available to be issued and that is requested;

(6) the estimated costs associated with each requested amount and class of public securities under this section, including any contractual coverage requirement and public security administrative expenses;

(7) the structure and terms of the public securities;

(8) market conditions and requirements necessary to sell marketable public securities;

(9) a cost-benefit analysis as described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis); and

(10) any other relevant information requested by the commissioner.

(c) For each class of public securities requested under this section, the association must determine and submit as part of its request the authorized amount of public securities. This amount must be the lesser of:

(1) the statutorily authorized principal amount for that class, less any principal amount of that class of public security that was issued in the catastrophe year, less, in the case of class 1 public securities, the proceeds of class 1 public securities issued under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event), including the proceeds of any outstanding Class 1 public securities issued on or before June 1, 2015, that were not depleted to pay for the association program as of the beginning of the catastrophe year for which the class 1 public securities are requested under this section; or

(2) the amount of the estimated loss payable from proceeds of that particular class, and estimated costs including the costs associated with the issuance of that class of public security.

(d) For the purposes of determining the amount of proceeds of class 1 public securities that were not depleted as described in subsection (c)(1) of this section, public security proceeds used to pay for public security issuance costs, establish a public security reserve fund, capitalize interest, or provide for contractual coverage amounts, are considered depleted in the same catastrophe year as, and in proportion to, the public security proceeds used to pay for losses or operating expenses, or used to pay principal on the public securities.

(e) The association must, in aggregate for each catastrophe year:

(1) impose an assessment of the statutorily authorized amount of class 1 assessments under Insurance Code §2210.0725 and §5.4161 of this division (relating to Member Assessments) before class 2 public securities may be issued; and

(2) impose an assessment of the statutorily authorized amount of class 2 assessments under Insurance Code §2210.074 and §5.4161 of this division before class 3 public securities may be issued.

(f) The association:

(1) may make one or more requests under this section;

(2) may, following a catastrophic event, request the issuance of class 1 public securities under this section, before the exhaustion of any remaining proceeds from class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015;

(3) must deplete the proceeds of any outstanding class 1 public securities issued before a catastrophic event, including the proceeds of any outstanding class 1 public securities issued on or before June 1, 2015, before using the proceeds of class 1 public securities requested under this section; and

(4) may request the issuance of class 2 and class 3 public securities under this section, before the exhaustion of all class 1 or class 2 assessments, respectively.

(g) For the issuance of class 2 or class 3 public securities payable under Insurance Code §2210.6132, the association must make a separate request under §5.4127 (relating to Contingent Sources of Payment for Class 2 and Class 3 Public Securities) of this division.

§5.4135. Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis.

(a) Marketable public securities under this division are public securities that the association in consultation with TPFA determines:

(1) are consistent with state debt issuance policy requirements; and

(2) achieve the goals of the association.

(b) In determining the amount of class 1 public securities that can or cannot be issued, the association must consider:

(1) the association's current premium and net revenue;

(2) the effect of depopulation under Insurance Code Chapter 2210, Subchapter O, on anticipated net premium and other revenue and anticipated revenue from association surcharges;

(3) the estimated amount of debt service for the public securities, including any contractual coverage amount;

(4) the association's obligations for outstanding public securities, including contractual coverage requirements and public security administrative expenses;

(5) the association's obligations for other financing arrangements;

(6) any conditions precedent to issuing class 1 public security obligations contained in any applicable public security financing documents;

(7) TPFA administrative rules;

(8) applicable State of Texas debt issuance policies;

(9) administrative rules of the Office of the Attorney General of Texas that require evidence of debt service and other obligation coverage; and

(10) market conditions and requirements necessary to sell marketable public securities, including issuing classes in installments.

(c) The association may rely on the advice and analysis of TPFA, TPFA consultants, TPFA legal counsel, and third parties the association has retained for this purpose in determining market conditions and requirements under subsection (b) of this section. The association's determination may include consideration of the following factors:

(1) interest rate spreads;

(2) municipal bond ratings of the public securities;

(3) prior issuances of catastrophe-related public securities in Texas or any other state;

(4) similar financings in the market within the preceding 12 months;

(5) news or other publications relating to the association or the issuance of catastrophe-related public securities;

(6) a nationally recognized investment banking firm's confidence memorandum;

(7) legal and regulatory conditions; and

(8) any other market conditions and requirements that the association deems necessary and appropriate.

(d) As part of each request for public securities, the association must submit to the commissioner a cost-benefit analysis of the various financing methods and funding structures that are available to the association. The cost-benefit analysis must include:

(1) for public securities requested under §5.4124 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event):

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities, liquidity position, and other benefits associated with issuing public securities before a catastrophic event; and

(C) estimates of the monetary costs, associated benefits, and the availability of funding alternatives, such as providing financing arrangements or additional financing arrangements, that provide similar funding and at a similar layer;

(2) for public securities requested under this division following a catastrophic event:

(A) estimates of the monetary costs of issuing public securities, including issuance costs, debt service costs, and any contractual coverage requirement;

(B) the benefits associated with issuing public securities, including benefits to the association's claim-paying capabilities and other benefits associated with issuing public securities; and

(C) the availability of alternative funding arrangements, if any, including the monetary costs and benefits associated with any available alternative funding arrangements.

§5.4161. *Member Assessments.*

(a) The association, with the approval of the commissioner, must assess members as provided by Insurance Code Chapter 2210.

(b) The association must provide, in the aggregate for the catastrophe year, the following information when requesting the commissioner to approve a class 1, class 2, or class 3 assessment under Insurance Code §§2210.0725, 2210.074, and 2210.0742, as applicable:

(1) the association's best estimate of the amount of losses expected to be paid as a result of the event, or series of events, that caused the need for the assessment requested;

(2) the amount of losses paid, or expected to be paid, from premium and other revenue of the association;

(3) the amount of losses paid, or expected to be paid, from available reserves of the association and available amounts in the CRTF;

(4) the amount of losses paid, or expected to be paid, from the proceeds of class 1 public securities issued, or expected to be issued;

(5) the amount of class 1 assessments previously approved and the amount of class 1 assessments now requested;

(6) in the case of a request to approve a class 2 or class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 2 public securities issued, or expected to be issued;

(7) in the case of a request to approve a class 2 or class 3 assessment, the amount of class 2 assessments previously approved and the amount of class 2 assessments now requested;

(8) in the case of a request to approve a class 3 assessment, the amount of losses paid, or expected to be paid, from the proceeds of class 3 public securities issued, or expected to be issued;

(9) in the case of a request to approve a class 3 assessment, the amount of class 3 assessments previously approved and the amount of class 3 assessments now requested.

(c) If all or any portion of the authorized principal amount of class 1 public securities requested under §5.4124 or §5.4125 of this division (relating to Issuance of Class 1 Public Securities before a Catastrophic Event or Issuance of Public Securities after a Catastrophic Event, respectively) cannot be issued based on the factors described in §5.4135 of this division (relating to Marketable Public Securities; the Amount of Class 1 Public Securities that Cannot be Issued; Market Conditions and Requirements; and Cost-Benefit Analysis), the association may request and the commissioner may approve the imposition of class 1 assessments as provided in this section.

(d) In its request to the commissioner to approve the imposition of assessments under subsection (c) of this section, the association must submit the following information:

(1) the information required by subsection (b) of this section;

(2) information based on the analyses described in §5.4135 of this division;

(3) the amount of class 1 public securities that can be issued;

(4) the amount of class 1 public securities that cannot be issued; and

(5) the specific reasons, market conditions, and requirements that prevent TPFA from issuing all or any portion of the authorized principal amount of class 1 public securities. The association may rely on information and advice provided by TPFA, TPFA consultants, TPFA legal counsel, and third parties retained by the association for this purpose.

(f) The association must request the issuance of the statutorily authorized principal amount of class 1 public securities before the association may request the commissioner approve a class 1 assessment under Insurance Code §2210.0725.

(g) The association must request the issuance of the statutorily authorized principal amount of class 2 public securities before the association may request the commissioner approve a class 2 assessment under Insurance Code §2210.074.

(h) The association must request the issuance of the statutorily authorized principal amount of class 3 public securities before the association may request the commissioner approve a class 3 assessment under Insurance Code §2210.0742.

(i) If the commissioner approves the imposition of assessments under subsection (c) of this section, any class 2 and class 3 public securities must be issued as provided by Insurance Code Chapter 2210 and these rules.

(j) This section and §§5.4162 - 5.4167 of this division (relating to Amount of Assessment; Notice of Assessment; Payment of Assessment; Failure to Pay Assessment; Contest After Payment of Assessment; and Inability to Pay Assessment by Reason of Insolvency, respectively) are a part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4171. *Premium Surcharge Requirements.*

(a) The association may be required to assess a premium surcharge under Insurance Code §§2210.612, 2210.613, or 2210.6131 on all policyholders of policies that cover association-insured property.

(b) Following a catastrophic event, insurers may be required to assess a premium surcharge under Insurance Code §2210.6132 on all policyholders of policies that cover insured property that is located in a catastrophe area, including automobiles principally garaged in the catastrophe area. This requirement applies to property and casualty insurers, the association, the Texas FAIR Plan Association, Texas Automobile Insurance Plan Association (TAIPA) policies, affiliated surplus lines insurers, and includes property and casualty policies independently procured from affiliated insurers.

(c) For premium surcharges described in subsection (a) of this section, this section and §§5.4172, 5.4173, 5.4181, 5.4182, 5.4184 - 5.4192 of this division (relating to Premium Surcharge Definitions, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges Not Subject to Commissions or Premium Taxes; Contingent Surcharges Not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation

Report, and Data Collection, respectively) apply to all policies written by the association.

(d) Contingent surcharges described in subsection (b) of this section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division only apply to policies written for the following types of insurance: commercial fire; commercial allied lines; farm and ranch owners; residential property insurance; commercial multiple peril (nonliability portion); private passenger automobile no fault (personal injury protection (PIP)), other private passenger automobile liability, private passenger automobile physical damage; commercial automobile no fault (PIP), other commercial automobile liability, and commercial automobile physical damage.

(e) This section and §§5.4172, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division do not apply to:

(1) a farm mutual insurance company operating under Insurance Code Chapter 911;

(2) a nonaffiliated county mutual fire insurance company described by Insurance Code §912.310 that is writing exclusively industrial fire insurance policies as described by Insurance Code §912.310(a)(2);

(3) a mutual insurance company or a statewide mutual assessment company engaged in business under Chapter 12 or 13, Title 78, Revised Statutes, respectively, before those chapters' repeal by §18, Chapter 40, Acts of the 41st Legislature, First Called Session (1929), as amended by Section 1, Chapter 60, General Laws, Acts of the 41st Legislature, Second Called Session (1929), that retains the rights and privileges under the repealed law to the extent provided by those sections; and

(4) premium and policies issued by an affiliated surplus lines insurer that a federal agency or court of competent jurisdiction determines to be exempt from a premium surcharge under Insurance Code Chapter 2210.

§5.4172. *Premium Surcharge Definitions.*

The following words and terms when used in §§5.4171, 5.4173, 5.4181, 5.4182, and 5.4184 - 5.4192 of this division (relating to Premium Surcharge Requirements, Determination of the Contingent Surcharge Percentage, Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, Notification Requirements, Annual Premium Surcharge Report, Premium Surcharge Reconciliation Report, and Data Collection, respectively) will have the following meanings unless the context clearly indicates otherwise:

(1) **Affiliated insurer**--An insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas. Affiliated insurer includes an insurer not authorized to engage in the business of property or casualty insurance in the State of Texas.

(2) **Affiliated surplus lines insurer**--An eligible surplus lines insurer that is an affiliate, as described by Insurance Code §823.003, of an insurer authorized to engage in the business of property or casualty insurance in the State of Texas.

(3) **Association-insured property**--Immovable property at a fixed location in a catastrophe area or corporeal movable property located in that immovable property covered under an insurance policy issued by the association.

(4) Contingent surcharge percentage--The percentage amount set by the commissioner under §5.4173(c) of this division.

(5) Exposure--The basic unit of risk that is used by an insurer to determine the insured's premium.

(6) Insurer--Each property and casualty insurer authorized to engage in the business of property or casualty insurance in the State of Texas and an affiliate of the insurer, as described by Insurance Code §823.003, including an affiliate that is not authorized to engage in the business of property or casualty insurance in the State of Texas, the association, and the Texas FAIR Plan Association. The term specifically includes a county mutual insurance company, a Lloyd's plan, and a reciprocal or interinsurance exchange.

(7) Residential property insurance--Insurance against loss to real or tangible personal property at a fixed location, including through a homeowners insurance policy, a tenants insurance policy, a condominium owners insurance policy, or a residential fire and allied lines insurance policy.

§5.4173. Determination of the Contingent Surcharge Percentage.

(a) If the commissioner orders public securities to be paid under Insurance Code §2210.6132, the association must submit a written request to the commissioner to approve a contingent surcharge on policyholders with insured property in the catastrophe area as authorized under Insurance Code §2210.6132. The association's request must specify, for each applicable class of public securities:

(1) the total amount of the class 2 and class 3 public security obligations and estimated amount of the class 2 and class 3 public security administrative expenses, including any required contractual coverage amount, provided in the TPFA notice; and

(2) the date on which the contingent surcharge is to commence and the date the contingent surcharge for the noticed amount is to end.

(b) While public securities repayable under Insurance Code §2210.6132 are outstanding, the association must submit a written request described under subsection (a) of this section on an annual basis. The commissioner must receive a request described by this subsection no later than 195 days before the date the association requests the contingent surcharge to commence.

(c) On approval by the commissioner, each insurer must assess a contingent surcharge in a percentage amount set by the commissioner to the insurer's policyholders. The contingent surcharge percentage must be applied to the premium attributable to insured property located in the catastrophe area on policies that become effective, or on multiyear policies that become effective or have an anniversary date, during the premium surcharge period when the contingent surcharge percentage will be in effect, as specified in §§5.4181, 5.4182, and 5.4184 - 5.4188 of this division (relating to Premiums to be Surcharged, Method for Determining the Premium Surcharge, Application of Premium Surcharges, Mandatory Premium Surcharge Collection, Remittance of Contingent Surcharges, Offsets, and Association Surcharges not Subject to Commissions or Premium Taxes; Contingent Surcharges not Subject to Commissions, respectively). The premium surcharge date specified by the commissioner must be at least 180 days after the date the commissioner issues the order under Insurance Code §2210.6132(b).

(d) This section is part of the association's plan of operation and will control over any conflicting provision in §5.4001 of this subchapter (relating to Plan of Operation).

§5.4185. Mandatory Premium Surcharge Collection.

(a) Insurers may not pay the surcharges instead of surcharging their policyholders; however, an insurer may remit a surcharge prior to collecting the surcharge from its policyholder.

(b) Insurers must collect the contingent surcharges proportionately as the insurer collects the premium.

(c) The association must collect the association surcharge in full when due for policies compliant with §5.4912 (relating to Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131) of Division 10 of this subchapter. For policies not yet compliant with §5.4912, the association must collect association surcharges in full no later than the effective date of the policy.

(d) Under Insurance Code §§2210.612(d), 2210.613(d), and 2210.6131(d), the failure of a policyholder to pay the association surcharge constitutes failure to pay premium for the purposes of policy cancellation.

(e) Before insurers may apply funds in a given payment to premiums, they must either:

(1) apply funds in the payment to any contingent surcharges due in that payment; or

(2) apply funds in the payment to any contingent surcharges due in that payment in proportion to the amount of contingent surcharges due in that payment.

§5.4187. Offsets.

(a) An insurer may credit a contingent surcharge amount on its next remission to the association if the insurer has already remitted the amount to the association for:

(1) the portion of the surcharge the insurer was not able to collect from the policyholder, if the policy was canceled or expired;

(2) the portion of the surcharge remitted to the association, or deposited directly in the premium surcharge trust fund, that was later refunded to the policyholder as a result of a rescission, midterm cancellation, or midterm policy change, as described in §5.4184 of this division (relating to Application of Premium Surcharges); or

(3) the portion of a surcharge remitted to the association, or deposited directly in the premium surcharge trust fund or funds, in excess of a deposit premium as described in §5.4184 of this division.

(b) An agent may not offset payment of a contingent surcharge or an association surcharge to the insurer for any reason; however, a surplus lines agent allowed by an affiliated surplus lines insurer to remit contingent surcharges to the association on its behalf under §5.4186(a) of this division (relating to Remittance of Contingent Surcharges), may offset as provided in this section.

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600751

Norma Garcia

General Counsel

Texas Department of Insurance

Effective date: March 9, 2016

Proposal publication date: October 9, 2015

For further information, please call: (512) 676-6584



28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, 5.4145 - 5.4149

Statutory Authority. TDI repeals 28 TAC §§5.4126 - 5.4128, 5.4142, 5.4143, and 5.4145 - 5.4149. The sections are repealed under Insurance Code §§2210.612, 2210.613, 2210.6131, 2210.6132, and 36.001.

Section 2210.612 provides that the association must pay class 1 public securities issued under §2210.072 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.613 provides that the association must pay class 2 public securities issued under §2210.073 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a premium surcharge on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6131 provides that the association shall pay class 3 public securities issued under §2210.0741 from its net premium and other revenue, and if these funds are not sufficient to pay the securities, and on approval by the commissioner, the association may assess a catastrophe area premium surcharge to each policyholder on each association policy issued under Insurance Code Chapter 2210.

Section 2210.6132 provides that the commissioner, in consultation with the board and TPFA, may determine that the authority is unable to issue class 2 or class 3 public securities, to be payable under §2210.613 or §2210.6131, as applicable, or may determine that the issuance of class 2 or class 3 public securities payable under §2210.613 or §2210.6131 is financially unreasonable. Following either determination, the commissioner must order the issuance of class 2 or class 3 public securities to be paid by a premium surcharge assessed on certain property and casualty policies, and all association and Texas FAIR Plan Association policies, insuring property located in the catastrophe area.

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

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600750
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 9, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 676-6584



DIVISION 10. ELIGIBILITY AND FORMS

28 TAC §5.4912

STATUTORY AUTHORITY. TDI adopts new 28 TAC §5.4912 under Insurance Code §§2210.003, 2210.008 and 36.001.

Section 2210.003(13) defines association policies and forms as being approved by TDI.

Section 2210.008(b) authorizes the commissioner to adopt reasonable and necessary rules in the manner prescribed by Insurance Code Chapter 36, Subchapter A.

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

§5.4912. *Filing and Issuance of Policy Forms Relating to Premium Surcharges under Insurance Code §§2210.612, 2210.613, and 2210.6131.*

(a) Not later than the 15th day after the effective date of this section, the association must file with the department policy forms that provide:

(1) that the policy is immediately subject to any surcharge the commissioner may determine under §5.4126 (relating to Determination of the Association Surcharge Percentage) of Division 3 of this subchapter;

(2) that the policyholder has 120 days from the date the policyholder receives the notice described in §5.4189(b) (relating to Notification Requirements) of Division 3 of this subchapter to pay the surcharge; and

(3) on the declarations page, a conspicuous notice in at least 12-point bolded font that the policy may be subject to an immediate premium surcharge, and that failure to pay will result in cancellation.

(b) The association must issue only policies that comply with subsection (a) of this section not later than 60 days after the department approves the policy forms filed under subsection (a) of this section.

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600752
Norma Garcia
General Counsel
Texas Department of Insurance
Effective date: March 9, 2016
Proposal publication date: October 9, 2015
For further information, please call: (512) 676-6584



PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 104. GENERAL PROVISIONS-- RULEMAKING

28 TAC §104.1

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to 28 TAC §104.1, concerning contents of rulemaking petitions. Section 104.1 is adopted without changes to the proposed text published in the December 11, 2015, issue of the *Texas Register* (40 TexReg 8867). There was not a request for public hearing submitted to the division.

In accordance with Government Code §2001.033, the division's reasoned justification for the sections is set out in this order, which includes the preamble. The following paragraphs include a detailed section by section description and reasoned justification for all amendments to §104.1.

The Texas Department of Insurance, Division of Workers' Compensation (division) adopts amendments to §104.1, concerning contents of rulemaking petitions, to implement House Bill (HB) 763, 84th Legislature, Regular Session (2015). HB 763 amended Government Code §2001.021 by defining an interested person, for purposes of §2001.021, as a resident of Texas, a business entity located in Texas, a Texas governmental subdivision, or a public or private organization located in Texas that is not a state agency. If a state agency requires a signed petition, HB 763 also amended Government Code §2001.021 to require 51 percent of the total number of signatures be from Texas residents.

Section 104.1 addresses Contents of Rulemaking Petitions. The division amended §104.1(a) by deleting "any person" and adding "an interested person under Government Code, §2001.021(d)." The amendment is necessary to implement HB 763 and align the division's rules regarding contents of rulemaking petitions with statutory changes provided in Government Code §2001.021. The division amended §104.1(a) by deleting "these rules" and adding "the Texas Administrative Code, Title 28, Part 2." The non-substantive amendment is necessary to specify the rules that may be petitioned to the division for change and to ensure the section conforms to current agency style. The division also made a non-substantive correction to punctuation in §104.1(a) by deleting the comma separating the words "letter" and "that."

The division amended §104.1(a)(7) by deleting "the petitioner's signature." This amendment lessens the burden to the public for submitting rulemaking petitions in accordance with the right to do so described in Government Code §2001.021(a). Section 104.1(a)(7) was also amended to add "a statement that the petitioner is an interested person under Government Code, §2001.021(d)." The amendment is necessary to implement HB 763 by asking the petitioner to confirm they are a resident of Texas, a business entity located in Texas, a Texas governmental subdivision, or a public or private organization located in Texas that is not a state agency. The amendment helps to ensure the requirements set out under Government Code, §2001.021(d) are met.

The division amended §104.1(c) by deleting "executive director of the commission" and adding "commissioner." The division amended §104.1(c) by deleting the phrase "[c]opies of the petition will be forwarded to each commissioner." These amendments are necessary to reflect the current organizational structure of the division. The division also amended §104.1(c) by deleting "or" and adding "or by email to rulecomments@tdi.texas.gov" to specify the email address interested persons must use if submitting a rulemaking petition by electronic means. This amendment makes it easier for interested

persons to submit rulemaking petitions and encourages public participation in the rulemaking process.

The division amended §104.1(d) to reflect a change in the agency's name by deleting "commission" and adding "division."

The division amended the Chapter 104 heading, the §104.1 title, §104.1(a), and §104.1(d) to delete the term "rule-making" and add the term "rulemaking" for consistency with current agency style.

The division did not receive any comments on the proposed amendments to §104.1.

The amendments are adopted under the authority of Labor Code §402.061, concerning adoption of rules; Labor Code §402.00111, concerning the relationship between commissioner of insurance and commissioner of workers' compensation; separation of authority; rulemaking; Government Code §2001.021, concerning petitions for adoption of rules; and Labor Code §401.021, concerning application of other acts.

Labor Code §402.061 authorizes the commissioner to adopt rules as necessary for the implementation and administration of the Texas Workers' Compensation Act.

Labor Code §402.00111 provides that the commissioner of workers' compensation shall exercise all executive authority, including rulemaking authority, under Title 5 of the Labor Code.

Government Code §2001.021(b) provides that a state agency shall prescribe the form for a petition by rule and the procedure for its submission, consideration, and disposition.

Labor Code §401.021 states, in part, that a proceeding, hearing, judicial review, or enforcement of a commissioner order, decision, or rule is governed by Government Code Chapter 2001, Subchapter B.

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

Filed with the Office of the Secretary of State on February 19, 2016.

TRD-201600792

Marisa Lopez Wagley

Acting General Counsel

Texas Department of Insurance, Division of Workers' Compensation

Effective date: March 10, 2016

Proposal publication date: December 11, 2015

For further information, please call: (512) 804-4703



TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 6. TEXAS DEPARTMENT OF CRIMINAL JUSTICE

CHAPTER 156. INVESTIGATIONS

37 TAC §156.1

The Texas Board of Criminal Justice adopts amendments to §156.1, concerning Investigations of Allegations of Abuse, Neglect, or Exploitation of an Elderly or Disabled Offender, without

changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9608).

The adopted amendments are necessary to update formatting.

No comments were received regarding the amendments.

The amendments are adopted under Texas Human Resources Code §48.301 and Texas Government Code §492.013.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600830

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: March 13, 2016

Proposal publication date: December 25, 2015

For further information, please call: (936) 437-6700



CHAPTER 195. PAROLE

37 TAC §195.71

The Texas Board of Criminal Justice adopts amendments to §195.71, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9608).

The adopted amendments are necessary to consolidate all drug and alcohol testing information for offenders under supervision of the Texas Department of Criminal Justice Parole Division into one rule.

No comments were received regarding the amendments.

The amendments are adopted under Texas Government Code §492.013 and §508.184.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600831

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: March 13, 2016

Proposal publication date: December 25, 2015

For further information, please call: (936) 437-6700



37 TAC §§195.72 - 195.78

The Texas Board of Criminal Justice adopts the repeal of §§195.72 - 195.78, concerning drug and alcohol testing of offenders under supervision of the Texas Department of Criminal Justice Parole Division, without changes to the proposed text as published in the December 25, 2015, issue of the *Texas Register* (40 TexReg 9609).

The repeals are necessary to eliminate unnecessary rules as the language for each of these rules has been consolidated into 37 Texas Administrative Code §195.71.

No comments were received regarding the proposed repeals.

The repeals are adopted under Texas Government Code §492.013 and §508.184.

Cross Reference to Statutes: None.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600832

Sharon Howell

General Counsel

Texas Department of Criminal Justice

Effective date: March 13, 2016

Proposal publication date: December 25, 2015

For further information, please call: (936) 437-6700



TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 107. DIVISION FOR REHABILITATION SERVICES

SUBCHAPTER D. COMPREHENSIVE REHABILITATION SERVICES

40 TAC §107.705, §107.714

The Texas Health and Human Services Commission (HHSC) on behalf of the Department of Assistive and Rehabilitative Services (DARS) adopts amendments to §107.705, concerning Definitions, and new §107.714, concerning Consumer (Client) Participation. The amendment to §107.705 is adopted without changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7968) and will not be republished. New §107.714 is adopted with changes to the proposed text as published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7968). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

House Bill 2463, 84th Legislature, Regular Session, 2015, the DARS Sunset Bill addressed the agency's Comprehensive Rehabilitation Services (CRS) Program, adding statutory authority for the program, currently operated by rule only. The bill also

required DARS to adopt rules for the program, which include requirements for client participation in the costs of the comprehensive rehabilitation services. The CRS program currently includes a client participation requirement addressed in program policy and contractor standards referred to as consumer participation. DARS is promulgating new rules for the existing CRS consumer participation requirements.

Client participation is a monthly contribution the client (consumer) may be required to pay for participation in the CRS Program. The consumer's contribution is based on 200 percent of the current United States Health and Human Services Poverty Guidelines, and information about the consumer's income, family status, and economic need. The consumer's contribution must not exceed the cost of the goods and services provided by CRS.

SECTION-BY-SECTION SUMMARY

DARS adopts the amendments to §107.705, Definitions, by adding definitions of "basic living requirements," "consumer participation," "liquid assets," "net monthly income," "provider," and "third-party payer."

DARS adopts new §107.714, Consumer participation, which explains the following changes:

Section 107.714(a) states that consumer participation is a monthly contribution the consumer may be required to pay toward CRS goods and services and that it applies to consumers in active services, as well as those on the interest list who are both eligible and receiving services.

Section 107.714(b) states that the consumer participation only applies when the CRS consumer's liquid assets exceed the current basic living requirements (BLR) established by DARS.

Section 107.714(b)(1), (2), (3), and (4) state the criteria on which the BLR calculations are based.

Section 107.714(c) states that CRS Program calculates the amount of the consumer participation regardless of the availability of private insurance or other third-party payer reimbursements and that obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly cost share amount.

Section 107.714(d)(1), (2), and (3) state what the consumer participation calculation will take into account.

Section 107.714(e) states that the consumer participation must not exceed the cost of the goods and services provided by the CRS Program and that it is applied only in months that billable goods and services are provided.

Section 107.714(f) states that the consumer participation is paid to the service provider by the consumer directly.

Section 107.714(g) states that the consumer participation will be deducted from the amount paid to the service provider by the CRS Program and must be reflected in the service authorization given to the provider by the CRS Program.

Section 107.714(h) states that the consumer may choose not to disclose financial information, but doing so may result in the presumption that the consumer has adequate resources to participate fully in the cost of CRS goods and services.

Section 107.714(i)(1) and (2) state that consumer participation does not apply when the consumer is eligible for Supplemental

Security Income or Social Security Disability Income and to certain services specified.

Section 107.714(j) states that DARS management may waive the consumer participation when the consumer's participation towards the cost of services would prevent the consumer from receiving a necessary service.

Section 107.714(k) states that the consumer participation must be reviewed annually by the CRS Program.

Section 107.714(l) states that to the extent that the consumer is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services.

Section 107.714(m)(1), (2), and (3) state the actions that may be taken by a consumer, consumer's representative, or a court appointed guardian or representative who disagrees with the calculated consumer participation amount.

Section 107.714(n) states how information about CRS consumer participation procedures and BLR used to administer the CRS Program may be obtained.

COMMENTS:

DARS did not receive any comments regarding the proposed sections during the comment period; however, DARS is recommending adoption of §107.714 with an editorial change. Section 107.714(b)(3) includes duplicative wording for "consumer participation" and DARS will remove the duplication with this adoption.

STATUTORY AUTHORITY

The adopted amendment and new rule are authorized by the Texas Human Resources Code, Chapter 111, §111.051, and Chapter 117. The amendment and new rule are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation of and provision of health and human services by the health and human services agencies.

§107.714. *Consumer (Client) Participation.*

(a) The consumer (client) participation is a monthly contribution the consumer (client) may be required to pay for participation in the Comprehensive Rehabilitation Services (CRS) Program. Consumer participation applies to consumers in active services, as well as those on the interest list who are both eligible and receiving services.

(b) The consumer participation is required only for CRS consumers when the consumer's liquid assets exceed the basic living requirement (BLR) level calculated by the CRS Program, and consequently require the consumer to contribute an amount equal to this excess toward the cost of the goods and services provided by the CRS Program. The BLR calculation is based on:

- (1) 200 percent of current U. S. Department of Health and Human Services Poverty Guidelines;
- (2) DARS BLR tables for the current fiscal year;
- (3) DARS policies relating to consumer participation and BLR; and
- (4) information regarding the consumer's income, family status, and economic need.

(c) The CRS Program calculates the amount of the consumer participation owed by the consumer for the goods and services that are provided, regardless of the availability of private insurance or other third-party payer reimbursements. The consumer's obligation for payment of any deductible, co-payment, or coinsurance is limited to the monthly consumer participation amount.

(d) The consumer participation calculation will take into account:

(1) the net monthly income and liquid assets of the consumer and the consumer's spouse, parents, or legal guardian or conservator;

(2) allowable expenses, such as monthly home mortgage or rental payments, prescribed diets and medicines used by the consumer, debts imposed by court order; and

(3) family size.

(e) The consumer participation must not exceed the cost of the services provided by the CRS Program in a given month, and it is applied only in months that billable goods and services are provided by the CRS Program.

(f) The consumer participation must be paid to the service provider by the consumer directly.

(g) The consumer participation will be deducted from the amount paid to the service provider by the CRS Program and must be reflected in the service authorization given to the provider by the CRS Program.

(h) The consumer may choose not to disclose financial information, but doing so may result in the presumption that the consumer has adequate resources to participate fully in the cost of CRS goods and services.

(i) The consumer participation does not apply:

(1) when the consumer is eligible for Supplemental Security Income or Social Security Disability Income.

(2) to certain services, including:

(A) assessments for determining eligibility;

(B) assessments for determining rehabilitation needs, including associated maintenance and transportation;

(C) rehabilitation counseling and guidance and referral for other services;

(D) personal assistance services; and

(E) any auxiliary aid or service that a consumer with a disability requires to participate in the CRS Program.

(j) DARS management may waive the consumer participation when the consumer's participation towards the cost of services would prevent the consumer from receiving a necessary service.

(k) The consumer participation must be reviewed annually by the CRS Program.

(l) To the extent that the consumer is entitled to insurance-payment for services or receives payment for services from other governmental programs, third-party payers, or other private sources, DARS funds must not be used to pay for the services.

(m) If the consumer, consumer's representative, or a court appointed guardian or representative disagrees with the calculated consumer participation amount, they can:

(1) request a review by DARS;

(2) contact the DARS Inquiries Line at 1-800-628-5115 for help resolving a problem or concern; or

(3) file a formal complaint with DARS as noted in §107.715 of this chapter (relating to Complaint Resolution Process).

(n) Information about CRS consumer participation procedures and BLR used to administer the CRS Program are available on the DARS website and for viewing at DARS, 4800 North Lamar Boulevard, Austin, Texas, between 8:00 a.m. and 5:00 p.m. on business days.

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

Filed with the Office of the Secretary of State on February 22, 2016.

TRD-201600827

Sylvia F. Hardman

General Counsel

Department of Assistive and Rehabilitative Services

Effective date: March 13, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 424-4050



PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

DIVISION 1. INVESTIGATIONS

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), new §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, and 700.481; amendments to §§700.506, 700.507, 700.511, and 700.513; and the repeal of §§700.501, 700.502, 700.503, 700.504, and 700.510 in Chapter 700, Child Protective Services (CPS). New §§700.453, 700.455, and 700.469 are adopted with changes to the proposed text published in the November 13, 2015, issue of the *Texas Register* (40 TexReg 7980). New §§700.451, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.471, 700.473, 700.475, 700.477, 700.479, and 700.481; amendments to §§700.506, 700.507, 700.511, and 700.513; and the repeal of §§700.501, 700.502, 700.503, 700.504, and 700.510 are adopted without changes to the proposed text and will not be republished.

The justification of the revisions is to update the rules where they are no longer accurate. Many of the rules in this division have not been revised since the mid-nineties. Other rules need updates to reflect work CPS has undertaken to streamline investigations policy and practice to support better case outcomes, or to comply with legislation passed during the 2015 legislative session. Another purpose of the revisions is to further define and update CPS's current abuse and neglect definitions in order to better

train CPS staff on investigating reports of abuse and neglect, provide clarification to the public on the meaning of the statutory definitions of abuse and neglect applied by CPS in reaching dispositions, and to eliminate ambiguity in interpreting the statutory definitions and current rules. Except for the four changes discussed below, the overarching aim is to explain and amplify, but not alter, current interpretation and practice. The policy and practice shifts that are included in the rule are:

(1) New §700.459 and §700.461 which provide further clarification concerning the definitions of human trafficking that were added to Texas Family Code §261.001 by Senate Bill (SB) 24, 82nd Texas Legislature, Regular Session (2011), in order to train caseworkers and inform the public on how CPS investigates reports of labor and sex trafficking involving children.

(2) New §700.455 and §700.465 related to prenatal alcohol and controlled substance exposure which provide clarity on the type of evidence needed to support a "reason-to-believe" (or confirmed) finding for physical abuse versus the type of evidence needed to support a "reason-to-believe" (or confirmed) finding for neglect.

(3) New §700.473 regarding dispositioning cases in which DFPS took conservatorship of a child with a severe emotional disturbance in order to obtain mental health care for the child, and the exclusion of a disposition in these types of cases from DFPS's central registry of child abuse and neglect, which is based on a statutory change to Texas Family Code §261.001 and §261.002 from SB 1889, 84th Texas Legislature, Regular Session (2015). SB 1889 requires DFPS to adopt rules to prohibit the inclusion in the registry when certain circumstances exist, as described in the rule, and to establish guidelines for reviewing records already in the registry which meet the same criteria.

(4) New §700.475 regarding exposure to domestic violence which relates to implementing clarification on what constitutes abuse and neglect in the context of domestic violence based on recommendations from the report developed by the Task Force to Address the Relationship Between Domestic Violence and Child Abuse and Neglect. HHSC established this Task Force, as directed by SB 434, 82nd Texas Legislature, Regular Session (2011), to develop a report with policy recommendations and comprehensive statewide best practice guidelines for CPS and other entities when investigating cases of abuse and neglect that also involve domestic violence. CPS was a participant in the Task Force and has committed to achieving the agreed-upon recommendations from the Task Force. The rule related to domestic violence restates and implements pertinent guidelines from that effort.

A summary of the rules follows:

New §700.451 clarifies that terms and corresponding definitions used within Division 1 of Subchapter E of this chapter (relating to Investigations) augment and further explain existing definitions in Chapter 101 and §261.001 of the Texas Family Code.

New §700.453: (1) reiterates the statutory definitions of emotional abuse from Texas Family Code §261.001(1); (2) defines and clarifies what constitutes "mental and emotional injury" and "observable and material impairment" when CPS investigates reports of emotional abuse; and (3) clarifies when a person's use of a controlled substance will result in a reason to believe finding for emotional abuse due to "mental or emotional injury" to the child caused by the use.

New §700.455: (1) reiterates the statutory definitions of physical abuse from Texas Family Code §261.001(1) and provides definitions and clarifications for terms used in the statutory definitions as well as this rule; (2) further defines and clarifies what constitutes "physical injury that results in substantial harm to the child" and "genuine threat of substantial harm from physical injury" when a child has not necessarily been physically injured; and (3) clarifies when a pregnant woman's use of alcohol or a controlled substance will result in a reason to believe finding for physical abuse of the infant.

New §700.457: (1) reiterates the statutory definitions of sexual abuse from Texas Family Code §261.001(1) and provides definitions and clarification for terms and phrases used in the statutory definitions as well as this rule; and (2) clarifies what constitutes "sexual conduct harmful to a child's mental, emotional or physical welfare" when CPS investigates reports of sexual abuse.

New §700.459: (1) reiterates the statutory definitions of labor trafficking from Texas Family Code §261.001(1); and (2) clarifies what is considered child labor trafficking for purposes of a CPS investigation by expanding upon the core elements of labor trafficking, explaining the factors CPS evaluates to determine if a child is being trafficked for purposes of labor, and elaborating on the types of situations CPS would not consider to be labor trafficking.

New §700.461: (1) reiterates the statutory definitions of sex trafficking from Texas Family Code §261.001(1); and (2) clarifies what is considered child sex trafficking for purposes of a CPS investigation by expanding upon the core elements of sex trafficking and explaining the factors CPS evaluates to determine if a child is being trafficked for purposes of sex.

New §700.463: (1) reiterates the statutory definition of abandonment, a type of neglect, from Texas Family Code §261.001(4); and (2) provides definitions for terms used in this rule as well as in Texas Family Code §261.001(4)(A) to further clarify what constitutes abandonment.

New §700.465: (1) reiterates the statutory definitions of neglectful supervision, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk" to a child when CPS investigates reports of neglectful supervision; and (3) clarifies the factors CPS considers to determine if a pregnant mother's use of alcohol or a controlled substance will result in a reason to believe finding for neglectful supervision because it endangered the physical or emotional well-being of the infant.

New §700.467: (1) reiterates the statutory definition of medical neglect, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk" and "observable and material impairment" to a child when CPS investigates reports of medical neglect; (3) explains the factors CPS considers to determine if a child has been medically neglected; (4) clarifies when CPS does and does not investigate a parent's refusal to administer or consent to psychological or psychiatric treatment or medication for a child; and (5) clarifies that a parent is not responsible for medical neglect if the lack of medical treatment is because of the parent's legitimately held religious belief.

New §700.469: (1) reiterates the statutory definition of physical neglect, a type of neglect, from Texas Family Code §261.001(4); (2) defines and further clarifies what constitutes "substantial risk," "observable and material impairment," and "relief services" when CPS investigates reports of physical neglect; and (3)

elaborates on the various factors CPS will consider to determine if a person is responsible for physically neglecting a child. This section was modified slightly to renumber subsections.

New §700.471 reiterates the statutory definition of refusal to assume parental responsibility, a type of neglect, from Texas Family Code §261.001(4).

New §700.473: (1) prohibits DFPS from including in the state's central registry a finding of abuse or neglect against a person when DFPS is named managing conservator of the person's child with a severe emotional disturbance only to obtain mental health care for the child, if the person has exhausted all reasonable means available to obtain the needed services; (2) defines "severe emotional disturbance;" both by reference to statute and with guidance for interpreting the definition; (3) outlines the factors DFPS will consider when determining whether a person's refusal to permit a child to remain in or return to the home is based solely on the person's inability to obtain mental health services for the child; and (4) directs DFPS to review records in the central registry and remove the names of persons who were included because DFPS assumed conservatorship of their child solely to provide mental health care to the child.

New §700.475 provides clarification on when victims and perpetrators of domestic violence are investigated as alleged perpetrators of abuse and/or neglect.

New §700.477 defines various terms used in the division that are not already defined elsewhere, as well as terms used in Chapters 101 and 261 of the Texas Family Code. Certain terms and definitions that were previously in rules being repealed have also been incorporated into this new rule.

New §700.479: clarifies (1) the responsibilities of DFPS when reports of child abuse or neglect are received, including when DFPS is able to receive reports; (2) DFPS's role in assisting the public in understanding when to make a report and which protective interventions are available; and (3) how DFPS may respond to reports that do not involve allegations of abuse or neglect or risk of abuse or neglect.

New §700.481 clarifies the types of allegations DFPS *does not* classify as reports of abuse or neglect. Certain terms and definitions that were previously in §700.503 are incorporated into this new rule.

Section 700.501 is repealed. The terms and definitions in this rule have been rewritten and incorporated into new §§700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, and 700.477.

Section 700.502 is repealed. The terms and definitions from this rule have been incorporated into new §700.477, except for terms such as affinity, consanguinity, serious physical abuse, and serious sexual abuse, which have been entirely deleted as they are not used in this division.

Section 700.503 is repealed. The terms and definitions from this rule have been included in new §700.481, except for "reasonable physical discipline" which has been redefined and included in new §700.455. In addition, paragraph (1) of this rule, concerning DFPS's responsibility in assisting the public in understanding what to report and available protective interventions as well as how DFPS handles reports that do not involve child abuse or neglect or risk of abuse or neglect, has been rewritten and incorporated into subsection (b) of new §700.479.

Section 700.504 is repealed and the content is incorporated into subsection (a) of new §700.479.

The amendment to §700.506 include (1) deleting the requirement that initial notification to law enforcement of reports of child abuse or neglect be given by DFPS orally or through facsimile and instead allowing initial notification to be provided through a manner agreed upon by DFPS and the appropriate law enforcement agency; (2) clarifying that reports submitted electronically are considered written notification for purposes of this rule; and (3) updating the agency name to DFPS.

The amendment to §700.507 include (1) updating the rule to reflect that administrative closures are not limited to preliminary investigations; (2) ensuring that language used herein concerning who is considered a person responsible for the care of the child as well as language concerning protective actions of a person responsible is consistent with language in policy and safety assessment tools that will be implemented for use by caseworkers to determine when DFPS intervention in the family is necessary; (3) deleting language that is duplicative of other rules within this division; (4) renumbering subsection (c); and (5) updating the agency's name.

Section §700.510 is repealed because the information is contained in or has been superseded by §700.507.

The amendment to §700.511 includes (1) adding new subsection (a) to clarify that DFPS is required to assign a disposition to each allegation and to further clarify the purpose of assigning a disposition to each allegation; (2) updating the references to §700.507; and (3) amending the definition of ruled out in new subsection (c) to clarify that when allegation dispositions are a mixture of "ruled-out" and "administrative closure," the overall disposition will be "ruled-out."

The amendment to §700.513 include (1) deleting subsection (a)(1)(A) that requires DFPS to notify each alleged victim who was interviewed during an investigation of the results of the investigation as the rule already requires that notification be given to the person responsible for the care of the child and there is a presumption that the child will be notified of the results through that individual; (2) updating the rule to clarify that any person with primary or legal responsibility for the alleged victim, and not just the parent, is entitled to notification of the results of an abuse and neglect investigation; (3) updating the rule to clarify that when an investigation is administratively closed because the report was referred for investigation to another authorized entity, DFPS must not provide notification to anyone; (4) renumbering parts of subsections (a) and (b); and (5) updating the agency name.

The sections will function by ensuring that the rules regarding investigations are consistent with current policy and practice; by helping better instruct CPS staff on investigation reports of abuse and neglect; and by ensuring that the public will gain a better understanding of what constitutes the different types of child abuse and neglect that DFPS investigates as well as a better understanding of the factors DFPS considers when determining if a child is a victim of a specific type of abuse or neglect.

During the public comment period, DFPS received comments from the Texas Council on Family Violence (TCFV). A summary of the comments and DFPS's responses follows:

Comment concerning §700.453: TCFV suggested amending subsection (b)(1) to state that while it is not necessary for a medical or mental health professional to diagnose a child as

suffering from a mental or emotional injury for purposes of emotional abuse, CPS must consult with external professional collaterals that have witnessed and validated behaviors in the children that are detailed in subsection (b)(2) concerning observable and material impairment to the child. TCFV further suggested clarifying that when the mental or emotional injury involves exposure to domestic violence, CPS will consult with professional collaterals that have documented expertise or training in the dynamics of domestic violence, whenever possible. TCFV's suggestion stems from the need to ensure that the rules are consistent with other policy and practice guidance being developed collaboratively between DFPS, TCFV, and other key stakeholders.

Response: DFPS agrees, and is adopting the section with the suggested changes.

Comment concerning §700.455: TCFV suggested changing "choking" to "strangling" in subsection (b)(2) concerning acts or attempted acts that constitute a "genuine threat of substantial harm from physical injury" for purposes of physical abuse. According to TCFV, "choking" generally connotes having an object lodged in one's throat, whereas "strangling," which is now codified in Texas Penal Code §22.01(2)(B), refers to "intentionally, knowingly, or recklessly impeding the normal breathing or circulation of the blood of the person by applying pressure to the person's throat or neck or by blocking the person's nose or mouth."

Response: DFPS agrees, and is adopting the section with the suggested changes.

Comment concerning §700.475: TCFV acknowledged and thanked DFPS, and specifically CPS, for their hard work and collaborative spirit in developing §700.475 regarding abuse and neglect in the context of domestic violence. TCFV appreciated the effective language established in §700.475 and believe that it will lead to increased clarity for CPS investigation staff in shifting the focus of investigations involving domestic violence to the perpetrators of that domestic violence. TCFV noted that this rule operationalized much of the collaborative work between CPS, TCFV, and domestic violence providers and constitutes one of the first statewide steps taken to codify and clarify for CPS investigation staff what qualifies as abuse and neglect in the context of domestic violence. TCFV further stated that the rule exemplifies the guiding principles and recommendations established in the SB 434 (Texas 82nd Regular Legislative Session, 2011) Task Force to Address the Relationship between Domestic Violence and Child Abuse and Neglect Report submitted to the Legislature on September 1, 2012.

Response: DFPS appreciates TCFV's comments and support. No changes are necessary based on this comment.

40 TAC §§700.451, 700.453, 700.455, 700.457, 700.459, 700.461, 700.463, 700.465, 700.467, 700.469, 700.471, 700.473, 700.475, 700.477, 700.479, 700.481, 700.506, 700.507, 700.511, 700.513

The new sections and amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommen-

dations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections and amendments also implement Texas Family Code §261.001, 261.002, as amended by SB 1889 in the 84th Texas legislature, and §261.105.

§700.453. What is emotional abuse?

(a) Emotional abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Mental or emotional injury to a child that results in an observable and material impairment in the child's growth, development, or psychological functioning;

(2) Causing or permitting the child to be in a situation in which the child sustains a mental or emotional injury that results in an observable and material impairment in the child's growth, development, or psychological functioning; or

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in mental or emotional injury to a child.

(b) In this section, the following terms have the following meanings:

(1) "Mental or emotional injury" means:

(A) That a child of any age experiences significant or serious negative effects on intellectual or psychological development or functioning. Although the child does not have to experience physical injury or be diagnosed by a medical or mental health professional in order for CPS to determine that the child suffers from a mental or emotional injury, when assessing the child, CPS must consult with professional collaterals outside of CPS that have witnessed and validated that the child is exhibiting behaviors indicative of observable and material impairment as specified in subsection (b)(2) of this section. When the mental or emotional injury involves exposure to domestic violence, CPS will consult with professional collaterals that have documented expertise or training in the dynamics of domestic violence, whenever possible.

(B) For purposes of subsection (a)(3) of this section, "mental or emotional injury" resulting from a person's current use of a controlled substance includes a child of any age experiencing interference with normal psychological development, functioning, or emotional or mental stability, as evidenced by an observable and substantial change in behavior, emotional response, or cognition, directly related to the person's current use of a controlled substance.

(2) "Observable and material impairment" means discernible and substantial damage or deterioration to a child's emotional, social, and cognitive development. It may include but is not limited to depression; anxiety; panic attacks; suicide attempts; compulsive and obsessive behaviors; acting out or exhibiting chronic or acute aggressive behavior directed toward self or others; withdrawal from normal routine and relationships; memory lapse; decreased concentration; difficulty or inability to make decisions; or a substantial and observable change in behavior, emotional response, or cognition.

§700.455. What is physical abuse?

(a) Physical abuse is a subset of the statutory definitions of abuse that appear in Texas Family Code §261.001(1) and includes the following acts or omissions by a person:

(1) Physical injury that results in substantial harm to the child, or the genuine threat of substantial harm from physical injury

to the child, including an injury that is at variance with the history or explanation given and excluding an accident or reasonable discipline by a parent, guardian, or managing or possessory conservator that does not expose the child to a substantial risk of harm;

(2) Failure to make a reasonable effort to prevent an action by another person that results in physical injury that results in substantial harm to the child;

(3) The current use by a person of a controlled substance as defined by Chapter 481, Health and Safety Code, in a manner or to the extent that the use results in physical injury to a child; or

(4) Causing, expressly permitting, or encouraging a child to use a controlled substance as defined by Chapter 481, Health and Safety Code.

(b) In this section, the following terms have the following meanings:

(1) "Accident" means an unforeseen, unexpected, or unplanned act or event that occurs unintentionally and causes or threatens physical injury despite exercising the care and diligence that a reasonable and prudent person would exercise under similar circumstances to avoid the risk of injury.

(2) "Genuine threat of substantial harm from physical injury" means declaring or exhibiting the intent or determination to inflict real and significant physical injury or damage to a child. The declaration or exhibition does not require actual physical contact or injury. It includes but is not limited to the following acts or attempt to commit the following acts: strangling as defined in §22.01(b)(2)(B), Penal Code; suffocating; shaking; hitting a child on the head; hitting, kicking, or punching a child's body parts or organs; throwing a child; throwing an object at a child; stabbing; shooting; or otherwise committing a violent act against a child.

(3) "Guardian" has the same definition as specified in §700.477(d) of this title (relating to What do the following additional terms mean?).

(4) "Managing or possessory conservator" has the same definition as specified in §700.477(f) of this title.

(5) "Parent" has the same definition as specified in §700.477(g) of this title.

(6) "Physical injury that results in substantial harm to the child" means real and significant physical injury or damage to a child that includes but is not limited to:

(A) Any of the following, if caused by an action of the alleged perpetrator directed toward the alleged victim: substantial or frequent skin bruising; substantial cuts, welts, lacerations, or pinch marks; skull or other bone fractures; damage to cartilage; brain damage; subdural hematoma; soft tissue swelling; impairment of or injury to any bodily organ or function; any other internal injury otherwise not specified; permanent or temporary disfigurement; burns; scalds; wounds, including puncture wounds; bite marks; causing or permitting a child to consume or inhale a poisonous or noxious substance that has the capacity to interfere with normal physiological functions; exposing a child to dangerous chemicals; starvation; concussions; dislocations; sprains; subjecting a child to Munchausen syndrome by proxy or a fictitious illness by proxy if the incident is confirmed by medical personnel; death; or any other cruel act that causes pain or suffering to the child.

(B) Any of the following conditions that occur in an infant under the age of one because of the pregnant mother's use of alcohol or a controlled substance that was not lawfully prescribed by a medical practitioner, was lawfully prescribed as a result of the mother

seeking out multiple health care providers as a means of exceeding ordinary dosages, or was not being used in accordance with a lawfully issued prescription, if the mother knew or reasonably should have known she was pregnant:

(i) A physician's written diagnosis of physical manifestations of Fetal Alcohol Syndrome or Fetal Alcohol Effect, which includes Alcohol-Related Birth Defects and Alcohol Related Neurodevelopmental Disorder;

(ii) A physician's written opinion that the newborn was harmed from in utero exposure to alcohol or a controlled substance; or

(iii) A physician's diagnosis of Neonatal Abstinence Syndrome.

(C) Any of the following physical injuries to a child of any age caused by a person's use of a controlled substance other than prenatal use: illness; interference with normal physiological functions or motor coordination; or any other physical harm directly related to the person's current use, manufacture, or possession of the controlled substance.

(7) "Reasonable discipline" means discipline that is reasonable in manner and moderate in degree; does not constitute cruelty, reckless behavior, or grossly negligent behavior; and is administered for purposes of restraining or correcting the child. It shall not include an act that is likely to cause or causes injury more serious than transient pain or minor temporary marks. The age, size, and condition of the child; the location of the injury; and the frequency or recurrence of injuries shall be considered when determining whether the discipline is reasonable and moderate.

(8) "...reasonable effort to prevent..." means actions that a person responsible for a child's care, custody, or welfare would have taken to protect a child from abuse the person knew or reasonably should have known was occurring. It is not required for that person to have directly perpetrated the abuse.

(9) "Substantial risk" means a real and significant possibility or likelihood.

§700.469. *What is physical neglect?*

(a) Physical neglect is a subset of the statutory definitions of neglect that appear in Texas Family Code §261.001(4) and includes the following act or omission by a person: the failure to provide a child with food, clothing, or shelter necessary to sustain the life or health of the child, excluding failure caused primarily by financial inability unless relief services had been offered and refused.

(b) In this section, the following terms have the following meanings:

(1) "...necessary to sustain the life or health of the child" is a condition of the statutory definition of physical neglect and is met if the failure to provide food, clothing, or shelter results in an observable and material impairment to the child's growth, development, or functioning, or in a substantial risk of such an observable and material impairment. For purposes of this paragraph, the following terms have the following meanings:

(A) "Observable and material impairment" means discernible and substantial damage or deterioration to the child's health or physical condition. It may include but is not limited to malnourishment; sudden or extreme weight loss; serious skin conditions or skin breakdown; serious illness or other serious medical conditions; or any other serious physical harm to the child as a direct result of the physical neglect.

(B) "Substantial risk" has the same definition as specified in §700.455(b)(9) of this title (relating to What is physical abuse?).

(2) "Relief services" means both public and private services, including but not limited to services provided through the government, community agencies, volunteer organizations, relatives, friends, neighbors, etc., that are intended to improve the overall well-being and physical condition of the family. The services must be affordable, reasonable, readily available, and appropriate to meet the needs of the family. Nothing in this subsection shall be interpreted to require that the relief services be provided by Child Protective Services.

(c) Evidence of physical neglect may include but is not limited to the following if they endanger the life or health of the child: unsound or decaying walls, ceiling, floors, or stairways; ineffective or faulty heating, cooling, or ventilation systems; inadequate, faulty, or broken plumbing including contaminated water; broken windows, mirrors or other glass; dangerous sleeping arrangements; the existence of dangerous bacteria or germs; nonexistent or ineffective waste disposal; dangerous food storage; fecal contamination or excessive animal feces throughout the house; untreated infestations such as fleas, roaches, or rodents; significant and uncontrolled mildew and mold; dirt buildup that is likely to cause bacteria and viruses in the dwelling; and hazardous junk material or appliances left unsecured and within easy access to the child.

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

Filed with the Office of the Secretary of State on February 12, 2016.

TRD-201600699

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: April 15, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-4358



40 TAC §§700.501 - 700.504, 700.510

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Texas Family Code §261.001 and Texas Government Code §411.114.

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

Filed with the Office of the Secretary of State on February 12, 2016.

TRD-201600700

Trevor Woodruff

General Counsel

Department of Family and Protective Services

Effective date: April 15, 2016

Proposal publication date: November 13, 2015

For further information, please call: (512) 438-4358



TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 206. MANAGEMENT

SUBCHAPTER E. ADVISORY COMMITTEES

43 TAC §§206.93 - 206.95

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 206, Management, Subchapter E, Advisory Committees, §206.93, Advisory Committee Operations and Procedures, and adopts new §206.94, Household Goods Rules Advisory Committee (HGRAC), and new §206.95, Motor Vehicle License Advisory Committee (MVLAC), without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8746). The rules will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS AND NEW SECTIONS

Amendments are adopted to §206.93, Advisory Committee Operations and Procedures, to remove inapplicable language regarding reimbursement of expenses, and to remove language relating to the applicability of certain laws, policies and ethical standards of conduct. Adopted new §206.94, Household Goods Rules Advisory Committee (HGRAC), and adopted new §206.95, Motor Vehicle License Advisory Committee (MVLAC), are added to state the purpose and tasks of the committees, and to indicate respective end dates.

COMMENTS

The department received one written comment from Danny Langfield, Executive Director of the Texas Independent Automobile Dealers Association, in favor of §206.95.

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 2110; and Transportation Code, §643.155 and §1001.031.

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600755

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 465-5665



CHAPTER 210. CONTRACT MANAGEMENT SUBCHAPTER A. PURCHASE CONTRACTS

43 TAC §210.3

The Texas Department of Motor Vehicles (department) adopts Chapter 210, Contract Management, Subchapter A, Purchase Contracts, new §210.3, Enhanced Contract Monitoring Program, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8747). The rule will not be republished.

EXPLANATION OF ADOPTED NEW SECTION

New §210.3, is adopted to implement Senate Bill 20, 84th Legislature, Regular Session, 2015, to include a procedure for the department to use in identifying contracts that require enhanced contract or performance monitoring. Senate Bill 20 requires each state agency to establish by rule a procedure to identify each contract that requires enhanced contract or performance monitoring, and to submit information on the contract to its governing body.

COMMENTS

No comments on the proposed new section were received.

STATUTORY AUTHORITY

The new section is adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and the duties of the department.

CROSS REFERENCE TO STATUTE

Government Code, §2261.253.

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600753
David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 465-5665



CHAPTER 217. VEHICLE TITLES AND REGISTRATION

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §217.3

The Texas Department of Motor Vehicles (department) adopts amendments to Chapter 217, Vehicle Titles and Registration, Subchapter A, §217.3, Motor Vehicle Titles, without changes to the proposed text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8748). The rule will not be republished.

EXPLANATION OF ADOPTED AMENDMENTS

The amendments are adopted to address the consequences of Senate Bill 449, 84th Legislature, Regular Session, 2015, which added autocycles to those items that are considered to be motor vehicles. The amendments also clarify the titling requirements of certain house trailer-type vehicles and assembled vehicles. More specifically, the adopted amendments to §217.3 add autocycles to the definition of motorcycle for the purposes of obtaining a Texas title. Additionally, amendments are adopted regarding house trailer-type vehicles including changes to clarify size required to register, and clarify the eligibility of certain house trailer-type vehicles for Texas title under Transportation Code, Chapter 501.

Adopted amendments clarify language regarding assembled vehicles, including assembled vehicles that have never been issued title in any jurisdiction; creation of vehicles from different vehicle classes, and vehicles that are not eligible for Texas title; information required to be submitted to establish the vehicle's identification number, and adds language providing provisions for assembled vehicles which have previously been titled. Additional adopted amendments provide methods for establishing the model year for assembled vehicles and noting remarks to be placed on titles for reconstructed vehicles or assembled replica vehicles, and clarifies assembled vehicles that are not eligible for Texas title.

COMMENTS

No comments on the proposed amendments were received.

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles with the authority to adopt rules that are necessary and appropriate to implement the powers and duties of the department under the laws of this state; and more specifically, Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapters 501, 502, 548, and §504.501.

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

Filed with the Office of the Secretary of State on February 18, 2016.

TRD-201600754

David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Effective date: March 9, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 465-5665

