TEXAS REGISTER

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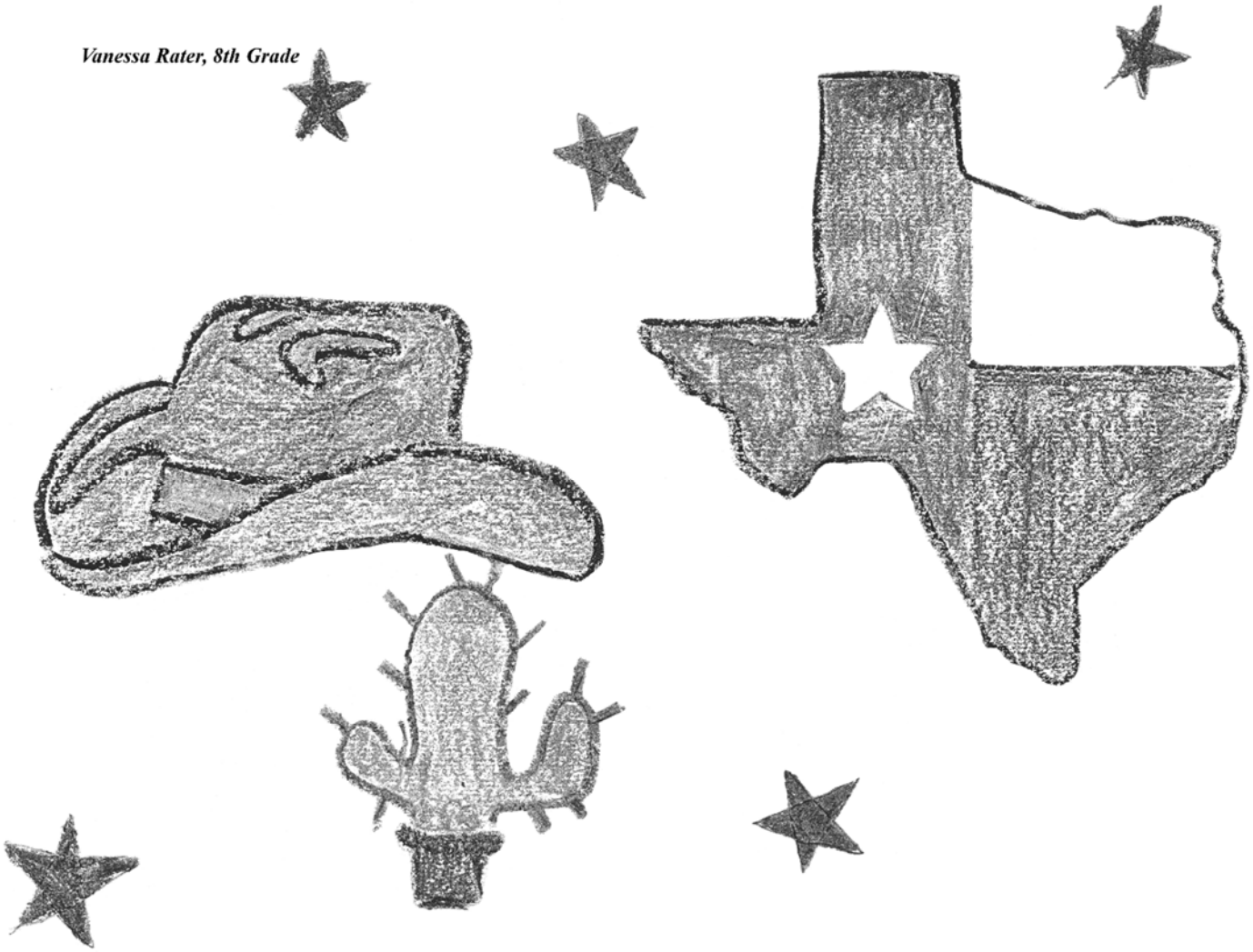

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Open Meetings

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

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

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

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

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

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

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

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

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

THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-0105-KP

Requestor:

The Honorable Billy W. Byrd

Upshur County Criminal District Attorney

405 North Titus Street

Gilmer, Texas 75644

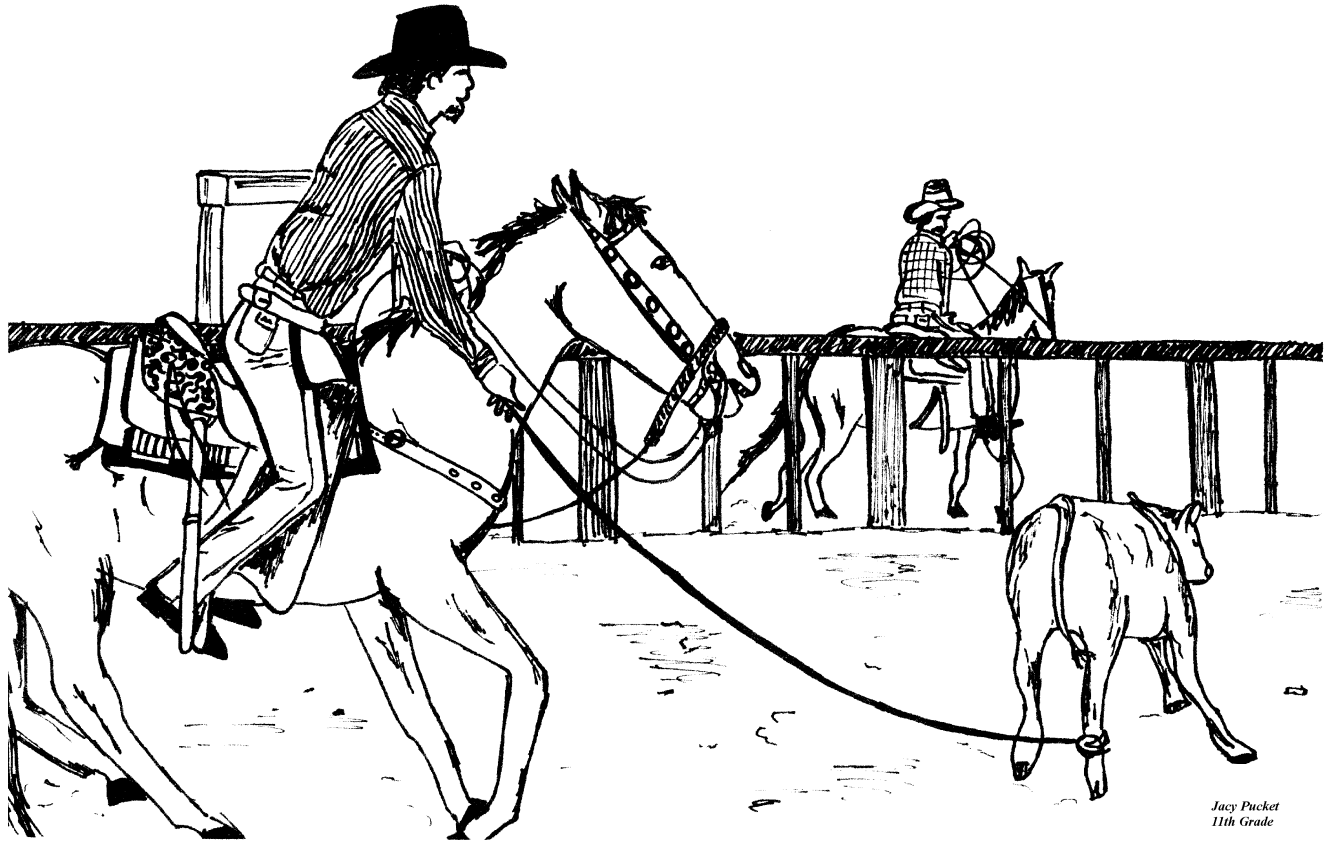
Re: Whether a county commissioners court has authority to expend county funds on holiday decorations and county literacy programs (RQ-0105-KP)

Briefs requested by May 13, 2016.

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

TRD-201601710
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 12, 2016

♦ ♦ ♦



Jacy Pucket
11th Grade

TEXAS ETHICS COMMISSION

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

Ethics Advisory Opinions

EAO-535. Application of Chapter 305 of the Government Code to an attorney's activities in response to certain invitations from members of the legislative branch to discuss pending legislation on behalf of the attorney's clients. (AOR-596, AOR-597)

SUMMARY

Under the facts as described in this opinion, an attorney who accepts an invitation from a member of the legislative branch to discuss pending legislation with the intent to influence legislation, and who receives compensation in excess of $1,000 in a calendar quarter, would be required to register as a lobbyist under Chapter 305 of the Government Code.

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

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

TRD-201601700
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: April 12, 2016

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Ethics Advisory Opinions

EAO-536. Whether a judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at a legal conference. (AOR-608)

SUMMARY

A judicial officeholder may use political contributions to pay reasonable and necessary travel expenses to teach at the legal conference described in this request.

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

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

TRD-201601701
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: April 12, 2016

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Ethics Advisory Opinions

EAO-537. Whether a legislator may accept a tax deduction for donating property to the state. (AOR-609)

SUMMARY

A legislator may accept a tax deduction for the donation of property or money to the state if the legislator is lawfully entitled to receive the deduction under the applicable federal or Texas tax laws and the valuation of the donation is not connected to the legislator's status as a public servant.

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

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

TRD-201601703
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: April 12, 2016

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Ethics Advisory Opinions

EAO-538. Whether a communication relating to a measure election complies with §255.003 of the Election Code. (AOR-610)

SUMMARY

For purposes of §255.003 of the Election Code, the attached brochure is not political advertising and, therefore, public funds may be used to distribute the brochure unless an officer or employee of the city authorizing such use of public funds knows that the brochure contains false information.

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

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

TRD-201601704
Natalia Luna Ashley
Executive Director
Texas Ethics Commission
Filed: April 12, 2016

PROPOSED RULES

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

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

TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 30. OCCUPATIONAL LICENSES AND REGISTRATIONS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes to amend §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.30, 30.81, 30.117, 30.120, 30.122, 30.231, 30.240, 30.279, 30.307, 30.331, 30.340, 30.390, 30.506, and 30.507; to repeal §30.247; and to repeal and simultaneously propose new §30.28.

Background and Summary of the Factual Basis for the Proposed Rules

The proposed rules implement requirements in Senate Bills (SB) 807 and 1307 from the 84th Texas Legislature, 2015. These bills impact 30 Texas Administrative Code (TAC) Chapter 30, Subchapter A, Administration of Occupational Licenses and Registrations.

The proposed rules will enable the commission to: waive licensing and examination fees for military service members, military veterans, or military spouses, as required by Texas Occupations Code, Chapter 55, as amended by SB 807; and extend renewal deadlines for military service as required by Texas Occupations Code, Chapter 55, amended by SB 1307.

Additionally, the proposed rules will: remove redundant citations; identify approved training delivery methods; increase examination security; add relevant statutory citations; remove historical dates which no longer pertain to occupational licenses due to agency rule changes; remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; and improve readability of rules by removing redundant wording and making non-substantive changes to grammar, punctuation, and organization.

The proposed rules will also repeal and simultaneously propose new §30.28 to reorganize the section to improve readability by the public. The new §30.28 will generalize training provider requirements to apply to all delivery methods.

Section by Section Discussion

In addition to the proposed amendments associated with this rulemaking, various stylistic, non-substantive changes have been made to update rule language to current *Texas Register* style and format requirements. Such changes included appropriate and consistent use of acronyms, section references, rule structure, and certain terminology. These changes are non-substantive and generally not specifically discussed in this preamble.

§30.3, Purpose and Applicability

The proposed amendment to §30.3, would update subsection (b)(11) to match the title of 30 TAC Chapter 30, Subchapter L, Visible Emissions Evaluator Training and Certification.

§30.7, Definitions

The proposed amendment to §30.7, would reorder definitions for alphabetical correctness. The proposed amendment would add a definition for *approved application* and *association.* The proposed rule would clarify training delivery methods and providers and identify entities that may be approved for differing delivery methods. The proposed amendment would add or modify definitions to clarify what the commission considers a *high school diploma* and *home school diploma.* The proposed amendment will also update additional definitions in the section to improve understanding.

§30.10, Administration

The proposed amendment to §30.10, clarifies the responsibilities of the executive director by including changes made in §30.7, Definitions.

§30.18, Applications for an Initial License

The proposed amendment to §30.18, would add language to allow the executive director discretion when considering an applicant's diploma from a non-accredited high school.

§30.20, Examinations

The proposed amendment to §30.20, would include language about the role and responsibility of examination proctors and examinees. The proposed rule would also include language for increased examination security requirements and provide details regarding the consequences for violation of exam security requirements.

§30.24, License and Registration Applications for Renewal

The proposed amendment to §30.24, would clarify language for renewal notification responsibilities. The proposed rule would include language from §30.7, Definitions. The proposed rule would incorporate language from SB 1307 for the extended renewal time for military service members.

§30.26, Recognition of Licenses from Out-of-State; Licenses for Military Service Members, Military Veterans, or Military Spouses

The proposed amendment to §30.26, would change the section title to reflect changes made by SB 1307. The proposed rule would incorporate language from SB 1307 for the qualifications of military service members, military veterans, and military

spouses. The proposed rule would add language clarifying the limitations of reciprocity.

§30.28, Approval of Training

The proposed rule would repeal and simultaneously propose new §30.28, to reorganize the section to improve readability and flow. The current rule does not allow for incorporation of emerging technologies to deliver training. The new rule will generalize training provider requirements so the requirements apply to all delivery methods.

New §30.28(a), existing §30.28(a), would remove the 45- and 120-day application review notification deadlines from the existing rule and place them into internal guidance. The removal of the review notification deadlines from rule would not affect the commission's response times on these reviews and would continue to ensure staff can review training applications completely and accurately.

New §30.28(b) would identify specific training delivery methods approved by the executive director. The proposed subsection will incorporate the existing training methods in existing §30.28(b).

New §30.28(c), part of existing §30.28(b), would allow the executive director to award training credit for successful completion of approved training used to obtain or renew a license.

New §30.28(d), existing §30.28(c), would allow the executive director to determine the number of hours of training credit for approval. The proposed subsection would clarify the methodology used to determine hours from the existing section.

New §30.28(e), existing §30.28(d), would identify the requirements for training provider applications. The proposed subsection would improve the readability of the existing language. The proposed §30.28(e)(6) would also specify documentation required for copyrighted material as listed in existing §30.28(v). The proposed §30.28(e)(7) would additionally include the application deadline from existing §30.28(y).

New §30.28(f) would add the executive director's definition of applicant.

New §30.28(g), existing Figure: TAC §30.28(y)(6), would identify the fee schedule calculations for training applications.

New §30.28(h), existing §30.28(l), would identify the requirements training providers must meet to be approved or renewed. The proposed subsection would make no substantive change to the existing language.

New §30.28(i), existing §30.28(j), would require that training not be advertised as approved until a notice of approval is received from the executive director. The proposed subsection would make no substantive change to the existing language.

New §30.28(j), existing §30.28(m)(1), would prohibit training in a place of business directly related to the occupational license. The proposed subsection would make no substantive change to the existing language.

New §30.28(k), existing §30.28(e), would allow approved training to be offered without notification to the executive director. The proposed subsection would make no substantive change to the existing language.

New §30.28(l), existing §30.28(f), would allow training to be considered approved until the content changes or the executive director notifies the training provider of required changes. The proposed subsection would make no substantive change to the existing language.

New §30.28(m), existing §30.28(g), would require the executive director's approval when training providers change delivery methods. The proposed subsection would make no substantive change to the existing language.

New §30.28(n), existing §30.28(x), would identify the executive director's authority over training providers. The proposed subsection would make no substantive change to the existing language. The proposed §30.28(n)(2) includes language from existing §30.28(y)(3) that grants the executive director authority to conduct an administrative review over applications and a technical review for rule compliance. The proposed §30.28(n)(4) includes the update requirement from existing §30.28(h).

New §30.28(o), existing §30.28(x)(3), would identify the reasons the executive director may recall, rescind, suspend, or deny approval for training. The proposed subsection would make no substantive change to the existing language.

New §30.28(p) would identify the types of training that will not be approved or allowed credit.

New §30.28(q), existing §30.28(i) and (q), would identify the obligations training providers have to the agency and to the students. The proposed subsection would include a requirement to ensure the agency has the most current electronic copy of a provider's training materials.

New §30.28(r), existing §30.28(t), would require that training material be presented in the original manner and be relevant to the critical job tasks for the occupational license. The proposed subsection would make no substantive change to the existing language.

New §30.28(s), existing §30.28(u), would require training providers utilizing public information modify the material to be applicable to the target audience and delivery methods. The proposed subsection would make no substantive change to the existing language.

§30.30, Terms and Fees for Licenses and Registration

The proposed amendment to §30.30, would incorporate language from SB 807 to waive the initial application fee for military service members, military veterans, and military spouses.

§30.81, Purpose and Applicability

The proposed amendment to §30.81, would remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes.

Subchapter D: Landscape Irrigators, Irrigation Technicians, and Irrigation Inspectors

The proposed amendment would change the title of Subchapter D to reflect historical rule changes.

§30.117, Definitions

The proposed amendment to §30.117, would remove and modify historical definitions that pertain to occupational licenses due to agency rule changes.

§30.120, Qualifications for Initial License

The proposed amendment to §30.120, would remove historical terms which no longer pertain to occupational licenses due to agency rule changes.

§30.122, Qualifications for License Renewal

The proposed amendment to §30.122, would remove historical terms which no longer pertain to occupational licenses due to agency rule changes.

§30.231, Purpose and Applicability

The proposed amendment to §30.231, would remove historical terms which no longer pertain to occupational licenses and registrations due to agency rule changes.

§30.240, Qualifications for Initial License

The proposed amendment to §30.240, would remove historical terms and dates which no longer pertain to occupational licenses due to agency rule changes.

§30.247, Registration of Maintenance Providers

The proposed repeal of §30.247, would repeal a historical rule that was valid from September 11, 2008, to April 30, 2009, due to legislative changes from House Bill 2482, 80th Texas Legislature, 2007.

§30.279, Exemptions

The proposed amendment to §30.279, would remove and modify citations which pertain to occupational licenses and registrations due to historical legislative statutory changes.

§30.307, Definitions

The proposed amendment to §30.307, would remove and modify citations which pertain to occupational licenses and registrations due to historical legislative statutory changes.

§30.331, Purpose and Applicability

The proposed amendment to §30.331, would add a new citation that resulted from a recent applicable rule change. The proposed section would also remove historical dates which no longer pertain to occupational licenses and registrations due to agency rule changes.

§30.340, Qualifications for Initial License

The proposed amendment to §30.340, would clarify that an examination is required to receive the license. The proposed amendment would make references to college degrees consistent with other rules. The proposed amendment would remove historical dates which no longer pertain to occupational licenses due to agency rule changes. The proposed amendment would clarify the amount of education and training that may be substituted for the required experience. The proposed amendment would clarify the courses required for licensure.

§30.390, Qualifications for Initial License

The proposed amendment to §30.390, would clarify that an examination is required to receive the license. The proposed rule would clarify the course and hours required for licensure. The proposed rule would make references to college degrees consistent with other rules. The proposed rule would clarify the experience requirements for licensure. The proposed rule would clarify the amount of education and training that may be substituted for the required experience.

§30.506, Visible Emission Evaluator Training Requirements

The proposed amendment to §30.506, would add a requirement for the number of proctors per student. This requirement was originally found in §30.507 and moved to §30.506 to clarify that the requirement applies to training providers.

§30.507, Field Training and Testing Requirements

The proposed amendment to §30.507, would remove a proctor requirement that is better suited to §30.506. The proposed amendment would also update a requirement to the field testing certification to be consistent with other certification requirements found in rule.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Chief Financial Officer's Division, has determined that for the first five-year period the proposed rules are in effect, no significant fiscal implications are anticipated for the agency and no fiscal implications are anticipated for other units of state or local government as a result of administration or enforcement of the proposed rules.

The proposed rules would implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. The proposed rules would waive licensing and examination fees for military service members, military veterans, or military spouses and extend occupational license renewal deadlines. The proposed rules would also: remove redundant citations; identify approved training delivery methods; increase examination security; add relevant statutory citations; remove historical dates that no longer pertain to occupational licenses due to agency rule changes; remove citations which no longer pertain to occupational licenses due to historical legislative statutory changes; and improve readability of rules by removing redundant wording and making nonsubstantive changes to grammar, punctuation, and organization.

No significant fiscal implications are anticipated for TCEQ to implement SBs 807 and 1307. The agency is required to waive occupational licensing application and examination fees for military service members, military veterans, and military spouses. Implementing these requirements will involve minor procedural changes in the occupational licensing application process when reviewing applicants with a military background. These changes would include a request by the agency for applicants to disclose and provide proof of their military background. These minor procedural changes are not expected to result in significant costs. The proposed rules are not expected to affect other units of state or local government, though SBs 807 and 1307 will affect other state agencies that license occupational vocations.

Waiving occupational license application and examination fees will decrease revenue to TCEQ's Occupational Licensing Account Number 468. The current combined TCEQ occupational license application and examination fee for each application is $111.00. With the fee waived for military service members, veterans, and military spouses, the Occupational Licensing Account will experience a decrease in funding. The magnitude of the revenue decrease is not known because TCEQ currently does not track the number of military service members, military veterans, and military spouses, nor can the agency anticipate the number of new applications it will receive in the future. Over time, the agency will be better able to determine the impact of the fee waiver to the account revenue stream. Currently, it is not expected that the decrease in revenue will be significant.

Public Benefits and Costs

Mr. Horvath has also determined that for each year of the first five years the proposed rules are in effect, the public benefit anticipated from the changes seen in the proposed rules will be that military service members, military veterans, or military spouses will have occupational license application and exam fees waived as a tribute for their service to the country.

The proposed rules are not anticipated to result in fiscal implications for businesses. The proposed rules will provide cost savings for those individuals who are military service members, military veterans, or military spouses who seek an occupational license by waiving the application and exam fees. These cost savings are estimated to be $111.00 for each application. Also, military service members who are on active duty who may need more time to renew their license will benefit from the rulemaking in that license renewal deadlines will be extended.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated due to the implementation or administration of the proposed rules for the first five year period the proposed rules are in effect for small or micro-businesses. The proposed rules are not anticipated to result in fiscal implications for businesses large or small. The proposed rules will provide cost savings for those individuals who are military service members, military veterans, or military spouses who seek an occupational license by waiving the application and exam fees.

Small Business Regulatory Flexibility Analysis

The commission has reviewed this proposed rulemaking and determined that a small business regulatory flexibility analysis is not required because the proposed rules are required by state law and do not adversely affect a small or micro-business in a material way for the first five years the proposed rules are in effect.

Local Employment Impact Statement

The commission has reviewed this proposed rulemaking and determined that a local employment impact statement is not required because the proposed rules do not adversely affect a local economy in a material way for the first five years that the proposed rules are in effect.

Draft Regulatory Impact Analysis Determination

The commission reviewed this rulemaking action in light of the regulatory analysis requirements of the Administrative Procedure Act, Texas Government Code, §2001.001 *et seq,* and determined that the rulemaking is not subject to Texas Government Code, §2001.0225, because it does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3). Texas Government Code, §2001.0225, applies only to rules that are specifically intended to protect the environment or reduce risks to human health from environmental exposure, and that may adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The intent of the proposed rulemaking is to implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. Protection of human health and the environment may be a by-product of the proposed rules, but it is not the specific intent of this rulemaking. Furthermore, the proposed rulemaking will enable the commission to: extend renewal deadlines for military service as required by Texas Occupations Code, Chapter 55, Licensing of Military Service Members, Military Veterans, and Military Spouses, amended by SB 1307; and waive licensing and examination fees for military service members, military veterans, or military spouses, as required by Texas Occupations Code, Chapter 55, as amended by SB 807. This rulemaking would not adversely affect, in a material way, the economy, a section of the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. Thus, the proposed rulemaking does not meet the definition of a "major environmental rule" as defined in Texas Government Code, §2001.0225(g)(3) and does not require a full regulatory impact analysis.

Furthermore, the proposed rulemaking does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Texas Government Code, §2001.0225 only applies to a major environmental rule which: 1) exceeds a standard set by federal law, unless the rule is specifically required by state law; 2) exceeds an express requirement of state law, unless the rule is specifically required by federal law; 3) exceeds a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) is adopted solely under the general powers of the agency instead of under a specific state law.

There are no federal standards regulating occupational licensing. This rulemaking does not exceed state law requirements, and state law authorizes their implementation, not federal law. There are no delegation agreements or contracts between the State of Texas and an agency or representative of the federal government to implement a state and federal program regarding occupational licensing. Finally, this rulemaking is being proposed under specific state laws, in addition to the general powers of the agency.

Written comments on the Draft Regulatory Impact Analysis may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Takings Impact Assessment

The commission evaluated this proposed rulemaking and performed an analysis of whether this proposed rulemaking constitutes a taking under Texas Government Code, Chapter 2007. The purpose of this proposed rulemaking is to implement requirements in SBs 807 and 1307 from the 84th Texas Legislature, 2015. Promulgation and enforcement of this proposed rulemaking would be neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in private real property because this rulemaking does not burden nor restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in the absence of the regulations. This rulemaking would not constitute a statutory or constitutional taking because this proposed rulemaking only implements statutory requirements and updates and clarifies the existing rules and does not affect a landowner's rights in real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that it is neither identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2) or (4), nor will the rulemaking affect any action/authorization identified in Coastal Coordination Act Implementation Rules, 31 TAC §505.11(a)(6). Therefore, the proposed rulemaking is not subject to the Texas Coastal Management Program.

Written comments on the consistency of this rulemaking may be submitted to the contact person at the address listed under the Submittal of Comments section of this preamble.

Announcement of Hearing

The commission will hold a public hearing on this proposal in Austin on May 17, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or (800) RELAY-TX (TDD). Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/.* File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-026-030-WS. The comment period closes on May 23, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html.* For further information, please contact Michael Parrish, Occupational Licensing, at (512) 239-2548.

SUBCHAPTER A. ADMINISTRATION OF OCCUPATIONAL LICENSES AND REGISTRATIONS

30 TAC §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30

Statutory Authority

These amendments and new section are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments and new section are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37 and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, chapter 37. These amendments and the new section are also proposed under Texas Occupations Code, §55.001, which establishes the definitions of active duty, armed forces of the United States, license, military service member, military spouse, military veteran, and state agency; Texas Occupations Code, §55.002, which requires the commission to adopt rules to exempt an individual who holds a license issued by the commission from any increased fee or other penalty for failing to renew the license in a timely manner if the individual establishes that the individual failed to renew the license in a timely manner because the individual was serving as a military service member; Texas Occupations Code, §55.003, which requires the commission to extend for two years license renewal deadlines for military service members who hold a license; Texas Occupations Code, §55.004, which requires the commission to adopt alternative licensing rules for military service members, military veterans, or military spouses who hold a license issued by another jurisdiction that has substantially equivalent requirements for the license in this state; Texas Occupations Code, §55.005, which requires the commission to provide an expedited license procedure for military service members, military veterans, and military spouses; Texas Occupations Code, §55.006, which requires the commission to provide expedited license renewal to military service members, military veterans, or military spouses; Texas Occupations Code, §55.008, which requires the commission to credit verified military service, training, or education that is relevant to the occupation toward apprenticeship requirements for a license if an apprenticeship is required; and Texas Occupations Code, §55.009, which requires the commission to waive license application and examination fees for certain military service members, military veterans, and military spouses and to prominently post a notice on the home page of the commission's website describing the provisions of Texas Occupations Code,

Chapter 55, that are available to military service members, military veterans, and military spouses.

These amendments and new section implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; Texas Occupations Code, §§55.001 - 55.006, 55.008, and 55.009; and Senate Bills 807 and 1307.

§30.3. Purpose and Applicability.

(a) The purpose of this chapter is to consolidate the administrative requirements and establish uniform procedures for the occupational licensing and registration programs prescribed by Texas Water Code, Chapter 37. This subchapter contains general procedures for issuing, renewing, denying, suspending, and revoking occupational licenses and registrations. Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers; Customer Service Inspectors; Landscape Irrigators, Irrigation Technicians, and Irrigation Inspectors; Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists; Municipal Solid Waste Facility Supervisors; On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators; Water Treatment Specialists; Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration; Wastewater Operators and Operations Companies; Public Water System Operators and Operations Companies; and Visible Emissions Evaluator Training and Certification) contain the program-specific requirements related to each program.

(b) The requirements of this chapter apply to the following occupational licenses and registrations:

(1) backflow prevention assembly testers;

(2) customer service inspectors;

(3) landscape irrigators, irrigation technicians, and irrigation inspectors;

(4) leaking petroleum storage tank corrective action specialists and project managers;

(5) municipal solid waste facility supervisors;

(6) on-site sewage facility installers, designated representatives, apprentices, maintenance providers, maintenance technicians, and site evaluators;

(7) water treatment specialists;

(8) underground storage tank contractors and on-site supervisors;

(9) wastewater operators and operations companies;

(10) public water system operators and operations companies; and

(11) visible emissions evaluator [~~evaluators~~] training and certification [~~providers~~].

§30.7. Definitions.

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

[~~(1) Approved training event--Instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance learning, or technology-based training providing the knowledge and skills needed to perform occupational job tasks and that has been reviewed and approved by the executive director.~~]

(1) [~~(2)~~] Aerobic treatment system owner--Persons that in their individual capacities own a single-family dwelling that is serviced by an on-site sewage disposal system using aerobic treatment.

(2) Approved application--An application submitted to the Occupational Licensing Section that contains all the information the executive director has deemed necessary to be accurately processed and that the executive director has determined to be approved.

(3) Approved classroom training providers--Entities that have been approved by the executive director to provide classroom training after demonstration of hands-on subject matter expertise, knowledge of and experience with educational principles and effective instructional designs.

(4) Approved conference and webinar training providers--Governmental entities or their designated agents, associations, or colleges as listed by accrediting agencies that are recognized by the United States Department of Education and that have been approved by the executive director to provide conference and webinar training.

(5) Approved distance training providers--Governmental entities or their designated agents, associations, or colleges as listed by accrediting agencies that are recognized by the United States Department of Education and that have been approved by the executive director to provide distance training after demonstrating comparable subject matter expertise, knowledge of and experience with educational principles, and effective instructional designs.

(6) Approved training--Training which provides the knowledge and skills necessary to perform occupational job tasks and is used for obtaining or renewing a license as determined by the executive director.

(7) Approved training delivery method--Methods approved by the executive director that currently include instructor-led classroom training, conferences, seminars, workshops, training at association meetings, distance training, or technology-based training.

(8) Association--The term association as used in the context of this chapter is an industry-related non-profit association whose members hold licenses issued by the commission.

(9) [~~(3)~~] Conference--The term conference as used in the context of this chapter includes conferences, seminars, workshops, symposiums, expos, [~~interactive video conferences~~] and any other such training venues.

(10) [~~(4)~~] Continuing education--Job-related training credit approved by the executive director used for renewal of licenses [~~and registrations~~].

(11) Correspondence training--The term correspondence training as used in the context of this chapter is distance training that can either be paper-based and conducted through a postal system, electronic-based and conducted through a website, or a blend of these delivery systems.

(12) [~~(5)~~] Distance training [~~learning~~]--The acquisition of knowledge that occurs through various technologies with a separation of place and/or time between the instructor(s) or learning resources and the learner.

(13) [~~(6)~~] Distributor--Any person or nongovernmental organization that sells a product primarily to individuals maintaining occupational licenses administered by the agency.

(14) High school diploma--An earned high school diploma from a United States high school, an accredited secondary school equivalent to that of United States high school, or a passing score on the general education development (GED) test that indicates a high school graduation level.

(15) Home school diploma--An earned diploma from a student who predominately receives instruction in a general elementary or

secondary education program that is provided by the parent, or by a person in parental authority, in or through the child's home.

[~~(7) High school diploma or equivalent certificate--A graduation diploma from a high school or a General Educational Development (GED) certification from an accrediting agency recognized by the United States Department of Education or other respective territory's or country's accreditation process if outside the United States.~~]

[~~(8) Industry-related association--A nonprofit organization that represents members that possess occupational licenses issued by the agency.~~]

(16) [~~(9)~~] License--An occupational license issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(17) [~~(10)~~] Maintenance provider--A person that, for compensation, provides service or maintenance for one or more on-site sewage disposal systems using aerobic treatment.

(18) [~~(11)~~] Manufacturer--For the purpose of this subchapter any person, company, or nongovernmental organization that produces a product for sale primarily to individuals who maintain occupational licenses that are administered by the agency.

(19) [~~(12)~~] Person--As defined in §3.2 of this title (relating to Definitions).

(20) [~~(13)~~] Qualified [~~classroom~~] instructor--An individual who has instructional experience, work-related experience, and subject matter expertise that enables [~~enable~~] the individual to communicate course information in a relevant, informed manner and to answer students' questions.

(21) [~~(14)~~] Registration--An occupational registration issued by the commission to a person authorizing the person to engage in an activity covered by this chapter.

(22) [~~(15)~~] Service provider--Any person, company, or nongovernmental organization that provides a service for its own profit to individuals who maintain occupational licenses that are administered by the agency.

(23) [~~(16)~~] Subject matter expert--A person having a minimum of three years of work-related experience and expert knowledge in a particular content area or areas as relates to training.

(24) Technology-based training--The term technology-based training as used in the context of this chapter includes training offered through computer equipment or through a website (also known as on-line training or e-learning).

(25) [~~(17)~~] Training credit--Hours awarded [~~of credit allowed~~] by the executive director for successful completion of [~~an~~] approved training [~~event~~].

[~~(18) Technology-based training--Training offered through computer equipment or through a Web site (also known as on-line training or e-learning).~~]

(26) [~~(19)~~] Training provider--An administrative entity or individual responsible for obtaining approval of training, providing acceptable delivery of approved training, ensuring that qualified instructors or subject matter experts are utilized in the delivery, support, and development of training and monitoring, recording and reporting attendance accurately and promptly as required by the executive director.

(27) [~~(20)~~] Webinar--Interactive training delivered live via the Internet as a combination of conference training and distance training [~~learning~~] where the learner is separated by place from the learning source. [~~Successful completion of webinar training may only be credited toward training requirements for license renewals.~~]

§30.10. Administration.

The executive director is responsible for:

(1) reviewing applications;

(2) developing, administering, and grading examinations;

(3) issuing and renewing licenses and registrations;

(4) maintaining records related to licenses and registrations;

(5) maintaining a roster of current licenses and registrations;

(6) collecting fees;

(7) approving training providers [~~used for the issuance of training credits~~];

(8) awarding training credit for approved [~~approving~~] training [~~providers~~]; and

(9) responding to complaints against licensees, registrants, and training providers.

§30.18. Applications for an Initial License.

(a) Applications for initial licenses shall be made on a standard form provided by the executive director. The application must be submitted to the executive director with the fee according to §30.30 of this title (relating to Terms and Fees for Licenses and Registrations). The application must be submitted to the executive director before the applicant may take the examination.

(b) Supplemental information for each individual program shall be submitted according to the specific requirements for each program.

(c) An approved application shall be valid for one year from the date of application approval.

(d) All statements and qualifications provided by each applicant or on the behalf of the applicant are subject to verification by the executive director.

(e) All statements, qualifications, and attachments provided by the applicant relating to an application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(f) Misrepresentation or falsification of any information may be grounds for denial of an application and for enforcement action.

(g) All applications must be completed in full. All deficiencies must be corrected within 120 days of notification, or the application shall be considered void.

(h) An applicant must furnish evidence of any training credit, proof of education, or work experience when requested. Diplomas from non-accredited high schools will be evaluated by the executive director on a case-by-case basis and will be considered based on the following submitted information:

(1) transcript;

(2) documentation of actual coursework;

(3) time spent on coursework or program; and

(4) any additional documentation the executive director might reasonably request or that would assist the applicant in demonstrating the proof of their education claim.

(i) The executive director shall determine whether an applicant meets the requirements of this subchapter. If all requirements have been met, the executive director shall issue the license. The license shall be valid for the term specified in Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers;[,] Customer Service Inspectors;[,] Landscape Irrigators, [~~Installers,~~] Irrigation Technicians, and Irrigation Inspectors;[,] Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists;[,] Municipal Solid Waste Facility Supervisors;[,] On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators;[,] Water Treatment Specialists;[,] Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration;[,] Wastewater Operators and Operations Companies;[,] Public Water System Operators and Operations Companies; and[,] Visible Emissions Evaluator Training and Certification, respectively.) The effective date of the license shall be the date the executive director issues the license.

§30.20. Examinations.

(a) The executive director shall prescribe the content of licensing examinations. Examinations shall be based on laws, rules, job duties, and standards relating to the particular license. The contents of any examination required for licensure under this chapter are confidential and examinees may not share them with anyone.

(b) Examinations shall be graded and the results forwarded to the applicant no later than 45 days after the examination date. The minimum passing score for an examination is 70%.

(c) An individual with an approved application who fails an examination may not repeat an examination until receiving notification of examination results for that particular examination.

(d) The application becomes void either after 365 days from date of application or failing the same examination four times, whichever occurs first. If an application becomes void, a new fee and a new application must be submitted before the applicant may take the same examination again.

(e) Any scores for repeat examinations taken after an application becomes void will not be applied to the issuance of the license.

(f) Any qualified applicant with a physical, mental, or developmental disability may request reasonable accommodations to take an examination.

(g) Examinations shall be given at places and times approved by the executive director.

(h) Examinees must comply with all written and verbal instructions of the proctor and shall not:

(1) bring any unauthorized written material, in either printed or electronic formats, into the examination room;

(2) bring any electronic devices, including any device with a camera, into the examination room;

(3) share, copy, or in any way reproduce any part of the examination;

(4) engage in any deceptive or fraudulent act; or

(5) solicit, encourage, direct, assist, or aid another person to violate any provision of this section or compromise the confidentiality of the examination.

(i) [~~(h)~~] The executive director shall provide an analysis of an examination when requested in writing by the applicant. The executive director shall ensure that an examination analysis does not compromise the fair and impartial administration of future examinations.

(j) [~~(i)~~] An individual who wishes to observe a religious holy day on which the individual's religious beliefs prevent the individual from taking an examination scheduled by the agency on that religious holy day shall be allowed to take the examination on an alternate date.

(k) [~~(j)~~] The executive director may deny an individual the opportunity to take a licensing examination on the grounds that the individual has been convicted of an offense, other than an offense punishable as a Class C misdemeanor, that:

(1) directly relates to the duties and responsibilities of the licensed occupation;

(2) does not directly relate to the duties and responsibilities of the licensed occupation and that was committed less than five years before the date the individual applies for the license;

(3) is an offense listed in Texas Code of Criminal Procedure, Article 42.12, Section 3g; or

(4) is a sexually violent offense, as defined by Texas Code of Criminal Procedure, Article 62.001.

(l) [~~(k)~~] The executive director may deny an individual the opportunity to take a licensing examination on the grounds that:

(1) the individual was charged with:

(A) any offense described by Texas Code of Criminal Procedure, Article 62.001(5); or

(B) an offense other than an offense described by subparagraph (A) of this paragraph if:

(i) the individual has not completed the period of supervision or the individual completed the period of supervision less than five years before the date the individual applied for the license; or

(ii) a conviction for the offense would make the individual ineligible for the license by operation of law; and

(2) after consideration of the factors described by Texas Occupations Code, §§53.021(d), 53.022, and 53.023(a), the executive director determines that:

(A) the individual may pose a continued threat to public safety; or

(B) employment of the individual in the licensed occupation would create a situation in which the individual has an opportunity to repeat the prohibited conduct.

(m) After notice and opportunity for a hearing, the commission may deny or revoke any license or registration held by a person who violates any of the provisions of this section. The commission may file a criminal complaint against any individual who removes or attempts to remove any portion of the examination, reproduces without permission any part of the examination, or who engages in any fraudulent act relating to the examination process.

§30.24. License and Registration Applications for Renewal.

(a) A license or registration may not be renewed if it has been:

(1) expired for more than 30 days and an application has not been received by the executive director or postmarked within 30 days after the expiration date of the license or registration;

(2) revoked; or

(3) replaced by a higher class of license.

(b) Applications for renewal must be made on a standard form provided by the executive director.

(1) The executive director shall mail a renewal notification [~~application~~] at least 60 days before the license or registration expires to the most recent address provided to the executive director. If a person does not receive a renewal notification [~~application~~], the person is not relieved of the responsibility to timely submit a renewal application.

(2) The person is responsible for ensuring that the completed renewal application, the renewal fee, and other required information are submitted to the executive director by the expiration date of the license or registration.

(c) All statements, qualifications, and attachments provided by the applicant that relate to a renewal application shall be true, accurate, complete, and contain no misrepresentation or falsification.

(d) Approved training [~~The continuing education which includes, but is not limited to, classroom and training programs made available through the internet used~~] to renew a license must be successfully completed after the issuance date and before the expiration date of the current license. Any training credits completed in excess of the amount required for the renewal period shall not be carried over to the next renewal period.

(e) An individual who holds a license prescribed by Texas Water Code, §26.0301, or Texas Health and Safety Code, §341.033 or §341.034, specifically the holder of a Class A or Class B public water system operator or Class A or B wastewater treatment facility operator license may certify compliance with continuing education requirements prior to or at the time the license is renewed by submitting a continuing education certification form available from the executive director.

(f) The executive director may renew a license or registration if the application is received by the executive director or is postmarked within 30 days after the expiration date of the license or registration, and the person meets the requirements for renewal by the expiration date of the license or registration and pays all appropriate fees. This subsection does not extend the validity period of the license or registration nor grant the person authorization to perform duties requiring a license or registration. This subsection only allows an additional 30 days after the expiration of the license or registration for the person to submit the renewal application, any supporting documentation, and appropriate fees.

(g) An individual whose license renewal application is not received by the executive director or is not postmarked within 30 days after the license expiration date may not renew the license and must meet the current education, training, and experience requirements, submit a new application with the appropriate fee, and pass the examination. A person whose registration renewal application is not received by the executive director or is not postmarked within 30 days after the expiration date may not renew the registration and must submit a new application with the appropriate fee and meet all applicable requirements for a new registration.

(h) Persons failing to renew their license or registration in a timely manner due to serving as a military service member [~~on active duty in the United States armed forces outside this state~~] may renew their license within two years [~~180 days~~] of returning from active duty by submitting the following:

(1) a completed renewal application;

(2) a copy of the military orders substantiating the military service during the time the license expired; and

(3) the applicable license renewal fee.

(i) For good cause the executive director may extend the two years [~~180-day~~] period for a military service member [~~individuals serving on active duty in the United States armed forces outside this state~~] seeking to renew their license. Good cause may include, but is not limited to, hospitalization or injury to the licensee.

(j) Completion of the required continuing education will be waived for the renewal cycle for military service members [~~while the licensee was on active duty service in the United States armed forces~~] outside of this state who were unable to complete the requirements.

(k) These procedures apply only to military service members who are [~~individuals on active duty service in the United States armed forces~~] outside this state and not to military contractors.

(l) All licensees must notify the executive director of any change in the previously submitted application information within ten days from the date the change occurs.

(m) All registration holders must notify the executive director of any change in the previously submitted application information within ten days after the month in which the change occurs.

(n) Licenses and registrations that have renewal cycles in transition shall follow the renewal requirements in the applicable subchapter.

(o) The executive director shall determine whether an applicant meets the renewal requirements of this subchapter. If all requirements have been met, the executive director shall renew the license or registration.

(p) The license or registration shall be valid for the term specified.

(q) If the application does not meet the requirements, the executive director shall notify the applicant in writing of the deficiencies.

(r) All deficiencies must be corrected within 30 days of date printed on the notification, or the renewal application shall be considered void after the license expiration date.

(s) A person whose license or registration has expired shall not engage in activities that require a license or registration until the license or registration is renewed or a new license or registration has been obtained.

§30.26. Recognition of Licenses from Out-of-State; Licenses for Military Service Members, Military Veterans, or Military Spouses[~~; Military Service Members; Military Veterans~~].

(a) Except for landscape irrigators the executive director may waive qualifications, training, or examination for individuals with a good compliance history who hold a current license from another state, territory, or country if that state, territory, or country has requirements equivalent to those in this chapter.

(b) A license may be issued after review and approval of the application, receipt of the appropriate fee, and verification of the license from the corresponding state, territory, or country.

(c) The executive director may waive any of the prerequisites for obtaining a landscape irrigator [~~or installer~~] license, if the applicant is licensed as an irrigator in another jurisdiction that has a reciprocity agreement with the State of Texas.

(d) The executive director may require the applicant to provide information about other occupational licenses and registrations held by the person, including:

(1) the state in which the other license or registration was issued;

(2) the current status of the other license or registration; and

(3) whether the other license or registration was ever denied, suspended, revoked, surrendered, or withdrawn.

(e) To maintain a license that was issued on the basis of reciprocity, applicants must comply with the renewal requirements of this subchapter. Reciprocity will not be granted for the issuance of lower level licenses of the same type as the one that was initially issued on the basis of reciprocity.

(f) [~~(e)~~] Military Service Members, Military Veterans, or Military Spouses.

(1) The executive director shall issue a license to an applicant who is a military service member, military veteran, or military spouse [~~the spouse of an individual serving on active duty as a member of the armed forces of the United States~~] and:

(A) holds a current license issued by another jurisdiction [~~state~~] that has licensing requirements that are substantially equivalent to the requirements for the license; or

(B) within the five years preceding the application date held the license in this state [~~that expired while the applicant lived in another state for at least six months~~].

(2) A license issued under this subsection shall be valid for the term specified in §30.18(i) of this title (relating to Applications for an Initial License).

(3) The executive director shall notify the license holder of the requirements for renewing a license issued under this subsection as specified in §30.24(b)(1) of this title (relating to License and Registration Applications for Renewal).

(g) [~~(f)~~] In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include, but not be limited to, any combination of the following as determined by the executive director:

(1) education;

(2) continuing education;

(3) examinations (written, practical, or a combination of written and practical);

(4) letters of good standing;

(5) letters of recommendation;

(6) work experience; or

(7) other methods or options as determined by the executive director.

(h) [~~(g)~~] Military service members or military veterans. The executive director shall credit verified military service, training, or education toward the licensing requirements.

(1) Verified military service, training, or education shall not be credited toward an examination requirement.

(2) The executive director may not apply this credit provision to an applicant who:

(A) holds a restricted license issued by another jurisdiction; or

(B) has an unacceptable criminal history.

§30.28. Approval of Training.

(a) The executive director shall approve training that provides the knowledge or skills necessary to obtain or maintain licenses or registrations that are issued by the commission. This training shall be directly related to tasks performed by persons whose duties require a license or registration in a program that is administered by the commission.

(b) The executive director may approve specific training delivery methods, to include:

(1) classroom training;

(2) conferences;

(3) technology-based training;

(4) correspondence courses or similar distance training;

(5) association meetings that include training sessions containing subject matter related to the particular license; or

(6) other professional activities, such as the publication of articles.

(c) The executive director shall award training credit for successful completion of approved training used for obtaining or renewing a license.

(d) The executive director shall determine the occupational program(s) and number of hours of training credit that will be granted for approved training. The executive director may:

(1) use the provider's subject matter experts' qualifications to determine the program(s); and

(2) request field testing data from training providers to validate the hours requested.

(e) Training providers who submit applications for approval must:

(1) utilize a standard form and method provided by the executive director;

(2) include the applicable fee found in the chart contained in subsection (g) of this section;

(3) include supplemental information and materials according to the specific requirements for each method of training as approved by the executive director;

(4) include supplemental materials and information edited by subject matter experts;

(5) include samples of certificates of completion, including information as required by the executive director;

(6) document approval from the publisher to reprint text, pictures, graphics, tables, data, and any other information that is copyrighted or obtained from a source that is not an original creation of the training provider. The training materials submitted shall include appropriate references; and

(7) respond to any deficiencies within 60 days of the notification provided by the executive director or the application will become void and the fee forfeited.

(f) The executive director shall determine whether a provider meets the requirements of this subchapter.

(g) Fees for training applications will be calculated based on the number of requested training credit hours or type of association meetings using the following table. If the requested hours are significantly different than the actual hours of training awarded, the executive director may request an adjustment in the fee from the applicant. If the applicant does not provide the adjusted fee, the application will not be processed, resulting in denial of training approval. Fees are nonrefundable whether the training is approved or not approved.

Figure: 30 TAC §30.28(g)

(h) Training delivered to meet the requirements for obtaining or renewing a license must:

(1) be approved by the executive director before the training begins;

(2) provide the knowledge or skills necessary to perform one or more of the occupation's critical job tasks as determined by a job analysis or training needs assessment;

(3) not promote or endorse the products, product lines, or services of a manufacturer, distributor, or service provider or used as an opportunity for advertisement;

(4) provide the means to accomplish the learning objectives identified for the training;

(5) contain learning aids, such as visual aids and graphics. Training must be interactive in order to enhance learning and attain learning objectives;

(6) include regular monitoring of student comprehension throughout the training and provide feedback from the training provider, instructor, or subject matter expert to the student;

(7) be monitored for successful student completion;

(8) track student time and progress toward completing learning objectives; and

(9) utilize, at a minimum, subject matter experts and instructional design experts or effective qualified instructors to develop training materials for approval. Additionally, development of technology-based training must also utilize qualified subject matter experts in technology delivery methods.

(i) Training shall not be advertised as approved until notice of approval is received from the executive director.

(j) Training may not be held in a place of business of a product manufacturer, distributor, or service provider directly related to the occupational license for which the training provider seeks approval.

(k) Once training is approved, training providers may offer the training without notification to the executive director.

(l) Training is considered approved until the content changes, or until the executive director notifies the training provider that changes in the content or delivery of the training are required.

(m) If a training provider changes the delivery method of the training, the training must be submitted for review and approval by the executive director.

(n) The executive director may:

(1) deny applications for training courses that contain extensive errors or do not meet the requirements of this section;

(2) conduct an administrative review for application completeness and a technical review for compliance with applicable agency rules;

(3) monitor, recall, reevaluate, and/or rescind approval of topics or training materials;

(4) require training providers to update training delivery methods or training materials to ensure that the content reflects current technology and practices;

(5) deny an application after determination that another delivery method is more conducive for the training material; and

(6) recall training for reevaluation which may result in rescinding any previous approval.

(o) The executive director's grounds for recalling, rescinding, suspending, or denying approval include, but are not limited to:

(1) the training does not conform to current accepted industry standard practices or agency rules;

(2) the training does not conform to the materials or method as approved;

(3) the subject matter is not related to critical job tasks performed by licensees;

(4) an instructor is not qualified to teach the subject matter;

(5) an instructor is ineffective in the delivery of the subject matter;

(6) the training promotes or endorses products, product lines, or services from a manufacturer, distributor, or service provider;

(7) the training credits for successfully completed training are not electronically submitted within 14 business days of course completion;

(8) the records, rosters, or application materials have been falsified;

(9) the training provider does not comply with a training recall;

(10) the training provider is not active or training has not been conducted for three or more years; or

(11) the training environment is not conducive to learning.

(p) The following types of training will not be approved or awarded training credit:

(1) distance training or webinars that are repeated during the renewal period;

(2) distance training that is intended to teach required manual skills; or

(3) webinar training that is submitted to qualify an applicant for an initial license.

(q) Approved training providers shall:

(1) ensure the executive director has the most current electronic edition of training materials;

(2) keep manuals and training content updated to reflect rule changes;

(3) submit approved training material that references rules for reapproval within 180 days of any new rule adoption that pertains to that training;

(4) submit material with substantial changes, including a summary, list, or other indication of changes, for review and reapproval by the executive director;

(5) allow the executive director staff or their agents access to training in order to audit training content, manner of delivery, and the effectiveness and qualifications of instructors and subject matter experts;

(6) be responsible for the content and delivery of the training;

(7) retain accurate training records for a minimum of five years;

(8) maintain records of training approval throughout the entire period the training provider actively delivers training;

(9) ensure that instructors and subject matter experts are qualified and provide the executive director with qualifications when requested;

(10) notify students of all fees associated with completing the training and obtaining credit for training before and during the training;

(11) accurately present to students the approved training credit along with any other criteria for obtaining full or partial training credit;

(12) provide students with approved copies of texts, manuals, or other training materials to use during the training and for future reference required by the delivery method and as approved by the executive director;

(13) verify participation;

(14) provide acceptable procedures for student identity verification;

(15) maintain procedures to protect student identity and personal information;

(16) provide students access to subject matter experts to answer technology-related and content-related questions within one business day from the time of request; and

(17) electronically report the students' successfully completed training credit hours per procedures provided and approved by the executive director, not to exceed approved training credit hours, within 14 business days of training completion.

(r) Printed training material must be presented in an original manner and must be relevant to the critical job tasks and knowledge for the occupational licensees.

(s) Public information copied from websites or other sources is not acceptable as training materials unless modified to be applicable to the target audience and the method of delivery.

§30.30. Terms and Fees for Licenses and Registrations.

(a) Licenses and registrations are valid for three years from the date of issuance, unless specified otherwise by Subchapters B - L of this chapter (relating to Backflow Prevention Assembly Testers;[,] Customer Service Inspectors;[,] Landscape Irrigators, [~~Installers,~~] Irrigation Technicians, and Irrigation Inspectors;[,] Leaking Petroleum Storage Tank Corrective Action Project Managers and Specialists;[,] Municipal Solid Waste Facility Supervisors;[,] On-Site Sewage Facilities Installers, Apprentices, Designated Representatives, Maintenance Providers, Maintenance Technicians, and Site Evaluators;[,] Water Treatment Specialists;[,] Underground Storage Tank On-Site Supervisor Licensing and Contractor Registration;[,] Wastewater Operators and Operations Companies;[,] Public Water System Operators and Operations Companies; and[,] Visible Emissions Evaluator Training and Certification, respectively).

(b) The executive director may adopt a system under which licenses or registrations expire on various dates.

(c) The license fee is $111 for a three-year license. The total amount shall be paid with each initial and renewal application and is nonrefundable. The initial fee is waived for military service member, military veteran, or military spouse applicants if they:

(1) meet all other requirements for the license; or

(2) hold a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license the applicant is applying for in this state.

(d) Registration fees are established in the applicable subchapters of this chapter.

(e) The executive director may charge a $20 fee to process a duplicate certificate or pocket card.

(f) A convenience fee may be set by the executive director or service provider for alternative fee payment methods. A person using an alternative payment method is responsible for paying the convenience fee.

(g) An examination or reexamination fee may be charged if the executive director designates an entity to administer the examinations.

(h) The executive director may charge an individual requesting a criminal history evaluation letter under §30.13 of this title (relating to Eligibility of Certain Applicants for Occupational Licenses or Registrations) a fee adopted by the commission. Fees adopted by the commission under §30.13 of this title must be in an amount sufficient to cover the cost of administering §30.13 of this title.

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

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30 TAC §30.28

Statutory Authority

This repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This repeal is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452 and 26.456, THSC, §§341.033, 341.034, 361.027, and 366.071, or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued

under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37.

This repeal implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015.

§30.28. Approval of Training.

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

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SUBCHAPTER C. CUSTOMER SERVICE INSPECTORS

30 TAC §30.81

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37 and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; and THSC, §341.034, which requires persons who perform duties relating to public water supplies to hold a license or registration issued by the commission under TWC, Chapter 37.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §341.034.

§30.81. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses to individuals who conduct and certify customer service inspections.

(b) An individual who performs customer service inspections must meet the qualifications of this subchapter and be licensed according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).

(c) An endorsement for customer service inspections shall expire when an individual renews a water operators license or the license expires. To obtain a customer service inspector license, an individual

holding an endorsement must submit a new application with the appropriate fee.

(d) A licensed customer service inspector shall not perform plumbing inspections required under Texas Occupations Code, §1301.255 and §1301.551 [~~Plumbing Licensing Law 15(a) (Texas Civil Statutes, Volume 17-1/2, Article 6243-101)~~].

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

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SUBCHAPTER D. LANDSCAPE IRRIGATORS, INSTALLERS, IRRIGATION TECHNICIANS AND IRRIGATION INSPECTORS

30 TAC §§30.117, 30.120, 30.122

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103,which authorizes the Texas Commission on Environmental Quality(commission) to make rules. These amendments also proposed under TWC,§37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573,26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033,341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251;establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC,§37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007,which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC,§37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC,§37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC,§37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; Texas Occupations Code, §1903.053, which requires the commission to adopt by rule and enforce standards governing the responsibilities of licensed irrigators; and Texas Occupations Code, §1903.251,which requires a person to hold a license issued by the commission under TWC, Chapter 37, if the person engages in certain activities related to landscape irrigation.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and Texas Occupations Code, §1903.053 and §1903.251.

§30.117. Definitions.

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

(1) Irrigation technician--A person who works under the supervision of a licensed irrigator to install, maintain, alter, repair, service, or supervise installation of an irrigation system, including the connection of such system in or to a private or public, raw or potable water supply system or any water supply.

[~~(1) Installer--An individual who connects irrigation systems to any water supply.~~]

(2) Irrigator--A person who sells, designs, offers consultations, installs, maintains, alters, repairs, services, or supervises the installation of an irrigation system, including the connection of such system to a private or public, raw or potable water supply system or any water supply. [~~An individual who sells, designs, installs, maintains, alters, repairs, or services an irrigation system; provides consulting services relating to an irrigation system; or connects an irrigation system to any water supply.~~]

§30.120. Qualifications for Initial License.

[~~(a) To obtain an installer license prior to January 1, 2009, an individual must:~~]

[~~(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and~~]

[~~(2) pass the applicable examination.~~]

(a) [~~(b)~~] Effective January 1, 2010, the installer license became invalid and was replaced with the irrigation technician license [~~will no longer be valid and will be replaced by an irrigation technician license. No new installer license applications will be accepted after June~~

~~1, 2009. New installer licenses issued after the effective date of these rules will remain valid through December 31, 2009. The fee for initial installer licenses issued after the effective date of these rules will be prorated to reflect the validity period~~].

(b) [~~(c)~~] To obtain an irrigator license, an individual must:

(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) complete and pass the basic irrigator training course; and

(3) pass all sections of the applicable examination.

(c) [~~(d)~~] To obtain an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter;

(2) complete the basic irrigation technician course; and

(3) pass the applicable examination.

(d) [~~(e)~~] To obtain an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter;

(2) successfully complete:

(A) the basic irrigator training course;

(B) an approved backflow prevention assembly testing training course; and

(C) an approved water conservation or water audit course; or

(D) an approved landscape irrigation inspection course; and[~~.~~]

(3) pass the applicable examination.

(e) [~~(f)~~] An individual is ineligible to obtain an irrigation inspector license if the individual engages in or has financial or advisory interest in an entity that:

(1) sells, designs, installs, maintains, alters, repairs, or services an irrigation system;

(2) provides consulting services relating to an irrigation system; or

(3) connects an irrigation system to any water supply.

§30.122. Qualifications for License Renewal.

~~[(a) To renew an installer license that expires prior to June 1,2009, an individual must meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations).]~~

(a) [~~(b)~~] Effective January 1, 2010, the installer license was [~~will no longer be valid and will be~~] replaced by an irrigation technician license. [~~No installer license renewal applications will be accepted after December 31, 2008.~~]

~~[(c) Installer licenses renewed after the effective date of these rules, but prior to June 1, 2009, will remain valid until December 31, 2009. The fee for installer licenses renewed after the effective date of these rules will be prorated to reflect the validity period.]~~

(b) [~~(d)~~] To renew an irrigator license, an individual must:

(1) meet the requirements in Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and

(2) complete 24 hours of approved training credits.

(c) [~~(e)~~] To renew an irrigation technician license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 16 hours of approved training credits.

(d) [~~(f)~~] To renew an irrigation inspector license, an individual must:

(1) meet the requirements in Subchapter A of this chapter; and

(2) complete 24 hours of approved training credits.

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SUBCHAPTER G. ON-SITE SEWAGE FACILITIES INSTALLERS, APPRENTICES, DESIGNATED REPRESENTATIVES, MAINTENANCE PROVIDERS, MAINTENANCE TECHNICIANS, AND SITE EVALUATORS

30 TAC §30.231, §30.240

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Commission (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033,

341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37 and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments are proposed under THSC, §366.011, which establishes that the commission has general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which authorizes the commission to adopt rules governing the installation of on-site sewage disposal systems.

These amendments implement TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; THSC, §366.011 and §366.012.

§30.231. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations for a person that:

(1) constructs any part of an on-site sewage facility;

(2) performs the duties of a designated representative;

(3) performs the duties of a site evaluator;

(4) performs the duties of an apprentice;

(5) performs the duties of a licensed maintenance provider; or

(6) performs the duties of a maintenance technician.

(b) A person that performs any of the tasks listed in subsection (a) of this section must meet the qualifications of this subchapter and be licensed or registered according to Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), unless exempt under §30.244 of this title (relating to Exemptions), and must comply with the requirements of Chapter 285 of this title (relating to On-Site Sewage Facilities).

[~~(c) A person that holds a current maintenance provider registration that performs maintenance to on-site sewage disposal systems using aerobic treatment shall be allowed to continue to perform maintenance provider duties until August 31, 2009. Effective September 1, 2009, those individuals shall either hold a:~~]

[~~(1) maintenance provider license; or~~]

[~~(2) maintenance technician registration.~~]

(c) [~~(d)~~] Effective September 1, 2009, all current maintenance provider registrations were [~~will be~~] converted to maintenance technician registrations.

[~~(e) Individuals renewing their maintenance provider registration after April 30, 2009 will be issued a maintenance technician registration or may apply for a maintenance provider license, provided they meet the qualifications for the initial license of a maintenance provider.~~]

[~~(f) No applications for maintenance provider registrations will be accepted after April 30, 2009.~~]

§30.240. Qualifications for Initial License.

(a) To obtain an Installer I license, an individual must have:

(1) met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations);

(2) completed the Installer I basic training course; and

(3) passed the Installer I examination.

(b) To obtain an Installer II license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) met one of the following requirements:

(A) held an Installer I license for at least one year;

(B) held an apprentice registration for at least two years; or

(C) previously possessed an Installer II license;

(3) completed the Installer II basic training course;

(4) passed the Installer II examination; and

(5) met the experience requirements. Applicants for an Installer II license must submit statements attesting to the applicant's work experience. Such statements shall include a description of the type of on-site sewage facility (OSSF) work that was performed by the applicant and the physical addresses where the activity occurred. The experience shall be actual work accomplished under the license or registration. The number of systems will not substitute for the time required. Experience requirements are:

(A) to document experience as an Installer I, the applicant shall submit either:

(i) sworn statements from at least three individuals for whom the applicant performed construction services, statements cannot be provided by individuals related by blood or marriage to the applicant or applicant's spouse;

(ii) a sworn statement from a designated representative who has approved a minimum of three installations performed by the applicant; or

(iii) other documentation of the applicant's work experience, approved by the executive director;

(B) to document experience as an apprentice, the applicant shall submit either:

(i) a sworn statement from the installer for whom the applicant performed construction services;

(ii) a sworn statement from a designated representative who witnessed the applicant working on at least six OSSF installations; or

(iii) other documentation of the applicant's work experience, approved by the executive director.

(c) To obtain a designated representative license, an individual must have:

(1) met the requirements of Subchapter A of this chapter;

(2) completed the designated representative basic training course; and

(3) passed the designated representative examination.

(d) To obtain a site evaluator license, an individual must have:

(1) met the requirements of Subchapter A of this chapter; and

(2) met the following requirements:

(A) complete the site evaluator basic training course;

(B) pass the site evaluator examination; and

(C) possess a current Installer II license, designated representative license, professional engineer license, professional sanitarian license, certified professional soil scientist, or professional geoscientist license in the soil science discipline (an individual who maintains a current license through the Texas Board of Professional Geoscientists according to the requirements for professional practice).

(e) Effective September 1, 2009, a maintenance provider must be licensed with the executive director. To obtain a maintenance provider license, a person must:

(1) meet the requirements of Subchapter A of this chapter;

[~~(2) submit a completed application and a $111 fee to the executive director on a form approved by the executive director. Applicants with a current maintenance provider registration will be given a pro rata reduction in the $111 fee toward the maintenance provider license for the unexpired term of their registration;~~]

(2) [~~(3)~~] submit verification that the applicant holds a current Installer II, Class C (or higher) Wastewater license or acceptable documentation of three years experience as a maintenance technician. Registered maintenance provider experience obtained prior to the effective date of these rules may be applied towards the three years of experience as a maintenance technician; and

(3) [~~(4)~~] successfully complete agency-approved courses in basic maintenance and advanced aerobic wastewater treatment related to residential proprietary aerobic treatment units. Advanced aerobic wastewater treatment courses must have been approved after September 1, 2008;

(4) [~~(5)~~] pass the maintenance provider licensing examination; and

(5) [~~(6)~~] any additional information required by the executive director.[~~; and~~]

[~~(7) Exemption. Maintenance provider license applicants who obtained a maintenance provider registration prior to the effective date of these rules, hold a current maintenance provider registration, and meet all of the other provisions of this chapter for licensing as a maintenance provider on the effective date of these rules are exempt from the requirements for completion of the agency-approved advanced aerobic wastewater treatment course and the maintenance provider licensing examination.~~]

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

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30 TAC §30.247

Statutory Authority

This repeal is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This repeal is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a

person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This repeal is also proposed under THSC, §366.011, which establishes that the commission has general authority over the location, design, construction, installation, and proper functioning of on-site sewage disposal systems; and THSC, §366.012, which authorizes the commission to adopt rules governing the installation of on-site sewage disposal systems.

This repeal implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §366.011 and §366.012.

§30.247. Registration of Maintenance Providers.

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

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SUBCHAPTER H. WATER TREATMENT SPECIALISTS

30 TAC §30.279

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This amendment is proposed under Texas Occupations Code, §1904.051, which requires the commission to establish a program to certify persons qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment equipment and appliances; Texas Occupations Code, §1904.052, which requires a person to obtain a certificate from the commission before engaging in water treatment; Texas Occupations Code, §1904.053, which establishes that the commission is authorized to take applications for certification into the water treatment specialist program; and Texas Occupations Code, §1904.054, which authorizes the commission to issue certificates stating that a person is qualified to install, exchange, service, and repair residential, commercial, or industrial water treatment facilities.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and Texas Occupations Code, §§1904.051 - 1904.054.

§30.279. Exemptions.

(a) Individuals who are licensed under the Texas Occupations Code, Chapter 1301 [~~Plumbing License Law (Texas Civil Statutes, Volume 17- 1/2, Article 6243-101)~~] are exempt from the requirements of this subchapter.

(b) Employees of industrial facilities who install or service water treatment equipment at their facilities are exempt from the requirements of this subchapter.

(c) Employees of public water systems installing water treatment equipment at their system who hold a Class C license or higher, are exempt from the requirements of this subchapter.

(d) Employees of registered operations companies installing water treatment equipment at the facilities for which the operations

company has a contract to operate and who hold a Class C license or higher, are exempt from the requirements of this subchapter.

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SUBCHAPTER I. UNDERGROUND STORAGE TANK ON-SITE SUPERVISOR LICENSING AND CONTRACTOR REGISTRATION

30 TAC §30.307

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37; TWC, §26.345, which requires the commission to administer TWC, Chapter 26, Subchapter I, concerning Underground and Aboveground Storage Tanks; TWC, §26.364, which authorizes the commission to implement a program under TWC, Chapter 37, to register persons who contract to perform corrective action under TWC, Chapter 26, Subchapter I; TWC, §26.365, which authorizes the commission to register geoscientists into the corrective action program; and TWC, §26.366, which authorizes the commission to implement a program to license persons who supervise a corrective action under TWC, Chapter 26, Subchapter I.

This amendment implements TWC, §§5.013, 5.102, 5.103, 26.345, 26.364 - 26.366, and 37.001 - 37.015.

§30.307. Definitions.

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

(1) Corrosion specialist--A person who, by reason of a thorough knowledge of the physical sciences and the principals of engineering and mathematics acquired by a professional education and related practical experience, is qualified to engage in the practice of corrosion control on buried or submerged metal piping systems and metal tanks, and who is either:

(A) certified as a corrosion specialist or a cathodic protection specialist by NACE International; or

(B) licensed as a professional engineer by the Texas Board of Professional Engineers in a branch of engineering that includes education and experience in corrosion control of buried or submerged metal piping systems and metal tanks.

(2) Corrosion technician--A person who can demonstrate an understanding of the principals of soil resistivity, stray current, structure-to-soil potential, and component electrical isolation measurements as they relate to corrosion protection and control on buried or submerged metal tanks and metal piping systems; who is qualified by appropriate training and experience to engage in the practice of inspection and testing for corrosion protection and control on such systems, including the inspection and testing of all common types of cathodic protection systems; and who either:

(A) has been certified by NACE International as a corrosion technician, corrosion technologist, or senior corrosion technologist;

(B) is employed under the direct supervision of a corrosion specialist (as defined in paragraph (1) of this section), where the corrosion specialist is responsible for maintaining control and oversight over all corrosion testing and inspection activities; or

(C) has been officially qualified as a cathodic protection tester, according to the assessment and examination procedures prescribed by NACE International.

(3) Critical junctures--In the case of an installation, repair, or removal of an underground storage tank (UST) system, all of the following steps:

(A) preparing the tank bedding immediately before receiving the tank;

(B) setting the tank and the piping, including placement of any anchoring devices, backfill to the level of the tank, and strapping, if any;

(C) connecting piping systems to the tank;

(D) pressure testing the UST, including associated piping, performed during the installation;

(E) completing backfill and filling the excavation;

(F) anytime during the repair in which the piping system is connected or reconnected to the tank;

(G) anytime during the repair in which the tank or its associated piping is tested; and

(H) anytime during the removal of the UST.

(4) Engineering construction--Construction designed by a civil or mechanical engineer, as opposed to building construction which is designed by an architectural engineer.

(5) Installation--The installation of underground storage tanks [~~USTs~~] and ancillary equipment, including, but not limited to, the following activities:

(A) installation of new or used tanks at a new or existing facility;

(B) installation of new or replacement piping for new or existing tanks;

(C) addition of secondary containment equipment for new or existing tanks or piping;

(D) addition or replacement of the following types of equipment at a new or existing facility:

(i) spill and overfill prevention equipment, as required in §334.51 of this title (relating to Spill and Overfill Prevention and Control); and

(ii) equipment or devices which are permanently installed for the purpose of providing release detection or release monitoring as required for compliance with §334.50 of this title (relating to Release Detection), except:

(I) observation wells or monitoring wells (excluding equipment and devices therein) constructed by a well driller who possesses the appropriate license required by the Texas Occupations Code, Chapter 1901 [~~Texas Department of Licensing and Regulation pursuant to the Water Well Drillers Act (Texas Civil Statutes, Article 7621e, Water Auxiliary Laws)~~]; or

(II) any equipment temporarily installed solely for the purpose of conducting a tank or piping tightness test, as defined in §334.2 of this title (relating to Definitions), except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal. Temporarily in this context means the reasonable amount of time required to attach the equipment, make the tests, and remove the equipment, under the given conditions at the site;

(E) installation or replacement of anchoring systems designed to prevent tank flotation;

(F) installation or replacement of vent lines at new or existing facilities;

(G) installation or replacement of submersible pumping systems at new or existing facilities; and

(H) installation or replacement of any underground Stage I or Stage II vapor recovery systems.

(6) On-site supervisor--An individual who supervises the installation, repair, or removal of an underground storage tank (UST) [~~a UST~~] in the State of Texas, and who meets the licensing requirements of this subchapter for one of the following licenses:

(A) Class A for an on-site supervisor who supervises the installation or repair of UST systems; or

(B) Class B for an on-site supervisor who supervises the removal of UST systems.

(C) Class A/B combination for an on-site supervisor who supervises the installation, repair, and removal of UST systems.

(7) Removal--Permanent removal of an underground storage tank [~~a UST~~] from service as defined in §334.2 of this title (relating to Definitions) conducted according to §334.55 of this title (relating to Permanent Removal from Service).

(8) Repair--The modification or correction of an underground storage tank (UST) [~~a UST~~] and ancillary equipment. The term does not include:

(A) relining a UST through the application of epoxy resins or similar materials;

(B) performing a tightness test to ascertain the integrity of the tank, except when a tightness test is a prescribed element of a critical juncture of an installation, repair, or removal;

(C) maintaining and inspecting cathodic protection devices by a corrosion specialist or corrosion technician;

(D) performing emergency actions to halt or prevent leaks or ruptures; or

(E) performing minor maintenance on ancillary aboveground equipment.

(9) Underground storage tank (UST)--Any one or combination of underground tanks and any connecting underground pipes used to contain accumulation of regulated substances, the volume of which, including the volume of the connecting underground pipes, is 10% or more beneath the surface of the ground.

(10) Underground storage tank contractor (or UST contractor)--A person that offers to undertake, represents itself as being able to undertake, or undertakes the installation, repair, or removal of a UST, and who meets the registration requirements of this subchapter.

(11) Underground utilities--Public underground water systems, sanitary sewers, or storm sewers. The phrase "underground utilities" does not include private underground pipe systems (water or sewer piping), power or communication cables, or natural gas lines.

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SUBCHAPTER J. WASTEWATER OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.331, §30.340

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. These amendments are also proposed under TWC, §26.0301, which authorizes the commission to issue licenses and registrations for wastewater treatment plant operators and sewage treatment or collection facility services under contract.

These amendments implement TWC, §§5.013, 5.102, 5.103, 26.0301, and 37.001 - 37.015.

§30.331. Purpose and Applicability.

(a) The purpose of this subchapter is to establish qualifications for issuing and renewing licenses and registrations to:

(1) domestic wastewater treatment facility operators;

(2) wastewater collection system operators; and

(3) companies that operate these facilities on a contract basis.

(b) Persons that operate, assist in the operation, or contract to operate domestic wastewater treatment facilities or supervise wastewater collection activities, other than an operator-in-training, must be licensed or registered and meet the qualifications of this subchapter and Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations); and must comply with the requirements in Chapter 217 of this title (relating to Design Criteria for Domestic Wastewater Systems), Chapter 317 of this title (relating to Design Criteria Prior to 2008 [~~for Sewerage Systems~~]), and all other applicable rules under the jurisdiction of this commission.

(c) Operators are responsible for performing adequate process control of wastewater treatment and collection facilities.

(d) All Class D and Class I licenses previously issued to operators who do not possess a high school diploma or equivalent, may still be renewed according to §30.342 of this title (relating to Qualifications for License Renewal).

(e) An individual who has an honorary license shall not operate a domestic wastewater treatment facility or supervise a wastewater collection system.

[~~(f) Certificates of competency or registration issued before January 1, 2002, remain in effect until they expire, or are replaced or revoked by the commission.~~]

(f) [~~(g)~~] The holder of a license or registration is not subject to revocation or suspension of a license or registration if the licensed operator or registered company is unable to properly operate the wastewater treatment or collection facility due to:

(1) the refusal of the permittee to authorize the necessary funds to operate the wastewater treatment or collection facility properly; or

(2) the failure of the wastewater treatment or collection facility to comply with its wastewater disposal permit resulting from faulty design or construction of the facility.

§30.340. Qualifications for Initial License.

(a) To obtain a license, an individual must have met the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), [~~and~~] the following requirements for each class of license, and pass an examination.[~~:~~]
Figure: 30 TAC §30.340(a)

[~~Figure: 30 TAC §30.340(a)~~]

(b) At least one-half of the total experience required for a wastewater treatment license must be in actual domestic wastewater treatment facility operation or maintenance duties. Related experience, which involves tasks similar to those required for operation of wastewater treatment facilities, will count at a rate of 50% toward meeting the total experience requirement. For laboratory experience to be applicable, the laboratory must be owned and operated by the permittee and the laboratory technician must consult daily with operational personnel.

(c) Wastewater collection system experience must be in actual wastewater collection system operation or maintenance duties. Credit for wastewater experience that is not directly connected with collection system operation or maintenance shall be approved if the experience involves tasks that are similar to that required for the operation and maintenance of collection systems. Each year of related experience shall count as 1/2 year of experience. Each year of experience in collection system operation and maintenance shall only count as 1/2 year of experience toward a wastewater treatment facility operator license.

(d) Individuals who request to substitute a bachelor's [~~bachelors~~] or master's [~~masters~~] degree for experience at the Class A, Class B, or Class III level must have a major in chemistry, biology, engineering, microbiology, bacteriology, or another similar discipline[~~, as~~] approved by the executive director.

(e) For each license, applicants may substitute either college hours or training credit hours to meet the experience requirement:

(1) 16 semester hours or an additional 20 hours of training credits are equal to six months of the required work experience;

(2) Class C and Class II applicants may only substitute up to one year of the required work experience; and

(3) Class A, Class B, and Class III applicants may only substitute up to two years of the required work experience.

[~~(e) Applicants may substitute an equivalent of:~~]

[~~(1) 32 semester hours of college or an additional 40 hours of training credits for one year of the experience requirement; or~~]

[~~(2) 16 semester hours of college or an additional 20 hours of training credits for six months of the experience requirement.~~]

[~~(f) The maximum years allowed for substitution are as follows:~~]

[~~(1) Class A, Class B, and Class III applicants may substitute up to two years of the required work experience; and~~]

[~~(2) Class C and Class II applicants may substitute up to one year of the required work experience.~~]

(f) [~~(g)~~] The hours of training credit required for a license must be in approved courses, which include the following or their equivalents.

Figure: 30 TAC §30.340(f)

[~~Figure: 30 TAC §30.340(g)~~]

(g) [~~(h)~~] An individual who previously held a Class D license or higher may not apply for a new Class D license if the individual currently operates any activated sludge type facilities, any trickling filter or rotating biological contractor facilities with a permitted daily average flow of 100,000 gallons per day or greater, or any facility that uses a subsurface area drip dispersal system as defined in §222.5 of this title (relating to Definitions) for disposal of its effluent. A trickling filter or rotating biological contractor is a secondary aerobic process that uses microbiological organisms attached to a fixed substrate.

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

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SUBCHAPTER K. PUBLIC WATER SYSTEM OPERATORS AND OPERATIONS COMPANIES

30 TAC §30.390

Statutory Authority

This amendment is proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. This amendment is also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the

public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37. This amendment is also proposed under THSC, §341.033, which requires persons who furnish drinking water to the public for a charge to hold a license issued by the commission under TWC, Chapter 37; and THSC, §341.034, which requires persons who operate a public water supply on a contract basis to hold a registration issued by the commission under TWC, Chapter 37.

This amendment implements TWC, §§5.013, 5.102, 5.103, and 37.001 - 37.015; and THSC, §341.033 and §341.034.

§30.390. Qualifications for Initial License.

(a) To obtain a license, an individual must meet the requirements of Subchapter A of this chapter (relating to Administration of Occupational Licenses and Registrations), and the following requirements for each class of license, and pass an examination.
Figure: 30 TAC §30.390(a)
[~~Figure: 30 TAC §30.390(a)~~]

(b) An individual who applies for a Class C, B, or A license, and relies on a bachelor's [~~bachelors~~] or master's [~~masters~~] degree to meet the educational requirements, must have a bachelor's [~~bachelors~~] or master's [~~masters~~] degree with a major in chemistry, biology, engineering, microbiology, bacteriology, or other similar discipline approved by the executive director.

(c) An individual who applies for a Class C or B license must obtain at least one-half of the total work experience requirement in the specific field for the license that is requested: [~~.~~]

(1) for [~~For~~] Class C and B surface water licenses, the experience must be obtained through operations activities at the production or treatment facilities for surface water or groundwater under the direct influence of surface water;[~~.~~]

(2) for [~~For~~] Class C and B groundwater licenses, the experience must be obtained through operations activities at the production or treatment facilities for groundwater source or groundwater under the direct influence of surface water; or[~~.~~]

(3) for [~~For~~] Class C and B distribution licenses, at least one-half of the required experience must be obtained as a result of operations activities at treated water storage, pumping, or distribution facilities; and[~~.~~]

(4) once the work experience has been met from paragraphs (1), (2), or (3) of this subsection, the executive director may count any remaining experience to meet up to 50% of the remaining requirement.

(d) For all classes of licenses, laboratory experience must:

(1) be obtained at a laboratory that is owned and operated by the public water system; and

(2) involve daily consultation with individuals who perform process control duties in production or distribution of drinking water for the water system.

(e) For each license, applicants may substitute either college hours or training credits to meet the experience requirement:

(1) 16 semester hours or an additional 20 hours of training credits are equal to six months of the experience;

(2) Class C applicants may only substitute up to one year of the required work experience; and

(3) Class B and Class A applicants may only substitute up to two years of the required work experience.

[~~(e) Individuals may substitute college credits or additional approved training for work experience.~~]

[~~(1) For a Class C license, 32 semester hours of college, or 40 additional hours of approved training may be substituted for one year of work experience, approved by the executive director.~~]

[~~(2) For a Class C license, 16 semester hours of college, or 20 additional hours of approved training may be substituted for six months of work experience, approved by the executive director.~~]

[~~(3) For Class B and A licenses, 64 semester hours of college, or 80 additional hours of approved training may be substituted for two years of work experience, approved by the executive director.~~]

[~~(4) For Class B and A licenses, 32 semester hours of college, or 40 additional hours of approved training may be substituted for one year of work experience, approved by the executive director.~~]

(f) Training credits must be in approved courses that include the following or equivalent.
Figure: 30 TAC §30.390(f)
[~~Figure: 30 TAC §30.390(f)~~]

(g) An individual who previously held a Class D license shall not apply for a new Class D license if the individual:

(1) currently operates facilities at groundwater treatment systems of 250 connections or more;

(2) currently operates facilities at groundwater treatment systems serving a population of 750 or more;

(3) currently operates facilities at surface water treatment systems;

(4) currently operates facilities at groundwater systems under the influence of surface water;

(5) performs supervisor, crew chief, or foremen duties for distribution systems that have over 250 connections; or

(6) operates multiple groundwater systems and the cumulative number of connections exceeds 250.

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

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SUBCHAPTER L. VISIBLE EMISSIONS EVALUATOR TRAINING AND CERTIFICATION

30 TAC §30.506, §30.507

Statutory Authority

These amendments are proposed under Texas Water Code (TWC), §5.013, which establishes the general jurisdiction of the commission; TWC, §5.102, which establishes the general powers of the commission; and TWC, §5.103, which authorizes the Texas Commission on Environmental Quality (commission) to make rules. These amendments are also proposed under TWC, §37.001, which establishes that in TWC, Chapter 37, "Commission" means the Texas Natural Resource Conservation Commission, predecessor to the commission; TWC, §37.002, which authorizes the commission to adopt any rules necessary to: establish occupational licenses and registrations prescribed by TWC, §§26.0301, 26.3573, 26.452, and 26.456; Texas Health and Safety Code (THSC), §§341.033, 341.034, 361.027, and 366.071; and Texas Occupations Code, §1903.251; establish classes and terms of occupational licenses and registrations; and administer the provisions of TWC, Chapter 37, and other laws governing occupational licenses and registrations under the commission's jurisdiction; TWC, §37.003, which establishes that a person may not engage in a business, occupation, or profession described by TWC, §§26.0301, 26.3573, 26.452, and 26.456; THSC, §§341.033, 341.034, 361.027, and 366.071; or Texas Occupations Code, §1903.251, unless the person holds the appropriate license or registration issued by the commission; TWC, §37.004, which authorizes the commission to establish qualifications for each license and registration issued under TWC, Chapter 37; TWC, §37.005, which authorizes the commission to establish requirements and uniform procedures for issuing licenses and registrations under TWC, Chapter 37; TWC, §37.006, which authorizes the commission to establish requirements and uniform procedures for renewing licenses and registrations; TWC, §37.007, which authorizes the commission to prescribe the content of licensing examinations; TWC, §37.008, which provides the commission authority to approve training programs necessary to qualify for or renew a license; TWC, §37.009, which authorizes the commission to establish and collect fees to cover the cost of administering and enforcing TWC, Chapter 37, and licenses and registrations issued under TWC, Chapter 37; TWC, §37.010, which grants the commission authority to make rules regarding false, misleading, or deceptive practices by licensees and registrants; TWC, §37.011, which authorizes the commission to prepare and make available to the public information describing the procedures by which a person may submit licensing and registration complaints to the commission; TWC, §37.012, which authorizes the commission to require a person to provide information about other occupational licenses and registrations held by the person; TWC, §37.013, which provides that a license or registration holder must engage in the business, occupation, or profession governed by the license or registration according to applicable laws and commission rules and orders; TWC, §37.014, which requires the commission to maintain and make available to the public an official roster of persons who hold licenses and registrations issued under TWC, Chapter 37; and TWC, §37.015, which authorizes the commission to contract with persons to provide services required by TWC, Chapter 37.

These amendments implement TWC, §§5.013, 5.102, 5.103 and 37.001 - 37.015.

§30.506. Visible Emission Evaluator Training Requirements.

(a) Visible emission evaluator training providers must:

(1) ensure that training meets the general and delivery standards approved by the executive director;

(2) follow the criteria and procedures of Method 9 as established by United States Environmental Protection Agency;

(3) provide a six to eight hour mandatory lecture session for first time students, and those students desiring to attend the lecture session again as a refresher;

(4) present the lecture session to the new students prior to any field training or testing;

(5) present the lecture session in a setting that is conducive to learning; [~~and~~]

(6) use visual aids and handouts to clarify topics that are taught; and[~~.~~]

(7) provide one proctor for 24 attendees or less, two proctors for 25 to 100 attendees, and an additional proctor for every 50 attendees over 100.

(b) Visible emission evaluator training shall include, but is not limited to, the following topics:

(1) opacity history to include Ringlemann equivalency;

(2) court cases that uphold opacity readings and procedures;

(3) applicability of Federal and State Method 9 opacity regulations;

(4) Federal and State New Source Performance Standards;

(5) Federal and State New Source Review program;

(6) State operating permits;

(7) State Implementation Plans;

(8) scientific principles of opacity;

(9) methodology of reading visible emissions, to include, but not limited to:

(A) position of sun;

(B) multiple stacks;

(C) water vapor plumes;

(D) slant angle correction;

(E) "red sky" concerns;

(F) not staring at plume;

(G) meteorology;

(H) wind direction and speed; and

(I) contrasting background;

(10) applicability and uses of Method 22, 203A, 203B, and 203C;

(11) proper documentation methods using the various field forms; and

(12) field testing instructions.

(c) The training topics may be modified at the discretion of the executive director.

(d) The training provider will issue a certificate of completion to attendees of the lecture session which will contain the training provider's name, title of course (visible emission evaluator course classroom lecture), student's name, location of lecture, and date of lecture.

(e) The training provider shall develop and submit for executive director approval an exit questionnaire that shall be administered to the attendees upon completion of the lecture. This questionnaire is for determining the effectiveness of the training session and the ability of the instructor to convey the necessary information. The completed questionnaires shall be kept on file for a minimum of three years and be made available to the agency upon request.

§30.507. Field Training and Testing Requirements.

(a) Field training shall:

(1) provide repetition of any field instructions, given at the lecture session, to those attendees attempting recertification who have not had to attend the lecture;

(2) provide familiarization plumes shown before the start of each black portion and each white portion of the field test;

(3) provide for completion of one test run for new students prior to taking a test for certification. The training run shall consist of 25 black readings and 25 white readings, and be given exactly as a regular certification test run. The training run cannot be accepted from the new student as certification, even if the score is within the passing parameters. This training run will be kept on file for three years; and

(4) allow attendees that are attempting recertification to take the training run described above before certification.

(b) Field testing shall include:

(1) a complete run which consists of 50 contiguous plumes;

(2) a random order of opacity from 0% to 100%;

(3) avoidance of adverse weather; i.e., drizzle, rain, fog, or high winds; and

[~~(4) at least two proctors per each 100 attendees, and two proctors if less than 100 attendees; and~~]

(4) [~~(5)~~] a certificate issued to those students that successfully pass the test that contains the name of the provider, title of certification (to include a term similar to "visible emissions evaluator"), the name of the student, and the date of successful certification. The provider shall number each certificate so that each certificate is unique and not duplicated.

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

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 2. TEXAS PARKS AND WILDLIFE DEPARTMENT

CHAPTER 53. FINANCE

SUBCHAPTER A. FEES

DIVISION 1. LICENSE, PERMIT, AND BOAT AND MOTOR FEES

31 TAC §53.3

The Texas Parks and Wildlife Department proposes an amendment to §53.3, concerning Combination Hunting and Fishing License Packages. Under Parks and Wildlife Code, §42.012, the Texas Parks and Wildlife Commission (commission) is required to waive the hunting license fee for a qualified disabled veteran, defined as "a veteran with a service connected disability, as defined by the Veteran's Administration, consisting of the loss of the use of a lower extremity or of a disability rating of 50 percent or more and who is receiving compensation from the United States for the disability." Under Parks and Wildlife Code, §46.004, the commission is required to waive fishing license fees for a qualified disabled veteran as defined by Parks and Wildlife Code, §42.012. Under Parks and Wildlife Code, §50.001, the commission is required to establish fees for combination hunting and fishing licenses.

In November of 2013 the department adopted an amendment to §53.3 to designate nonresident disabled veterans as Texas residents for purposes of allowing them to obtain a super combination hunting and "all water" fishing package (or "super-combo," consisting of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag) at no charge. As adopted (38 TexReg 9371), the amendment contained an August 31, 2016 sunset date. Staff was directed to encourage other states to promulgate reciprocal license privileges for Texas residents prior to the sunset date. Although such privileges were explored, due to differences among the states regarding hunting and fishing license structure, authority to set fees and fiscal realities, a reciprocal arrangement is not feasible. Notwithstanding the lack of reciprocity, the department has determined that it is appropriate to continue to allow nonresident disabled veterans to obtain the super-combo license package at no charge.

Justin Halvorsen, Revenue Director, has determined that for each of the first five years that the rule as proposed is in effect, there will be fiscal implications to state or local governments as a result of enforcing or administering the rule, consisting of the cost to the department of issuing the license and the theoretical lost revenue resulting from no-cost super-combo license packages issued to nonresidents who otherwise would have had to purchase the necessary nonresident licenses and stamps.

Department data indicate that since 2013, an average of 2,680 nonresident disabled veteran super-combo license packages have been issued each license year (September 1 - August 31). Assuming this average is representative of future issuance trends, the department estimates that for each of the first five years that the amendment as proposed is in effect, there will be an issuance cost to the department of approximately $1,796

(rounded up to the nearest whole dollar). This figure was derived by multiplying the average number of nonresident disabled veteran super-combo license packages issued (2,680) by the $.67 transaction fee incurred by the department each time a license is issued via the department's electronic point-of-sale system.

As noted above, to facilitate issuance of a super combination license to nonresident disabled veterans, the subsection proposed for continuation currently defines "resident" for purposes of obtaining a super-combo license to include a nonresident disabled veteran. If the provision expired and a nonresident disabled veteran was unable to acquire a super-combo license (which is available only to residents as defined by the Parks and Wildlife Code and Commission regulation), the nonresident disabled veteran would be required to obtain the appropriate nonresident license(s) and endorsement(s).

The department is unable to determine how many nonresident disabled veterans to whom super-combo license packages were issued would have purchased all of the individual licenses and endorsements that make up a super-combo license. However, the department believes that it is highly unlikely that persons who currently qualify for the nonresident disabled veteran super-combo license would seek to purchase all of the licenses and endorsements that make up the super-combo license if the no cost nonresident disabled veterans super-combo license expired. If the licenses and endorsements that make up a super-combo were sold individually to a nonresident, the total cost would be $404 consisting of a hunting license ($315 for nonresidents), "all water" fishing license ($68 for nonresidents), upland game bird stamp ($7), migratory game bird stamp ($7), and archery stamp ($7).

It is more likely that a nonresident would purchase the lowest cost license required to engage in the activity for which a license was required. Among the license types that such a person would more likely acquire are the following: nonresident freshwater fishing package ($58), a nonresident saltwater fishing package ($63), a nonresident all-water fishing package ($68), a nonresident one-day all-water fishing package ($16), a nonresident general hunting license ($315), a nonresident spring turkey license ($126), a nonresident special hunting license ($132), or a nonresident 5-day special hunting license ($48), and any required endorsements/stamps.

Mr. Halvorsen also has determined that for each of the first five years the rule as proposed is in effect the public benefit anticipated as a result of enforcing or administering the rule as proposed will be the acknowledgment of the service and sacrifice of those who have become disabled while serving in the United States Armed Forces by allowing qualified nonresident disabled veterans to hunt and fish without having to purchase licenses or stamps.

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

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

The department has determined that there will be no adverse economic effects on small businesses or microbusinesses because the proposed rule will not directly affect small businesses or micro-businesses. Therefore, the department has not prepared the economic impact statement or regulatory flexibility analysis described in Government Code, Chapter 2006.

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

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

Comments on the proposed rule may be submitted to Justin Halvorsen, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (512) 389-8551 (e-mail: justin.halvorsen@tpwd.texas.gov) or via the department website at http://tpwd.texas.gov/business/feedback/public_comment/.

The amendment is proposed under the authority of Parks and Wildlife Code, §42.012, which requires the commission to waive the hunting license fee for a qualified disabled veteran; §46.004, which requires the commission to waive fishing license fees for a qualified disabled veteran as defined by Parks and Wildlife Code, §42.012; and §50.001, which requires the commission to establish fees for combination hunting and fishing licenses.

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

§53.3. Combination Hunting and Fishing License Packages.

(a) Combination hunting and fishing license packages may be priced at an amount less than the sum of the license and stamp prices of the individual licenses and stamps included in the package.

(1) - (9) (No change.)

(10) Nonresident disabled veteran super combination hunting and "all water" fishing package--$0. Package consists of a resident hunting license, a migratory game bird stamp, an upland game bird stamp, an archery stamp, a resident fishing license, a freshwater fish stamp, and a saltwater sportfishing stamp with a red drum tag. For purposes of this paragraph, a nonresident disabled veteran is a resident for the purpose of obtaining a super combination hunting and "all water" fishing package. [~~This paragraph expires August 31, 2016.~~]

(11) - (12) (No change.)

(b) (No change.)

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

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CHAPTER 65. WILDLIFE

SUBCHAPTER B. DISEASE DETECTION AND RESPONSE

DIVISION 2. CHRONIC WASTING DISEASE - MOVEMENT OF DEER

The Texas Parks and Wildlife Department (the Department, or TPWD) proposes the repeal of §§65.90 - 65.94 and new §§65.90 - 65.99, concerning Chronic Wasting Disease - Movement of Deer. The rules proposed for repeal were intended to function as interim rules (Interim Deer Breeder Rules) in order to maintain regulatory continuity for the duration of the 2015-2016 deer season and the period immediately thereafter. As stated in previous rulemakings, the department's intent was to review the interim rules and, based on additional information from the ongoing epidemiological investigation, disease surveillance data collected from captive and free-ranging deer herds, guidance from the Texas Animal Health Commission, and input from stakeholder groups, present the results of that review to the Parks and Wildlife Commission (Commission) in the spring of 2016 for possible modifications.

To ensure that the concerns and interests of the regulated community were fully understood and considered, the Department engaged the Center for Public Policy Dispute Resolution at the University of Texas School of Law to provide facilitation services for the spectrum of stakeholders (including deer breeders, landowners and land managers, hunters, veterinarians, wildlife enthusiasts, the Texas Animal Health Commission (TAHC), and the Department), the purpose of which was to negotiate and develop a consensus concerning the essential components of eventual regulations to comprehensively address and implement effective chronic wasting disease (CWD) management strategies. The stakeholder group convened three times during February and March at which time apparent consensus was reached. The stakeholders also participated in a final phone conference on March 21. The official report of the facilitator is available on the department's website at http://tpwd.texas.gov/huntwild/wild/diseases/cwd/.

At the March 23, 2016, meeting of the Texas Parks and Wildlife Commission (Commission), Department staff briefed the Commission on the process and results of the facilitation and presented a synoptic overview of the substantive regulatory provisions being recommended for proposal by staff to address both the consensus issues that emerged from the facilitation and additional regulatory components necessary to operationalize consensus decisions, as well as other regulatory components deemed necessary but on which there was no consensus.

In addition to the facilitated process, the new rules are also a result of extensive cooperation between the department and TAHC to protect susceptible species of exotic and native wildlife from CWD. TAHC is the state agency authorized to manage "any disease or agent of transmission for any disease that affects livestock, exotic livestock, domestic fowl, or exotic fowl, regardless of whether the disease is communicable, even if the agent of transmission is an animal species that is not subject to the jurisdiction" of TAHC. Tex. Agric. Code §161.041(b).

Regulatory Authority

Under Parks and Wildlife Code, Chapter 43, Subchapter E, the department may issue permits authorizing the trapping, transporting, and transplanting of game animals and game birds for better wildlife management (popularly referred to as "Triple T" permits). In addition, the department may issue permits authorizing the trapping, transporting and processing of surplus white-tailed deer (popularly referred to as TTP permits) and permits for the removal of urban white-tailed deer.

Under Parks and Wildlife Code, Chapter 43, Subchapter L, the department regulates the possession of captive-raised deer within a facility for breeding purposes and the release of such deer into the wild. A deer breeder permit affords deer breeders certain privileges, such as (among other things) the authority to buy, sell, transfer, lease, and release captive-bred white-tailed and mule deer, subject to the regulations of the Commission and the conditions of the permit. Breeder deer may be purchased, sold, transferred, leased, or received only for purposes of propagation or liberation. There are currently 1,275 permitted deer breeders (operating more than 1,300 deer breeding facilities) in Texas.

Under Parks and Wildlife Code, Chapter 43, Subchapters R and R-1, and Deer Management Permit (DMP) regulations for white-tailed deer at 31 TAC Chapter 65, Subchapter D, the department may allow the temporary possession of free-ranging white-tailed or mule deer for propagation within an enclosure on property surrounded by a fence capable of retaining deer. At the current time, there are no rules authorizing DMP activities for mule deer.

In addition the department regulations authorize the introduction of a deer from a deer breeding facility into a DMP facility for propagation. Deer breeders are permitted under Parks and Wildlife Code, Chapter 43, Subchapter L and 31 TAC Chapter 65, Subchapter T.

Background Regarding CWD

CWD is a fatal neurodegenerative disorder that affects some cervid species, including white-tailed deer, mule deer, elk, red deer, sika, and their hybrids (susceptible species). It is classified as a TSE (transmissible spongiform encephalopathy), a family of diseases that includes scrapie (found in sheep), bovine spongiform encephalopathy (BSE, found in cattle), and variant Creutzfeldt-Jakob Disease (vCJD) in humans. Currently, the only test certified by the U.S. Department of Agriculture (USDA) for CWD must be conducted post-mortem by extracting and testing the obex (a structure in the brain) or medial retropharyngeal lymph node, although the department in this rulemaking proposes to allow certain ante-mortem tests to be valid.

Much remains unknown about CWD. The peculiarities of its transmission (how it is passed from animal to animal), infection rate (the frequency of occurrence through time or other comparative standard), incubation period (the time from exposure to clinical manifestation), and potential for transmission to other species are still being investigated. There is no scientific evidence to indicate that CWD is transmissible to humans. What is known is that CWD is invariably fatal to cervids, and is transmitted both directly (through deer-to-deer contact) and indirectly (through environmental contamination). Moreover, a high prevalence of the disease correlates with deer population

decline in at least one free-ranging population, and human dimensions research suggests that hunters will avoid areas of high CWD prevalence. Additionally, the apparent persistence of CWD in contaminated environments represents a significant obstacle to eradication of CWD from either farmed or free-ranging cervid populations. The potential implications of CWD for Texas and its annual, multi-billion dollar ranching, hunting, real estate, tourism, and wildlife management-related economies could be significant, unless it is contained and controlled.

Discovery of CWD

The department has been concerned for over a decade about the possible emergence of CWD in free-ranging and captive deer populations in Texas. Since 2002, more than 50,000 "not detected" CWD test results have been obtained from free-ranging (i.e., not breeder) deer in Texas, and deer breeders have submitted approximately 20,000 "not detected" test results as well. The intent of the proposed new rules is to reduce the probability of CWD being spread from facilities where it might exist and to increase the probability of detecting and containing CWD if it does exist.

On June 30, 2015, the department received confirmation that a two-year-old white-tailed deer held in a deer breeding facility in Medina County ("index facility") had tested positive for CWD. Under the provisions of the Agriculture Code, §161.101(a)(6) CWD is a reportable disease and requires a veterinarian, veterinary diagnostic laboratory, or person having care, custody, or control of an animal to report the existence of CWD to TAHC within 24 hours after diagnosis. Subsequent testing confirmed the presence of CWD in additional white-tailed deer at the index facility. The source of the CWD at the index facility is unknown at this time. Within the last five years, the index facility accepted deer from 30 other Texas deer breeders and transferred 835 deer to 147 separate sites (including 96 deer breeding facilities, 46 release sites, and two DMP facilities in Texas, as well as two destinations in Mexico). The department estimates that more than 728 locations in Texas (including 384 deer breeders) either received deer from the index facility or received deer from a deer breeder who had received deer from the index facility. At least one of those locations, a deer breeding facility in Lavaca County, was also confirmed to have a CWD positive white-tailed deer acquired from the index facility.

Heightened testing requirements resulted in additional discoveries. A total of 10 white-tailed breeder deer have now been confirmed positive at four facilities (including the index facility). A total of four CWD positive deer were found in the in the index facility. Three CWD positive deer that originated from the index facility were discovered in the Lavaca County facility. A CWD positive deer was harvested from a Medina County release site and another CWD positive deer was sampled in the associated Uvalde County breeding facility located on the same ranch. While the Uvalde County breeding facility is epidemiologically linked to the index facility, neither positive deer at this location originated from the index facility. More recently, another CWD positive deer was reported in a Medina County deer breeding facility and a free-ranging hunter-harvested mule deer in Hartley County was confirmed to have CWD.

Previous CWD Rulemaking

The department has engaged in several rulemakings over the years to address the threat posed by CWD. In 2005, the department closed the Texas border to the entry of out-of-state captive white-tailed and mule deer and increased regulatory requirements regarding disease monitoring and record keeping. (The closing of the Texas border to entry of out-of-state captive white-tailed and mule deer was updated, effective in January 2010, to address other disease threats to white-tailed and mule deer (35 TexReg 252).)

On July 10, 2012, the department confirmed that two mule deer sampled in the Texas portion of the Hueco Mountains tested positive for CWD. In response, the department and TAHC convened the CWD Task Force, comprised of wildlife-health professionals and cervid producers, to advise the department on the appropriate measures to be taken to protect white-tailed and mule deer in Texas. Based on recommendations from the CWD Task Force, the department adopted new rules in 2013 (37 TexReg 10231) to implement a CWD containment strategy in far West Texas. The rules (31 TAC §§65.80 - 65.88), among other things, require deer harvested in a specific geographical area (the Containment Zone), to be presented at check stations to be tested for CWD.

In response to the first discovery of CWD in a deer breeding facility in Medina County, the department adopted emergency rules on August 18, 2015 (40 TexReg 5566) to address deer breeding facilities and release sites for breeder deer. The department followed the emergency rulemaking with the "interim" rules that are proposed for repeal as part of this rulemaking, which were published for public comment in the October 2, 2015, issue of the *Texas Register,* adopted by the Commission on November 5, 2015, and published for adoption in the January 29, 2016, issue of the *Texas Register* (41 TexReg 815).

The department also adopted emergency rules governing DMP and Triple T activities (effective October 5, 2015, published in the October 23, 2015, issue of the *Texas Register* (40 TexReg 7305, 7307) and followed with interim DMP rules published for public comment in the December 18, 2015, issue of the *Texas Register* (40 TexReg 9086), adopted by the Commission on January 21, 2016, and published for adoption in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1250).

Consensus Rule Components

As mentioned previously, the proposed new rules contain provisions that represent a consensus resulting from facilitation. Early in the facilitation process, representatives of the regulated community stated that two important goals for the regulatory community were that new rules allow live-animal testing and that the new rules allow for the transfer of breeder deer without requiring testing at the release site. At a subsequent facilitation meeting, stakeholders suggested the creation of several regulatory components, the most important of which was the creation of four new subcategories of "TC 1" deer breeding facilities (in the rubric of the interim rules, those facilities representing the least amount of risk of spreading CWD), each with a different testing regime. The proposed TC 1 testing regime would allow ante-mortem testing, and would allow the transfer of breeder deer without requiring CWD testing at the release site. After extended discussion and refinement over the remaining facilitation meetings, all stakeholders agreed that the structure was suitable for attaining the goals of both the regulated community, the other stakeholders, and the department.

The major consensus provisions emerging from the facilitation process are:

1. TC 1 breeding facility testing plans which require no release site testing for recipients of breeder deer;

2. The requirements for TC2 breeding facilities and Class II release sites;

3. The requirements for TC 3 breeding facilities and Class III release sites;

4. Standards for valid ante-mortem testing;

5. Standards for post-mortem testing;

6. The definition for "eligible-aged deer" to provide for breeder deer 12 months and older, provided the breeding facility is enrolled in the TAHC Herd Certification Program;

7. The stipulation that breeding facilities and release sites that accept breeder deer assume the lowest facility status of all originating facilities;

8. The provisions allowing breeding facilities to maintain MQ authorization or facility status by making up for missed tests;

9. The allowance of ante-mortem tests to be submitted in lieu of post-mortem tests;

10. Stipulation that failure to test a release site make the site ineligible for future releases;

11. Testing requirements for DMP sites;

12. Testing requirements for Triple T and TTP permits;

13. Testing requirements at Triple T release sites;

14. Tagging requirements for Class III release sites; and

15. Testing requirements and prohibitions for release sites that failed to comply with the interim rules and release sites that fail to comply with the new rules.

Non-consensus Rule Components

The stakeholders at the facilitation were unable to reach consensus on the following:

1. The release of breeder deer to sites not surrounded by a 7-foot high fence; which is a provision of the interim rules and which the department has retained in the proposed new rules.

2. Standardized ear tagging requirements were a part of the stakeholder discussions. There was no consensus on this issue nor do the proposed rules prescribe a change to the standard for ear tagging requirements for all breeder deer, with the exception of Class III release sites.

Description of the Rules

Definitions

Proposed new §65.90, concerning Definitions, would set forth the meanings of specialized words and terms in order to eliminate ambiguity and enhance compliance and enforcement.

Proposed new §65.90(1) would define "accredited testing facility" as "a laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD." The definition is necessary in order to provide a standard for testing facilities.

Proposed new §65.90(2) would define "ante-mortem" testing as "a CWD test performed on a live deer." The definition is necessary because the proposed new rules allow or require ante-mortem testing in addition to post-mortem testing.

Proposed new §65.90(3) would define "breeder deer" as "a white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." The definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(4) would define "confirmed" as "a CWD test result of "positive" received from the National Veterinary Service Laboratories (NVSL) of the United States Department of Agriculture." The definition is necessary in order to provide a definitive standard for asserting the presence of CWD in a sample. Samples collected from breeder deer are sent initially to an accredited testing facility, such as the Texas Veterinary Medical Diagnostic Laboratory (TVMDL). A test result of "suspect" is returned when CWD is detected, and a tissue sample is forwarded to the NVSL for confirmation.

Proposed new §65.90(5) would define "CWD" as "chronic wasting disease." The definition is necessary to provide an acronym for a term that is used repeatedly in the rules.

Proposed new §65.90(6) would define "CWD-positive facility" as "a facility where CWD has been confirmed." The definition is necessary because the proposed new rules contain provisions that are predicated on whether or not CWD has been detected and confirmed in a given deer breeding, DMP, nursing, or other facility authorized to possess white-tailed deer or mule deer.

Proposed new §65.90(7) would define "deer breeder" as "a person who holds a valid deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." As with several other definitions in the proposed new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(8) would define "deer breeding facility (breeding facility)" as "a facility permitted to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter." As with several other definitions in the proposed new rules, the definition is necessary to establish a shorthand term for a phrase that is used frequently in the proposed new rules but cumbersome to repeat.

Proposed new §65.90(9) would define "department (department)" as "Texas Parks and Wildlife Department." The definition is necessary to avoid confusion, since the proposed new rules contain references to another state agency.

Proposed new §65.90(10) would define "Deer Management Permit (DMP)" as "a permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for propagation purposes. The proposed new rules would regulate certain aspects of activities conducted under a DMP and a definition is necessary to avoid any confusion as to what is meant by the term.

Proposed new §65.90(11) would define "eligible-aged deer" as "if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older or for any other deer, 16 months of age or older." CWD is difficult to detect in deer younger than 12 months of age. The department's previous CWD testing rules at §65.604(e) of this title provided for testing of mortalities that were 16 months or older. The department is retaining that standard but is also recognizing that the TAHC and USDA use a standard of 12 months.

Proposed new §65.90(12) would define "eligible mortality" as "an eligible-aged deer that has died." The proposed new rules stipulate CWD testing requirements. As mentioned earlier, CWD is difficult to detect in younger animals; therefore, the proposed new rules would require that all deer tested be of eligible age.

Proposed new §65.90(13) would define "exposed deer." This definition would replace the former definition for "Tier 1," which proved to be easily confused with other terms such as "TC 1." The definition would provide that "unless the department determines through an epidemiological investigation that a specific breeder deer has not been exposed to CWD, an exposed deer is a white-tailed deer or mule deer that is in a CWD-positive facility or was in a CWD-positive facility within the five years preceding the confirmation of CWD in that facility." The definition is necessary to distinguish the circumstances under which certain provisions of the proposed new rules are applicable. The five-year timeframe was selected because a deer infected with CWD could shed prions (the infectious agent believed to cause CWD) and infect other animals during this period before exhibiting clinical symptoms of the disease. However, if an epidemiological investigation concludes that any part of the five-year window is unnecessary, the status of "exposed" could be altered.

Proposed new §65.90(14) would define "facility" as "any location required to be registered in TWIMS under a deer breeder permit, Triple T permit, or DMP, including release sites and/or trap sites." The definition is necessary to provide a shorthand term for the locations to which the proposed new rules apply, rather than having to enumerate a cumbersome list of sites.

Proposed new §65.90(15) would define "hunter-harvested deer" as "a deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation)." The definition is necessary because the proposed rules in some instances require deer harvested by hunters (as opposed to other types of mortality) to be tested for CWD.

Proposed new §65.90(16) would define "hunting year." Because the proposed new rules would stipulate the testing of deer harvested by lawful hunting it is necessary to create a term that covers hunting under the normal seasons and bag limits established for each county by the Commission and hunting that occurs during the period of validity of Managed Lands Deer Permits; therefore, "hunting year" would be defined as "that period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation)."

Proposed new §65.90(17) would define "landowner (owner)" as "any person who has an ownership interest in a tract of land, and includes a landowner's authorized agent." The definition is necessary because the proposed new rules set forth testing requirements and other obligations for persons who own land where breeder deer are released.

Proposed new §65.90(18) would define "landowner's authorized agent" as "a person designated by a landowner to act on the landowner's behalf." The definition is necessary for the same reason set forth in the discussion of proposed new §65.90(17).

Proposed new §65.90(19) would define "liberated deer" as "a free-ranging deer that bears evidence of a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue)." The definition is necessary because the proposed new rules would in certain circumstances require the testing of hunter-harvested deer that could be identified as breeder deer that had been liberated.

Proposed new §65.90(20) would define "Movement Qualified (MQ)." Because the proposed new rules require deer breeding facilities to maintain a minimum level of testing over specified time period in order to be authorized by the department to transfer breeder deer to other deer breeders or for purposes of release, it is necessary to create a shorthand term to reference that ability. Therefore, "Movement Qualified (MQ)" would be defined as "a designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer."

Proposed new §65.90(21) would define "Not Movement Qualified (NMQ)" as "a designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder." Because the proposed new rules would prohibit the movement of deer from any facility that is not MQ, a definition for that condition is necessary.

Proposed new §65.90(22) would define "NUES tag" as "an ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES)." The definition is necessary because the proposed new rules require certain breeder deer and Triple T deer released to a release site to be tagged with either a RFID or NUES tag.

Proposed new §65.90(23) would define "originating facility" as "any facility from which deer have been transported, transferred, or released, as provided in this division or as determined by an investigation of the department, including for breeder deer, the source facility identified on a transfer permit and for deer being moved under a Triple T permit, the trap site.

Proposed new §65.90(24) would define "post-mortem test" as "a CWD test performed on a dead deer," which is necessary in order to delineate the situations in which the proposed new rules require post-mortem testing as opposed to ante-mortem testing.

Proposed new §65.90(25) would define "properly executed." Because the proposed new rules would require the submission of electronic reports and forms that provide critical information to the department, it is necessary to make clear that all information on such a form or report must be provided. Therefore, the proposed new rules would define "properly executed" as "a form or report required by this division on which all required information has been entered."

Proposed new §65.90(26) would define "reconciled herd" as "the deer held in a breeding facility for which the department has determined that the deer breeder has accurately reported every birth, mortality, and transfer of deer in the previous reporting year." The definition is necessary because the proposed rules require a deer breeder to have a reconciled herd in order to transfer or release breeder deer.

Proposed new §65.90(27) would define "release site" as "a specific tract of land that has been approved by the department for the release of deer under this division." The definition is necessary because the proposed new rules impose CWD testing and other requirements for certain tracts of land where breeder deer are liberated or transferred.

Proposed new §65.90(28) would define "reporting year" as "the period of time from April 1 of one calendar year to March 31 of the next calendar year." Deer breeders are required to file annual reports with the department. The proposed new rules condition the eligibility of deer breeders to transfer and release deer on the completeness and accuracy of those reports.

Proposed new §65.90(29) would define "RFID tag" as "a button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system." The definition is necessary because the proposed new rules require certain breeder deer and Triple T deer released to release sites to be tagged with either an RFID or NUES tag.

Proposed new §65.90(30) would define "status" as "the level of testing required by this division for any given deer breeding facility or release site." The definition also clarifies that the highest status for a Transfer Category is 1 and the lowest status is Transfer Category 3. Similarly, Class I is the highest status for release sites and Class III is the lowest. As noted previously, the proposed new rules categorize breeding facilities and release sites based on relative risk. The definition is necessary because the proposed new rules include regulatory requirements that are predicated upon the status of a breeding facility or release site.

Proposed new §65.90(31) would define "submit." In order to eliminate lengthy repetition throughout the proposed new rules, "submit" is defined as "when used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory."

Proposed new §65.90(32) would define "suspect." The testing process for determining that a deer is in fact infected with CWD is two-fold. If the initial test on a sample indicates the presence of the disease, the sample or another sample from the same animal is re-tested. Because the proposed new rules would make any facility NMQ pending confirmation (i.e., the re-test), it is necessary to create a term for the initial test result that causes the re-test. Therefore, "suspect" would be defined as "an initial CWD test result of "detected" that has not been confirmed."

Proposed new §65.90(33) would define "TAHC" as "Texas Animal Health Commission."

Proposed new §65.90(34) would define "TAHC CWD Herd Certification Program" as "the disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae)." The proposed new rules have provisions specific to deer breeders who participated in the TAHC herd certification program. The definition makes it clear that references to herd certification are references to the herd certification program administered by TAHC.

Proposed new §65.90(35) would define "TAHC Herd Plan" as "a set of requirements for disease testing and management developed by TAHC for a specific facility." The proposed new rules in some cases make eligibility to transfer or receive breeder deer contingent on compliance with a herd plan developed by TAHC. The definition makes it clear that references to herd plans are references to herd plans developed by TAHC.

Proposed new §65.90(36) would define "Test, Test Result(s), or Test Requirement" as "a CWD test, CWD test result or CWD test requirement as provided in this division," for the same reasons described in the explanation of the definition for "submit."

Proposed new §65.90(37) would define "trap site" as "a specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1," which is necessary because the proposed new rules would impose testing and reporting requirements on trap sites under various permits.

Proposed new §65.90(38) would define "Triple T permit." Because the proposed new rules would affect certain activities conducted under Triple T permits, the term is defined in order to eliminate any confusion. A Triple T permit is "a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds)." In the context of the proposed new rules, a reference to Triple T permit is limited to a Triple T permit for activities involving white-tailed and mule deer.

Proposed new §65.90(39) would define "Trap, Transport and Process (TTP) permit"-as "a permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds), to trap, transport, and process surplus white-tailed deer (TTP permit)." The proposed definition is necessary to clarify and distinguish TTP and Triple T permit requirements.

Proposed new §65.90(40) would define "TWIMS" as "the department's Texas Wildlife Information Management Services (TWIMS) online application." TWIMS is the system that all deer breeders are required to use to file required notifications and reports required by current rule.

General Provisions

Proposed new §65.91, concerning General Provisions, would set forth a number of provisions that are applicable to the transfer or release of deer.

Proposed new §65.91(a) would stipulate that in the event that a provision of the proposed new rules conflicts with any other provision of 31 TAC Chapter 65, the new rules (if adopted) would apply. In order to avoid confusion resulting from a conflict between regulations, the proposed new rules with the agency's existing rules governing white-tailed deer and mule deer. Therefore, the proposed new rules would clarify that the proposed new rules govern in the event of conflict.

Proposed new §65.91(b) would prohibit the transfer of live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP for any purpose except as provided by the proposed new rules. Because deer breeders, landowners, and wildlife managers frequently transfer deer under various permits, it is necessary in light of the emergence of CWD in Texas deer breeding facilities as well as in free-ranging deer to prohibit the movement of breeder deer except as authorized by the proposed rules.

Proposed new §65.91(c) would prohibit the movement of deer to or from any facility where CWD has been detected, beginning with the notification that a "suspect" test result has been received from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample and would stipulate that such prohibition would take effect immediately upon the notification of a CWD "suspect" test result and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility. The proposed new provision is necessary because CWD is an infectious disease, which makes it necessary to prohibit certain activities in order to contain the potential spread of the disease while test results are confirmed.

Proposed new §65.91(d) would provide that a facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of the division at that status for a minimum of two years, if

the facility is a breeding facility, or for the period specified for release sites in §65.95(c)(1)(D) of this title (relating to Movement of Breeder Deer). The proposed new rules create a tiered system of testing requirements based on the level of risk of transmission of CWD for each deer breeding facility or release site. The level of risk is based on the degree to which the facility has been monitored for the presence of CWD, or contains or is connected to exposed animals. Epidemiological science dictates that a population receiving individuals from a higher risk population is itself at greater risk; therefore, the proposed new rules would address such transfers from higher risk to lower risk populations by requiring the receiving facility or release site to comply with the testing requirements associated with the originating facility, and would stipulate a duration for the application of continued testing requirements.

Proposed new §65.91(e) would provide that a deer breeding facility that was initially permitted after March 31, 2016, will assume the lowest status among all originating facilities from which deer are received. The proposed new subsection is necessary for the same reasons addressed in the discussion of proposed new §65.91(d).

Proposed new §65.91(f) would provide that the designation of status by the department in and of itself does not authorize the transfer or movement of deer and prohibit any person from removing or causing the removal of deer from a facility that has been designated NMQ by the department. The provision is necessary because a breeding facility of any status can be designated NMQ.

Proposed new §65.91(g) would require all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department. To provide greater regulatory efficiency, it is necessary to require the use of an automated system.

Proposed new §65.91(h) would provide that in the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division, which is necessary to provide for continuity of administration in the event of technical disruptions.

CWD Testing

Proposed new §65.92, concerning CWD Testing, would establish the general provisions regarding the collection and submission of CWD test samples.

Proposed new §65.92(a) would require all CWD test samples at the time of submission for testing to be accompanied by a properly executed, department-prescribed form provided for that purpose. The technical response being developed by the department would provide for the accredited laboratories that perform CWD testing notify the department of test results electronically. Requiring persons who submit test samples to those laboratories to use a department-supplied form that contains data fields that can be entered by the laboratory, the process of notification and the sharing of records is enhanced by eliminating the need for manual data entry by the department after the test results have been received.

Proposed new §65.92(b) would set forth the requirements for valid ante-mortem testing, including the identification of the specific tissues that may be used, the requirement that tissue samples be collected by a licensed veterinarian, that the testing be done by an accredited laboratory, that samples be submitted within six months of submission from a live deer that is at least 16 months of age, has been in the facility for at least 16 months; and has not been the source of a "not detected" ante-mortem test result submitted within the previous 36 months. Under the Texas Veterinary Practices Act (Occupations Code, Chapter 801) only a licensed veterinarian is authorized to perform the procedures that the proposed new rules would allow for purposes of meeting ante-mortem testing requirements. Additionally, in order to be minimally accurate and epidemiologically valuable, tissue samples must be extracted from deer older than 16 months of age that have been in one environment long enough to be expected to have contracted CWD if it were present (which also allows epidemiologists to determine where the disease was acquired). Finally, the most significant epidemiological distinction between ante-mortem testing and post-mortem testing is that the testing of animals that have died provides a much higher likelihood of detecting the presence of disease, since diseased animals are more likely to die than healthy animals. In order to prevent the repeated use of tissues from an animal that has produced "not detected" results in the recent past, it is necessary to stipulate a minimum frequency that an animal may be used to provide tissue samples. The department has chosen the 36-month interval because it is approximately half the amount of the known maximum incubation period for CWD (five years). It should also be noted that although ante-mortem testing has not yet been acknowledged as an official test protocol by the USDA, the submission of a "suspect" ante-mortem test would cause the subject animal to be euthanized and subjected to post-mortem testing for confirmation.

Proposed new §65.92(c) would stipulate that ante-mortem tests submitted by a deer breeder for purposes of attaining a higher status would have to be collected and submitted between October 15 of one year and March 15 of the following year. This time period was chosen because it encompasses the time period when breeder deer are most likely to be handled by deer breeders for other reasons (affording the opportunity to take tissue samples at convenient times) and because it is necessary for the department to impose a "window" for logistical and administrative purposes.

Proposed new §65.92(d) would set forth the requirements for post-mortem testing, stipulating that a post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex of an eligible mortality, which may be collected only by a qualified licensed veterinarian or other person certified by TAHC to perform that procedure. The provision also would stipulate that a medial retropharyngeal lymph node collected from the eligible mortality by an qualified licensed veterinarian or other person approved by the department could be submitted to an accredited testing facility for testing in addition to or in lieu of the obex (if the obex cannot be obtained) of the eligible mortality. Obviously, the department's efforts to detect and contain CWD depend on the quality of the testing itself. At the current time, USDA will not certify herd plans for cervidae unless post-mortem CWD testing is performed by laboratories that have been approved by USDA. The standard for approval is compliance with 9 CFR §55.8, which sets forth the specific tests, methodology, and procedure for conducting post-mortem CWD tests. Therefore, in order to ensure that post-mortem CWD tests are performed in accordance with uniform standards, the proposed new rules would require all CWD tests to be performed by

a laboratory approved by USDA. Additionally, the proposed new subsection would specify which tissues must be submitted and who is authorized to collect those tissues. At the current time, the only CWD testing approved by USDA must be performed on certain tissues from eligible mortalities, such as the obex (a structure in the brain) or certain lymph nodes. Laypersons can be trained to remove an obex, but the successful extraction of appropriate lymph nodes requires an experienced veterinarian, technician, or biologist. Therefore, the proposed new subsection also stipulates that to be valid, a CWD test must be performed on an obex, which can be collected by anyone. If a lymph node is to be tested in addition to the obex, it must be a medial retropharyngeal lymph node collected from the eligible mortality by an accredited veterinarian or other person approved by the department.

Proposed new §65.92(e) would allow ante-mortem tests to be substituted for required post-mortem tests at a ratio of 2:1, provided at least two eligible mortalities have occurred in the facility in the corresponding report year; and the number of "not detected" post-mortem test results is equal to at least 50 percent of the total test results required have been submitted. The department acknowledges that natural mortality is unpredictable and that therefore there will be time periods when test results for a sufficient number of mortalities cannot be submitted; therefore, the proposed new rule allows limited substitution of ante-mortem tests for post-mortem tests. For reasons discussed earlier, test results from natural mortalities have a higher epidemiological value than ante-mortem tests and the department believes that ante-mortem testing should not replace more than half of the total required post-mortem testing.

Proposed new §65.92(f) would prohibit the use of a single ante-mortem test result more than once to satisfy any testing requirement of the division. From an epidemiological perspective, the use of one test result to satisfy more than one testing requirement (especially if the submissions take place in more than one reporting year) creates a weakness because the test result is then not unique.

Proposed new §65.92(g) would stipulate that the testing requirements of the division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division. The department believes that a person subject to the provisions of the proposed new rules should not be able to avoid compliance simply by selling, donating, or trading property to another person related to the seller.

Proposed new §65.92(h) would provide that the owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division. The proposed new rules contemplate a disease management strategy predicated on the results of CWD testing. Incomplete, inadequate, or tardy reporting of test results confound that strategy. For this reason, the proposed new rule would establish a date certain for reporting test results to the department.

Harvest Log

Proposed new §65.93, concerning Harvest Log, would set forth the elements and requirements for on-site harvest documentation. The proposed new rules require a harvest log to be maintained on Class II and Class III release sites and Triple T release sites. For each deer harvested from a Class II or Class III release site for which a harvest log is required, the proposed new rules would require the hunter's name and hunting license number (or driver's license number, if the daily harvest log is also being used as a cold storage/processing book) to be entered into the harvest log, along with the date of kill, type of deer killed, any alphanumeric identifier tattooed on the deer, the tag number of any RFID or NUES tag affixed to the deer; and any other identifier and identifying number on the deer. The proposed new provision would enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary. The proposed new paragraph also would require the daily harvest log to be presented to any department employee acting within the scope of official duties and for the contents of the daily harvest log to be reported to the department via TWIMS by no later than April 1 of each year, and would also provide for the format and retention of the harvest.

Breeding Facility Minimum Movement Qualification

Proposed new §65.94, concerning Breeding Facility Minimum Movement Qualification, would set forth the testing requirements necessary for a breeding facility to be able to transfer deer to other deer breeders or for purposes of release. The proposed new provision would cause any breeding facility to be NMQ (prohibited from transferring breeder deer anywhere for any purpose) if the breeding facility was not in compliance with MQ requirements in effect prior to the new rules, if the breeding facility is not in compliance with the testing requirements of the new rules as of their effective date and moving forward, if the facility is prohibited from transferring deer by order of TAHC, if the facility does not have a reconciled herd inventory, or if the facility was not in compliance with reporting and recordkeeping requirements. Among the requirements for achieving the movement qualification standard in proposed new §65.94(a) is a requirement to submit CWD "not detected" test results for at least 50% of eligible mortalities occurring in the facility during each reporting year beginning April 1, 2016. However, the department recognizes that if a breeding facility has unusually low eligible mortalities, this provision would result in the submission of very few test results. Therefore a provision is included to require that beginning April 1, 2021, the number of "not detected" test results submitted during the previous five consecutive years must be equal to or greater than the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 2.25 percent. This provision is intended to provide a minimum number of tests that must be submitted in a five-year period. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average natural mortality rate among eligible-aged deer and tested 50% of those mortalities, the breeding facility would test 2.25 percent (i.e., 50% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility (the eligible-aged population of the breeding facility plus eligible-aged mortalities) for each of the previous five years is added together. That number is multiplied by 2.25 percent. The resulting number is 50 percent of the average eligible-aged mortality for a deer breeding facility over a five-year period.

Proposed new §65.94(b) would provide that a breeding facility that has been designated as NMQ for failure to comply with testing requirements would be restored to MQ when sufficient "not detected" test results are submitted. The department has determined that once a breeding facility is compliant with applicable testing requirements, MQ authority should be restored, so long as the other requirements being MQ are met.

Proposed new §65.94(c) would require a facility designated NMQ to report all mortalities within the facility to the department immediately upon discovery. From an epidemiological perspective, once a breeding facility cannot provide the minimum assurance that adequate disease surveillance is being maintained, there is an increased risk that if CWD is present it could be spread. Therefore, the proposed new rule requires noncompliant facilities to report all mortalities immediately, rather than at the end of the reporting year.

Proposed new §65.94(d) would require that immediately upon the notification that a facility has received a "suspect" test result, all facilities that received deer from or provided deer to the suspect facility within the previous five years would be designated NMQ until a determination that the facility is not epidemiologically linked to the suspect deer or upon further testing the "suspect" deer is determined not to be positive. The proposed new rules are intended to detect CWD if it is present and prevent the spread of CWD once it is detected; therefore, the department has determined that it is prudent, once a "suspect" test result has been returned, to stop all movement to and from all connected facilities until the "suspect" test is either confirmed or determined to be non-positive.

Movement of Breeder Deer

Proposed new §65.95, concerning Movement of Deer, would establish the various status levels and attendant testing requirements for breeding facilities and release sites.

Proposed new §65.95(a) would allow a TC 1 or TC 2 breeding facility designated MQ and in compliance with the applicable provisions of the divisions to transfer breeder deer under existing rules to another breeding facility, an approved release site, a DMP facility, or to another person for nursing purposes.

Proposed new §65.95(b) would establish three categories of breeder facilities based on level of epidemiological risk. The TC 1 category represents the lowest risk of transmitting CWD, based on the provenance of the deer within the facility and the testing regimen performed at the facility on annual and five-year time periods. The proposed new rule would establish TC 1 status for breeding facilities that have "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program. The proposed new rule would also establish TC 1 status for breeding facilities that have submitted "not detected" post-mortem test results equivalent to one the following testing regimes (discussed in greater detail later in this preamble: 1) results equivalent to at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter, as well as a five-year record of minimum post-mortem testing based on the facility population; 2) ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter, as well as a five-year record of minimum post-mortem testing based on the facility population; or 3) annual ante-mortem tests of at least 25 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and annual post-mortem tests of at least 50 percent of eligible mortalities. These categories were developed during the facilitation effort discussed earlier in this preamble. The department is confident that the testing requirements provide an increased potential to detect and contain CWD compared to the interim rules.

Among the options provided in proposed new §65.95(b) for obtaining TC 1 status is an option to test at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter. Another option is to conduct ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted and post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter. For both of those options, the department recognizes that if a breeding facility has an unusually low number of eligible mortalities, the requirement to submit post-mortem tests for 80 percent of all eligible mortalities during year could result in a lower number of post-mortem tests. Therefore, both provisions contain a minimum number of post-mortem tests to be submitted over a five-year period. That number is calculated as the sum of the eligible-aged population in the breeding facility at the end of each of five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent. To develop this number, the department considered that the average natural mortality in a deer breeding facility is 4.5 percent of the eligible-aged deer population in the breeding facility each year. Therefore, if a deer breeding facility with an average number of natural mortalities among eligible-aged deer and tested 80% of those mortalities, the breeding facility would test 3.6 percent (i.e., 80% of 4.5%) of the eligible-aged population each year. In order to calculate this number over a five-year period, the eligible-aged population of the breeding facility (the eligible-aged population of the breeding facility plus eligible-aged mortalities) for each of the previous five years is added together. That number is multiplied by 3.6 percent. The resulting number is 80 percent of the average eligible-aged mortality for a deer breeding facility over a five-year period.

Proposed new §65.95(b) also would stipulate consequences for breeding facilities that have failed to comply with the testing requirements for TC 1 breeding facilities, providing for reduction in status to TC 2, provisions for re-attaining TC 1 status if testing compliance is achieved within 60 days of being reduced in status, the stipulation of a minimum time period of two years at TC 2 status if TC 1 status is not re-attained within 60 days, and a provision for ineligibility to regain TC 1 status if breeder deer from a lower status facility are accepted during the 60-day re-attainment period. The department believes that failure to comply with testing requirements is problematic from an epidemiological point of view and should result in demotion to a lower status, but recognizes that it is not necessarily possible to observe or locate mortalities in a timely manner; therefore, the proposed new rules would offer a limited time period for delinquent facilities to "catch up" before being reduced in status for a two-year period.

Proposed new §65.95(b)(2) would establish testing requirements for TC 2 breeding facilities, which would be the minimum testing requirements for MQ status stipulated in §65.94, relating to Breeding Facility Minimum Movement Qualification. A TC 2 breeding facility is a facility that is neither a TC 1 breeding facility nor a TC 3 facility.

Proposed new §65.95(b)(2) also would establish provisions regarding classification and requirements for TC 3 breeding facilities. A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order and/or herd plan and received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, or possessed a deer that was in a CWD-positive facility within the previous five years. As such, TC 3 breeder facilities are the facilities with the highest risk of harboring and spreading CWD. Therefore, the proposed new rule prohibits the transfer of deer from any TC 3 facility unless such transfer is expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan, and requires all transferred deer to be tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

Proposed new §65.95(c) would set forth provisions governing release sites.

Proposed new §65.95(c)(1) would provide that an approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS, require that liberated breeder deer have complete, unrestricted access to the entirety of the release site, and stipulate that all release sites onto which breeder deer are liberated be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times (and make the owner of the release site responsible for ensuring that the fence and associated infrastructure retain deer). In order to provide a measure of confidence that CWD is not spread from those places where breeder deer are released, it is necessary to identify the specific location where breeder deer are authorized to be released. Similarly, it is necessary to establish a level of vigilance sufficient to give reasonable assurance that breeder deer are not allowed to leave the specific premise where they were released. It is also necessary to ensure that released deer are not confined in smaller enclosures within a permitted release site, which have the effect of creating unnatural densities that could encourage the spread of disease if present.

Proposed new §65.95(c)(1) also would provide that any testing requirements of the division continue in effect until "not detected" test results are submitted for five consecutive hunting years following the last date on which breeder deer were liberated on the release site, that a release site not in compliance with the testing requirements of this subsection is ineligible to receive deer, prohibit any intentional act that allows any live deer to leave or escape from a release site, and require a harvest log to be maintained. In addition, the owner of a Class II or Class III release site would be required to maintain a harvest log.

The proposed new rule would establish that a Class I release site is a release site that has received deer only from TC 1 facilities and is in compliance with the applicable provisions of the division. On that basis, Class I release sites represent the lowest risk of harboring or spreading CWD and are therefore not required to perform CWD testing. A Class II release site is a release site that receives deer from a TC 2 breeding facility (but not a breeding facility of lower status). The proposed new rule would require that for each year a Class II release site receives deer from any TC 2 breeding facility, the owner of the release site must, for a period of five consecutive hunting years immediately following the release, submit "not detected" post-mortem test results for 50 percent of liberated deer that are harvested at the release site or, if no liberated deer are harvested at the release site in any hunting year, 50 percent of hunter-harvested deer. Because a Class II release site receives breeder deer that represent a higher risk of harboring and spreading CWD than breeder deer from a TC 1 facility, the department has determined that some level of testing is prudent. The 50 percent value for hunter-harvested deer provides an additional level of surveillance from an epidemiological perspective, as does the alternative of testing 50 percent of liberated deer (deer that were previously breeder deer). The five-year period for testing represents the approximate time period during which CWD could be expected to be detected. The proposed new rule would also provide that once the testing requirements have been met, the site becomes a Class I release site (no testing required).

Finally, proposed new §65.95 would provide that a Class III release site is any release site that has received deer from an originating facility that is a TC 3 facility, received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility, and has not been released from a TAHC hold order. The proposed new rule would require the landowner of a Class III release site to submit post-mortem CWD test results for 100 percent of all hunter-harvested deer or one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year, whichever is greater and condition the minimum harvest and testing provision on terms prescribed in a TAHC herd plan. The proposed new rule also would prohibit the transfer of a breeder deer to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag.

Movement of DMP Deer

Proposed new §65.96, concerning Movement of DMP Deer, would set forth the movement and testing requirements associated with DMP activities. The proposed new rule would require a DMP release site to which breeder deer from a TC 2 breeding facility are released, or if the DMP property from which deer are trapped for DMP purposes is a Class II release site, to submit "not detected" test results equivalent to 50 percent of the number of hunter-harvested deer in each hunting year for five consecutive hunting years, beginning with the hunting year immediately following the liberation. As discussed elsewhere in this preamble, a TC 2 breeding facility or Class II release site represents a higher risk of transmitting CWD than a TC 1 breeding facility or Class I release site; therefore some level of testing is appropriate. The department has determined that testing half the hunter-harvested deer each year for five years (the approximate time period during which CWD could be expected to be detected) provides a reasonable assurance that CWD would be detected if it were present. The proposed new rule would prohibit the transfer of deer from a TC 3 breeding facility to a DMP facility because breeder deer in a TC 3 breeding facility are presumed to be exposed and therefore present an unacceptable risk of spreading CWD to free-ranging populations. The proposed rules would not impose testing requirements on any DMP facility that either does not receive breeder deer or receives breeder deer solely from TC 1 deer breeding facilities.

Testing and Movement of Deer Pursuant to a Triple T or TTP Permit

Proposed new §65.97, concerning Testing and Movement of Deer Pursuant to a Triple T or TTP Permit, would set forth

general provisions and testing requirements applicable to the movement of deer under a Triple T or TTP permit.

Proposed new §65.97(a) would stipulate that the disease detection provisions of §65.102 cease effect upon the effective date of the proposed new section, if adopted. This is necessary to prevent regulatory conflict.

Proposed new §65.97(a) also would provide that the department may require a map of any prospective Triple T trap site to be submitted as part of the application process, which is necessary to address situations in which the exact nature of a prospective Triple T site and its relationship to nearby or adjoining tracts of land is unclear with respect to previous releases.

Proposed new §65.97(a) would further enumerate the criteria under which the department will not authorize deer to be trapped at a specific site, including a release site that has received breeder deer within five years of the application for a Triple T permit, a release site that has failed to fulfill testing requirements, any site where a deer has been confirmed positive for CWD, any site where a deer has tested "suspect" for CWD, or any site under a TAHC hold order. Further, proposed §65.97(a) would provide that in addition to the reasons for denying a Triple T permit listed in §65.103(c) (concerning Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD. Each of the enumerated criteria for permit refusal represents an unacceptable risk of spreading CWD to free-ranging populations.

In addition, proposed new §65.97(a) would require all Triple deer to be tagged prior to release in one ear with a button-type RFID tag approved by the department and for the RFID tag information to be submitted to the department. The proposed new provision would enable the department to identify all deer harvested at a given release site (including deer that were released breeder deer) if an epidemiological investigation becomes necessary.

Proposed new §65.97(a) would further stipulate that a Triple T permit does not authorize the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation), which is necessary to ensure that all deer are harvested by hunters under the regulations established for lawful hunting.

Proposed new §65.97(a) also would require all test samples to be collected or tested after the Saturday closest to September 30 (the first day of lawful hunting in any year), which is necessary to ensure that test samples are temporally linked to the year for which activities of the permit are authorized; however, this requirement would not apply to permits issued for the removal of urban deer, for which test samples could be collected between April 1 and the time of application.

Additional provisions of proposed new §65.97(a) include a harvest log requirement, the stipulation that a Triple T release site consist solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS, the requirement that deer released pursuant to a Triple T permit must have complete, unrestricted access to the entirety of the release site, the requirement that the testing requirements of the section continue in effect until "not detected" test results have been submitted for five consecutive hunting years following the last date on which deer were released, and the provision that a Triple T release site that does not comply with the testing requirements of the subsection becomes ineligible to be a release site in the future.

Proposed new §65.97(b) would establish the testing requirements for Triple T trap and release sites. At the trap site, the proposed new rule would require 15 "not detected" post-mortem test results to be submitted prior to permit issuance. For release sites, the proposed new provision would require the landowner of a Triple T release site to submit "not detected" post-mortem test results for a period of five consecutive hunting years immediately following the release for either 50 percent of liberated deer that are harvested at the Triple T release site, or if no liberated deer are harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer.

Proposed new §65.97(b) also would stipulate that CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

Proposed new §65.97(c) would set forth the testing requirements for TTP permits. The proposed new provision would require "not detected" test results for at least 15 eligible-aged deer from the trap site to submitted and would require the landowner of a Class III release site where TTP deer are trapped to submit CWD test results for 100% of the deer trapped. The proposed new rule also would require test results related to a TTP permit to be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

Transition Provisions

Proposed new §65.98, concerning Transition Provisions, would set forth provisions to clarify enforcement of regulations with respect to the effective dates of various provisions and would stipulate that the department's executive director develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations.

Violations and Penalties

Proposed new §65.99, concerning Violations and Penalties, would prescribe the penalties and sanctions for violations of a condition of a permit or a provision of the division.

Clayton Wolf, Wildlife Division Director, has determined that for each of the first five years that the rules as proposed are in effect, there will initially be no fiscal implications to state and local governments as a result of enforcing or administering the rules as proposed, as department personnel currently allocated to the administration and enforcement of the permit programs affected will administer and enforce the rules as part of their current job duties and resources already in place will be reallocated for purposes of program administration, primarily to address programming costs. However, if administering the program following the initial transition requires continued reallocation of staff and resources, there may be a need for additional personnel to assist in administering the program.

Mr. Wolf also has determined that for each of the first five years the new rules as proposed are in effect, the public benefit anticipated as a result of enforcing or administering the rules as proposed will be a reduction of the probability of CWD being spread from facilities where it might exist and an increase in the probability of detecting CWD if it does exist, thus ensuring the public of continued enjoyment of the resource and also ensuring the

continued beneficial economic impacts of hunting in Texas. Additionally, the protection of free-ranging deer herds will have the simultaneous collateral benefit of protecting captive herds, and maintaining the economic viability of deer breeding operations.

There will be adverse economic impact on persons required to comply with the rules as proposed. For deer breeders, those impacts are the same as the adverse economic impacts to small and micro-businesses, which are addressed later in this preamble.

For persons who obtain breeder deer for purposes of release (including under a DMP permit) or trap free-ranging deer under a Triple T or TTP permit, the adverse economic impacts of the proposed new rules consist of the CWD testing requirements that the proposed new rules would impose, based on the source and history of the deer being released.

The current cost of a CWD test administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) is a minimum of $46, to which is added a $6 submission fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional $20 sample collection fee, plus a $20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair would be $52, plus any veterinary cost (which the department cannot quantify) and the fee for submitting an entire head for testing would be $92. Therefore, for any Class II or Class III release site owner, the cost of compliance with the testing requirements of the proposed new rules would be approximately $92 per animal required to be tested.

There are no adverse economic impacts for persons who obtain and release breeder deer from solely from TC 1 breeding facilities because under the rules as proposed, a release site that receives breeder deer only from TC 1 facilities is a Class I release site and no CWD testing is required.

For persons who obtain breeder deer from TC 2 breeding facilities or facilities of higher status (making the release site a Class II release site), the proposed new rules would require the landowner to test either 50 percent of the liberated deer (deer that were ever held under a deer breeder permit) harvested by hunters or, if no liberated deer are harvested, 50 percent of the deer harvested by hunters. Thus, the adverse economic impacts would be a function of the number and type of deer harvested, which could be as low as the cost of testing one deer (i.e., if only two liberated deer were part of the harvest, one would have to be tested and the testing requirement would be met).

For Class III release sites, the proposed new rules would require the landowner to test 100% of hunter-harvested deer. Therefore, the cost of compliance would be the cost of a CWD test for every deer harvested. Historically there have been liberations of up to 175 deer; however, the vast majority of releases involve fewer than 10 deer.

For a person trapping deer under a Triple T or TTP permit, the adverse economic impact would be would be the cost of complying with the requirement to submit 15 valid CWD test results of "not detected" to the department prior to permit issuance.

The proposed new rules will result in adverse economic impacts to landowners of Class II and Class III release sites, who would be required to comply with certain testing requirements. Only those landowners who receive breeder deer from TC 2 and/or TC 3 breeding facility would be subject to the testing requirements imposed by the proposed rules.

For a Class II release site, if deer are hunter-harvested, a number of deer equivalent to 50 percent of the number of liberated breeder deer that are harvested at the site or 50 percent of all hunter-harvested deer if not liberated deer are harvested.

For a Class III release site, the proposed new rules would require 100 percent of all hunter-harvested deer to be tested or one hunter-harvested deer per breeder deer released between the last day of lawful deer hunting at the site in the previous year and the last day of lawful deer hunting at the site in the current year.

Also, because the proposed new rules require all release sites for breeder deer to be enclosed by a fence of at least seven feet in height, a landowner desiring to have breeder deer released on a tract that is not surrounded by such a fence would incur the cost of building one. The cost of fence construction varies by terrain and region, but anecdotal information suggests that it is $10,000 per linear mile or more. The department notes that only 610 breeder deer were released to low-fence environments in 2014 (the last year that such releases were allowed), and that the practice is extremely rare because the breeder deer purchased for liberation represent a significant purchase cost and once they are released they become free-ranging deer and may be legally killed on an adjoining property should they wander from the release site.

Small and Micro-business Impact Analysis

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. As required by Government Code, §2006.002(g), in April 2008, the Office of the Attorney General issued guidelines to assist state agencies in determining a proposed rule's potential adverse economic impact on small businesses. These guidelines state that "[g]enerally, there is no need to examine the indirect effects of a proposed rule on entities outside of an agency's regulatory jurisdiction." The guidelines state that an agency need only consider a proposed rule's "direct adverse economic impacts" to small businesses and micro-businesses to determine if any further analysis is required. The guidelines also list examples of the types of costs that may result in a "direct economic impact." Such costs may include costs associated with additional recordkeeping or reporting requirements; new taxes or fees; lost sales or profits; changes in market competition; or the need to purchase or modify equipment or services.

Parks and Wildlife Code, §43.357(a), authorizes a person to whom a breeder permit has been issued to "engage in the business of breeding breeder deer in the immediate locality for which the permit was issued" and to "sell, transfer to another person, or hold in captivity live breeder deer for the purpose of propagation." As a result, deer breeders are authorized to engage in business activities; namely, the purchase and sale of breeder deer. The same is not true of DMP or Triple T permit holders, who are authorized only to trap, temporarily detain, and release deer and are not authorized by those permits to buy or sell deer, or to exchange deer for anything of value.

Government Code, §2006.001(1), defines a small or micro-business as a legal entity "formed for the purpose of making a profit" and "independently owned and operated." A micro-business is a business with 20 or fewer employees. A small business is defined as a business with fewer than 100 employees, or less than $6 million in annual gross receipts. Although the department

does not require deer breeders to file financial information with the department, the department believes that most if not all deer breeders would qualify as a small or micro-business. Since the rules as proposed would impact the ability of a deer breeder to engage in certain activities undertaken to generate a profit, the proposed rules may have an adverse impact on deer breeders.

Impact on Sales

The variety of business models utilized by deer breeders makes meaningful estimates of potential adverse economic impacts difficult. Although a deer breeder has the permit privilege to buy and sell breeder deer and many deer breeders participate in a market for breeder deer, other deer breeders are interested only in breeding and liberating deer on their own property to provide hunting opportunity. Once a breeder deer is liberated, it cannot be returned to a breeding facility and assumes the same legal status as all other free-ranging deer. Thus, if a person who is a deer breeder is engaged primarily in buying and selling deer, the potential adverse economic impact is greater than that for a deer breeder who engages in deer breeding activities primarily for purposes of release onto that person's property. The department does not require deer breeders to report the buying or selling prices of deer. However, publicly available and anecdotal information indicates that sale prices, especially for buck deer, may be significant. The sale price for a single deer may range from hundreds of dollars to many thousands of dollars.

It should also be noted that some aspects of this analysis are based on anticipated marketplace behavior which cannot be accurately predicted. In addition, to the extent that any marketplace analysis can be conducted, it is difficult, if not impossible, to accurately separate and distinguish marketplace behavior that is the result of the proposed new rules from marketplace behavior that is the result of the discovery of CWD. For reasons unrelated to the proposed new rules, it is possible, perhaps even likely, that breeders and release site owners will be reluctant to purchase a breeder deer from a facility with a close relationship to a facility at which CWD has been detected.

The proposed new rules would not completely prohibit the transfer of deer except facilities that are not movement qualified or TC 3 facilities that are not otherwise authorized to transfer deer pursuant to a TAHC herd plan (in addition to facilities that were not allowed to transfer deer under previous regulations due to failure to test a minimum number of deer or failure to comply with record-keeping requirements). All TC 1 and TC 2 facilities would be allowed to transfer deer, provided certain conditions are met.

For TC 1 facilities, the department has determined that there will likely be no adverse economic impact on sales as a result of the proposed new rules. Since transfers of breeder deer from TC 1 facilities are subject to the fewest restrictions under the proposed new rules, breeder deer from a TC 1 facility can more easily be sold to other breeders or to landowners for purposes of liberation. In addition, TC 1 facilities are subject to monitoring and testing at a higher level. Since classification as a TC 1 facility requires certain actions by deer breeders as provided in the proposed rules, the Department cannot accurately identify the number of deer breeders willing to undertake the obligations required to be classified as a TC 1 facility. One category of TC 1 facilities are facilities with "fifth" year or "certified" status in the TAHC CWD Herd Certification Program.

For TC 2 and TC 3 facilities, the adverse economic impact of the proposed new rules would consist of testing costs and the possible loss of sales to TC 1 facilities and Class I release sites. The proposed new rules would not prohibit the transfer of breeder deer by TC 2 facilities, but because the proposed new rules would cause any TC 1 facility or Class I release site that accepts deer from a TC 2 (or TC 3) facility to assume the status (and regulatory obligations, such as testing) of the TC 2 (or TC 3) facility, and because TC 2 facilities carry a greater risk of exposure to CWD, it can be assumed that TC 1 facilities or Class I release sites will be less likely destinations for breeder deer coming from facilities of lower status. Historically there have been liberations of up to 175 deer; however, the vast majority of releases involve fewer than 10 deer.

As noted above, since the proposed rules would provide a mechanism for more breeder facilities to be classified as a TC 1 facility, many facilities classified as TC 2 under the Interim Rules may elect to undertake the requirements of the proposed rule necessary to attain TC 1 status. Since such decisions are personal and business decisions to be made by each breeder, the Department cannot accurately identify the number of deer breeders willing to undertake the obligations required to be classified as a TC 1 facility.

As noted above, if a release site is unwilling to obtain deer from a TC 2 facility, the impact of the proposed rules to a TC 2 deer breeder would be the loss of sales and any attendant profit from the sale of deer. Similarly, a TC 1 facility that acquires a breeder deer from a TC 2 facility would assume the lower TC 2 status. As previously mentioned in this analysis, the department does not require holders of deer breeder permits to disclose the dollar values of sales and purchases of breeder deer; therefore, an exact quantification of the possible impact of the proposed new rules on TC 2 facilities cannot be accurately calculated. However, based on public and anecdotal information, such impact could be from few hundred dollars or less per deer or to thousands of dollars per deer.

The proposed new rules would prohibit the introduction to or removal of deer from TC 3 breeder facilities unless authorized by a TAHC herd plan and then only in compliance with the requirements of this division. TC 3 facilities are breeder facilities that received an exposed deer within the previous five years, transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or possessed a deer that was in a CWD-positive facility within the previous five years. The proposed rules would result in an adverse economic impact to deer breeders whose facilities are TC 3 facilities. The extent of such adverse economic impact would consist of loss of revenue as a result of being unable to introduce or remove deer from the breeding facility and thus being unable to deliver or accept deer that have been bought or sold. The dollar value of the adverse economic impact is dependent on the volume of deer produced or acquired by any given permittee, which can vary from a few deer to hundreds of deer. However, as noted above, it is difficult, if not impossible, to accurately determine whether and how much any adverse economic impact is due to the presence of CWD in a facility (or a related facility) or attributable to the proposed new rules. Department records indicate that there are currently 304 TC 3 facilities in the state; if the proposed new rules are adopted, that number will be less than 100. The department notes that with the exception of breeding facilities that are CWD-positive, the proposed new rules allow "exposed" facilities (which would be classified as TC 3 facilities) to transfer breeder deer following successful compliance with the testing and other provisions of the proposed new rules.

Testing Costs

The proposed new rules would cause an adverse economic impact to deer breeders who must undertake disease-testing requirements to continue certain activities. As a result, deer breeders and owners of release sites that are not Class I release sites would incur costs related to the increased testing and monitoring requirements of the proposed new rules.

The cost of a CWD testing administered by the Texas Veterinary Medicine Diagnostic Lab (TVMDL) on a sample collected and submitted by a deer breeder is a minimum of $46, to which is added a $6 submission fee (which may cover multiple samples submitted at the same time). If a whole head is submitted to TVDML there is an additional $20 sample collection fee, plus a $20 disposal fee. Thus, the fee for submitting an obex or obex/medial retropharyngeal lymph node pair would be $52, plus any veterinary cost (which the department cannot quantify) and the fee for submitting an entire head for testing would be $92.

A significant factor that differentiates the proposed new rules from the interim rules is that the proposed new rules either require or allow ante-mortem (live animal) tests for CWD to be submitted by deer breeders seeking to maintain or increase status. Under the Veterinary Practice Act, the samples necessary for ante-mortem testing can only be obtained a licensed veterinarian. Because veterinary practice models vary significantly (flat rates, graduated rates, included travel costs, herd call rates, sedation costs, etc.) in addition to pricing structures determined by the presence or absence of economic competition in different parts of the state, the cost of ante-mortem testing is difficult to quantify; however, based on anecdotal information and an informal survey of knowledgeable veterinarians, the department estimates the cost of tonsillar or rectal biopsies at approximately $30-70 per head and the cost of ante-mortem lymph node biopsies at approximately $700 per head (these costs are in addition to the estimated $92 lab fee per sample for the actual CWD test). It is important to note that ante-mortem procedures for CWD testing are very new and at the current time there are very few veterinarians with the training and expertise to perform them reliably; thus, the fee structure for such procedures can best be described as still evolving.

Additionally, deer breeders who seek "certified" or "fifth year" facilities are also required to obtain an annual inventory by an accredited veterinarian. The cost of an annual inventory by an accredited veterinarian is estimated by TAHC to be approximately $250. However, it should be noted that the requirements for obtaining "certified" or "fifth year" status are not imposed by the proposed rules, but rather by existing TAHC regulations.

The department notes that because CWD has been proven to be transmissible by direct contact (including through fences) and via environmental contamination, there may be adverse economic impacts unrelated to the proposed new rules in the event that CWD is confirmed in a breeding facility due to the possible reluctance of potential customers to purchase deer from a facility that accepted deer from a CWD-positive facility. Additionally, in the absence of the proposed new rules, if CWD is detected within a facility or breeder deer that have been in a facility that accepted deer from a CWD-positive facility, there could be lost revenue to the permittee since potential purchasers who are aware of CWD would likely refrain from purchasing deer from such a facility. Therefore, the proposed new rules, by providing a mechanism to minimize the spread of CWD, could also protect the economic interests of the regulated community.

The department also notes that for any given deer breeder that is currently not qualified to move or release deer, compliance with the proposed new rules could be achieved in five years or less and at the additional direct economic cost of CWD testing requirements imposed by the proposed new rules.

Loss of Sacrificed Deer

The proposed new rules would allow for the testing of additional deer (compared to the previous testing requirements) for some deer breeders who desire to move to a higher status. If deer are sacrificed for testing (in order to reach the required number of post-mortem tests to be movement qualified, maintain status, or in increase in status), there could be an economic impact from the loss of the deer and any revenue that might have been realized from the sale of the deer to another breeder or to a release site for liberation. As noted previously, the department does not require that breeders report financial data. The economic impact on a deer breeder would depend on whether the deer breeder sacrifices deer to achieve testing requirements, and the number and type of deer sacrificed. As noted above, the lost revenue from the sacrificed deer could range from few hundred dollars or less per deer to thousands of dollars per deer.

However, it should also be noted that the option in the proposed rules for ante-mortem testing should result in fewer deer being sacrificed for purpose of testing.

Alternatives Considered

In the development of the proposed rules, including through discussions among stakeholders and through the facilitated rulemaking process, several alternatives were raised, discussed and/or considered to achieve the goals of the proposed new rules while reducing potential adverse impacts on small and micro-businesses and persons required to comply.

One alternative was to allow the interim rules to expire on their own terms on August 31, 2016. If the interim rules expired, the CWD testing and deer movement requirements would revert to those that existed prior to the 2015 discovery of CWD in Medina County. This alternative was rejected because the presence of CWD in breeding facilities and free-ranging populations presents an actual, direct threat to free-ranging and farmed cervid populations and the economies that depend upon them. Although the previous rules provided some level of monitoring and containment, the 2015 discovery of CWD in a white-tailed deer in Medina County and the subsequent discovery of CWD in additional white-tailed deer warrants a more comprehensive approach. Therefore, because the department has a statutory duty to protect and conserve the wildlife resources of the state, the previous rules would not achieve the necessary level of vigilance needed to detect the presence and/or spread of CWD. Therefore, this alternative was rejected.

Another alternative would have been to propose rules identical or very similar to the interim rules. This alternative was rejected for several reasons. The interim rules were intended to be an interim regulatory response to the 2015 discovery of CWD in white-tailed deer, and were not intended to be a long-term response. The interim rules were developed to implement requirements necessary to protect deer herds through the 2015-2016 hunting season, and facilitate continuation of activities by deer breeders. As a result, the interim rules did not provide for a fuller universe of options, such as live-animal (ante-mortem) testing of breeder deer. Therefore, this alternative was rejected.

Another alternative would be an absolute prohibition on the movement of deer within the state for any purpose. While this alternative would significantly reduce the potential spread of CWD, it would also have the simultaneous effect of preventing landowners and land managers from implementing popular management strategies involving the movement of deer, and would deprive deer breeders of the ability to engage in the business of buying and selling breeder deer. Therefore, this alternative was rejected because the department determined that it placed an avoidable burden on the regulated community.

Another alternative would be imposing less stringent testing requirements. This alternative was rejected because the testing requirements in the proposed new rules reflect mathematical models aimed at higher confidence than is possible under current disease-testing requirements that CWD is or is not present. Less stringent testing requirements would reduce confidence and therefore impair the ability of the department to respond in the event that CWD actually is present. The department also believes that a higher testing intensity is necessary to provide assurance to the hunting public, private landowners, and the regulated community that wildlife resources are safe and reliable.

The department has not drafted a local employment impact statement under the Administrative Procedure Act, Government Code, §2001.022, as the agency has determined that the rules as proposed will not result in direct impacts to local economies.

The department has determined that there will not be a taking of private real property, as defined by Government Code, Chapter 2007, as a result of the proposed new rules. Any impacts resulting from the discovery of CWD in or near private real property would be the result of the discovery of CWD and not the proposed rules.

Comments on the proposed rule may be submitted to Mitch Lockwood, Texas Parks and Wildlife Department, 4200 Smith School Road, Austin, Texas 78744; (830) 792-9677 (e-mail: *mitch.lockwood@tpwd.texas.gov);* or via the department's website at www.tpwd.texas.gov.

31 TAC §§65.90 - 65.94

The repeals are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed repeals affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. Definitions.

§65.91. General Provisions.

§65.92. Transfer Categories and Requirements.

§65.93. Release Sites - Qualifications and Testing Requirements.

§65.94. Chronic Wasting Disease - Deer Management Permit Provisions.

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

Filed with the Office of the Secretary of State on April 11, 2016.

TRD-201601677
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 389-4775

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31 TAC §§65.90 - 65.99

The new rules are proposed under the authority of Parks and Wildlife Code, Chapter 43, Subchapter L, which authorizes the commission to make regulations governing the possession, transfer, purchase, sale, of breeder deer held under the authority of the subchapter; Subchapter R, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that white-tailed deer may be temporarily detained in an enclosure; Subchapter R-1, which authorizes the commission to establish the conditions of a deer management permit, including the number, type, and length of time that mule deer may be temporarily detained in an enclosure (although the department has not yet established a DMP program for mule deer authorized by Subchapter R-1); and §61.021, which provides that no person may possess a game animal at any time or in any place except as permitted under a proclamation of the commission.

The proposed new rules affect Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

§65.90. Definitions.

The following words and terms shall have the following meanings, except in cases where the context clearly indicates otherwise.

(1) Accredited testing laboratory--A laboratory approved by the United States Department of Agriculture to test white-tailed deer or mule deer for CWD.

(2) Ante-mortem test--A CWD test performed on a live deer.

(3) Breeder deer--A white-tailed deer or mule deer possessed under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(4) Confirmed--A CWD test result of "positive" received from the National Veterinary Service Laboratories of the United States Department of Agriculture.

(5) CWD--Chronic wasting disease.

(6) CWD-positive facility--Any facility in or on which CWD has been confirmed.

(7) Deer breeder--A person who holds a deer breeder's permit issued pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter.

(8) Deer breeding facility (breeding facility)--A facility authorized to hold breeder deer under a permit issued by the department pursuant to Parks and Wildlife Code, Chapter 43, Subchapter L, and Subchapter T of this chapter (Deer Breeder's Permit).

(9) Department (department)--Texas Parks and Wildlife Department.

(10) Deer Management Permit (DMP)--A permit issued under the provisions of Parks and Wildlife Code, Subchapter R or R-1 and Subchapter D of this chapter (relating to Deer Management Permit (DMP)) that authorizes the temporary detention of deer for the purpose of propagation.

(11) Eligible-aged deer--

(A) if the deer is held in a breeding facility enrolled in the TAHC CWD Herd Certification Program, 12 months of age or older; or

(B) for any other deer, 16 months of age or older.

(12) Eligible mortality--An eligible-aged deer that has died.

(13) Exposed deer--Unless the department determines through an epidemiological investigation that a specific deer has not been exposed, an exposed deer is a white-tailed deer or mule deer that:

(A) is in a CWD-positive facility; or

(B) was in a CWD-positive facility within the five years preceding the confirmation of CWD in the CWD-positive facility.

(14) Facility--Any location required to be registered in TWIMS under a deer breeder's permit, Triple T permit, or DMP, including release sites and/or trap sites.

(15) Hunter-harvested deer--A deer required to be tagged under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(16) Hunting year--That period of time between September 1 and August 31 of any year when it is lawful to hunt deer under the provisions of Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(17) Landowner (owner)--Any person who has an ownership interest in a tract of land and includes landowner's authorized agent.

(18) Landowner's authorized agent (agent)--A person designated by a landowner to act on the landowner's behalf.

(19) Liberated deer--A free-ranging deer that bears evidence of having been liberated including, but not limited to a tattoo (including partial or illegible tattooing) or of having been eartagged at any time (holes, rips, notches, etc. in the ear tissue).

(20) Movement Qualified (MQ)--A designation made by the department pursuant to this division that allows a deer breeder to lawfully transfer breeder deer.

(21) Not Movement Qualified (NMQ)--A designation made by the department pursuant to this division that prohibits the transfer of deer by a deer breeder.

(22) NUES tag--An ear tag approved by the United States Department of Agriculture for use in the National Uniform Eartagging System (NUES).

(23) Originating facility--Any facility from which deer have been transported, transferred, or released, as provided in this definition or as determined by an investigation of the department, including:

(A) for breeder deer, the source facility identified on a transfer permit; and

(B) for deer being moved under a Triple T permit, the trap site.

(24) Post-mortem test--A CWD test performed on a dead deer.

(25) Properly executed--A form or report required by this division on which all required information has been entered.

(26) Reconciled herd--The breeder deer held in a breeding facility for which every birth, mortality, and transfer of breeder deer in the previous reporting year has been accurately reported.

(27) Release site--A specific tract of land to which deer are released, including the release of deer under the provisions of this chapter or Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, or R-1.

(28) Reporting year--For a deer breeder's permit, the period of time from April 1 of one calendar year through March 31 of the next calendar year.

(29) RFID tag--A button-type ear tag conforming to the 840 standards of the United States Department of Agriculture's Animal Identification Number system.

(30) Status--A level assigned under this division for any given facility on the basis of testing performance and the source of the deer. For the transfer categories established in §65.95(b) of this title (relating to Movement of Breeder Deer), the highest status is Transfer Category 1 (TC 1) and the lowest status is Transfer Category 3 (TC3). For the release site classes established in §65.95(c) of this title, Class I is the highest status and Class III is the lowest.

(31) Submit--When used in the context of test results, provided to the department, either directly from a deer breeder or via an accredited testing laboratory.

(32) Suspect--An initial CWD test result of "detected" that has not been confirmed.

(33) TAHC--Texas Animal Health Commission.

(34) TAHC CWD Herd Certification Program--The disease-testing and herd management requirements set forth in 4 TAC §40.3 (relating to Herd Status Plans for Cervidae).

(35) TAHC Herd Plan--A set of requirements for disease testing and management developed by TAHC for a specific facility.

(36) Test, Test Result(s), or Test Requirement--A CWD test, CWD test result, or CWD test requirement as provided in this division.

(37) Trap Site--A specific tract of land approved by the department for the trapping of deer under this chapter and Parks and Wildlife Code, Chapter 43, Subchapters E, L, R, and R-1.

(38) Triple T permit--A permit to trap, transport, and transplant white-tailed or mule deer (Triple T permit) issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game Birds),

(39) Trap, Transport and Process (TTP) permit--A permit issued under the provisions of Parks and Wildlife Code, Chapter 43, Subchapter E, and Subchapter C of this chapter (relating to Permits for Trapping, Transporting, and Transplanting Game Animals and Game

Birds), to trap, transport, and process surplus white-tailed deer (TTP permit).

(40) TWIMS--The department's Texas Wildlife Information Management Services (TWIMS) online application.

§65.91. General Provisions.

(a) To the extent that any provision of this division conflicts with any other provision of this chapter, this division prevails.

(b) Except as provided in this division, no live breeder deer or deer trapped under a Triple T permit, TTP permit or DMP may be transferred anywhere for any purpose.

(c) Except as provided in this division, no person shall introduce into or remove deer from or allow or authorize deer to be introduced into or removed from any facility for which a CWD test result of "suspect" has been obtained from an accredited testing laboratory, irrespective of how the sample was obtained or who collected the sample. The provisions of this subsection take effect immediately upon the notification of a CWD "suspect" test result, and continue in effect until the department expressly authorizes the resumption of permitted activities at that facility.

(d) A facility (including a facility permitted after the effective date of this division) that receives breeder deer from an originating facility of lower status automatically assumes the status associated with the originating facility and becomes subject to the testing and release requirements of this division at that status for:

(1) a minimum of two years, if the facility is a breeding facility; or

(2) for the period specified in §65.95(c)(1)(D) of this title (relating to Movement of Breeder Deer), if the facility is a release site.

(e) A deer breeding facility that was initially permitted after March 31, 2016 will assume the lowest status among all originating facilities from which deer are received.

(f) The designation of status by the department in and of itself does not authorize the transfer or movement of deer. No person may remove or cause the removal of deer from a facility that has been designated NMQ by the department pursuant to this division.

(g) Unless expressly provided otherwise in this division, all applications, notifications, and requests for change in status required by this division shall be submitted electronically via TWIMS or by another method expressly authorized by the department.

(h) In the event that technical or other circumstances prevent the development or implementation of automated methods for collecting and submitting the data required by this division via TWIMS, the department may prescribe alternative methods for collecting and submitting the data required by this division.

§65.92. CWD Testing.

(a) All CWD test samples at the time of submission for testing shall be accompanied by a properly executed, department-prescribed form provided for that purpose.

(b) For the purposes of this subchapter, an ante-mortem CWD test is not valid unless it is performed by an accredited laboratory on retropharyngeal lymph node, rectal mucosa, or tonsillar tissue collected by or under the supervision of a qualified licensed veterinarian within six months of submission from a live deer that:

(1) is at least 16 months of age;

(2) has been in the facility for at least 16 months; and

(3) has not been the source of a "not detected" ante-mortem test result submitted within the previous 36 months.

(c) Ante-mortem tests submitted by a deer breeder for purposes of attaining a higher status under the provisions of this section shall be collected and submitted between October 15 of one year and March 15 of the following year.

(d) A post-mortem CWD test is not valid unless it is performed by an accredited testing laboratory on the obex of an eligible mortality, which may be collected only by a qualified licensed veterinarian or other person certified by TAHC to perform that procedure. A medial retropharyngeal lymph node collected from the eligible mortality by an qualified licensed veterinarian or other person approved by the department may be submitted to an accredited testing facility for testing in addition to or in lieu of the obex (if the obex cannot be obtained) of the eligible mortality.

(e) To meet the requirements of §65.94(a)(1)(B) and (C) of this title (relating to Breeding Facility Minimum Movement Qualifications), or §65.95 of this title, ante-mortem test results may be substituted for post-mortem test results at a ratio of two "not detected" ante-mortem test results for each required "not detected" post-mortem test result, provided:

(1) at least two eligible mortalities have occurred in the facility in the corresponding report year; and

(2) "not detected" post-mortem test results equal to at least 50 percent of the total test results required have been submitted.

(f) Except as provided in this section, an ante-mortem test result may not be used more than once to satisfy any testing requirement of this division.

(g) The testing requirements of this division cannot be altered by the sale or subdivision of a property to a related party if the purpose of the sale or subdivision is to avoid the requirements of this division.

(h) The owner of a release site agrees, by consenting to the release of breeder deer on the release site, to submit all required CWD test results to the department as soon as possible but not later than May 1 of each year for as long as CWD testing is required at the release site under the provisions of this division.

§65.93. Harvest Log.

(a) When a release site is required by this division to maintain a harvest log, the harvest log shall be maintained daily and shall meet the requirements of this section.

(b) For each deer harvested on the release site the landowner must, on the same day that the deer is harvested, legibly enter the following information in the daily harvest log:

(1) the name and hunting license of the person who harvested the deer;

(2) the date the deer was harvested;

(3) the species (white-tailed or mule deer) and type of deer harvested (buck or antlerless);

(4) any alphanumeric identifier tattooed on the deer;

(5) any RFID or NUES tag number of any RFID or NUES tag affixed to the deer; and

(6) any other identifier and identifying number on the deer, including a description of any evidence or indication that the deer was a liberated deer including, but not limited to evidence of having been eartagged at any time (holes, rips, notches, etc. in ear tissue).

(c) The daily harvest log shall be made available upon request to any department employee acting in the performance of official duties.

(d) By not later than April 1 of each year, the owner of a release site shall submit the contents of the daily harvest log to the department via TWIMS or via another method specified by the department.

(e) The daily harvest log shall be on a form provided or approved by the department and shall be retained for a period of one year following submission and acceptance by the department.

§65.94. Breeding Facility Minimum Movement Qualification.

(a) Notwithstanding any other provision of this division, a breeding facility is designated NMQ and is prohibited from transferring breeder deer anywhere for any purpose if the breeding facility:

(1) has not complied with the following testing requirements:

(A) submitted CWD "not detected" test results for at least 20% of the total number of eligible mortalities that occurred in the facility since May 23, 2006;

(B) submitted CWD "not detected" test results for at least 50% of eligible mortalities occurring in the facility during each reporting year beginning April 1, 2016; and

(C) beginning April 1, 2021, the number of "not detected" test results submitted during the previous five consecutive years must be equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 2.25 percent; tests submitted pursuant to subparagraph (B) of this paragraph may be used to satisfy the testing requirements of this subparagraph;

(2) is not authorized pursuant to a TAHC Herd Plan associated with a TAHC hold order or TAHC quarantine;

(3) does not have a reconciled herd inventory;

(4) is not in compliance with the provisions of §65.608 of this title (relating to Annual Reports and Records).

(b) A facility that has been designated as NMQ for failure to comply with the testing requirements specified in subsection (a) of this section, will be restored to MQ when sufficient "not detected" test results as described in subsection (a) of this section are submitted.

(c) A facility designated NMQ shall report all mortalities within the facility to the department immediately upon discovery of the mortality.

(d) Immediately upon the notification that a facility has received a CWD suspect" test result (a CWD suspect facility), all facilities that received deer from or provided deer to the CWD suspect facility within the previous five years shall be designated NMQ by the department until it is determined that the facility is not epidemiologically linked to the CWD suspect deer, or it is determined upon further testing that the "suspect" deer is not a confirmed positive.

§65.95. Movement of Breeder Deer.

(a) General. Except as otherwise provided in this division, a TC 1 or TC 2 breeding facility may transfer breeder deer under a transfer permit that has been activated and approved by the department as provided in §65.610(e) of this title (relating to Transfer of Deer) to:

(1) another breeding facility;

(2) an approved release site as provided in paragraph (3) of this subsection;

(3) a DMP facility; or

(4) to another person for nursing purposes.

(b) Breeder Facilities.

(1) TC 1.

(A) Except as may be otherwise provided in this division, a breeding facility is a TC 1 facility if:

(i) it has "fifth-year" or "certified" status in the TAHC CWD Herd Certification Program;

(ii) has submitted "not detected" post-mortem test results equivalent to:

(I) at least 80 percent of the total number of eligible mortalities that occurred in the breeding facility in each reporting year of the immediately preceding five-year period and each year thereafter; and

(II) a number of "not detected" post-mortem test results submitted during the previous five consecutive years equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of the previous five consecutive reporting years, plus the sum of the eligible mortalities that occurred within the breeding facility for each of the previous five consecutive reporting years, multiplied by 3.6 percent; tests submitted pursuant to subclause (I) of this clause may be used to satisfy the testing requirements of this subclause.

(iii) has submitted the following "not detected" test results:

(I) ante-mortem tests of at least 80 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted;

(II) post-mortem tests of at least 80 percent of all eligible mortalities during each reporting year thereafter; and

(III) beginning April 1, 2021, the number of "not detected" post-mortem test results submitted within the previous five consecutive years must be equal to or greater than the following number: the sum of the eligible-aged population in the breeding facility at the end of each of five consecutive reporting years, plus the sum of the eligible mortalities that have occurred within the breeding facility for each of the five consecutive years, multiplied by 3.6 percent; tests submitted pursuant to subclause (II) of this clause may be used to satisfy the testing requirements of this subclause; or

(iv) "not detected" test results are submitted on an annual basis for:

(I) ante-mortem tests of at least 25 percent of eligible-aged deer in the facility's inventory at the time the testing is conducted; and

(II) post-mortem tests of at least 50 percent of eligible mortalities.

(B) Failure to Comply with TC 1 Testing Requirements.

(i) Upon processing of the annual report, a TC 1 facility that has not met the post-mortem testing requirements of this section becomes a TC 2 facility.

(ii) If the deer breeder seeks to regain TC 1 status, the deer breeder must, within 60 days from the date the breeder is notified by the department of the change in status, furnish the test results

necessary to be in full compliance with the applicable TC 1 testing requirements in order to be returned to TC1 status.

(iii) If after 60 days the department has not received test results sufficient to achieve compliance with the applicable TC 1 testing requirements, the breeding facility is not eligible to regain TC 1 status for a period of two years.

(iv) A breeder will not be eligible to regain TC 1 status, if breeder deer from a lower status breeding facility are transferred to the breeding facility during the 60 days in which the breeder is seeking to regain TC 1 status.

(2) TC 2.

(A) A breeding facility is a TC 2 facility if:

(i) it is not a TC 1 facility; and

(ii) it is not a TC 3 facility.

(B) The testing requirements for a TC 2 facility are the minimum testing requirements established for MQ designation in §65.94(a)(1) of this title (relating to Breeding Facility Minimum Movement Qualification).

(3) TC 3.

(A) A TC 3 facility is any breeding facility registered in TWIMS that is under a TAHC hold order and/or herd plan and meets any of the following criteria:

(i) received an exposed deer within the previous five years;

(ii) transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; or

(iii) possessed a deer that was in a CWD-positive facility within the previous five years.

(B) No deer from a TC 3 facility may be transferred or liberated unless expressly authorized in a TAHC herd plan and then only in accordance with the provisions of this division and the TAHC herd plan.

(C) A TC 3 breeding facility remains a TC 3 breeding facility until the TAHC hold order in effect at the breeding facility has been lifted.

(D) A TC3 breeding facility may not transfer a breeder deer for any purpose unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

(c) Release Sites.

(1) General.

(A) An approved release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS.

(B) Liberated breeder deer must have complete, unrestricted access to the entirety of the release site.

(C) All release sites onto which breeder deer are liberated must be surrounded by a fence of at least seven feet in height that is capable of retaining deer at all times. The owner of the release site is responsible for ensuring that the fence and associated infrastructure retain deer.

(D) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted for five consecutive hunting years following the last date on which breeder deer were liberated on the release site. A release site that is not in compliance with the testing requirements of this subsection is ineligible to receive deer.

(E) No person may intentionally cause or allow any live deer to leave or escape from a release site onto which breeder deer have been liberated.

(F) The owner of a Class II or Class III release site shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(2) Class I Release Site. A release site that is in compliance with the applicable provisions of this division and receives deer only from TC 1 facilities is a Class I release site and is not required to perform CWD testing, unless it becomes a Class II or Class III release site.

(3) Class II Release Site.

(A) A release site that receives deer from a TC 2 breeding facility is a Class II release site unless it becomes a Class III release site.

(B) Each year that a Class II release site receives deer from any TC 2 breeding facility, the owner of the release site must, for a period of five consecutive hunting years immediately following the release, submit "not detected" post-mortem test results for:

(i) 50 percent of liberated deer that are harvested at the release site; or

(ii) if no liberated deer are harvested at the release site in any hunting year, 50 percent of hunter-harvested deer.

(C) Upon the satisfaction of the provisions of paragraph (3)(B) of this subsection, a Class II release site becomes a Class I release site.

(4) Class III Release Site.

(A) A release site is a Class III release site if:

(i) it has:

(I) received deer from an originating facility that is a TC 3 facility; or

(II) received an exposed deer within the previous five years or has transferred deer to a CWD-positive facility within the five-year period preceding the confirmation of CWD in the CWD-positive facility; and

(ii) has not been released from a TAHC hold order related to activity described in clause (i) of this subparagraph.

(B) The landowner of a Class III release site must submit post-mortem CWD test results for one of the following values, whichever represents the greatest number of deer tested:

(i) 100 percent of all hunter-harvested deer; or

(ii) one hunter-harvested deer per liberated deer released on the release site between the last day of lawful hunting on the release in the previous hunting year and the last day of lawful hunting on the release site during the current hunting year; provided, however, this minimum harvest and testing provision may only be substituted as prescribed in a TAHC herd plan.

(C) No breeder deer may be transferred to a Class III release site unless the deer has been tagged in one ear with a NUES tag or button-type RFID tag approved by the department.

§65.96. Movement of DMP Deer.

This section applies to the movement of deer under a DMP.

(1) Testing Requirements.

(A) There are no CWD testing requirements for a DMP facility that:

(i) does not receive breeder deer; or

(ii) receives breeder deer solely from TC 1 deer breeding facilities.

(B) A release site onto which deer are liberated from the following is required to submit "not detected" test results equivalent to 50 percent of the number of hunter-harvested deer in each hunting year for five consecutive hunting years, beginning with the hunting year immediately following the liberation of:

(i) deer from a DMP facility that receives breeder deer from a TC 2 deer breeding facility; or

(ii) deer from a DMP facility that receives deer trapped deer from a Class II release site.

(2) The department will not authorize the transfer of deer to a DMP facility from a TC 3 breeding facility.

§65.97. Testing and Movement of Deer Pursuant to a Triple T or TTP Permit.

(a) General.

(1) The provisions of §65.102 of this title (relating to Disease Detection Requirements) cease effect upon the effective date of this section.

(2) The department may require a map of any Triple T trap site to be submitted as part of the application process.

(3) The department will not issue a Triple T permit authorizing deer to be trapped at a:

(A) release site that has received breeder deer within five years of the application for a Triple T permit;

(B) release site that has failed to fulfill testing requirements;

(C) any site where a deer has been confirmed positive for CWD;

(D) any site where a deer has tested "suspect" for CWD; or

(E) any site under a TAHC hold order.

(4) In addition to the reasons for denying a Triple T permit listed in §65.103(c) of this title (relating to Trap, Transport, and Transplant Permit), the department will not issue Triple T permit if the department determines, based on epidemiological assessment and consultation with TAHC that to do so would create an unacceptable risk for the spread of CWD.

(5) All deer released under the provisions of this section must be tagged prior to release in one ear with a button-type RFID tag approved by the department. RFID tag information must be submitted to the department.

(6) Nothing in this section authorizes the take of deer except as authorized by applicable laws and regulations, including but not limited to laws and regulations regarding seasons, bag limits, and means and methods as provided in Subchapter A of this chapter (relating to Statewide Hunting Proclamation).

(7) Except for a permit issued for the removal of urban deer, a test result is not valid if the sample was collected or tested after the Saturday closest to September 30 of the year for which activities of the permit are authorized.

(8) For permits issued for the removal of urban deer, test samples may be collected between April 1 and the time of application.

(9) The owner of a Triple T release site shall maintain a harvest log at the release site that complies with §65.93 of this title (relating to Harvest Log).

(10) A Triple T release site consists solely of the specific tract of land to which deer are released and the acreage designated as a release site in TWIMS.

(11) Deer transferred pursuant to a Triple T permit must have complete, unrestricted access to the entirety of the release site.

(12) The testing requirements of this subsection continue in effect until "not detected" test results have been submitted for five consecutive hunting years following the last date on which deer were transferred to the site pursuant to a Triple T permit. A Triple T release site that is not in compliance with the testing requirements of this subsection will be ineligible as a release site.

(b) Testing Requirements for Triple T Permit.

(1) The department will not issue a Triple T permit unless "not detected" post-mortem test results have been submitted for 15 eligible-aged deer from the trap site.

(2) The landowner of a Triple T release site shall submit "not detected" post-mortem test results for a period of five consecutive hunting years immediately following the release for:

(A) 50 percent of liberated deer that are harvested at the Triple T release site; or

(B) if no liberated deer are harvested at the Triple T release site in any hunting year, 50 percent of hunter-harvested deer.

(3) CWD testing is not required for deer trapped on any property if the deer are being moved to adjacent, contiguous tracts owned by the same person who owns the trap site property.

(c) Testing Requirements for TTP Permit.

(1) "Not detected" test results for at least 15 eligible-aged deer from the trap site must be submitted.

(2) The landowner of a Class III release site must submit CWD test results for 100% of the deer harvested pursuant to a TTP permit, which may include the samples required under paragraph (1) of this subsection.

(3) Test results related to a TTP permit must be submitted to the department by the method prescribed by the department by the May 1 immediately following the completion of permit activities.

§65.98. Transition Provisions.

(a) This division does not apply to an offense committed before the effective date of this division. An offense committed before the effective date of this division is governed by the regulations that existed on the date the offense was committed, including, but not limited to the following:

(1) Deer Breeder: published in the *Texas Register* September 4, 2015 (40 TexReg 5566); January 1, 2016 (41 TexReg 9); January 29, 2016 (41 TexReg 815);

(2) DMP: published in the *Texas Register* October 23, 2015 (40 TexReg 7305); February 12, 2016 (41 TexReg 1049); February 19, 2016 (41 TexReg 1250); and

(3) Triple T/TTP: published in the *Texas Register* October 23, 2015 (40 TexReg 7307); January 1, 2016 (41 TexReg 9).

(b) A release site that was in compliance with the Interim Deer Breeder Rules (41 TexReg 815) shall be not subject to testing requirements until deer are liberated or released onto the release site under the provisions of this division.

(c) A release site that was not in compliance with the Interim Deer Breeder Rules (41 TexReg 815) shall:

(1) be required to comply with the applicable provisions of this division regarding Class II or Class III sites for a period of five years beginning on the first day of lawful hunting for the 2016-2017 hunting year; and

(2) be ineligible to be a release site for breeder deer or deer transferred pursuant to a Triple T permit until the release site has complied with paragraph (1) of this subsection.

(d) The department's executive director shall develop a transition plan and issue appropriate guidance documents to facilitate an effective transition to this division from previously applicable regulations. The transition plan shall include, but is not limited to, provision addressing a mechanism for classifying facilities that have obtained "not detected" ante-mortem test results at a level that meets or exceeds that required in this division prior to the effective date of this division.

§65.99. Violations and Penalties.

(a) A person who violates a provision of this division or a condition of a deer breeder's permit, DMP, Triple T permit, or TTP permit commits an offense and is subject to the penalties prescribed by the applicable provisions of the Parks and Wildlife Code.

(b) A person who possesses or receives white-tailed deer or mule deer under the provisions of this division and/or Subchapters C, D, or T of this chapter is subject to the provisions of TAHC regulations at 4 TAC Chapter 40 (relating to Chronic Wasting Disease) that are applicable to white-tailed or mule deer.

(c) A person who fails to comply with a provision of this division or a condition of a deer's breeder permit, DMP, Triple T permit, or TTP permit may be prohibited by the department from future permit eligibility or issuance.

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

Filed with the Office of the Secretary of State on April 11, 2016.

TRD-201601678
Ann Bright
General Counsel
Texas Parks and Wildlife Department
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 389-4775

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PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 520. DISTRICT OPERATIONS

SUBCHAPTER A. ELECTION PROCEDURES

31 TAC §520.3, §520.5

The Texas State Soil and Water Conservation Board (State Board) proposes amendments to 31 TAC §520.3, District Conducted Elections; Notice, and §520.5, Election Forms; Reporting. Specifically, the changes to §520.3(b) involve inserting language to state that unless specifically requested to file original forms, districts may file completed forms electronically with the State Board and retain the original copies for their files. The changes to §520.5(b) state that unless specifically requested to submit original copies, districts may submit completed forms electronically to the State Office. It also adds language to specify that districts should retain originals if electronic forms are sent to the State Office.

Mr. Kenny Zajicek, Fiscal Officer, State Board, has determined that for the first five-year period there will be no fiscal implications for state or local government as a result of administering the amended rules.

Mr. Zajicek has also determined that for the first five-year period the amended rules are in effect, the public benefit anticipated as a result of administering the rules will be the possibility of improved district operations by districts being able to compete with the public workforce for qualified employees.

There are no anticipated costs to small businesses or individuals resulting from these amended rules.

Comments on the proposed amendments may be submitted in writing to Rex Isom, Executive Director, Texas State Soil and Water Conservation Board, P.O. Box 658, Temple, Texas 76503, (254) 773-2250 ext. 231.

The amendments are proposed under Agriculture Code of Texas, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture Code.

No other statutes, articles, or codes are affected by these amendments.

§520.3. District Conducted Elections; Notice.

(a) Districts shall:

(1) Adopt rules for conducting elections consistent with §201.073, Agriculture Code of Texas.

(2) Administer elections consistent with their adopted rules.

(3) Prior to adoption or any subsequent amending of election rules, submit a draft copy for approval by the Executive Director or his designee for the purpose of assuring uniformity and consistency with legal requirements as set out in Chapter 201, Agriculture Code of Texas.

(4) Maintain a copy of adopted rules with the State Board and maintain a copy of adopted rules at their office for public review.

(b) Districts are required to use all election forms prescribed by the State Board, and they are to[;] file all original completed forms required by the State Board with the State Board and retain copies for their files. Unless specifically requested to file original forms, districts may file completed forms electronically with the State Board and retain the original copies for their files.

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

§520.5. Election Forms; Reporting.

(a) The State Board may consider and approve or amend certain election forms and require districts to utilize the forms for the pur-

pose of assuring uniformity and consistency with legal requirements as set out in Chapter 201, Agriculture Code of Texas.

(b) The State Board may require districts to submit original copies of certain completed election forms to the State Board State Office for filing. Unless specifically requested to submit original copies, districts may submit completed forms electronically to the State Office. Districts should retain copies of any originals submitted to the State Office or the originals if electronic forms are sent to the State Office.

(c) (No change.)

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

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601623
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Earliest possible date of adoption: May 22, 2016
For further information, please call: (254) 773-2250 x252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 5. FUNDS MANAGEMENT (FISCAL AFFAIRS)

SUBCHAPTER N. FUNDS ACCOUNTING--ACCOUNTING POLICY STATEMENTS

34 TAC §5.160

The Comptroller of Public Accounts proposes amendments to §5.160, concerning incorporation by reference: accounting policy statements 2012 - 2013. The Accounting Policy Statements are issued to provide procedures and guidelines to state agencies for the effective operation of the Uniform Statewide Accounting System and for preparation of the annual financial report. This section is being amended to update the effective dates of the Accounting Policy Statements incorporated by reference. The section is also being amended to update the website address where the Accounting Policy Statements may be found.

Tom Currah, Chief Revenue Estimator, has determined that for the first five-year period the rule will be in effect, there will be no significant revenue impact on the state or units of local government.

Mr. Currah also has determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of enforcing the rule will be by facilitating the collection and dissemination of state financial information. The proposed amendment would have no fiscal impact on small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Michael Apperley, Manager, Fiscal Integrity Department, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

This amendment is proposed under Government Code, §§403.011, 2101.012, 2101.035, and 2101.037 which provide the comptroller with the authority to supervise and manage the state's fiscal concerns, prescribed rules and procedures relating to the operation of the Uniform Statewide Accounting System and the preparation of the annual financial report.

This amendment implements Government Code, §§403.011, 2101.012, 2101.035, and 2101.037.

§5.160. Incorporation by Reference: Accounting Policy Statements 2015 - 2016 [~~2012~~ - ~~2013~~].

The "Accounting Policy Statements," issued by the Fiscal Management Division of the Comptroller of Public Accounts as of August 31, 2015 [~~2012~~], are incorporated by reference and filed with the secretary of state. All statements are published by the comptroller in Austin, and copies may be obtained from the comptroller upon request. All statements are also available on the comptroller's [~~Comptroller's~~] website at: https://fmx.cpa.texas.gov/fm/pubs/aps/index.php [~~https://fmx.cpa.state.tx.us/fm/pubs/aps/index.php~~].

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

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601590
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 92. LICENSING STANDARDS FOR ASSISTED LIVING FACILITIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), new §92.21, in Subchapter B, Application Procedures; an amendment to §92.64, in Subchapter D, Facility Construction; and an amendment to §92.551, in Subchapter H, Enforcement in Chapter 92, Licensing Standards for Assisted Living Facilities.

BACKGROUND AND PURPOSE

The proposed amendments and new section implement Texas Health and Safety Code §247.022, as amended by House Bill 1769, 84th Legislature, 2015. Section 247.022(d) allows an assisted living facility license applicant in "good standing" to request that DADS issue an initial license that does not require an on-site health inspection. Section 247.022(d) also prohibits DADS from requiring an applicant in good standing that requests an initial license to admit a resident to the facility before DADS

issues an initial license. The criteria for being in "good standing" are listed in §247.022(f). Section 247.022 requires a license applicant in good standing to submit for DADS approval the applicant's policies and procedures, verification of employee background checks, and employee credentials before DADS issues an initial license. Section 247.022 requires a facility granted an initial license in accordance with §247.022(d) to disclose to residents and prospective residents that the facility has not yet met the requirements of an on-site health inspection. Section 247.022 requires DADS to conduct an on-site health inspection within 90 days after DADS issues an initial license. The proposed new section and amendments set forth the requirements for an applicant in good standing to obtain an initial license, allow a facility to admit more than three residents after it receives an initial license, and allow DADS to impose an administrative penalty if a facility does not disclose to residents and prospective residents that it has not met the requirements of an on-site health inspection.

SECTION-BY-SECTION SUMMARY

Proposed new §92.21 allows an applicant for an initial license for a Type A or Type B assisted living facility to request DADS to issue the license before conducting an on-site health inspection. The proposed new section states that if DADS determines the applicant is in good standing, the applicant is not required to admit a resident to the facility or have an on-site health inspection before DADS issues the initial license. The proposed new section sets forth the criteria for an applicant to be in good standing and requires an applicant to submit information to DADS for approval before a license is issued. If DADS issues a license under the proposed new section, DADS conducts an on-site health inspection within 90 days after issuing the license. Until a facility that is issued a license under the proposed new section meets the requirements of an on-site health inspection, the facility must disclose, in writing, to residents and prospective residents that the facility has not yet met the requirements of an on-site health inspection.

The proposed amendment to §92.64(4)(B) clarifies that a facility may admit more than three residents after it meets the requirements of a Life Safety Code inspection and DADS issues a license under proposed new §92.21.

The proposed amendment to §92.551(d) allows DADS to impose an administrative penalty of $500-$800 if a facility does not disclose that the facility has not yet met the requirements of an on-site health inspection in accordance with proposed new §92.21.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for each year of the first five years the proposed amendments and new section are in effect, enforcing or administering the amendments and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendments and new section will not have an adverse economic effect on small businesses or micro-businesses because the amendments and new section, which allow DADS to issue an initial license more quickly to an applicant with a history of compliance with assisted living rules, do not impose any new obligations on small businesses or micro-businesses.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendments and new section are in effect, the public will benefit by assisted living facilities being licensed more quickly if they are associated with a person who has previous experience with an assisted living facility and has complied with assisted living facility rules. This will provide more options for persons seeking services from an assisted living facility.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Lorraine Brady at (512) 438-2235 in DADS Regulatory Services. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R09, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R09" in the subject line.

SUBCHAPTER B. APPLICATION PROCEDURES

40 TAC §92.21

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

The new section implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §247.025.

§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing.

(a) An applicant may request that DADS issue, before conducting an on-site health inspection, an initial license for a Type A or Type B facility. The applicant must request the license by submitting a form prescribed by and made available from DADS.

(b) If an applicant makes a request in accordance with subsection (a) of this section, DADS determines the applicant is in good standing, and the applicant complies with subsection (d) of this section, the applicant is not required to admit a resident to the facility or have the on-site health inspection described in §92.14(f) of this subchapter (relating to Initial License Application Process and Requirements) before DADS issues an initial license.

(c) For purposes of this section, an applicant is in good standing if:

(1) one of the following conditions is met:

(A) the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; or

(B) the applicant has not held a license for a Type A or Type B facility, but a controlling person of the applicant has operated or been a controlling person of a licensed Type A or Type B facility in Texas for at least six consecutive years; and

(2) each licensed facility operated by the applicant or the controlling person described in paragraph (1)(A) or (B) of this subsection:

(A) has not been cited for a violation that:

(i) resulted in actual harm to a resident, which is defined as a negative outcome that compromises the resident's physical, mental or emotional well-being; or

(ii) posed an immediate threat of harm causing or likely to cause serious injury, impairment, or death to a resident; and

(B) has not had a sanction imposed by DADS against the facility during the six years before the date an application is submitted that resulted in:

(i) a civil penalty;

(ii) an administrative penalty;

(iii) an injunction;

(iv) the denial, suspension, or revocation of a license; or

(v) an emergency closure.

(d) An applicant that makes a request in accordance with subsection (a) of this section must:

(1) submit to DADS:

(A) the applicant's policies and procedures;

(B) evidence that the applicant has complied with §92.123 of this chapter (relating to Investigation of Facility Employees); and

(C) documentation that the applicant's employees have the credentials described in §92.41(a) of this chapter (relating to Standards for Type A and Type B Assisted Living Facilities); and

(2) comply with §92.14(d) of this subchapter and §92.11(c)(1)(A) - (C) of this subchapter (relating to Criteria for Licensing).

(e) DADS issues an initial license to an applicant that makes a request in accordance with subsection (a) of this section if DADS determines that an applicant:

(1) is in good standing;

(2) has submitted information in accordance with subsection (d)(1) of this section that complies with this chapter; and

(3) is in compliance with the requirements of Subchapter D of this chapter (relating to Facility Construction), including meeting the requirements of a Life Safety Code (LSC) inspection within 120 days after the date DADS conducts the initial LSC inspection.

(f) DADS conducts an on-site health inspection within 90 days after the date DADS issues a license in accordance with subsection (e) of this section. The on-site health inspection includes DADS observation of the facility's provision of care to at least one resident.

(g) Until a facility that is issued an initial license under this section meets the requirements of the on-site health inspection described in subsection (f) of this section, the facility must attach a written addendum to the disclosure statement required by §92.41(d)(1) of this chapter as notice to a resident or a prospective resident that the facility has not met the requirements of the on-site health inspection.

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

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Lawrence Hornsby
General Counsel
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For further information, please call: (512) 438-2235

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SUBCHAPTER D. FACILITY CONSTRUCTION

40 TAC §92.64

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §247.025.

§92.64. Plans, Approvals, and Construction Procedures.

At the option of the applicant, DADS reviews plans for new buildings, additions, conversion of buildings not licensed by DADS, or remodeling of existing licensed facilities. DADS informs the applicant of the results of the review within 30 days after receipt of the plans. If the plans comply with DADS architectural requirements, DADS may

not subsequently change the architectural requirement applicable to the project unless the change is required by federal law or the applicant fails to complete the project within a reasonable time.

(1) Submittal of plans.

(A) For review of plans, before construction is begun, the applicant must submit one copy of contract documents including working drawings and specifications in sufficient detail to interpret compliance with these standards and assure proper construction by the general contractor or builder. Documents must be prepared according to accepted architectural practice and must include general construction, special conditions, and schedules.

(B) Final copies of plans must have a title block showing name of facility, person, or organization preparing the sheet, sheet numbers, facility address, and drawing date. Sheets and sections covering structural, electrical, mechanical, and sanitary engineering final plans, designs, and specifications must bear the seal of a registered professional engineer licensed by the Texas Board of Professional Engineers. Contract documents for additions, remodeling, and construction of an entirely new facility must be prepared by an architect licensed by the Texas Board of Architectural Examiners. Drawings must bear the seal of the architect.

(C) A final plan for a major addition to a facility must include a basic layout to scale of the entire building onto which the addition connects. North direction must be shown. Usually the entire basic layout can be drawn to scale of 1/16 inch per foot or 1/32 inch per foot for very large buildings.

(D) Plans and specifications for conversions or remodeling must be complete for all parts and features involved. DADS review is limited to the plans and specifications for conversions or remodeling as submitted.

(E) The sponsor is responsible for employing qualified personnel to prepare the contract documents for construction. If the contract documents have errors or omissions to the extent that compliance with architectural and DADS licensing standards cannot be reasonably assured or determined by DADS, DADS may request a revised set of documents for review.

(F) The review of plans and specifications by DADS is based on general utility, the minimum licensing standards, and conformance of the Life Safety Code, and is not to be construed as all-inclusive approval of the structural, electrical, or mechanical components, nor does it include a review of building plans for compliance with the Texas Accessibility Standards as administered and enforced by the Texas Department of Licensing and Regulation.

(G) Fees for plan review will be required in accordance with §92.4 of this chapter (relating to License Fees).

(2) Contract documents.

(A) Site plan documents must include grade contours; streets with names; North arrow; fire hydrants, fire lanes, utilities, public or private; fences; and unusual site conditions, including ditches, low water levels, other buildings on-site, and indications of buildings five feet or less beyond site property lines.

(B) Foundation plan documents must include general foundation design and details.

(C) Floor plan documents must include room names, numbers, and usages; numbered doors including swing; windows; legend or clarification of wall types; dimensions; fixed equipment; plumbing fixtures; kitchen basic layout; and identification of all smoke barrier walls from outside wall to outside wall or fire walls.

(D) For both new construction and additions or remodeling to existing buildings, an overall plan of the entire building must be drawn or reduced to fit on an 8 1/2 inch by 11 inch sheet.

(E) Schedules must include door materials, widths, and types; window materials, sizes, and types; room finishes; and special hardware.

(F) Elevations and roof plan must include exterior elevations, including material note indications and any roof top equipment; roof slopes, drains, gas piping, and interior elevations where needed for special conditions.

(G) Details must include wall sections as needed, especially for special conditions; cabinet and built-in work; cross sections through buildings as needed and miscellaneous details and enlargements as needed.

(H) Building structure documents must include structural framing layout and details primarily for column, beam, joist, and structural building; roof framing layout if the layout cannot be adequately shown on a cross section; and cross sections in quantity and detail to show sufficient structural design and structural details as necessary to assure adequate structural design and calculated design loads.

(I) Electrical documents must include electrical layout, including lights, convenience outlets, equipment outlets, switches, and other electrical outlets and devices; service, circuiting, distribution, and panel diagrams; exit light system including exit signs and emergency egress lighting; emergency electrical provisions including generators and panels; staff communication system; fire alarm and similar systems including control panel, devices, and alarms; and sizes and details sufficient to assure safe and properly operating systems.

(J) Plumbing documents must include plumbing layout with pipe sizes and details sufficient to assure safe and properly operating systems, water systems, sanitary systems, gas systems, and other systems normally considered under the scope of plumbing, fixtures, and provisions for combustion air supply.

(K) Heating, ventilating and air-conditioning systems (HVAC) documents must include sufficient details of HVAC systems and components to assure a safe and properly operating installation including, but not limited to, heating, ventilating, and air-conditioning layout, ducts, protection of duct inlets and outlets, combustion air, piping, exhausts, and duct smoke and/or fire dampers; and equipment types, sizes, and locations.

(L) Sprinkler system documents must include plans and details of NFPA designed systems; plans and details of partial systems provided only for hazardous areas; and electrical devices interconnected to the alarm system.

(M) Specifications must include information about installation techniques; quality standards and manufacturers; references to applicable codes and other standards used for design; design criteria; special equipment; hardware; finishes; and any other information DADS may need to interpret drawings and notes.

(N) Other layout, plans, or details as may be necessary for a clear understanding of the design and scope of the project, including plans covering private water or sewer systems, must be reviewed by local health or wastewater authority having jurisdiction where the facility is located.

(3) Construction phase.

(A) DADS must be notified in writing prior to construction start.

(B) All construction not done to comply with the completed plans and specifications as submitted for review and as modified in accordance with review requirements will require additional drawings if the change is significant.

(4) Initial survey of completed construction.

(A) Upon completion of construction, including grounds and basic equipment and furnishings, a final construction inspection or initial survey of the facility must be performed by DADS prior to the facility admitting residents, unless DADS issues a provisional license. An initial architectural inspection will be scheduled after DADS receives a notarized licensure application, required fee, fire marshal approval, and a letter from an architect or engineer stating that to the best of the architect's or engineer's knowledge that the facility meets the architectural requirements for a license.

(B) After DADS surveys the completed construction and finds it acceptable, DADS forwards the information to the Licensing and Credentialing Unit as part of the applicant's license application. In the case of additions or remodeling of existing facilities, the applicant may be required to submit a revision or modification to an existing license. All buildings, including basic furnishings and operational needs, grades, drives, and parking must be 100 percent complete at the time of the initial visit for occupancy approval and licensing. A facility may admit no more than three residents after it receives initial approval from DADS but before a [~~the~~] license is issued, except if DADS issues one of the following licenses the facility may admit more than three residents: [~~unless DADS issues~~]

(i) a provisional license in accordance with §92.20 of this chapter (relating to Provisional License); or[~~.~~]

(ii) an initial license in accordance with §92.21 of this chapter (relating to Initial License for a Type A or Type B Facility for an Applicant in Good Standing).

(C) An applicant must make the following documents available to a DADS surveyor at the time of the survey of the completed building:

(i) written approval of local authorities as required by subparagraph (A) of this paragraph;

(ii) record drawings of the fire detection and alarm system as installed, signed by an Alarm Planning Superintendent licensed by the State Fire Marshal's office or bearing the seal of a licensed professional engineer, including a sequence of operation, the owner's manuals, and the manufacturer's published instructions covering all system equipment;

(iii) a signed copy of the State Fire Marshal's Office Fire Alarm Installation Certificate;

(iv) for software-based fire alarm systems, a record copy of the site-specific software, excluding the system executive software or external programmer software in a non-volatile, non-erasable, non-rewritable memory;

(v) documentation of materials used in the building which have a specific limited fire or flame spread rating, including special wall finishes or floor coverings, flame retardant curtains, including cubicle curtains, and rated ceilings;

(vi) a signed letter from the installer of carpeting verifying that the carpeting is named in the laboratory test document;

(vii) record drawings of the fire sprinkler system as installed, signed by a Responsible Managing Employee licensed by the State Fire Marshal's Office, or bearing the seal of a licensed professional engineer, including the hydraulic calculations, fire alarm configuration, aboveground and underground Contractor's Material and Test Certificate;

(viii) all literature and instructions provided by the sprinkler system manufacturer describing the proper operation and maintenance of all equipment and devices in accordance with NFPA 25;

(ix) service contracts for maintenance and testing of alarm systems, sprinkler systems, and other systems;

(x) a copy of a gas test results of the facility's gas lines from the meter;

(xi) a written statement from an architect or engineer stating that, from periodic onsite observation visits, the facility as constructed is, to the best of architect or engineer's knowledge and belief, in substantial compliance with the architect or engineer's contract documents, the Life Safety Code, DADS licensure standards, and local codes; and

(xii) the contract documents described in paragraph (2) of this section.

(5) Non-approval of new construction.

(A) If, during the initial on-site survey of completed construction, the surveyor finds certain basic requirements not met, DADS may recommend that the facility not be licensed and approved for occupancy. The items that may trigger non-approval include:

(i) substantial changes made during construction that were not submitted to DADS for review and which may require revised "as-built" drawings to cover the changes, including architectural, structural, mechanical, and electrical items specified in paragraph (3)(B) of this section;

(ii) construction that does not meet minimum Life Safety Code or DADS licensure standards, including corridors that are less than required width, ceilings installed at less than the minimum seven-foot six-inch height, resident bedroom dimensions less than required, and other features which would disrupt or otherwise adversely affect the residents and staff if corrected after occupancy;

(iii) lack of written approval by local authorities;

(iv) fire protection systems, including fire alarm systems, emergency power and lighting, and sprinkler systems, not completely installed or not functioning properly;

(v) required exits not all usable according to NFPA 101 requirements;

(vi) telephones that are not installed or not properly working;

(vii) sufficient basic furnishings, essential appliances, and equipment that are not installed or not functioning; and

(viii) any other basic operational or safety feature which would preclude safe and normal occupancy by residents on that day.

(B) If the surveyor encounters only minor deficiencies, licensure may be recommended based on an approved written plan of correction from the facility's administrator.

(C) A facility must submit two copies of reduced size floor plans on an 8 1/2 inch by 11 inch sheet to DADS for DADS records and the facility's use for evacuation plans and fire alarm zone identification. The plan must contain basic legible information including scale, room usage names, actual bedroom numbers, doors, windows, and any other pertinent information.

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

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Lawrence Hornsby
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Department of Aging and Disability Services
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SUBCHAPTER H. ENFORCEMENT
DIVISION 9. ADMINISTRATIVE PENALTIES

40 TAC §92.551

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS, and Texas Health and Safety Code §247.025 which provides that the HHSC executive commissioner shall adopt rules necessary for licensing assisted living facilities.

The amendment implements Texas Government Code, §531.0055, Texas Human Resources Code, §161.021, and Texas Health and Safety Code §247.025.

§92.551. Administrative Penalties.

(a) Assessment of an administrative penalty. DADS may assess an administrative penalty if a license holder:

(1) violates:

(A) Texas Health and Safety Code, Chapter 247;

(B) a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or

(C) a term of a license issued under Texas Health and Safety Code, Chapter 247;

(2) makes a false statement of material fact that the license holder knows or should know is false:

(A) on an application for issuance or renewal of a license;

(B) in an attachment to the application; or

(C) with respect to a matter under investigation by DADS;

(3) refuses to allow a DADS representative to inspect:

(A) a book, record, or file that a facility must maintain; or

(B) any portion of the premises of a facility;

(4) willfully interferes with the work of a DADS representative or the enforcement of this chapter;

(5) willfully interferes with a DADS representative preserving evidence of a violation of Texas Health and Safety Code, Chapter 247; a rule, standard, or order adopted under Texas Health and Safety Code, Chapter 247; or a term of a license issued under Texas Health and Safety Code, Chapter 247;

(6) fails to pay an administrative penalty not later than the 30th calendar day after the penalty assessment becomes final; or

(7) fails to notify DADS of a change of ownership before the effective date of the change of ownership.

(b) Criteria for assessing an administrative penalty. DADS considers the following in determining the amount of an administrative penalty:

(1) the gradations of penalties established in subsection (d) of this section;

(2) the seriousness of the violation, including the nature, circumstances, extent, and gravity of the situation, and the hazard or potential hazard created by the situation to the health or safety of the public;

(3) the history of previous violations;

(4) deterrence of future violations;

(5) the license holder's efforts to correct the violation;

(6) the size of the facility and of the business entity that owns the facility; and

(7) any other matter that justice may require.

(c) Late payment of an administrative penalty. A license holder must pay an administrative penalty within 30 calendar days after the penalty assessment becomes final. If a license holder fails to timely pay the administrative penalty, DADS may assess an administrative penalty under subsection (a)(6) of this section, which is in addition to the penalty that was previously assessed and not timely paid.

(d) Administrative penalty schedule. DADS uses the schedule of appropriate and graduated administrative penalties in this subsection to determine which violations warrant an administrative penalty.
Figure: 40 TAC §92.551(d)
[~~Figure: 40 TAC §92.551(d)~~]

(e) Administrative penalty assessed against a resident. DADS does not assess an administrative penalty against a resident, unless the resident is also an employee of the facility or a controlling person.

(f) Proposal of administrative penalties.

(1) DADS issues a preliminary report stating the facts on which DADS concludes that a violation has occurred after DADS has:

(A) examined the possible violation and facts surrounding the possible violation; and

(B) concluded that a violation has occurred.

(2) DADS may recommend in the preliminary report the assessment of an administrative penalty for each violation and the amount of the administrative penalty.

(3) DADS provides a written notice of the preliminary report to the license holder not later than 10 calendar days after the date on which the preliminary report is issued. The written notice includes:

(A) a brief summary of the violation;

(B) the amount of the recommended administrative penalty;

(C) a statement of whether the violation is subject to correction in accordance with subsection (g) of this section and, if the violation is subject to correction, a statement of:

(i) the date on which the license holder must file with DADS a plan of correction for approval by DADS; and

(ii) the date on which the license holder must complete the plan of correction to avoid assessment of the administrative penalty; and

(D) a statement that the license holder has a right to an administrative hearing on the occurrence of the violation, the amount of the penalty, or both.

(4) Not later than 20 calendar days after the date on which a license holder receives a written notice of the preliminary report, the license holder may:

(A) give DADS written consent to the preliminary report, including the recommended administrative penalty; or

(B) make a written request to the Texas Health and Human Services Commission (HHSC) for an administrative hearing.

(5) If a violation is subject to correction under subsection (g) of this section, the license holder must submit a plan of correction to DADS for approval not later than 10 calendar days after the date on which the license holder receives the written notice described in paragraph (3) of this subsection.

(6) If a violation is subject to correction under subsection (g) of this section, and after the license holder reports to DADS that the violation has been corrected, DADS inspects the correction or takes any other step necessary to confirm the correction and notifies the facility that:

(A) the correction is satisfactory and DADS will not assess an administrative penalty; or

(B) the correction is not satisfactory and a penalty is recommended.

(7) Not later than 20 calendar days after the date on which a license holder receives a notice under paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty), the license holder may:

(A) give DADS written consent to DADS' report, including the recommended administrative penalty; or

(B) make a written request to HHSC for an administrative hearing.

(8) If a license holder consents to the recommended administrative penalty or does not timely respond to a notice sent under paragraph (3) of this subsection (written notice of the preliminary report) or paragraph (6)(B) of this subsection (notice that the correction is not satisfactory and recommendation of a penalty):

(A) the commissioner or the commissioner's designee assesses the recommended administrative penalty;

(B) DADS gives written notice of the decision to the license holder; and

(C) the license holder must pay the penalty not later than 30 calendar days after the written notice given in subparagraph (B) of this paragraph.

(g) Opportunity to correct.

(1) A license holder has an opportunity to correct a violation, except a violation described in paragraph (2) of this subsection, and to avoid paying an administrative penalty, if the license holder corrects the violation not later than 45 calendar days after the date the facility receives the written notice described in subsection (f)(3) of this section.

(2) A license holder does not have an opportunity to correct a violation:

(A) that DADS determines results in serious harm to or death of a resident;

(B) described by subsection (a)(2) - (7) of this section;

(C) related to advance directives as described in §92.41(g);

(D) that is the second or subsequent violation of:

(i) a right of the same resident under §92.125 of this chapter (relating to Advance Directives); or

(ii) the same right of all residents under §92.125 of this chapter; or

(E) a violation that is written because of an inappropriately placed resident, except as described in §92.41(f) of this chapter (relating to Inappropriate Placement).

(3) Maintenance of violation correction.

(A) A license holder that corrects a violation must maintain the correction. If the license holder fails to maintain the correction until at least the first anniversary of the date the correction was made, DADS may assess and collect an administrative penalty for the subsequent violation.

(B) An administrative penalty assessed under this paragraph is equal to three times the amount of the original administrative penalty that was assessed but not collected.

(C) DADS is not required to offer the license holder an opportunity to correct the subsequent violation.

(h) Hearing on an administrative penalty. If a license holder timely requests an administrative hearing as described in subsection (f)(3) or (f)(7) of this section, the administrative hearing is held in accordance with HHSC rules at 1 TAC Chapter 357, Subchapter I (relating to Hearings under the Administrative Procedure Act).

(i) DADS may charge interest on an administrative penalty. The interest begins the day after the date the penalty becomes due and ends on the date the penalty is paid in accordance with Texas Health and Safety Code, §247.0455(e).

(j) Amelioration of a violation.

(1) In lieu of demanding payment of an administrative penalty, the commissioner may allow a license holder to use, under DADS' supervision, any portion of the administrative penalty to ameliorate the violation or to improve services, other than administrative services, in the facility affected by the violation. Amelioration is an alternate form of payment of an administrative penalty, not an appeal, and does not remove a violation or an assessed administrative penalty from a facility's history.

(2) A license holder cannot ameliorate a violation that DADS determines constitutes immediate jeopardy to the health or safety of a resident.

(3) DADS offers amelioration to a license holder not later than 10 calendar days after the date a license holder receives a final notification of the recommended assessment of an administrative penalty

that is sent to the license holder after an informal dispute resolution process but before an administrative hearing.

(4) A license holder to whom amelioration has been offered must:

(A) submit a plan for amelioration not later than 45 calendar days after the date the license holder receives the offer of amelioration from DADS; and

(B) agree to waive the license holder's right to an administrative hearing if DADS approves the plan for amelioration.

(5) A license holder's plan for amelioration must:

(A) propose changes to the management or operation of the facility that will improve services to or quality of care of residents;

(B) identify, through measurable outcomes, the ways in which and the extent to which the proposed changes will improve services to or quality of care of residents;

(C) establish clear goals to be achieved through the proposed changes;

(D) establish a time line for implementing the proposed changes; and

(E) identify specific actions the license holder will take to implement the proposed changes.

(6) A license holder's plan for amelioration may include proposed changes to:

(A) improve staff recruitment and retention;

(B) offer or improve dental services for residents; and

(C) improve the overall quality of life for residents.

(7) DADS may require that an amelioration plan propose changes that would result in conditions that exceed the requirements of this chapter.

(8) DADS approves or denies a license holder's amelioration plan not later than 45 calendar days after the date DADS receives the plan. If DADS approves the amelioration plan, any pending request the license holder has submitted for an administrative hearing must be withdrawn by the license holder.

(9) DADS does not offer amelioration to a license holder:

(A) more than three times in a two-year period; or

(B) more than one time in a two-year period for the same or a similar violation.

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

Filed with the Office of the Secretary of State on April 11, 2016.

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-2235

CHAPTER 97. LICENSING STANDARDS FOR HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

The Texas Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §97.2; and new §97.202 in Chapter 97, Licensing Standards for Home and Community Support Services Agencies.

BACKGROUND AND PURPOSE

The purpose of the proposed amendment and new section is, in part, to implement House Bill 4001, 84th Legislature, Regular Session, 2015, which amends Texas Health and Safety Code, Chapter 142, governing home and community support services agencies (HCSSA). House Bill 4001 adds habilitation as a service that a HCSSA provides and defines "habilitation" as services described in Texas Government Code §534.001 that are delivered by a licensed HCSSA. Therefore, the proposed rules allow a licensed HCSSA to provide habilitation and require those services to be provided in accordance with Texas Administrative Code, Title 40, Chapter 97. The proposed rules do not require an entity providing habilitation to obtain a HCSSA license if the entity does not provide any other service for which a license is required-home health, hospice, or personal assistance services. The proposal also includes minor editorial changes for clarity and consistency.

SECTION-BY-SECTION SUMMARY

The proposed amendment to §97.2 defines habilitation according to Texas Government Code §534.001. The proposed amendment uses the acronyms for alternate delivery site, end stage renal disease, legally authorized representative, and registered nurse as defined terms. The definitions of those terms were not changed, but they were reordered alphabetically. The proposed amendment also makes minor editorial changes.

The proposed new §97.202 states that if a HCSSA provides habilitation, the services must be provided in accordance with the minimum licensure standards in Chapter 97 and the specific standards that apply to the categories of service designated on the HCSSA's license.

FISCAL NOTE

David Cook, DADS Chief Financial Officer, has determined that, for the first five years the proposed amendment and new section are in effect, enforcing or administering the amendment and new section does not have foreseeable implications relating to costs or revenues of state or local governments.

SMALL BUSINESS AND MICRO-BUSINESS IMPACT ANALYSIS

DADS has determined that the proposed amendment and new section will not have an adverse economic effect on small businesses or micro-businesses, because there are no costs for compliance with the amendment and new section.

PUBLIC BENEFIT AND COSTS

Mary T. Henderson, DADS Assistant Commissioner for Regulatory Services, has determined that, for each year of the first five years the amendment and new section are in effect, the public benefit expected as a result of enforcing the amendment and new section is the provision of habilitation by a licensed HCSSA in accordance with HCSSA standards.

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Questions about the content of this proposal may be directed to Christy Parks at (512) 438-3791 in DADS Regulatory Services division. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-15R12, Department of Aging and Disability Services W-615, P.O. Box 149030, Austin, Texas 78714-9030, or street address 701 West 51st St., Austin, Texas 78751; faxed to (512) 438-5759; or e-mailed to *rulescomments@dads.state.tx.us.* To be considered, comments must be submitted no later than 30 days after the date of this issue of the *Texas Register.* The last day to submit comments falls on a Sunday; therefore, comments must be: (1) postmarked or shipped before the last day of the comment period; (2) hand-delivered to DADS before 5:00 p.m. on DADS last working day of the comment period; or (3) faxed or e-mailed by midnight on the last day of the comment period. When faxing or e-mailing comments, please indicate "Comments on Proposed Rule 15R12" in the subject line.

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §97.2

STATUTORY AUTHORITY

The amendment is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; and Texas Health and Safety Code, Chapter 142 which authorizes the executive commissioner to license and regulate home and community support services agencies.

The amendment implements Texas Government Code, §531.0055, Texas Health and Safety Code §§142.001 - 142.017, and Texas Human Resources Code, §161.021.

§97.2. Definitions.

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

(1) Accessible and flexible services--Services that are delivered in the least intrusive manner possible and are provided in all settings where individuals live, work, and recreate.

(2) Administration of medication--The direct application of any medication by injection, inhalation, ingestion, or any other means to the body of a client. The preparation of medication is part of the administration of medication and is the act or process of making ready a medication for administration, including the calculation of a client's medication dosage; altering the form of the medication by crushing, dissolving, or any other method; reconstitution of an injectable medication; drawing an injectable medication into a syringe; preparing an intravenous admixture; or any other act required to render the medication ready for administration.

(3) Administrative support site--A facility or site where an agency performs administrative and other support functions but does not provide direct home health, hospice, or personal assistance services. This site does not require an agency license.

(4) Administrator--The person who is responsible for implementing and supervising the administrative polices and operations of a home and community support services agency and for administratively supervising the provision of all services to agency clients on a day-to-day basis.

(5) ADS--Alternative delivery site. A facility or site, including a residential unit or an inpatient unit:

(A) that is owned or operated by an agency providing hospice services;

(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;

(C) that is located in the geographical area served by the hospice; and

(D) from which the hospice provides hospice services.

(6) [~~(5)~~] Advanced practice nurse--A registered nurse who is approved by the Texas Board of Nursing to practice as an advanced practice nurse and who maintains compliance with the applicable rules of the Texas Board of Nursing. See the Texas Board of Nursing's definition of advanced practice nurse in Title 22, Texas Administrative Code, (22 TAC) [~~22 TAC~~] §221.1.

(7) [~~(6)~~] Advisory committee--A committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup, established for the purpose of obtaining advice or recommendations on issues or policies that are within the scope of a person's responsibility.

(8) [~~(7)~~] Affiliate--With respect to an applicant or license holder that is:

(A) a corporation--means each officer, director, and stockholder with direct ownership of at least 5.0 percent, subsidiary, and parent company;

(B) a limited liability company--means each officer, member, and parent company;

(C) an individual--means:

(i) the individual's spouse;

(ii) each partnership and each partner thereof of which the individual or any affiliate of the individual is a partner; and

(iii) each corporation in which the individual is an officer, director, or stockholder with a direct ownership or disclosable interest of at least 5.0 percent.

(D) a partnership--means each partner and any parent company; and

(E) a group of co-owners under any other business arrangement--means each officer, director, or the equivalent under the specific business arrangement and each parent company.

(9) [~~(8)~~] Agency--A home and community support services agency.

[~~(9) Alternate delivery site (ADS)--A facility or site, including a residential unit or an inpatient unit:~~]

[~~(A) that is owned or operated by an agency providing hospice services;~~]

[~~(B) that is not the hospice's principal place of business, which for the purposes of this definition, means it is not the parent agency;~~]

[~~(C) that is located in the geographical area served by the hospice; and~~]

[~~(D) from which the hospice provides hospice services.~~]

(10) Applicant--The owner of an agency that is applying for a license under the statute. This is the person in whose name the license will be issued.

(11) Assistance with self-administration of medication--Any needed ancillary aid provided to a client in the client's self-administered medication or treatment regimen, such as reminding a client to take a medication at the prescribed time, opening and closing a medication container, pouring a predetermined quantity of liquid to be ingested, returning a medication to the proper storage area, and assisting in reordering medications from a pharmacy. Such ancillary aid includes administration of any medication when the client has the cognitive ability to direct the administration of their medication and would self-administer if not for a functional limitation.

(12) Association--A partnership, limited liability company, or other business entity that is not a corporation.

(13) Audiologist--A person who is currently licensed under the Texas Occupations Code, Chapter 401, as an audiologist.

(14) Bereavement--The process by which a survivor of a deceased person mourns and experiences grief.

(15) Bereavement services--Support services offered to a family during bereavement. Services may be provided to persons other than family members, including residents of a skilled nursing facility, nursing facility, or intermediate care facility for individuals with an intellectual disability or related conditions, when appropriate and identified in a bereavement plan of care.

(16) Biologicals--A medicinal preparation made from living organisms and their products, including serums, vaccines, antigens, and antitoxins.

(17) Boarding home facility--An establishment defined in Texas Health and Safety Code §260.001(2).

(18) Branch office--A facility or site in the service area of a parent agency from which home health or personal assistance services are delivered or where active client records are maintained. This does not include inactive records that are stored at an unlicensed site.

(19) Care plan--

(A) a written plan prepared by the appropriate health care professional for a client of the home and community support services agency; or

(B) for home dialysis designation, a written plan developed by the physician, registered nurse, dietitian, and qualified social worker to personalize the care for the client and enable long- and short-term goals to be met.

(20) Case conference--A conference among personnel furnishing services to the client to ensure that their efforts are coordinated effectively and support the objectives outlined in the plan of care or care plan.

(21) Certified agency--A home and community support services agency, or portion of the agency, that:

(A) provides a home health service; and

(B) is certified by an official of the Department of Health and Human Services as in compliance with conditions of participation in Social Security Act, Title XVIII (42 United States Code (USC) §1395 et seq.).

(22) Certified home health services--Home health services that are provided by a certified agency.

(23) CFR--Code of Federal Regulations. The regulations and rules promulgated by agencies of the Federal government that address a broad range of subjects, including hospice care and home health services.

(24) CHAP--Community Health Accreditation Program, Inc. An independent, nonprofit accrediting body that publicly certifies that an organization has voluntarily met certain standards for home and community-based health care.

(25) Chief financial officer--An individual who is responsible for supervising and managing all financial activities for a home and community support services agency.

(26) Client--An individual receiving home health, hospice, or personal assistance services from a licensed home and community support services agency. This term includes each member of the primary client's family if the member is receiving ongoing services. This term does not include the spouse, significant other, or other family member living with the client who receives a one-time service (for example, vaccination) if the spouse, significant other, or other family member receives the service in connection with the care of a client.

(27) Clinical note--A dated and signed written notation by agency personnel of a contact with a client containing a description of signs and symptoms; treatment and medication given; the client's reaction; other health services provided; and any changes in physical and emotional condition.

(28) CMS--Centers for Medicare and Medicaid Services. The federal agency that administers the Medicare program and works in partnership with the states to administer Medicaid.

(29) Complaint--An allegation against an agency regulated by DADS or against an employee of an agency regulated by DADS that involves a violation of this chapter or the statute.

(30) Community disaster resources--A local, statewide, or nationwide emergency system that provides information and resources during a disaster, including weather information, transportation, evacuation, and shelter information, disaster assistance and recovery efforts, evacuee and disaster victim resources, and resources for locating evacuated friends and relatives.

(31) Controlling person--A person with the ability, acting alone or with others, to directly or indirectly influence, direct, or cause the direction of the management, expenditure of money, or policies of an agency or other person.

(A) A controlling person includes:

(i) a management company or other business entity that operates or contracts with others for the operation of an agency;

(ii) a person who is a controlling person of a management company or other business entity that operates an agency or that contracts with another person for the operation of an agency; and

(iii) any other individual who, because of a personal, familial, or other relationship with the owner, manager, or provider of an agency, is in a position of actual control or authority with respect to the agency, without regard to whether the individual is formally named as an owner, manager, director, officer, provider, consultant, contractor, or employee of the agency.

(B) A controlling person, as described by subparagraph (A)(iii) of this paragraph, does not include an employee, lender, secured creditor, or other person who does not exercise formal or actual influence or control over the operation of an agency.

(32) Conviction--An adjudication of guilt based on a finding of guilt, a plea of guilty, or a plea of nolo contendere.

(33) Counselor--An individual qualified under Medicare standards to provide counseling services, including bereavement, dietary, spiritual, and other counseling services to both the client and the family.

(34) DADS--Department of Aging and Disability Services.

(35) Day--Any reference to a day means a calendar day, unless otherwise specified in the text. A calendar day includes weekends and holidays.

(36) Deficiency--A finding of noncompliance with federal requirements resulting from a survey.

(37) Designated survey office--A DADS Home and Community Support Services Agencies Program office located in an agency's geographic region.

(38) Dialysis treatment record--For home dialysis designation, a dated and signed written notation by the person providing dialysis treatment which contains a description of signs and symptoms, machine parameters and pressure settings, type of dialyzer and dialysate, actual pre- and post-treatment weight, medications administered as part of the treatment, and the client's response to treatment.

(39) Dietitian--A person who is currently licensed under the laws of the State of Texas to use the title of licensed dietitian or provisional licensed dietitian, or who is a registered dietitian.

(40) Disaster--The occurrence or imminent threat of widespread or severe damage, injury, or loss of life or property resulting from a natural or man-made cause, such as fire, flood, earthquake, wind, storm, wave action, oil spill or other water contamination, epidemic, air contamination, infestation, explosion, riot, hostile military or paramilitary action, or energy emergency. In a hospice inpatient unit, a disaster also includes failure of the heating or cooling system, power outage, explosion, and bomb threat.

(41) ESRD--End stage renal disease. [~~(ESRD)--~~]For home dialysis designation, the stage of renal impairment that appears irreversible and permanent and requires a regular course of dialysis or kidney transplantation to maintain life.

(42) Functional need--Needs of the individual that require services without regard to diagnosis or label.

(43) Habilitation--Habilitation services, as defined by Texas Government Code §534.001, provided by an agency licensed under this chapter.

(44) [~~(43)~~] Health assessment--A determination of a client's physical and mental status through inventory of systems.

(45) [~~(44)~~] Home and community support services agency--A person who provides home health, hospice, habilitation, or personal assistance services for pay or other consideration in a client's residence, an independent living environment, or another appropriate location.

(46) [~~(45)~~] Home health aide--An individual working for an agency who meets at least one of the requirements for home health aides as defined in §97.701 of this chapter (relating to Home Health Aides).

(47) [~~(46)~~] Home health medication aide--An unlicensed person issued a permit by DADS to administer medication to a client under the Texas Health and Safety Code, Chapter 142, Subchapter B.

(48) [~~(47)~~] Home health service--The provision of one or more of the following health services required by an individual in a residence or independent living environment:

(A) nursing, including blood pressure monitoring and diabetes treatment;

(B) physical, occupational, speech, or respiratory therapy;

(C) medical social service;

(D) intravenous therapy;

(E) dialysis;

(F) service provided by unlicensed personnel under the delegation or supervision of a licensed health professional;

(G) the furnishing of medical equipment and supplies, excluding drugs and medicines; or

(H) nutritional counseling.

(49) [~~(48)~~] Hospice--A person licensed under this chapter to provide hospice services, including a person who owns or operates a residential unit or an inpatient unit.

(50) [~~(49)~~] Hospice aide--A person working for an agency licensed to provide hospice services who meets the qualifications for a hospice aide as described in §97.843 of this chapter (relating to Hospice Aide Qualifications).

(51) [~~(50)~~] Hospice homemaker--A person working for an agency licensed to provide hospice services who meets the qualifications described in §97.845 of this chapter (relating to Hospice Homemaker Qualifications).

(52) [~~(51)~~] Hospice services--Services, including services provided by unlicensed personnel under the delegation of a registered nurse or physical therapist, provided to a client or a client's family as part of a coordinated program consistent with the standards and rules adopted under this chapter. These services include palliative care for terminally ill clients and support services for clients and their families that:

(A) are available 24 hours a day, seven days a week, during the last stages of illness, during death, and during bereavement;

(B) are provided by a medically directed interdisciplinary team; and

(C) may be provided in a home, nursing facility, residential unit, or inpatient unit according to need. These services do not include inpatient care normally provided in a licensed hospital to a terminally ill person who has not elected to be a hospice client. For the purposes of this definition, the word "home" includes a person's "residence" as defined in this section.

(53) [~~(52)~~] Independent living environment--A client's residence, which may include a group home, foster home, or boarding

home facility, or other settings where a client participates in activities, including school, work, or church.

(54) [~~(53)~~] Individual and family choice and control--Individuals and families who express preferences and make choices about how their support service needs are met.

(55) [~~(54)~~] Individualized service plan--A written plan prepared by the appropriate health care personnel for a client of a home and community support services agency licensed to provide personal assistance services.

(56) [~~(55)~~] Inpatient unit--A facility, also referred to as a hospice freestanding inpatient facility, that provides a continuum of medical or nursing care and other hospice services to clients admitted into the unit and that is in compliance with:

(A) the conditions of participation for inpatient units adopted under Social Security Act, Title XVIII (42 United States Code §1395 et seq.); and

(B) standards adopted under this chapter.

(57) [~~(56)~~] IRoD--Informal review of deficiencies. An informal process that allows an agency to refute a deficiency or violation cited during a survey.

(58) [~~(57)~~] JCAHO--Joint Commission on Accreditation of Healthcare Organizations. An independent, nonprofit organization for standard-setting and accrediting in-home care and other areas of health care.

(59) [~~(58)~~] Joint training--Training provided by DADS at least semi-annually for home and community support services agencies and DADS surveyors on subjects that address the 10 most commonly cited violations of federal or state law by home and community support services agencies as published in DADS annual reports.

(60) [~~(59)~~] LAR [~~Legally authorized representative (LAR)~~]--Legally authorized representative. A person authorized by law to act on behalf of a client with regard to a matter described in this chapter, and may include a parent of a minor, guardian of an adult or minor, managing conservator of a minor, agent under a medical power of attorney, or surrogate decision-maker under Texas Health and Safety Code, §313.004.

(61) [~~(60)~~] Licensed vocational nurse--A person who is currently licensed under Texas Occupations Code, Chapter 301, as a licensed vocational nurse.

(62) [~~(61)~~] Life Safety Code (also referred to as NFPA 101)--The Code for Safety to Life from Fire in Buildings and Structures, Standard 101, of the National Fire Protection Association (NFPA).

(63) [~~(62)~~] Local emergency management agencies--The local emergency management coordinator, fire, police, and emergency medical services.

(64) [~~(63)~~] Local emergency management coordinator--The person identified as the emergency management coordinator by the mayor or county judge in an agency's service area.

(65) [~~(64)~~] Manager--An employee or independent contractor responsible for providing management services to a home and community support services agency for the overall operation of a home and community support services agency including administration, staffing, or delivery of services. Examples of contracts for services that will not be considered contracts for management services include contracts solely for maintenance, laundry, or food services.

(66) [~~(65)~~] Medication administration record--A record used to document the administration of a client's medications.

(67) [~~(66)~~] Medication list--A list that includes all prescription and over-the-counter medication that a client is currently taking, including the dosage, the frequency, and the method of administration.

(68) [~~(67)~~] Mitigation--An action taken to eliminate or reduce the probability of a disaster, or reduce a disaster's severity or consequences.

(69) [~~(68)~~] Multiple location--A Medicare-approved alternate delivery site that meets the definition in 42 CFR §418.3.

(70) [~~(69)~~] Notarized copy--A sworn affidavit stating that attached copies are true and correct copies of the original documents.

(71) [~~(70)~~] Nursing facility--An institution licensed as a nursing home under the Texas Health and Safety Code, Chapter 242.

(72) [~~(71)~~] Nutritional counseling--Advising and assisting individuals or families on appropriate nutritional intake by integrating information from the nutrition assessment with information on food and other sources of nutrients and meal preparation consistent with cultural background and socioeconomic status, with the goal being health promotion, disease prevention, and nutrition education. Nutritional counseling may include the following:

(A) dialogue with the client to discuss current eating habits, exercise habits, food budget, and problems with food preparation;

(B) discussion of dietary needs to help the client understand why certain foods should be included or excluded from the client's diet and to help with adjustment to the new or revised or existing diet plan;

(C) a personalized written diet plan as ordered by the client's physician or practitioner, to include instructions for implementation;

(D) providing the client with motivation to help the client understand and appreciate the importance of the diet plan in getting and staying healthy; or

(E) working with the client or the client's family members by recommending ideas for meal planning, food budget planning, and appropriate food gifts.

(73) [~~(72)~~] Occupational therapist--A person who is currently licensed under the Occupational Therapy Practice Act, Texas Occupations Code, Chapter 454, as an occupational therapist.

(74) [~~(73)~~] Operating hours--The days of the week and the hours of day an agency's place of business is open as identified in an agency's written policy as required by §97.210 of this chapter (relating to Agency Operating Hours).

(75) [~~(74)~~] Original active client record--A record composed first-hand for a client currently receiving services.

(76) [~~(75)~~] Palliative care--Intervention services that focus primarily on the reduction or abatement of physical, psychosocial, and spiritual symptoms of a terminal illness. It is client and family-centered care that optimizes quality of life by anticipating, preventing, and treating suffering. Palliative care throughout the continuum of illness involves addressing physical, intellectual, emotional, social, and spiritual needs and facilitating client autonomy, access to information, and choice.

(77) [~~(76)~~] Parent agency--An agency that develops and maintains administrative controls and provides supervision of branch offices and alternate delivery sites.

(78) [~~(77)~~] Parent company--A person, other than an individual, who has a direct 100 percent ownership interest in the owner of an agency.

(79) [~~(78)~~] Person--An individual, corporation, or association.

(80) [~~(79)~~] Person with a disclosable interest--Any person who owns at least a 5.0 percent interest in any corporation, partnership, or other business entity that is required to be licensed under Texas Health and Safety Code, Chapter 142. A person with a disclosable interest does not include a bank, savings and loan, savings bank, trust company, building and loan association, credit union, individual loan and thrift company, investment banking firm, or insurance company, unless these entities participate in the management of the agency.

(81) [~~(80)~~] Personal assistance services--Routine ongoing care or services required by an individual in a residence or independent living environment that enable the individual to engage in the activities of daily living or to perform the physical functions required for independent living, including respite services. The term includes:

(A) personal care;

(B) health-related services performed under circumstances that are defined as not constituting the practice of professional nursing by the Texas Board of Nursing through a memorandum of understanding with DADS in accordance with Texas Health and Safety Code, §142.016; and

(C) health-related tasks provided by unlicensed personnel under the delegation of a registered nurse or that a registered nurse determines do not require delegation.

(82) [~~(81)~~] Personal care--The provision of one or more of the following services required by an individual in a residence or independent living environment:

(A) bathing;

(B) dressing;

(C) grooming;

(D) feeding;

(E) exercising;

(F) toileting;

(G) positioning;

(H) assisting with self-administered medications;

(I) routine hair and skin care; and

(J) transfer or ambulation.

(83) [~~(82)~~] Pharmacist--A person who is licensed to practice pharmacy under the Texas Pharmacy Act, Texas Occupations Code, Chapter 558.

(84) [~~(83)~~] Pharmacy--A facility defined in the Texas Occupations Code, §551.003(31), at which a prescription drug or medication order is received, processed, or dispensed.

(85) [~~(84)~~] Physical therapist--A person who is currently licensed under Texas Occupations Code, Chapter 453, as a physical therapist.

(86) [~~(85)~~] Physician--This term includes a person who is:

(A) licensed in Texas to practice medicine or osteopathy in accordance with Texas Occupations Code, Chapter 155;

(B) licensed in Arkansas, Louisiana, New Mexico, or Oklahoma to practice medicine, who is the treating physician of a client and orders home health or hospice services for the client, in accordance with the Texas Occupations Code, §151.056(b)(4); or

(C) a commissioned or contract physician or surgeon who serves in the United States uniformed services or Public Health Service if the person is not engaged in private practice, in accordance with the Texas Occupations Code, §151.052(a)(8).

(87) [~~(86)~~] Physician assistant--A person who is licensed under the Physician Assistant Licensing Act, Texas Occupations Code, Chapter 204, as a physician assistant.

(88) [~~(87)~~] Physician-delegated task--A task performed in accordance with the Texas Occupations Code, Chapter 157, including orders signed by a physician that specify the delegated task, the individual to whom the task is delegated, and the client's name.

(89) [~~(88)~~] Place of business--An office of a home and community support services agency that maintains client records or directs home health, hospice, or personal assistance services. This term includes a parent agency, a branch office, and an alternate delivery site. The term does not include an administrative support site.

(90) [~~(89)~~] Plan of care--The written orders of a practitioner for a client who requires skilled services.

(91) [~~(90)~~] Practitioner--A person who is currently licensed in a state in which the person practices as a physician, dentist, podiatrist, or a physician assistant, or a person who is a registered nurse registered with the Texas Board of Nursing as an advanced practice nurse.

(92) [~~(91)~~] Preparedness--Actions taken in anticipation of a disaster.

(93) [~~(92)~~] Presurvey conference--A conference held with DADS staff and the applicant or the applicant's representatives to review licensure standards and survey documents, and to provide consultation before the survey.

(94) [~~(93)~~] Progress note--A dated and signed written notation by agency personnel summarizing facts about care and the client's response during a given period of time.

(95) [~~(94)~~] Psychoactive treatment--The provision of a skilled nursing visit to a client with a psychiatric diagnosis under the direction of a physician that includes one or more of the following:

(A) assessment of alterations in mental status or evidence of suicide ideation or tendencies;

(B) teaching coping mechanisms or skills;

(C) counseling activities; or

(D) evaluation of the plan of care.

(96) [~~(95)~~] Recovery--Activities implemented during and after a disaster response designed to return an agency to its normal operations as quickly as possible.

~~[(96) Registered nurse (RN)--A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.]~~

(97) Registered nurse delegation--Delegation by a registered nurse in accordance with:

(A) 22 TAC Chapter 224 (concerning Delegation of Nursing Tasks by Registered Professional Nurses to Unlicensed

Personnel for Clients with Acute Conditions or in Acute Care Environments); and

(B) 22 TAC Chapter 225 (relating to RN Delegation to Unlicensed Personnel and Tasks Not Requiring Delegation in Independent Living Environments for Clients with Stable and Predictable Conditions).

(98) Residence--A place where a person resides, including a home, a nursing facility, a convalescent home, or a residential unit.

(99) Residential unit--A facility that provides living quarters and hospice services to clients admitted into the unit and that is in compliance with standards adopted under the Texas Health and Safety Code, Chapter 142.

(100) Respiratory therapist--A person who is currently licensed under Texas Occupations Code, Chapter 604, as a respiratory care practitioner.

(101) Respite services--Support options that are provided temporarily for the purpose of relief for a primary caregiver in providing care to individuals of all ages with disabilities or at risk of abuse or neglect.

(102) Response--Actions taken immediately before an impending disaster or during and after a disaster to address the immediate and short-term effects of the disaster.

(103) Restraint--A restraint is:

(A) A manual method, physical or mechanical device, material, or equipment that immobilizes or reduces the ability of a client in a hospice inpatient unit to move his or her arms, legs, body, or head freely, but does not include a device, such as an orthopedically prescribed device, a surgical dressing or bandage, a protective helmet, or other method that involves the physical holding of the client for the purpose of:

(i) conducting a routine physical examination or test;

(ii) protecting the client from falling out of bed; or

(iii) permitting the client to participate in activities without the risk of physical harm, not including a physical escort; or

(B) A drug or medication when used as a restriction to manage a client's behavior or restrict the client's freedom of movement in a hospice inpatient unit, but not as a standard treatment or medication dosage for the client's condition.

(104) RN--Registered nurse. A person who is currently licensed under the Nursing Practice Act, Texas Occupations Code, Chapter 301, as a registered nurse.

(105) [~~(104)~~] Seclusion--The involuntary confinement of a client alone in a room or an area in a hospice inpatient unit from which the client is physically prevented from leaving.

(106) [~~(105)~~] Section--A reference to a specific rule in this chapter.

(107) [~~(106)~~] Service area--A geographic area established by an agency in which all or some of the agency's services are available.

(108) [~~(107)~~] Skilled services--Services in accordance with a plan of care that require the skills of:

(A) a registered nurse;

(B) a licensed vocational nurse;

(C) a physical therapist;

(D) an occupational therapist;

(E) a respiratory therapist;

(F) a speech-language pathologist;

(G) an audiologist;

(H) a social worker; or

(I) a dietitian.

(109) [~~(108)~~] Social worker--A person who is currently licensed as a social worker under Texas Occupations Code, Chapter 505.

(110) [~~(109)~~] Speech-language pathologist--A person who is currently licensed as a speech-language pathologist under Texas Occupations Code, Chapter 401.

(111) [~~(110)~~] Statute--The Texas Health and Safety Code, Chapter 142.

(112) [~~(111)~~] Substantial compliance--A finding in which an agency receives no recommendation for enforcement action after a survey.

(113) [~~(112)~~] Supervised practical training--Hospice aide training that is conducted in a laboratory or other setting in which the trainee demonstrates knowledge while performing tasks on an individual. The training is supervised by a registered nurse or by a licensed vocational nurse who works under the direction of a registered nurse.

(114) [~~(113)~~] Supervising nurse--The person responsible for supervising skilled services provided by an agency and who has the qualifications described in §97.244(c) of this chapter (relating to Administrator Qualifications and Conditions and Supervising Nurse Qualifications). This person may also be known as the director of nursing or similar title.

(115) [~~(114)~~] Supervision--Authoritative procedural guidance by a qualified person for the accomplishment of a function or activity with initial direction and periodic inspection of the actual act of accomplishing the function or activity.

(116) [~~(115)~~] Support services--Social, spiritual, and emotional care provided to a client and a client's family by a hospice.

(117) [~~(116)~~] Survey--An on-site inspection or complaint investigation conducted by a DADS representative to determine if an agency is in compliance with the statute and this chapter or in compliance with applicable federal requirements or both.

(118) [~~(117)~~] Terminal illness--An illness for which there is a limited prognosis if the illness runs its usual course.

(119) [~~(118)~~] Unlicensed person--A person not licensed as a health care provider. The term includes home health aides, hospice aides, hospice homemakers, medication aides permitted by DADS, and other unlicensed individuals providing personal care or assistance in health services.

(120) [~~(119)~~] Unsatisfied judgments--A failure to fully carry out the terms or meet the obligation of a court's final disposition on the matters before it in a suit regarding the operation of an agency.

(121) [~~(120)~~] Violation--A finding of noncompliance with this chapter or the statute resulting from a survey.

(122) [~~(121)~~] Volunteer--An individual who provides assistance to a home and community support services agency without compensation other than reimbursement for actual expenses.

(123) [~~(122)~~] Working day--Any day except Saturday, Sunday, a state holiday, or a federal holiday.

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

Filed with the Office of the Secretary of State on April 8, 2016.

TRD-201601661
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 438-3791

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SUBCHAPTER C. MINIMUM STANDARDS FOR ALL HOME AND COMMUNITY SUPPORT SERVICES AGENCIES

DIVISION 1. GENERAL PROVISIONS

40 TAC §97.202

STATUTORY AUTHORITY

The new section is proposed under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

The new section implements Texas Government Code, §531.0055, and Texas Human Resources Code, §161.021.

§97.202. Habilitation.

(a) An agency may provide habilitation.

(b) An agency that provides habilitation must provide habilitation in accordance with this chapter, including any licensure standards in Subchapter D of this chapter that apply to the categories of service designated on the agency's license.

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

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Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3791

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 800. GENERAL ADMINISTRATION

SUBCHAPTER B. ALLOCATIONS

40 TAC §800.68

The Texas Workforce Commission (Commission) proposes amendments to the following section of Chapter 800, relating to General Administration: Subchapter B. Allocations, §800.68

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the proposed Chapter 800 rule change is to amend Agency rules to clarify that the allocation of Adult Education and Literacy (AEL) funds, pursuant to Texas Labor Code §302.062(d), includes the application of a hold-harmless/stop-gain calculation, as defined in Agency rule §800.52(7). This proposed amendment also strikes an adjacent clause that is now out of date and unnecessary.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER B. ALLOCATIONS

The Commission proposes the following amendments to Subchapter B:

§800.68. Adult Education and Literacy

Section 800.68(b)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(c)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(d)(3) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

Section 800.68(e)(1)(C) is amended by:

--adding the stop-gain option to the hold-harmless procedure; and

--removing "(for any program year after Fiscal Year (FY) 2015)," as it is no longer relevant.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state or to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state or to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses, as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to prevent local workforce development areas (workforce areas) from receiving substantially more funding than in a previous year, providing ample time for program capacity building.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 3, 2015. The Commission also conducted a webinar with Board executive directors and Board staff on November 12, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin, Texas 78778; faxed to (512) 475-3577; or e-mailed to *TWCPolicyComments@twc.state.tx.us.* Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§800.68. Adult Education and Literacy.

(a) AEL funds available to the Commission to provide services under the federal Adult Education and Family Literacy Act (AEFLA), WIA Title II, together with associated state general revenue matching funds and federal TANF funds--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be used by the Commission, as set forth in subsections (b) - (f) of this section.

(b) At least 82.5 percent of the federal funds constituting the total state award of AEFLA state grants--including amounts allotted to the eligible agency having a state plan, as provided by AEFLA §211(c) and amounts provided to the eligible agency under §243 for English Literacy/Civics (EL/Civics)--will be allocated by the Commission to the workforce areas. From the amount allotted to the eligible agency having a state plan, as provided by AEFLA §211(c), the Commission will allocate amounts to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after Fiscal Year (FY) 2015)~~].

(2) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA, provided, however, that the Special Rule outlined in AEFLA §233(b) shall apply with effective justification, as appropriate.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(c) At least 80 percent of the state general revenue matching funds associated with the allotment of federal funds to the eligible agency having a state plan, as provided by AEFLA §211(c), will be allocated by the Commission to the workforce areas according to the established federal formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of individuals residing within each workforce area who are at least 18 years of age, do not have a secondary school diploma or its recognized equivalent, and are not enrolled in secondary school, during the most recent period for which statistics are available;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after FY 2015)~~].

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(d) At least 82.5 percent of the federal funds provided to the eligible agency from amounts under AEFLA §243 for EL/Civics will be allocated by the Commission among the workforce areas according to the established federal formula, as follows:

(1) The relative proportion based on:

(A) 65 percent of the average number of legal permanent residents during the most recent 10-year period, available from U.S. Citizenship and Immigration Services data; and

(B) 35 percent of the average number of legal permanent residents during the most recent three-year period, available from U.S. Citizenship and Immigration Services data;

(2) a base amount of 1 percent for each workforce area; and

(3) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after FY 2015)~~].

(4) No more than 5 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by AEFLA.

(5) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(e) At least 80 percent of federal TANF funds associated with the AEL program--together with any state general revenue funds appropriated as TANF maintenance-of-effort--will be allocated by the Commission to the workforce areas according to a need-based formula, as follows:

(1) 100 percent will be based on:

(A) the relative proportion of the unduplicated number of TANF adult recipients with educational attainment of less than a secondary diploma during the most recently completed calendar year;

(B) an equal base amount; and

(C) the application of a hold-harmless/stop-gain [~~hold-harmless~~] procedure [~~(for any program year after FY 2015)~~].

(2) No more than 15 percent of the funds expended as part of this workforce area allocation shall be used for administrative costs, as defined by federal regulations and Commission policy.

(3) No more than 10 percent of this allocation shall be available for expenditure within each workforce area on the basis of the achievement of performance benchmarks, as set forth in subsection (f) of this section.

(f) AEL performance accountability benchmarks shall be established to coincide with performance measures and reports, or other periods, as determined by the Commission. Levels of performance shall, at a minimum, be expressed in an objective, quantifiable, and measureable form, and show continuous improvement.

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

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601601
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 475-0829

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CHAPTER 805. ADULT EDUCATION AND LITERACY

The Texas Workforce Commission (Commission) proposes amendments to the following sections of Chapter 805, relating to Adult Education and Literacy:

Subchapter A. General Provisions, §805.2 and §805.3

Subchapter B. Staff Qualifications, §805.21

PART I. PURPOSE AND BACKGROUND

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART III. IMPACT STATEMENTS

PART IV. COORDINATION ACTIVITIES

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of the amendment to §805.21 is to address issues based on observations and feedback related to finding and supporting qualified staff across an Adult Education and Literacy (AEL) system built on partnerships.

Current staff qualification requirements set forth in §805.21 were carried over with some modifications from the Texas Education Code (TEC). The TEC rules were developed for an AEL program that largely operated as an independent, nonintegrated program. Transition of the AEL program to TWC, with the implementation of new contracts, has revealed a stronger need for partnerships, including partnerships with community colleges and Local Workforce Development Boards (Boards).

The amendment to §805.3 aligns with new Texas Education Code (TEC) §25.085, which modifies the compulsory attendance age from 18 years to 19 years.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

SUBCHAPTER A. GENERAL PROVISIONS

The Commission proposes the following amendments to Subchapter A:

§805.2. Definitions

New §805.2(7) defines "assessment services" as the processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance to direct placement, progress, and achievement in AEL and other instructional services, including the identification of potential academic or support service needs.

New §805.2(8) defines "clock hour," distinguishing a clock hour of 60 minutes from a credit hour, which constitutes 50 minutes of instruction over a 15-week period in a semester system or a 10-week period in a quarter system.

New §805.2(9) defines "college and career transitional support" as support that may include, but is not limited to, recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

New §805.2(12) defines "literacy," in alignment with the Workforce Innovation and Opportunity Act (WIOA), as an individual's ability to read, write, and speak in English, and to compute and

solve problems at levels of proficiency necessary to function on the job, in the family of the individual, and in society.

New §805.2(13) defines "principles of adult learning" as a wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

New §805.2(14) defines "proctoring" as one type of assessment service, the administration of tests or pretests by test proctors working under the guidance or supervision of an individual who oversees program assessment services and/or accountability assessment.

New §805.2(15) defines "professional development" as encompassing all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (.5) hour (i.e., the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

New §805.2(16) defines "program year" for AEL purposes. The AEL program year, which aligns to the U.S. Department of Education's (ED) Adult Education and Family Literacy Act (AEFLA) program year, is July 1 through June 30.

New §805.2(17) defines "substitute," specifying the distinction between a substitute and a full- or part-time instructor. A substitute works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

New §805.2(18) defines "support services," to align with the definition in WIOA §2, as services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities.

New §805.2(19) defines "workforce training" to align with the definition in WIOA §134(c)(3)(D), which states that workforce training services may include the following:

occupational skills training, including training for nontraditional employment;

on-the-job training;

incumbent worker training;

programs that combine workplace training with related instruction, which may include cooperative education programs;

training programs operated by the private sector;

skill upgrading and retraining;

entrepreneurial training;

transitional jobs;

job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

§805.3. Federal and State AEL Funds

Section 805.3 is amended to replace "18 years of age" with "19 years of age" to align with new TEC §25.085.

SUBCHAPTER B. STAFF QUALIFICATIONS

The Commission proposes the following amendments to Subchapter B:

§805.21. Staff Qualifications and Training

Current §805.21(1) and (2) are removed.

Current §805.21(3) is renumbered as new §805.21(1), and is amended to apply additionally to administrative, data entry, and proctoring staff, and staff providing support or employment services to students.

Current §805.21(4) is renumbered as new §805.21(2), and is amended to remove teachers and counselors and to apply additionally to staff that oversees program assessment services and/or accountability and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

New §805.21(3) is added to specify requirements for workforce training instructors.

New §805.21(4) is added to set forth the process for submitting staff qualification exemption requests.

New §805.21(4)(B) specifies that exemptions must be submitted and approved prior to an individual being placed in the position for which an exemption is requested.

Current §805.21(5) is amended to remove teachers and counselors and add "other staff with program oversight or coordination responsibilities." The required 12 clock hours of professional development annually is modified to 15 clock hours each program year. The provision modifying the amount of required professional development once the described individuals have completed six clock hours of AEL college credit or two years of AEL experience is removed. Additionally, staff described in §805.21(5), hired on or after January 1 of a program year, may have half of the required staff professional development time required in that particular program year.

Current §805.21(6) is renumbered as new §805.21(9), new §805.21(6) is added to specify that all AEL instructional staff, except substitutes, who are paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year.

New §805.21(6)(A)(i) - (iii) specify that the 15 hours shall include three clock hours of principles of adult learning as defined in §805.2(13), six clock hours in relevant areas of literacy instruction, with literacy defined in §805.2(12), and six hours at the discretion of the program that consist of content related to the AEL program's purpose, which is to provide adults with specific basic education that enables them to effectively:

--acquire the basic educational skills necessary for literate functioning;

--participate in job training and retraining programs;

--obtain and retain employment; and

--continue their education to at least the level of secondary school completion and postsecondary education preparation.

New §805.21(6)(A)(iv) allows for six clock hours of content area in staff professional development to be waived for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

New §805.21(6)(B) is added to specify that staff meeting the specifications outlined in §805.21(6)(A) and hired on or after January 1 of a program year, may require half of the professional development time required for that program year, and to specify that for instructors in the content areas of reading, writing, mathematics, and English language acquisition, the professional development time completed shall consist of three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

New §805.21(6)(C) is added to specify that staff described in §805.21(2) must receive at least six clock hours of professional development as described in §805.21(b)(2)(A)(i) - (iii) within 30 calendar days of providing instructional activities if new to AEL or direct student service delivery; the six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. New §805.21(6)(C) also specifies that any waiver of the requirement that staff members who are new to AEL or to direct student service must receive staff development within 30 calendar days of providing instructional services shall be approved before the individual provides any instructional services.

Language referring to exemptions for qualifications, which previously required Commission approval when an entity submitted its application for funding, has been removed from current §805.21(6).

New §805.21(7) is added to specify that staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

New §805.21(8) is added to specify that AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

Current §805.21(6) is renumbered as new §805.21(9) and modified to remove the word "in-service" and replace the term "local programs" with "grant recipients." The definition of "exceptional circumstances" is added to include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Language is changed to specify that documents justifying these circumstances shall be available for monitoring and as requested by AEL staff. Language requiring exemptions to be submitted to the Commission for approval in cases of exemptions for minimum qualifications is removed.

Current §805.21(7) is renumbered as new §805.21(10), and "fiscal agent" is replaced with "grant recipient."

Current §805.21(8) is removed.

PART III. IMPACT STATEMENTS

Randy Townsend, Chief Financial Officer, has determined that for each year of the first five years the rules will be in effect, the following statements will apply:

There are no additional estimated costs to the state and to local governments expected as a result of enforcing or administering the rules.

There are no estimated cost reductions to the state and to local governments as a result of enforcing or administering the rules.

There are no estimated losses or increases in revenue to the state or to local governments as a result of enforcing or administering the rules.

There are no foreseeable implications relating to costs or revenue of the state or local governments as a result of enforcing or administering the rules.

There are no anticipated economic costs to persons required to comply with the rules.

There is no anticipated adverse economic impact on small businesses or microbusinesses as a result of enforcing or administering the rules.

Economic Impact Statement and Regulatory Flexibility Analysis

The Agency has determined that the proposed rules will not have an adverse economic impact on small businesses as these proposed rules place no requirements on small businesses.

Doyle Fuchs, Director of Labor Market and Career Information, has determined that there is no significant negative impact upon employment conditions in the state as a result of the rules.

Reagan Miller, Director, Workforce Development Division, has determined that for each year of the first five years the rules are in effect, the public benefit anticipated as a result of enforcing the proposed rules will be to stronger alignment to an integrated system built on a need for partnerships, including those with community colleges and Local Workforce Development Boards.

The Agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the Agency's legal authority to adopt.

PART IV. COORDINATION ACTIVITIES

In the development of these rules for publication and public comment, the Commission sought the involvement of Texas' 28 Boards. The Commission provided the concept paper regarding these rule amendments to the Boards for consideration and review on November 3, 2015. The Commission also conducted a webinar with Board executive directors and Board staff on November 12, 2015, to discuss the concept paper. During the rulemaking process, the Commission considered all information gathered in order to develop rules that provide clear and concise direction to all parties involved.

Comments on the proposed rules may be submitted to TWC Policy Comments, Workforce Policy and Service Delivery, attn: Workforce Editing, 101 East 15th Street, Room 440T, Austin,

Texas 78778; faxed to (512) 475-3577; or e-mailed to *TWCPolicyComments@twc.state.tx.us.* Comments must be received or postmarked no later than 30 days from the date this proposal is published in the *Texas Register.*

SUBCHAPTER A. GENERAL PROVISIONS

40 TAC §805.2, §805.3

The rules are proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rules affect Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.2. Definitions.

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

(1) Adult education--Basic and secondary instruction and services for adults.

(A) Adult basic education (ABE)--Instruction in reading, writing, and speaking and comprehending English, and solving quantitative problems, including functional context, designed for adults who:

(i) have minimal competence in reading, writing, and solving quantitative problems;

(ii) are not sufficiently competent to speak, read, or write the English language; or

(iii) are not sufficiently competent to meet the requirements of adult life in the United States, including employment commensurate with the adult's real ability.

(B) Adult secondary education (ASE)--Comprehensive secondary instruction below the college credit level in reading, writing and literature, mathematics, science, and social studies, including functional context, and instruction for adults who do not have a high school diploma or its equivalent.

(C) English literacy education (EL)--Instruction designed to help adults with limited English proficiency achieve competence in the English language.

(2) AEL consortium--A partnership of educational, workforce development, social service entities, and other public and private organizations that agree to partner, collaborate, plan, and apply for funding to provide AEL and related support services. Consortium members shall include an AEL grant recipient, AEL fiscal agent, an AEL lead organization of a consortium, and AEL service provider(s). Consortium members may serve in one or more of the functions in accordance with state statutes and Commission rules.

(3) AEL fiscal agent--An entity that is assigned financial management duties as outlined in an Agency-AEL contract or is assigned this function as a member of an AEL consortium.

(4) AEL grant recipient--An eligible grant recipient within a local workforce development area (workforce area), as defined in §800.2(11) of this title, that is awarded AEL funds by the Agency. The AEL grant recipient also may act as an AEL lead organization of a consortium, AEL fiscal agent, or AEL service provider as designated in an agreement with an AEL consortium.

(5) AEL lead organization of a consortium--An organization designated as the AEL consortium manager in a written agreement between AEL consortium members. The AEL lead organization of a consortium is responsible for planning and leadership responsibilities as outlined in the written agreement and also may serve as an AEL grant recipient, AEL fiscal agent, or AEL service provider. If a consortium does not identify the lead organization of a consortium through a written agreement, the AEL grant recipient will be presumed to assume the responsibility of the lead organization of the consortium.

(6) AEL service provider--An entity that is eligible to provide AEL services as specified in 20 USC §9202 and Texas Labor Code §315.003.

(7) Assessment services--The processes, administration, review, and consultation provided to individuals in accordance with the AEL assessment procedure and other agency guidance that direct placement, progress, achievement, and overall program accountability in AEL and other services, including the identification of potential academic or support service needs.

(8) Clock hour--60 minutes.

(9) College and career transitional support--Support that may include, but is not limited to recruiting and outreach, intensive individual case management, career and academic counseling, enrollment and financial aid support, self-advocacy skills development, academic and career support strategies, college and workforce system capacity building, student data records management, and providing access to other support and employment services.

(10) [~~(7)~~] Contact time--The cumulative sum of minutes during which an eligible adult student receives instructional, counseling, or assessment services by a staff member supported by federal and state AEL funds as documented by local attendance and reporting records.

(A) Student contact time generated by volunteers may be accrued by the AEL program when volunteer services are verifiable by attendance and reporting records and volunteers meet requirements under §805.21 of this title (relating to Staff Qualifications and Training).

(B) A student contact hour is 60 minutes.

(11) [~~(8)~~] Eligible grant recipient--An entity, as specified in state and federal law, that is eligible to receive AEL program funding. Eligible grant recipients include:

(A) a local educational agency;

(B) a community-based organization of demonstrated effectiveness;

(C) a volunteer literacy organization of demonstrated effectiveness;

(D) an institution of higher education;

(E) a public or private nonprofit agency;

(F) a library;

(G) a public housing authority;

(H) a nonprofit institution that is not described in any of subparagraphs (A) - (G) of this paragraph and has the ability to provide literacy services to adults and families; and

(I) a consortium of the agencies, organizations, institutions, libraries, or authorities described in any of subparagraphs (A) - (H) of this paragraph.

(12) Literacy--An individual's ability to read, write, and speak in English, and to compute and solve problems at levels of profi-

ciency necessary to function on the job, in the family of the individual, and in society.

(13) Principles of adult learning--A wide variety of research-based professional development topics that include instructional and advising characteristics specific to adults, and support the range of knowledge, skills, and abilities adults need to understand and use information, express themselves, act independently, effectively manage a changing world, and meet goals and objectives related to career, family, and community participation. Instructional principles include, but are not limited to, engaging adults and customizing instruction on subjects that have immediate relevance to their career and personal goals and objectives, building on their prior knowledge and experience, and supporting them in taking responsibility for their learning.

(14) Proctoring--Support in the administration of tests or pretests under the guidance of a staff member who oversees program assessment services and/or accountability assessment.

(15) Professional development--Encompasses all types of facilitated learning activities for instructors and staff of AEL programs and organizations participating in AEL programs and services. Professional development can be face-to-face or virtual and can be a workshop, lecture, presentation, poster session, roundtable discussion, study circle, or demonstration that meets for a minimum of one hour and upwards in increments of one half (.5) hour (i.e., the hours assigned for purposes of tracking AEL staff professional development requirements in TEAMS, the Texas Educating Adults Management System) to accomplish a predetermined educational or learning outcome.

(16) Program year--The AEL program year is July 1 through June 30.

(17) Substitute--An instructor who works on call, does not have a full-time assignment, and does not assume permanent responsibilities for class instruction. An individual is considered a substitute if he or she instructs a particular class for four or fewer consecutive class meetings.

(18) Support services--Services such as transportation, child care, dependent care, housing, and needs-related payments, which are necessary to enable an individual to participate in activities as defined in Workforce Innovation and Opportunity Act (WIOA) §2.

(19) Workforce training--Services described in WIOA §134(c)(3)(D), including the following:

(A) occupational skills training, including training for nontraditional employment;

(B) on-the-job training;

(C) incumbent worker training;

(D) programs that combine workplace training with related instruction, which may include cooperative education programs;

(E) training programs operated by the private sector;

(F) skill upgrading and retraining;

(G) entrepreneurial training;

(H) transitional jobs;

(I) job readiness training provided in combination with services described in any of subparagraphs (A) through (H) of this paragraph;

(J) AEL activities, including activities of English language acquisition and integrated education and training programs, provided concurrently or in combination with services described in any of subparagraphs (A) through (G) of this paragraph; and

(K) customized training conducted with a commitment by an employer or group of employers to employ an individual upon successful completion of the training.

§805.3. Federal and State AEL Funds.

(a) Federal AEL funds may be used for AEL programs for out-of-school individuals who have attained 16 years of age and who are not enrolled or required to be enrolled in secondary school under state law and:

(1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are unable to speak, read, or write the English language.

(b) State AEL funds are to be used for AEL programs for out-of-school individuals who have attained 19 [~~18~~] years of age unless specifically exempted from compulsory school attendance by Texas Education Code §25.086 and:

(1) lack sufficient mastery of basic educational skills to enable the individuals to function effectively in society;

(2) do not have a secondary school diploma or its recognized equivalent, and have not achieved an equivalent level of education; or

(3) are unable to speak, read, or write the English language.

(c) The proportion of students served who meet the requirements of subsection (a) of this section, but do not meet the requirements of subsection (b) of this section, shall not exceed the grant recipient's percentage of federal funds to the total allocation.

(d) The Commission shall establish annual performance benchmarks for the use of AEL funds in serving specific student populations, including the population of students receiving other workforce services or coenrolled in postsecondary education or training.

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

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601603
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 475-0829

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SUBCHAPTER B. STAFF QUALIFICATIONS

40 TAC §805.21

The rule is proposed under Texas Labor Code §301.0015 and §302.002(d), which provide the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The proposed rule affects Title 4, Texas Labor Code, particularly Chapters 301 and 302.

§805.21. Staff Qualifications and Training.

The requirements of this section shall apply to all AEL staff hired after July 1, 2013, excluding clerical and janitorial staff.

[~~(1) All staff shall receive at least 12 clock hours of professional development annually.~~]

[~~(2) All staff new to AEL and assigned assessment and instructional duties shall receive six clock hours of in-service professional development before they begin work in assessment and instructional activities, in addition to the annual professional development requirements set forth in paragraph (1) of this section.~~]

(1) [~~(3)~~] AEL aides, administrative, data entry, proctoring staff, and staff providing support or employment services to students [~~Aides~~] shall have at least a high school diploma or high school equivalency certificate.

(2) [~~(4)~~] AEL directors [~~Directors, teachers, counselors, and~~] supervisors, staff that oversees program assessment services and/or overall program accountability, and instructors in the content areas of reading, writing, mathematics, and English language acquisition, including substitutes, shall possess at least a bachelor's degree.

(3) Workforce training instructors must meet the requirements of the institution and/or the associated accrediting or credentialing entity, if applicable.

(4) Requests for exemptions for staff qualification requirements in individual cases:

(A) may be submitted to the Agency for approval with a justification outlining extenuating circumstances; and

(B) shall be submitted and approved prior to an individual being placed in the position in question.

(5) All AEL directors [~~Directors, teachers, counselors, and~~] supervisors, and other staff with program oversight or coordination responsibilities [~~without valid Texas teacher certification~~] shall receive 15 [~~attend 12~~] clock hours of [~~in-service~~] professional development each program year with the following exception: Staff hired on or after January 1 of a program year may require half of the professional development time required for that program year. [~~annually, in addition to that specified in paragraph (2) of this section, until they have completed either six clock hours of AEL college credit or attained two years of AEL experience.~~]

(6) All AEL instructional staff, except substitutes, paid with AEL grant funds or who acquire student contact hours, including volunteers, shall receive at least 15 clock hours of professional development each program year, with the following specifications:

(A) Instructors in the content areas of reading, writing, mathematics, and English language acquisition shall:

(i) receive three clock hours of training in principles of adult learning;

(ii) receive six clock hours in relevant areas of literacy instruction; and

(iii) receive the remaining six clock hours of training in content areas at the discretion of the program, but consisting of content related to the AEL program's purpose, which is to provide adults with sufficient basic education that enables them to effectively:

(I) acquire the basic educational skills necessary for literate functioning;

(II) participate in job training and retraining programs;

(III) obtain and retain employment; and

(IV) continue their education to at least the level of secondary school completion and postsecondary education preparation; or

(iv) waive six clock hours of content area in staff professional development for individuals who have 18 or more college semester undergraduate or graduate credit hours in relevant areas of literacy instruction.

(B) Staff, as described in subparagraph (A) of this paragraph, hired on or after January 1 of a program year, may require half of the professional development time required for that program year. For instructors in the content areas of reading, writing, mathematics, and English language acquisition, these hours must include three clock hours of training in principles of adult learning and three clock hours in the relevant areas of literacy instruction.

(C) Staff described in this paragraph shall receive at least six clock hours of the required professional development outlined in subparagraph (A)(i) - (iii) of this paragraph within 30 calendar days of providing instructional activities, if new to AEL or to direct student service delivery. The six hours include the required three hours of principles of adult learning and three hours of the relevant areas of literacy instruction. Waiving of the requirements for staff new to direct student services must be approved by Agency AEL staff prior to the individual providing any instructional services.

(7) All staff providing support services or college and career transitional support who are paid through an AEL grant shall receive at least three clock hours of professional development each program year.

(8) AEL staff assigned test proctoring or data entry duties shall receive at least three clock hours of professional development related to their primary job duties each program year.

(9) [~~(6)~~] The requirements for [~~in-service~~] professional development may be reduced by grant recipients [~~local programs~~] in individual cases in which [~~where~~] exceptional circumstances prevent employees from completing the required hours of [~~in-service~~] professional development. Exceptional circumstances can include absence from the program or work due to personal health reasons or emergency familial responsibilities, including maternity/paternity. Documentation justifying these circumstances shall be available for monitoring and as requested by AEL staff [~~maintained. Requests for exemption from staff qualification requirements in individual cases may be submitted to the Commission for approval in the application for funding and shall include justification and proposed qualifications~~].

(10) [~~(7)~~] Records of staff qualifications and professional development shall be maintained by each grant recipient [~~fiscal agent~~] and shall be available for monitoring.

[~~(8) The requirements in paragraphs (1) - (6) of this section also apply to volunteers who generate student contact time, as defined in §805.2, which is accrued by the AEL program and reported to the Commission for funding purposes.~~]

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

Filed with the Office of the Secretary of State on April 6, 2016.

TRD-201601604

Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 475-0829

♦ ♦ ♦

TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 217, Subchapter A, §217.2, Definitions; §217.3, Motor Vehicle Titles; §217.4, Initial Application for Title; §217.5, Evidence of Motor Vehicle Ownership; §217.7, Replacement of Title; Subchapter B, §217.26, Identification Required; §217.33, Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers; §217.40, Special Registration Permits; §217.43, Military Specialty License Plates; §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices; §217.46, Commercial Vehicle Registration; §217.54, Registration of Fleet Vehicles; §217.55, Exempt and Alias Vehicle Registration; Subchapter D, §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle; and Subchapter F, §217.123, Access to Motor Vehicle Records.

EXPLANATION OF PROPOSED AMENDMENTS

Several bills from the 84th Legislature, Regular Session, 2015, amended sections of the Transportation Code. Because of these statutory changes, several rules must be amended to maintain consistency with the amended statutes. Amendments are proposed throughout Chapter 217, Subchapters A, B, D, and F to reflect the statutory changes and to correct statutory citations; delete unnecessary language, including language that repeats statute; and to update and clarify various requirements and procedures.

SECTION BY SECTION ANALYSIS

Amendments are proposed to §217.2, Definitions, to update the definition of "implement of husbandry" to mirror the amendment to the definition in Transportation Code, §541.201(6) by Senate Bill 971, 84th Regular Session. This section is also amended to include a definition for "even trade."

Amendments are proposed to §217.3, Motor Vehicle Titles, to remove an unnecessary sentence that requires a brand on a title indicating that an oversize permit must be obtained.

Amendments are proposed to §217.4, Initial Application for Title, to remove an unnecessary rule citation, update numbering within the rule, and prescribe requirements applicable to "even trade" title transactions. The proposed amendments require both parties to an even trade to apply for title in person at the same time, unless a party provides a power of attorney and medical documentation indicating the party is unable to be physically present.

Amendments are proposed to §217.5, Evidence of Motor Vehicle Ownership; §217.7, Replacement of Title; §217.26, Identification Required; and §217.123, Access to Motor Vehicle Records, to add a concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H as an acceptable form of identification to support an application for a title, replacement title, initial registration, or a request for personal information.

Amendments are proposed to §217.33, Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers, to implement House Bill 75, 84th Regular Session. This bill exempted a farmers' cooperative society incorporated under Chapter 51, Agriculture Code, or a marketing association organized under Chapter 52, Agriculture Code from the requirement to submit proof of the applicant's Texas Agriculture or Timber Exemption Registration issued by the Texas Comptroller of Public Accounts when applying for or renewing the registration of farm plates under this section.

Amendments are proposed to §217.40, Special Registration Permits, to reflect that permits are issued in lieu of registration insignia as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The amendments also delete "Permits" from the section heading.

Amendments are proposed to §217.43, Military Specialty License Plates, to simplify the rule and allow for future amendments to the statutes authorizing military specialty license plates without requiring rule amendments. Amendments to this section are also proposed to implement House Bill 789, 84th Regular Session, which amended Transportation Code, §504.303, to allow a retired member of the United States armed forces to use an identification card issued by any branch of the military under the jurisdiction of the United States Department of Defense or the United States Department of Homeland Security indicating that the member is retired to support an application for a military specialty license plate. Amendments are also proposed to update numbering within the section.

Amendments are proposed to §217.45, Specialty License Plates, Symbols, Tabs, and Other Devices, to implement House Bill 792, 84th Regular Session, which amended Transportation Code, §504.502 by adding "bus" to the type of vehicle eligible for antique plates.

Amendments are proposed to §217.46, Commercial Vehicle Registration, to clarify which vehicles may not be registered in combination and to reflect that tow trucks are issued permits by the Texas Department of Licensing and Regulation under Occupations Code, Chapter 2308, Subchapter C.

Amendments are proposed to §217.54, Registration of Fleet Vehicles, to clarify that for a cancellation of a commercial fleet vehicle registration for non-compliance with the inspection requirements under Transportation Code, Chapter 548, a registrant must pay a $10 fee in addition to the other requirements for reinstatement of the registration.

Amendments are proposed to §217.55, Exempt and Alias Vehicle Registration, to implement House Bill 1360, 84th Regular Session, which added United States Coast Guard Auxiliary Vehicles to the categories of vehicles eligible for an exemption under Transportation Code, §502.453. Amendments are also proposed to clarify the language in the rule.

Amendments are proposed to §217.88, Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle, to correct a statutory citation.

Further, nonsubstantive amendments are proposed throughout these sections to correct grammar and punctuation.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state and local governments as a result of enforcing or administering the amendments.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no anticipated impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amended sections will be accuracy, clarity, and consistency in the department's rules. Mr. Kuntz has also determined that for each of the first five years the proposed amendments are in effect, there are no anticipated significant economic costs for persons required to comply with the amendments as proposed.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code Chapter 2006, the department does not anticipate any adverse economic effect on small businesses or micro-businesses due to the adoption of the amendments.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on May 23, 2016.

SUBCHAPTER A. MOTOR VEHICLE TITLES

43 TAC §§217.2 - 217.5, 217.7

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.2. Definitions.

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

(1) Alias--The name of a vehicle owner reflected on a title, when the name on the title is different from the name of the legal owner of the vehicle.

(2) Alias title--A title document issued by the department for a vehicle that is used by an exempt law enforcement agency in covert criminal investigations.

(3) Bond release letter--Written notification from the United States Department of Transportation authorizing United States Customs to release the bond posted for a motor vehicle imported into the United States to ensure compliance with federal motor vehicle safety standards.

(4) Title application--A form prescribed by the division director that reflects the information required by the department to create a motor vehicle title record.

(5) Date of sale--The date of the transfer of possession of a specific vehicle from a seller to a purchaser.

(6) Division director--The director of the department's Vehicle Titles and Registration Division.

(7) Executive administrator--The director of a federal agency, the director of a Texas state agency, the sheriff of a Texas county, or the chief of police of a Texas city who by law possesses the authority to conduct covert criminal investigations.

(8) Exempt agency--A governmental body exempt by law from paying title or registration fees for motor vehicles.

(9) Federal motor vehicle safety standards--Motor vehicle safety requirements promulgated by the United States Department of Transportation, National Highway Traffic Safety Administration, set forth in Title 49, Code of Federal Regulations.

(10) House moving dolly--An apparatus consisting of metal beams and axles used to move houses. House moving dollies, by nature of their construction and use, actually form large semitrailers.

(11) Identification certificate--A form issued by an inspector of an authorized safety inspection station in accordance with Transportation Code, Chapter 548.

(12) Implements of husbandry--Farm implements, machinery, and tools used in tilling the soil, including self-propelled machinery specifically designed or especially adapted for applying plant food materials or agricultural chemicals. This term does not include an implement unless it is designed or adapted for the sole purpose of transporting farm materials or chemicals. This term does not include any passenger car or truck. <u>This term does include a towed vehicle that transports to the field and spreads fertilizer or agricultural chemicals; or a motor vehicle designed and adapted to deliver feed to livestock.</u>

(13) Manufacturer's certificate of origin--A form prescribed by the department showing the original transfer of a new motor vehicle from the manufacturer to the original purchaser, whether

importer, distributor, dealer, or owner, and when presented with an application for title, showing, on appropriate forms prescribed by the department, each subsequent transfer between distributor and dealer, dealer and dealer, and dealer and owner.

(14) Moped--A motor driven cycle whose attainable speed is not more than 30 miles per hour and that is equipped with a motor that produces not more than two-brake horsepower. If an internal combustion engine is used, the piston displacement may not exceed 50 cubic centimeters and the power drive system may not require the operator to shift gears.

(15) Motor vehicle importation form--A declaration form prescribed by the United States Department of Transportation and certified by United States Customs that relates to any motor vehicle being brought into the United States and the motor vehicle's compliance with federal motor vehicle safety standards.

(16) Non United States standard motor vehicle--A motor vehicle not manufactured in compliance with federal motor vehicle safety standards.

(17) Obligor--An individual who is required to make payments under the terms of a support order for a child.

(18) Person--An individual, firm, corporation, company, partnership, or other entity.

(19) Safety certification label--A label placed on a motor vehicle by a manufacturer certifying that the motor vehicle complies with all federal motor vehicle safety standards.

(20) Statement of fact--A written declaration that supports an application for a title, that is executed by an involved party to a transaction involving a motor vehicle, and that clarifies an error made on a title or other negotiable evidence of ownership. An involved party is the seller or an agent of the seller involved in the motor vehicle transaction. When a written declaration is necessary to correct an odometer disclosure error, the signatures of both the seller and buyer when the error occurred are required.

(21) Verifiable proof--Additional documentation required of a vehicle owner, lienholder, or agent executing an application for a certified copy of a title.

(A) Individual applicant. If the applicant is an individual, verifiable proof consists of a copy of a current photo identification issued by this state or by the United States or foreign passport.

(B) Business applicant. If the applicant is a business, verifiable proof consists of an original or copy of a letter of signature authority on letterhead, a business card, or employee identification and a copy of current photo identification issued by this state or by the United States or foreign passport.

(C) Power of attorney. If the applicant is a person in whose favor a power of attorney has been executed by the owner or lienholder, verifiable proof consists of the documentation required under subparagraph (A) or (B) of this paragraph both for the owner or lienholder and for the person in whose favor the power of attorney is executed.

(22) Even trade--A transaction involving the even exchange of two automobiles with comparable standard presumptive value.

§217.3. Motor Vehicle Titles.

Unless otherwise exempted by law or this chapter, the owner of any motor vehicle that is required to be registered in accordance with Transportation Code, Chapter 502, shall apply for a Texas title in accordance with Transportation Code, Chapter 501.

(1) Motorcycles, motor-driven cycles, autocycles, and mopeds.

(A) The title requirements of a motorcycle, motor-driven cycle, autocycle, and moped are the same requirements prescribed for any motor vehicle.

(B) A vehicle that meets the criteria for a moped and has been certified as a moped by the Department of Public Safety will be registered and titled as a moped. If the vehicle does not appear on the list of certified mopeds published by that agency, the vehicle will be treated as a motorcycle for title and registration purposes.

(2) Farm vehicles.

(A) The term motor vehicle does not apply to implements of husbandry, which may not be titled.

(B) Farm tractors owned by agencies exempt from registration fees in accordance with Transportation Code, §502.453, are required to be titled and registered with "Exempt" license plates issued in accordance with Transportation Code, §502.451.

(C) Farm tractors used as road tractors to mow rights of way or used to move commodities over the highway for hire are required to be registered and titled.

(D) Farm semitrailers with a gross weight of more than 4,000 pounds that are registered in accordance with Transportation Code, §502.146, may be issued a Texas title.

(3) Neighborhood electric vehicles. The title requirements of a neighborhood electric vehicle (NEV) are the same requirements prescribed for any motor vehicle.

(4) Trailers, semitrailers, and house trailers. Owners of trailers and semitrailers shall apply for and receive a Texas title for any stand alone (full) trailer, including homemade or shopmade full trailers, or any semitrailer having a gross weight in excess of 4,000 pounds. Owners of trailers having a gross weight of 4,000 pounds or less may apply for and receive a Texas title. House trailer-type vehicles must meet the criteria outlined in subparagraph (C) of this paragraph to be titled.

(A) The rated carrying capacity will not be less than one-third of its empty weight.

(B) Mobile office trailers, mobile oil field laboratories, and mobile oil field bunkhouses are not designed as dwellings, but are classified as commercial semitrailers and must be registered and titled as commercial semitrailers if operated on the public streets and highways.

(C) House trailer-type vehicles and camper trailers must meet the following criteria in order to be titled.

(i) A house trailer-type vehicle designed for living quarters and that is eight body feet or more in width and forty body feet or more in length (not including the hitch), is classified as a manufactured home or mobile home and is not eligible for a Texas title under Transportation Code, Chapter 501.

(ii) A house trailer-type vehicle that is less than eight feet in width or less than forty feet in length is classified as a travel trailer and shall be registered and titled.

(iii) A camper trailer shall be titled as a house trailer and shall be registered with travel trailer license plates.

(iv) A recreational park model type trailer that is primarily designed as temporary living quarters for recreational, camping or seasonal use, is built on a single chassis, and is 400 square feet or

less when measured at the largest horizontal projection when in the set up mode shall be titled as a house trailer and may be issued travel trailer license plates. [~~If the park model type trailer exceeds one hundred two inches in width or forty feet in length, the title will include a brand to indicate that an oversize permit must be obtained to move the trailer on the public roads.~~]

(5) Assembled vehicles.

(A) An assembled vehicle is a vehicle assembled from the three basic component parts (motor, frame, and body), except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor, and that is:

(i) assembled from new or used materials and parts by someone not regulated as a motor vehicle manufacturer;

(ii) altered or modified to the extent that it no longer reflects the original manufacturer's configuration; or

(iii) assembled from a kit even if a Manufacturer's Certificate of Origin or Manufacturer's Statement of Origin is provided.

(B) A newly assembled vehicle, for which a title has never been issued in this jurisdiction or any other, may be titled if:

(i) it is assembled and completed with a body, motor, and frame, except that a motorcycle must have a frame and motor, and a trailer or travel trailer will have no motor;

(ii) it is not created from different vehicle classes, (as established by the Federal Highway Administration, except as provided by subparagraph (C) of this paragraph), that were never engineered or manufactured to be combined with one another;

(iii) it has all safety components required by federal law during the year of assembly, unless the vehicle qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501;

(iv) it is not a vehicle described by paragraph (6) of this section;

(v) for a vehicle assembled with a body, motor, and frame, the applicant provides proof, on a form prescribed by the department, of a safety inspection performed by an Automotive Service Excellence (ASE) technician with valid certification as a Certified Master Automobile and Light Truck Technician, certifying that the vehicle:

(I) is structurally stable;

(II) meets the necessary conditions to be operated safely on the roadway; and

(III) is equipped and operational with all equipment required by statute or rule as a condition of sale during the year the vehicle was assembled unless it is being inspected pursuant to Subchapter G of this chapter;

(vi) for a vehicle assembled with a body, motor, and frame, the applicant submits a copy of the Certified Master Automobile and Light Truck Technician's ASE certification;

(vii) the applicant submits a Rebuilt Vehicle Statement; and

(viii) the applicant submits the following to establish the vehicle's vehicle identification number:

(I) an Application for Assigned or Reassigned Number, and Notice of Assigned Number or Installation of Reassigned Vehicle Identification Number, on forms prescribed by the department; or

(II) acceptable proof, as established by the department, of a vehicle identification number assigned by the manufacturer of the component part by which the vehicle will be identified.

(C) Component parts from the following vehicle classes may be interchanged with one another or used in the creation of an assembled vehicle:

(i) 2-axle, 4-tire passenger cars;

(ii) 2-axle, 4 tire pickups, panels and vans;

(iii) 6-tire dually pickups, of which the rear tires are dual tires.

(D) The ASE inspection for a newly assembled vehicle required under subparagraph (B) of this paragraph is in addition to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501, is exempt from the inspection required under Transportation Code, Chapter 548, for the duration the vehicle is registered as such.

(E) An assembled vehicle which has previously been titled and/or registered in this or any other jurisdiction is subject to subparagraph (B)(i) - (iv) of this paragraph, but is not subject to subparagraph (B)(v) - (viii); however, it is subject to the inspection required by Transportation Code, Chapter 548, except a vehicle that qualifies and is registered as a custom vehicle or street rod in accordance with Transportation Code, §504.501.

(F) An assembled vehicle will be titled using the year it was assembled as the model year and "ASSEMBLED" or "ASVE" as the make of the vehicle unless the body of the vehicle is established to the department's satisfaction to be an original body from a particular year and make. An assembled vehicle utilizing an original body may be titled by the year and the make of the original body but must reflect a "RECONSTRUCTED" remark. An assembled vehicle not utilizing an original body may obtain a title with a "REPLICA" remark featuring the year and make of the replica if the vehicle resembles a prior model year vehicle. This subparagraph applies regardless of how the vehicle's model year or make was previously identified in this or any other jurisdiction.

(6) Not Eligible for Title. The following are not eligible for a Texas title regardless of the vehicle's previous title and/or registration in this or any other jurisdiction:

(A) vehicles that are missing or are stripped of their motor, frame, or body, to the extent that it materially alters the manufacturer's original design or makes the vehicle unsafe for on-road operation as determined by the department;

(B) vehicles designed or determined by the department to be a dune buggy;

(C) vehicles designed or determined by the department to be for on-track racing, unless such vehicles meet Federal Motor Vehicle Safety Standards (FMVSS) for on-road use and are reported to the National Highway Traffic Safety Administration;

(D) vehicles designed or determined by the department to be for off-road use only, unless specifically defined as a "motor vehicle" in Transportation Code, Chapter 501[;]; or

(E) vehicles assembled, built, constructed, rebuilt, or reconstructed in any manner with:

(i) a body or frame from a vehicle which is a "nonrepairable motor vehicle" as that term is defined in Transportation Code, §501.091(9); or

(ii) a motor or engine from a vehicle which is flood damaged, water damaged, or any other term which may reasonably establish the vehicle from which the motor or engine was obtained is a loss due to a water related event.

§217.4. Initial Application for Title.

(a) Time for application. Except as otherwise provided in Transportation Code, Chapter 501, a [A] person must apply for the title not later than the 30th day after the date of assignment, except:

(1) in a seller-financed sale, the title must be applied for not later than the 45th day after the date the motor vehicle is delivered to the purchaser; or,

[~~(2) as provided by §215.144(e) of this title (relating to Record of Sales and Inventory); or~~]

(2) [~~(3)~~] a member of the armed forces or a member of a reserve component of the United States, a member of the Texas National Guard or of the National Guard of another state serving on active duty, must apply not later than the 60th day after the date of assignment of ownership.

(b) Place of application. When motor vehicle ownership is transferred, a title application must be filed with the county tax assessor-collector in the county in which the applicant resides or in the county in which the motor vehicle was purchased or encumbered, as selected by the applicant, except:

(1) as provided by Transportation Code, Chapters 501 and 502 and by §217.84(a) of this title (relating to Application for Nonrepairable or Salvage Vehicle Title);

(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or

(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.

(c) Information to be included on application. An applicant for an initial title must file an application on a form prescribed by the department. The form will at a minimum require the:

(1) motor vehicle description including, but not limited to, the motor vehicle:

(A) year;

(B) make;

(C) identification number;

(D) body style; and

(E) empty weight;

(2) license plate number, if the motor vehicle is subject to registration under Transportation Code, Chapter 502;

(3) odometer reading and brand, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(4) previous owner's legal name and complete mailing address, if available;

(5) legal name as stated on the identification presented and complete address of the applicant;

(6) name and mailing address of any lienholder and the date of lien, if applicable;

(7) signature of the seller of the motor vehicle or the seller's authorized agent and the date the title application was signed; and

(8) signature of the applicant or the applicant's authorized agent and the date the title application was signed.

(d) Accompanying documentation. The title application must be supported by, at a minimum, the following documents:

(1) evidence of vehicle ownership, as described in §217.5 of this title (relating [~~related~~] to Evidence of Motor Vehicle Ownership);

(2) an odometer disclosure statement properly executed by the seller of the motor vehicle and acknowledged by the purchaser, if applicable;

(3) proof of financial responsibility in the applicant's name, as required by Transportation Code, §502.046, unless otherwise exempted by law;

(4) an identification certificate if required by Transportation Code, Chapter 548, and Transportation Code, §501.030, and if the vehicle is being titled and registered, or registered only;

(5) a release of any liens, provided that if any liens are not released, they will be carried forward on the new title application with the following limitations:

(A) A lien recorded on out-of-state evidence as described in §217.5 cannot be carried forward to a Texas title when there is a transfer of ownership, unless a release of lien or authorization from the lienholder is attached; and

(B) A lien recorded on out-of-state evidence as described in §217.5 is not required to be released when there is no transfer of ownership from an out-of-state title and the same lienholder is being recorded on the Texas application as is recorded on the out-of-state title; and

(6) any documents required by §217.9 of this title (relating to Bonded Titles).

(e) Requirements applicable to even trades. Both parties to an even trade must apply for title in person at the same time. If one party to an even trade cannot be physically present due to a verifiable physical or medical condition, the transaction may be processed by a representative of the applicant if the representative presents documentation authorizing the representative to act on behalf of the applicant and documentation from a treating physician attesting that the applicant is unable to be physically present. One party to an even trade may not be appointed as a representative of the applicant who is unable to be physically present, and no person may serve as representative of both parties to an even trade.

§217.5. Evidence of Motor Vehicle Ownership.

(a) Evidence of motor vehicle ownership properly assigned to the applicant must accompany the title application. Evidence must include, but is not limited to, the following documents.

(1) New motor vehicles. A manufacturer's certificate of origin assigned by the manufacturer or the manufacturer's representative or distributor to the original purchaser is required for a new motor vehicle that is sold or offered for sale.

(A) The manufacturer's certificate of origin must be in the form prescribed by the department and must contain, at a minimum, the following information:

(i) motor vehicle description including, but not limited to, the motor vehicle year, make, identification number, and body style;

(ii) the empty or shipping weight;

(iii) the gross vehicle weight when the manufacturer's certificate of origin is invoiced to a licensed Texas motor vehicle dealer and is issued for commercial motor vehicles as that term is defined in Transportation Code, Chapter 502;

(iv) a statement identifying a motor vehicle designed by the manufacturer for off-highway use only; and

(v) if the vehicle is a "neighborhood electric vehicle," a statement that the vehicle meets Federal Motor Vehicle Safety Standard 500 (49 C.F.R. §571.500) for low-speed vehicles.

(B) When a motor vehicle manufactured in another country is sold directly to a person other than a manufacturer's representative or distributor, the manufacturer's certificate of origin must be assigned to the purchaser by the seller.

(2) Used motor vehicles. A title issued by the department, a title issued by another state if the motor vehicle was last registered and titled in another state, or other evidence of ownership must be relinquished in support of the title application for any used motor vehicle. A registration receipt is required from a vehicle owner coming from a state that no longer titles vehicles after a certain period of time.

(3) Motor vehicles brought into the United States. An application for title for a motor vehicle last registered or titled in a foreign country must be supported by documents including, but not limited to, the following:

(A) the motor vehicle registration certificate or other verification issued by a foreign country reflecting the name of the applicant as the motor vehicle owner, or reflecting that legal evidence of ownership has been legally assigned to the applicant;

(B) unless the applicant is an active duty member of the U.S. Armed Forces or is from the immediate family of such a member returning to Texas with proof of the active duty status of the family member, verification of the vehicle identification number of the vehicle, on a form prescribed by the department, executed by a member of:

(i) the National Insurance Crime Bureau;

(ii) the Federal Bureau of Investigation; or

(iii) a law enforcement auto theft unit; and

(C) for motor vehicles that are less than 25 years old, proof of compliance with United States Department of Transportation (USDOT) regulations including, but not limited to, the following documents:

(i) the original bond release letter with all attachments advising that the motor vehicle meets federal motor vehicle safety requirements or a letter issued by the USDOT, National Highway Traffic Safety Administration, verifying the issuance of the original bond release letter;

(ii) a legible copy of the motor vehicle importation form validated with an original United States Customs stamp, date, and signature as filed with the USDOT confirming the exemption from the bond release letter required in clause (i) of this subparagraph, or a copy thereof certified by United States Customs;

(iii) a verification of motor vehicle inspection by United States Customs certified on its letterhead and signed by its agent verifying that the motor vehicle complies with USDOT regulations;

(iv) a written confirmation that a physical inspection of the safety certification label has been made by the department and that the motor vehicle meets United States motor vehicle safety standards;

(v) the original bond release letter, verification thereof, or written confirmation from the previous state verifying that a bond release letter issued by the USDOT was relinquished to that jurisdiction, if the non United States standard motor vehicle was last titled or registered in another state for one year or less; or

(vi) verification from the vehicle manufacturer on its letterhead stationery.

(b) Alterations to documentation. An alteration to a registration receipt, title, manufacturer's certificate, or other evidence of ownership constitutes a valid reason for the rejection of any transaction to which altered evidence is attached.

(1) Altered lien information on any surrendered evidence of ownership requires a release from the original lienholder or a statement from the proper authority of the state in which the lien originated. The statement must verify the correct lien information.

(2) A strikeover that leaves any doubt about the legibility of any digit in any document will not be accepted.

(3) A corrected manufacturer's certificate of origin will be required if the manufacturer's certificate of origin contains an:

(A) incomplete or altered vehicle identification number;

(B) alteration or strikeover of the vehicle's model year;

(C) alteration or strikeover to the body style, or omitted body style on the manufacturer's certificate of origin; or

(D) alteration or strikeover to the weight.

(4) A Statement of Fact may be requested to explain errors, corrections, or conditions from which doubt does or could arise concerning the legality of any instrument. A Statement of Fact will be required in all cases:

(A) in which the date of sale on an assignment has been erased or altered in any manner; or

(B) of alteration or erasure on a Dealer's Reassignment of Title.

(c) Rights of survivorship. A signed "rights of survivorship" agreement may be executed by a natural person acting in an individual capacity in accordance with Transportation Code, §501.031.

(d) Identification required.

(1) An application for title is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; [~~or~~]

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(F) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification of one owner must be presented;

(B) the name of a leasing company, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(ii) the leasing company may submit:

(I) a government issued photo identification, required under paragraph (1) of this subsection, of the lessee listed as the registrant; or

(II) a government issued photo identification, required under paragraph (1) of this subsection, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(ii) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(iii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney; or

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity.

(4) Within this subchapter, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(6) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301 is exempt from submitting to the county tax assessor-collector, but must retain:

(A) the owner's identification, as required under paragraph (1) of this subsection; and

(B) authorization to sign, as required under paragraph (2) of this subsection.

(7) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

§217.7. Replacement of Title.

(a) Lost or destroyed title. If a title is lost or destroyed, the department will issue a certified copy of the title to the owner, the lienholder, or a verified agent of the owner or lienholder in accordance with Transportation Code, Chapter 501, on proper application and payment of the appropriate fee to the department.

(b) Identification required.

(1) An owner or lienholder may not apply for a certified copy of title unless the applicant presents a current photo identification of the owner or lienholder containing a unique identification number and expiration date. The identification document must be a:

(A) driver's license or state identification certificate issued by a state or territory of the United States;

(B) United States or foreign passport;

(C) United States military identification card;

(D) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; [~~or~~]

(E) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(F) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(2) If the motor vehicle is titled in:

(A) more than one name, then the identification for each owner must be presented;

(B) the name of a leasing company, then the lessor's employee or authorized agent who signed the application for the leasing company must present:

(i) a government issued photo identification, required under paragraph (1) of this subsection; and

(ii) employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(C) the name of a trust, then a government issued photo identification, required under paragraph (1) of this subsection, of a trustee must be presented; or

(D) the name of a business, government entity, or organization, then:

(i) the employee or authorized agent must present a government issued photo identification, required under paragraph (1) of this subsection; and

(ii) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(3) In addition to the requirements of paragraphs (1) and (2) of this subsection, if a power of attorney is being used to apply for a certified copy of title, then the applicant must show:

(A) identification, required under paragraph (1) of this subsection, matching the person named as power of attorney;

(B) identification, required under paragraph (1) of this subsection, and employee identification or a printed business card or authorization written on the letterhead of the entity named as power of attorney that matches the identification of the employee if the power of attorney names an entity; or

(C) identification, required under paragraph (1) of this subsection, of the owner or lienholder.

(4) Within this subchapter, "current" is defined as within 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(5) Within this subsection, an identification document, such as a printed business card, letter of authorization, or power of attorney, may be an original or a photocopy.

(c) Issuance. An application for a certified copy must be properly executed and supported by appropriate verifiable proof of the vehicle owner, lienholder, or agent regardless of whether the application is submitted in person or by mail. A certified copy will not be issued until after the 14th day that the original title was issued.

(d) Denial. If issuance of a certified copy is denied, the applicant may resubmit the request with the required verifiable proof or may pursue the privileges available in accordance with Transportation Code, §501.052 and §501.053.

(e) Additional copies. An additional certified copy will not be issued until 30 days after issuance of the previous certified copy.

(f) Fees. The fee for obtaining a certified copy of a title is $2 if the application is submitted to the department by mail and $5.45 if the application is submitted in person for expedited processing at one of the department's regional offices.

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

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SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.26, 217.33, 217.40, 217.43, 217.45, 217.46, 217.54, 217.55

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.26. Identification Required.

(a) An application for initial registration is not acceptable unless the applicant presents a current photo identification of the owner containing a unique identification number and expiration date. The identification document must be a:

(1) driver's license or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card;

(4) North Atlantic Treaty Organization identification or identification issued under a Status of Forces Agreement; [~~or~~]

(5) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(6) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(b) If the motor vehicle is titled in:

(1) more than one name, then the identification of one owner must be presented;

(2) the name of a leasing company, then:

(A) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the leasing company must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the leasing company in which the vehicle is being titled; and

(B) the leasing company may submit:

(i) a government issued photo identification, required under this section, of the lessee listed as the registrant; or

(ii) a government issued photo identification, required under this section, of the employee or authorized agent who signed the application for the leasing company, and the employee's or authorized agent's employee identification, letter of authorization written on the lessor's letterhead, or a printed business card. The printed business card, employee identification, or letter of authorization written on the lessor's letterhead must contain the name of the lessor, and the employee's or authorized agent's name must match the name on the government issued photo identification;

(3) the name of a trust, then a government issued photo identification, required under this section, of a trustee must be presented; or

(4) the name of a business, government entity, or organization, then:

(A) proof of the Federal Employer Identification Number/Employee Identification Number (FEIN/EIN) of the business, government entity, or organization must be submitted, written on the application, and can be entered into the department's titling system. The number must correspond to the name of the business, government entity, or organization in which the vehicle is being titled;

(B) the employee or authorized agent must present a government issued photo identification, required under this section; and

(C) the employee's or authorized agent's employee identification; letter of authorization written on the business', government entity's, or organization's letterhead; or a printed business card. The printed business card, employee identification, or letter of authorization written on the business', government entity's, or organization's letterhead must contain the name of the business, governmental entity, or organization, and the employee's or authorized agent's name must match the name on the government issued photo identification.

(c) Within this section, "current" is defined as not to exceed 12 months after the expiration date, except that a state-issued personal identification certificate issued to a qualifying person is considered current if the identification states that it has no expiration.

(d) Within this section, an identification document such as a printed business card, letter of authorization, or power of attorney, may be an original or photocopy.

(e) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is exempt from submitting to the county tax assessor-collector, but must retain:

(1) the owner's identification, as required under this section; and

(2) authorization to sign, as required under this section.

(f) A person who holds a general distinguishing number issued under Transportation Code, Chapter 503 or Occupations Code, Chapter 2301, is not required to submit photo identification or authorization for an employee or agent signing a title assignment with a secure power of attorney.

(g) This section does not apply to non-titled vehicles.

§217.33. Commercial Farm Motor Vehicles, Farm Trailers, and Farm Semitrailers.

(a) An applicant must provide a properly completed application for farm plates. Except as provided by subsection (d) of this section, the [~~The~~] application must be accompanied by proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the registration number must be:

(1) legible;

(2) current; and

(3) in the name of the person or dba in which the vehicle is or will be registered, pursuant to Transportation Code, §502.146 and §502.433.

(b) A registration renewal of farm plates must be accompanied by proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts.

(c) In accordance with Transportation Code, §502.146 and §502.433, an applicant's Texas Agriculture or Timber Exemption Registration Number may be verified through the online system established by the Comptroller.

(d) A farmers' cooperative society incorporated under Chapter 51, Agriculture Code, or a marketing association organized under Chapter 52, Agriculture Code applying for or renewing the registration of farm plates under this section is not required to submit proof of the applicant's Texas Agriculture or Timber Exemption Registration issued by the Texas Comptroller of Public Accounts.

§217.40. Special Registrations [~~Registration Permits~~].

(a) Purpose and scope. Transportation Code, Chapter 502, Subchapters C and I, charge the department with the responsibility of issuing special registration permits which shall be recognized as legal registration for the movement of motor vehicles not authorized to travel on Texas public highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. For the department to efficiently and effectively perform these duties, this section prescribes the policies and procedures for the application and the issuance of temporary registration permits.

(b) Permit categories. The department will issue the following categories of special registration permits.

(1) Additional weight permits. The owner of a truck, truck tractor, trailer, or semitrailer may purchase temporary additional weight permits for the purpose of transporting the owner's own seasonal agricultural products to market or other points for sale or processing in accordance with Transportation Code, §502.434. In addition, such vehicles may be used for the transportation without charge of seasonal laborers from their place of residence, and materials, tools, equipment, and supplies from the place of purchase or storage, to a farm or ranch exclusively for use on such farm or ranch.

(A) Additional weight permits are valid for a limited period of less than one year.

(B) An additional weight permit will not be issued for a period of less than one month or extended beyond the expiration of a license plate issued under Transportation Code, Chapter 502.

(C) The statutory fee for an additional weight permit is based on a percentage of the difference between the owner's annual registration fee and the annual fee for the desired gross vehicle weight computed as follows:

(i) one-month (or 30 consecutive days)--10 percent;

(ii) one-quarter (three consecutive months)--30 percent;

(iii) two-quarters (six consecutive months)--60 percent; or

(iv) three-quarters (nine consecutive months)--90 percent.

(D) Additional weight permits are issued for calendar quarters with the first quarter to begin on April 1st of each year.

(E) A permit will not be issued unless the registration fee for hauling the additional weight has been paid prior to the actual hauling.

(F) An applicant must provide proof of the applicant's Texas Agriculture or Timber Exemption Registration Number issued by the Texas Comptroller of Public Accounts. Proof of the registration number must be:

(i) legible;

(ii) current;

(iii) in the name of the person or dba in which the vehicle is or will be registered; and

(iv) verifiable through the online system established by the Comptroller.

(2) Annual permits.

(A) Transportation Code, §502.093 authorizes the department to issue annual permits to provide for the movement of foreign commercial vehicles that are not authorized to travel on Texas highways for lack of registration or for lack of reciprocity with the state or country in which the vehicles are registered. The department will issue annual permits:

(i) for a 12-month period designated by the department which begins on the first day of a calendar month and expires on the last day of the last calendar month in that annual registration period; and

(ii) to each vehicle or combination of vehicles for the registration fee prescribed by weight classification in Transportation Code, §502.253 and §502.255.

(B) The department will not issue annual permits for the importation of citrus fruit into Texas from a foreign country except for foreign export or processing for foreign export.

(C) The following exemptions apply to vehicles displaying annual permits.

(i) Currently registered foreign semitrailers having a gross weight in excess of 6,000 pounds used or to be used in combination with commercial motor vehicles or truck tractors having a gross vehicle weight in excess of 10,000 pounds are exempted from the requirements to pay the token fee and display the associated distinguishing license plate provided for in Transportation Code, §502.255. An annual permit is required for the power unit only. For vehicles registered in combination, the combined gross weight may not be less than 18,000 pounds.

(ii) Vehicles registered with annual permits are not subject to the optional county registration fee under Transportation Code, §502.401; the optional county fee for transportation projects under Transportation Code, §502.402; or the optional registration fee for child safety under Transportation Code, §502.403.

(3) 72-hour permits and 144-hour permits.

(A) In accordance with Transportation Code, §502.094, the department will issue a permit valid for 72 hours or 144 hours for the movement of commercial motor vehicles, trailers, semitrailers, and motor buses owned by residents of the United States, Mexico, or Canada.

(B) A 72-hour permit or a 144-hour permit is valid for the period of time stated on the permit beginning with the effective day and time as shown on the permit registration receipt.

(C) Vehicles displaying 72-hour permits or 144-hour permits are subject to vehicle safety inspection in accordance with Transportation Code, §548.051, except for:

(i) vehicles currently registered in another state of the United States, Mexico, or Canada; and

(ii) mobile drilling and servicing equipment used in the production of gas, crude petroleum, or oil, including, but not limited to, mobile cranes and hoisting equipment, mobile lift equipment, forklifts, and tugs.

(D) The department will not issue a 72-hour permit or a 144-hour permit to a commercial motor vehicle, trailer, semitrailer, or motor bus apprehended for violation of Texas registration laws. Apprehended vehicles must be registered under Transportation Code, Chapter 502.

(4) Temporary agricultural permits.

(A) Transportation Code, §502.092 authorizes the department to issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer to be used in the movement of all agriculture products produced in Texas:

(i) from the place of production to market, storage, or railhead not more than 75 miles from the place of production; or

(ii) to be used in the movement of machinery used to harvest Texas-produced agricultural products.

(B) The department will issue a 30-day temporary nonresident registration permit to a nonresident for any truck, truck tractor, trailer, or semitrailer used to move or harvest farm products, produced outside of Texas, but:

(i) marketed or processed in Texas; or

(ii) moved to points in Texas for shipment from the point of entry into Texas to market, storage, processing plant, railhead or seaport not more than 80 miles from such point of entry into Texas.

(C) The statutory fee for temporary agricultural permits is one-twelfth of the annual Texas registration fee prescribed for the vehicle for which the permit is issued.

(D) The department will issue a temporary agricultural permit only when the vehicle is legally registered in the nonresident's home state or country for the current registration year.

(E) The number of temporary agricultural permits is limited to three permits per nonresident owner during any one vehicle registration year.

(F) Temporary agricultural permits may not be issued to farm licensed trailers or semi-trailers.

(5) One-trip permits. Transportation Code, §502.095 authorizes the department to temporarily register any unladen vehicle upon application to provide for the movement of the vehicle for one trip, when the vehicle is subject to Texas registration and not authorized to travel on the public roadways for lack of registration or lack of registration reciprocity.

(A) Upon receipt of the $5 fee, registration will be valid for one trip only between the points of origin and destination and intermediate points as may be set forth in the application and registration receipt.

(B) The department will issue a one-trip permit to a bus which is not covered by a reciprocity agreement with the state or country in which it is registered to allow for the transit of the vehicle only. The vehicle should not be used for the transportation of any passenger or property, for compensation or otherwise, unless such bus is operating under charter from another state or country.

(C) A one-trip permit is valid for a period up to 15 days from the effective date of registration.

(D) A one-trip permit may not be issued for a trip which both originates and terminates outside Texas.

(E) A laden motor vehicle or a laden commercial vehicle cannot display a one-trip permit. If the vehicle is unregistered, it must operate with a 72-hour or 144-hour permit.

(6) 30-day temporary registration permits. Transportation Code, §502.095 authorizes the department to issue a temporary registration permit valid for 30 days for a $25 fee. A vehicle operated on a 30-day temporary permit is not restricted to a specific route. The permit is available for:

(A) passenger vehicles;

(B) motorcycles;

(C) private buses;

(D) trailers and semitrailers with a gross weight not exceeding 10,000 pounds;

(E) light commercial vehicles not exceeding a gross weight of 10,000 pounds; and

(F) a commercial vehicle exceeding 10,000 pounds, provided the vehicle is operated unladen.

(c) Application process.

(1) Procedure. An owner who wishes to apply for a temporary registration permit for a vehicle which is otherwise required to be registered in accordance with this subchapter, must do so on a form prescribed by the department.

(2) Form requirements. The application form will at a minimum require:

(A) the signature of the owner;

(B) the name and complete address of the applicant; and

(C) the vehicle description.

(3) Fees and documentation. The application must be accompanied by:

(A) statutorily prescribed fees;

(B) evidence of financial responsibility:

(i) as required by Transportation Code, Chapter 502, Subchapter B, provided that all policies written for the operation of motor vehicles must be issued by an insurance company or surety company authorized to write motor vehicle liability insurance in Texas; or

(ii) if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration); and

(C) any other documents or fees required by law.

(4) Place of application.

(A) All applications for annual permits must be submitted directly to the department for processing and issuance.

(B) Additional weight permits and temporary agricultural permits may be obtained by making application with the department through the county tax assessor-collectors' offices.

(C) 72-hour and 144-hour permits, one-trip permits, and 30-day temporary registration permits may be obtained by making application either with the department or the county tax assessor-collectors' offices.

[~~(d) Display of registration insignia. The department will issue a specially designed tag or windshield validation sticker, upon receipt of a complete application for a permit.~~]

[~~(1) Tags shall be displayed in a manner that is clearly visible and legible when viewed from outside of the vehicle. The tag shall be attached to or displayed in the vehicle to allow ready inspection.~~]

[~~(2) Windshield validation stickers shall be displayed on the inside of the front windshield in the lower left corner.~~]

(d) [~~(3)~~] Receipt for permit in lieu of registration. A receipt will be issued for each permit in lieu of registration [~~insignia as evidence of registration~~] to be carried in the vehicle during the time the permit is valid. A one-trip or 30-day trip permit must be displayed as required by Transportation Code, §502.095(f). If the receipt is lost or destroyed, the owner must obtain a duplicate from the department or from the county office [~~who issued the original receipt~~]. The fee for the duplicate receipt is the same as the fee required by Transportation Code, §502.058.

(e) Transfer of temporary [~~registration~~] permits.

(1) Temporary [~~registration~~] permits are non-transferable between vehicles and/or owners.

(2) If the owner of a vehicle displaying a temporary [~~registration~~] permit disposes of the vehicle during the time the permit is valid, the permit must be returned to the county tax assessor-collector office or department immediately.

(f) Replacement permits. Vehicle owners displaying annual permits may obtain replacement permits if an annual permit is lost, stolen, or mutilated.

(1) The fee for a replacement annual permit is the same as for a replacement number plate, symbol, tab, or other device as provided by Transportation Code, §502.060.

(2) The owner shall apply directly to the department in writing for the issuance of a replacement annual permit. Such request should include a copy of the registration receipt and replacement fee.

(g) Agreements with other jurisdictions. In accordance with Transportation Code, §502.091, and Chapter 648, the executive director of the department may enter into a written agreement with an authorized officer of a state, province, territory, or possession of a foreign country to provide for the exemption from payment of registration fees by nonresidents, if residents of this state are granted reciprocal exemptions. The executive director may enter into such agreement only upon:

(1) the approval of the governor; and

(2) making a determination that the economic benefits to the state outweigh all other factors considered.

(h) Border commercial zones.

(1) Texas registration required. A vehicle located in a border commercial zone must display a valid Texas registration if the vehicle is owned by a person who:

(A) owns a leasing facility or a leasing terminal located in Texas; and

(B) leases the vehicle to a foreign motor carrier.

(2) Exemption for trips of short duration. Except as provided by paragraph (1) of this subsection, a foreign commercial vehicle operating in accordance with Transportation Code, Chapter 648 is exempt from the display of a temporary registration permit if:

(A) the vehicle is engaged solely in the transportation of cargo across the border into or from a border commercial zone;

(B) for each load of cargo transported the vehicle remains in this state for:

(i) not more than 24 hours; or

(ii) not more than 48 hours, if:

(I) the vehicle is unable to leave this state within 24 hours because of circumstances beyond the control of the motor carrier operating the vehicle; and

(II) all financial responsibility requirements applying to this vehicle are satisfied;

(C) the vehicle is registered and licensed as required by the country in which the person that owns the vehicle is domiciled or is a citizen as evidenced by a valid metal license plate attached to the front or rear exterior of the vehicle; and

(D) the country in which the person who owns the vehicle is domiciled or is a citizen provides a reciprocal exemption for commercial motor vehicles owned by residents of Texas.

(3) Exemption due to reciprocity agreement. Except as provided by paragraph (1) of this subsection, a foreign commercial motor vehicle in a border commercial zone in this state is exempt from the requirement of obtaining a Texas registration if the vehicle is currently registered in another state of the United States or a province of Canada with which this state has a reciprocity agreement that exempts a vehicle that is owned by a resident of this state and that is currently registered in this state from registration in the other state or province.

§217.43. Military Specialty License Plates.

(a) Purpose and Scope. Transportation Code, Chapter 504 authorizes the department to issue military specialty license plates. This section prescribes the policies and procedures for the application, issuance, and renewal of military specialty license plates.

(b) Classification and fees. The department will issue specialty plates for the military and charge fees as authorized by Transportation Code, §504.202 and Chapter 504, Subchapter D.

[~~(1) Meritorious Service. There are no fees for the first set of specialty license plates. Registration fees and any additional fees will be collected at the time of registration for additional sets. These plates include:~~]

[~~(A) Congressional Medal of Honor;~~]

[~~(B) Legion of Valor, consisting of Air Force Cross, Distinguished Flying Cross, Distinguished Service Cross and Navy Cross;~~]

[~~(C) Legion of Merit;~~]

[~~(D) Silver Star;~~]

[~~(E) Bronze Star and Bronze Star with Valor;~~]

[~~(F) Distinguished Service Medal;~~]

[~~(G) Defense Superior Service Medal; and~~]

[~~(H) Air Medal and Air Medal with Valor.~~]

[~~(2) Recognition Award. The first set of specialty license plates is $3 and no registration fee is collected. Registration fees and any additional fees will be collected at the time of registration for additional sets. These plates include:~~]

[~~(A) Former Prisoner of War (POW);~~]

[~~(B) Disabled Veteran;~~]

[~~(C) Purple Heart; and~~]

[~~(D) Pearl Harbor Survivor.~~]

[~~(3) Issued to members or former members of the U.S. Armed Forces. There is no charge for the specialty plate, however, registration fees and any additional fees collected at the time of registration apply. These plates include:~~]

[~~(A) World War II, Korea, Vietnam Operations, Iraqi Freedom, Enduring Freedom, Enduring Freedom Afghanistan, Desert Storm and Desert Shield;~~]

[~~(B) Coast Guard Auxiliary;~~]

[~~(C) Armed Forces Reserved;~~]

[~~(D) U.S. Paratrooper;~~]

[~~(E) Marine Corps League;~~]

[~~(F) Texas Guard (National and State);~~]

[~~(G) Texas Wing Civil Air Patrol;~~]

[~~(H) Woman Veteran;~~]

[~~(I) U.S. Air Force;~~]

[~~(J) U.S. Army;~~]

[~~(K) U.S. Coast Guard;~~]

[~~(L) U.S. Marine Corps; or~~]

[~~(M) U.S. Navy.~~]

[~~(4) Honorably discharged and retired. The following license plates may include the words "Honorably Discharged" or "Retired" if the applicant is a former member of one of the following branches of the U.S. Armed Forces and meets eligibility criteria as established in Transportation Code, Chapter 504:~~]

[~~(A) U.S. Air Force;~~]

[~~(B) U.S. Army;~~]

[~~(C) U.S. Coast Guard;~~]

[~~(D) U.S. Marine Corps; or~~]

[~~(E) U.S. Navy.~~]

[~~(c) Surviving spouse license plates.~~]

[~~(1) The surviving spouse of a deceased Disabled Veteran may apply for "Surviving Spouse Disabled Veteran" specialty license plates, if proof exists that Disabled Veteran License Plates were issued to the veteran prior to the time of death, and the surviving spouse remains unmarried. The first set of specialty license plates is $3 and no registration fee is collected. Registration fees and additional fees will be collected at the time of registration for additional sets.~~]

[~~(2) The surviving spouse of a deceased veteran who, prior to death, had been issued other military specialty plates, may apply for and continue to register one vehicle and pay the fee applicable for that military specialty license plate. The surviving spouse must remain unmarried to remain eligible.~~]

(c) [~~(d)~~] Application. Applications for military specialty license plates must be made to the department and include evidence of eligibility. The evidence of eligibility may include, but is not limited to:

(1) an official document issued by a governmental entity;

(2) a letter issued by a governmental entity on that agency's letterhead;

(3) discharge papers; [~~or~~]

(4) a death certificate; or[~~.~~]

(5) an identification card issued by any branch of the military under the jurisdiction of the United States Department of Defense or the United States Department of Homeland Security indicating that the member is retired.

(d) [~~(e)~~] Period.

[~~(1) Military Vehicle license plates and registration numbers are issued for a five-year period.~~]

[~~(2)~~] The registration for Congressional Medal of Honor license plates expires each March 31. All other specialty plates for the military may be replaced in accordance with §217.32 of this title (relating to Replacement of License Plates, Symbols, Tabs, and Other Devices).

(e) [~~(f)~~] Assignment and Transfer. Military plates may not be assigned and may only be transferred to another vehicle owned by the same vehicle owner.

(f) [~~(g)~~] Applicability. Section 217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices) applies to military plates, symbols, tabs, or other devices as to:

(1) what is considered one set of plates per vehicle as determined by vehicle type;

(2) issuance of validation tabs and insignia;

(3) stolen or replaced plates;

(4) payment of other applicable fees;

(5) personalization, except that Congressional Medal of Honor plates may not be personalized;

(6) renewal, except that the owner of a vehicle with Congressional Medal of Honor license plates must return the documentation and specialty license plate fee, if any, directly to the department;

(7) refunds; and

(8) expiration.

§217.45. Specialty License Plates, Symbols, Tabs, and Other Devices.

(a) Purpose and Scope. Transportation Code, Chapters 504 and 551 charge the department with providing specialty license plates, symbols, tabs, and other devices. For the department to perform these duties efficiently and effectively, this section prescribes the policies and procedures for the application, issuance, and renewal of specialty license plates, symbols, tabs, and other devices, through the county tax assessor-collectors, and establishes application fees, expiration dates, and registration periods for certain specialty license plates. This section does not apply to military license plates except as provided by §217.43 of this title (relating to Military Specialty License Plates).

(b) Initial application for specialty license plates, symbols, tabs, or other devices.

(1) Application Process.

(A) Procedure. An owner of a vehicle registered as specified in this subchapter who wishes to apply for a specialty license plate, symbol, tab, or other device must do so on a form prescribed by the director.

(B) Form requirements. The application form shall at a minimum require the name and complete address of the applicant.

(2) Fees and Documentation.

(A) The application must be accompanied by the prescribed registration fee, unless exempted by statute.

(B) The application must be accompanied by the statutorily prescribed specialty license plate fee. If a registration period is greater than 12 months, the expiration date of a specialty license plate, symbol, tab, or other device will be aligned with the registration period and the specialty plate fee will be adjusted to yield the appropriate fee. If the statutory annual fee for a specialty license plate is $5 or less, it will not be prorated.

(C) Specialty license plate fees will not be refunded after an application is submitted and the department has approved issuance of the license plate.

(D) The application must be accompanied by prescribed local fees or other fees that are collected in conjunction with registering a vehicle, with the exception of vehicles bearing license plates that are exempt by statute from these fees.

(E) The application must include evidence of eligibility for any specialty license plates. The evidence of eligibility may include, but is not limited to:

(i) an official document issued by a governmental entity; or

(ii) a letter issued by a governmental entity on that agency's letterhead.

(F) Initial applications for license plates for display on Exhibition Vehicles must include a photograph of the completed vehicle.

(3) Place of application. Applications for specialty license plates may be made directly to the county tax assessor-collector, except that applications for the following license plates must be made directly to the department:

(A) County Judge;

(B) Federal Administrative Law Judge;

(C) State Judge;

(D) State Official;

(E) U.S. Congress--House;

(F) U.S. Congress--Senate; and

(G) U.S. Judge.

(4) Gift plates.

(A) A person may purchase general distribution specialty license plates as a gift for another person if the purchaser submits an application for the specialty license plates that provides:

(i) the name and address of the person who will receive the plates; and

(ii) the vehicle identification number of the vehicle on which the plates will be displayed.

(B) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502 and this subchapter.

(c) Initial issuance of specialty license plates, symbols, tabs, or other devices.

(1) Issuance. On receipt of a completed initial application for registration, accompanied by the prescribed documentation and fees, the department will issue specialty license plates, symbols, tabs, or other devices to be displayed on the vehicle for which the license plates, symbols, tabs, or other devices were issued for the current registration period. If the vehicle for which the specialty license plates, symbols, tabs, or other devices are issued is currently registered, the owner must surrender the license plates currently displayed on the vehicle, along with the corresponding license receipt, before the specialty license plates may be issued.

(2) Classic Motor Vehicles, [~~Vehicle,~~] Classic Travel Trailers, [~~Trailer, and~~] Custom Vehicles, Street Rods and Exhibition Vehicles. [~~Vehicle.~~]

(A) License plates. Texas license plates that were issued the same year as the model year of a Classic Motor Vehicle, Travel Trailer, Street Rod, or Exhibition Vehicle may be displayed on that vehicle under Transportation Code, §504.501 and §504.502, unless:

(i) the license plate's original use was restricted by statute to another vehicle type;

(ii) the license plate is a qualifying plate type that originally required the owner to meet one or more eligibility requirements; or

(iii) the alpha numeric pattern is already in use on another vehicle.

(B) Validation stickers and tabs. The department will issue validation stickers and tabs for display on license plates that are displayed as provided by subparagraph (A) of this paragraph.

(3) Number of plates issued.

(A) Two plates. Unless otherwise listed in subparagraph (B) of this paragraph, two specialty license plates, each bearing the same license plate number, will be issued per vehicle.

(B) One plate. One license plate will be issued per vehicle for all motorcycles and for the following specialty license plates:

(i) Antique Vehicle (includes Antique Auto, Antique Truck, Antique Motorcycle, and Antique Bus);

(ii) Classic Travel Trailer;

(iii) Rental Trailer;

(iv) Travel Trailer;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Forestry Vehicle;

(viii) Golf Cart;

(ix) Log Loader; and

(x) Military Vehicle.

(C) Registration number. The identification number assigned by the military may be approved as the registration number instead of displaying Military Vehicle license plates on a former military vehicle.

(4) Assignment of plates.

(A) Title holder. Unless otherwise exempted by law or this section, the vehicle on which specialty license plates, symbols, tabs, or other devices is to be displayed shall be titled in the name of the person to whom the specialty license plates, symbols, tabs, or other devices is assigned, or a title application shall be filed in that person's name at the time the specialty license plates, symbols, tabs, or other devices are issued.

(B) Non-owner vehicle. If the vehicle is titled in a name other than that of the applicant, the applicant must provide evidence of having the legal right of possession and control of the vehicle.

(C) Leased vehicle. In the case of a leased vehicle, the applicant must provide a copy of the lease agreement verifying that the applicant currently leases the vehicle.

(5) Classification of neighborhood electric vehicles. The registration classification of a neighborhood electric vehicle, as defined by §217.3(3) of this title (relating to Motor Vehicle Titles) will be determined by whether it is designed as a 4-wheeled truck or a 4-wheeled passenger vehicle.

(6) Number of vehicles. An owner may obtain specialty license plates, symbols, tabs, or other devices for an unlimited number of vehicles, unless the statute limits the number of vehicles for which the specialty license plate may be issued.

(7) Personalized plate numbers.

(A) Issuance. The department will issue a personalized license plate number subject to the exceptions set forth in this paragraph.

(B) Character limit. A personalized license plate number may contain no more than six alpha or numeric characters or a combination of characters. Depending upon the specialty license plate design and vehicle class, the number of characters may vary. Spaces, hyphens, periods, hearts, stars, the International Symbol of Access, or silhouettes of the state of Texas may be used in conjunction with the license plate number.

(C) Personalized plates not approved. A personalized license plate number will not be approved by the executive director if the alpha-numeric pattern:

(i) conflicts with the department's current or proposed regular license plate numbering system;

(ii) would violate §217.27 of this title (relating to Vehicle Registration Insignia), as determined by the executive director; or

(iii) is currently issued to another owner.

(D) Classifications of vehicles eligible for personalized plates. Unless otherwise listed in subparagraph (E) of this paragraph, personalized plates are available for all classifications of vehicles.

(E) Categories of plates for which personalized plates are not available. Personalized license plate numbers are not available for display on the following specialty license plates:

(i) Amateur Radio (other than the official call letters of the vehicle owner);

(ii) Antique Motorcycle;

(iii) Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus);

(iv) Apportioned;

(v) Cotton Vehicle;

(vi) Disaster Relief;

(vii) Farm Trailer (except Go Texan II);

(viii) Farm Truck (except Go Texan II);

(ix) Farm Truck Tractor (except Go Texan II);

(x) Fertilizer;

(xi) Forestry Vehicle;

(xii) Log Loader;

(xiii) Machinery;

(xiv) Permit;

(xv) Rental Trailer;

(xvi) Soil Conservation; and

(xvii) Texas Guard.

(F) Fee. Unless specified by statute, a personalized license plate fee of $40 will be charged in addition to any prescribed specialty license plate fee.

(G) Priority. Once a personalized license plate number has been assigned to an applicant, the owner shall have priority to that number for succeeding years if a timely renewal application is submitted to the county tax assessor-collector each year in accordance with subsection (d) of this section.

(d) Specialty license plate renewal.

(1) Renewal deadline. If a personalized license plate is not renewed within 60 days after its expiration date, a subsequent renewal application will be treated as an application for new personalized license plates.

(2) Length of validation. With the following exceptions, all specialty license plates, symbols, tabs, or other devices shall be valid for 12 months from the month of issuance or for a prorated period of at least 12 months coinciding with the expiration of registration.

(A) Five-year period. Antique Vehicle (includes Antique Auto, Antique Truck, and Antique Bus) and Antique Motorcycle license plates, Antique tabs, and registration numbers are issued for a five-year period.

(B) Seven-year period. Foreign Organization license plates and registration numbers are issued for a seven-year period.

(C) March expiration dates. The registration for Cotton Vehicle and Disaster Relief license plates expires each March 31.

(D) June expiration dates. The registration for the Honorary Consul license plate expires each June 30.

(E) September expiration dates. The registration for the Log Loader license plate expires each September 30.

(F) December expiration dates. The registration for the following license plates expires each December 31:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(G) Except as otherwise provided in this paragraph, if a vehicle's registration period is other than 12 months, the expiration date of the specialty license plate, symbol, tab, or other device will be set to align it with the expiration of registration.

(3) Renewal.

(A) Renewal notice. Approximately 60 days before the expiration date of a specialty license plate, symbol, tab, or other device, the department will send each owner a renewal notice that includes the amount of the specialty plate fee and the registration fee.

(B) Return of notice. The owner must return the fee and any prescribed documentation to the tax assessor-collector of the county in which the owner resides, except that the owner of a vehicle with one of the following license plates must return the documentation and specialty license plate fee, if applicable, directly to the department and submit the registration fee to the county tax assessor-collector:

(i) County Judge;

(ii) Federal Administrative Law Judge;

(iii) State Judge;

(iv) State Official;

(v) U.S. Congress--House;

(vi) U.S. Congress--Senate; and

(vii) U.S. Judge.

(C) Expired plate numbers. The department will retain a specialty license plate number for 60 days after the expiration date of the plates if the plates are not renewed on or before their expiration date. After 60 days the number may be reissued to a new applicant. All specialty license plate renewals received after the expiration of the 60 days will be treated as new applications.

(D) Issuance of validation insignia. On receipt of a completed license plate renewal application and prescribed documentation, the department will issue registration validation insignia as specified in §217.27 unless this section or other law requires the issuance of new license plates to the owner.

(E) Lost or destroyed renewal notices. If a renewal notice is lost, destroyed, or not received by the vehicle owner, the spe-

cialty license plates, symbol, tab, or other device may be renewed if the owner provides acceptable personal identification along with the appropriate fees and documentation. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of specialty license plates.

(1) Transfer between vehicles.

(A) Transferable between vehicles. The owner of a vehicle with specialty license plates, symbols, tabs, or other devices may transfer the specialty plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(i) is titled or leased in the owner's name; and

(ii) meets the vehicle classification requirements for that particular specialty license plate, symbol, tab, or other device.

(B) Non-transferable between vehicles. The following specialty license plates, symbols, tabs, or other devices are non-transferable between vehicles:

(i) Antique Vehicle license plates (includes Antique Auto, Antique Truck, and Antique Bus), Antique Motorcycle license plates, and Antique tabs;

(ii) Classic Auto, Classic Truck, Classic Motorcycle, Classic Travel Trailer, Street Rod, and Custom Vehicle license plates;

(iii) Forestry Vehicle license plates; and

(iv) Log Loader license plates.

(C) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between vehicles.

(2) Transfer between owners.

(A) Non-transferable between owners. Specialty license plates, symbols, tabs, or other devices issued under Transportation Code, Chapter 504, Subchapters C, E, and F are not transferable from one person to another except as specifically permitted by statute.

(B) New specialty license plates. If the department creates a new specialty license plate under Transportation Code, §504.801, the department will specify at the time of creation whether the license plate may be transferred between owners.

(3) Simultaneous transfer between owners and vehicles. Specialty license plates, symbols, tabs, or other devices are transferable between owners and vehicles simultaneously only if the owners and vehicles meet all the requirements in both paragraphs (1) and (2) of this subsection.

(f) Replacement.

(1) Application. When specialty license plates, symbols, tabs, or other devices are lost, stolen, or mutilated, the owner shall apply directly to the county tax assessor-collector for the issuance of replacements, except that Log Loader license plates must be reapplied for and accompanied by the prescribed fees and documentation.

(2) Temporary registration insignia. If the specialty license plate, symbol, tab, or other device is lost, destroyed, or mutilated to such an extent that it is unusable, and if issuance of a replacement license plate would require that it be remanufactured, the owner must pay the statutory replacement fee, and the department will issue a temporary tag for interim use. The owner's new specialty license plate number will be shown on the temporary tag unless it is a personalized license plate, in which case the same personalized license plate number will be shown.

(3) Stolen specialty license plates.

(A) The department or county tax assessor-collector will not approve the issuance of replacement license plates with the same personalized license plate number if the department's records indicate either the vehicle displaying the personalized license plates or the license plates are reported as stolen to law enforcement. The owner will be directed to contact the department for another personalized plate choice.

(B) The owner may select a different personalized number to be issued at no charge with the same expiration as the stolen specialty plate. On recovery of the stolen vehicle or license plates, the department will issue, at the owner's or applicant's request, replacement license plates, bearing the same personalized number as those that were stolen.

(g) License plates created after January 1, 1999. In accordance with Transportation Code, §504.702, the department will begin to issue specialty license plates authorized by a law enacted after January 1, 1999, only if the sponsoring entity for that license plate submits the following items before the fifth anniversary of the effective date of the law.

(1) The sponsoring entity must submit a written application. The application must be on a form approved by the director and include, at a minimum:

(A) the name of the license plate;

(B) the name and address of the sponsoring entity;

(C) the name and telephone number of a person authorized to act for the sponsoring entity; and

(D) the deposit.

(2) A sponsoring entity is not an agent of the department and does not act for the department in any matter, and the department does not assume any responsibility for fees or applications collected by a sponsoring entity.

(h) Assignment procedures for state, federal, and county officials.

(1) State Officials. State Official license plates contain the distinguishing prefix "SO." Members of the state legislature may be issued up to three sets of State Official specialty license plates with the distinguishing prefix "SO," or up to three sets of State Official specialty license plates that depict the state capitol, and do not display the distinguishing prefix "SO." An application by a member of the state legislature, for a State Official specialty license plate, must specify the same specialty license plate design for each applicable vehicle. State Official license plates are assigned in the following order:

(A) Governor;

(B) Lieutenant Governor;

(C) Speaker of the House;

(D) Attorney General;

(E) Comptroller;

(F) Land Commissioner;

(G) Agriculture Commissioner;

(H) Secretary of State;

(I) Railroad Commission Presiding Officer followed by the remaining members based on their seniority;

(J) Supreme Court Chief Justice followed by the remaining justices based on their seniority;

(K) Criminal Court of Appeals Presiding Judge followed by the remaining judges based on their seniority;

(L) Members of the State Legislature, with Senators assigned in order of district number followed by Representatives assigned in order of district number, except that in the event of redistricting, license plates will be reassigned; and

(M) Board of Education Presiding Officer followed by the remaining members assigned in district number order, except that in the event of redistricting, license plates will be reassigned.

(2) Members of the U.S. Congress.

(A) U.S. Senate license plates contain the prefix "Senate" and are assigned by seniority; and

(B) U.S. House license plates contain the prefix "House" and are assigned in order of district number, except that in the event of redistricting, license plates will be reassigned.

(3) Federal Judge.

(A) Federal Judge license plates contain the prefix "USA" and are assigned on a seniority basis within each court in the following order:

(i) Judges of the Fifth Circuit Court of Appeals;

(ii) Judges of the United States District Courts;

(iii) United States Bankruptcy Judges; and

(iv) United States Magistrates.

(B) Federal Administrative Law Judge plates contain the prefix "US" and are assigned in the order in which applications are received.

(C) A federal judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive federal judge plates. A federal judge who retired after August 31, 2003, is not eligible for U.S. Judge license plates.

(4) State Judge.

(A) State Judge license plates contain the prefix "TX" and are assigned sequentially in the following order:

(i) Appellate District Courts;

(ii) Presiding Judges of Administrative Regions;

(iii) Judicial District Courts;

(iv) Criminal District Courts; and

(v) Family District Courts and County Statutory Courts.

(B) A particular alpha-numeric combination will always be assigned to a judge of the same court to which it was originally assigned.

(C) A state judge who retired on or before August 31, 2003, and who held license plates expiring in March 2004 may continue to receive state judge plates. A state judge who retired after August 31, 2003, is not eligible for State Judge license plates.

(5) County Judge license plates contain the prefix "CJ" and are assigned by county number.

(6) In the event of redistricting or other plate reallocation, the department may allow a state official to retain that official's plate number if the official has had the number for five or more consecutive years.

(i) Development of new specialty license plates.

(1) Procedure. The following procedure governs the process of authorizing new specialty license plates under Transportation Code, §504.801, whether the new license plate originated as a result of an application or as a department initiative.

(2) Applications for the creation of new specialty license plates. An applicant for the creation of a new specialty license plate, other than a vendor specialty plate under §217.52 of this title (relating to Marketing of Specialty License Plates through a Private Vendor), must submit a written application on a form approved by the executive director. The application must include:

(A) the applicant's name, address, telephone number, and other identifying information as directed on the form;

(B) certification on Internal Revenue Service letterhead stating that the applicant is a not-for-profit entity;

(C) a draft design of the specialty license plate;

(D) projected sales of the plate, including an explanation of how the projected figure was established;

(E) a marketing plan for the plate, including a description of the target market;

(F) a licensing agreement from the appropriate third party for any intellectual property design or design element;

(G) a letter from the executive director of the sponsoring state agency stating that the agency agrees to receive and distribute revenue from the sale of the specialty license plate and that the use of the funds will not violate a statute or constitutional provision; and

(H) other information necessary for the Board to reach a decision regarding approval of the requested specialty plate.

(3) Review process. The Board:

(A) will not consider incomplete applications;

(B) may request additional information from an applicant if necessary for a decision; and

(C) will consider specialty license plate applications that are restricted by law to certain individuals or groups of individuals (qualifying plates) using the same procedures as applications submitted for plates that are available to everyone (non-qualifying plates).

(4) Request for additional information. If the Board determines that additional information is needed, the applicant must return the requested information not later than the requested due date. If the additional information is not received by that date, the Board will return the application as incomplete unless the Board:

(A) determines that the additional requested information is not critical for consideration and approval of the application; and

(B) approves the application, pending receipt of the additional information by a specified due date.

(5) Board decision. The Board's decision will be based on:

(A) compliance with Transportation Code, §504.801;

(B) the proposed license plate design, including:

(i) whether the design appears to meet the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness;

(iii) other information provided during the application process;

(iv) the criteria designated in §217.27 as applied to the design; and

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(C) the applicant's ability to comply with Transportation Code, §504.702 relating to the required deposit or application that must be provided before the manufacture of a new specialty license plate.

(6) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet website to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all other specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet website for submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(7) Final approval.

(A) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter at an open meeting.

(B) Application not approved. If the application is not approved under subparagraph (A) of this paragraph, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(i) the applicant has additional, required documentation; or

(ii) the design has been altered to an acceptable degree.

(8) Issuance of specialty plates.

(A) If the specialty license plate is approved, the applicant must comply with Transportation Code, §504.702 before any further processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval authority of all specialty license plate designs and may adjust or reconfigure the submitted draft design to comply with the format or license plate specifications.

(C) If the Board, in consultation with the applicant, adjusts or reconfigures the design, the adjusted or reconfigured design will not be posted on the department's website for additional comments.

(9) Redesign of specialty license plate.

(A) Upon receipt of a written request from the applicant, the department will allow redesign of a specialty license plate.

(B) A request for a redesign must meet all application requirements and proceed through the approval process of a new specialty plate as required by this subsection.

(C) An approved license plate redesign does not require the deposit required by Transportation Code, §504.702, but the applicant must pay a redesign cost to cover administrative expenses.

(j) Golf carts.

(1) A county tax assessor-collector may issue golf cart license plates as long as the requirements under Transportation Code, §551.403 or §551.404 are met.

(2) A county tax assessor-collector may only issue golf cart license plates to residents or property owners of the issuing county.

(3) A golf cart license plate may not be used as a registration insignia, and a golf cart may not be registered for operation on a public highway.

(4) The license plate fee for a golf cart license plate is $10.

§217.46. Commercial Vehicle Registration.

(a) Eligibility. A motor vehicle, other than a motorcycle, designed or used primarily for the transportation of property, including any passenger car that has been reconstructed to be used, and is being used, primarily for delivery purposes, with the exception of a passenger car used in the delivery of the United States mails, must be registered as a commercial vehicle.

(b) Commercial vehicle registration classifications.

(1) Apportioned license plates. Apportioned license plates are issued in lieu of Combination, Motor Bus, or Truck license plates to Texas carriers who proportionally register their fleets in other states, in conformity with §217.56 of this title (relating to Registration Reciprocity Agreements).

(2) City bus license plates. A street or suburban bus shall be registered with license plates bearing the legend "City Bus."

(3) Combination license plates.

(A) Specifications. A truck or truck tractor with a gross weight in excess of 10,000 pounds used or to be used in combination with a semitrailer having a gross weight in excess of 6,000 pounds, may be registered with combination license plates. Such vehicles must be registered for a gross weight equal to the combined gross weight of all the vehicles in the combination, but not less than 18,000 pounds. Only one combination license plate is required and must be displayed on the front of the truck or truck tractor. When displaying a combination license plate, a truck or truck tractor is not restricted to pulling a semitrailer licensed with a Token Trailer license plate and may legally pull semitrailers and full trailers displaying other types of Texas license plates or license plates issued out of state. The following vehicles may not [~~are not required to~~] be registered in combination:

(i) trucks or truck tractors having a gross weight of less than 10,000 pounds or trucks or truck tractors to be used exclusively in combination with semitrailers having gross weights not exceeding 6,000 pounds;

(ii) semitrailers with gross weights of 6,000 pounds or less, or semitrailers that are to be operated exclusively with trucks or truck tractors having gross weight of less than 10,000 pounds;

(iii) trucks or truck tractors used exclusively in combination with semitrailer-type vehicles displaying Machinery, Permit, or Farm Trailer license plates;

(iv) trucks or truck tractors used exclusively in combination with travel trailers and manufactured housing;

(v) trucks or truck tractors to be registered with Farm Truck or Farm Truck Tractor license plates;

(vi) trucks or truck tractors and semitrailers to be registered with disaster relief license plates;

(vii) trucks or truck tractors and semitrailers to be registered with Soil Conservation license plates;

(viii) trucks or truck tractors and semitrailers to be registered with U.S. Government license plates or Exempt license plates issued by the State of Texas; and

(ix) vehicles that are to be issued temporary permits, such as 72-Hour Permits, 144-Hour Permits, One Trip Permits, or 30-Day Permits in accordance with Transportation Code, §502.094 and §502.095.

(B) Converted semitrailers. Semitrailers that are converted to full trailers by means of auxiliary axle assemblies will retain their semitrailer status, and such semitrailers are subject to the combination and token trailer registration requirements.

(C) Axle assemblies. Various types of axle assemblies that are specially designed for use in conjunction with other vehicles or combinations of vehicles may be used to increase the load capabilities of such vehicles or combinations.

(i) Auxiliary axle assemblies such as trailer axle converters, jeep axles, and drag axles, which are used in conjunction with truck tractor and semitrailer combinations, are not required to be registered; however, the additional weight that is acquired by the use of such axle assemblies must be included in the combined gross weight of the combination.

(ii) Ready-mixed concrete trucks that have an auxiliary axle assembly installed for the purpose of increasing a load capacity of such vehicles must be registered for a weight that includes the axle assembly.

(D) Exchange of Combination license plates. Combination license plates shall not be exchanged for another type of registration during the registration year, except that:

(i) if a major permanent reconstruction change occurs, Combination license plates may be exchanged for Truck license plates, provided that a corrected title is applied for;

(ii) if the department initially issues Combination license plates in error, the plates will be exchanged for license plates of the proper classification;

(iii) if the department initially issues Truck or Trailer license plates in error to vehicles that should have been registered in combination, such plates will be exchanged for Combination and Token Trailer license plates; or

(iv) if a Texas apportioned carrier acquires a combination license power unit, the Combination license plates will be exchanged for Apportioned license plates.

(4) Cotton Vehicle license plates. The department will issue Cotton Vehicle license plates in accordance with Transportation Code, §504.505 and §217.45 of this title (relating to Specialty License Plates, Symbols, Tabs, and Other Devices).

(5) Forestry Vehicle license plates. The department will issue Forestry Vehicle license plates in accordance with Transportation Code, §504.507 and §217.45 of this title.

(6) In Transit license plates. The department may issue an In Transit license plate annually to any person, firm, or corporation engaged in the primary business of transporting and delivering by means of the full mount, saddle mount, tow bar, or any other combination, new vehicles and other vehicles from the manufacturer or any other point of origin to any point of destination within the State. Each new vehicle being transported, delivered, or moved under its own power in accordance with this paragraph must display an In Transit license plate in accordance with Transportation Code, §503.035.

(7) Motor Bus license plates. A motor bus as well as a taxi and other vehicles that transport passengers for compensation or hire, must display Motor Bus license plates when operated outside the limits of a city or town, or adjacent suburb, in which its company is franchised to do business.

(8) Token Trailer license plates.

(A) Qualification. The department will issue Token Trailer license plates for semitrailers that are required to be registered in combination.

(B) Validity. A Token Trailer license plate is valid only when it is displayed on a semitrailer that is being pulled by a truck or a truck tractor that has been properly registered with Forestry Vehicle (in accordance with Transportation Code, §504.507), Combination (in accordance with Transportation Code, §502.255), or Apportioned (in accordance with Transportation Code, §502.091) license plates for combined gross weights that include the weight of the semitrailer, unless exempted by Transportation Code, §502.094 and §623.011.

(C) House-moving dollies. House-moving dollies are to be registered with Token Trailer license plates and titled as semitrailers; however, only one such dolly in a combination is required to be registered and titled. The remaining dolly (or dollies) is permitted to operate unregistered, since by the nature of its construction, it is dependent upon another such vehicle in order to function. The pulling unit must display a Combination or Apportioned license plate.

(D) Full trailers. The department will not issue a Token Trailer license plate for a full trailer.

(9) Tow Truck license plates. A Tow Truck license plate must be obtained for all tow trucks operating and registered in this state. The department will not issue a Tow Truck license plate unless the Texas Department of Licensing and Regulation has issued a permit for the tow truck under Occupations Code, Chapter 2308, Subchapter C. [~~to tow trucks that are not registered in compliance with Transportation Code, Chapter 643.~~]

(c) Application for commercial vehicle registration.

(1) Application form. An applicant shall apply for commercial license plates through the appropriate county tax assessor-collector upon forms prescribed by the director and shall require, at a minimum, the following information:

(A) owner name and complete address;

(B) complete description of vehicle, including empty weight; and

(C) motor number or serial number.

(2) Empty weight determination.

(A) The weight of a Motor Bus shall be the empty weight plus carrying capacity, in accordance with Transportation Code, §502.055.

(B) The weight of a vehicle cannot be lowered below the weight indicated on a Manufacturer's Certificate of Origin unless a corrected Manufacturer's Certificate of Origin is obtained.

(C) In all cases where the department questions the empty weight of a particular vehicle, the applicant should present a weight certificate from a public weight scale or the Department of Public Safety.

(3) Gross weight.

(A) Determination of Weight. The combined gross weight of vehicles registering for combination license plates shall be determined by the empty weight of the truck or truck tractor combined with the empty weight of the heaviest semitrailer or semitrailers used or to be used in combination therewith, plus the heaviest net load to be carried on such combination during the motor vehicle registration year, provided that in no case may the combined gross weight be less than 18,000 pounds.

(B) Restrictions. The following restrictions apply to combined gross weights.

(i) After a truck or truck tractor is registered for a combined gross weight, such weight cannot be lowered at any subsequent date during the registration year. The owner may, however, lower the gross weight when registering the vehicle for the following registration year, provided that the registered combined gross weight is sufficient to cover the heaviest load to be transported during the year and provided that the combined gross weight is not less than 18,000 pounds.

(ii) A combination of vehicles is restricted to a total gross weight not to exceed 80,000 pounds; however, all combinations may not qualify for 80,000 pounds unless such weight can be properly distributed in accordance with axle load limitations, tire size, and distance between axles, in accordance with Transportation Code, §623.011.

(4) Motor number or serial number. Ownership must be established by a court order if no motor or serial number can be identified. Once ownership has been established, the department will assign a number upon payment of the fee.

(5) Accompanying documentation. Unless otherwise exempted by law, completed applications for commercial license plates shall be accompanied by:

(A) prescribed registration fees;

(B) prescribed local fees or other fees that are collected in conjunction with registering a vehicle;

(C) evidence of financial responsibility as required by Transportation Code, §502.046 if the applicant is a motor carrier as defined by §218.2 of this title (relating to Definitions), proof of financial responsibility may be in the form of a registration listing or an international stamp indicating that the vehicle is registered in compliance with Chapter 218, Subchapter B of this title (relating to Motor Carrier Registration);

(D) an application for Texas Title in accordance with Subchapter A of this chapter, or other proof of ownership;

(E) proof of payment of the Federal Heavy Vehicle Use Tax, if applicable;

(F) an original or certified copy of the current permit issued in accordance with Occupations Code, Chapter 2308, Subchapter C, [~~Certificate of Registration issued in accordance with Transportation Code, Chapter 643,~~] if application is being made for Tow Truck license plates; and

(G) other documents or fees required by law.

(6) Proof of payment required. Proof of payment of the Federal Heavy Vehicle Use Tax is required for vehicles with a gross registration weight of 55,000 pounds or more, or in cases where the vehicle's gross weight is voluntarily increased to 55,000 pounds or more. Proof of payment shall consist of an original or photocopy of the Schedule 1 portion of Form 2290 receipted by the Internal Revenue Service (IRS), or a copy of the Form 2290 with Schedule 1 attached as filed with the IRS, along with a photocopy of the front and back of the canceled check covering the payment to the IRS.

(7) Proof of payment not required. Proof of payment of the Federal Heavy Vehicle Use Tax is not required:

(A) for new vehicles when an application for title and registration is supported by a Manufacturer's Certificate of Origin;

(B) on used vehicles when an application for title and registration is filed within 60 days from the date of transfer to the applicant as reflected on the assigned title, except that proof of payment will be required when an application for Texas title and registration is accompanied by an out-of-state title that is recorded in the name of the applicant;

(C) when a vehicle was previously wrecked, in storage, or otherwise out of service and, therefore, not registered or operated during the current registration year or during the current tax year, provided that a non-use affidavit is signed by the operator; and

(D) as a prerequisite to registration of vehicles apprehended for operating without registration or reciprocity or when an owner or operator purchases temporary operating permits or additional weight.

(d) Renewal of commercial license plates.

(1) Registration period. The department will establish the registration period for commercial vehicles, unless specified by statute. Commercial license plates are issued for established annual registration periods as follows.

(A) March expiration. The following license plates are issued for the established annual registration period of April 1st through March 31st of the following year:

(i) City Bus license plates;

(ii) Combination license plates; and

(iii) Motor Bus license plates.

(B) Five-year registration with March 31st expiration. The following license plates are available with a five-year registration period. Registration fees for the license plates listed below may be paid on an annual basis, or may be paid up front for the entire five-year period:

(i) Five-year Rental Trailer license plates issued for rental trailers that are part of a rental fleet; and

(ii) Five-year Token Trailer license plates, available to owners of semitrailers to be used in combination with truck-tractors displaying Apportioned or Combination license plates.

(2) License Plate Renewal Notice. The department will mail a License Plate Renewal Notice, indicating the proper registra-

tion fee and the month and year the registration expires, to each vehicle owner approximately six to eight weeks prior to the expiration of the vehicle's registration.

(3) Return of License Plate Renewal Notices. License Plate Renewal Notices should be returned by the vehicle owner to the department or the appropriate county tax assessor-collector, as indicated on the License Plate Renewal Notice. Unless otherwise exempted by law, License Plate Renewal Notices may be returned either in person or by mail, and shall be accompanied by:

(A) statutorily prescribed registration renewal fees;

(B) prescribed local fees or other fees that are collected in conjunction with registration renewal;

(C) evidence of financial responsibility as required by Transportation Code, §502.046; and

(D) other prescribed documents or fees.

(4) Lost or destroyed License Plate Renewal Notice. If a License Plate Renewal Notice is lost, destroyed, or not received by the vehicle owner, the vehicle may be registered if the owner presents personal identification acceptable to the county tax assessor-collector. Failure to receive the notice does not relieve the owner of the responsibility to renew the vehicle's registration.

(e) Transfer of commercial vehicle license plates.

(1) Transfer between persons. With the exceptions noted in paragraph (3) of this subsection, when ownership of a vehicle displaying commercial vehicle license plates is transferred, application for transfer of such license plates shall be made with the county tax assessor-collector in the county in which the purchaser resides. If the purchaser does not intend to use the vehicle in a manner that would qualify it for the license plates issued to that vehicle, such plates must be exchanged for the appropriate license plates.

(2) Transfer between vehicles. Commercial vehicle license plates are non-transferable between vehicles.

(3) Transfer of Apportioned and Tow Truck license plates. Apportioned and Tow Truck license plates are non-transferable between persons or vehicles, and become void if the vehicle to which the license plates were issued is sold.

(f) Replacement of lost, stolen, or mutilated commercial vehicle license plates. An owner of lost, stolen, or mutilated commercial vehicle license plates may obtain replacement license plates by filing an Application for Replacement Plates and remitting the prescribed fee to the county tax assessor-collector of the county in which the owner resides.

§217.54. Registration of Fleet Vehicles.

(a) Scope. A registrant may consolidate the registration of multiple motor vehicles, including trailers and semi-trailers, in a fleet instead of registering each vehicle separately. This section prescribes the policies and procedures for fleet registration.

(b) Eligibility. A fleet must meet the following requirements to be eligible for fleet registration.

(1) No fewer than twenty-five vehicles will be registered as a fleet;

(2) Vehicles may be registered in annual increments for up to eight years;

(3) All vehicles in a fleet must be owned by or leased to the same business entity;

(4) All vehicles must be vehicles that are not registered under the International Registration Plan; and

(5) Each vehicle must currently be titled in Texas or be issued a registration receipt, or the registrant must submit an application for a title or registration for each vehicle.

(c) Application.

(1) Application for fleet registration must be in a form prescribed by the department. At a minimum the form will require:

(A) the full name and complete address of the registrant;

(B) a description of each vehicle in the fleet, which may include the vehicle's model year, make, model, vehicle identification number, document number, body style, gross weight, empty weight, and for a commercial vehicle, manufacturer's rated carrying capacity in tons;

(C) the existing license plate number, if any, assigned to each vehicle; and

(D) any other information that the department may require.

(2) The application must be accompanied by the following items:

(A) in the case of a leased vehicle, a certification that the vehicle is currently leased to the person to whom the fleet registration will be issued;

(B) registration fees prescribed by law for the entire registration period selected by the registrant;

(C) local fees or other fees prescribed by law and collected in conjunction with registering a vehicle for the entire registration period selected by the registrant;

(D) evidence of financial responsibility for each vehicle as required by Transportation Code, §502.046, unless otherwise exempted by law;

(E) annual proof of payment of Heavy Vehicle Use Tax;

(F) the state's portion of the vehicle inspection fee for the vehicle inspections conducted in Texas; and

(G) any other documents or fees required by law.

(d) Registration period.

(1) The fleet owner will designate a single registration period for a fleet so the registration period for each vehicle will expire on the same date.

(2) The fleet registration period will begin on the first day of a calendar month and end on the last day of a calendar month.

(e) Insignia.

(1) As evidence of registration, the department will issue distinguishing insignia for each vehicle in a fleet.

(2) The insignia shall be included on the license plate and affixed to the vehicle.

(3) The insignia shall be attached to the rear license plate if the vehicle has no windshield.

(4) The registration receipt for each vehicle shall at all times be carried in that vehicle and be available to law enforcement personnel.

(5) Insignia may not be transferred between vehicles, owners, or registrants.

(f) Fleet composition.

(1) A registrant may add a vehicle to a fleet at any time during the registration period. An added vehicle will be given the same registration period as the fleet and will be issued fleet registration insignia.

(2) A registrant may remove a vehicle from a fleet at any time during the registration period. The fleet registrant shall return the fleet registration insignia for that vehicle to the department at the time the vehicle is removed from the fleet. Credit for any vehicle removed from the fleet for the remaining full year increments can be applied to any vehicle added to the fleet or at the time of renewal. No refunds will be given if credit is not used or the account is closed.

(3) If the number of vehicles in an account falls below twenty-five during the registration period, fleet registration will remain in effect. If the number of vehicles in an account is below twenty-five at the end of the registration period, fleet registration will be canceled. In the event of cancellation, each vehicle shall be registered separately. The registrant shall immediately return all fleet registration insignia to the department.

(g) Fees.

(1) When a fleet is first established, the department will charge a registration fee for each vehicle for the entire registration period selected. A currently registered vehicle, however, will be given credit for any remaining time on its separate registration.

(2) When a vehicle is added to an existing fleet, the department will charge a registration fee that is prorated based on the number of months of fleet registration remaining. If the vehicle is currently registered, this fee will be adjusted to provide credit for the number of months of separate registration remaining.

(3) When a vehicle is removed from fleet registration, it will be considered to be registered separately. The vehicle's separate registration will expire on the date that the fleet registration would have expired. The registrant must pay the statutory replacement fee to obtain regular registration insignia before the vehicle may be operated on a public highway.

(h) Payment. Payment will be made in the manner prescribed by the department.

(i) Cancellation.

(1) The department will cancel registration for non-payment and lack of proof of annual payment of the Heavy Vehicle Use Tax.

(2) The department may cancel registration on any fleet vehicle that is not in compliance with the inspection requirements under Transportation Code, Chapter 548 and the Texas Department of Public Safety rules regarding inspection requirements on the anniversary date(s) of the registration.

(3) A vehicle with a cancelled registration may not be operated on a public highway.

(4) If the department cancels the registration of a vehicle under this subsection, the registrant can request the department to reinstate the registration by doing the following:

(A) complying with the requirements for which the department cancelled the registration;

(B) providing the department with notice of compliance on a form prescribed by the department; and

(C) for a registration cancelled under paragraph 2 of this subsection, paying an administrative fee in the amount of $10.

(5) A registrant is only eligible for reinstatement of the registration within 90 calendar days of the department's notice of cancellation.

(6) If a registrant fails to timely reinstate the registration of a cancelled vehicle registration under this section, the registrant:

(A) is not entitled to a credit or refund of any registration fees for the vehicle; and

(B) must immediately return the registration insignia to the department.

(j) Inspection fee. The registrant must pay the department by the deadline listed in the invoice for the state's portion of the vehicle inspection fee for a vehicle inspection conducted in Texas.

§217.55. Exempt and Alias Vehicle Registration.

(a) Exempt plate registration.

(1) Issuance. Pursuant to Transportation Code, §502.453 or §502.456, certain vehicles[, ~~a vehicle~~] owned by and used exclusively in the service of a governmental agency, owned by a commercial transportation company and used exclusively for public school transportation services, designed and used for fire-fighting or owned by a volunteer fire department and used in the conduct of department business, privately owned and[, ~~or~~] used in volunteer county marine law enforcement activities, used by law enforcement under an alias for covert criminal investigations, owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operations, or owned or leased by a non-profit emergency medical service provider is exempt from payment of a registration fee and is eligible for exempt plates.

(2) Application for exempt registration.

(A) Application. An application for exempt plates shall be made to the county tax assessor-collector, shall be made on a form prescribed by the department, and shall contain the following information:

(i) vehicle description;

(ii) name of the exempt agency;

(iii) an affidavit executed by an authorized person stating that the vehicle is owned or under the control of and will be operated by the exempt agency; and

(iv) a certification that each vehicle listed on the application has the name of the exempt agency printed on each side of the vehicle in letters that are at least two inches high or in an emblem that is at least 100 square inches in size and of a color sufficiently different from the body of the vehicle as to be clearly legible from a distance of 100 feet.

(B) Emergency medical service vehicle.

~~*[(i)* Exempt registration may be issued for a vehicle that is owned or leased by a non-profit emergency medical service provider; a municipality or county; or a non-profit emergency medical service provider chief or supervisor in accordance with Transportation Code, §502.456.]~~

(i) [~~(ii)~~] The application for exempt registration must contain the vehicle description, the name of the emergency

medical service provider, and a statement signed by an officer of the emergency medical service provider stating that the vehicle is used exclusively as an emergency response vehicle and qualifies for registration under Transportation Code, §502.456.

(ii) [~~(iii)~~] A copy of an emergency medical service provider license issued by the Department of State Health Services must accompany the application.

(C) Fire-fighting vehicle. The application for exempt registration of a fire-fighting vehicle or vehicle owned privately [~~or~~] by a volunteer fire department and used exclusively in the conduct of department business must contain the vehicle description, including a description of any fire-fighting equipment mounted on the vehicle if the vehicle is a fire-fighting vehicle. The affidavit must be executed by the person who has the proper authority and shall state either: [~~that:~~]

(i) the vehicle is [~~privately owned and is~~] designed and used exclusively for fire-fighting; or

(ii) the vehicle is owned by a volunteer fire department and is used exclusively in the conduct of its business.

(D) County marine law enforcement vehicle. The application for exempt registration of a privately owned vehicle used by a volunteer exclusively in county marine law enforcement activities, including rescue operations, under the direction of the sheriff's department verifying that fact.

(E) United States Coast Guard Auxiliary vehicle. The application for exempt registration of a vehicle owned by units of the United States Coast Guard Auxiliary headquartered in Texas and used exclusively for conduct of United States Coast Guard or Coast Guard Auxiliary business and operation, including search and rescue, emergency communications, and disaster operations, must include a statement by a person having authority to act for the United States Coast Guard Auxiliary that the vehicle or trailer is used exclusively in fulfillment of an authorized mission of the United States Coast Guard or Coast Guard Auxiliary, including search and rescue, emergency communications, or disaster operations.

(3) Exception. A vehicle may be exempt from payment of a registration fee, but display license plates other than exempt plates if the vehicle is not registered under subsection (b) of this section.

(A) If the applicant is a law enforcement office, the applicant must present a certification that each vehicle listed on the application will be dedicated to law enforcement activities.

(B) If the applicant is exempt from the inscription requirements under Transportation Code, §721.003, the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.003. The applicant must also provide a citation to the section that exempts the vehicle.

(C) If the applicant is exempt from the inscription requirements under Transportation Code, §721.005 the applicant must present a certification that each vehicle listed on the application is exempt from inscription requirements under Transportation Code, §721.005. The applicant must also provide a copy of the order or ordinance that exempts the vehicle.

(D) If the applicant is exempt from the inscription requirements under Education Code, §51.932, the applicant must present a certification that each vehicle listed on the application is exempt from the inscription requirements under Education Code, §51.932. Exempt plates will be marked with the replacement year.

(b) Affidavit for issuance of exempt registration under an alias.

(1) On receipt of an affidavit for alias exempt registration, approved by the executive administrator of an exempt law enforcement agency, the department will issue alias exempt license plates for a vehicle and register the vehicle under an alias for the law enforcement agency's use in covert criminal investigations.

(2) The affidavit for alias exempt registration must be in a form prescribed by the director and must include the vehicle description, a sworn statement that the vehicle will be used in covert criminal investigations, and the signature of the executive administrator or the executive administrator's designee as provided in paragraph (3) of this subsection. The vehicle registration insignia of any vehicles no longer used in covert criminal investigations shall be surrendered immediately to the department.

(3) The executive administrator, by annually filing an authorization with the director, may appoint a staff designee to execute the affidavit. A new authorization must be filed when a new executive administrator takes office.

(4) The letter of authorization must contain a sworn statement delegating the authority to sign the affidavit to a designee, the name of the designee, and the name and the signature of the executive administrator.

(5) The affidavit for alias exempt registration must be accompanied by a title application under §217.103 of this title (relating to Restitution Liens). The application must contain the information required by the department to create the alias record of vehicle registration and title.

(c) Replacement of exempt registration.

(1) If an exempt plate is lost, stolen, or mutilated, a properly executed application for exempt plates must be submitted to the county tax assessor-collector.

(2) An application for replacement exempt plates must contain the vehicle description, original license number, and the sworn statement that the license plates furnished for the vehicle have been lost, stolen, or mutilated and will not be used on any other vehicle.

(d) Title requirements. Unless exempted by statute, a vehicle must be titled at the time the exempt registration is issued.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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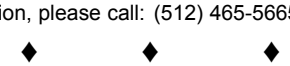

SUBCHAPTER D. NON-REPAIRABLE AND SALVAGE MOTOR VEHICLES

43 TAC §217.88

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary

and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.88. Sale, Transfer, or Release of Ownership of a Non-repairable or Salvage Motor Vehicle.

(a) With a non-repairable or salvage motor vehicle title. The ownership of a motor vehicle for which a non-repairable or salvage vehicle title has been issued, including a motor vehicle that has a "Flood Damage" notation on the title, may be sold, transferred, or released to anyone, except that an insurance company may sell, transfer, or release ownership of a motor vehicle for which a non-repairable or salvage vehicle title has been issued, only to:

(1) a salvage vehicle dealer;

(2) an out-of-state buyer;

(3) a buyer in a casual sale; or

(4) a metal recycler.

(b) Without a non-repairable or salvage motor vehicle title. If a non-repairable or salvage vehicle title or comparable out-of-state ownership document has not been issued for a non-repairable or salvage motor vehicle, only a salvage vehicle dealer, metal recycler, or governmental entity may sell, transfer, or otherwise release ownership of the motor vehicle. A salvage vehicle dealer, metal recycler, or governmental entity may only sell, transfer, or otherwise transfer ownership of a motor vehicle to which this subsection applies to:

(1) a salvage vehicle dealer;

(2) a metal recycler;

(3) a governmental entity;

(4) an insurance company; or

(5) an out-of-state buyer.

(c) Sale of self-insured non-repairable or salvage motor vehicle. The owner of a self-insured non-repairable or salvage motor vehicle that has been damaged and removed from normal operation shall obtain a non-repairable or salvage vehicle title before selling or otherwise transferring ownership of the motor vehicle.

(d) Casual sales. A salvage vehicle dealer, salvage pool operator, or insurance company may sell up to five non-repairable or salvage motor vehicles, for which non-repairable or salvage vehicle titles have been issued, to a person in a casual sale during a calendar year.

(e) Records of casual sales.

(1) A salvage vehicle dealer, salvage pool operator, or insurance company must maintain records of each casual sale made during the previous 36 months, in accordance with Transportation Code, §501.108, [~~§501.105,~~] that at a minimum contain:

(A) the date of sale;

(B) the sales price;

(C) the name and address of the purchaser;

(D) a legible photocopy of the purchaser's government-issued photo identification;

(E) the form of identification provided, the identification document number, and the name of the jurisdiction that issued the identification document;

(F) the description of the motor vehicle, including the vehicle identification number, model year, make, body style, and model;

(G) a photocopy of the front and back of the properly assigned ownership document provided to the purchaser; and

(H) the purchaser's certification, on a form provided by the department, that the purchase of motor vehicles in a casual sale is not intended to circumvent the provisions of Transportation Code, Chapter 501 (relating to Certificates of Title) and Occupations Code, Chapter 2302 (relating to Salvage Vehicle Dealers).

(2) Records may be maintained on a form provided by the department or in an electronic format.

(3) Records must be maintained on the business premises of the seller, and shall be made available for inspection upon request.

(f) Export-only sales.

(1) In accordance with Transportation Code, §501.099, only a licensed salvage vehicle dealer, including a salvage pool operator acting as agent for an insurance company, or governmental entity may sell a non-repairable or salvage motor vehicle to a person who resides outside the United States, and only:

(A) when a non-repairable or salvage vehicle title has been issued for the motor vehicle prior to offering it for export-only sale; and

(B) prior to the sale, the seller obtains a legible photocopy of a government-issued photo identification of the purchaser that can be verified by law enforcement, issued by the jurisdiction in which the purchaser resides that may consist of:

(i) a passport;

(ii) a driver's license;

(iii) consular identity document;

(iv) national identification certificate or identity document; or

(v) other government-issued identification that includes the name of the jurisdiction issuing the document, the purchaser's full name, foreign address, date of birth, photograph, and signature.

(2) The seller must obtain the purchaser's certification, on a form prescribed by the department, that the purchaser will remove the motor vehicle from the United States and will not return the motor vehicle to any state of the United States as a motor vehicle titled or registered under its manufacturer's vehicle identification number.

(3) The seller must provide the buyer with a properly assigned non-repairable or salvage vehicle title.

(4) The seller must stamp FOR EXPORT ONLY and the seller's salvage vehicle dealer license number or the governmental en-

tity's name, whichever applies, on the face of the title and on any unused reassignments on the back of the title.

(g) Records of export-only sales.

(1) A salvage vehicle dealer or governmental entity that sells a non-repairable or salvage motor vehicle for export-only must maintain records of all export-only sales.

(2) Records of each sale must include:

(A) a legible copy of the stamped and properly assigned non-repairable or salvage vehicle title;

(B) the buyer's certified statement required by subsection (f)(2) of this section;

(C) a legible copy of the buyer's photo identification document;

(D) a legible copy of any other documents related to the sale of the motor vehicle; and

(E) a listing of each motor vehicle sold for export-only that states the:

(i) date of sale;

(ii) name and address of the seller;

(iii) name and address of the purchaser;

(iv) purchaser's identification document number;

(v) name of the country that issued the identification document;

(vi) the form of identification provided by the purchaser; and

(vii) description of the motor vehicle that includes the year, make, model, and vehicle identification number of the motor vehicle.

(3) The listing required by paragraph (2)(E) of this subsection must be maintained either on a form provided by the department or in an electronic format approved by the department.

(4) The salvage vehicle dealer or governmental entity shall submit the listing prescribed by paragraph (2)(E) of this subsection to the department within 30 days from the date of sale.

(5) Upon receipt of the listing prescribed by paragraph (2)(E) of this subsection, the department will place an appropriate notation on the motor vehicle record to identify it as a motor vehicle sold for export-only that may not be operated, retitled, or registered in this state.

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

Filed with the Office of the Secretary of State on April 8, 2016.

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: May 22, 2016
For further information, please call: (512) 465-5665

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SUBCHAPTER F. MOTOR VEHICLE RECORD INFORMATION

43 TAC §217.123

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Chapter 502, Registration of Vehicles; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates. More specifically, amendments are also proposed under Transportation Code, §501.0235, which provides the department may require an applicant for a title to provide current personal identification as determined by department rule.

CROSS REFERENCE TO STATUTE

Transportation Code, §§501.022, 501.023, 502.095, 502.453, 502.456, and 504.202.

§217.123. Access to Motor Vehicle Records.

(a) Request for records. A person seeking motor vehicle record information shall submit a written request on the form required by the department. Information will be released in accordance with Title 18 U.S.C. §2721 et seq., Transportation Code, Chapter 730, and Government Code, §552.130. A completed and properly executed form must include, at a minimum:

(1) the name and address of the requestor;

(2) the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;

(3) a photocopy of the requestor's identification;

(4) a statement that the requested information may only be released if the requestor is the subject of the record, if the requestor has written authorization for release from the subject of the record, or if the intended use is for a permitted use as indicated on the form;

(5) a certification that the statements made on the form are true and correct; and

(6) the signature of the requestor.

(b) Identification required. A person may not apply for receipt of personal information unless the person presents current photo identification containing a unique identification number. The identification document must be a:

(1) driver's license or state identification certificate issued by a state or territory of the United States;

(2) United States or foreign passport;

(3) United States military identification card; [~~or~~]

(4) United States Department of Homeland Security, United States Citizenship and Immigration Services, or United States Department of State identification document; or[~~.~~]

(5) Concealed handgun license issued by the Texas Department of Public Safety under Government Code, Chapter 411, Subchapter H.

(c) Electronic access. The department may make motor vehicle record information available under the terms of a written service agreement.

(1) Agreement with business or individuals. The written service agreement with a business or individual must contain:

(A) the specified purpose of the agreement;

(B) an adjustable account, if applicable, in which an initial deposit and minimum balance is maintained in the amount of:

(i) $200 for an on-line access account; or

(ii) $1,000 for a prepaid account for batch purchase of motor vehicle record information;

(C) termination and default provisions;

(D) service hours for access to motor vehicle records for on-line access;

(E) the contractor's signature;

(F) a statement that the use of motor vehicle record information obtained by virtue of a service agreement is conditional upon its being used:

(i) in accordance with 18 U.S.C. §2721 et seq.[~~, Transportation Code, §502.008,~~] and Transportation Code, Chapter 730; and

(ii) only for the purposes defined in the agreement; and

(G) the statements required by subsection (a) of this section.

(2) Agreements with governmental agencies.

(A) The written service agreement with an agency must contain:

(i) the specified purpose of the agreement;

(ii) method of payment;

(iii) notification regarding the charges;

(iv) a statement that the use of motor vehicle record information obtained by virtue of a service agreement is conditional upon its being used in accordance with 18 U.S.C. §2721 et seq.[~~, Transportation Code, §502.008,~~] and Transportation Code, Chapter 730, and only for the purposes defined in the agreement;

(v) the statements required by subsection (a) of this section;

(vi) the signature of an authorized official; and

(vii) an attached statement citing the agency's authority to obtain social security number information, if applicable.

(B) Texas Law Enforcement Telecommunication System access is exempt from the payment of fees.

(d) Ineligibility to receive personal information. The department may prohibit a person, business, or agency from receiving personal information if the department finds a violation of a term or condition of the agreement entered into in accordance with subsection (c) of this section.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

CHAPTER 217. VEHICLE TITLES AND REGISTRATION

The Texas Department of Motor Vehicles (department) proposes amendments to §217.23, Initial Application for Vehicle Registration; §217.24, Vehicle Last Registered in Another Jurisdiction; §217.29, Vehicle Registration Renewal via Internet; §217.32, Replacement of License Plates, Symbols, Tabs, and Other Devices; §217.52, Marketing of Specialty License Plates through a Private Vendor; §217.53, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle; and §217.72, Automated Equipment. The department also proposes new Subchapter I, Fees; §217.181, Purpose and Scope; §217.182, Registration Transaction; §217.183, Fee Amount; §217.184, Exclusions; and §217.185, Allocation of Processing and Handling Fee. In addition, the department proposes the repeal of §217.31, License Plate Reissuance Program.

EXPLANATION OF PROPOSED AMENDMENTS, NEW SUBCHAPTER AND REPEAL

House Bill 2202, 83rd Legislature, Regular Session, 2013, added new §502.1911 to the Transportation Code, which authorizes the department to establish a processing and handling fee to be collected to cover the expenses of collecting registration fees. House Bill 2202 further directs the Board of the Texas Department of Motor Vehicles (board) to "set the fee in an amount that..., is sufficient to cover the expenses associated with collecting registration fees[.]" The proposed rules set the allocation of the processing and handling fee to the department, county tax assessor-collectors, and deputies. The proposed rules also define the scope of a registration transaction and those transactions that are exempt from the processing and handling fee.

The purpose of these proposed rules is to support the department's mission to serve, protect, and advance the citizens and industries in this state with quality motor vehicle related services. To accomplish this mission, in this and related packages, the department proposes rules that will ensure accountability and transparency in the provision of services, combat fraud, streamline and standardize processes across the state, set service standards to enhance consumer confidence, allow for more funding to go toward transportation, establish structures that allow for cost-savings in the future, and modernize services to bring them in line with the needs of today's and tomorrow's consumers.

In concert with this proposal, but in a separate package, the department is also proposing rules to establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any

bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies. The proposed rules related to deputies reference the fee amounts that can be charged or retained by deputies; therefore, amendments to §217.161, and new sections §§217.162 - 217.168 are related to the fee rules proposed pursuant to Transportation Code, §520.0071, especially §217.185, Allocation of Processing and Handling Fee.

In developing the proposed fee amounts, the department considered information gathered over the past two years from multiple meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership. Further, the department contracted with Texas A&M Transportation Institute (TTI) to conduct research regarding costs associated with processing vehicle registration and title transactions. The TTI report estimated costs for county tax assessor-collectors to process vehicle registration transactions using the average transaction times as: (1) walk-in vehicle registration transactions: $2.59; (2) online vehicle registration transactions: $1.36; and, (3) mail-in vehicle registration transactions: $1.97. The estimated costs contained in the TTI report did not anticipate the efficiencies and changes in service proposed in this rule package or any future efficiencies implemented by the counties or the state. The costs calculated by the report included costs associated with collection of local-only fees (e.g., scofflaw, county road and bridge), which are not statewide registration issues, and therefore not under the control of the department in these rules. The proposed compensation of $2.30 for a walk-in transaction, while slightly lower than the TTI conclusion, is higher than the current compensation of $1.90, and should be sufficient to cover the costs of performing the registration transactions when all other costs and efficiencies are considered, including the proposal for the state to perform all aspects of the fulfillment of online registration transactions. Additionally, the study concluded that mail-in vehicle registration transaction cost is $1.97, whereas compensation in the proposed rule is set at $2.30. Although county compensation for online transactions is reduced to $.25, the department is assuming all costs of fulfilling these online transactions at its expense, including payment of the $2 Texas Online fee, thus virtually eliminating costs to the county for these transactions. The counties will continue to hold the registration revenue for these transactions and will benefit from the interest for the 34 days the funds are maintained in county accounts.

The TTI report, available on the department's website, is the most recent and comprehensive collection and analysis of data available to the department regarding costs associated with processing registration and title transactions. The TTI report is available on the department's website at http://www.txdmv.gov/reports-and-data/doc_download/5121-estimating-the-cost-to-process-vehicle-registration-and-title-transactions-in-texas-counties and is hereby incorporated by reference into this preamble.

SECTION BY SECTION ANALYSIS

Amendments proposed to §217.23, Initial Application for Vehicle Registration, add a reference to the processing and handling fee to be established by proposed new §217.183, Fee Amount. In addition, language is added to address vehicle registration in situations where a county tax assessor-collector office is closed for more than a week, which aligns this rule with §217.4, Initial Application for Title.

Amendments proposed to §217.24, Vehicle Last Registered in Another Jurisdiction, add a reference to the processing and handling fee to be established by proposed new §217.183, Fee Amount.

Amendments proposed to §217.29, Vehicle Registration Renewal via Internet, remove language on fees and remove fulfillment responsibilities related to renewal registrations from the county tax assessor-collectors and transfers these obligations to the department. Based on recent actions by the Texas Department of Information Resources regarding Automated Clearing House (ACH) fees, the department plans to research possible implementation strategies for and fiscal impacts of acceptance of ACH transactions.

The department proposes the repeal of §217.31, License Plate Reissuance Program, because the section is unnecessary due to amendments to §217.32, Replacement of License Plates, Symbols, Tabs, and Other Devices.

Amendments are proposed to §217.32, to add language permitting replacement of a license plate if the license plate needs to be replaced for cosmetic or readability reasons.

Amendments are proposed to §217.52, Marketing of Specialty License Plates through a Private Vendor, to eliminate no-charge replacement of specialty plates if the plate is at least seven years old. The proposed amendments to this section permit optional replacement of plates at any time upon payment of the required fee. The proposed amendments also renumber subsections due to the elimination of a subsection.

Amendments are proposed to §217.53, Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle, to correct a statutory citation and to delete a reference to §217.31, which is proposed for repeal.

Amendments proposed to §217.72, Automated Equipment, reduce the automated registration and titling system fee required by Transportation Code, §502.356 from $1 to $.50, and reiterates that the fee will be deposited into a subaccount of the Texas Department of Motor Vehicles fund.

Proposed new §217.181, Purpose and Scope, states the intention to prescribe the processing and handling fee authorized by Transportation Code, §502.1911.

Proposed new §217.182, Registration Transaction, defines registration transaction for purposes of the subchapter. Registration transaction includes all registration and registration renewal transactions under Transportation Code, Chapter 502, and other listed transactions.

Proposed new §217.183, Fee Amount, sets the amount of the processing and handling fee at $5 and requires that the processing and handling fee be collected with each registration transaction processed by the department, a tax assessor-collector, or a deputy appointed by a tax assessor-collector. This section also clarifies that if a transaction includes both registration and issuance of a license plate or specialty plate, the processing and handling fee shall be collected on the registration transaction only. The proposed fee amount may change depending upon comments received after publication of these proposed rules.

Proposed new §217.184, Exclusions, lists the transactions that are exempt from the processing and handling fee.

Proposed new §217.185, Allocation of Processing and Handling Fee, outlines the allocation of the processing and handling fee for all types of registration transactions. For walk-in transactions processed in person at the office of a county tax assessor-collector and mail-in transactions, the county retains $2.30 of the $5 processing and handling fee, and remits the remainder to the department. For registration transactions processed through the department's online portal, which are discounted by $1.25, counties retain $.25 per transaction, and $3.50 is remitted to the department. The department pays the $2 per credit card transaction fee to Texas Online, which is currently paid by the customer. Further, the proposed rule reduces the total online registration fee to an amount that is lower than the current fee for such a transaction by passing along the savings to the customer. For registration transactions processed by a deputy, the deputy retains $1 in addition to any convenience fees allowed by proposed §217.168 (in a separate rule package), and $1.30 is retained by the county. The portion of the processing and handling fee retained by the department, as set out in the proposed rule, is necessary to fill agency funding shortfalls not provided for by other department revenue collections allowed by statute. The new section also clarifies that the entity receiving the application and processing a temporary permit transaction under Transportation Code, §502.094 or §502.095, retains the entire processing and handling fee. The proposed fee allocation may change depending upon comments received after publication of these proposed rules.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments, new subchapter, and repeal as proposed are in effect, there will be fiscal implications for state and local governments. The fiscal implications are affected by a shift in some of the services provided for online registration renewals from counties to the department, and a shift in the distribution of fees received with vehicle registration renewals. The fiscal implications assume that for the first five years the rule is in effect, 20% more vehicle registrations will be renewed using online resources rather than another transaction method. In addition, it is assumed that total vehicle registrations will increase by 1.5% year to year. County tax assessor-collectors will see a reduction of in-person transactions, and a reduction in processing online renewal registrations. Those reductions will allow counties to reduce overall costs of operation. In addition, both counties and the state will see a savings as a result of discontinuing the mandatory seven-year plate replacement cycle. County tax assessor-collectors will see a reduction in processing and postage costs associated with the mandatory replacement of license plates. For state government, savings will result from a reduction in production costs associated with manufacturing license plates.

No reductions in costs to state government are expected as a result of enforcing or administering the proposed rules. For state government, the predicted effect of the proposed rules in the first year will be an increase in costs of approximately $6,447,899. In the second year, the predicted effect of the new rules will be an increase in costs to the state of approximately $12,351,478. In the third year, the predicted effect of the new rules will be an increase in costs to the state of approximately $15,108,514. In the fourth year, the predicted effect of the new rules will be an increase in costs to the state of approximately $19,262,930. In the fifth year, the predicted effect of the new rules will be an increase in costs to the state of approximately $23,537,837. Over the first five years the rules are in effect, the total increase in costs to the state will be approximately $76,708,658.

No additional costs to local (county) government are expected as a result of enforcing or administering the proposed rules. For local governments, specifically county tax assessor-collector offices, the predicted effect of the proposed rules in the first year will be a decrease in costs of approximately $4,980,533. This decrease in costs is an aggregate number for all 254 county tax assessor-collectors in Texas. In the second year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $9,156,210. In the third year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $10,901,976. In the fourth year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $13,509,423. In the fifth year, the predicted effect of the new rules will be a decrease in costs to the counties of approximately $16,166,976. Over the first five years the rule is in effect, the total reduction in costs to counties is approximately $54,715,117.

For local governments, specifically counties, the predicted effect of the new rules in the first year will be a decrease in revenues to counties of approximately $4,966,000. This decrease in revenues is an aggregate number for all 254 county tax assessor-collectors in Texas compared to anticipated current year revenues. In the second year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $10,656,000. In the third year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $13,957,000. In the fourth year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $18,949,000. In the fifth year, the predicted effect of the new rules will be a decrease in revenues to the counties of approximately $23,822,000. Over the first five years the rule is in effect, the total decrease in revenue to counties will be approximately $72,349,000.

The predicted effect of the new rules in the first year will be an increase in revenues to the department of approximately $2,455,000. In the second year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $19,469,000. In the third year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $20,312,000. In the fourth year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $21,592,000. In the fifth year, the predicted effect of the new rules will be an increase in revenues to the department of approximately $22,906,000. Over the first five years the rule is in effect, the total increase in revenue to the department will be approximately $86,734,000.

Additionally, the implementation of these rules will result in approximately $224,772,638 in a five year period flowing to State Highway Fund (Fund 0006) to support critical transportation needs for the state.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no anticipated significant impact on local economies or overall employment as a result of enforcing or administering the amendments, new subchapter, and repeal.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments, new subchapter, and repeal are in effect, the public benefit anticipated as a result of

enforcing or administering the proposed rules will be to provide faster, more convenient and cost-effective services to motorists, and an increase in funding for critical transportation needs. The public will benefit from a decrease in the dependency on in-person registration transactions during an entity's business hours by incentivizing online transactions and reducing the cost of delivering online services. Individuals who renew their registrations online will benefit from a discount to the total registration fee, and from the convenience of being able to renew without having to visit an office in person. Implementation of the rules will also standardize the costs for delivering registration services to the public regardless of where or in what manner the transaction is processed. Transparency of funding sources and amounts for the department will be an additional benefit to the public as the agency moves to a self-funded model through these rules. The public will also benefit by not having to replace a license plate on a registered vehicle that is in good condition for as long as the owner desires. To the extent there are minor overall increases in cost to the public as a result of the implementation of the processing and handling fee, this cost is required by statute, which states that the fee must be set in an amount sufficient to cover the costs of the department, county tax assessor-collectors, deputies, and other specified elements of providing the registration services. Moreover, if the processing and handling fee is not adopted, the department would suffer a shortfall in revenue to support agency operations and the level of service provided by the department to the public would be reduced.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code, Chapter 2006, the department does not anticipate any adverse economic effect on small businesses or micro-businesses due to the adoption of the amendments, new subchapter, and repeal, since these proposed rules merely set processing and handling fees and distributions of fee amounts between the state and county governments. Counties have discretion to outsource vehicle transactions by deputizing entities to perform work on their behalf, and any such deputies are compensated under these rules out of the county's portion of the fees. Counties also have discretion to provide compensation in amounts above those contemplated in the rules.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments, new subchapter, and repeal may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to rules@txdmv.gov. The deadline for receipt of comments is 5:00 p.m. on May 23, 2016. If any commenter submits written comments disagreeing with the department's position regarding economic impact, the department strongly recommends including documentation to support any stated negative financial, revenue, or cost implications. Such documentation will aid in the board's decision-making process and could include detailed financial statements, business plans, budgets, or other items necessary to demonstrate the stated impact. If a commenter considers any such information confidential, the information should be clearly marked "CONFIDENTIAL." If the department receives a request for this information, the department will comply with the requirements of the Public Information Act, Chapter 552 of the Texas Government Code, and request a ruling from the Office of the Attorney General for any information marked "CONFIDENTIAL."

SUBCHAPTER B. MOTOR VEHICLE REGISTRATION

43 TAC §§217.23, 217.24, 217.29, 217.32, 217.52, 217.53

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.23. Initial Application for Vehicle Registration.

(a) An applicant for initial vehicle registration must file an application on a form prescribed by the department. The form will at a minimum require:

(1) the signature of the owner;

(2) the motor vehicle description, including, but not limited to, the motor vehicle's year, make, model, vehicle identification number, body style, carrying capacity for commercial motor vehicles, and empty weight;

(3) the license plate number;

(4) the odometer reading, or the word "exempt" if the motor vehicle is exempt from federal and state odometer disclosure requirements;

(5) the name and complete address of the applicant; and

(6) the name, mailing address, and date of any liens.

(b) The application must be accompanied by the following [~~documents~~]:

(1) evidence of vehicle ownership as specified in Transportation Code, §501.030, unless the vehicle has been issued a non-

repairable or salvage vehicle title in accordance with Transportation Code, Chapter 501, Subchapter E;

(2) registration fees prescribed by law;

(3) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;

(4) evidence of financial responsibility required by Transportation Code, §502.046, unless otherwise exempted by law; [~~and~~]

(5) the processing and handling fee prescribed by §217.183 of this title (relating to Fee Amount); and

(6) [~~(5)~~] any other documents or fees required by law.

(c) An initial application for registration must be filed with the tax assessor-collector of the county in which the owner resides, except:

(1) an application for registration, as a prerequisite to filing an application for title, may also be filed with the county tax assessor-collector in the county in which the motor vehicle is purchased or encumbered; [~~or~~]

(2) if a county has been declared a disaster area, the resident may apply at the closest unaffected county if the affected county tax assessor-collector estimates the county offices will be inoperable for a protracted period; or[~~.~~]

(3) if the county tax assessor-collector office in the county in which the owner resides is closed for more than one week, the resident may apply to the county tax assessor-collector in a county that borders the closed county if the adjacent county agrees to accept the application.

§217.24. Vehicle Last Registered in Another Jurisdiction.

(a) The recorded owner of a vehicle that was last registered or titled in another jurisdiction and is subject to registration in this state may apply for registration if the owner cannot or does not wish to relinquish the negotiable out-of-state evidence of ownership to obtain a Texas title. On receipt of a form prescribed by the department and payment of the statutory fee for a title application and any other applicable fees, the department will issue a registration receipt to the applicant.

(b) Registration receipt.

(1) The receipt issued at the time of application may serve as proof of registration and evidences title to a motor vehicle for registration purposes only, but may not be used to transfer any interest or ownership in a motor vehicle or to establish a lien.

(2) Information to be included on the form. The form will include the:

(A) out-of-state title number, if applicable;

(B) out-of-state license plate number, if applicable;

(C) state or country that issued the out-of-state title or license plate;

(D) lienholder name and address as shown on the out-of-state evidence, if applicable;

(E) statement that negotiable evidence of ownership is not being surrendered; and

(F) signature of the applicant or authorized agent of the applicant.

(3) Accompanying documentation. An application for registration under this paragraph must be supported, at a minimum, by:

(A) a completed application for registration, as specified in subsection (a) of this section;

(B) presentation, but not surrender of, evidence from another jurisdiction demonstrating that legal evidence of ownership has been issued to the applicant as the motor vehicle's owner, such as a validated title, a registration receipt that is not more than six months past the date of expiration, a non-negotiable title, or written verification from the other jurisdiction; [~~and~~]

(C) the processing and handling fee prescribed by §217.183 of this title (relating to Fee Amount); and

(D) [~~(C)~~] any other documents or fees required by law.

(4) Assignment. In instances in which the title or registration receipt is assigned to the applicant, an application for registration purposes only will not be processed. The applicant must apply for a title under Transportation Code, Chapter 501.

§217.29. Vehicle Registration Renewal via Internet.

(a) Internet registration renewal program. The department will maintain a uniform Internet registration renewal process. This process will provide for the renewal of vehicle registrations via the Internet and will be in addition to vehicle registration procedures provided for in §217.28 of this title (relating to Vehicle Registration Renewal). The Internet registration renewal program will be facilitated by a third-party vendor.

(b) County participation in program. All county tax assessor-collectors shall process registration renewals through an online system designated by the department.

(c) Eligibility of individuals for participation. To be eligible to renew a vehicle's registration via the Internet, the vehicle owner must meet all criteria for registration renewal outlined in this subchapter and in Transportation Code, Chapter 502.

[~~(d) Fees. A vehicle owner who renews registration via the Internet must pay:~~]

[~~(1) registration fees prescribed by law;~~]

[~~(2) any local fees or other fees prescribed by law and collected in conjunction with registering a vehicle;~~]

[~~(3) a fee of $1 for the processing of a registration renewal by mail in accordance with Transportation Code, §502.197(a); and~~]

[~~(4) a convenience fee of $2 for the processing of an electronic registration renewal paid by a credit card payment in accordance with Transportation Code, §1001.009.~~]

(d) [~~(e)~~] Information to be submitted by vehicle owner. A vehicle owner who renews registration via the Internet must submit or verify the following information:

(1) registrant information, including the vehicle owner's name and county of residence;

(2) vehicle information, including the license plate number of the vehicle to be registered;

(3) insurance information, including the name of the insurance company, the name of the insurance company's agent (if applicable), the telephone number of the insurance company or agent (local or toll free number serviced Monday through Friday 8:00 a.m. to 5:00 p.m.), the insurance policy number, and representation that the policy meets all applicable legal standards;

(4) credit card information, including the type of credit card, the name appearing on the credit card, the credit card number, and the expiration date; and

(5) other information prescribed by rule or statute.

(e) [~~(f)~~] Duties of the county. A county tax assessor-collector shall:

(1) accept electronic payment for vehicle registration renewal via the Internet;

(2) execute an agreement with the department as provided by the director;

(3) process qualified Internet registration renewal transactions as submitted by the third-party vendor;

(4) communicate with the third-party vendor and applicants via email, regular mail, or other means, as specified by the director; and

[~~(5) promptly mail renewal registration validation stickers and license plates to applicants;~~]

[~~(6) ensure that all requirements for registration renewal are met, including all requirements set forth in this subchapter, and in Transportation Code, Chapter 502;~~]

[~~(7) reject applications that do not meet all requirements set forth in this chapter, and in Transportation Code, Chapter 502; and~~]

(5) [~~(8)~~] register each vehicle for a 12-month period.

(f) Duties of the department. The department shall promptly mail renewal registration validation stickers and license plates to applicants.

§217.32. Replacement of License Plates, Symbols, Tabs, and Other Devices.

(a) When a license plate, symbol, tab, or other registration device is lost, stolen, [~~or~~] mutilated, or needs to be replaced for cosmetic or readability reasons, a replacement may be obtained from any county tax assessor-collector upon:

(1) the payment of the statutory replacement fee prescribed by Transportation Code, §502.060 or §504.007; and

(2) the provision of a signed statement, on a form prescribed by the department, that states:

(A) the license plate, symbol, tab, or other registration device furnished for the described vehicle has been lost, stolen, [~~or~~] mutilated, or needs to be replaced for cosmetic or readability reasons, and if recovered, will not be used on any other vehicle; and

(B) the replaced license plate, symbol, tab, or other device will only be used on the vehicle to which it was issued.

(b) If the owner remains in possession of any part of the lost, stolen, or mutilated license plate, symbol, tab, or other registration device, that remaining part must be removed and surrendered to the department on issuance of the replacement and request by the county tax assessor-collector.

§217.52. Marketing of Specialty License Plates through a Private Vendor.

(a) Purpose and scope. The department will enter into a contract with a private vendor to market department-approved specialty license plates in accordance with Transportation Code, Chapter 504, Subchapter J. This section sets out the procedure for approval of the design, purchase, and replacement of vendor specialty license plates. In this section, the license plates marketed by the vendor are referred to as vendor specialty license plates.

(b) Application for approval of vendor specialty license plate designs.

(1) Approval required. The vendor shall obtain the approval of the Board for each license plate design the vendor proposes to market in accordance with this section and the contract entered into between the vendor and the department.

(2) Application. The vendor must submit a written application on a form approved by the executive director to the department for approval of each license plate design the vendor proposes to market. The application must include:

(A) a draft design of the specialty license plate;

(B) projected sales of the plate, including an explanation of how the projected figure was determined;

(C) a marketing plan for the plate including a description of the target market;

(D) a licensing agreement from the appropriate third party for any design or design element that is intellectual property; and

(E) other information necessary for the Board to reach a decision regarding approval of the requested vendor specialty plate.

(c) Review and approval process. The Board will review vendor specialty license plate applications. The Board:

(1) will not consider incomplete applications; and

(2) may request additional information from the vendor to reach a decision.

(d) Board decision.

(1) Decision. The decision of the Board will be based on:

(A) compliance with Transportation Code, Chapter 504, Subchapter J;

(B) the proposed license plate design, including:

(i) whether the design meets the legibility and reflectivity standards established by the department;

(ii) whether the design meets the standards established by the department for uniqueness to ensure that the proposed plate complies with Transportation Code, §504.852(c);

(iii) whether the license plate design can accommodate the International Symbol of Access (ISA) as required by Transportation Code, §504.201(f);

(iv) the criteria designated in §217.27 of this title (relating to Vehicle Registration Insignia) as applied to the design;

(v) whether a design is similar enough to an existing plate design that it may compete with the existing plate sales; and

(vi) other information provided during the application process.

(2) Public comment on proposed design. All proposed plate designs will be considered by the Board as an agenda item at a regularly or specially called open meeting. Notice of consideration of proposed plate designs will be posted in accordance with Office of the Secretary of State meeting notice requirements. Notice of each license plate design will be posted on the department's Internet web site to receive public comment at least 25 days in advance of the meeting at which it will be considered. The department will notify all specialty plate organizations and the sponsoring agencies who administer specialty license plates issued in accordance with Transportation Code, Chapter 504, Subchapter G, of the posting. A comment on the proposed design can be submitted in writing through the mechanism provided on the department's Internet web site for

submission of comments. Written comments are welcome and must be received by the department at least 10 days in advance of the meeting. Public comment will be received at the Board's meeting.

(e) Final approval and specialty license plate issuance.

(1) Approval. The Board will approve or disapprove the specialty license plate application based on all of the information provided pursuant to this subchapter in an open meeting.

(2) Application not approved. If the application is not approved, the applicant may submit a new application and supporting documentation for the design to be considered again by the Board if:

(A) the applicant has additional, required documentation; or

(B) the design has been altered to an acceptable degree.

(3) Issuance of approved specialty plates.

(A) If the vendor's specialty license plate is approved, the vendor must submit the non-refundable start-up fee before any further design and processing of the license plate.

(B) Approval of the plate does not guarantee that the submitted draft plate design will be used. The Board has final approval of all specialty license plate designs and will provide guidance on the submitted draft design to ensure compliance with the format and license plate specifications.

(f) Redesign of vendor specialty license plates.

(1) On receipt of a written request from the vendor, the department will allow a redesign of a vendor specialty license plate.

(2) The vendor must pay the redesign administrative costs as provided in the contract between the vendor and the department.

(g) Multi-year vendor specialty license plates. Purchasers will have the option of purchasing vendor specialty license plates for a one-year, a three-year, or a five-year period.

(h) License plate categories and associated fees. The categories and the associated fees for vendor specialty plates are set out in this subsection.

(1) Custom license plates. Custom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with either three alpha and two or three numeric characters or two or three numeric and three alpha characters. Generic license plates on standard white sheeting with the word "Texas" that may be personalized with up to six alphanumeric characters are considered custom license plates before December 2, 2010. The fees for issuance of Custom and Generic license plates are $150 for one year, $400 for three years, and $450 for five years.

(2) T-Plates (Premium) license plates. T-Plates (Premium) license plates may be personalized with up to seven alphanumeric characters, including the "T," on colored backgrounds or designs approved by the department. The fees for issuance of T-Plates (Premium) license plates are $150 for one year, $400 for three years, and $450 for five years.

(3) Luxury license plates. Luxury license plates may be personalized with up to six alphanumeric characters on colored backgrounds or designs approved by the department. The fees for issuance of luxury license plates are $150 for one year, $400 for three years, and $450 for five years.

(4) Freedom license plates. Freedom license plates include license plates with a variety of pre-approved background and character color combinations that may be personalized with up to seven alphanumeric characters. The fees for issuance of freedom license plates are $195 for one year, $445 for three years, and $495 for five years.

(5) Background only license plates. Background only license plates include non-personalized license plates with a variety of pre-approved background and character color combinations. The fees for issuance of background only license plates are $50 for one year, $130 for three years, and $175 for five years.

(6) Vendor souvenir license plates. Vendor souvenir license plates are replicas of vendor specialty license plate designs that may be personalized with up to twenty-four alphanumeric characters. Vendor souvenir license plates are not street legal or legitimate insignias of vehicle registration. The fee for issuance of souvenir license plates is $40.

(7) Auction of alphanumeric patterns. The vendor may auction alphanumeric patterns for one, three, or five year terms with options to renew indefinitely at the current price established for a one, three, or five year luxury category license plate. The purchaser of the auction pattern may select from the vendor background designs at no additional charge at the time of initial issuance. The auction pattern may be moved from one vendor design plate to another vendor design plate as provided in subsection (n)(1) of this section. The auction pattern may be transferred from owner to owner as provided in subsection (l)(2) of this section.

(8) Personalization and specialty plate fees.

(A) The fee for the personalization of license plates applied for prior to November 19, 2009 is $40 if the plates are renewed annually.

(B) The personalization fee for plates applied for after November 19, 2009 is $40 if the plates are issued pursuant to Transportation Code, Chapter 504, Subchapters G and I.

(C) If the plates are renewed annually, the personalization and specialty plate fees remain the same fee as at the time of issuance if a sponsor of a specialty license plate authorized under Transportation Code, Chapter 504, Subchapters G and I signs a contract with the vendor in accordance with Transportation Code, Chapter 504, Subchapter J.

(i) Payment of fees.

(1) Payment of specialty license plate fees. The fees for issuance of vendor specialty license plates will be paid directly to the state through vendor and state systems for the license plate category and period selected by the purchaser. A person who purchases a multi-year vendor specialty license plate must pay upon purchase the full fee which includes the renewal fees.

(2) Payment of statutory registration fees. To be valid for use on a motor vehicle, the license plate owner is required to pay, in addition to the vendor specialty license plate fees, any statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(j) Refunds. Fees for vendor specialty license plate fees will not be refunded after an application is submitted to the vendor and the department has approved issuance of the license plate.

(k) Replacement.

(1) Application. An owner must apply directly to the county tax assessor-collector for the issuance of replacement vendor specialty license plates and must pay the fee described in paragraphs (2), (3), or (4) of this subsection, whichever applies.

(2) Lost or mutilated vendor specialty license plates. To replace vendor specialty license plates that are lost or mutilated, the owner must pay the statutory replacement fee provided in Transportation Code, §504.007.

[~~(3) No-charge replacement. The owner of vendor specialty license plates will receive at no charge replacement license plates as follows:~~]

[~~(A) one set of replacement license plates on or after the seventh anniversary after the date of initial issuance; and~~]

[~~(B) one set of replacement license plates seven years after the date the set of license plates were issued in accordance with subparagraph (A) of this paragraph.~~]

(3) [~~(4)~~] Optional replacements. An owner of a vendor specialty license plate may replace vendor specialty license plates [~~before the seventh anniversary after the date of issuance~~] by submitting a request to the county tax assessor-collector accompanied by the payment of a $6 fee.

(4) [~~(5)~~] Interim replacement tags. If the vendor specialty license plates are lost or mutilated to such an extent that they are unusable, replacement license plates will need to be remanufactured. The county tax assessor-collector will issue interim replacement tags for use until the replacements are available. The owner's vendor specialty license plate number will be shown on the interim replacement tags.

(5) [~~(6)~~] Stolen vendor specialty license plates. The county tax assessor-collector will not approve the issuance of replacement vendor specialty license plates with the same license plate number if the department's records indicate that the vehicle displaying that license plate number was reported stolen or the license plates themselves were reported stolen.

(l) Transfer of vendor specialty license plates.

(1) Transfer between vehicles. The owner of a vehicle with vendor specialty license plates may transfer the license plates between vehicles by filing an application through the county tax assessor-collector if the vehicle to which the plates are transferred:

(A) is titled or leased in the owner's name; and

(B) meets the vehicle classification requirements for that particular specialty license plate.

(2) Transfer between owners. Vendor specialty license plates may not be transferred between persons unless the license plate pattern was initially purchased through auction as provided in subsection (h)(7) of this section. An auctioned alphanumeric pattern may be transferred as a specialty license plate or as a virtual pattern to be manufactured on a new background as provided under the restyle option in subsection (n)(1) of this section. In addition to the fee paid at auction, the new owner of an auctioned alphanumeric pattern or plate will pay the department a fee of $25 to cover the cost of the transfer, and complete the department's prescribed application at the time of transfer.

(m) Gift plates.

(1) A person may purchase plates as a gift for another person if the purchaser submits a statement that provides:

(A) the purchaser's name and address;

(B) the name and address of the person who will receive the plates; and

(C) the vehicle identification number of the vehicle on which the plates will be displayed or a statement that the plates will not be displayed on a vehicle.

(2) To be valid for use on a motor vehicle, the recipient of the plates must file an application with the county tax assessor-collector and pay the statutorily required registration fees in the amount as provided by Transportation Code, Chapter 502, and this subchapter.

(n) Restyled vendor specialty license plates. A person who has purchased a multi-year vendor specialty license plate may request a restyled license plate at any time during the term of the plate.

(1) For the purposes of this subsection, "restyled license plate" is a vendor specialty license plate that has a different style from the originally purchased vendor specialty license plate but:

(A) is within the same price category, except if the pattern is an auction pattern; and

(B) has the same alpha-numeric characters and expiration date as the previously issued multi-year license plates.

(2) The fee for each restyled license plate is $50.

§217.53. Removal of License Plates and Registration Insignia upon Sale of Motor Vehicle.

(a) Purpose. Transportation Code, Chapter 502, Subchapter L and Chapter 504, Subchapter K, provide [~~I, provides~~] for the removal of the license plates and registration insignia when a motor vehicle is sold or transferred. Motor vehicles eligible for this process are limited to a passenger car or a light truck, as those terms are defined in Transportation Code, §502.001.

(b) Disposition of removed license plates. License plates removed from a motor vehicle by a licensed motor vehicle dealer or by a motor vehicle owner in a private transaction as provided in Transportation Code, §502.491, may be:

(1) transferred to another vehicle:

(A) that is titled or will be titled in the same owner name as the vehicle from which the license plates were removed;

(B) that is of the same vehicle classification (passenger car or light truck) as the vehicle from which the license plates were removed; and

[~~(C) if the age of the removed license plate is not greater than provided in §217.31 of this title (relating to License Plate Reissuance Program) which would require a new license plate to be issued; and~~]

(C) [~~(D)~~] upon acceptance of a request to transfer the license plate by the county tax assessor-collector in which the application is filed as provided by Transportation Code, §501.023 or §502.040, whichever applies;

(2) disposed of in a manner that renders the license plates unusable or that ensures the license plates will not be available for fraudulent use on a motor vehicle; or

(3) retained by the owner of the motor vehicle from which the license plates were removed.

(c) Vehicle transit permit.

(1) Obtaining a vehicle transit permit. A person who obtains a motor vehicle in a private transaction may obtain one vehicle transit permit (temporary single-trip permit), through the department's website at www.txdmv.gov if the seller or transferor has removed the license plates and registration insignia.

(2) Restrictions. The permit, which is valid only for the period shown on the permit, may be used for operation of the motor vehicle only as provided in Transportation Code, §502.492, and must be carried in the vehicle at all times. The permit may only be used on passenger vehicles 6,000 pounds or less and light trucks with a gross vehicle weight of 10,000 pounds or less.

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

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43 TAC §217.31

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.31. License Plate Reissuance Program.

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

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SUBCHAPTER C. REGISTRATION AND TITLE SYSTEM

43 TAC §217.72

STATUTORY AUTHORITY

The amendment is proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.72. Automated Equipment.

(a) Initial allocation of automated equipment. When requested by resolution of the commissioners court of a county, and subject to the terms and conditions specified in subsection (d) of this section, the department will:

(1) make a fair share allocation of automated equipment available to that county to be used by its tax assessor-collector in implementing and operating RTS;

(2) provide the tax assessor-collector with computer programs and personnel training; and

(3) furnish official automated forms and, for the initial start-up of the system, automated equipment supplies.

(b) Additional automated equipment. At the request of the tax assessor-collector of a county, subject to the terms and conditions specified in subsection (d) of this section, and for an amount of consideration that will cover the department's costs, the department will enter into an agreement with the commissioners court of that county under which the department will lease automated equipment to that county in addition to the fair share allocation for that county. Leased equipment will remain the property of the department and will be used primarily for RTS.

(c) Automated Registration and Titling System fee [~~Fee~~]. The department will collect an additional fee of $.50 [~~$1~~] for each registration for the purposes set forth in Transportation Code, §502.356. The fee shall be deposited into a subaccount in the Texas Department of Motor Vehicles fund.

(d) Conditions of availability.

(1) A county must:

(A) meet electrical power supply criteria specified by the department prior to installation of the automated equipment;

(B) bear all costs incurred for 24-hour per day electrical power consumption for operation of the equipment;

(C) provide for the physical security and protection of the equipment and shall indemnify the department for any loss or damages to the equipment while in the custody and control of the county;

(D) provide the department's maintenance personnel access to the equipment during business hours of the involved county office; and

(E) notify the department not less than 30 working days prior to relocating or adding automation equipment, or of the closing or remodeling of an office, that may affect automated equipment operations.

(2) At the election of a county tax assessor-collector, automated equipment may be located at sites other than those of the tax assessor-collector, including privately owned, for-profit enterprises performing registration and title functions for the county tax office. With regard to equipment located at sites other than those of the tax assessor-collector, the department's responsibility will be limited to ensuring that the equipment remains operational. The county will be responsible for all training, user support, forms, supplies, user policy and procedures, and other support associated with this equipment.

(3) Automated equipment made available to a county pursuant to this section shall remain the property of the department and must be used by the county tax assessor-collector for operation of RTS; provided, however, that while not in RTS usage, the equipment may be utilized for another statutory duty or function of that office.

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

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SUBCHAPTER I. FEES

43 TAC §§217.181 - 217.185

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; and more specifically, Transportation Code, §520.0071, which provides the board by rule shall prescribe the fees that may be charged or retained by deputies; Transportation Code, §502.1911, which authorizes the department to collect a fee to cover the expenses of collecting registration fees and that is in an amount sufficient to cover the expenses of collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with board rule under Transportation Code, §520.0071; and Transportation Code, §504.0011, which provides the department may adopt rules to implement and administer Chapter 504, License Plates.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§502.060, 502.191, 502.1911, 502.197, 504.002, 504.007, and 520.007.

§217.181. Purpose and Scope.

This subchapter prescribes the processing and handling fee authorized by Transportation Code, §502.1911, which includes the fee established under Transportation Code, §502.356(a), and is sufficient to cover the expenses associated with collecting registration fees by the department, a county tax assessor-collector, a private entity with which a county tax assessor-collector contracts under Transportation Code, §502.197, or a deputy assessor-collector that is deputized in accordance with Subchapter H of this chapter (relating to Deputies).

§217.182. Registration Transaction.

As used in this subchapter, a registration transaction is a registration or registration renewal under Transportation Code, Chapter 502, or a transaction to issue the following:

(1) a registration, registration renewal, or permit issued under Transportation Code, Chapter 502, Subchapter C (Special Registrations);

(2) a license plate issued under Transportation Code, §502.146;

(3) a temporary additional weight permit under Transportation Code, §502.434;

(4) a license plate or license plate sticker under Transportation Code, §§504.501, 504.502, 504.506, or 504.507; or

(5) a golf cart plate under Transportation Code, §551.402.

§217.183. Fee Amount.

Except as limited by §217.184 of this title (relating to Exclusions), a processing and handling fee in the amount of $5 shall be collected with each registration transaction processed by the department, the county tax assessor-collector, or a deputy appointed by the county tax assessor-collector. If a transaction includes both registration and issuance of a license plate or specialty plate, the processing and handling fee shall be collected on the registration transaction only.

§217.184. Exclusions.

The following transactions are exempt from the processing and handling fee established by §217.183 of this title (relating to Fee Amount). The processing and handling fee may not be assessed or collected on the following transactions:

(1) a replacement registration sticker under Transportation Code, §502.060;

(2) a registration transfer under Transportation Code, §502.192;

(3) an exempt registration under Transportation Code, §502.451;

(4) a vehicle transit permit under Transportation Code, §502.492;

(5) a replacement license plate under Transportation Code, §504.007;

(6) a registration correction receipt, duplicate receipt, or inquiry receipt;

(7) an inspection fee receipt; or

(8) an exchange of license plate for which no registration fees are collected.

§217.185. Allocation of Processing and Handling Fee.

(a) For registrations that expire on or after January 1, 2017, except for temporary permit transactions under Transportation Code, §502.094 or §502.095, the fee amount established in §217.183 of this title (relating to Fee Amount) shall be allocated as follows:

(1) If the registration transaction was processed in person at the office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(2) If the registration transaction was mailed to office of the county tax assessor-collector:

(A) the county tax assessor-collector may retain $2.30; and

(B) the remaining amount shall be remitted to the department.

(3) If the registration transaction was processed through the department's online registration portal, the fee established in §217.183 is discounted by $1.25:

(A) Texas Online receives the amount set pursuant to Government Code, §2054.2591, Fees;

(B) the county tax assessor-collector may retain $.25; and

(C) the remaining amount shall be remitted to the department.

(4) If the registration transaction was processed by a deputy appointed by the county tax assessor-collector in accordance with Subchapter H of this chapter (relating to Deputies):

(A) the deputy may retain:

(i) the amount specified in §217.168(c) of this title (relating to Deputy Fee Amounts). The deputy must remit the remainder of the processing and handling fee to the county tax assessor-collector; and

(ii) the convenience fee established in §217.168, if the registration transaction is processed by a full service deputy;

(B) the county tax assessor-collector may retain $1.30; and

(C) the county tax assessor-collector must remit the remaining amount to the department.

(b) For temporary permit transactions under Transportation Code, §502.094 or §502.095, the entity receiving the application and processing the transaction collects and retains the entire processing and handling fee established in §217.183. A full service deputy processing a temporary permit transaction may not charge a convenience fee for that transaction.

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SUBCHAPTER H. DEPUTIES

43 TAC §§217.161 - 217.168

The Texas Department of Motor Vehicles (department) proposes amendments to §217.161, Deputies. The department also proposes new sections §217.162, Definitions; §217.163, Full Service Deputies; §217.164, Limited Service Deputies; §217.165, Inspection Deputies; §217.166, Dealer Deputies; §217.167, Bonding Requirements; and §217.168, Deputy Fee Amounts.

EXPLANATION OF PROPOSED AMENDMENTS AND NEW SECTIONS

House Bill 2741 and House Bill 2202, 83rd Legislature, Regular Session, 2013, added Transportation Code, §520.0071 and repealed Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092. As a result, the legislature directed the department to prescribe rules governing deputies performing titling and registration duties. The legislation authorized deputies to continue to perform services under §§520.008, 520.009, 520.0091, and 520.0092 until the effective date of the rules adopted by the board of the Texas Department of Motor Vehicles (board) regarding the types of deputies authorized to perform titling and registration duties under §520.0071. The proposed amendments and new sections are intended to fill the void created by the repeal of the former Transportation Code sections describing deputies and their duties and obligations, and to implement the legislative directive of House Bills 2202 and 2741.

As required by Transportation Code, §520.0071, the proposed rules establish the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for deputies to perform titling and registration duties, and the fees that may be charged or retained by deputies. The rules authorize deputies to continue to operate under the repealed statutes, as prescribed by current §217.161, through December 31, 2016. Beginning January 1, 2017, all deputies must be deputized in accordance with and comply with Subchapter H in full.

The purpose of these proposed rules is to support the department's mission to serve, protect, and advance the citizens and industries in this state with quality motor vehicle related services. To accomplish this mission, the department proposes rules that will ensure accountability and transparency in the pro-

vision of services, combat fraud, streamline and standardize processes across the state, set standards to enhance consumer confidence, allow additional funding to go toward transportation, establish structures that allow for cost-savings in the future, and modernize services to bring them in line with the needs of today's and tomorrow's consumers.

The board initially proposed rules as authorized by Transportation Code, §520.0071 on May 23, 2014, which were published in the *Texas Register* (39 TexReg 3974). Due to the great number of comments from the public expressing concern about the proposed rules, the board adopted only one rule, §217.111, which was published in the October 3, 2014, issue of the *Texas Register* (39 TexReg 7962). New §217.111 maintained the status quo for deputies that existed in statute, making clear that existing and newly appointed deputies would continue to provide the services authorized under the former statutory provisions of Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092.

In addition, as a result of a rule review conducted pursuant to Government Code, §2001.039, §217.111 was renumbered as §217.161 with no changes to the text.

In concert with this proposal, but in a separate proposal, the department is proposing rules related to the processing and handling fee authorized by Transportation Code, §502.1911. The proposed rules related to the processing and handling fee reference the fee amounts that may be retained by deputies.

SECTION BY SECTION ANALYSIS

The proposed amendments to §217.161, Deputies, change the section title to "Purpose and Scope," and state the intention to prescribe the classification types, duties, and obligations of deputies, the type and amount of bonds that deputies may be required to post, and the additional fees deputies may be authorized to charge, pursuant to Transportation Code, §520.0071.

Proposed new §217.162, Definitions, defines the different types of deputies and provides other definitions to clarify language in the new sections.

Proposed new §217.163, Full Service Deputies, prescribes the duties, obligations, and requirements of persons authorized to offer vehicle registration, registration renewal, and titling services in the same manner as a county tax assessor-collector. Full service deputies offer an alternative to obtaining titling and registration services from the county tax assessor-collectors. This section provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a person as a full service deputy, and requires full service deputies to offer and provide titling and registration services to the general public. This section also requires full service deputies to enter into a three-party agreement with the department and the county in which the full service deputy provides services beginning January 1, 2017. The department anticipates negotiating these agreements with the counties and existing full service deputies after the effective date of the rule, but prior to January 1, 2017, so that the agreements may be finalized by January 1, 2017. The agreement will outline the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. The agreement may contain additional terms and conditions specified by the county, and must be approved by the department. Key terms and conditions that will be reflected in the agreement include: (1) the full service deputy's agreement to cooperate with law enforcement in any investigation; (2) the understanding that the department will suspend the full service deputy's access to the registration and title system if the deputy or an employee of the deputy is the subject of a criminal investigation involving a crime of moral turpitude (generally, a crime involving conduct that is considered contrary to community standards of justice, honesty, ethics or good morals, including crimes involving dishonesty, fraud, deceit, misrepresentation, deliberate violence); and (3) certain audit rights for the county and the department to enable the county and department to ensure inventory is properly accounted for and to allow the department to determine if the fees being charged and collected are in compliance with rule and statute, among other contractual terms set forth in this rule.

Proposed new §217.164, Limited Service Deputies, prescribes the duties, obligations and requirements of persons authorized to accept and process registration renewals, but who do not offer titling services. This section provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a person as a limited service deputy, to provide registration renewals to the general public; for example, a supermarket business counter where customers may pay utility bills, obtain fishing licenses, or buy concert tickets may also provide registration renewal services. Alternately, limited service deputies may be authorized to provide registration renewal services restricted to itself or its customers only; for example, a business or an agency or subdivision of a governmental jurisdiction of the State of Texas that maintains a large fleet of vehicles may be authorized to process its own registrations. The scope of any such restriction must be determined when the limited service deputy is authorized.

Proposed new §217.165, Inspection Deputies, provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a person as an inspection deputy to accept and process registration renewals as a limited service deputy, with additional requirements and limitations.

Proposed new §217.166, Dealer Deputies, provides that the county tax assessor-collector, with approval of the commissioners court, may deputize a motor vehicle dealer as a dealer deputy to provide motor vehicle titling and registration services, with limitations.

Proposed new §217.167, Bonding Requirements, provides that the county tax assessor-collector shall determine the amount of the surety bond that a deputy must post, subject to the minimum and maximum limits provided by this section. For full service deputies and dealer deputies, the minimum bond amount is $100,000 and the maximum is $2,000,000. For limited service deputies and inspection deputies, the minimum bond amount is $2,500 and the maximum is $1,000,000. This section also exempts an agency or subdivision of a governmental jurisdiction of the State of Texas from the bonding requirement, unless the county tax assessor-collector determines that a bond is appropriate. The proposed minimum and maximum limits of the bonds may change depending upon comments received after publication of these proposed rules.

Proposed new §217.168, Deputy Fee Amounts, provides that a county tax assessor-collector may allow a deputy to charge or retain certain fee amounts for providing the titling or registration service according to the type of deputy and transaction type. Proposed new §217.168 provides for some fees to be charged and retained by the deputy and other fees to be retained from the processing and handling fee established in proposed new §217.183 (part of a separate proposal). Specifically, proposed new §217.168 authorizes full service deputies and dealer deputies to charge customers up to $15 for title transactions and

retain that entire fee amount. Proposed new §217.168 authorizes all deputies to retain $1 from the processing and handling fee for each registration and registration renewal transaction. In addition, a full service deputy may charge a $4 convenience fee for each registration or registration renewal transaction and retain that entire fee amount. The convenience fee is subject to exclusions identified in proposed new §217.184 (part of a separate proposal). Proposed §217.168 also clarifies that the proposed new section does not limit a full service deputy's ability to charge and collect fees for other services provided by the full service deputy that are related to titles or registrations, but are not transactions that must be performed through the department's automated vehicle registration and title system. Proposed new §217.168 also requires full service deputies to prominently post a fee list at the physical location and on the full service deputy's website. Lastly, proposed new §217.168 clarifies that this section does not preclude or limit the ability of a county to provide additional compensation to a deputy from county funds. The proposed fee amounts may change depending upon comments received after publication of these proposed rules.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the amendments and new sections as proposed are in effect, there will be no foreseeable economic implications relating to costs or revenues of the state or local governments as a result of enforcing or administering the amendments and new sections. If a tax assessor-collector elects not to authorize deputies in the county, these rules will have no impact on the county. If a tax assessor-collector chooses to authorize only limited service and/or dealer deputies in the county, there are no foreseeable economic implications relating to costs or revenues of local governments, specifically counties, as the proposed compensation for such deputies is consistent with current statutorily authorized compensation for the deputies. As such, there is no anticipated change in the number of transactions processed through deputies after the effective date of these rules. Lastly, if a tax assessor-collector chooses to authorize full service deputies in the county, there are no foreseeable economic implications to the counties. The department is aware that at present, only six counties authorize full service deputies to provide titling and registration services. Some of these counties have informed the department that if the deputies were to cease providing services in the county, the counties would be required to absorb an increased number of title and registration transactions, hire additional employees, and potentially increase office space. However, the vast majority of counties provide services to the motoring public without utilizing full service deputies. In addition, the compensation proposed for full service deputies, as more thoroughly discussed below, is consistent with the charges previously authorized by statute and is sufficient to cover the costs to process the transactions based on data provided. Currently, there is no specific authorized amount for deputies to charge for titling services, whereas this proposed rule specifically authorizes a $15 convenience fee. As such, there should be no significant change in the number of customers a full service deputy serves and, therefore, no foreseeable impact on the counties.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no anticipated impact on local economies or overall employment as a result of enforcing or administering the amendments and new sections.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed amendments and new sections are in effect, the public benefit anticipated as a result of enforcing or administering the sections will be the standardization of fees for delivering titling and registration services to the public when the customer chooses a deputy for such services; and an increase in consumer confidence in the services provided by deputies by ensuring appropriate oversight of deputies by the counties and the department. Mr. Kuntz has also determined that for each of the first five years the proposed amendments and new sections are in effect, there are no anticipated significant economic costs for persons required to comply with the amendments and new sections as proposed. The cost of the convenience fee that a full service deputy may charge for registration is consistent with the amount currently allowed by statute, and the public may choose to avoid this fee by performing transactions online or dealing directly with a county tax assessor-collector or limited service deputy.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Under the provisions of Government Code, Chapter 2006, a state agency must prepare an economic impact statement and a regulatory flexibility analysis for a rule that may have an adverse economic effect on small businesses and micro-businesses. The department has been alerted that some or all of the 30 full service deputies in the state fit the definition of small or micro-businesses. For other categories of deputies potentially affected by the rules, the department has determined that either they are not small or micro-businesses, or there will be no adverse impact to these entities from the proposed rules.

Although the proposed rules establish specific compensation amounts for full service deputies, the amounts are consistent with what statute authorized the deputies to charge for registration-related transactions and what some full service deputies actually charge for title transactions, based on data reviewed and as discussed in more detail below. The department has therefore determined that there will be no adverse impact to small or micro-businesses operating in compliance with statute prior to these proposed rules. Accordingly, the department has not prepared a regulatory flexibility analysis under Government Code, Chapter 2006.

The department set the amount a full service deputy may charge for title transactions at an amount similar to what full service deputies currently charge, according to the data provided. Currently, there is no specific authorized amount for deputies to charge for titling services, whereas this proposed rule specifically authorizes a $15 convenience fee. As such, the department does not anticipate an adverse impact due to the full service deputy compensation amount for title transactions.

The fee structure proposed in the rule places the full service deputy compensation for registration and registration renewal transactions at a rate equal to what these deputies were allowed to charge under former Transportation Code, §520.009. As such, the impact will be neutral to positive, in that deputies across the state will operate on a level playing field and with a clear understanding of their duties and obligations and the rates they may charge. To the extent any full service deputies have been charging more than what was allowed by statute, any adverse economic impact would not be a result of the rule, since the rule establishes a fee that is the same as was allowed by statute.

The proposed rules do not impact any fees a full service deputy may charge for any service that is not performed through the department's automated registration and titling system. For example, the department is aware that full service deputies often offer a wide variety of services in addition to processing title and registration transactions--services including notary, insurance, title pick-up and delivery to and from dealerships, surety bonds, and other services and products to ensure a sufficient volume of business to generate an adequate return on investment. The proposed amendment and new rules do not impact the fees that may be charged for any such service or product.

In developing the proposed fee amounts, the department considered information gathered over the past two years from multiple meetings with stakeholders, including county tax assessor-collectors, full and limited service deputies and their representatives, representatives of motor vehicle dealers, and state government leadership. The department also contracted with Texas A&M Transportation Institute (TTI) to conduct research regarding costs associated with processing vehicle registration and title transactions. In conducting its research, TTI requested information from, and met with and observed, full service deputies to determine costs associated with processing registration and title transactions. TTI's research noted that full service deputy operations are currently based on a business model that includes profit. TTI also determined that the estimated cost for full service deputies to process vehicle registration and title transactions using an average transaction time is $4.06 for walk-in registration transactions and $12.88 for title transactions. The amount that full service deputies are authorized to charge and retain for title and registration transactions under the proposed rules is more than the estimated cost of those transactions, and thus should be sufficient to account for fluctuations across the state. The TTI report, available on the department's website, is the most recent and comprehensive collection and analysis of data available to the department regarding costs associated with processing registration and title transactions. The TTI report is available on the department's website at http://www.txdmv.gov/reports-and-data/doc_download/5121-estimating-the-cost-to-process-vehicle-registration-and-title-transactions-in-texas-counties and is hereby incorporated by reference into this preamble.

Lastly, former Transportation Code, §520.0091 required full service deputies to post a bond payable to the county tax assessor-collector in an amount determined by the assessor-collector. The proposed new rule keeps this bond requirement, but establishes a minimum and maximum amount that is consistent with bond amounts previously required of full service deputies and deemed sufficient by county tax assessor-collectors. The bond amounts previously considered in an earlier draft of the proposed rules was based on a percentage of the deputy's net collections of motor vehicle sales and use taxes and motor vehicle registration and title fees during a calendar year. During a stakeholder meeting, full service deputies expressed concern that such bond amounts would create substantial hardship for the businesses. After due consideration and in response to these concerns, the department changed the proposed required bond amounts and believes the proposed amounts will not result in a negative fiscal impact to the deputies. This conclusion was based on the department's review of known current bond amounts of existing deputies.

The amendments to the Transportation Code by House Bill 2741 and House Bill 2202 were specifically intended by the Texas Legislature to allow the department to prescribe the type and amounts of bonds the deputies must obtain and the fees a deputy may charge or retain. To the extent any of the small or micro-businesses who operate as full service deputies contend there is an adverse economic impact, an alternative regulatory method could not achieve the purpose of the proposed rule while minimizing any adverse effects and thus would not be consistent with the health, safety, and environmental and economic welfare of the state. There are no new substantive compliance or reporting requirements as a result of the proposed rules, there are no performance standards or design standards required of small businesses or micro-businesses as a result of the proposed rules, and if businesses were exempt from any provision of the proposed rules, those businesses would not have authority to serve as full service deputies. The legislature mandated that the department prescribe the classification types of deputies and the duties and obligations of those deputies. As such, the authority to serve as a deputy is through compliance with the department's rules establishing such deputy. Any exemption from these rules would render a business ineligible from operating as a deputy.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments and new sections may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* If any commenter submits written comments disagreeing with the department's position regarding economic impact, the department strongly recommends including documentation to support any stated negative financial, revenue, or cost implications. Such documentation will aid in the board's decision-making process and could include detailed financial statements, business plans, budgets, or other items necessary to demonstrate the stated impact. If a commenter considers any such information confidential, the information should be clearly marked "CONFIDENTIAL." If the department receives a request for this information, the department will comply with the requirements of the Public Information Act, Chapter 552 of the Texas Government Code, and request a ruling from the Office of the Attorney General for any information marked "CONFIDENTIAL."

The deadline for receipt of comments is 5:00 p.m. on May 23, 2016.

STATUTORY AUTHORITY

The amendments and new sections are proposed under Transportation Code, §1002.001, which provides the board with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §501.0041, which provides the department may adopt rules to administer Transportation Code, Chapter 501, Certificate of Title Act; Transportation Code, §502.0021, which provides the department may adopt rules to administer Transportation Code, Chapter 502, Registration of Vehicles; Transportation Code, §520.003, which provides the department may adopt rules to

administer Chapter 520, Miscellaneous Provisions; and more specifically, Transportation Code, §520.004, which provides the department by rule shall establish standards for uniformity and service quality for counties and dealers; and Transportation Code, §520.0071, which provides the board by rule shall prescribe the classification types of deputies performing titling and registration duties, the duties and obligations of deputies, the type and amount of any bonds that may be required by a county tax assessor-collector for a deputy to perform titling and registration duties, and the fees that may be charged or retained by deputies.

CROSS REFERENCE TO STATUTE

Finance Code, §348.005 and §353.006; and Transportation Code, §§501.076, 502.191, 502.1911, 502.197, and 520.007.

§217.161. Purpose and Scope [~~Deputies~~].

Pursuant to Transportation Code, §520.0071, a county tax assessor-collector, with the approval of the commissioners court of the county, may appoint deputies to perform designated motor vehicle titling and registration services. This subchapter prescribes the classification types, duties, and obligations of deputies; the type and amount of any bonds that deputies may be required to post; and the fees that deputies may be authorized to charge or retain. A deputy appointed under Transportation Code, §520.0071, on or before December 31, 2016, may continue to perform services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357). Beginning January 1, 2017, all deputies must be deputized in accordance with and comply with the provisions of this subchapter.

[~~(a) A county assessor-collector with the approval of the commissioners court of the county may deputize a person to perform services authorized under former Transportation Code, §§520.008, 520.009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.~~]

[~~(b) A deputy appointed under Transportation Code, §520.0091, may perform the services authorized under former Transportation Code, §§520.008, 520,009, 520.0091, and 520.0092, as amended by Acts 2011, 82nd Leg., ch. 1296 (H.B. 2357), effective January 1, 2012.~~]

§217.162. Definitions.

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

(1) Board--Board of the Texas Department of Motor Vehicles.

(2) Dealer deputy--A motor vehicle dealer, as defined by Transportation Code, §503.001(4), who is deputized to process motor vehicle titling and registration transactions, and who may be authorized to provide registration renewal services. Dealer deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the dealer deputy to serve as the deputy's agent in performing motor vehicle titling, registration or registration renewal services.

(3) Department--Texas Department of Motor Vehicles.

(4) Deputy--A person appointed to serve in an official government capacity to perform, under the provisions of this subchapter, designated motor vehicle titling, registration, and registration renewal services as a deputy assessor-collector. The term "deputy" does not include an employee of a county tax assessor-collector.

(5) Full service deputy--A deputy appointed to accept and process applications for motor vehicle title transfers and initial registrations, and process registration renewals and other transactions related to titling and registration. Full service deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the full service deputy to serve as the deputy's agent in performing motor vehicle titling, registration or registration renewal services.

(6) Inspection deputy--A limited service deputy who is also a certified inspection station providing motor vehicle inspection services under Transportation Code, Chapter 548.

(7) Limited service deputy--A deputy appointed to accept and process motor vehicle registration renewals. Limited service deputy includes an individual, who is not himself or herself appointed as a deputy, employed, hired, or otherwise engaged by the limited service deputy to serve as the deputy's agent in performing motor vehicle registration renewals.

(8) Person--An individual, business organization, governmental subdivision or agency, or any other legal entity.

§217.163. Full Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a full service deputy in the same manner and with the same authority as though done in the office of the county tax assessor-collector, subject to the criteria and limitations of this section, including entering into the agreement specified in subsection (j) of this section.

(b) A full service deputy must offer and provide titling and registration services to the general public, and must accept any application for registration, registration renewal, or title transfer that the county tax assessor-collector would accept and process, unless otherwise limited by the county.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a full service deputy in addition to those set forth in this section. The additional obligations or requirements must be reflected in the agreement specified in subsection (j) of this section.

(d) To be eligible to serve as a full service deputy, a person must be trained, as approved by the county tax assessor-collector, to perform motor vehicle titling, registration, and registration renewal services, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(e) To be eligible to serve as a full service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(f) A person applying to be a full service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title, registration, or registration renewal applications may occur.

(g) A full service deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(h) A full service deputy shall keep a separate accounting of the fees collected and remitted to the county and a record of daily receipts.

(i) A full service deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(j) Beginning January 1, 2017, a person may not serve as a full service deputy unless the person has entered into and executed an agreement with the county and the department. An agreement described by this subsection is required for each location at which the full service deputy operates. The agreement will have an effective date no earlier than January 1, 2017, and will outline the terms and conditions of the full service deputy's access to and use of the department's registration and titling system. The agreement must be approved by the department, and must include, at a minimum, the following terms and conditions:

(1) The full service deputy must identify all owners, regardless of ownership percentage, including contact information, and must notify the county and the department of any change in ownership within 30 days of the change.

(2) The full service deputy must identify all personnel who will access the registration and titling system. If an individual who has been given access to the registration and titling system is no longer associated with the full service deputy, the full service deputy must notify the county and department in order to terminate that individual's access. The full service deputy must request access for new or additional personnel in writing to the county and department.

(3) The full service deputy agrees to cooperate with any investigation by law enforcement.

(4) If the full service deputy is the subject of a criminal investigation involving a crime of moral turpitude, the full service deputy's access to the registration and titling system will be suspended until such time as the investigation has concluded and the full service deputy is cleared of any allegations or upon the county's written request to the department, but only if the department approves the request.

(5) A full service deputy must reject any transaction that appears irregular on its face and report any such transaction to the county and the department within 72 hours of presentation of the transaction. The full service deputy must cooperate with the county's or department's reasonable requests for information related to any irregular transaction.

(6) The county must conduct an inventory of license plates, secure paper, and any other accountable items provided to the full service deputy at least once per month and provide a copy of the inventory report to the department within 30 days of the report's completion.

(7) The full service deputy understands and agrees that the department may conduct an inventory of state assets and accountable items provided by the state via the county.

(8) The full service deputy understands and agrees that the department may conduct an audit of the full service deputy's operations. The full service deputy must maintain and retain all documentation pertaining to operations as a full service deputy for a period of four years following the transaction date and provide the department with prompt access to requested records during normal business hours.

(9) The full service deputy must make its audited financial statement available to the department for review only on request.

(10) The agreement must be for an initial term of five years, and may be renewed for additional five-year periods.

(11) The agreement may be terminated for cause by the county or the department at any time. Cause for termination includes violation of any term of the agreement or any department rule, including, but not limited to, Chapter 217, Subchapters H and I. The agreement may be terminated for convenience by the full service deputy or the county on 30 days written notice to the other two parties.

§217.164. Limited Service Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as a limited service deputy. A limited service deputy may only process registration renewals, except as limited by this section, and may not prepare or accept an application for title transfer or initial registration.

(b) A limited service deputy offering registration renewal services to the general public must accept and process any proper application for registration renewal that the county tax assessor-collector would accept and process.

(c) The county tax assessor-collector may impose reasonable obligations or requirements upon a limited service deputy in addition to those set forth in this section. The county tax assessor-collector may, at the time of deputation or upon renewal of deputation, impose specified restrictions or limitations on a limited service deputy's authority to provide registration renewal services.

(d) A limited service deputy may be authorized by the county tax assessor-collector to provide registration renewal services only for the members, officers, employees, affiliates and customers of the deputy, and not to the public generally. If a limited service deputy does not provide services to the general public, the scope of the deputy's authority to provide registration renewal services to itself and its members, officers, employees, affiliates, and customers must be defined by the county tax assessor-collector as part of the authorization to act as a limited service deputy.

(e) To be eligible to serve as a limited service deputy, a person must be trained to accept and process registration renewals, as approved by the county tax assessor-collector, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(f) To be eligible to serve as a limited service deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(g) A person applying to be a limited service deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any registration renewals may occur.

(h) If a limited service deputy offers services to the general public, the deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(i) A limited service deputy shall keep a separate accounting of the fees collected and remitted to the county, and a record of daily receipts.

(j) A limited service deputy may retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

§217.165. Inspection Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a person to act as an inspection deputy. An inspection deputy must meet all of the requirements of a limited service deputy, as outlined in §217.164 of this title (relating to Limited Service Deputies), and additional requirements as follows:

(1) an inspection deputy must maintain current certification as an inspection station under Transportation Code, Chapter 548, and rules adopted by the Texas Department of Public Safety regarding inspection stations; and

(2) any additional requirements of the county tax assessor-collector.

(b) An inspection deputy is considered a limited service deputy for compensation purposes, and may retain fees consistent with the provisions of §217.168(c)(2) of this title (relating to Deputy Fee Amounts).

§217.166. Dealer Deputies.

(a) A county tax assessor-collector, with the approval of the commissioners court of the county, may deputize a motor vehicle dealer to act as a dealer deputy to provide motor vehicle titling and registration services in the same manner and with the same authority as though done in the office of the county tax assessor-collector, except as limited by this section.

(b) A dealer deputy must hold a valid general distinguishing number (GDN) under Transportation Code, Chapter 503, Subchapter B, and may act as a dealer deputy only for a type of motor vehicle for which the dealer holds a GDN. A dealer may not continue to act as a dealer deputy if the GDN is cancelled or suspended.

(c) A county tax assessor-collector may impose reasonable obligations or requirements upon a dealer deputy in addition to those set forth in this section. The county tax assessor-collector may, at the time of deputation or upon renewal of deputation, impose specified restrictions or limitations on a dealer deputy's authority to provide certain titling or registration services.

(d) Upon the transfer of ownership of motor vehicles purchased, sold or exchanged by the dealer deputy, the dealer deputy may process titling transactions in the same manner and with the same authority as though done in the office of the county tax assessor-collector. The dealer deputy may not otherwise provide titling services to the general public.

(e) Upon the transfer of ownership of a motor vehicle purchased, sold or exchanged by the dealer deputy, the dealer deputy may process initial registration transactions in the same manner and with the same authority as though done in the office of the county tax assessor-collector. The dealer deputy may not otherwise offer initial registration services to the general public.

(f) The county tax assessor-collector may authorize a dealer deputy to provide motor vehicle registration renewal services. A dealer deputy offering registration renewal services must offer such services to the general public, and must accept and process any proper application for registration renewal that the county tax assessor-collector would accept and process.

(g) To be eligible to serve as a dealer deputy, a person must be trained to perform motor vehicle titling and registration services, as approved by the county tax assessor-collector, or otherwise be deemed competent by the county tax assessor-collector to perform such services.

(h) To be eligible to serve as a dealer deputy, a person must post a bond payable to the county tax assessor-collector consistent with §217.167 of this title (relating to Bonding Requirements) with the bond conditioned on the person's proper accounting and remittance of the fees the person collects.

(i) A person applying to be a dealer deputy must complete the application process as specified by the county tax assessor-collector. The application process may include satisfaction of any bonding requirements and completion of any additional required documentation or training of the deputy before the processing of any title or registration transactions may occur.

(j) If a dealer deputy offers registration renewal services to the general public, the deputy must provide the physical address at which services will be offered, the mailing address, the phone number, and the hours of service. This information may be published on the department's website and may be published by the county if the county publishes a list of deputy locations.

(k) A dealer deputy shall keep a separate accounting of the fees collected and remitted to the county, and a record of daily receipts.

(l) A dealer deputy may charge or retain fees consistent with the provisions of §217.168 of this title (relating to Deputy Fee Amounts).

(m) This section does not prevent a county tax assessor-collector from deputizing a dealer as a full service deputy under §217.163 of this title (relating to Full Service Deputies), a limited service deputy under §217.164 of this title (relating to Limited Service Deputies), or an inspection deputy under §217.165 of this title (relating to Inspection Deputies) instead of a dealer deputy under this section.

§217.167. Bonding Requirements.

(a) A deputy appointed under this subchapter shall post a surety bond payable to the county tax assessor-collector.

(b) A deputy is required to post a single bond for a county in which the deputy performs titling, registration, or registration renewal services, regardless of the number of locations in that county from which that deputy may provide these services.

(c) A full service deputy or dealer deputy must post a bond in an amount between $100,000 and $2,000,000, as determined by the county tax assessor-collector.

(d) A limited service deputy or inspection deputy must post a bond in an amount between $2,500 and $1,000,000, as determined by the county tax assessor-collector.

(e) A deputy that is an agency or subdivision of a governmental jurisdiction of the State of Texas is not required to post a bond pursuant to this section, unless the county tax assessor-collector determines that a bond should be required in an amount consistent with subsection (d) of this section.

§217.168. Deputy Fee Amounts.

(a) Fees. A county tax assessor-collector may authorize a deputy to charge or retain the fee amounts prescribed by this section according to the type of deputy and transaction type.

(b) Title transactions. For each motor vehicle title transaction processed:

(1) A full service deputy may charge the customer a fee of up to $15, as determined by the full service deputy and approved by

the tax assessor-collector. The full service deputy retains the entire fee charged to the customer.

(2) A dealer deputy may charge the customer a fee of up to $15, as determined by the dealer deputy and approved by the tax assessor-collector. The dealer deputy retains the entire fee charged to the customer. This section does not preclude a dealer deputy from charging a documentary fee authorized by Finance Code, §348.006.

(c) Registration and registration renewals. For each registration transaction processed:

(1) A full service deputy may:

(A) retain $1 from the processing and handling fee established by §217.183 of this title (relating to Fee Amount); and

(B) charge a convenience fee of $4, except as limited by §217.184 of this title (relating to Exclusions).

(2) A limited service deputy may retain $1 from the processing and handling fee established by §217.183.

(3) A dealer deputy may retain $1 from the processing and handling fee established by §217.183. This section does not preclude a dealer deputy from charging a documentary fee authorized by Finance Code, §348.006.

(d) Temporary permit transactions under Transportation Code, §502.094 or §502.095. For each temporary permit transaction processed by a full service deputy, the full service deputy may retain the entire processing and handling fee established by §217.183.

(e) Full service deputy convenience fee. The convenience fee authorized by this section is collected by the full service deputy directly from the customer and is in addition to the processing and handling fee established by §217.183. A full service deputy may not charge any additional fee for a registration or registration renewal transaction.

(f) Related transactions by a full service deputy. The limitations of subsections (b), (c), (d), and (e) of this section do not apply to other services that a full service deputy may perform that are related to titles or registrations, but are not transactions that must be performed through the department's automated vehicle registration and title system. Services that are not transactions performed through the department's automated vehicle registration and title system include, but are not limited to, the additional fees a full service deputy may charge for copying, faxing, or transporting documents required to obtain or correct a motor vehicle title or registration. However, the additional fees that a full service deputy may charge for these other services may be limited by the terms of the county tax assessor-collector's authorization to act as deputy.

(g) Posting of fees. At each location where a full service deputy provides titling or registration services, the deputy must prominently post a list stating all fees charged for each service related to titling or registration. The fee list must specifically state each service, including the additional fee charged for that service, that is subject to subsections (b), (c), (d), or (e) of this section. The fee list must also state that each service subject to an additional fee under subsection (b), (c), (d), or (e) of this section may be obtained from the county tax assessor-collector without the additional fee. If the full service deputy maintains a website advertising or offering titling or registration services, the deputy must post the fee list described by this subsection on the website.

(h) Additional compensation. The fee amounts set forth in this section do not preclude or limit the ability of a county to provide additional compensation to a deputy out of county funds.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

SUBCHAPTER J. PERFORMANCE QUALITY RECOGNITION PROGRAM

43 TAC §§217.201 - 217.207

The Texas Department of Motor Vehicles (department) proposes new Subchapter J, Performance Quality Recognition Program: §217.201, Purpose and Scope; §217.202, Definitions; §217.203, Recognition Criteria; §217.204, Applications; §217.205, Department Decision to Award, Deny, Revoke, or Demote a Recognition Level; §217.206, Term of Recognition Level; and §217.207, Review Process.

EXPLANATION OF PROPOSED NEW SUBCHAPTER

Transportation Code, §520.004 requires the department to establish standards for uniformity and service quality for county tax assessor-collectors regarding vehicle titles and registration. The proposed new Subchapter J prescribes the procedures and general criteria the department will use to establish and administer a voluntary program called the Performance Quality Recognition Program (Recognition Program).

The department will use the Recognition Program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions. The recognition criteria contain the standards for uniformity and service quality, such as processing transactions in a timely fashion and consistently applying statutes, rules, and policies governing motor vehicle transactions.

Proposed new §217.203, Recognition Criteria, states the department will establish criteria for multiple levels of recognition for performance. Proposed new §217.206, Term of Recognition Level, establishes the length or term for a recognition level, including triggers that will cause the recognition level to terminate or expire.

FISCAL NOTE

Linda M. Flores, Chief Financial Officer, has determined that for each of the first five years the new subchapter as proposed is in effect, there will be no major fiscal implications for state or local governments as a result of administering the proposed new subchapter. To the extent the administration of the proposed new subchapter causes county tax assessor-collectors to timely remit registration fee collections, motor sales tax, and penalties to the state, there may be a minor positive fiscal impact for the state; however, the deadlines for these remittances are provided by statute, rather than the proposed new subchapter. Since the program is voluntary, the proposed new Subchapter J will not cause a negative fiscal impact to the counties.

Jeremiah Kuntz, Director of the Vehicle Titles and Registration Division, has determined that there will be no impact on local economies or overall employment as a result of enforcing or administering the new subchapter.

PUBLIC BENEFIT AND COST

Mr. Kuntz has also determined that for each year of the first five years the proposed new subchapter is in effect, the public benefit anticipated as a result of enforcing or administering the subchapter will be the uniformity and quality of service provided by county tax assessor-collectors in processing title and registration transactions. There are no anticipated economic costs for persons required to comply with the subchapter as proposed.

SMALL AND MICRO-BUSINESS IMPACT ASSESSMENT

Pursuant to Government Code, Chapter 2006, the department does not anticipate any adverse economic effect on small businesses or micro-businesses due to the adoption of the new subchapter.

TAKINGS IMPACT ASSESSMENT

The department has determined that this proposal affects no private real property interests and that this proposal does not restrict or limit an owner's right to property that would otherwise exist in the absence of government action, and so does not constitute a taking or require a takings impact assessment under Government Code, §2007.043.

SUBMITTAL OF COMMENTS

Written comments on the proposed new subchapter may be submitted to David D. Duncan, General Counsel, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731 or by email to *rules@txdmv.gov.* The deadline for receipt of comments is 5:00 p.m. on May 23, 2016.

STATUTORY AUTHORITY

The new subchapter is proposed under Transportation Code, §1002.001, which provides the board of the Texas Department of Motor Vehicles (board) with the authority to adopt rules necessary and appropriate to implement the powers and the duties of the department under the Transportation Code; Transportation Code, §520.003, which states the department may adopt rules to administer Chapter 520, Miscellaneous Provisions; and more specifically, Transportation Code, §520.004, which states the department by rule shall establish standards for uniformity and service quality for counties.

CROSS REFERENCE TO STATUTE

Transportation Code, §520.004.

§217.201. Purpose and Scope.

Transportation Code, §520.004, requires the department to establish standards for uniformity and service quality for counties. This subchapter prescribes the procedures and general criteria the department will use to establish and administer a voluntary program called the Performance Quality Recognition Program. The department will use the Performance Quality Recognition Program to recognize county tax assessor-collectors and their offices for outstanding performance and efficiency in processing title and registration transactions.

§217.202. Definitions.

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

(1) Department--The Texas Department of Motor Vehicles.

(2) Deputy--A person appointed to serve in an official government capacity to perform, under the provisions of Subchapter H of this chapter, designated motor vehicle titling, registration, and registration renewal services as a deputy assessor-collector. The term "deputy" does not include an employee of a county tax assessor-collector.

(3) Office--The county tax assessor-collector office(s) for each county, including the office(s) of any deputy.

§217.203. Recognition Criteria.

(a) Levels of recognition. The department will establish criteria for multiple levels of recognition for performance.

(b) Recognition criteria for minimum recognition level. The recognition criteria shall include, but are not limited to, factors that indicate whether the office:

(1) timely remits registration fee collections;

(2) timely remits motor vehicle sales tax and penalties;

(3) consistently applies statutes, rules, and policies governing motor vehicle transactions; and

(4) maintains bonds as required by statute or administrative rule.

(c) Recognition criteria for a higher recognition level. The recognition criteria shall include, but are not limited to, factors that indicate whether the office:

(1) performs efficiently and with low error rates;

(2) processes transactions in a timely fashion;

(3) has customer feedback programs; and

(4) has fraud, waste, and abuse awareness and prevention programs.

(d) Possible additional criteria for a higher recognition level. In addition to the recognition criteria listed in subsection (c) of this section, the department may include recognition criteria, such as the following, that indicate whether the office:

(1) implements cost-saving measures; and

(2) has customer feedback metrics to measure customer satisfaction.

(e) Posting recognition criteria. The department shall post the recognition criteria on its website.

§217.204. Applications.

(a) Application deadline. If a county tax assessor-collector chooses to apply for a recognition level or to apply for a higher level of recognition under the Performance Quality Recognition Program, the county tax assessor-collector must submit an application to the department during any year of the county tax assessor-collector's term of office. The application must be received by the department or postmarked no later than October 31st.

(b) Application from a successor county tax assessor-collector. A successor county tax assessor-collector is not eligible for a recognition level until after serving as the county tax assessor-collector during an entire state fiscal year, which is September 1st through August 31st.

(c) Application for a higher level of recognition.

(1) If a county tax assessor-collector obtains a recognition level and chooses to apply for a higher level of recognition during the term of the existing recognition level, the county tax assessor-collector is not eligible to apply for a higher level until after serving as the county

tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year for which the existing recognition level was awarded.

(2) If the department demotes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a higher level of recognition until after serving as the county tax assessor-collector during an entire state fiscal year subsequent to the state fiscal year during which the existing recognition level was demoted.

(d) Application for a recognition level after revocation of recognition level. If the department revokes a county tax assessor-collector's recognition level, the county tax assessor-collector is not eligible to apply for a recognition level during the remainder of the county tax assessor-collector's term of office during which the revocation occurred.

(e) Application form. The application must be submitted on a form prescribed by the department.

(f) Signature on application. The county tax assessor-collector must sign the application.

(g) Additional information, documentation, or clarification. At the department's discretion, the department may request additional information, documentation, or clarification from the county tax assessor-collector after the department receives an application. The department shall provide the county tax assessor-collector with a deadline to respond to the request.

§217.205. Department Decision to Award, Deny, Revoke, or Demote a Recognition Level.

(a) Award of recognition level. The department may award a recognition level based on the following for the time frame of September 1st through August 31st immediately preceding the application deadline:

(1) information and documents contained in the application;

(2) any additional information, documentation, or clarification requested by the department; and

(3) information and documentation from department records.

(b) Denial of recognition level. The department may deny an award of recognition if:

(1) the application contains any incomplete or inaccurate information;

(2) the applicant fails to provide requested documents;

(3) the application contains incomplete documents;

(4) the application was not received by the department or postmarked by the department's deadline;

(5) the county tax assessor-collector who applied for recognition no longer holds the office of county tax assessor-collector;

(6) the county tax assessor-collector did not sign the application; or

(7) the department discovers information which shows the applicant does not comply with the criteria to receive a recognition level.

(c) Revocation of recognition level or demotion of recognition level. The department may revoke a recognition level or demote a recognition level if the department discovers information which shows the applicant no longer complies with the criteria for the recognition level.

(d) Notice of department decision to award, deny, demote, or revoke a recognition level. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.

(e) Deadline for department decision to award or to deny a recognition level. No later than 90 calendar days after receiving the application for recognition, the department shall send a written notice to the applicant stating:

(1) the department's decision to award or to deny a recognition level; or

(2) there will be a delay in the department's decision.

§217.206. Term of Recognition Level.

(a) Expiration of recognition level. Except as provided in subsections (b), (c), (d), and (e) of this section, the recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition was awarded or the one-year anniversary of the start of their re-election term of office.

(b) Demoted recognition level. If a recognition level is demoted during the term of a recognition level, the demoted recognition level expires on the later of the end of the county tax assessor-collector's term of office during which the recognition level was demoted or the one-year anniversary of the start of their re-election term of office, except as provided in subsections (c), (d), and (e) of this section.

(c) Revoked recognition level. A recognition level that is revoked will terminate on the effective date of the revocation.

(d) Decision on application for a higher level of recognition. If a county tax assessor-collector chooses to apply for a higher level of recognition, the existing recognition level terminates once the department makes a decision on the application for a higher level of recognition.

(e) County tax assessor-collector no longer holds office. The recognition level awarded to a county tax assessor-collector expires when the county tax assessor-collector no longer holds the office of county tax assessor-collector.

§217.207. Review Process.

(a) Request for review. A county tax assessor-collector may request the department to review its decision by submitting a written request for review as prescribed by the department:

(1) if an application for recognition is denied;

(2) if the county tax assessor-collector is not satisfied with the awarded level of recognition; or

(3) if a level of recognition is revoked or demoted.

(b) Deadline for request for review. The written request for review must be received by the department or postmarked no later than 90 calendar days after the date listed in the department's notice to the county tax assessor-collector of the department's decision for which review is requested.

(c) County tax assessor-collector's request for review. The department will not consider a request for review submitted by someone other than the county tax assessor-collector who signed the application for recognition or who obtained the recognition level at issue. The request must:

(1) specifically identify the basis for the county tax assessor-collector's disagreement with the department's decision; and

(2) include any evidence or legal authority that supports the request for review.

(d) Deadline for department decision on request for review. The department shall make a decision on the written request for review no later than 90 calendar days after receiving the written request for review.

(e) Notice of department decision on request for review. The department shall notify the county tax assessor-collector of the department's decision via email, facsimile transmission, or regular mail.

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

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David D. Duncan
General Counsel
Texas Department of Motor Vehicles
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For further information, please call: (512) 465-5665

ADOPTED RULES

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

TITLE 1. ADMINISTRATION

PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 371. MEDICAID AND OTHER HEALTH AND HUMAN SERVICES FRAUD AND ABUSE PROGRAM INTEGRITY

The Texas Health and Human Services Commission (HHSC) adopts amendments to Chapter 371, Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity.

HHSC adopts the repeal of Subchapter A, concerning Introduction, and §371.1, concerning Purpose and Scope; §371.13, concerning Statutory Authority; §371.19, concerning Investigations; §371.1002, concerning Minimum Collection Goal; §371.1003, concerning Definitions; §371.1303, concerning Definitions; §371.1607, concerning Definitions; and §371.1713, concerning Restricted Reimbursement. HHSC also adopts new §371.1, concerning Definitions; §371.3, concerning Purpose and Authority; and §371.1311, concerning Role of the OIG and Special Investigative Units. HHSC also adopts amendments to §§371.11, 371.17, 371.23, 371.25, 371.27, 371.29, and 371.31, concerning Office of Inspector General; §§371.200, 371.201, 371.203, 371.204, 371.206, 371.208, 371.210, 371.212, 371.214, and 371.216, concerning Utilization Review; §§371.1001, 371.1005, 371.1007, 371.1009, 371.1011, 371.1013, and 371.1015, concerning Provider Disclosure and Screening; §§371.1301, 371.1305, 371.1307, and 371.1309, concerning Investigations; §§371.1601, 371.1603, 371.1609, 371.1611, 371.1613, 371.1615, 371.1617, 371.1619, 371.1651, 371.1653, 371.1655, 371.1657, 371.1659, 371.1663, 371.1665, 371.1667, 371.1669, 371.1701, 371.1703, 371.1705, 371.1707, 371.1709, 371.1711, 371.1715, 371.1717, and 371.1719, concerning Administrative Actions and Sanctions. The rules are adopted without changes to the proposed text as published in the January 29, 2016, issue of the *Texas Register* (41 TexReg 717) and will not be republished.

BACKGROUND AND JUSTIFICATION

The existing rules in Chapter 371 include various provisions to ensure the integrity of Medicaid and other HHS programs by discovering, preventing, and correcting fraud, waste, or abuse.

The rules in Chapter 371 are adopted new, amended, or repealed to implement various provisions of Senate Bill 207 (S.B. 207), 84th Legislature, Regular Session, 2015; and to clarify, update, or eliminate obsolete provisions.

S.B. 207 amended various provisions in Texas Government Code Chapter 531 related to the Office of Inspector General's (OIG's) authority and duties. Among other things, the bill amended timelines in the OIG's investigation of fraud, waste, and abuse; clarified the use of payment holds; required the adoption of rules for opening and prioritizing cases; and required criminal history record information checks on health care professionals who wish to enroll as Medicaid providers.

The amendments consequently revise the current process for investigations and provider background checks as mandated by S.B. 207. The amendments also include components and clarifications related to management practices and processes of the OIG, provider disclosure and screening, administrative actions and sanctions, and grounds for enforcement by the OIG.

The new rules as adopted consolidate all definitions into a single rule; move and revise the rule regarding the purpose of the chapter; and address the role of the OIG related to managed care organizations' Special Investigation Units.

COMMENTS

The 30-day comment period ended February 29, 2016. During this period, HHSC received comments regarding the rules from three commenters: the Teaching Hospitals of Texas, the Texas Hospital Association, and the Texas Radiological Society. A summary of comments relating to the rules and HHSC's responses follows.

Comment: Commenters requested additional amendments related to the OIG's compliance with federal coding guidelines in conducting diagnosis-related group (DRG) validation and related audits. Specifically, the commenters stated that the OIG should repeat the statutory mandate to follow federal coding guidelines and that the OIG provide specific references to the federal coding guidelines when supporting findings.

Response: HHSC declines to make the suggested amendments. The requirements of Texas Government Code §531.1023 are already set forth in statute and need not be repeated in rule.

Comment: Commenters requested additional amendments related to the OIG's compliance with federal coding guidelines in conducting DRG validation and related audits, and that the OIG develop a process through rulemaking to communicate with and educate providers about DRG validation criteria that resulted from S.B. 207.

Response: HHSC declines to make the suggested amendments. HHSC is continuing to examine the issue of what potential rule or policy changes are required to accurately implement S.B. 207. SB 207 already requires the OIG to comply with federal coding guidelines.

Comment: One commenter suggested possible strategies regarding communication, training, and education.

Response: These suggestions will be considered as HHSC continues to review the issue.

Comment: One commenter commented that SB 207 requires OIG to follow federal coding guidelines effective September 1, 2015 and requested that the rules address the effective date. Specifically, that the requirement to comply with federal coding guidelines be applied to any audits for which a provider has not received a final decision by the state by August 31, 2015.

Response: HHSC declines to make the suggested amendments. SB 207's implementation date is clearly delineated by statute, and the requirement need not be repeated in rule at this time. The statute does not require OIG to re-review cases that were initially reviewed prior to its implementation. Additionally, providers may appeal any final decision they believe does not include compliance with federal coding guidelines.

Comment: One commenter proposed amendments to §371.203(a)(5) to read as follows: "Day outlier review verifies the medical necessity of each day of the admission."

Response: HHSC declines to make the suggested amendments. The day outlier review is performed in two steps. Utilization review includes diagnosis related group validation to confirm documentation in the medical record of the critical elements necessary to assign the billed DRG are present.

Comment: One commenter questioned the need for §371.203(a)(6) regarding cost outlier reviews since DRGs are to be used.

Response: HHSC declines to make the suggested amendments. Utilization review selects claims for review based upon claims submitted by hospitals for reimbursement which may include both day and cost outliers. When an outlier is submitted for reimbursement, HHSC calculates the reimbursement as either a day or cost outlier, but not both, therefore utilization review reviews either.

Comment: One commenter proposed further amendment to §371.203(b) regarding HHSC review of medical records so that the last sentence be read as follows: "If the complete medical record is not available during the review, HHSC issues a preliminary technical denial and notifies the facility specifying what is missing in sufficient detail for the provider to comply."

Response: HHSC declines to make the suggested amendments at this time. The rule currently requires HHSC to provide notice to facilities, and issues related to HHSC Appeals of OIG determinations are out of the scope of this rule rewrite.

Comment: One commenter proposed further amendment to §371.203(c) physician consultant medical necessity determinations. Specifically, commenter proposed amendment to the last sentence to read as follows: The written notification will explain any changes made to the process for appealing the denial.

Response: HHSC declines to make the suggested amendments at this time. The rule currently requires HHSC to provide notice to facilities, and issues related to HHSC Appeals of OIG determinations are out of the scope of this rule rewrite.

Comment: One commenter believes the proposed amendments related to enrollment of practice locations are a positive change.

Response: HHSC appreciates this feedback.

SUBCHAPTER A. INTRODUCTION

1 TAC §371.1

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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TRD-201601679
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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SUBCHAPTER B. OFFICE OF INSPECTOR GENERAL

1 TAC §§371.1, 371.3, 371.11, 371.17, 371.23, 371.25, 371.27, 371.29, 371.31

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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1 TAC §371.13, §371.19

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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SUBCHAPTER C. UTILIZATION REVIEW

1 TAC §§371.200, 371.201, 371.203, 371.204, 371.206, 371.208, 371.210, 371.212, 371.214, 371.216

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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SUBCHAPTER E. PROVIDER DISCLOSURE AND SCREENING

1 TAC §§371.1001, 371.1005, 371.1007, 371.1009, 371.1011, 371.1013, 371.1015

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

Filed with the Office of the Secretary of State on April 11, 2016.

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Karen Ray
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

1 TAC §371.1002, §371.1003

STATUTORY AUTHORITY

The repeals are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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SUBCHAPTER F. INVESTIGATIONS

1 TAC §§371.1301, 371.1305, 371.1307, 371.1309, 371.1311

STATUTORY AUTHORITY

The amendments and new rules are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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1 TAC §371.1303

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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SUBCHAPTER G. ADMINISTRATIVE ACTIONS AND SANCTIONS

DIVISION 1. GENERAL PROVISIONS

1 TAC §§371.1601, 371.1603, 371.1609, 371.1611, 371.1613, 371.1615, 371.1617, 371.1619

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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1 TAC §371.1607

STATUTORY AUTHORITY

The repeal is adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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DIVISION 2. GROUNDS FOR ENFORCEMENT

1 TAC §§371.1651, 371.1653, 371.1655, 371.1657, 371.1659, 371.1663, 371.1665, 371.1667, 371.1669

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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DIVISION 3. ADMINISTRATIVE ACTIONS AND SANCTIONS

1 TAC §§371.1701, 371.1703, 371.1705, 371.1707, 371.1709, 371.1711, 371.1715, 371.1717, 371.1719

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code §531.102(a-2), which requires the Executive Commissioner to work in consultation with the Office of Inspector General to adopt rules necessary to implement a power or duty of the office; Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas, to administer Medicaid funds, and to adopt rules necessary for the proper and efficient regulations of the Medicaid program.

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

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CHAPTER 375. REFUGEE CASH ASSISTANCE AND MEDICAL ASSISTANCE PROGRAMS

SUBCHAPTER G. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §375.701

The Texas Health and Human Service Commission (HHSC) adopts new §375.701, concerning Local Governmental and Community Input, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 878). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The new rule allows HHSC to require local resettlement agencies to obtain governmental and community input for the process of proposing refugee placements in Texas.

The HHSC Office of Immigration and Refugee Affairs is the single point of contact for federally funded refugee cash and medical assistance and social services in Texas. The process for refugee resettlement and placement primarily involves the U.S. Department of State, national resettlement agencies, and their local resettlement agency affiliates. HHSC contracts with the local resettlement agencies in Texas to provide refugee resettlement services under the State Plan for the Refugee Program.

Senate Bill (S.B.) 1928, 84th Legislature, Regular Session, 2015, enacted Texas Government §531.0411, which requires HHSC to adopt rules requiring local resettlement agencies to obtain governmental and community input for the process of proposing refugee placements in Texas. The new rule adds requirements for local resettlement agencies engaged in the refugee resettlement and placement process in Texas.

The new rule requires local resettlement agencies to:

1) Convene meetings at least quarterly at which local resettlement agencies can consult with local governmental entities and officials, and other community stakeholders, on proposed refugee placement.

2) Respond within ten business days as to whether requests from a local governmental entity or community stakeholder to meet regarding the resettlement process, outside of the quarterly meetings, will be granted. (This time period was extended based on public comments received.)

3) Consider input from these meetings in reporting annual refugee placement information to their national organizations for purposes of 8 U.S.C. §1522(b)(7)(E).

4) Provide HHSC, local governmental entities and officials, and local community stakeholders with a copy of proposed annual refugee placement data for purposes of 8 U.S.C. §1522(b)(7)(E).

5) Submit a final annual report to their national organizations and HHSC summarizing how this input contributed to the development of an annual refugee placement report for purposes of 8 U.S.C. §1522(b)(7)(E).

6) Provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

7) Respond within ten business days as to whether requests for information related to the resettlement process by local governmental entities and officials or community stakeholders will be granted, to the extent not otherwise prohibited by state or federal law. In addition, the rule provides that if such requests are granted, the requested information must be provided within 20 business days from the date of receipt of the request. (These timeframes were extended based on public comments received.)

Local resettlement agencies are already required by their national organizations and the U.S. Department of State to engage in community consultation and to provide quarterly narrative reports that describe both best practices and issues that may affect placement in their area. See: 8 U.S.C. §1522(a)(2)(C)(ii) and (b)(7). S.B. 1928 provides more specificity and structure around the existing federal requirements. As a result, any costs incurred by local resettlement agencies to comply with the new rule will be minimal.

COMMENTS

The 30-day comment period ended March 7, 2016. During this period, HHSC received comments regarding the new rule. A summary of comments relating to the rule and HHSC's responses follow.

HHSC received comments in support of the proposed Refugee Resettlement Program rule, either in whole or in part, from Catholic Charities of Fort Worth and the Texas Catholic Conference.

HHSC received comments opposed to the proposed Refugee Resettlement Program rule, either in whole or in part, from the following entities: Refugee Services of Texas, Catholic Charities of Fort Worth, the International Rescue Committee, the Alliance for Multicultural Community Service, Caritas of Austin, Texas Catholic Conference, and Texas Impact.

HHSC received comments from the following entities requesting changes to the proposed Refugee Resettlement Program rule: Refugee Services of Texas, Catholic Charities of Fort Worth, the Alliance for Multicultural Community Service, Caritas of Austin, and Texas Impact.

Comments received regarding duplication of or conflict with federal law:

Comment: Several commenters stated that the S.B. 1928 provisions are unnecessary and duplicative because federal rules already require the same or similar actions by local resettlement agencies. Commenters noted that local resettlement agencies have invested significant time and energy in recent years to provide expanded and timely information regarding the refugee resettlement program.

Response: HHSC declines to comment on S.B. 1928. These are comments on the appropriateness of S.B. 1928, not the rules as proposed by HHSC. The Texas Legislature enacted S.B. 1928 pursuant to its constitutional authority, and required HHSC to enact rules to implement the legislation by May 1, 2016.

Comment: One commenter raised the concern that the rules proposed by HHSC to implement S.B. 1928 have the potential to come into conflict with federal law and obligations as a federal grantee.

Response: Given that the commenter did not elaborate on what specific federal law or federal grantee obligation may conflict with the proposed rule, HHSC can only respond that it is not aware of any such conflicts.

Comments regarding the costs associated with the proposed rule:

Comment: One commenter expressed concern that possible increased administrative costs to comply with the proposed rule risks the imposition of an impermissible state tax on federal activities.

Response: The commenter did not specify which costs risk constituting an impermissible tax.

The term "tax" is not defined under the Tax Code or by legislative definition. Where a term is not defined by statute or technical meaning, the Code Construction Act directs that the term "shall be construed according to the rules of grammar and common usage." Tex. Gov't Code §311.011. Black's Law Dictionary defines "tax" as "a charge, usually monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue." Black's Law Dictionary, p. 700 (Third Pocket Edition). The possible increase in administrative costs to an entity contracted with HHSC to provide Refugee Resettlement Program services does not meet this definition. The rule does not impose any charge or fee on contractors to be collected by HHSC or the State of Texas.

Comments regarding the Fiscal Analysis in the Preamble:

Comment: Several commenters expressed concern that the proposed rule included a fiscal note that did not recognize costs to resettlement agencies. Commenters stated that the financial impact of the proposed new rule on resettlement agencies would result in a significant financial burden that would hinder their ability to serve refugees. Specifically, commenters expressed concern that the proposed rule will require local resettlement agencies to redirect agency efforts to manage the new administrative burden or require additional fundraising to cover the costs of additional staff for turnaround times.

Response: To clarify, the Fiscal Note provided addresses only expected costs to state and local governments as required by the Administrative Procedure Act.

As stated by several commenters, the requirement for local resettlement agencies to meet regularly (not less often than quarterly) with state and local governmental entities was set forth by the United States Department of State (DOS) in a program announcement dated September 26, 2013. Under this DOS guidance, the following stakeholders were required to be involved at a minimum: the state refugee coordinator, the state refugee health coordinator, local governance (city and/or state as applicable), local and/or county public health, welfare and social services, and public education.

S.B. 1928 reiterates the requirement for local resettlement agencies to meet at least quarterly with certain government and community stakeholders. The identified government stakeholders in-

clude, at a minimum, municipal and county officials, local school district officials, and representatives of local law enforcement agencies. The identified community stakeholders include, at a minimum, major providers under the local health care system and major employers of refugees. These parties are identified in subsection (b) of the rule and are largely identical to the parties identified under the DOS guidance. As quarterly meetings with these parties are already required, HHSC does not anticipate additional costs to meet the requirements for quarterly meetings under the rule.

Regarding the requirements to respond to requests for meetings and information from certain stakeholders, HHSC expects the additional costs to do so to be minimal as these only apply, at a minimum, to certain identified parties. As many commenters mentioned, local resettlement agencies already engage in routine communications with community stakeholders as the need arises. These communications often occur outside the quarterly meetings. Subsections (c) and (d) of the rule seek to formalize the identified stakeholders' ability to seek timely and updated information. HHSC does not expect these provisions to require local resettlement agencies to significantly alter administrative efforts or funding. Regarding the timeline for responses, please see the discussion regarding subsections (c) and (d) of the rule below.

Comments on specific rule subsections:

§375.701(a):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§375.701(b):

Comment: Several commenters asked HHSC to clarify the definition of "community stakeholders" and expressed concern that the term was too vague in the proposed rule. One commenter expressed concern that the term did not specify what parties were not included. One commenter suggested that a broad definition would be beneficial to ensure local resettlement agencies have a meaningful spectrum of community input.

Response: HHSC agrees that a broad definition of "community stakeholder" is most appropriate to further the intent of S.B. 1928 in providing governmental entities with community stakeholder input regarding proposed refugee placement. As such, subsection (b) of the rule sets forth a minimum list of relevant stakeholders that HHSC requires local resettlement agencies to interact with, subject to the provisions of the rule. Local resettlement agencies are encouraged to interact with and seek the input of any additional stakeholder that can offer input relevant to the refugee resettlement process. Examples of additional stakeholders can be found under the U.S. Department of State program guidance letter from September 2013.

Regarding any limit to the definition, HHSC declines to include a list of excluded parties under the proposed rule, so as not to limit agency ability to seek additional input from interested stakeholders for S.B. 1928 purposes. Under the canon of construction known as "ejusdem generis," an enumeration of specific items that follows a general term limits unlisted items to items similar in nature. Tex. Att'y Gen. Op. No. JC-410 (2001). As such, subsection (b) of the rule is meant to apply to entities similar in nature to the stakeholders that are listed. The proposed rule addresses local resettlement agency interactions with stakeholders that actively participate in the refugee resettlement process, and that have obtained experience unique to this involvement. This is not intended to include members of the general public not engaged in the resettlement process.

Comment: One commenter suggested that HHSC define "community stakeholder" to track the guidance provided by the U.S. Department of State in Appendix 1 of the program guidance letter from September 2013.

Response: HHSC declines to provide an exhaustive list of which entities constitute community stakeholders. The rule provides a minimum set of stakeholders that HHSC expects local resettlement agencies to consult regarding the refugee resettlement program. HHSC encourages local resettlement agencies to consult and meet with any additional entities that the agency considers to be integral to the resettlement process.

Comments regarding both §375.701(c) and (d):

Comment: Several commenters stated that subsections (c) and (d) of the proposed rule exceeded HHSC's statutory authority under S.B. 1928.

Response: HHSC respectfully disagrees with this statement. S.B. 1928 enacted new Texas Government Code §531.0411(b), which requires the HHSC Executive Commissioner to "adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information." As stated by many commenters, cooperation and consultation with local communities are important for the success of resettlement programs.

In order to provide accurate and targeted input, local governmental entities and community stakeholders must be enabled to discuss or request information regarding the refugee resettlement process in addition to the information provided in the quarterly meetings required under subsection (b) of the rule. Subsection (c) of the rule seeks to ensure that local governmental entities and community stakeholders have access to timely and comprehensive information, particularly with regard to the rapidly changing circumstances of worldwide immigration and population displacement in the last several months.

S.B. 1928 does not prohibit HHSC from ensuring that local governmental entities and community stakeholders have such access. While subsections (c) and (d) of the rule are not expressly set forth under S.B. 1928, HHSC believes the subsections are necessary to fully implement subsection (b) of the rule relating to quarterly meetings with local government and community stakeholders. Absent subsections (c) and (d), subsection (b) would arguably be implemented either inadequately or to no avail. HHSC believes that ensuring such access furthers the legislative intent stated under Texas Government Code §531.0411(b). Furthermore, where a statute leaves room for policy determinations regarding implementation, deference is given to an agency's reasonable interpretation of the statute. See Tex. Dep't of Ins. v. Am. Nat'l Ins. Co., 410 S.W.3d 843, 859 (Tex. 2012); and Stanford v. Butler, 142 Tex. 692, 181 S.W.2d 269, 273 (Tex. 1944).

Comment: One commenter expressed concern that subsections (c) and (d) of the proposed rule place a substantial burden on the free exercise of religion of local resettlement agencies that are faith-based organizations. Accordingly, the commenter requests that HHSC show subsections (c) and (d) provisions are necessary to achieve a compelling state interest and why a less restrictive means to achieve this interest is not available pursuant to Tex. Civ. Prac. & Rem. Code §110.003.

Response: The commenter did not identify how religious exercise was substantially burdened by the proposed rule. As such, HHSC can only respond generally.

State law prohibits a government agency from substantially burdening a person's free exercise of religion, unless the government agency demonstrates that the application of the burden to the person: 1) is in furtherance of a compelling governmental interest; and 2) is the least restrictive means of furthering that interest. Tex. Civ. Prac. & Rem Code §110.003.

The Texas Legislature sought to strengthen the success of placing actual refugees throughout the state by ensuring that local governmental and community input was effectively considered regarding the refugee resettlement program. The state's interest in resettling genuine refugees in communities best prepared to serve and assist them is "paramount" and "of the highest order."

Subsections (c) and (d) of the rule are necessary to fully implement subsection (b), relating to regular meetings and informational sharing with local government and community stakeholders.

As stated by many commenters, cooperation and consultation with local communities are important for the success of resettlement programs. In order to provide accurate and targeted input, local governmental entities and community stakeholders may need to discuss or request information regarding refugees or the resettlement process in addition to the information provided in the quarterly meetings required under subsection (b) of the rule. Subsections (c) and (d) will help ensure that local governmental entities and community stakeholders have access to timely and comprehensive information, particularly with regard to the ever-changing circumstances and challenges associated with worldwide immigration and population displacement. Texas Government Code §531.0411(b), as enacted by S.B. 1928, requires HHSC to ensure that local governmental entities and community stakeholders have such informational access.

The provision of resettlement information to the identified stakeholders is most efficiently and accurately done by requiring the local resettlement agencies to do so directly. Local resettlement agencies contract with both the federal government, to provide services and assistance in the initial resettlement phase, and with HHSC regarding longer term dynamics once refugees are settled within Texas. To give effect to S.B. 1928's directive to "ensure local government and community input in a federal refugee resettlement program" in the state, these stakeholders must have access to timely and accurate information when required. The most effective and least restrictive way to provide such information to these stakeholders is to require local resettlement agencies to provide the information requested directly to the identified stakeholders.

Comment: Some commenters expressed concern regarding the definition of "community stakeholder" for purposes of subsections (c) and (d) of the rule. The commenters explained that a broad definition would cause local resettlement agencies significant administrative burdens by having to respond to requests without any clarity as to which parties had standing to make such a request.

Response: Subsection (b) sets forth a minimum list of relevant stakeholders that HHSC requires local resettlement agencies to interact with for purposes of subsections (c) and (d). Local resettlement agencies are encouraged to interact with and seek the input of any additional stakeholder that can offer input relevant to the refugee resettlement process.

Comments specific to §375.701(c):

Comment: Several commenters are opposed to the additional meetings local governmental entities and community stakeholders may request with local resettlement agencies. Many commenters pointed to already existing relationships with local community stakeholders maintained through the existing quarterly meetings and ongoing community engagement measures. Some commenters requested the removal of this provision from the rule.

Response: HHSC declines to remove subsection (c) from the rule. HHSC agrees that local resettlement agencies interact with community stakeholders through the quarterly meetings already required by federal rules and through ongoing community engagement. However, the purpose of the ability to request additional meetings is to ensure that local community stakeholders have a continual and ongoing mechanism to obtain information as it arises, and to not be limited by the quarterly meetings. This provision simply seeks to formalize what many commenters have identified as an existing ability to provide needed information to community stakeholders.

Comment: One commenter stated that, by implementing the proposed rule, HHSC failed to distinguish between prescribing by rule and delegating authority to the public. The commenter further stated that in doing so, HHSC exceeded its statutory authority under Texas Government Code Chapters 531 and 752. Specifically, the commenter pointed to HHSC "authoriz(ing) any member of the general public to demand a meeting with a local resettlement agency within 5 days."

Response: To clarify, the proposed rule does not authorize a member of the general public to "demand" a meeting with a local resettlement agency. Rather, the proposed rule requires local resettlement agencies to respond to meeting requests from certain identified local governmental entities and community stakeholders, as described. Local resettlement agencies may decline a request for a meeting, and in such situations the response must be in writing with the reason for the decision clearly stated. A copy of the response is then submitted to HHSC within three business days.

In adopting proposed §375.701(c), HHSC does not delegate any agency authority to the general public, or exceed the statutory authority provided by S.B. 1928. Texas Government Code §531.0411(b) requires the HHSC Executive Commissioner to "adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information." Subsection (c) seeks to ensure that local governmental entities and community stakeholders have access to timely and comprehensive information, particularly with regard to the rapidly changing circumstances of worldwide immigration and population displacement in the last several months. S.B. 1928 does not prohibit HHSC from ensuring that local governmental entities and community stakeholders have such access. On the contrary, ensuring such access furthers the legislative intent stated under Texas Government Code §531.0411(b).

Comment: Several commenters opposed the inclusion of a mandated maximum time period of five business days to respond to meeting requests from governmental entities and community stakeholders. Specifically, several entities commented that this

proposed time restraint would cause an undue burden on staff, interrupt community engagement efforts, and increase administrative costs to the resettlement agency. One commenter suggested that the five business day timeframe be extended to ten business days.

Response: HHSC recognizes that responding to a meeting request, either by agreeing to meet or by declining the request in writing, is only one of a local resettlement agency's many responsibilities. As such, HHSC will modify subsection (c)(1) by extending the period from five business days to ten business days for a local resettlement agency to grant or decline a requested meeting. This edit can be found in the updated rule language below.

§375.701(d):

Comment: Several commenters opposed the inclusion of a mandated maximum time period of five business days to respond to information requests from governmental entities and community stakeholder. Specifically, several entities commented this proposed time restraint would cause an undue burden on staff, interrupt community engagement efforts, and increase administrative costs to the resettlement agency. One commenter suggested that the five business day timeframe be extended to ten business days.

Response: The five business day response timeframe under subsection (d) of the rule applies to the local resettlement agencies' duty to state whether a request for information will be granted. Local resettlement agencies may decline a request for information, and in such situations the response must be in writing with the reason for the decision clearly stated. A copy of the response is then submitted to HHSC within three business days.

HHSC recognizes that responding to an information request, either by agreeing to provide the information or by declining the request in writing, is only one of a local resettlement agency's many responsibilities. As such, HHSC will modify subsection (d)(1) by extending the period from five business days to ten business days for a local resettlement agency to grant or decline a request for information. This edit can be found in the updated rule language below.

Comment: One commenter stated that the 15 business day period to provide information requested by any member of the public placed a substantial burden on agency resources and staff.

Response: To clarify, the community stakeholders identified under subsection (d) are the same as those listed under subsection (b). HHSC did not intend to give any member of the general public standing to request information from local resettlement agencies about the refugee resettlement process. However, given the extension of the grant/denial period under subsection (d)(1), HHSC will modify the rule to commensurately expand the timeframe in which a local resettlement agency must provide requested information once a request is granted. This has been extended from 15 to 20 business days. The edit can be found in the rule language below.

§375.701(e):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§375.701(f):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§375.701(g):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§375.701(h):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§375.701(i):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §752.004, which authorize HHSC to apply for and distribute funds to agencies responsible for providing services to refugees; and Texas Government Code §531.0411 which requires the Executive Commissioner of HHSC to adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information.

§375.701. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply:

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) HHSC--Texas Health and Human Services Commission, or its designee.

(3) Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(4) National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies; and

(2) community stakeholders, including:

(A) major providers under the local health care system; and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within ten business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within ten business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than twenty business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section in reporting annual refugee placement information to the local refugee resettlement agency's national voluntary agency for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of proposed annual refugee placement data for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of an annual refugee placement report for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements for the Refugee Cash Assistance Program), Subchapter C of this chapter (relating to Program Administration for the Refugee Cash Assistance Program), and Subchapter E of this chapter (relating to Refugee Medical Assistance), a contract with a local resettlement agency to provide Refugee Cash Assistance services must comply with the requirements of this subchapter.

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 April 7, 2016.

TRD-201601625
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 1, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 424-6900

CHAPTER 376. REFUGEE SOCIAL SERVICES SUBCHAPTER J. LOCAL RESETTLEMENT AGENCY REQUIREMENTS

1 TAC §376.1001

The Texas Health and Human Service Commission (HHSC) adopts new §376.1001, concerning Local Governmental and Community Input, with changes to the proposed text as published in the February 5, 2016, issue of the *Texas Register* (41 TexReg 880). The text of the rule will be republished.

BACKGROUND AND JUSTIFICATION

The new rule allows HHSC to require local resettlement agencies to obtain governmental and community input for the process of proposing refugee placements in Texas.

The HHSC Office of Immigration and Refugee Affairs is the single point of contact for federally funded refugee cash and medical assistance and social services in Texas. The process for refugee resettlement and placement primarily involves the U.S. Department of State, national resettlement agencies, and their local resettlement agency affiliates. HHSC contracts with the local resettlement agencies in Texas to provide refugee resettlement services under the State Plan for the Refugee Program.

Senate Bill (S.B.) 1928, 84th Legislature, Regular Session, 2015, enacted Texas Government §531.0411, which requires HHSC to adopt rules requiring local resettlement agencies to obtain governmental and community input for the process of proposing refugee placements in Texas. The new rule adds requirements for local resettlement agencies engaged in the refugee resettlement and placement process in Texas.

The new rule requires local resettlement agencies to:

1) Convene meetings at least quarterly at which local resettlement agencies can consult with local governmental entities and officials, and other community stakeholders, on proposed refugee placement.

2) Respond within ten business days as to whether requests from a local governmental entity or community stakeholder to meet regarding the resettlement process, outside of the quarterly meetings, will be granted. (This time period was extended based on public comments received.)

3) Consider input from these meetings in reporting annual refugee placement information to their national organizations for purposes of 8 U.S.C. §1522(b)(7)(E).

4) Provide HHSC, local governmental entities and officials, and local community stakeholders with a copy of proposed annual refugee placement data for purposes of 8 U.S.C. §1522(b)(7)(E).

5) Submit a final annual report to their national organizations and HHSC summarizing how this input contributed to the development of an annual refugee placement report for purposes of 8 U.S.C. §1522(b)(7)(E).

6) Provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

7) Respond within ten business days as to whether requests for information related to the resettlement process by local governmental entities and officials or community stakeholders will be granted, to the extent not otherwise prohibited by state or federal law. In addition, the rule provides that if such requests are granted, the requested information must be provided within 20 business days from the date of receipt of the request. (These timeframes were extended based on public comments received.)

Local resettlement agencies are already required by their national organizations and the U.S. Department of State to engage in community consultation and to provide quarterly narrative reports that describe both best practices and issues that may affect placement in their area. See: 8 U.S.C. §1522(a)(2)(C)(ii) and (b)(7). S.B. 1928 provides more specificity and structure around the existing federal requirements. As a result, any costs incurred by local resettlement agencies to comply with the new rule will be minimal.

COMMENTS

The 30-day comment period ended March 7, 2016. During this period, HHSC received comments regarding the new rule. A summary of comments relating to the rule and HHSC's responses follows.

HHSC received comments in support of the proposed Refugee Resettlement Program rule, either in whole or in part, from Catholic Charities of Fort Worth and the Texas Catholic Conference.

HHSC received comments opposed to the proposed Refugee Resettlement Program rule, either in whole or in part, from the following entities: Refugee Services of Texas, Catholic Charities of Fort Worth, the International Rescue Committee, the Alliance for Multicultural Community Service, Caritas of Austin, Texas Catholic Conference, and Texas Impact.

HHSC received comments from the following entities requesting changes to the proposed Refugee Resettlement Program rule: Refugee Services of Texas, Catholic Charities of Fort Worth, the Alliance for Multicultural Community Service, Caritas of Austin, and Texas Impact.

Comments received regarding duplication of or conflict with federal law:

Comment: Several commenters stated that the S.B. 1928 provisions are unnecessary and duplicative because federal rules already require the same or similar actions by local resettlement agencies. Commenters noted that local resettlement agencies have invested significant time and energy in recent years to provide expanded and timely information regarding the refugee resettlement program.

Response: HHSC declines to comment on S.B. 1928. These are comments on the appropriateness of S.B. 1928, not the rules as proposed by HHSC. The Texas Legislature enacted S.B. 1928 pursuant to its constitutional authority, and required HHSC to enact rules to implement the legislation by May 1, 2016.

Comment: One commenter raised the concern that the rules proposed by HHSC to implement S.B. 1928 have the potential to come into conflict with federal law and obligations as a federal grantee.

Response: Given that the commenter did not elaborate on what specific federal law or federal grantee obligation may conflict with the proposed rule, HHSC can only respond that it is not aware of any such conflicts.

Comments regarding the costs associated with the proposed rule:

Comment: One commenter expressed concern that possible increased administrative costs to comply with the proposed rule risks the imposition of an impermissible state tax on federal activities.

Response: The commenter did not specify which costs risk constituting an impermissible tax.

The term "tax" is not defined under the Tax Code or by legislative definition. Where a term is not defined by statute or technical meaning, the Code Construction Act directs that the term "shall be construed according to the rules of grammar and common usage." Tex. Gov't Code §311.011. Black's Law Dictionary defines "tax" as "a charge, usually monetary, imposed by the government on persons, entities, transactions, or property to yield public revenue." Black's Law Dictionary, p. 700 (Third Pocket Edition). The possible increase in administrative costs to an entity contracted with HHSC to provide Refugee Resettlement Program services does not meet this definition. The proposed rule does not impose any charge or fee on contractors to be collected by HHSC or the State of Texas.

Comments regarding the Fiscal Analysis in the Preamble:

Comment: Several commenters expressed concern that the proposed rule included a fiscal note that did not recognize costs to resettlement agencies. Commenters stated that the financial impact of the proposed new rule on resettlement agencies would result in a significant financial burden that would hinder their ability to serve refugees. Specifically, commenters expressed concern that the proposed rule will require local resettlement agencies to redirect agency efforts to manage the new administrative burden or require additional fundraising to cover the costs of additional staff for turnaround times.

Response: To clarify, the Fiscal Note provided addresses only expected costs to state and local governments as required by the Administrative Procedure Act.

As stated by several commenters, the requirement for local resettlement agencies to meet regularly (not less often than quarterly) with state and local governmental entities was set forth by the United States Department of State (DOS) in a program announcement dated September 26, 2013. Under this DOS guidance, the following stakeholders were required to be involved at a minimum: the state refugee coordinator, the state refugee health coordinator, local governance (city and/or state as appli-

cable), local and/or county public health, welfare and social services, and public education.

S.B. 1928 reiterates the requirement for local resettlement agencies to meet at least quarterly with certain government and community stakeholders. The identified government stakeholders include, at a minimum, municipal and county officials, local school district officials, and representatives of local law enforcement agencies. The identified community stakeholders include, at a minimum, major providers under the local health care system and major employers of refugees. These parties are identified in subsection (b) of the rule and are largely identical to the parties identified under the DOS guidance. As quarterly meetings with these parties are already required, HHSC does not anticipate additional costs to meet the requirements for quarterly meetings under the rule.

Regarding the requirements to respond to requests for meetings and information from certain stakeholders, HHSC expects the additional costs to do so to be minimal as these only apply, at a minimum, to certain identified parties. As many commenters mentioned, local resettlement agencies already engage in routine communications with community stakeholders as the need arises. These communications often occur outside the quarterly meetings. Subsections (c) and (d) of the rule seek to formalize the identified stakeholders' ability to seek timely and updated information. HHSC does not expect these provisions to require local resettlement agencies to significantly alter administrative efforts or funding. Regarding the timeline for responses, please see the discussion regarding subsections (c) and (d) of the rule below.

Comments on specific rule subsections:

§376.1001(a):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§376.1001(b):

Comment: Several commenters asked HHSC to clarify the definition of "community stakeholders" and expressed concern that the term was too vague in the proposed rule. One commenter expressed concern that the term did not specify what parties were not included. One commenter suggested that a broad definition would be beneficial to ensure local resettlement agencies have a meaningful spectrum of community input.

Response: HHSC agrees that a broad definition of "community stakeholder" is most appropriate to further the intent of S.B. 1928 in providing governmental entities with community stakeholder input regarding proposed refugee placement. As such, subsection (b) of the rule sets forth a minimum list of relevant stakeholders that HHSC requires local resettlement agencies to interact with, subject to the provisions of the rule. Local resettlement agencies are encouraged to interact with and seek the input of any additional stakeholder that can offer input relevant to the refugee resettlement process. Examples of additional stakeholders can be found under the U.S. Department of State program guidance letter from September 2013.

Regarding any limit to the definition, HHSC declines to include a list of excluded parties under the proposed rule, so as not to limit agency ability to seek additional input from interested stakeholders for S.B. 1928 purposes. Under the canon of construction known as "ejusdem generis," an enumeration of specific items that follows a general term limits unlisted items to items similar in nature. Tex. Att'y Gen. Op. No. JC-410 (2001). As such, subsection (b) of the rule is meant to apply to entities similar in nature to the stakeholders that are listed. The proposed rule addresses local resettlement agency interactions with stakeholders that actively participate in the refugee resettlement process, and that have obtained experience unique to this involvement. This is not intended to include members of the general public not engaged in the resettlement process.

Comment: One commenter suggested that HHSC define "community stakeholder" to track the guidance provided by the U.S. Department of State in Appendix 1 of the program guidance letter from September 2013.

Response: HHSC declines to provide an exhaustive list of which entities constitute community stakeholders. The rule provides a minimum set of stakeholders that HHSC expects local resettlement agencies to consult regarding the refugee resettlement program. HHSC encourages local resettlement agencies to consult and meet with any additional entities that the agency considers to be integral to the resettlement process.

Comments regarding both §376.1001(c) and (d):

Comment: Several commenters stated that subsections (c) and (d) of the proposed rule exceeded HHSC's statutory authority under S.B. 1928.

Response: HHSC respectfully disagrees with this statement. S.B. 1928 enacted new Texas Government Code §531.0411(b), which requires the HHSC Executive Commissioner to "adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information." As stated by many commenters, cooperation and consultation with local communities are important for the success of resettlement programs.

In order to provide accurate and targeted input, local governmental entities and community stakeholders must be enabled to discuss or request information regarding the refugee resettlement process in addition to the information provided in the quarterly meetings required under subsection (b) of the rule. Subsection (c) of the rule seeks to ensure that local governmental entities and community stakeholders have access to timely and comprehensive information, particularly with regard to the rapidly changing circumstances of worldwide immigration and population displacement in the last several months.

S.B. 1928 does not prohibit HHSC from ensuring that local governmental entities and community stakeholders have such access. While subsections (c) and (d) of the rule are not expressly set forth under S.B. 1928, HHSC believes the subsections are necessary to fully implement subsection (b) of the rule relating to quarterly meetings with local government and community stakeholders. Absent subsections (c) and (d), subsection (b) would arguably be implemented either inadequately or to no avail. HHSC believes that ensuring such access furthers the legislative intent stated under Texas Government Code §531.0411(b). Furthermore, where a statute leaves room for policy determinations regarding implementation, deference is given to an agency's reasonable interpretation of the statute. See Tex. Dep't of Ins. v. Am. Nat'l Ins. Co., 410 S.W.3d 843, 859 (Tex. 2012); and Stanford v. Butler, 142 Tex. 692, 181 S.W.2d 269, 273 (Tex. 1944).

Comment: One commenter expressed concern that subsections (c) and (d) of the proposed rule place a substantial burden on the free exercise of religion of local resettlement agencies that are

faith-based organizations. Accordingly, the commenter requests that HHSC show subsections (c) and (d) provisions are necessary to achieve a compelling state interest and why a less restrictive means to achieve this interest is not available pursuant to Tex. Civ. Prac. & Rem. Code §110.003.

Response: The commenter did not identify how religious exercise was substantially burdened by the proposed rule. As such, HHSC can only respond generally.

State law prohibits a government agency from substantially burdening a person's free exercise of religion, unless the government agency demonstrates that the application of the burden to the person: 1) is in furtherance of a compelling governmental interest; and 2) is the least restrictive means of furthering that interest. Tex. Civ. Prac. & Rem Code §110.003.

The Texas Legislature sought to strengthen the success of placing actual refugees throughout the state by ensuring that local governmental and community input was effectively considered regarding the refugee resettlement program. The state's interest in resettling genuine refugees in communities best prepared to serve and assist them is "paramount" and "of the highest order."

Subsections (c) and (d) of the rule are necessary to fully implement subsection (b), relating to regular meetings and informational sharing with local government and community stakeholders.

As stated by many commenters, cooperation and consultation with local communities are important for the success of resettlement programs. In order to provide accurate and targeted input, local governmental entities and community stakeholders may need to discuss or request information regarding refugees or the resettlement process in addition to the information provided in the quarterly meetings required under subsection (b) of the rule. Subsections (c) and (d) will help ensure that local governmental entities and community stakeholders have access to timely and comprehensive information, particularly with regard to the ever-changing circumstances and challenges associated with worldwide immigration and population displacement. Texas Government Code §531.0411(b), as enacted by S.B. 1928, requires HHSC to ensure that local governmental entities and community stakeholders have such informational access.

The provision of resettlement information to the identified stakeholders is most efficiently and accurately done by requiring the local resettlement agencies to do so directly. Local resettlement agencies contract with both the federal government, to provide services and assistance in the initial resettlement phase, and with HHSC regarding longer term dynamics once refugees are settled within Texas. To give effect to S.B. 1928's directive to "ensure local government and community input in a federal refugee resettlement program" in the state, these stakeholders must have access to timely and accurate information when required. The most effective and least restrictive way to provide such information to these stakeholders is to require local resettlement agencies to provide the information requested directly to the identified stakeholders.

Comment: Some commenters expressed concern regarding the definition of "community stakeholder" for purposes of subsections (c) and (d) of the rule. The commenters explained that a broad definition would cause local resettlement agencies significant administrative burdens by having to respond to requests without any clarity as to which parties had standing to make such a request.

Response: Subsection (b) sets forth a minimum list of relevant stakeholders that HHSC requires local resettlement agencies to interact with for purposes of subsections (c) and (d). Local resettlement agencies are encouraged to interact with and seek the input of any additional stakeholder that can offer input relevant to the refugee resettlement process.

Comments specific to §376.1001(c):

Comment: Several commenters are opposed to the additional meetings local governmental entities and community stakeholders may request with local resettlement agencies. Many commenters pointed to already existing relationships with local community stakeholders maintained through the existing quarterly meetings and ongoing community engagement measures. Some commenters requested the removal of this provision from the rule.

Response: HHSC declines to remove subsection (c) from the rule. HHSC agrees that local resettlement agencies interact with community stakeholders through the quarterly meetings already required by federal rules and through ongoing community engagement. However, the purpose of the ability to request additional meetings is to ensure that local community stakeholders have a continual and ongoing mechanism to obtain information as it arises, and to not be limited by the quarterly meetings. This provision simply seeks to formalize what many commenters have identified as an existing ability to provide needed information to community stakeholders.

Comment: One commenter stated that by implementing the proposed rule HHSC failed to distinguish between prescribing by rule and delegating authority to the public. The commenter further stated that in doing so, HHSC exceeded its statutory authority under Texas Government Code Chapters 531 and 752. Specifically, the commenter pointed to HHSC "authoriz(ing) any member of the general public to demand a meeting with a local resettlement agency within 5 days."

Response: To clarify, the proposed rule does not authorize a member of the general public to "demand" a meeting with a local resettlement agency. Rather, the proposed rule requires local resettlement agencies to respond to meeting requests from certain identified local governmental entities and community stakeholders, as described. Local resettlement agencies may decline a request for a meeting, and in such situations the response must be in writing with the reason for the decision clearly stated. A copy of the response is then submitted to HHSC within three business days.

In adopting proposed §376.1001(c), HHSC does not delegate any agency authority to the general public, or exceed the statutory authority provided by S.B. 1928. Texas Government Code §531.0411(b) requires the HHSC Executive Commissioner to "adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information." Subsection (c) seeks to ensure that local governmental entities and community stakeholders have access to timely and comprehensive information, particularly with regard to the rapidly changing circumstances of worldwide immigration and population displacement in the last several months. S.B. 1928 does not prohibit HHSC from ensuring that local governmental entities and community stakeholders have such access. On the contrary, ensuring such access furthers the legislative intent stated under Texas Government Code §531.0411(b).

Comment: Several commenters opposed the inclusion of a mandated maximum time period of five business days to respond to meeting requests from governmental entities and community stakeholders. Specifically, several entities commented that this proposed time restraint would cause an undue burden on staff, interrupt community engagement efforts, and increase administrative costs to the resettlement agency. One commenter suggested that the five business day timeframe be extended to ten business days.

Response: HHSC recognizes that responding to a meeting request, either by agreeing to meet or by declining the request in writing, is only one of a local resettlement agency's many responsibilities. As such, HHSC will modify subsection (c)(1) by extending the period from five business days to ten business days for a local resettlement agency to grant or decline a requested meeting. This edit can be found in the updated rule language below.

§376.1001(d):

Comment: Several commenters opposed the inclusion of a mandated maximum time period of five business days to respond to information requests from governmental entities and community stakeholder. Specifically, several entities commented this proposed time restraint would cause an undue burden on staff, interrupt community engagement efforts, and increase administrative costs to the resettlement agency. One commenter suggested that the five business day timeframe be extended to ten business days.

Response: The five business day response timeframe under subsection (d) of the rule applies to the local resettlement agencies' duty to state whether a request for information will be granted. Local resettlement agencies may decline a request for information, and in such situations the response must be in writing with the reason for the decision clearly stated. A copy of the response is then submitted to HHSC within three business days.

HHSC recognizes that responding to an information request, either by agreeing to provide the information or by declining the request in writing, is only one of a local resettlement agency's many responsibilities. As such, HHSC will modify subsection (d)(1) by extending the period from five business days to ten business days for a local resettlement agency to grant or decline a request for information. This edit can be found in the updated rule language below.

Comment: One commenter stated that the 15 business day period to provide information requested by any member of the public placed a substantial burden on agency resources and staff.

Response: To clarify, the community stakeholders identified under subsection (d) are the same as those listed under subsection (b). HHSC did not intend to give any member of the general public standing to request information from local resettlement agencies about the refugee resettlement process. However, given the extension of the grant/denial period under subsection (d)(1), HHSC will modify the rule to commensurately expand the timeframe in which a local resettlement agency must provide requested information once a request is granted. This has been extended from 15 to 20 business days. The edit can be found in the rule language below.

§376.1001(e):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§376.1001(f):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§376.1001(g):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§376.1001(h):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

§376.1001(i):

HHSC did not receive any public comments regarding this specific section of the proposed rule.

STATUTORY AUTHORITY

The new rule is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Government Code §752.004, which authorize HHSC to apply for and distribute funds to agencies responsible for providing services to refugees; and Texas Government Code §531.0411 which requires the Executive Commissioner of HHSC to adopt rules to ensure that local governmental and community input is included in any refugee placement report required under a federal refugee resettlement program and that governmental entities and officials are provided with related information.

§376.1001. Local Governmental and Community Input.

(a) For purposes of this subchapter, the following definitions apply:

(1) Business day--A day that is not a Saturday, Sunday, or federal legal holiday. In computing a period of business days, the first day is excluded and the last day is included. If the last day of any period is a Saturday, Sunday, or federal legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or federal legal holiday.

(2) HHSC--Texas Health and Human Services Commission, or its designee.

(3) Local resettlement agency--As defined by 45 C.F.R. §400.2, means a local affiliate or subcontractor of a national voluntary agency that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(4) National voluntary agency--As defined by 45 C.F.R. §400.2, means one of the national resettlement agencies or a state or local government that has entered into a grant, contract, or cooperative agreement with the United States Department of State or other appropriate federal agency to provide for the reception and initial placement of refugees in the United States.

(b) A local resettlement agency must convene meetings at least quarterly at which representatives of the local resettlement agency have an opportunity to consult with and obtain feedback regarding proposed refugee placement from, at a minimum:

(1) local governmental entities and officials, including:

(A) municipal and county officials;

(B) local school district officials; and

(C) representatives of local law enforcement agencies; and

(2) community stakeholders, including:

(A) major providers under the local health care system; and

(B) major employers of refugees.

(c) In addition to the quarterly meetings held under subsection (b) of this section, local governmental entities and community stakeholders may request to meet with a local resettlement agency regarding refugee placement.

(1) A local resettlement agency must respond within ten business days to a request from a local governmental entity or community stakeholder to meet.

(2) If a request for a meeting is denied, the response must be in writing and the reason for denial must be clearly stated.

(3) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(d) To facilitate consultation and effective feedback, local governmental entities and community stakeholders may request information from a local resettlement agency related to the resettlement process.

(1) A local resettlement agency must respond within ten business days as to whether a request for information from a local governmental entity or community stakeholder will be granted.

(2) If the request is granted, the local resettlement agency must provide the requested information no later than twenty business days from the date of the receipt of the request, to the extent not otherwise prohibited by state or federal law.

(3) If a request for information is denied, the response must be in writing and the reason for denial must be clearly stated.

(4) A copy of the denial must be submitted to HHSC by the local resettlement agency no later than three business days after it is sent to the local governmental entity or community stakeholder.

(e) A local resettlement agency must consider all feedback obtained in community consultation meetings under subsections (b) and (c) of this section in reporting annual refugee placement information to the local refugee resettlement agency's national voluntary agency for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(f) A local resettlement agency must provide HHSC, local governmental entities and officials, and community stakeholders described under subsection (b) of this section a copy of proposed annual refugee placement data for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(g) A local resettlement agency must develop and submit a final annual report to the local refugee resettlement agency's national voluntary agency and for HHSC that includes a summary regarding how community stakeholder input contributed to the development of an annual refugee placement report for purposes of 8 U.S.C. Section 1522(b)(7)(E).

(h) A local resettlement agency must provide HHSC with the preliminary number of refugees the local resettlement agencies recommend to the national voluntary agencies for placement throughout the State of Texas.

(i) In addition to applicable requirements specified in Subchapter B of this chapter (relating to Contractor Requirements), a contract with a local resettlement agency to provide Refugee Social Services must comply with the requirements of this subchapter.

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 April 7, 2016.

TRD-201601626
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Effective date: May 1, 2016
Proposal publication date: February 5, 2016
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 30. COMMUNITY DEVELOPMENT

SUBCHAPTER A. TEXAS COMMUNITY DEVELOPMENT BLOCK GRANT PROGRAM

DIVISION 3. ADMINISTRATION OF PROGRAM FUNDS

4 TAC §30.52

The Texas Department of Agriculture (Department) adopts amendments to §30.52, relating to match requirements under the Texas Capital Fund Real Estate and Infrastructure Development Programs, without changes to the proposed text as published in the March 4, 2016, issue of the *Texas Register* (41 TexReg 1560).

There were no comments received on the proposal.

The adoption is made under Texas Government Code §487.051, which provides the Department authority to administer the state's community development block grant non-entitlement program, and §487.052, which provides authority for the Department to adopt rules as necessary to implement Chapter 487.

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

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 April 5, 2016.

TRD-201601572
Jessica Escobar
Assistant General Counsel
Texas Department of Agriculture
Effective date: April 25, 2016
Proposal publication date: March 4, 2016
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS

SUBCHAPTER II. COMMISSIONER'S RULES CONCERNING HIGH SCHOOL ALLOTMENT

The Texas Education Agency adopts amendments to §§61.1091, 61.1093, 61.1094, and 61.1099 and the repeal of §61.1100 and §61.1101, concerning the high school allotment for school districts. The amendments and repeals are adopted without changes to the proposed text as published in the January 15, 2016 issue of the *Texas Register* (41 TexReg 561) and will not be republished. The sections implement provisions for the administration of high school allotment funds. The adopted amendments and repeals update the current rules to reflect statutory changes.

REASONED JUSTIFICATION. The Texas Education Code (TEC), §42.2516(b)(3), added by the 79th Texas Legislature, Third Called Session, 2006, and amended by the 80th Texas Legislature, Regular Session, 2007, provided for an allotment of $275 for each student in average daily attendance in Grades 9-12 in a school district. This allotment is known as the high school allotment.

The TEC, §39.113, added by the 79th Texas Legislature, Third Called Session, 2006, authorized the commissioner to adopt rules related to the recognition of high school completion and success and college readiness programs. The TEC, §39.114, also added by the 79th Texas Legislature, Third Called Session, 2006, required the commissioner to adopt rules related to permissible uses of the high school allotment.

House Bill (HB) 3, 81st Texas Legislature, 2009, renumbered the TEC, §39.113, as §39.233, and updated statutory references within the section. The bill also renumbered the TEC, §39.114, as §39.234. In addition, the criteria a district must meet to be able to use high school allotment funds on any instructional program in Grades 6-12 other than an athletic program, found in subsection (b) of the new TEC, §39.234, were revised.

The commissioner exercised rulemaking authority to implement the high school allotment by adopting 19 TAC Chapter 61, Subchapter II, Commissioner's Rules Concerning High School Allotment, effective November 9, 2006, and adopted amendments to the rules effective March 3, 2010, in response to actions from the 2006, 2007, and 2009 legislative sessions.

Subsequently, HB 5, 83rd Texas Legislature, 2013, changed graduation requirements, transitioning from three high school graduation programs to one foundation high school program with endorsement options to increase flexibility for students. HB 5 also changed some accountability indicators. The adopted revisions to 19 TAC Chapter 61, Subchapter II, reflect these statutory changes, as follows.

Section 61.1091, Definitions, removes the criteria related to the Distinguished Achievement High School Program.

Section 61.1093, Use of Funds, removes options related to the Recommended High School Program and the Distinguished Achievement Program.

Section 61.1094, Exceptions for Alternative Uses of Funds, updates and specifies in rule the eligibility criteria for exceptions for alternative uses of the high school allotment funds.

Section 61.1099, School District Annual Performance Review, updates the performance indicators that school districts must use to establish annual performance goals to be implemented with high school allotment funds.

Section 61.1100, Evaluation of Programs, is repealed to minimize duplication as §61.1099 outlines school district performance review protocols.

Section 61.1101, Standards for Selecting and Methods for Recognizing Districts and Campuses Offering Exceptional Programs, is repealed based on the 2015 Sunset Advisory Commission Review Recommendation 4.11 (and TEA's agreement with the recommendation) to eliminate the requirement for TEA to recognize schools' use of high school allotment funds.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began January 15, 2016, and ended February 16, 2016. No public comments were received.

19 TAC §§61.1091, 61.1093, 61.1094, 61.1099

STATUTORY AUTHORITY. The amendments are adopted under the Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; and TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment.

CROSS REFERENCE TO STATUTE. The amendments implement the Texas Education Code, §§39.233, 39.234, and 42.160.

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 April 6, 2016.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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19 TAC §61.1100, §61.1101

STATUTORY AUTHORITY. The repeals are adopted under the Texas Education Code (TEC), §39.233, which permits the commissioner of education to adopt rules to recognize high school completion and success and college readiness programs; TEC, §39.234, which requires the commissioner to adopt rules related to the permissible use of funds allocated under the annual high school allotment; and TEC, §42.160, which requires the commissioner to adopt rules to administer the annual high school allotment.

CROSS REFERENCE TO STATUTE. The repeals implement the Texas Education Code, §§39.233, 39.234, and 42.160.

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

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CHAPTER 129. STUDENT ATTENDANCE
SUBCHAPTER AA. COMMISSIONER'S RULES

19 TAC §129.1029

The Texas Education Agency adopts an amendment to §129.1029, concerning the Optional Flexible Year Program (OFYP). The amendment is adopted without changes to the proposed text as published in the January 15, 2016 issue of the *Texas Register* (41 TexReg 564) and will not be republished. The section implements provisions for the administration of the OFYP. The adopted amendment modifies the rule to reflect changes in statute made by House Bill (HB) 2610, 84th Texas Legislature, 2015.

REASONED JUSTIFICATION. HB 2610, 84th Texas Legislature, 2015, made changes to the Texas Education Code (TEC), §25.081, to modify how a school district counts instructional time for the school year by requiring a minimum of 75,600 minutes of instruction, including intermission and recess, instead of the current minimum of 180 days. It also defines one day of instruction to be equal to 420 minutes.

Before amendment by HB 2610, the TEC, §25.081, required school districts to provide at least 180 days of instruction to students each school year, except if the school district operated on a year-round calendar or offered a flexible year program. The statute allowed the commissioner of education to approve a reduced number of instructional days if an extreme weather event or another calamity caused schools to close.

When schools close due to severe weather and the commissioner does not approve reduced instructional days, schools must make up lost instructional days by adding days to the school calendar and extending the school year into summer. Allowing school districts to count instructional time by minutes instead of days provides for lost instructional time to be added to a regular school day, permitting districts to make up lost time without extending classes into the summer.

In accordance with HB 2610, the commissioner may approve reduced minutes of instruction if certain extreme weather or another calamity causes schools to close. If the commissioner does not approve fewer instructional minutes for a school district, the district may add additional minutes to its normal school hours as necessary, with additional instructional minutes compensating for the time lost due to bad weather or other extraordinary events.

The adopted amendment to 19 TAC §129.1029 incorporates the changes made by HB 2610 as follows.

New subsection (a) was added to establish definitions for the Optional Flexible Year Program (OFYP) and school district.

Subsection (c) was revised to update program criteria, including the addition of new paragraph (7) to require proposed OFYP instructional time to be scheduled before the last approved student assessment testing window of the school year. The TEC, §29.0821, specifies that this program is available to assist students in meeting promotion requirements. New paragraph (7) is intended to ensure that additional instruction takes place prior to the final administration of state assessments since these are required for promotion.

Subsection (d) was revised to update the approval process, including the requirement that a school district submit its instructional calendar that indicates the days and minutes scheduled as OFYP instructional days.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began January 15, 2016, and ended February 16, 2016. No public comments were received.

STATUTORY AUTHORITY. The amendment is adopted under the Texas Education Code (TEC), §29.0821, which authorizes the commissioner of education to adopt rules necessary for the administration of provisions under the optional flexible year program.

CROSS REFERENCE TO STATUTE. The amendment implements the TEC, §29.0821.

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

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CHAPTER 150. COMMISSIONER'S RULES CONCERNING EDUCATOR APPRAISAL
SUBCHAPTER AA. TEACHER APPRAISAL

The Texas Education Agency (TEA) adopts the repeal of §§150.1001-150.1007, 150.1009, and 150.1010, and new §§150.1001-150.1008, concerning teacher appraisal. The repeal of §§150.1001-150.1007, 150.1009, and 150.1010 and new §150.1005 and §150.1008 are adopted without changes to the proposed text as published in the December 11, 2015 issue of the *Texas Register* (40 TexReg 8857) and will not be republished. New §§150.1001-150.1004, 150.1006, and 150.1007 are adopted with changes to the proposed text as published in the December 11, 2015 issue of the *Texas Register* (40 TexReg 8857). Sections 150.1001-150.1007, 150.1009, and 150.1010 reflect the state-recommended appraisal system for teachers. The adopted repeal and new rules reflect changes to the state-recommended teacher appraisal system by replacing the current state-recommended teacher appraisal system, the Professional Development Appraisal System (PDAS), effective July 1, 2016, with a new state-recommended teacher appraisal

system, the Texas Teacher Evaluation and Support System (T-TESS).

REASONED JUSTIFICATION. The rules in 19 TAC Chapter 150, Subchapter AA, capture the commissioner's current state-recommended appraisal system for teachers, the PDAS, which has been in place since 1997.

Since the fall of 2013, the TEA has worked with stakeholders, including teachers, principals, district administrators, higher education representatives, and regional education service centers, to build and refine a new state-recommended teacher appraisal system that can be utilized more effectively for educator development. The new system, the T-TESS, was piloted in approximately 57 districts during the 2014-2015 school year and refined throughout the year based on educator feedback. During the 2015-2016 school year, the T-TESS is being piloted in 232 districts, which have adopted the system as a locally developed appraisal option.

The T-TESS will replace the PDAS as the state-recommended teacher appraisal system beginning July 1, 2016. The adopted rule actions in this item repeal the rules for the PDAS and replace them with the new rules for the T-TESS. Besides describing and detailing the process for the T-TESS, the adopted new rules also clarify statutory language in the Texas Education Code (TEC), §21.351(a)(2), that requires the use of the performance of teachers' students as a measure of student growth at the individual teacher level.

Although statute requires the use of "the performance of teachers' students" in both the state-recommended teacher appraisal system and any locally adopted teacher appraisal system, the term "the performance of teachers' students" is not defined in the statute, nor does the statute prescribe what type of performance should be considered in a teacher's appraisal results. The commissioner has, by rule, clarified that term to mean student growth at the individual teacher level for the following reasons.

First, when considering the purpose of appraisal is to determine whether or not a teacher's pedagogical choices have proven to be effective for the students enrolled in the teacher's courses, the measure of student performance should be based on student growth rather than student proficiency. Student proficiency measures a student's ability to reach a predetermined academic standard without consideration of what level of knowledge and skill a student possessed when entering the teacher's course. When measuring student proficiency, a student who moves from three years behind grade level to one year behind grade level in a single year still counts as a student who failed to meet the predetermined academic standard. For the purposes of a teacher appraisal process, this type of measure could lead to false diagnostic conclusions about the effectiveness of a teacher's pedagogical decisions and diminish the accuracy and value of the appraisal process. In the example above, the proficiency data would suggest that the teacher's practices were ineffective even though the student improved two grade levels in a single year.

Student growth measures how much a student progresses academically during his or her time with a particular teacher. It takes into consideration a student's entering knowledge and skill level when measuring how much the student grew over time, and, as opposed to measuring student proficiency, student growth is not concerned with whether or not a student reaches a predetermined and uniform benchmark. It tailors growth expectations to each student's context. Measuring student growth in a teacher's appraisal process furthers the statutory requirement to allow for diagnostic results (TEC, §21.351(d)) that help determine areas of deficiency (TEC, §21.352(c)).

Second, when considering a measure of student growth at an individual versus a collective level (e.g., grade-level teams, subject teams, or entire campuses), an appraisal process that is required by statute to be diagnostic and to identify areas of deficiency for the individual teacher must look at how the individual teacher's students improved academically during the students' time with that teacher. Any student growth measure that is solely based on a group of teachers with different students and/or teaching assignments will not provide diagnostic, prescriptive feedback about the effectiveness of the pedagogy of the teacher being appraised. A collective student growth measure by itself does not provide specific, diagnostic feedback to the individual teacher on the impact of his or her instructional practices and decisions on the students enrolled in the teacher's courses.

More technically, prior attempts of individuals and groups to clarify the term "the performance of teachers' students" to mean solely a collective measure of student performance fall short of both grammatical and statutory standards. First, "teachers' students" is a plural possessive phrase, and plural possessive phrases do not indicate that what is possessed (students) can only be viewed as possessed by all collectively. Second, the Texas Government Code, §312.003(b), states that "the singular includes the plural and the plural includes the singular unless expressly provided otherwise," indicating that an interpretation of "teachers'" as plural without the ability to view it as singular does not follow the rules of statutory construction.

In addition to clarifying in rule the term "the performance of teachers' students" as student growth at the individual teacher level, the commissioner has defined the term to include the four broad ways to measure student growth for individual teachers while not requiring any one measure to be chosen over another due to the teacher's grade and subject assignment. These four broad ways are listed with the intent of capturing the entirety of the practical possibilities to measure student growth for an individual teacher.

The inclusion of the four broad measures of student growth in the rule without the requirement that a district choose any one particular measure in its locally adopted appraisal system is consistent with the commissioner's acknowledgement to the United States Department of Education (USDE) that the commissioner of education could not require "the performance of teachers' students" as narrowly as a value-added measures based on state assessment results for teachers who teach certain state tested grades and subjects. While the terms "student growth measure" and "value-added measures" are sometimes mistakenly used interchangeably, the latter is a narrow subset of the former. Such a narrow definition of that phrase and the mandate of a single measure that would only apply to approximately 20% of classroom teachers would exceed what is reasonable and permissible in clarifying an ambiguous term while supporting the statutory purposes of a teacher appraisal process, i.e., one that provides diagnostic and prescriptive feedback and identifies a teacher's areas of deficiency. In addition, the USDE required an enforcement regime beyond TEA's authority. By allowing school districts to measure the "performance of teachers' students" through four different possible student growth measures, the rules preserve the school districts' discretion and ability to tailor locally developed performance criteria to reflect accurately the performance of each individual teacher.

While the term "performance of teachers' students" is undefined, the commissioner does not find that the term is ambiguous in

TEC, §21.351. Statutory interpretation requires that words be given their ordinary meaning unless a different or more precise definition is apparent from the term's use in the context of the statute. Here the context of the statute is the use of the "performance of teachers' students" in the appraisal of an individual teacher, making it apparent that the term requires a teacher to be evaluated based on his or her own students' performance. However, even if the term were ambiguous, the commissioner of education has statutory authority to clarify ambiguous statutory terms that appear in TEC, §21.351, the section of statute that requires the commissioner to develop a state-recommended appraisal system. The term in question, "the performance of teachers' students," appears only in TEC, §21.351. The statutory provision that allows school districts to develop locally adopted appraisal systems, TEC, §21.352, simply refers back to TEC, §21.351, with a citation to TEC, §21.351(a) and (b). By statute, the locally developed appraisal system is derivative of the criteria developed by the commissioner under TEC, §21.351, and, therefore, subject to the commissioner's interpretation of the statutory terms in TEC, §21.351(a) and (b).

The commissioner has modified the rules at adoption to clarify the statutory requirements for the state-recommended and locally adopted teacher appraisal systems in §150.1001(f)(1) and (2).

The following additional changes were made to the rule since published as proposed in response to public comment, to provide clarification, and to incorporate technical edits.

In §150.1001, new subsection (f) was added to further clarify two statutory requirements of teacher appraisal systems, one on discipline procedures and one on student performance. The clarification on discipline procedures was added as new subsection (f)(1). The clarification on student performance, added as new subsection (f)(2), was moved from §150.1002(d). Technical edits were also made throughout the adopted rules to reflect the new subsection in which the clarifications can be found.

In §150.1003(b)(1)(A), the phrase "or for teachers new to the district" was added to clarify who completes a Goal-Setting and Professional Development Plan at the beginning of the school year.

In §150.1003(b)(2), the phrase "or for teachers new to the district" was added to clarify who participates in a Goal-Setting and Professional Development Plan conference.

In §150.1003(b)(4), language was added to clarify that additional observations and walk-throughs do not require post-conferences, but if the additional observations and walk-throughs will impact summative appraisal ratings, then they do require a written summary to be shared with the teacher within 10 working days.

In §150.1003(b)(6), the phrase "as described in subsection (f) of this section" was added to link the term "cumulative data" to an explanation of the term in subsection (f).

In §150.1003(d)(1), a technical edit was made by replacing the word "three" with "two" to indicate the number of weeks that must pass between a T-TESS orientation and an observation, as indicated in §150.1006(a).

In §150.1003(g), the word "written" was added to indicate that the mutual consent necessary to allow observations to be conducted in less than 45-minute segments should be written consent.

In §150.1004(f), the phrase "the second appraiser shall appraise the teacher in all domains" was deleted, as it was inaccurate and contradicted language in another subsection.

In §150.1004(f), language was added to indicate that the Goal-Setting and Professional Development Plan could be reviewed in a second appraisal as evidence of goal attainment and professional development activities.

In §150.1006(b), language was added to clarify that teacher orientation must be done in a face-to-face setting during a district's first year of T-TESS implementation.

In §150.1007(a), the phrase "Texas Teacher Evaluation and Support System" was replaced with "appraisal system" to clarify that districts that already had a locally adopted system approved by their school board did not need to go through the adoption process again simply because of the statewide rollout of T-TESS.

In §150.1007(a)(2)(A) and (b)(2)(A), the phrase "or less frequently if in accordance with TEC, §21.352(c)" was added to clarify that locally adopted appraisal systems can appraise a teacher less than annually if in accordance with statute.

In §150.1007(a)(2)(C)(ii) and (b)(2)(C)(ii), the phrase "beginning with the 2017-2018 school year" was added to clarify that the requirement to include student growth in locally adopted appraisal systems will not begin until the 2017-2018 school year.

SUMMARY OF COMMENTS AND AGENCY RESPONSES. The public comment period on the proposal began December 11, 2015, and ended January 11, 2016. Following is a summary of public comments received on the proposal and corresponding agency responses.

Comment: The Texas State Teachers Association (TSTA) commented that proposed new §150.1001(e) should be amended to indicate that districts using locally adopted teacher appraisal systems should, at a minimum, match the procedural rules of T-TESS.

Agency Response: The agency disagrees. The TEC, §21.352, governs the required procedures of locally adopted teacher appraisal systems.

Comment: The Association of Texas Professional Educators (ATPE) commented that the domains and dimensions listed in proposed new §150.1002(a) should not necessarily be tied to the teacher standards captured in 19 TAC §149.1001.

Agency Response: The agency provides the following clarification. The domains and dimensions listed in new §150.1002(a) reflect the domains and dimensions of the T-TESS rubric. Although the practices captured in the T-TESS rubric are aligned with the teacher standards in 19 TAC §149.1001, they are also aligned with recent research and vetted rubrics used in variety of districts throughout the state and nation.

Comment: The Texas Classroom Teachers Association (TCTA) commented that language should be added to proposed new §150.1002(b) to indicate that each domain should be scored independently, in accordance with TEC, §21.351(d).

Agency Response: The agency disagrees. TEC, §21.351(d), indicates that the appraisal process should detail ratings by "category of professional skill and characteristic." In T-TESS, the dimensions of the rubric and student growth are the categories that capture professional skill and characteristic. In the T-TESS

process, teachers do receive ratings for each dimension and for student growth.

Comment: One individual commented that the pre-conference and post-conference, as indicated in §150.1002(b) and §150.1003(b)(3) and (5), should be left as optional components in T-TESS.

Agency Response: The agency disagrees. During stakeholder meetings with both the teacher steering committee that built T-TESS and districts that piloted T-TESS, educators uniformly agreed that required conferences were a necessary component of an appraisal system designed both to provide formative feedback to teachers and to foster positive, collaborative campus cultures. The local discretion to waive conferences under the current state recommended teacher appraisal system was widely recognized during these meetings as one of the largest flaws of the current system.

Comment: TSTA commented that the performance levels listed in proposed new §150.1002(c) should be limited to four instead of five.

Agency Response: The agency disagrees. The agency along with two different steering committees of educators determined that five performance levels allow for better differentiation on an appraisal rubric and a more accurate determination of where a teacher is with his or her practice.

Comment: ATPE commented that the performance levels listed in proposed new §150.1002(c) should not be based on the assumption that the majority of teachers will be rated in the "developing" category, as that is equivalent to "below expectations" as captured in proposed new §150.1002(f).

Agency Response: The agency provides the following clarification. Appraiser training for T-TESS makes clear that the default rating for teacher practices is "proficient" until the weight of evidence suggests otherwise. In addition, the term "below expectations" is not meant to clarify the term "developing" but is the term used for a particular performance level of value-added measures, as that student growth measure is based on a group of students' performance relative to their expected performance based on past assessment performance.

Comment: TCTA commented that the commissioner does not have statutory authority to include student growth as a measure in the state-recommended teacher appraisal system.

Agency Response: The agency disagrees. TEC, §21.351(a)(2), requires the commissioner to include in the state-recommended teacher appraisal system a measure of student performance. Not only does a measure of student growth satisfy this statutory requirement, it does so in a way that is the most instructionally valuable for teachers. In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption. Technical edits were also made throughout the adopted rules to reference new §150.1001(f)(2).

Comment: Eighty-six individuals and TCTA commented that student performance or growth, as indicated in proposed new §150.1002(d), should not be included as a measure in a teacher appraisal process.

Agency Response: The agency provides the following clarification. Many of the comments received about student performance or growth described a process that is a measure of student proficiency rather than a measure of student growth, which is what T-TESS requires. A measure of student proficiency is not a required component of either the state-recommended teacher appraisal process or a locally developed teacher appraisal process.

Student growth measures how much academic progress a student makes during his or her time with a particular teacher. It takes into consideration a student's entering skill level when measuring how much the student grew over time, and, as opposed to measuring student proficiency on an assessment, student growth is not concerned with whether or not a student passes a particular test or reaches a predetermined and uniform benchmark. Student growth focuses on progress over time, and student growth expectations are tailored to the context of the individual student.

As the comments relate to the inclusion of a true student growth measure in a teacher appraisal process, the agency disagrees. In a formative appraisal process focused on diagnosing strengths, weaknesses, and areas for professional development, feedback and data on how an individual teacher's students respond to the teacher's instructional decision forms an integral piece of information in a multiple measure system.

Student growth measured at the individual teacher level provides the most instructionally valuable measurement of student performance for a teacher appraisal process. A measure that looks at a student's ability to reach a predetermined benchmark (proficiency) often does not take into consideration where a student is academically when entering the teacher's class, and measuring student proficiency exclusively can yield inaccurate or incomplete feedback on the efficacy of a teacher's instruction. A measure that uses collective team or campus student performance data fails to provide as valuable data as a growth measure at the individual teacher level. Collective measures do not provide specific feedback to an individual teacher that indicates which practices of that individual teacher were effective, which were not, and what the individual teacher should target for professional development.

In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption. Technical edits were also made throughout the subchapter to reference new §150.1001(f)(2).

Comment: One individual commented that they were in favor of including student growth, as indicated in proposed new §150.1002(d), as one measure in a teacher appraisal process.

Agency Response: The agency agrees. In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption.

Comment: TSTA and TCTA commented that proposed new §150.1002(d)(3), which would allow districts to use district-level pre- and post-tests in a measure of student growth, be eliminated.

Agency Response: The agency disagrees. The use of assessments tied to appropriate learning standards for the purposes of determining how students are responding to the pedagogical decisions that teachers make can have significant formative value in a teacher appraisal process. In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d), including the provision regarding pre- and post-test results on district-level assessments, to new §150.1001(f)(2) at adoption.

Comment: One hundred twenty-seven individuals, TSTA, ATPE, TCTA, the Texas American Federation of Teachers (Texas AFT), and Texans Advocating for Meaningful Student Assessment commented that the results of state assessments should not be used to measure a teacher's performance in either a state or local appraisal system.

Agency Response: The agency provides the following clarification. State assessment results are not a required component of student growth for either the state-recommended appraisal system or a locally developed appraisal system under new rule. Districts are free to use student growth measures that do not include or consider state assessment results, as indicated in new §150.1001(f)(2).

Additionally, any district that chooses to use state assessment results in a measure of student growth would not be dependent on 19 TAC Chapter 150 to grant it that authority, as it would be allowed to do so consistent with the statutory option to create a locally developed appraisal system in TEC, §21.352.

Comment: Twenty individuals, TSTA, ATPE, and TCTA commented that student growth should not count as at least 20% of a teacher's appraisal rating for the state-recommended appraisal system.

Agency Response: The agency provides the following clarification. As indicated in new §150.1002(e), which references new §150.1001(f)(2), as it relates to the state-recommended appraisal system, a district may choose to keep summative appraisal ratings disaggregated at the dimension level. In those instances, teachers would only receive 16 separate ratings for each dimension of the T-TESS rubric and an additional rating for student growth. Each of those ratings would not be weighted, as the district would not apply a weighted formula to determine a single overall rating.

Comment: TSTA commented that the phrase "whenever possible" should be eliminated from proposed new §150.1003(a) so that teachers could only ever be appraised based on an assignment for which he or she is certified.

Agency Response: The agency disagrees. The term "whenever possible" places the burden on appraisers to conduct appraisals for teaching assignments for which the teacher is certified, if at all possible. In instances where the teacher is working entirely outside of his or her certification area, an appraiser should not be categorically barred from working with that teacher through a formative appraisal process.

Comment: One individual commented that T-TESS should not include a Goal-Setting and Professional Development Plan, as indicated in proposed new §150.1003(b)(1).

Agency Response: The agency disagrees. T-TESS was designed by teachers and other educators to be a system that mirrors the habits of effective educators, who consistently pinpoint areas for improvement and strive to continuously grow in their practice. The Goal-Setting and Professional Development Plan is a tool that allows all teachers, regardless of ratings, to translate appraisal data into the improvement of practice and demonstrate their commitment to honing their craft.

Comment: ATPE commented that an appraiser should not have final approval of what a teacher's goals are within the Goal-Setting and Professional Development Plan, as indicated in proposed new §150.1003(b)(1).

Agency Response: The agency disagrees. An appraiser, through his or her supervisory duties, is tasked with ensuring that the components of the appraisal process are implemented appropriately and accurately. In that sense, the appraiser should have the final responsibility of ensuring that appraisal data is accurately translated into professional growth goals and activities.

Comment: The Texas Association of School Boards (TASB) and the Texas Association of School Administrators (TASA) commented that proposed new §150.1003(b)(1)(A) should clarify that the six-week timeline for teachers to return their Goal-Setting and Professional Development Plan to appraisers should apply to teachers new to the district, not just teachers new to T-TESS.

Agency Response: The agency agrees and has modified new §150.1003(b)(1)(A) at adoption accordingly.

Comment: One individual commented that the required Goal-Setting and Professional Development Plan conference for first-year teachers, as indicated in proposed new §150.1003(b)(2), should be optional.

Agency Response: The agency disagrees. The Goal-Setting and Professional Development Plan is one of the pieces of T-TESS that ensures the system has recurring developmental value for teachers. This plan is most effective when it is established collaboratively between an appraiser and teacher and becomes a central resource in translating appraisal data into goals and professional development activities. The teacher steering committee and pilot district stakeholders uniformly recognized that for the plan to have value, it must be established and/or solidified during conferences between appraisers and teachers, whether during a Goal-Setting and Professional Development Plan conference in a teacher's first year or during the end-of-year conference each year thereafter.

Comment: TASB and TASA commented that proposed new §150.1003(b)(2) should clarify that the requirement for a Goal-Setting and Professional Development Plan conference should also apply to teachers who are new to the district.

Agency Response: The agency agrees and has modified new §150.1003(b)(2) at adoption accordingly.

Comment: TSTA commented that proposed new §150.1003(b)(3) should require the pre-conference to be conducted no earlier than 10 working days before the observation.

Agency Response: The agency disagrees. A significant portion of the value of a pre-conference is derived from an appraiser's and teacher's discussion of how the teacher approaches planning in the general sense--how a teacher works through the decision-making process to plan any lesson, not just a single lesson within an entire school calendar. In that sense, valuable pre-conferences can occur prior to 10 working days before the lesson observed.

Comment: ATPE commented that proposed new §150.1003(b)(3) should both require the pre-conference in year one of T-TESS implementation and for unannounced observations.

Agency Response: The agency disagrees. Although the agency recognizes the value of the pre-conference, the effort required to implement a new teacher appraisal system in a district's first year and the time management adjustment that many appraisers will have to make when conducting conferences were of pri-

mary concern in allowing districts a year of implementation before they are required to conduct pre-conferences. Additionally, the requirement of a pre-conference prior to an unannounced observation announces the observation and potentially negates what a district perceives as the value of an unannounced observation.

Comment: TSTA commented that proposed new §150.1003(b)(3) should require a pre-conference for all announced observations.

Agency Response: The agency provides the following clarification. New §150.1003(b)(3) does require a pre-conference for all announced observations.

Comment: TSTA commented that proposed new §150.1003(b)(4) should require one formal observation and one informal observation, and that any observation be the length of the lesson.

Agency Response: The agency disagrees. Although the agency does recommend informal walk-throughs and observations in addition to one formal observation, the agency recognizes that time management limitations exist for campus leaders and the requirement of a second observation could often lead to diminished quality for the sake of increasing quantity. The agency also ensures that T-TESS is not a process focused on a snapshot in time, as both the Goal-Setting and Professional Development Plan and student growth are measures designed to engage the teacher in self-assessment, reflection, and adjustment throughout the school year. Additionally, new §150.1003(g) allows for shorter than 45-minute observations if the context of the teacher's assignment dictates that a single 45-minute segment is not appropriate. In response to other comments, however, new §150.1003(b)(4) was modified at adoption to address additional observations and walk-throughs.

Comment: TASB and TASA commented that proposed new §150.1003(b)(4) and (5) should clarify that additional walk-through observations do not require an observation post-conference and written report.

Agency Response: The agency agrees in part and has modified new §150.1003(b)(4) at adoption as it applies to a post-conference following an additional observation or walk-through.

The agency disagrees in part and has modified new §150.1003(b)(4) at adoption to clarify that a written summary shall be required for an additional observation or walk-through if the additional observation or walkthrough will impact the teacher's summative appraisal ratings.

Comment: TSTA commented that the post-conference, as indicated in proposed new §150.1003(b)(5), should be required to be conducted within two working days after the observation.

Agency Response: The agency disagrees. Although best practices would dictate that a post-conference should be conducted as close to the observed lesson as possible, the agency acknowledges that campus timelines and demands do not constantly allow for both appraisers and teachers to be available for a post-conference within two days after an observation.

Comment: ATPE commented that proposed new §150.1003(b)(5) should clarify when observation results must be shared with the teacher.

Agency Response: The agency disagrees. New §150.1003(b)(5)(A) clearly indicates that observation results must be shared with the teacher at the conclusion of a post-conference, which must be held "within 10 working days after the conclusion of an observation."

Comment: Texas AFT commented that the term "including as to student growth" should be added to the end of proposed new §150.1003(b)(5).

Agency Response: The agency disagrees. Although the agency agrees that conferences and conversations about any aspect of T-TESS should primarily focus on the diagnostic value of data, the term "is diagnostic and prescriptive in nature" in new §150.1003(b)(5)(B) already applies to the post-observation conference in general, including any discussion of student growth that may occur.

Comment: Texas AFT commented that the term "refinement" in proposed new §150.1003(b)(5)(C) and (D) is unclear and should be more plainly stated.

Agency Response: The agency disagrees. The term "refinement" is used consistently throughout all T-TESS training, orientation, and support materials and is not ambiguous to those implementing T-TESS. In addition, "refinement," a word that is a derivative of "refine," has a clear dictionary definition that reinforces its intended use in T-TESS.

Comment: Texas AFT commented that cumulative data, as referenced in proposed new §150.1003(b)(6), should include a linking phrase to indicate that it is further described in proposed new §150.1003(f).

Agency Response: The agency agrees and has modified new §150.1003(b)(6) at adoption accordingly.

Comment: TSTA and TCTA commented that proposed new §150.1003(b)(7) should not include language that indicates the end-of-year conference include a discussion of previous years' appraisal data.

Agency Response: The agency disagrees. Appraisal is a recursive process and is best conducted when teachers and appraisers discuss the evolution of a teacher's practice over time. New §150.1003(b)(7) does not indicate that past data already captured in previous appraisal ratings should be used again to rate a teacher's performance but that discussions about a teacher's progress and growth goals should take into consideration as much information as possible, including data from prior years.

Comment: ATPE commented that proposed new §150.1003(b)(7) should clarify the deadline to share final summative appraisal ratings with a teacher.

Agency Response: The agency disagrees. New §150.1003(i) explicitly states that the "written summative annual appraisal report shall be shared with the teacher...no later than 15 working days before the last day of instruction."

Comment: Texas AFT commented that the phrase "when available" is problematic as it exists in proposed new §150.1003(b)(7) in reference to the inclusion of student growth data in end-of-year conferences.

Agency Response: The agency disagrees. For certain student growth measures, data may not be available at the time an end-of-year conference is conducted. In those instances, an end-of-year conference cannot include a discussion of student growth data that is not yet available. In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new

§150.1001(f)(2) at adoption. A technical edit has been made in new §150.1003(b)(7)(C) to reference new §150.1001(f)(2).

Comment: TSTA commented that proposed new §150.1003(c) should indicate that all observations should be announced.

Agency Response: The agency disagrees. The agency believes that districts should have the flexibility to conduct announced and/or unannounced observations based on the context of the district, campus, and teacher.

Comment: TSTA commented that proposed new §150.1003(d) should indicate that a district observation calendar should eliminate the possibility for observations during a week where a state assessment is given, the instructional day prior to or after a holiday, or on any day where an alternative schedule is used, such as a day with pep rallies or early dismissal.

Agency Response: The agency disagrees. The days listed by TSTA in the public comment still have an expectation that student learning occurs, and as such, those days can be an opportunity for appraisers and teachers to determine the efficacy of a teacher's instructional choices and determine areas for reinforcement and refinement.

Comment: Texas AFT commented that the word "written" be added to proposed new §150.1003(g) to allow for clear documentation that both teacher and appraiser consented to observations conducted in less than 45-minute increments.

Agency Response: The agency agrees and modified new §150.1003(g) at adoption accordingly.

Comment: TSTA commented that proposed new §150.1003(i) should clarify the timeline for the end-of-year conference and should allow for teachers to respond to summative appraisal results in a timely manner.

Agency Response: The agency provides the following clarification. New §150.1003(i) requires summative appraisal results to be returned to teachers by the 15th day from the last day of instruction, and teachers have the customary 10 days to respond to summative appraisal results, just as they do under the repealed rule. In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption. A technical edit has been made in new §150.1003(i) to reference new §150.1001(f)(2).

Comment: Texas AFT commented that proposed new §150.1003(k) should indicate that documentation received after the conclusion of the end-of-year conference that may impact a teacher's appraisal results for that specific contract year may only be used for that specific contract year.

Agency Response: The agency disagrees. The agency believes that the language is clear as written as proposed. The language already clearly indicates that the documentation received after the conclusion of the end-of-year conference that may impact a teacher's appraisal results for that specific contract year may only be used for that specific contract year.

Comment: TCTA commented that to be eligible for less-than-annual appraisals, proposed new §150.1003(l) should indicate that a teacher can be "Improvement Needed" in one dimension and still meet the definition of "proficient" that allows them to be appraised less than annually.

Agency Response: The agency disagrees. First, a stakeholder group of educators who are implementing T-TESS determined the appropriate definition of "proficient" for the purposes of less-than-annual appraisals. Second, the term "Improvement Needed" indicates that a teacher needs the structure of a full appraisal process in order to have access to the support and feedback necessary to move to a higher level of performance as captured on the T-TESS rubric.

Comment: ATPE and TCTA commented that proposed new §150.1003(l) should include student growth only during a teacher's full appraisal year.

Agency Response: The agency disagrees. Student growth measures within T-TESS should parallel and examine the pedagogical decision-making processes teachers deploy every year. In that sense, student growth processes should not be different from effective teaching and should have significant value for student learning. In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption. A technical edit has been made in new §150.1003(l) to reference new §150.1001(f)(2).

Comment: Texas AFT commented that language in proposed new §150.1003(l)(1)(D) should clarify that cumulative data is not an intended source of data that could place a teacher back on a traditional appraisal cycle.

Agency Response: The agency provides the following clarification. The language in new §150.1003(l)(1)(D) does intend to indicate that cumulative data can be a source of data that could place a teacher back on a traditional appraisal cycle, just as in the repealed rule.

Comment: TCTA commented that the student growth process should be like the cumulative data provision, as indicated in proposed new §150.1003(l)(1)(D), in that appraisers should be required to share information from the student growth process within 10 days of the information being available rather than at the conclusion of the student growth process.

Agency Response: The agency disagrees. The student growth process is a cumulative process that informs appraisal ratings until the conclusion of the process, at which time the appraiser has an obligation to share ratings with a teacher in a timely manner. Requiring an appraiser to share data with a teacher every time an appraiser encounters student learning or a lack thereof over the course of a school year is impractical.

Comment: One individual commented that there should not be any required components of T-TESS for teachers that are not experiencing a "full-appraisal," as indicated in proposed new §150.1003(l)(3).

Agency Response: The agency disagrees. During stakeholder meetings with both the teacher steering committee that built T-TESS and districts that piloted T-TESS, educators uniformly agreed that a successful appraisal system needed to facilitate timely and ongoing activities designed to improve practice and student performance. The required activities in new §150.1003(l)(3) both keep the concept of development continuous and not something addressed less than annually and maintain educator focus on pedagogical strategies and adjustments to improve student academic growth.

In response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption. A technical edit has been made in new §150.1003(l)(3) to reference new §150.1001(f)(2).

Comment: TSTA, ATPE and TCTA commented that proposed new §150.1004 should not differentiate when and to what a teacher may respond during the appraisal process.

Agency Response: The agency disagrees. Teachers have an opportunity to respond to appraisal data when it is first provided to them. The differentiation in new §150.1004 simply indicates that a teacher does not have a second opportunity at the end of the year to respond to the same data that was already provided to them earlier in the year and to which they already had an opportunity to respond.

Comment: TCTA commented that proposed new §150.1004(a) and (b) should indicate that an appraiser may extend the time by which a teacher's response or rebuttal is due.

Agency Response: The agency disagrees. New §150.1004 does not disallow appraisers from accepting responses or rebuttals at a time beyond their due date. In that sense, the inclusion of the commenter's suggested language would be redundant.

Comment: TASB and TASA commented that the language in proposed new §150.1004(f) contradicts itself and indicates that a second appraisal shall both always include all domains and at times not include all domains.

Agency Response: The agency agrees and modified new §150.1004(f) at adoption to clarify that a second appraisal does not necessarily require an appraisal in all domains.

Comment: TCTA commented that the Goal-Setting and Professional Development Plan, as indicated in proposed new §150.1003(b)(1), should be included in proposed new §150.1004(f).

Agency Response: The agency agrees and has modified new §150.1004(f) at adoption accordingly.

Comment: Texas AFT commented that proposed new §150.1004(g) should indicate that districts need to create local policy on the use of second appraisers and second appraisals.

Agency Response: The agency disagrees. Adding language indicating this is redundant, as its exclusion already places the burden on local policy.

Comment: TCTA commented that certification rules in proposed new §150.1005 should clarify that an appraiser that has not completed training and certification cannot conduct formal or informal observations.

Agency Response: The agency disagrees. New §150.1005(b) clearly indicates that an appraiser must have completed training and passed the certification examination prior to conducting an appraisal. Observations and walk-throughs that do not impact appraisal or are not a part of the appraisal process are outside the scope of rulemaking as it relates to teacher appraisal.

Comment: TCTA commented that proposed new §150.1005(b) should not allow non-classroom teacher supervisory staff whose job description includes the appraisal of teachers to appraise teachers.

Agency Response: The agency disagrees. TEC, §21.351(c), indicates that a teacher appraiser can be a teacher's supervisor or a person approved by the board of trustees. New §150.1005 clearly indicates that the appraisers about which TCTA commented are supervisors of teachers.

Comment: TSTA commented that requirements for periodic recertification should be spelled out in proposed new §150.1005(c).

Agency Response: The agency disagrees. Recertification requirements need to be flexible so that recertification requirements can be aligned to implementation feedback.

Comment: TSTA commented that criteria should be added to proposed new §150.1005(d) to facilitate identification of who could be an appraiser in T-TESS beyond the campus administrators defined in proposed new §150.1005(b).

Agency Response: The agency disagrees. TEC, §21.351(c), indicates that a district's board of trustees should approve who an appraiser should be when not a teacher's supervisor. The agency believes this level of local control should not be restricted for appraiser selection, provided all appraisers are appropriately trained and certified in T-TESS.

Comment: TCTA commented that proposed new §150.1006(a) should increase the amount of time between a teacher's orientation and when an observation can be conducted to three weeks instead of the two weeks.

Agency Response: The agency disagrees. The agency cannot find and has not been presented with any evidence that would suggest that observations conducted two weeks after an orientation rather than three weeks after an orientation are less accurate, reliable, or valuable.

Comment: TASB and TASA commented that language should be added to proposed new §150.1007(a)(2)(A) and (b)(2)(A) to clarify that under a locally adopted appraisal system, a teacher can be appraised less than annually in accordance with the TEC, §21.352(c).

Agency Response: The agency agrees and has modified new §150.1007(a)(2)(A) and (b)(2)(A) at adoption for clarification.

Comment: TASB and TASA commented that proposed new §150.1007(a) should clarify that a district that was already using a locally developed and adopted teacher appraisal system does not need to go through the adoption process again due to the implementation of T-TESS.

Agency Response: The agency agrees and has modified new §150.1007(a) at adoption to indicate that the statewide implementation of T-TESS does not require districts that have already developed and adopted a local teacher appraisal system to go through the local adoption process again.

Comment: Thirty individuals and TCTA commented that annual appraisals for all teachers should not be a requirement of teacher appraisal systems.

Agency Response: The agency provides the following clarification. Consistent with the TEC, §21.352(c), a teacher may be appraised less than annually by mutual consent of the district and the teacher if the result of the teacher's most recent appraisal was at least proficient or its equivalent. In those instances, a teacher must be appraised at least once in a five-year period.

For the state-recommended appraisal process, new §150.1003(l) defines what conditions must be met for a teacher to rate as proficient for the purposes of less than annual full appraisals. The new rule does not define what conditions must be met for a teacher to rate as proficient for a locally developed system, and it would be the obligation of a district using a locally developed system to clarify those conditions in local policy.

Comment: Texas AFT commented that language should be added to proposed new §150.1007 to indicate that alleged violations of district or campus appraisal systems may be grieved and appealed in accordance with TEC, §7.057.

Agency Response: The agency disagrees. Any right that exists in statute does not need to be copied into rule.

Comment: TASB, TASA, and Texas AFT commented that proposed new §150.1007(a)(2)(C)(ii) and (b)(2)(C)(ii) should be clarified to indicate that the requirement to include student growth in locally adopted teacher appraisal systems does not begin until the 2017-2018 school year.

Agency Response: The agency agrees and has modified new §150.1007(a)(2)(C)(ii) and (b)(2)(C)(ii) at adoption accordingly for clarification. Additionally, in response to public comment and to provide clarification, the agency has moved the definition of student performance from proposed §150.1002(d) to new §150.1001(f)(2) at adoption. Technical edits have been made in new §150.1007(a)(2)(C)(ii) and (b)(2)(C)(ii) to reference new §150.1001(f)(2).

Comment: One individual commented in favor of annual appraisals for all teachers.

Agency Response: The agency provides the following clarification. Consistent with the TEC, §21.352(c), a teacher may be appraised less than annually by mutual consent of the district and the teacher if the result of the teacher's most recent appraisal was at least proficient or its equivalent. In those instances, a teacher must be appraised at least once in a five-year period.

Comment: Six individuals, Texas AFT, and TCTA commented that the commissioner does not have authority to make a rule for locally developed teacher appraisal systems or to clarify ambiguous statutory terms when they relate to locally adopted teacher appraisal systems.

Agency Response: The agency disagrees. While the term "performance of teachers' students" is undefined, the commissioner does not find that the term is ambiguous in TEC, §21.351. Statutory interpretation requires that words be given their ordinary meaning unless a different or more precise definition is apparent from the term's use in the context of the statute. Here the context of the statute is the use of the "performance of teachers' students" in the appraisal of an individual teacher, making it apparent that the term requires a teacher to be evaluated based on his or her own students' performance. However, even if the term were ambiguous, the commissioner of education has statutory authority to clarify ambiguous statutory terms that appear in TEC, §21.351, the section of statute that requires the commissioner to develop a state-recommended appraisal system. The term in question, "the performance of teachers' students," appears only in TEC, §21.351. The statutory provision that allows school districts to develop locally adopted appraisal systems, TEC, §21.352, simply refers back to TEC, §21.351, with a citation to TEC, §21.351(a) and (b). By statute, the locally developed appraisal system is derivative of the criteria developed by the commissioner under TEC, §21.351, and, therefore, subject to the commissioner's interpretation of the statutory terms in TEC, §21.351(a) and (b).

Comment: Two individuals commented that districts should be able to create their own locally adopted appraisal systems.

Agency Response: The agency provides the following clarification. Districts are able to create their own locally adopted appraisal systems, as captured in TEC, §21.352, and in new §150.1007.

Comment: Eight individuals commented that either appraisal results or student test scores should not be the determination of how much teachers are paid.

Agency Response: The agency offers the following clarification. Neither the repealed teacher appraisal rules nor the new teacher appraisal rules require teacher pay to be tied to any aspect of teacher appraisal, including student test scores or student growth. This rule action does not contain any stipulation that addresses teacher pay at all.

Comment: Three individuals commented that T-TESS would take too much time to do.

Agency Response: The agency disagrees. Although the agency acknowledges that T-TESS does require conversations and conferences between educators that may not have been required in past state-recommended teacher appraisal systems, T-TESS is a system designed to foster positive, collegial relationships between appraisers and teachers and to facilitate campus-wide efforts for growth and development. To do that, conversations and conferences between educators have to occur so that appraisal can be a tool for accurate diagnosis and improvement of practice.

In addition, the agency has consistently worked with educators, from a steering committee that built T-TESS to educators implementing during pilot and refinement years, and has based process rules on the consensus recommendations of these educators.

Comment: One individual commented that T-TESS should not be for librarians.

Agency Response: The agency agrees and provides the following clarification. T-TESS was designed for the various categories of classroom teachers as captured in 19 TAC Chapter 233, not for the categories of educators as captured in 19 TAC Chapter 239, which includes school librarians. Although districts could choose to use the T-TESS process and components in the appraisal of educators captured in 19 TAC Chapter 239, modifications may need to be made to cover those specific job descriptions.

Comment: Five individuals commented that T-TESS would not work well for special education teachers or teachers with unique assignments or schedules.

Agency Response: The agency disagrees. Although appraisers in T-TESS do need to ensure that teacher context is taken into consideration when working with teachers, T-TESS was designed to provide a process that allowed appraisers and teachers to accurately diagnose practice strengths and areas for improvement and to guide teachers in processes of self-assessment, reflection, and adjustment. The process itself can have value for all teachers, regardless of assignment. Context matters when applying the T-TESS rubric to various teaching assignments, but T-TESS's purpose--a formative process designed to encourage habits of self-assessment and adjustment--and general process benefit teachers in all assignments.

Comment: One individual commented that T-TESS would not work well for teachers in alternative school settings.

Agency Response: The agency disagrees. Although appraisers in T-TESS do need to ensure that teacher context is taken into consideration when working with teachers, T-TESS was de-

signed to provide a process that allowed appraisers and teachers to accurately diagnose practice strengths and areas for improvement and to guide teachers in processes of self-assessment, reflection, and adjustment. The process itself can have value for all teachers, regardless of assignment. Context matters when applying the T-TESS rubric to various teaching assignments, but T-TESS's purpose--a formative process designed to encourage habits of self-assessment and adjustment--and general process benefit teachers in all assignments.

Comment: Three individuals commented that the proposed rules would not guarantee the effective implementation of T-TESS.

Agency Response: The agency provides the following clarification. No single set of rules written at the state level necessarily guarantees uniform and appropriate implementation across the state. Although T-TESS is designed to be objective through the rubric and the articulation of what are effective teaching practices and to be evidence-based through all components, implementation of any system or process in education is dependent on the educators who implement and the culture in which implementation occurs. Required T-TESS training strives, however, to reinforce the objective nature of the rubric, the evidentiary nature of the process, and the value of appraiser calibration across campuses and districts.

Comment: One individual commented that he was against the new teacher appraisal system in general.

Agency Response. The agency disagrees. Because the comment is not about any specific aspect of T-TESS, the agency is unable to respond outside of indicating that it believes that T-TESS was appropriately designed based on successful, proven practices that improve campus culture, instruction, and student performance.

Comment: Twelve individuals commented that what teachers have to contend with in general is making teaching more and more difficult.

Agency Response: The agency is unable to respond to these comments as they do not relate specifically to the proposed rules for teacher appraisal.

19 TAC §§150.1001 - 150.1007, 150.1009, 150.1010

STATUTORY AUTHORITY. The repeal is adopted under the Texas Education Code (TEC), §21.351, which requires the commissioner of education to adopt a state-recommended appraisal process for teachers. In addition, TEC, §21.352, details the local role for school districts as it relates to teacher appraisal, including locally adopted appraisal processes that must include the teachers' implementation of discipline management procedures and the performance of teachers' students set out in TEC, §21.351(a), and appraisal timelines and frequency.

CROSS REFERENCE TO STATUTE. The repeal implements the TEC, §21.351.

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

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19 TAC §§150.1001 - 150.1008

STATUTORY AUTHORITY. The new sections are adopted under the Texas Education Code (TEC), §21.351, which requires the commissioner of education to adopt a state-recommended appraisal process for teachers. In addition, TEC, §21.352, details the local role for school districts as it relates to teacher appraisal, including locally adopted appraisal processes that must include the teachers' implementation of discipline management procedures and the performance of teachers' students set out in TEC, §21.351(a), and appraisal timelines and frequency.

CROSS REFERENCE TO STATUTE. The new sections implement the TEC, §21.351.

§150.1001. General Provisions.

(a) All school districts have two choices in selecting a method to appraise teachers: a teacher appraisal system recommended by the commissioner of education or a local teacher appraisal system.

(b) The commissioner's recommended teacher appraisal system, the Texas Teacher Evaluation and Support System (T-TESS), was developed in accordance with the Texas Education Code (TEC), §21.351.

(c) The superintendent of each school district, with the approval of the school district board of trustees, may select the T-TESS. Each school district or campus wanting to select or develop an alternative teacher appraisal system must follow the TEC, §21.352, and §150.1007 of this title (relating to Alternatives to the Commissioner's Recommended Appraisal System).

(d) The commissioner may designate a regional education service center to serve as the T-TESS certification provider for the state. The designated regional education service center may collect appropriate fees under the TEC, §8.053, from school districts and open-enrollment charter schools for training and certification.

(e) Sections 150.1002 through 150.1006 of this title apply only to the T-TESS and not to local teacher appraisal systems.

(f) The statutorily required components of teacher appraisal are defined as follows.

(1) The implementation of discipline management procedures is the teacher's pedagogical practices that produce student engagement and establish the learning environment.

(2) The performance of teachers' students is how the individual teacher's students progress academically in response to the teacher's pedagogical practice as measured at the individual teacher level by one or more of the following student growth measures:

(A) student learning objectives;

(B) student portfolios;

(C) pre- and post-test results on district-level assessments; or

(D) value-added data based on student state assessment results.

§150.1002. Assessment of Teacher Performance.

(a) Each teacher shall be appraised on the following domains and dimensions of the Texas Teacher Evaluation and Support System (T-TESS) rubric that is aligned to the Texas Teacher Standards in Chapter 149 of this title (relating to Commissioner's Rules Concerning Educator Standards).

(1) Domain I. Planning, which includes the following dimensions:

(A) standards and alignment;

(B) data and assessment;

(C) knowledge of students; and

(D) activities.

(2) Domain II. Instruction, which includes the following dimensions:

(A) achieving expectations;

(B) content knowledge and expertise;

(C) communication;

(D) differentiation; and

(E) monitor and adjust.

(3) Domain III. Learning Environment, which includes the following dimensions:

(A) classroom environment, routines, and procedures;

(B) managing student behavior; and

(C) classroom culture.

(4) Domain IV. Professional Practices and Responsibilities, which includes the following dimensions:

(A) professional demeanor and ethics;

(B) goal setting;

(C) professional development; and

(D) school community involvement.

(b) The evaluation of each of the dimensions identified in subsection (a) of this section shall consider all data generated in the appraisal process. The data for the appraisal of each dimension shall be gathered from pre-conferences, observations, post-conferences, end-of-year conferences, the Goal-Setting and Professional Development Plan process, and other documented sources.

(c) Each teacher shall be evaluated on the 16 dimensions in Domains I-IV identified in subsection (a) of this section using the following categories:

(1) distinguished;

(2) accomplished;

(3) proficient;

(4) developing; and

(5) improvement needed.

(d) Beginning with the 2017-2018 school year, each teacher appraisal shall include the performance of teachers' students, as defined in §150.1001(f)(2) of this title (relating to General Provisions).

(e) If calculating a single overall summative appraisal score for teachers, the performance of teachers' students, as defined in §150.1001(f)(2) of this title, shall count for at least 20% of a teacher's summative score.

(f) Each teacher shall be evaluated on the performance of teachers' students using one of the terms from the following categories:

(1) distinguished or well above expectations;

(2) accomplished or above expectations;

(3) proficient or at expectations;

(4) developing or below expectations; or

(5) improvement needed or well below expectations.

§150.1003. Appraisals, Data Sources, and Conferences.

(a) Each teacher must be appraised each school year, except as provided by subsection (l) of this section. Whenever possible, an appraisal shall be based on the teacher's performance in fields and teaching assignments for which he or she is certified.

(b) The annual teacher appraisal, or full appraisal, shall include:

(1) a completed and appraiser-approved Goal-Setting and Professional Development Plan that shall be:

(A) submitted to the teacher's appraiser within the first six weeks from the day of completion of the Texas Teacher Evaluation and Support System (T-TESS) orientation, as described in §150.1006 of this title (relating to Teacher Orientation), for teachers in their first year of appraisal under the T-TESS or for teachers new to the district; or

(B) initially drafted in conjunction with the teacher's end-of-year conference from the previous year, revised as needed based on changes to the context of the teacher's assignment during the current school year, and submitted to the teacher's appraiser within the first six weeks of instruction; and

(C) maintained throughout the course of the school year by the teacher to track progress in the attainment of goals and participation in professional development activities detailed in the approved plan;

(D) shared with the teacher's appraiser prior to the end-of-year conference; and

(E) used after the end-of-year conference in the determination of ratings for the goal setting and professional development dimensions of the T-TESS rubric;

(2) for a teacher in the first year of appraisal under the T-TESS or for teachers new to the district, a Goal-Setting and Professional Development Plan conference prior to the teacher submitting the plan to the teacher's appraiser;

(3) after a teacher's first year of appraisal under the T-TESS within the district, an observation pre-conference conducted prior to announced observations;

(4) at least one classroom observation of a minimum of 45 minutes, as described in subsection (g) of this section, with additional walk-throughs and observations conducted at the discretion of the certified appraiser and in accordance with the Texas Education Code, §21.352(c-1). Additional observations and walk-throughs do not require an observation post-conference. Additional observations and walk-throughs do require a written summary if the data gathered during the additional observation or walk-through will impact the teacher's summative appraisal ratings, in which case the written summary shall be shared within 10 working days after the completion of the additional observation or walk-through. Section 150.1004 of this title (relating to

Teacher Response and Appeals) applies to a written summary of an additional observation or walk-through that will impact the teacher's summative appraisal ratings;

(5) an observation post-conference that:

(A) shall be conducted within 10 working days after the completion of an observation;

(B) is diagnostic and prescriptive in nature;

(C) includes a written report of the rating of each dimension observed that is presented to the teacher only after a discussion of the areas for reinforcement and areas for refinement; and

(D) can allow for, at the discretion of the appraiser, a revision to an area for reinforcement or refinement based on the post-conference discussion with the teacher;

(6) cumulative data, as described in subsection (f) of this section, from written documentation collected regarding job-related teacher performance in addition to formal classroom observations;

(7) an end-of-year conference that:

(A) reviews the appraisal data collected throughout the current school year and previous school years, if available;

(B) examines and discusses the evidence related to the teacher's performance on the four dimensions of Domain IV of the T-TESS rubric, as described in §150.1002(a)(4) of this title (relating to Assessment of Teacher Performance);

(C) examines and discusses evidence related to the performance of teachers' students, as defined in §150.1001(f)(2) of this title (relating to General Provisions), when available; and

(D) identifies potential goals and professional development activities for the teacher for the next school year; and

(8) a written summative annual appraisal report to be provided to the teacher within 10 working days of the conclusion of the end-of-year conference.

(c) A teacher may be given advance notice of the date or time of an observation, but advance notice is not required.

(d) Each school district shall establish a calendar for the appraisal of teachers and provide that calendar to teachers within three weeks from the first day of instruction. The appraisal period for each teacher must include all of the days of a teacher's contract. Observations during the appraisal period must be conducted during the required days of instruction for students during one school year. The appraisal calendar shall:

(1) exclude observations in the two weeks following the day of completion of the T-TESS orientation in the school years when an orientation is required, as described in §150.1006 of this title; and

(2) indicate a period for end-of-year conferences that ends no later than 15 working days before the last day of instruction for students.

(e) During the appraisal period, the certified appraiser shall evaluate and document teacher performance specifically related to the domain criteria, as identified in §150.1002(a) of this title, and the performance of teachers' students, as defined in §150.1001(f)(2) of this title.

(f) The certified appraiser is responsible for documentation of the cumulative data identified in subsection (b)(6) of this section. Any third-party information from a source other than the certified appraiser that the certified appraiser wishes to include as cumulative data shall be verified and documented by the certified appraiser. Any documentation that will influence the teacher's summative annual appraisal report must be shared in writing with the teacher within 10 working days of the certified appraiser's knowledge of the occurrence. The principal shall also be notified in writing of the cumulative data when the certified appraiser is not the teacher's principal.

(g) By written, mutual consent of the teacher and the certified appraiser, the required minimum of 45 minutes of observation may be conducted in shorter time segments. The time segments must aggregate to at least 45 minutes.

(h) A written summative annual appraisal report shall be shared with the teacher no later than 15 working days before the last day of instruction for students. The written summative annual appraisal report shall be placed in the teacher's personnel file by the end of the appraisal period.

(i) An end-of-year conference shall be held within a time frame specified on the school district calendar, no later than 15 working days before the last day of instruction for students. The end-of-year conference shall focus on the data and evidence gathered throughout the appraisal year; the teacher's efforts as they pertain to Domain IV, as identified in §150.1002(a) of this title; the results of the performance of teachers' students, when available, as defined in §150.1001(f)(2) of this title; and the potential goals and professional development plans, as identified in subsection (b) of this section, for the following year. The written summative annual appraisal report shall be shared with the teacher within 10 working days following the conclusion of the end-of-year conference but no later than 15 working days before the last day of instruction.

(j) In cases where the certified appraiser is not an administrator on the teacher's campus, as defined in §150.1005(b) of this title (relating to Appraiser Qualifications), either the principal, assistant principal, or another supervisory staff member designated as an administrator on the campus must participate in the end-of-year conference.

(k) Any documentation collected after the end-of-year conference but before the end of the contract term during one school year may be considered as part of the appraisal of a teacher. If the documentation affects the teacher's evaluation in any dimension, another summative report shall be developed to inform the teacher of the change(s).

(l) Except as otherwise provided by this subsection, a full appraisal must be done at least once during each school year. A teacher may receive a full appraisal less frequently if the teacher agrees in writing and the teacher's most recent full appraisal resulted in the teacher receiving summative ratings of at least proficient on nine of the sixteen dimensions identified in §150.1002(a) of this title and did not identify any area of deficiency, defined as a rating of Improvement Needed or its equivalent, on any of the sixteen dimensions identified in §150.1002(a) of this title or the performance of teachers' students, as defined in §150.1001(f)(2) of this title. A teacher who receives a full appraisal less than annually must receive a full appraisal at least once during each period of five school years.

(1) District policy may stipulate:

(A) whether the option to receive a full appraisal less frequently than annually is to be made available to teachers;

(B) whether the option to receive a full appraisal less frequently than annually is to be adopted districtwide or is to be campus specific;

(C) if the appraisal accompanying a teacher new to a district or campus meets the option as specified in this subsection,

whether the appraisal is to be accepted or whether that teacher is to be appraised by the new campus administrator; and

(D) whether a certified appraiser may place a teacher on the traditional appraisal cycle as a result of performance deficiencies documented in accordance with subsections (b)(6) and (f) of this section.

(2) A school district may choose annually to review the written agreement to have less frequent full appraisals with the teacher. However, at the conclusion of the school year, the district may modify appraisal options through board policy and may make changes to expectations for appraisals that apply to all teachers regardless of a teacher's participation in the appraisal option in the previous year(s).

(3) In a year in which a teacher does not receive a full appraisal due to meeting the requirements identified in this subsection, a teacher shall participate in:

(A) the Goal-Setting and Professional Development Plan process, as identified in subsection (b)(1) of this section;

(B) the performance of teachers' students, as defined in §150.1001(f)(2) of this title; and

(C) a modified end-of-year conference that addresses:

(i) the progress on the Goal-Setting and Professional Development Plan;

(ii) the performance of teachers' students, as defined in §150.1001(f)(2) of this title; and

(iii) the following year's Goal-Setting and Professional Development plan.

§150.1004. Teacher Response and Appeals.

(a) A teacher may submit a written response or rebuttal at the following times:

(1) for Domains I, II, and III, as identified in §150.1002(a) of this title (relating to Assessment of Teacher Performance), after receiving a written observation summary or any other written documentation related to the ratings of those three domains; or

(2) for Domain IV, as identified in §150.1002(a) of this title, and for the performance of teachers' students, as defined in §150.1001(f)(2) of this title (relating to General Provisions, after receiving a written summative annual appraisal report.

(b) Any written response or rebuttal must be submitted within 10 working days of receiving a written observation summary, a written summative annual appraisal report, or any other written documentation associated with the teacher's appraisal. A teacher may not submit a written response or rebuttal to a written summative annual appraisal report for the ratings in Domains I, II, and III, as identified in §150.1002(a) of this title, if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to submit a written response or rebuttal.

(c) A teacher may request a second appraisal by another certified appraiser at the following times:

(1) for Domains I, II, and III, as identified in §150.1002(a) of this title, after receiving a written observation summary with which the teacher disagrees; or

(2) for Domain IV, as identified in §150.1002(a) of this title, and for the performance of teachers' students, as defined in §150.1001(f)(2) of this title, after receiving a written summative annual appraisal report with which the teacher disagrees.

(d) The second appraisal must be requested within 10 working days of receiving a written observation summary or a written summative annual appraisal report. A teacher may not request a second appraisal by another certified appraiser in response to a written summative annual appraisal report for the ratings of dimensions in Domains I, II, and III, as identified in §150.1002(a) of this title, if those ratings are based entirely on observation summaries or written documentation already received by the teacher earlier in the appraisal year for which the teacher already had the opportunity to request a second appraisal.

(e) A teacher may be given advance notice of the date or time of a second appraisal, but advance notice is not required.

(f) The second appraiser shall make observations and walk-throughs as necessary to evaluate the dimensions in Domains I-III or shall review the Goal-Setting and Professional Development Plan for evidence of goal attainment and professional development activities, when applicable. Cumulative data may also be used by the second appraiser to evaluate other dimensions.

(g) Each school district shall adopt written procedures for determining the selection of second appraisers. These procedures shall be disseminated to each teacher at the time of employment and updated annually or as needed.

§150.1006. Teacher Orientation.

(a) A school district shall ensure that a teacher is provided with an orientation of the Texas Teacher Evaluation and Support System (T-TESS) no later than the final day of the first three weeks of school and at least two weeks before the first observation when:

(1) the teacher is new to the district;

(2) the teacher has never been appraised under the T-TESS; or

(3) district policy regarding teacher appraisal has changed since the last time the teacher was provided with an orientation to the T-TESS.

(b) The teacher orientation shall be conducted in a face-to-face setting during a district's first year of T-TESS implementation and include all state and local appraisal policies and the local appraisal calendar. In addition to the orientation, campuses may hold other sessions sufficient in length allowing teachers to actively participate in a discussion of the T-TESS specifics and to have their questions answered.

§150.1007. Alternatives to the Commissioner's Recommended Appraisal System.

(a) District option. A school district that does not choose to use the commissioner's recommended appraisal system must develop its own teacher appraisal system supported by locally adopted policy and procedures and by the processes outlined in the Texas Education Code (TEC), §21.352.

(1) The school district-level planning and decision-making committee shall:

(A) develop an appraisal process;

(B) develop evaluation criteria, including discipline management and performance of the teacher's students; and

(C) consult with the campus planning and decision-making committee on each campus in the school district.

(2) The appraisal process shall include:

(A) at least one appraisal each year, or less frequently if in accordance with the TEC, §21.352(c);

(B) a conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and

(C) criteria based on observable, job-related behavior, including:

(i) the teacher's implementation of discipline management procedures, as defined in §150.1001(f)(1) of this title (relating to General Provisions); and

(ii) beginning with the 2017-2018 school year, the performance of teachers' students, as defined in §150.1001(f)(2) of this title.

(3) The school district-level planning and decision-making committee shall submit the appraisal process and criteria to the superintendent, who shall submit the appraisal process and criteria to the school district board of trustees with a recommendation to accept or reject. The school district board of trustees may accept or reject an appraisal process and performance criteria, with comments, but may not modify the process or criteria.

(b) Campus option. A campus within a school district may choose to develop a local system as provided in this subsection.

(1) The campus planning and decision-making committee shall:

(A) develop an appraisal process;

(B) develop evaluation criteria, including discipline management and performance of the teacher's students; and

(C) submit the process and criteria to the district-level planning and decision-making committee.

(2) The appraisal process shall include:

(A) at least one appraisal each year, or less frequently if in accordance with the TEC, §21.352(c);

(B) a conference between the teacher and the appraiser that is diagnostic and prescriptive with regard to remediation needed in overall performance by category; and

(C) criteria based on observable, job-related behavior, including:

(i) the teacher's implementation of discipline management procedures, as defined in §150.1001(f)(1) of this title; and

(ii) beginning with the 2017-2018 school year, the performance of teachers' students, as defined in §150.1001(f)(2) of this title.

(3) Upon submission of the appraisal process and criteria to the school district-level planning and decision-making committee, the committee shall make a recommendation to accept or reject the appraisal process and criteria and transmit that recommendation to the superintendent.

(4) The superintendent shall submit the recommended campus appraisal process and criteria, the school district-level planning and decision-making committee's recommendation, and the superintendent's recommendation to the school district board of trustees. The school district board of trustees may accept or reject, with comments, an appraisal process and performance criteria, but may not modify the process or criteria.

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 April 6, 2016.

TRD-201601619
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: July 1, 2016
Proposal publication date: December 11, 2015
For further information, please call: (512) 475-1497

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 17. TEXAS STATE SOIL AND WATER CONSERVATION BOARD

CHAPTER 519. TECHNICAL ASSISTANCE

SUBCHAPTER A. TECHNICAL ASSISTANCE PROGRAM

31 TAC §519.8

The Texas State Soil and Water Conservation Board (State Board) adopts an amendment to 31 TAC Chapter 519, §519.8, Eligible Pay Rates, without changes to the proposed text as published in the February 12, 2016, issue of the *Texas Register* (41 TexReg 1081). The amendment changes the current maximum pay rate that is eligible for reimbursement from the State Board. The current pay rate of $15.00 is being increased to $20.00 per hour.

No comments were received regarding the amendment.

The amendment is adopted under the Texas Agriculture Code, Title 7, Chapter 201, §201.020, which authorizes the State Board to adopt rules that are necessary for the performance of its functions under the Agriculture 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 April 6, 2016.

TRD-201601616
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Effective date: May 1, 2016
Proposal publication date: February 12, 2016
For further information, please call: (254) 773-2250 x252

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE AND LOCAL SALES AND USE TAXES

34 TAC §3.355

The Comptroller of Public Accounts adopts amendments to §3.355, concerning insurance services, without changes to the proposed text as published in the October 30, 2015, issue of the *Texas Register* (40 TexReg 7571). This section is amended to implement House Bill 1841, 84th Legislature, 2015, which amended Tax Code, §151.0039(b)(2) to exclude services performed by a public insurance adjuster from the scope of taxable insurance services. House Bill 1841 is effective October 1, 2015. The section is also amended to make clerical edits and to update rule references.

Subsection (a)(8) is added to define a public insurance adjuster as set out in, and by reference to, Insurance Code, §4102.001(3). Subsequent paragraphs are renumbered accordingly.

Subsection (c)(4) is added to state that services performed on behalf of an insured by a public insurance adjuster on or after October 1, 2015, are not taxable insurance services. This subsection also provides that the date the services are performed, and not the date billed or paid, determines the taxability of the services.

Subsection (i) is amended to correct a typographical error.

Subsection (k) is amended to refer to §3.334 Local Sales and Use Taxes and to delete references to previous rules which were repealed with the adoption of §3.334.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Tax Code 111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of provisions of Tax Code, Title 2, and taxes, fees, or other charges or refunds which the comptroller administers under other law.

The amendment implements amendments to Tax Code, §151.0039 (Insurance Service).

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 April 11, 2016.

TRD-201601668
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Effective date: May 1, 2016
Proposal publication date: October 30, 2015
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 90. INTERMEDIATE CARE FACILITIES FOR INDIVIDUALS WITH AN INTELLECTUAL DISABILITY OR RELATED CONDITIONS

The Texas Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Aging and Disability Services (DADS), an amendment to §90.3 and new §90.44 in Chapter 90, Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions, without changes to the proposed text as published in the January 8, 2016, issue of the *Texas Register* (41 TexReg 466).

The amendment and new section are adopted to implement House Bill 2789 of the 84th Legislature, Regular Session, 2015, which added new §161.088 to the Texas Human Resources Code. The adoption requires an intermediate care facility for individuals with an intellectual disability or related conditions to ensure that an employee who is hired on or after May 1, 2016, completes trauma-informed care training before working directly with a resident. The adoption provides that an employee works directly with a resident if the employee serves on a resident's interdisciplinary team or otherwise works with a resident to implement the resident's individual program plan. The adoption also updates the definition for "facility" and adds a definition for "individual program plan."

DADS received written comments from Providers Alliance for Community Services of Texas and one individual. A summary of the comments and the responses follows.

Comment: Two commenters requested more flexibility in the delivery of the trauma-informed care training. The commenters stated that accessing an online course may be burdensome for some facilities. The commenters requested curriculum that can be administered without a computer, and an option for more than one person to watch the online course in one sitting.

Response: The agency will make training content available in other formats for facilities to access. Specific information will be provided in a provider letter from the agency. The costs associated with these formats will be minimal because the agency will provide the content of the training. No changes were made in response to the comments.

SUBCHAPTER A. INTRODUCTION

40 TAC §90.3

The amended section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on April 7, 2016.

TRD-201601628
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: April 27, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 438-2264

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SUBCHAPTER C. STANDARDS FOR LICENSURE

40 TAC §90.44

The new section is adopted under Texas Government Code, §531.0055, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §32.021, which provides that HHSC shall adopt necessary rules for the proper and efficient operation of the Medicaid program.

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

Filed with the Office of the Secretary of State on April 7, 2016.

TRD-201601629
Lawrence Hornsby
General Counsel
Department of Aging and Disability Services
Effective date: April 27, 2016
Proposal publication date: January 8, 2016
For further information, please call: (512) 438-2264

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PART 20. TEXAS WORKFORCE COMMISSION

CHAPTER 815. UNEMPLOYMENT INSURANCE

SUBCHAPTER C. TAX PROVISIONS

40 TAC §815.111

The Texas Workforce Commission (Commission) adopts amendments to the following section of Chapter 815, relating to Unemployment Insurance, *without* changes to the text as published in the December 4, 2015, issue of the *Texas Register* (40 TexReg 8742): Subchapter C. Tax Provisions, §815.111

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

PART I. PURPOSE, BACKGROUND, AND AUTHORITY

The purpose of amending Subchapter C, Chapter 815, Unemployment Insurance rules, is to facilitate implementation of House Bill (HB 1251), 84th Texas Legislature, Regular Session (2015), relating to the joint application following certain partial transfers of compensation experience.

PART II. EXPLANATION OF INDIVIDUAL PROVISIONS

(Note: Minor editorial changes are made that do not change the meaning of the rules and, therefore, are not discussed in the Explanation of Individual Provisions.)

SUBCHAPTER C. TAX PROVISIONS

The Commission adopts the following amendments to Subchapter C:

§815.111. Partial Transfer of Compensation Experience

Section 815.111(b) is amended to clarify that with regard to mandatory partial transfers of compensation experience required under the Texas Unemployment Compensation Act (the Act) §204.083, the successor and predecessor employing units may jointly file with the Agency information necessary to establish a contribution rate pursuant to §204.085 of the Act. The section is further amended to clarify that for acquisitions that occurred prior to September 1, 2015, the effective date of HB 1251, the deadline for submitting the information remains one year following the acquisition. For all other acquisitions, the Agency shall use the deadlines stipulated in §204.085(a-1) of the Act.

No comments were received on the proposed rule.

The rule is adopted under Texas Labor Code §301.0015, which provides the Texas Workforce Commission with the authority to adopt, amend, or repeal such rules as it deems necessary for the effective administration of Agency services and activities.

The adopted rule affects Texas Labor Code, Title 4.

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 April 6, 2016.

TRD-201601606
Patricia Gonzalez
Deputy Director, Workforce Development Division Programs
Texas Workforce Commission
Effective date: April 26, 2016
Proposal publication date: December 4, 2015
For further information, please call: (512) 475-0829

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Review Of Agency Rules

This section contains notices of state agency rules review as directed by the Texas Government Code, §2001.039. Included here are (1) notices of *plan to review;* (2) notices of *intention to review,* which invite public comment to specified rules; and (3) notices of *readoption,* which summarize public comment to specified rules. The complete text of an agency's *plan to review* is available after it is filed with the Secretary of State on the Secretary of State's web site (http://www.sos.state.tx.us/texreg). The complete text of an agency's rule being reviewed and considered for *readoption* is available in the *Texas Administrative* Code on the web site (http://www.sos.state.tx.us/tac).

For questions about the content and subject matter of rules, please contact the state agency that is reviewing the rules. Questions about the web site and printed copies of these notices may be directed to the *Texas Register* office.

Proposed Rule Reviews

Credit Union Department

Title 7, Part 6

The Texas Credit Union Commission will review and consider for re-adoption, revision, or repeal Chapter 91, §91.7000 (Certificates of Indebtedness) and §91.8000 (Discovery of Confidential Information) of Title 7, Part 6 of the Texas Administrative Code in preparation for the Commission's Rule Review as required by §2001.039, Government Code.

An assessment will be made by the Commission as to whether the reasons for adopting or re-adopting these rules continue to exist. Each rule will be reviewed to determine whether it is obsolete, whether the rule reflects current legal and policy considerations, and whether the rule reflects current procedures of the Credit Union Department.

Comments or questions regarding these rules may be submitted in writing to Credit Union Department, 914 East Anderson Lane, Austin, Texas 78752-1699 or electronically to *cudmail@cud.texas.gov.* The deadline for comments is May 16, 2016.

The Commission also invites your comments on how to make these rules easier to understand. For example:

• Do the rules organize the material to suit your needs? If not, how could the material be better organized?

• Do the rules clearly state the requirements? If not, how could the rule be more clearly stated?

• Do the rules contain technical language or jargon that isn't clear? If so, what language requires clarification?

• Would a different format (grouping and order of sections, use of headings, paragraphing) make the rule easier to understand? If so, what changes to the format would make the rule easier to understand?

• Would more (but shorter) sections be better in any of the rules? If so, what sections should be changed?

Any proposed changes to these rules as a result of the rule review will be published in the Proposed Rule Section of the *Texas Register.* The proposed rules will be open for public comment prior to final adoption by the Commission.

TRD-201601692
Harold E. Feeney
Commissioner
Credit Union Department
Filed: April 11, 2016

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Texas Board of Nursing

Title 22, Part 11

In accordance with Government Code §2001.039, the Texas Board of Nursing (Board) files this notice of intention to review and consider for re-adoption, re-adoption with amendments, or repeal the following chapters contained in Title 22, Part 11 of the Texas Administrative Code, pursuant to the 2015 rule review plan adopted by the Board at its July 2015 meeting.

Chapter 213. Practice and Procedure, §§213.1 - 213.35

Chapter 216. Continuing Competency, §§216.1 - 216.11

Chapter 221. Advanced Practice Nurses, §§221.1 - 221.17

In conducting its review, the Board will assess whether the reasons for originally adopting these chapters continue to exist. Each section of these chapters will be reviewed to determine whether it is obsolete, whether it reflects current legal and policy considerations and current procedures and practices of the Board, and whether it is in compliance with Chapter 2001 of the Government Code (Administrative Procedure Act).

The public has thirty (30) days from the publication of this rule review in the *Texas Register* to comment and submit any response or suggestions. Written comments may be submitted to Dusty Johnston, General Counsel, Texas Board of Nursing, 333 Guadalupe, Suite 3-460, Austin, Texas 78701, by email to dusty.johnston@bon.texas.gov, or by fax to Dusty Johnston at (512) 305-8101. Any proposed changes to these chapters as a result of this review will be published separately in the Proposed Rules section of the *Texas Register* and will be open for an additional comment period prior to the final adoption or repeal by the Board.

TRD-201601673
James W. Johnston
General Counsel
Texas Board of Nursing
Filed: April 11, 2016

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Adopted Rule Reviews

Texas Board of Nursing

Title 22, Part 11

On October 12, 2015, in accordance with Government Code §2001.039, the Texas Board of Nursing (Board) filed a notice of

intention to review and consider for re-adoption, re-adoption with amendments, or repeal the following chapter contained in Title 22, Part 11 of the Texas Administrative Code, pursuant to the 2015 rule review plan adopted by the Board at its July 2015 meeting.

Chapter 226. Patient Safety Pilot Programs on Nurse Reporting Systems, §§226.1 - 226.7

The notice of proposed rule review was published in the February 19, 2016, issue of the *Texas Register* (41 TexReg 1263). The Board did not receive comment on the Chapter 226 rules. The Board has completed its review and has determined that the reasons for originally adopting the above rules continue to exist. The rules were also reviewed to determine whether they were obsolete, whether they reflected current legal and policy considerations and current procedures and practices of the Board, and whether they were in compliance with Texas Government Code Chapter 2001 (Texas Administrative Procedure Act). The Board finds that the rules are not obsolete, reflect current legal and policy considerations, current procedures and practices of the Board, and that the rules are in compliance with the Texas Administrative Procedure Act.

The Board readopts the rules in Chapter 226 without changes, pursuant to the Texas Government Code §2001.039 and Texas Occupations Code §301.151, which authorize the Board to adopt, enforce, and repeal rules consistent with its legislative authority under the Nursing Practice Act. This concludes the rule review of Chapter 226 under the 2015 rule review plan adopted by the Board.

TRD-201601674
James W. Johnston
General Counsel
Texas Board of Nursing
Filed: April 11, 2016

TABLES & GRAPHICS

Graphic images included in rules are published separately in this tables and graphics section. Graphic images are arranged in this section in the following order: Title Number, Part Number, Chapter Number and Section Number.

Graphic images are indicated in the text of the emergency, proposed, and adopted rules by the following tag: the word "Figure" followed by the TAC citation, rule number, and the appropriate subsection, paragraph, subparagraph, and so on.

Figure: 30 TAC §30.28(g)

Type of Delivery Method	Fee Amount
Association Meetings - training sessions up to two hours (over two hours, see conferences)	$10.00 per training credit hour
Association Meetings - annual review for single chapter, section, or district with 12 or less meetings per year	$100 per annual review application
Association Meetings - annual review for multiple chapters, sections, or districts with 12 or less meetings per year	$400 per annual review application
Conferences	$10.00 per training credit hour or a minimum of $50 whichever is greater
Classroom Training - using existing approved manuals	$10.00 per training credit hour or a minimum of $50 whichever is greater
Classroom Training - with new manuals and new materials	$25 per training credit hour or a minimum of $100 whichever is greater
Technology-Based Training	$25 per training credit hour or a minimum of $100 whichever is greater
Correspondence Courses	$25 per training credit hour or a minimum of $100 whichever is greater
Webinar	$50 for initial review, then $10.00 per training credit hour for subsequent applications

Figure: 30 TAC §30.340(a)

License	Education	Required Work Experience	Required Training
Class D or Class I	High School diploma (HSD) or Equivalent	None	20 hours
Class C or Class II	HSD or equivalent	2 years	60 hours
Class B or Class III	Bachelor's HSD or equivalent	2½ years 5 years	100 hours 100 hours
Class A	Master's Bachelor's HSD or equivalent	4 years 5 years 8 years	160 hours 160 hours 160 hours

Figure: 30 TAC §30.340(f)

License	Required Courses	Elective Courses
Class D	Basic Wastewater Operation	None
Class C	Basic Wastewater Operation Activated Sludge or Wastewater Treatment plus one elective course	Wastewater Collection Wastewater Laboratory Water Utility Calculations Water Utility Safety
Class B	Activated Sludge or Wastewater Treatment Wastewater Collection Wastewater Laboratory Water Utility Safety plus one elective course	Intermediate Wastewater Laboratory Water Utility Calculations Water Utility Management
Class A	Activated Sludge or Wastewater Treatment Wastewater Collection Wastewater Laboratory Water Utility Management Water Utility Safety plus one elective course	Intermediate Wastewater Laboratory Water Utility Calculations Wastewater Technology Advanced Management
Class I	Wastewater Collection	None
Class II	Basic Wastewater Operation Wastewater Collection plus one elective course	Water Utility Safety Pump and Motor Maintenance
Class III	Basic Wastewater Operation Wastewater Collection Water Utility Safety Pump and Motor Maintenance plus one elective course	Intermediate Wastewater Laboratory Water Utility Management Water Utility Calculations Pre-treatment Facility Inspection

Figure: 30 TAC §30.390(a)

License	Education	Work Experience	Training Credits
Class D	High School Diploma (HSD) or equivalent	None	20 hours
Class C, Distribution, Groundwater, Surface water	HSD or equivalent	2 years	60 hours
Class B, Distribution and Groundwater	Bachelor's HSD or equivalent	2½ years 5 years	120 hours 120 hours
Class B, Surface water	Bachelor's HSD or equivalent	2½ years 5 years	144 hours 144 hours
Class A	Master's Bachelor's HSD or equivalent	4 years 5 years 8 years	184 hours 184 hours 184 hours

Figure: 30 TAC §30.390(f)

License	Core Training Courses	Elective Training Courses
Class D	Basic Waterworks Operation	None
Class C Surface Water	Basic Waterworks Operation Surface Water Production I Surface Water Production II	None
Class C Groundwater	Basic Waterworks Operation Groundwater Production Plus one elective course	Water Distribution Water Laboratory Water Utility Safety Water Utility Calculations Chlorinator Maintenance Pump and Motor Maintenance Valve and Hydrant Maintenance
Class C Water Distribution	Basic Waterworks Operation Water Distribution Plus one elective course	Water Laboratory Water Utility Safety Water Utility Calculations Chlorinator Maintenance Pump and Motor Maintenance Valve and Hydrant Maintenance.
Class B Surface Water	Basic Waterworks Operation Surface Water Production I Surface Water Production II Water Distribution Water Utility Safety Water Laboratory Water Utility Management	None
Class B Groundwater	Basic Waterworks Operation Groundwater Production Water Laboratory Water Distribution Water Utility Safety Plus one elective course	Water Utility Management Water Utility Calculations Chlorinator Maintenance Pump and Motor Maintenance Valve and Hydrant Maintenance

Class B Water Distribution	Basic Waterworks Operation Water Distribution Water Utility Safety Pump and Motor Maintenance Valve and Hydrant Maintenance Plus one elective course	Water Utility Management Water Utility Calculations Chlorinator Maintenance Water Laboratory
Class A	Basic Waterworks Operation Surface Water Production I Surface Water Production II Groundwater Production Water Distribution Water Laboratory Water Utility Management Water Utility Safety	Plus additional training to meet the 184 hour requirement

Figure: 40 TAC §92.551(d)

ADMINISTRATIVE PENALTY SCHEDULE	SMALL FACILITY (4-16 beds)		LARGE FACILITY (17+ beds)	
	Business entity owns one facility	Business entity owns multiple facilities	Business entity owns one facility	Business entity owns multiple facilities
§92.3. Types of Assisted Living Facilities	$300	$450	$500	$650
§92.4. License Fees	$300	$400	$500	$600
§92.11. Criteria for Licensing	$300	$450	$500	$650
§92.16. Change of Ownership	$300	$400	$500	$600
§92.18. Increase in Capacity	$300	$400	$500	$600
§92.21. Initial License for a Type A or Type B Facility for an Applicant in Good Standing				
(g) health inspection disclosure	$500	$600	$700	$800
§92.41. Standards for Type A and Type B Assisted Living Facilities				
(a) employees	$350	$550	$750	$950
(b) social services	$200	$300	$400	$500
(c) resident assessment	$400	$550	$600	$750
(d) resident policies	$250	$350	$450	$550
(e) admission policies	$300	$400	$500	$600
(f) inappropriate placement in Type A or Type B facilities	$700	$800	$900	$1,000
(g) advance directives	$500	$500	$500	$500
(h) resident records	$200	$300	$400	$500
(i) personnel records	$200	$300	$400	$500
(j) medications	$400	$500	$600	$700
(k) accident, injury, or acute illness	$400	$500	$600	$700
(l) resident finances	$200	$300	$400	$500
(m) food and nutrition services	$400	$550	$700	$850

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(n) infection control	$400	$550	$700	$850
(o) access to residents	$150	$200	$250	$300
(p) restraints	$700	$800	$900	$1,000
(q) accreditation status	$700	$800	$900	$1,000
§92.51. Licensure of Facilities for Persons with Alzheimer's Disease	$200	$300	$400	$500
§92.53. Standards for Certified Alzheimer's Assisted Living Facilities	$400	$500	$600	$700
§92.54. Advertisements, Solicitations, and Promotional Material	$250	$350	$450	$550
§92.61. Facility Construction-Introduction and Application	$300	$400	$500	$600
§92.62. General Requirements	$350	$450	$550	$650
§92.81. Inspections and Surveys	$300	$400	$500	$600
§92.82. Determinations and Actions Pursuant to Inspections	$200	$300	$400	$500
§92.102. Abuse, Neglect, Exploitation Reportable to DADS by Facilities	$700	$800	$900	$1,000
§92.123. Investigation of Facility Employees	$450	$550	$650	$750
§92.125. Resident's Bill of Rights and Provider Bill of Rights				
(a) resident's bill of rights	--	--	--	--
(1) post and provide copy of bill	$100	$150	$200	$250
(2) right to exercise civil rights	$150	$200	$250	$300
(3) each resident has the right to:	--	--	--	--
(A) be free from physical, mental abuse, corporal punishment, physical, chemical restraints for discipline/convenience	$700	$800	$900	$1,000
(B) participate in activities	$150	$200	$250	$300
(C) religion of choice	$150	$200	$250	$300
(D) if MR, participate in	$150	$200	$250	$300

2

behavior modification with guardian consent				
(E)(i)-(iii) be treated with respect, consideration, dignity	$200	$250	$300	$350
(F) safe, decent living environment	$100	$150	$200	$250
(G) communicate in native language	$100	$150	$200	$250
(H) complain about care, treatment	$200	$250	$300	$350
(I) receive and send mail	$100	$150	$200	$250
(J) unrestricted communication	$150	$200	$250	$300
(K) make community contacts	$100	$150	$200	$250
(L) manage financial affairs	$100	$150	$200	$250
(M)(i)-(ii) access resident records	$100	$150	$200	$250
(N) choose physician and be informed about treatment and care	$100	$150	$200	$250
(O) help develop individual service plan	$100	$150	$200	$250
(P)(i)-(ii) opportunity to refuse medical treatment or services	$100	$150	$200	$250
(Q) unaccompanied access to telephone	$100	$150	$200	$250
(R) privacy	$100	$150	$200	$250
(S) retain and use personal possessions	$100	$150	$200	$250
(T) determine personal preference in dress, hair style, personal effects	$100	$150	$200	$250
(U) retain and use personal property	$100	$150	$200	$250
(V) refuse to perform services	$100	$150	$200	$250
(W)(i)-(ii) be informed about Medicare, Medicaid, and covered items/services	$100	$150	$200	$250
(X)(i)-(v) not be transferred/discharged except under specific conditions	$300	$350	$400	$450

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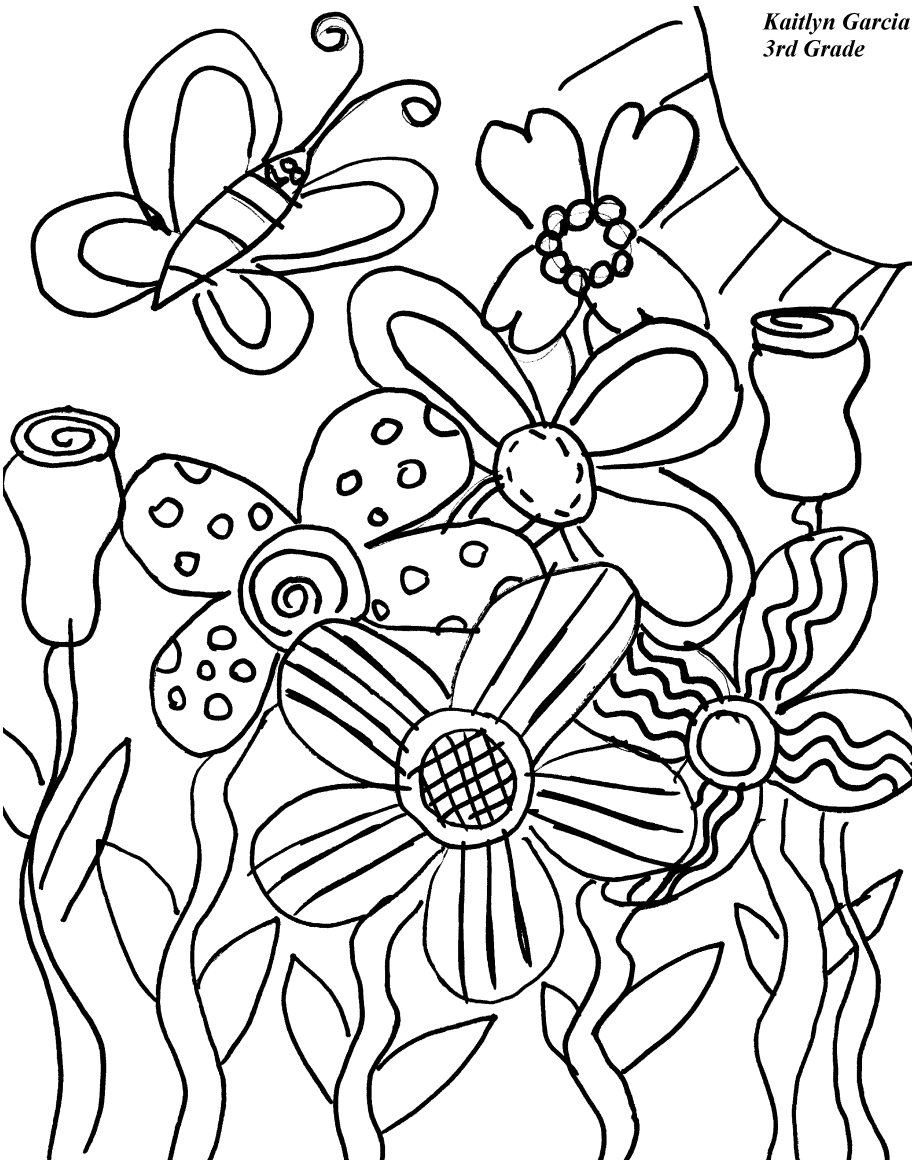
(Y)(i)-(v) not be transferred/discharged except in an emergency without specific written notice	$300	$350	$400	$450
(Z) leave facility temporarily or permanently	$100	$150	$200	$250
(AA) access the Ombudsman program	$100	$150	$200	$250
(BB) execute an advance directive or designate a guardian for decisions	$200	$250	$300	$350
§92.127. Required Posting	$250	$350	$450	$550
§92.129. Authorized Electronic Monitoring (AEM)	$100	$150	$200	$250
§§92.351-92.374. Emergency License Suspension and Closing Order	$150	$250	$350	$450
§§92.551-92.595. Administrative Penalties	$400	$500	$600	$700

4



Kaitlyn Garcia
3rd Grade

IN ADDITION

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Texas Health and Safety Code and Texas Water Code Settlement Notice

The State of Texas gives notice of the following proposed resolution of an environmental enforcement action under the Texas Water Code. Before the State may enter into a voluntary settlement agreement, pursuant to §7.110 of the Texas Water Code, the State shall permit the public to comment in writing. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreement if the comments disclose facts or considerations indicating that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the law.

Case Title and Court: *County of Brazoria and the State of Texas, Acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Cristy Griffith, a.k.a. Cristy Scott;* Cause No. 84131-CV; in the 23rd Judicial District Court of Brazoria County, Texas.

Background: Defendant Cristy Griffith, a.k.a. Cristy Scott, is the owner of property located at 20150 County Road 510P in Brazoria County, Texas. Defendant was repeatedly cited for allowing the on-site sewage facility (OSSF) at the property to cause raw sewage and wastewater to discharge onto the property and the neighboring property, in violation of Chapters 341, 343 and 366 of the Texas Health and Safety Code, Chapter 7 of the Texas Water Code, Chapter 285 of Title 30 of the Texas Administrative Code, and Brazoria County OSSF regulations.

Proposed Settlement: Since the filing of the lawsuit in late 2015, Defendant has agreed to vacate the property and to hire a maintenance company to repair the malfunctioning OSSF. The parties propose an Agreed Final Judgment and Permanent Injunction, which orders the Defendant to, among other things, clean up any sewage/wastewater on the property and neighboring properties, renew OSSF maintenance contract annually, and allow the Brazoria County Environmental Health Department continued access and monitoring of the site. The proposed settlement also awards Brazoria County and the State $500 in civil penalties, to be equally divided between Brazoria County and the State, and awards the State attorney's fees in the amount of $175.

The Office of the Attorney General will accept written comments relating to the proposed judgment for thirty (30) days from the date of publication of this notice. The proposed judgment may be examined at the Office of the Attorney General, 300 W. 15th Street, 10th Floor, Austin, Texas, and copies may be obtained in person or by mail for the cost of copying. Requests for copies of the proposed judgment and settlement, and written comments on the same, should be directed to Erin Rodman, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, MC 066, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911.

TRD-201601637
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 8, 2016

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health & Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed judgment if the comments disclose facts or considerations that include that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health & Safety Code.

Case Title and Court: *Ector County, Texas and the State of Texas, v. Arnulfo Aranda;* Cause No. D-1-GV-12-001449, in the 250th Judicial District Court, Travis County, Texas.

Nature of the Defendant's Operations: The case involves Arandas Trucking Services, LLC, and its use of property located in Odessa, Texas as an illegal landfill. The Defendant, Arnulfo Aranda, and his employees have been dumping trash at this site with company vehicles for a number of years. This form of waste storage and disposal is not permissible, and violates several public health and environmental protection laws, including the Texas Solid Waste Disposal Act and the Texas Clean Air Act. Since the filing of the lawsuit the Defendant has removed and properly disposed of the waste he and his employees dumped in the illegal landfill.

Proposed Agreed Judgment: The Agreed Final Judgment and orders the Defendant to pay civil penalties of $8,000 to be divided equally between Ector County and the State of Texas. The Defendant will pay attorney's fees to the State of Texas in the amount of $2,000.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment and Permanent Injunction should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4153, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201601707
Amanda Crawford
General Counsel
Office of the Attorney General
Filed: April 12, 2016

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Comptroller of Public Accounts

Certification of the Average Closing Price of Gas and Oil - March 2016

The Comptroller of Public Accounts, administering agency for the collection of the Crude Oil Production Tax, has determined, as required

by Tax Code, §202.058, that the average taxable price of crude oil for reporting period March 2016 is $24.76 per barrel for the three-month period beginning on December 1, 2015, and ending February 29, 2016. Therefore, pursuant to Tax Code, §202.058, crude oil produced during the month of March 2016 from a qualified low-producing oil lease is eligible for a 50% credit on the crude oil production tax imposed by Tax Code, Chapter 202.

The Comptroller of Public Accounts, administering agency for the collection of the Natural Gas Production Tax, has determined, as required by Tax Code, §201.059, that the average taxable price of gas for reporting period March 2016 is $1.22 per mcf for the three-month period beginning on December 1, 2015, and ending February 29, 2016. Therefore, pursuant to Tax Code, §201.059, gas produced during the month of March 2016 from a qualified low-producing well is eligible for a 100% credit on the natural gas production tax imposed by Tax Code, Chapter 201.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of West Texas Intermediate crude oil for the month of March 2016 is $37.96 per barrel. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from oil produced during the month of March 2016 from a qualified low-producing oil well.

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has determined, as required by Tax Code, §171.1011(s), that the average closing price of gas for the month of March 2016 is $1.81 per MMBtu. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of March 2016 from a qualified low-producing gas well.

TRD-201601669
Lita Gonzalez
General Counsel
Comptroller of Public Accounts
Filed: April 11, 2016

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Office of Consumer Credit Commissioner

Notice of Rate Ceilings

The Consumer Credit Commissioner of Texas has ascertained the following rate ceilings by use of the formulas and methods described in §303.003 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/18/16 - 04/24/16 is 18% for Consumer[1]/Agricultural/Commercial[2] credit through $250,000.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 04/18/16 - 04/24/16 is 18% for Commercial over $250,000.

[1] Credit for personal, family or household use.

[2] Credit for business, commercial, investment or other similar purpose.

TRD-201601702
Leslie Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: April 12, 2016

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Texas Education Agency

Request for Applications Concerning the 2016-2018 Public Charter School Program Start-Up Grant

Filing Authority. The availability of grant funds under Request for Applications (RFA) #701-16-103 is authorized by P.L. 107-110, Elementary and Secondary Education Act of 1965, as amended by the No Child Left Behind Act of 2001, Title V, Part B, Subpart 1, Charter School Programs.

Eligible Applicants. The Texas Education Agency (TEA) is requesting applications under Request for Applications (RFA) #701-16-103 from eligible charter schools to provide initial start-up funding for planning and/or implementing charter school activities. This competitive grant opportunity is available for charter schools that meet the federal definition of a charter school, have never received Public Charter School Program start-up funds, and are one of the following: (1) a campus charter school authorized by the local board of trustees at Dallas Independent School District or San Antonio Independent School District pursuant to the Texas Education Code (TEC), Chapter 12, Subchapter C, on or before December 16, 2015, that submits all required documentation as required by the RFA and previously described in the "To the Administrator Addressed" letter dated August 25, 2015; (2) an open-enrollment charter school authorized by the commissioner under the Generation 20 charter application pursuant to the TEC, Chapter 12, Subchapter D; (3) a college, university, or junior college charter school authorized by the commissioner pursuant to the TEC, Chapter 12, Subchapter E, that will begin serving students on or before September 7, 2016; or (4) an open-enrollment charter school designated by the commissioner of education for the 2016-2017 school year as a new school under an existing charter. Charters awarded by the commissioner under the Generation 20 application that have been notified of contingencies to be cleared prior to receiving a charter contract are considered eligible to apply for the grant. However, these charters should be diligent in working with TEA to complete the contingency process as all contingencies pertaining to the charter application and approval must be cleared and a contract issued to the charter holder prior to receiving grant funding, if awarded. Charters submitting an application for a New School Designation for the 2016-2017 school year are considered to be eligible to apply for the grant. However, the commissioner must designate the campus as a new school under an existing charter prior to the charter receiving grant funding, if awarded.

Description. The purpose and goals of the 2016-2018 Public Charter School Program Start-Up Grant are to provide financial assistance for the startup and implementation of charter schools and expand the number of high-quality charter schools available to students across the state.

Dates of Project. The 2016-2018 Public Charter School Program Start-Up Grant will be implemented primarily during the 2016-2017 and 2017-2018 school years. Applicants should plan for a starting date of no earlier than August 31, 2016, and an ending date of no later than July 31, 2018, contingent on the continued availability of federal funding.

Project Amount. Approximately $9.6 million is available for funding the 2016-2018 Public Charter School Program Start-Up Grant. It is anticipated that approximately 10 to 12 grants of no more than $800,000 each will be awarded. Applicants that are in their first or second year of eligibility may apply for grant funding. However, if selected for funding, the award amount will be prorated based on the remaining months of eligibility. This project is funded 100 percent with federal funds.

Selection Criteria. Applications will be selected based on the ability of each applicant to carry out all requirements contained in the RFA. Reviewers will evaluate applications based on the overall quality and validity of the proposed grant programs and the extent to which the applications address the primary objectives and intent of the project.

Applications must address each requirement as specified in the RFA to be considered for funding. TEA reserves the right to select from the highest-ranking applications those that address all requirements in the RFA.

TEA is not obligated to approve an application, provide funds, or endorse any application submitted in response to this RFA. This RFA does not commit TEA to pay any costs before an application is approved. The issuance of this RFA does not obligate TEA to award a grant or pay any costs incurred in preparing a response.

Applicants' Conference. A webinar will be held on Wednesday, May 18, 2016, from 10:00 a.m. to 12:00 p.m. Register for the webinar at https://attendee.gotowebinar.com/register/3574323559604712196. Questions relevant to the RFA may be emailed to Arnoldo Alaniz at CharterSchools@tea.texas.gov or faxed to (512) 463-9732 prior to Thursday, May 5, 2016. These questions, along with other information, will be addressed during the webinar. The applicants' conference webinar will be open to all potential applicants and will provide general and clarifying information about the grant program and RFA.

Requesting the Application. The announcement letter and complete RFA will be posted on the TEA Grant Opportunities web page at http://burleson.tea.state.tx.us/GrantOpportunities/forms/GrantProgramSearch.aspx for viewing and downloading. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view and download all documents that pertain to this RFA.

Further Information. In order to make sure that no prospective applicant obtains a competitive advantage because of acquisition of information unknown to other prospective applicants, any and all questions must be submitted in writing to the TEA contact persons identified in the program guidelines of the RFA at CharterSchools@tea.texas.gov no later than Tuesday, May 24, 2016. All questions and the written answers thereto will be posted on the TEA Grant Opportunities web page in the format of Frequently Asked Questions (FAQs) by Tuesday, June 7, 2016. In the "Search Options" box, select the name of the RFA from the drop-down list. Scroll down to the "Application and Support Information" section to view all documents that pertain to this RFA.

Deadline for Receipt of Applications. Applications must be received in the TEA Document Control Center by 5:00 p.m. (Central Time), Tuesday, June 21, 2016, to be eligible to be considered for funding. TEA will not accept applications by email. Applications may be delivered to the TEA visitors' reception area on the second floor of the William B. Travis Building, 1701 North Congress Avenue (at 17th Street and North Congress, two blocks north of the Capitol), Austin, Texas, 78701 or mailed to Document Control Center, Division of Grants Administration, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494.

TRD-201601733
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: April 13, 2016

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is May 23, 2016. TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building C, 1st Floor, Austin, Texas 78753, (512) 239-2545 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the enforcement coordinator designated for each AO at the commission's central office at P.O. Box 13087, Austin, Texas 78711-3087 and must be received by 5:00 p.m. on May 23, 2016. Written comments may also be sent by facsimile machine to the enforcement coordinator at (512) 239-2550. The commission enforcement coordinators are available to discuss the AOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the AOs shall be submitted to the commission in writing.

(1) COMPANY: Aqua Utilities, Incorporated; DOCKET NUMBER: 2016-0063-PWS-E; IDENTIFIER: RN101217537; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.46(m)(1)(B), by failing to conduct an annual inspection of the facility's pressure tank at Plant Number 2; and 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Numbers 1 and 2; PENALTY: $474; ENFORCEMENT COORDINATOR: Sarah Kim, (512) 239-4728; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(2) COMPANY: Bottom Line Food Processors, Incorporated; DOCKET NUMBER: 2014-1672-WQ-E; IDENTIFIER: RN103029302; LOCATION: Austin, Travis County; TYPE OF FACILITY: food processing plant and associated wastewater pretreatment facility; RULES VIOLATED: TWC, §26.121(a)(1), by failing to prevent the unauthorized discharge of wastewater into or adjacent to water in the state; and TWC, §26.039(b), by failing to provide notify to the commission of an unauthorized discharge which caused pollution within 24 hours after the occurrence; PENALTY: $13,125; ENFORCEMENT COORDINATOR: Had Darling, (512) 239-2520; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: City of Ladonia; DOCKET NUMBER: 2016-0061-PWS-E; IDENTIFIER: RN101413136; LOCATION: Ladonia, Fannin County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of Well Numbers 1 and 2; 30 TAC §§290.41(c)(3)(O), 290.42(m), and 290.43(e), by failing to provide an intruder-resistant fence or well house around each water treatment plant, well unit, potable water storage tanks, pressure maintenance facilities, and related appurtenances that remains locked during periods of darkness and when the facility is unattended; 30 TAC §290.46(m)(4), by failing to maintain all distribution system lines, storage and pressure maintenance facilities, water treatment units and all related appurtenances in a watertight condition; 30 TAC §290.44(h)(1)(A), by failing to install backflow prevention assemblies

or an air gap at all residences or establishments where an actual or potential contamination hazard exists; 30 TAC §290.46(j), by failing to complete a customer service inspection certificate prior to providing continuous service to new construction or any existing service when the water purveyor has reason to believe cross-connections or other potential contamination hazards exists; 30 TAC §290.46(l), by failing to flush all dead-end mains at monthly intervals or more often as needed if water quality complaints are received from water customers or if disinfectant residuals fall below acceptable levels; 30 TAC §290.46(m), by failing to initiate maintenance and housekeeping practices to ensure the good working condition and general appearance of the facility and its equipment; 30 TAC §290.46(n)(3), by failing to maintain copies of well completion data such as well material setting data, geological log, sealing information (pressure cementing and surface protection), disinfection information, microbiological sample results and a chemical analysis report of a representative sample of water from Well Number 2; 30 TAC §290.121(a) and (b), by failing to develop, maintain and make available for executive director review upon request an accurate and up-to-date chemical and microbiological monitoring plan that identifies all sampling locations, describes the sampling frequency, and specifies the analytical procedures and laboratories that the facility will use to comply with the monitoring requirements; 30 TAC §290.41(c)(3)(K), by failing to properly seal the wellhead with a gasket or sealing compound; 30 TAC §290.42(l), by failing to maintain a thorough and up-to-date plant operations manual for operator review and reference; and 30 TAC §290.46(f)(2) and (3)(A)(iii), by failing to provide facility records to commission personnel at the time of an investigation; PENALTY: $1,551; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(4) COMPANY: Enbridge G and P (East Texas) L.P.; DOCKET NUMBER: 2016-0194-AIR-E; IDENTIFIER: RN100223783; LOCATION: Pittsburg, Camp County; TYPE OF FACILITY: natural gas processing and treatment plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O2961, Special Terms and Conditions (STC) Number 7, and New Source Review Permit Number 8986, Special Conditions Number 1, by failing to prevent unauthorized emissions; and 30 TAC §101.201(a)(1)(B) and §122.143(4), THSC, §382.085(b), and FOP Number O2961, STC Number 2.F., by failing to submit the initial notification for a reportable emissions event within 24 hours of discovery; PENALTY: $5,800; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(5) COMPANY: H and S Constructors, Incorporated; DOCKET NUMBER: 2016-0271-AIR-E; IDENTIFIER: RN108877879; LOCATION: Alice, Jim Wells County; TYPE OF FACILITY: oil and pipeline equipment fabrication plant; RULES VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.085(b) and §382.0518(a), by failing to obtain proper authorizations prior to conducting outdoor or non-enclosed surface coating and outside dry abrasive cleaning operations; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Amancio R. Gutierrez, (512) 239-3921; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(6) COMPANY: Huntsman Petrochemical LLC; DOCKET NUMBER: 2015-1838-AIR-E; IDENTIFIER: RN100219252; LOCATION: Port Neches, Jefferson County; TYPE OF FACILITY: petrochemical plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3056, General Terms and Conditions and Special Terms and Conditions Number 17, and New Source Review Permit Number 20160, Special Conditions Number 1, by failing to prevent unauthorized emissions; PENALTY: $7,500; Supplemental Environmental Project offset amount of $3,000; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(7) COMPANY: Jim Wells County Fresh Water Supply District 1; DOCKET NUMBER: 2016-0110-PWS-E; IDENTIFIER: RN102673506; LOCATION: Ben Bolt, Jim Wells County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.106(f)(3) and §290.122(b)(2)(A) and (f) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.01 milligrams per liter for arsenic based on the running annual average and failing to provide public notification and submit a copy of the public notification to the executive director regarding an arsenic MCL violation; and 30 TAC §290.51(a)(6) and TWC, §5.702, by failing to pay public health service fees, including late fees, for TCEQ Financial Administration Account Number 91250030 for Fiscal Year 2016; PENALTY: $183; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Kenneth Mowles dba Captain Ken's RV Park; DOCKET NUMBER: 2015-1804-PWS-E; IDENTIFIER: RN107586570; LOCATION: Aransas Pass, Aransas County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.109(c)(2)(A)(i) and §290.122(c)(2)(A) and (f) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the months of February 2015 - August 2015 and failing to post public notification and provide a copy of the public notification to the executive director regarding the failure to conduct routine coliform monitoring during the months of February 2015 -June 2015; PENALTY: $2,025; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(9) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2015-1744-PWS-E; IDENTIFIER: RN102676970; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.41(c)(1)(F), by failing to obtain a sanitary control easement that covers the land within 150 feet of well Number 3 (Pete's Paradise) and well Number 7 (King's Point); PENALTY: $138; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(10) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2015-1552-PWS-E; IDENTIFIER: RN102676970; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the third quarter of 2013 through the first quarter of 2015, and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the third quarter of 2013 through the fourth quarter of 2014; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to persons served at the locations in a manner consistent with TCEQ requirements for the 2014 monitoring

period; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the first quarter of 2013, the failure to collect an annual nitrate sample in 2012, and the failure to collect triennial radionuclide, metal, and mineral samples for the January 1, 2010 - December 31, 2012 monitoring period; PENALTY: $1,168; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(11) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2015-1120-PWS-E; IDENTIFIER: RN101174902; LOCATION: Arp, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the second, third, and fourth quarters of 2014 and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the second quarter of 2014; 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and failing to submit to the TCEQ a copy of the consumer notification and certification that the consumer notification has been distributed to persons served at the locations in a manner consistent with TCEQ requirements for the 2014 monitoring period; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2012 and 2013; and 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs for the first, third, and fourth quarter of 2013; PENALTY: $984; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(12) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2015-1098-PWS-E; IDENTIFIER: RN104966544; LOCATION: Tyler, Smith County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the second, third, and fourth quarters of 2014 and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR for the second and third quarters of 2014; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2012 and 2013; 30 TAC §290.115(f)(1) and §290.122(b)(2)(A) and (f), and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level (MCL) of 0.080 milligrams per liter for total trihalomethanes (TTHM) based on the locational running annual average and failing to provide public notification and submit a copy of the public notification to the ED regarding the TTHM MCL violation; PENALTY: $947; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4076; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(13) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2015-0449-PWS-E; IDENTIFIER: RN102673712; LOCATION: Eustace, Henderson County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter for the second and third quarters of 2014 and failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs for the second quarter of 2011, the first and third quarters of 2013, and the second quarter of 2014; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data for the years 2012 and 2013; and 30 TAC §291.76 and TWC, §5.702, by failing to pay regulatory assessment fees for the TCEQ Public Utility Account regarding Certificate of Convenience and Necessity Number 10843 for calendar year 2011; PENALTY: $804; ENFORCEMENT COORDINATOR: Michaelle Garza, (210) 403-4078; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(14) COMPANY: MAXEY ENERGY COMPANY dba Max E Mart 13; DOCKET NUMBER: 2016-0029-PST-E; IDENTIFIER: RN101499234; LOCATION: Johnson City, Blanco County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tank for releases at a frequency of at least once every month; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

(15) COMPANY: Navasota Concrete, Incorporated; DOCKET NUMBER: 2015-1738-IWD-E; IDENTIFIER: RN104760962; LOCATION: Navasota, Grimes County; TYPE OF FACILITY: ready-mixed concrete plant; RULES VIOLATED: 30 TAC §305.125(1) and (17) and §319.7(d), and Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXG111229, Part IV. Standard Permit Conditions Number 7.f, by failing to submit effluent monitoring results at the intervals specified in the permit; and 30 TAC §305.125(1) and §319.5(b), and TPDES General Permit Number TXG111229, Part III. Permit Requirements, Section A, Number 2, by failing to collect and analyze effluent samples at the required frequency; PENALTY: $9,923; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(16) COMPANY: Rolling Hills Water Service, Incorporated; DOCKET NUMBER: 2015-1746-PWS-E; IDENTIFIER: RN101229177; LOCATION: Weatherford, Hood County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; and 30 TAC §290.117(c)(2)(C) and (i)(1), by failing to collect triennial lead and copper tap samples at the required five sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director by the tenth day of the month following the

end of the monitoring period; PENALTY: $524; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(17) COMPANY: SBBQ Operations, LLC; DOCKET NUMBER: 2016-0097-WQ-E; IDENTIFIER: RN101747905; LOCATION: Henderson, Rusk County; TYPE OF FACILITY: meat packing plant; RULES VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge stormwater associated with industrial activities under Texas Pollutant Discharge Elimination System General Permit Number TXR050000; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Melissa Castro, (512) 239-0855; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(18) COMPANY: Targa Midstream Services LLC; DOCKET NUMBER: 2015-1575-AIR-E; IDENTIFIER: RN100238716; LOCATION: Chico, Wise County; TYPE OF FACILITY: oil and gas plant; RULES VIOLATED: 30 TAC §116.115(b)(2)(F) and (c) and §122.143(4), Texas Health and Safety Code, §382.085(b), Federal Operating Permit Number O3181, Special Terms and Conditions Number 12, and New Source Review Permit Number 84108, Special Conditions Number 1, by failing to comply with the maximum allowable hourly emissions rate; PENALTY: $23,888; Supplemental Environmental Project offset amount of $9,555; ENFORCEMENT COORDINATOR: Eduardo Heras, (512) 239-2422; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: TEXAS WATER SYSTEMS, INCORPORATED; DOCKET NUMBER: 2016-0208-PWS-E; IDENTIFIER: RN101376705; LOCATION: Gregg, Gregg County; TYPE OF FACILITY: public water supply; RULES VIOLATED: 30 TAC §290.115(f)(1) and Texas Health and Safety Code, §341.0315(c), by failing to comply with the maximum contaminant level of 0.080 milligrams per liter for total trihalomethanes, based on the locational running annual average; PENALTY: $168; ENFORCEMENT COORDINATOR: Carol McGrath, (210) 403-4063; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(20) COMPANY: Total Petrochemicals and Refining USA, Incorporated; DOCKET NUMBER: 2015-1770-AIR-E; IDENTIFIER: RN102457520; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical refinery; RULES VIOLATED: 30 TAC §§101.20(3), 116.115(c), and 122.143(4), Texas Health and Safety Code (THSC), §382.085(b), Federal Operating Permit (FOP) Number O1267, Special Terms and Conditions (STC) Number 29, and New Source Review (NSR) Permit Numbers 46396, PSDTX1073M1, and N044, Special Conditions (SC) Number 25, by failing to comply with the in-stack sulfur dioxide concentration limit for Sulfur Recovery Unit (SRU) Number 5 Incinerator, Emission Point Number (EPN) 36SRUINCIN, and SRU Number 4 Incinerator, EPN 25SRUINCIN; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1267, STC Number 29, and NSR Permit Numbers 46396, PSDTX1073M1, and N044, SC Number 11, by failing to comply with the emission limits for Condensate Splitter Heater (CSH) H-1, EPN 40CSPLTH-1; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4), THSC, §382.085(b), FOP Number O1267, STC Number 29, and NSR Permit Numbers 46396, PSDTX1073M1, and N044, SC Number 1, by failing to comply with the maximum allowable emission rates for CSH H-1, EPN 40CSPLTH-1, and Reformer Heaters, EPN 17REFHTRS; PENALTY: $45,000; Supplemental Environmental Project offset amount of $18,000; ENFORCEMENT COORDINATOR: Jennifer Nguyen, (512) 239-6160; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

TRD-201601699
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 12, 2016

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Notice of Correction to Agreed Order Number 3

In the December 4, 2015, issue of the *Texas Register* (40 TexReg 8823), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 3, for City of Groveton. The reference to penalty should be corrected to "$4,876."

Also, the reference to Supplemental Environmental Project offset amount should be corrected to "$3,901."

For questions concerning this error, please contact Melissa Cordell at (512) 239-2483.

TRD-201601697
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 12, 2016

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Notice of Correction to Agreed Order Number 4

In the July 11, 2014, issue of the *Texas Register* (39 TexReg 5451), the Texas Commission on Environmental Quality published notice of Agreed Orders, specifically item Number 4, for City of Carrizo Springs. The reference to Supplemental Environmental Project offset amount of $28,275 should be corrected to read: applied to "Texas Association of Resource Conservation and Development Areas, Inc."

For questions concerning this error, please contact Melissa Cordell at (512) 239-2483.

TRD-201601698
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 12, 2016

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Notice of Hearing

KBARC, LLC

SOAH Docket No. 582-16-3191

TCEQ Docket No. 2015-1791-MWD

Proposed Permit No. WQ0015225001

APPLICATION.

KBARC, LLC, P.O. Box 3321, Bryan, Texas 77805, has applied to the Texas Commission on Environmental Quality (TCEQ) for a new permit, Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0015225001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. TCEQ received this application on February 12, 2014. The facility will be located at 6932 Farm-to-Market Road 1179, Bryan in Brazos County, Texas 77808. The treated effluent will be discharged to Steep Hollow Branch; thence to Wickson Creek; thence to Navasota River Below Lake Limestone in Segment No. 1209 of the Brazos River Basin. The unclassified receiving water use is minimal aquatic life use for Steep Hollow Branch. The designated uses for Segment No. 1209

are primary contact recreation, public water supply and high aquatic life use.

In accordance with 30 Texas Administrative Code (TAC) §307.5 and the TCEQ implementation procedures (January 2003) for the Texas Surface Water Quality Standards, an antidegradation review of the receiving waters was performed. A Tier 1 antidegradation review has preliminarily determined that existing water quality uses will not be impaired by this permit action. Numerical and narrative criteria to protect existing uses will be maintained. This review has preliminarily determined that no water bodies with exceptional, high, or intermediate aquatic life uses are present within the stream reach assessed; therefore, no Tier 2 degradation determination is required. No significant degradation of water quality is expected in water bodies with exceptional, high, or intermediate aquatic life uses downstream, and existing uses will be maintained and protected. The preliminary determination can be reexamined and may be modified if new information is received.

The TCEQ Executive Director has prepared a draft permit which, if approved, would establish the conditions under which the facility must operate. The Executive Director has made a preliminary decision that this permit, if issued, meets all statutory and regulatory requirements. The permit application, Executive Director's preliminary decision, and draft permit are available for viewing and copying at the Clara B. Mounce Public Library, 201 East 26th Street, Bryan, Texas. As a public courtesy, we have provided the following Web page to an online map of the site or the facility's general location. The online map is not part of the application or the notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=30.698055&lng=-96.276944&zoom=13&type=r. For the exact location, refer to the application.

CONTESTED CASE HEARING.

The State Office of Administrative Hearings (SOAH) will conduct a formal contested case hearing at:

10:00 a.m. - May 23, 2016

Brazos County Courthouse

200 South Texas Avenue, Suite 106

Bryan, Texas 77803

The contested case hearing will be a legal proceeding similar to a civil trial in state district court. The hearing will address the disputed issues of fact identified in the TCEQ order concerning this application issued on February 23, 2016. In addition to these issues, the judge may consider additional issues if certain factors are met.

The hearing will be conducted in accordance with Chapter 2001, Texas Government Code; Chapter 26, Texas Water Code; and the procedural rules of the TCEQ and SOAH, including 30 TAC Chapter 80 and 1 TAC Chapter 155. The hearing will be held unless all timely hearing requests have been withdrawn or denied.

To request to be a party, you must attend the hearing and show you would be adversely affected by the application in a way not common to members of the general public. Any person may attend the hearing and request to be a party. Only persons named as parties may participate at the hearing.

INFORMATION.

If you need more information about the hearing process for this application, please call the Public Education Program, toll free, at (800) 687 4040. General information about the TCEQ can be found at our web site at http://www.tceq.texas.gov/.

Further information may also be obtained from KBARC, LLC at the address stated above or by calling Mr. Kenneth Neatherlin at (936) 825-2533.

Persons with disabilities who need special accommodations at the hearing should call the SOAH Docketing Department at (512) 475-3445, at least one week prior to the hearing.

Issued: April 7, 2016

TRD-201601714
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: April 13, 2016

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Notice of Opportunity to Comment on Agreed Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 23, 2016.** TWC, §7.075 also requires that the commission promptly consider any written comments received and that the commission may withdraw or withhold approval of an AO if a comment discloses facts or considerations that indicate that consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed AO is not required to be published if those changes are made in response to written comments.

A copy of each proposed AO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about an AO should be sent to the attorney designated for the AO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 23, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The designated attorney is available to discuss the AO and/or the comment procedure at the listed phone number; however, TWC, §7.075 provides that comments on an AO shall be submitted to the commission in **writing.**

(1) COMPANY: Forester Estates, LLC dba Cedar Grove Park; DOCKET NUMBER: 2015-1119-PWS-E; TCEQ ID NUMBER: RN101188753; LOCATION: at the intersection of County Roads 128 and 143 off Highway 35 South (Key Map 655J), Brazoria, Brazoria County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.117(c)(2)(B) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper tap samples at the required 20 sample sites, have the samples analyzed at an approved laboratory, and submit the results to the executive director (ED), provide public notification and provide a copy of the notification to the ED regarding the failure to collect lead and copper tap samples; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and provide a copy of the notification to the ED regarding the failure to provide Disinfectant Level Quarterly Operating Reports to the ED;

and 30 TAC §290.122(b)(3)(A) and (f), by failing to provide public notification and provide a copy of the notification to the ED regarding the failure to comply with the maximum contaminant level for total coliform; PENALTY: $2,973; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(2) COMPANY: LAKESHORE UTILITY COMPANY; DOCKET NUMBER: 2014-1469-PWS-E; TCEQ ID NUMBERS: RN101177897, RN102679701, RN102681665, RN101266039, and RN102674587; LOCATIONS: County Road 1429, 0.6 mile south of the intersection of Farm-to-Market Road 2329 and Farm-to-Market Road 3054 near Henderson (Hidden Acres), off of Esquire Estates Road near Mabank (Esquire Estates II), off of Farm-to-Market Road 2329 south of Eustace (Cedarview Estates), 4925 La Prada near Malakoff (Point La Vista), 205 Lakeview Circle near Eustace (Lake Vista Village), Henderson County; TYPE OF FACILITIES: five public water supply facilities; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit Disinfectant Level Quarterly Operating Report (DLQORs) to the executive director (ED) each quarter by the tenth day of the month following the end of the quarter, provide public notification and submit a copy of the public notification to the ED regarding the failures; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR and conduct routine coliform monitoring; 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data; 30 TAC §290.117(c)(2)(B), (C), (D) and (i)(1), by failing to collect lead and copper tap samples at the required sample sites, have the samples analyzed at an approved laboratory, and submit the results to the ED; 30 TAC §290.122(c)(2)(A) and (f), by failing to provide public notification and submit a copy of the public notification to the ED regarding the failure to submit a DLQOR; and 30 TAC §290.109(c)(4)(B) and §290.122(c)(2)(A) and (f), by failing to collect a raw groundwater source *Escherichia coli* sample from each active source within 24 hours of notification of a distribution total coliform-positive result on a routine sample, and failing to provide public notification, and submit a copy of the public notification to the ED regarding the failure; PENALTY: $6,955; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(3) COMPANY: LANDMARK INDUSTRIES ENERGY, LLC dba Timewise Exxon 816; DOCKET NUMBER: 2015-1548-PST-E; TCEQ ID NUMBER: RN102657764; LOCATION: 15931 John F. Kennedy Boulevard, Houston, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(a) and 30 TAC §334.50(b)(2)(A), by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,879; STAFF ATTORNEY: Clayton Smith, Litigation Division, MC 175, (512) 239-6224; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(4) COMPANY: LERRET ENTERPRISES, INC. dba Terrel Service Center; DOCKET NUMBER: 2015-1583-PST-E; TCEQ ID NUMBER: RN100707447; LOCATION: 834 North Hampton Road, DeSoto, Dallas County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); 30 TAC §334.50(d)(1)(B)(ii) and TWC, §26.3475(c)(1), by failing to conduct reconciliation of detailed inventory control records at least once every month, in a manner sufficiently accurate to detect a release which equals or exceeds the sum of 1.0% of the total substance flow through for the month plus 130 gallons; 30 TAC §334.50(d)(1)(B)(iii)(I) and TWC, §26.3475(c)(1), by failing to record inventory volume measurements for regulated substance inputs, withdrawals, and the amount still remaining in the tank each operating day; 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide release detection for the pressurized piping associated with the UST system; and 30 TAC §334.10(b)(1)(B), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,630; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Dallas-Fort Worth Regional Office, 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(5) COMPANY: MINSA CORPORATION; DOCKET NUMBER: 2015-1435-PWS-E; TCEQ ID NUMBER: RN102597200; LOCATION: 1972 County Road 1068 near Muleshoe, Bailey County; TYPE OF FACILITY: public water system; RULES VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3) and §290.122(c)(2)(A) and (f), by failing to submit a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director (ED) each quarter by the tenth day of the month following the end of each quarter, and failing to issue public notification and submit a copy of the public notification to the ED regarding the failure to submit DLQORs; 30 TAC §290.117(c)(2)(A) and (i)(1), by failing to collect lead and copper tap samples at the required ten sample sites and submit the results to the ED; 30 TAC §290.117(i)(5) and (k), by failing to deliver public education materials in the event of an exceedance of the lead action level and to continue the delivery of the public education materials for as long as the lead action level was not met; and 30 TAC §290.117(i)(6) and (j), by failing to mail consumer notification of lead tap water monitoring results to persons served at the locations that were sampled and submit to the TCEQ a copy of consumer notification and certification that the consumer notification has been distributed to the persons served at the locations in a manner consistent with TCEQ requirements; PENALTY: $1,178; STAFF ATTORNEY: Audrey Liter, Litigation Division, MC 175, (512) 239-0684; REGIONAL OFFICE: Lubbock Regional Office, 5012 50th Street, Suite 100, Lubbock, Texas 79414-3426, (806) 796-7092.

(6) COMPANY: S & A OIL CO., INC. dba Handi Stop 91; DOCKET NUMBER: 2015-1085-PST-E; TCEQ ID NUMBER: RN103118550; LOCATION: 12150 Cypress North Houston Road, Cypress, Harris County; TYPE OF FACILITY: underground storage tank (UST) system and a convenience store with retail sales of gasoline; RULES VIOLATED: TWC, §26.3475(d) and 30 TAC §334.49(c)(2)(C), by failing to inspect the impressed current cathodic protection system at least once every 60 days to ensure that the rectifier and other system components are operating properly; TWC, §26.3475(d) and 30 TAC §334.49(c)(4)(C), by failing to have the cathodic protection system inspected and tested for operability and adequacy of protection at a frequency of at least once every three years; 30 TAC §334.42(i), by failing to inspect all sumps, including dispenser sumps, manways, overspill containers, or catchment basins associated with the UST system at least once every 60 days to ensure that the sides, bottoms, and any penetration points are maintained liquid tight and free of debris

and liquid; and TWC, §26.3475(c)(1) and 30 TAC §334.50(b)(1)(A), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $8,685; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Houston Regional Office, 5425 Polk Street, Suite H, Houston, Texas 77023-1452, (713) 767-3500.

(7) COMPANY: TRAILSWEST MOBILE HOME PARK, LLC; DOCKET NUMBER: 2015-1097-PWS-E; TCEQ ID NUMBER: RN101182855; LOCATION: 5405 West 7th Street, Texarkana, Bowie County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.033(d) and 30 TAC §290.109(c)(2)(A)(ii) and §290.122(c)(2)(A) and (f), by failing to collect routine distribution water samples for coliform analysis and to provide public notification and submit a copy of the public notification to the executive director (ED) regarding the failure to conduct coliform monitoring; 30 TAC §290.117(c)(2)(C) and (i)(1) and §290.122(c)(2)(A) and (f), by failing to collect lead and copper samples at the required five sample sites, have the samples analyzed at a TCEQ approved laboratory, submit the results to the ED and to provide public notification and submit a copy of the public notification to the ED regarding the failure to conduct lead and copper monitoring; 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to submit a Disinfectant Level Quarterly Operating Report to the ED each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1st of each year, and failing to submit to the TCEQ by July 1st of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility, and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $2,525; STAFF ATTORNEY: Ryan Rutledge, Litigation Division, MC 175, (512) 239-0630; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(8) COMPANY: Travis County Water Control and Improvement District 18; DOCKET NUMBER: 2015-1578-PWS-E; TCEQ ID NUMBER: RN101410405; LOCATION: 1502 San Juan Drive, Austin, Travis County; TYPE OF FACILITY: public water system; RULES VIOLATED: Texas Health and Safety Code, §341.031(a) and 30 TAC §290.109(f)(3) and §290.122(b)(2)(A) and (f), by failing to comply with the maximum contaminant level (MCL) for total coliform during the months of June and August 2015, to provide public notification and provide a copy of the notification to the executive director regarding the failure to comply with the MCL for total coliform during the month of June 2015; PENALTY: $702; STAFF ATTORNEY: Ian Groetsch, Litigation Division, MC 175, (512) 239-2225; REGIONAL OFFICE: Austin Regional Office, 12100 Park 35 Circle, Building A, Austin, Texas 78753, (512) 339-2929.

TRD-201601695
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 12, 2016

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Notice of Opportunity to Comment on Default Orders of Administrative Enforcement Actions

The Texas Commission on Environmental Quality (TCEQ or commission) staff is providing an opportunity for written public comment on the listed Default Orders (DOs). The commission staff proposes a DO when the staff has sent an executive director's preliminary report and petition (EDPRP) to an entity outlining the alleged violations; the proposed penalty; the proposed technical requirements necessary to bring the entity back into compliance; and the entity fails to request a hearing on the matter within 20 days of its receipt of the EDPRP or requests a hearing and fails to participate at the hearing. Similar to the procedure followed with respect to Agreed Orders entered into by the executive director of the commission, in accordance with Texas Water Code (TWC), §7.075, this notice of the proposed order and the opportunity to comment is published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **May 23, 2016.** The commission will consider any written comments received, and the commission may withdraw or withhold approval of a DO if a comment discloses facts or considerations that indicate that consent to the proposed DO is inappropriate, improper, inadequate, or inconsistent with the requirements of the statutes and rules within the commission's jurisdiction, or the commission's orders and permits issued in accordance with the commission's regulatory authority. Additional notice of changes to a proposed DO is not required to be published if those changes are made in response to written comments.

A copy of each proposed DO is available for public inspection at both the commission's central office, located at 12100 Park 35 Circle, Building A, 3rd Floor, Austin, Texas 78753, (512) 239-3400 and at the applicable regional office listed as follows. Written comments about the DO should be sent to the attorney designated for the DO at the commission's central office at P.O. Box 13087, MC 175, Austin, Texas 78711-3087 and must be **received by 5:00 p.m. on May 23, 2016.** Comments may also be sent by facsimile machine to the attorney at (512) 239-3434. The commission's attorneys are available to discuss the DOs and/or the comment procedure at the listed phone numbers; however, TWC, §7.075 provides that comments on the DOs shall be submitted to the commission in **writing.**

(1) COMPANY: ESPINOZA STONE, INC.; DOCKET NUMBER: 2015-0997-WQ-E; TCEQ ID NUMBERS: RN106352875 and RN108638545; LOCATIONS: County Road 207, approximately 0.5 mile southwest of the intersection of County Roads 205 and 207, Shackelford (Site Number 1); 470 East County Road 427, Goldthwaite, Mills County (Site Number 2); TYPE OF FACILITIES: aggregate production operations (APOs); RULES VIOLATED: 30 TAC §342.25(d), by failing to renew the APO registration annually for Site Number 1 as regulated activities continued; and 30 TAC §342.25(b), by failing to register Site Number 2 as an APO not later than 10 business days before the beginning date of regulated activities; PENALTY: $10,000; STAFF ATTORNEY: Jess Robinson, Litigation Division, MC 175, (512) 239-0455; REGIONAL OFFICES: Abilene Regional Office, 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674 and Waco Regional Office, 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(2) COMPANY: Larry Hill; DOCKET NUMBER: 2015-0777-MSW-E; TCEQ ID NUMBER: RN107190373; LOCATION: 19420 Indian Village Trail, Flint, Smith County; TYPE OF FACILITY: unauthorized waste disposal site; RULE VIOLATED: 30 TAC §330.15(c), by causing, suffering, allowing, or permitting the unauthorized disposal of municipal solid waste; PENALTY: $1,312; STAFF ATTORNEY: Jacquelyn Boutwell, Litigation Division, MC 175, (512) 239-5846; REGIONAL OFFICE: Tyler Regional Office, 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

TRD-201601696
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: April 12, 2016

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 30

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to 30 Texas Administrative Code (TAC) Chapter 30, Occupational Licenses and Registrations, §§30.3, 30.7, 30.10, 30.18, 30.20, 30.24, 30.26, 30.28, 30.30, 30.81, 30.117, 30.120, 30.122, 30.231, 30.240, 30.247, 30.279, 30.307, 30.331, 30.340, 30.390, 30.506, and 30.507, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement Senate Bills 807 and 1307, 84th Texas Legislature, 2015, by incorporating new provisions regarding veteran licensure. The proposed rulemaking will also identify approved training delivery methods, increase licensing examination security, remove outdated and redundant references, and improve readability of the chapter.

The commission will hold a public hearing on this proposal in Austin on May 17, 2016, at 10:00 a.m. in Building E, Room 201S, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Sandy Wong, Office of Legal Services at (512) 239-1802 or 1-800-RELAY-TX (TDD). Requests should be made as far in advance as possible.

Written comments may be submitted to Sherry Davis, MC 205, Office of Legal Services, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-4808. Electronic comments may be submitted at: *http://www1.tceq.texas.gov/rules/ecomments/*. File size restrictions may apply to comments being submitted via the eComments system. All comments should reference Rule Project Number 2015-026-030-WS. The comment period closes on May 23, 2016. Copies of the proposed rulemaking can be obtained from the commission's website at *http://www.tceq.texas.gov/rules/propose_adopt.html*. For further information, please contact Michael Parrish, Occupational Licensing, at (512) 239-2548.

TRD-201601642
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: April 8, 2016

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Texas Health and Human Services Commission

Public Notice: HCBS-AMH 1915(i) State Plan Amendment

The Texas Health and Human Services Commission announces its intent to submit transmittal number 16-0001 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment expands the needs-based eligibility criteria for the Home and Community-Based Services-Adult Mental Health (HCBS-AMH) 1915(i) program to include adults with a diagnosis of a serious mental illness (SMI) who have a history of psychiatric crisis and repeated discharges from correctional facilities, and adults with a diagnosis of SMI who have a pattern of emergency department utilization; removes the one to three bed limit for homes owned or leased by an HCBS-AMH provider and approved by the State; and revises the conflict of interest standards to mitigate conflict of interest if the individual performing the assessment works for the provider of last resort. The proposed amendment is effective July 1, 2016.

The proposed amendment is estimated to result in an additional annual aggregate expenditure of $5,505,776 for the remainder of federal fiscal year (FFY) 2016, consisting of $1,643,316 in federal funds and $3,862,460 in state general revenue. For FFY 2017, the estimated additional annual expenditure is $24,340,566 consisting of $13,674,530 in federal funds and $10,666,036 in state general revenue. For FFY 2018, the estimated additional annual expenditure is $26,406,364 consisting of $14,835,095 in federal funds and $11,571,268 in state general revenue.

To obtain copies of the proposed amendment, interested parties may contact J.R. Top, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-600, Austin, Texas 78711; by telephone at (512) 462-6397; by facsimile at (512) 730-7472; or by e-mail at *jr.top@hhsc.state.tx.us*. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201601688
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 11, 2016

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Public Notice: Waiver Amendment to the Medically Dependent Children Program

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare & Medicaid Services (CMS) a request for an amendment to the Medically Dependent Children Program (MDCP) waiver, a waiver implemented under the authority of section 1915(c) of the Social Security Act. CMS has approved this waiver through August 31, 2017. The proposed effective date for the amendment is November 1, 2016, with no changes to cost neutrality.

This amendment request proposes to make the following changes:

1) Update the waiver to reflect the change in delivery method from fee-for-service (FFS) to a managed care model (as the result of a state legislative mandate) to include:

a. Provider enrollment, recruitment and verification process.

b. Performance measures updated to reflect necessary changes for transition from fee-for-service to a managed care model.

c. Managed care organizations (MCOs) will conduct medically necessity and level of care (MNLOC) assessments and service planning.

d. Adjust the timeframe in which assessments are conducted.

e. MCOs will provide service coordination and facilitate the person centered planning process.

f. Modifications to the service coordinator qualifications.

g. Addition of a MCO internal appeal process.

h. Change provider oversight and monitoring functions from Texas Department of Aging and Disability Services (DADS) to MCOs.

i. Remove references to DADS MDCP rules.

j. Changes to reflect that providers will contract with MCOs rather than with DADS.

2) Update the waiver to remove DADS as the operating agency (as a result of a state legislative mandate) to include:

a. Program will also be authorized under the 1915(a) STAR Health and 1115 STAR Kids.

b. Performance measures will be modified to reflect necessary changes in authority.

c. Age-out transition planning process has been updated.

d. Remove DADS from the fair hearings process.

3) Update the quality review process to include:

a. MCOs will send quarterly and annual reports to HHSC.

b. HHSC will use an external quality review organization (EQRO) to assist in monitoring quality.

c. Addition of an independent consumer support system to ensure managed care members understand the MCOs' programs, options and the processes for resolving issues.

4) Update the medical necessity and level of care assessment:

a. To use Screening and Assessment Instrument (SAI).

b. Medical necessity and level of care assessment will differ from the assessment tool used to determine institutional level of care under the state plan.

5) Update the financial component of the waiver to include:

a. HHSC will change the methodology from a fee-for-service to a capitated rate.

b. Increase the point-in-time (PIT) and number of unduplicated participants (Factor C) for waiver year 5.

c. Texas Medicaid Health Partnership (TMHP) will remain the Medicaid Management Information System (MMIS) but will no longer reimburse MDCP providers.

6) Interest list:

a. HHSC will manage the interest list; the process will remain the same as in the currently approved MDCP waiver.

7) Add Service Responsibility Option (SRO) as a new service option available to MDCP members. Update the abuse, neglect and exploitation (ANE) investigation process to reflect legislation from the 84th Legislature, Regular Session.

8) Add medication management and administration process and oversight for out-of-home respite settings (nursing facilities, camps and Texas Department of Family and Protective Services (DFPS) foster homes).

9) Create the MDCP waiver transition plan for the transition from fee-for-service to managed care.

The MDCP waiver which the Department of Aging and Disability Services (DADS) operates under HHSC's authority, provides home and community-based services to individuals under age 21 who are medically fragile and meet the requirements for nursing facility care. Services include respite, adaptive aids, minor home modifications, employment assistance, supported employment, financial management services, transition assistance services, and flexible family support services. Services are provided in the least restrictive environment possible, which may be the individual's home, a family member's home, or a foster care home that can meet the individual's complex medical needs.

An individual may obtain a free copy of the proposed waiver amendment, including the MDCP transition plans, or to ask questions, obtain additional information, or submit comments regarding this amendment or the MDCP transition plans, by contacting Jacqueline Pernell by U.S. mail, telephone, fax, or email. The addresses are as follows:

U.S. Mail

Texas Health and Human Services Commission

Attention: Jacqueline Pernell, Policy Development Support, Waiver Coordinator

P.O. Box 13247

Mail Code H-600

Austin, Texas 78711-3247

Telephone

(512) 428-1931

Fax

Attention: Jacqueline Pernell, Program Coordinator, at (512) 730-7477

Email

TX_Medicaid_Waivers@hhsc.state.tx.us.

In addition, the DADS local offices will post this notice for 30 days. The complete waiver amendment request can be found online on the DADS website at:

http://www.dads.state.tx.us/providers/MDCP/

The HHSC website will have a link to the complete waiver amendment at:

http://www.hhsc.state.tx.us/medicaid/hcbs/

TRD-201601731
Karen Ray
Chief Counsel
Texas Health and Human Services Commission
Filed: April 13, 2016

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Texas Department of Insurance

Company Licensing

Application for admission in the State of Texas by US BUILDERS INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Dover, Delaware.

Application for FOUNDATION TITLE INSURANCE COMPANY, a domestic title company, to change its name to AMROCK TITLE INSURANCE COMPANY. The home office is in Dallas, Texas.

Application for ATX PREMIER INSURANCE COMPANY, a domestic fire and/or casualty company, to change its name to WINDHAVEN NATIONAL INSURANCE COMPANY. The home office is in Richardson, Texas.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of the *Texas Register* publication, addressed to the attention of Jeff Hunt, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201601723

Norma Garcia
General Counsel
Texas Department of Insurance
Filed: April 13, 2016

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Policy and Forms

Texas Windstorm Insurance Association Dwelling and Commercial Insurance Policy and Declarations Page Forms Petition and State Tracking Numbers: Dwelling Policy P-0316-01, STN S622264 Dwelling Policy Declarations Page P-0316-02, STN S622265 Commercial Policy P-0316-03, STN S622266 Commercial Policy Declarations Page P-0316-04, STN S622267

The Texas Windstorm Insurance Association submitted new mandatory revisions to its dwelling and commercial insurance policy forms and declarations page forms to the Texas Department of Insurance for approval, as required by 28 TAC §5.4912.

The revised forms state that the policy may be subject to a surcharge to pay public securities, the policyholder has 120 days to pay the surcharge, and failure to pay will result in cancellation. The revised declarations page forms also include editorial and formatting changes.

You may obtain a copy of the revised forms from the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104 or from www.tdi.state.tx.us/submissions/index.html.

Public Comments: To comment on the submission, you must send two copies of your comments to the Texas Department of Insurance by 5:00 p.m., Central time, on May 23, 2016. Send one copy by email to chiefclerk@tdi.texas.gov, or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P. O. Box 149104, Austin, Texas 78714-9104. Send the second copy by email to marilyn.hamilton@tdi.texas.gov or by mail to Marilyn Hamilton, Director, Property and Casualty Lines Office, Mail Code 104-PC, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

Hearing Requests: To request a public hearing, you must submit a written request by May 12, 2016. Send the hearing request separately from any written comments by email to chiefclerk@tdi.texas.gov, or by mail to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104.

TRD-201601717
Norma Garcia
General Counsel
Texas Department of Insurance
Filed: April 13, 2016

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Texas Department of Licensing and Regulation

Public Notice - Criminal Conviction Guidelines

The Texas Commission of Licensing and Regulation (Commission) provides this public notice that, at their regularly scheduled meeting held March 9, 2016, the Commission adopted amendments to the Texas Department of Licensing and Regulation's (Department's) Criminal Conviction Guidelines pursuant to Texas Occupations Code, §53.025(a). The Criminal Conviction Guidelines are updated from the original guidelines published in the December 5, 2003, issue of the *Texas Register* (28 TexReg 11018) to include the Driver Education and Safety program.

The Criminal Conviction Guidelines (guidelines) describe the process by which the Department determines whether a criminal conviction renders an applicant an unsuitable candidate for the license, or whether a conviction warrants revocation or suspension of a license previously granted. The guidelines present the general factors that are considered in all cases and the reasons why particular crimes are considered to relate to each type of license issued by the Department.

House Bill 1786, 84th Legislature, Regular Session (2015), transferred Driver and Traffic Safety Education from the Texas Education Agency and the Texas Department of Public Safety to the Texas Department of Licensing and Regulation effective September 1, 2015, and amended Texas Education Code, Chapter 1001.

The Criminal Conviction Guidelines for the Driver Education and Safety program will become a part of the overall guidelines that are already in place for other Department programs. The Department presented the applicable guidelines to the Driver Training and Traffic Safety Advisory Committee at their meeting on February 25, 2016, and received the Committee's recommendation of approval.

The Criminal Conviction Guidelines for the Driver Education and Safety program are as follows:

Crimes against the person such as homicide, kidnapping, and assault.

Reasons:

1. Under §1001.2514(b) of the Texas Education Code, the agency SHALL suspend or revoke the license of a driver education instructor, or refuse to issue or renew a license to a driver education instructor applicant, if the licensee or applicant has been convicted of a felony offense under Title 5, Texas Penal Code.

2. Licensees interact with adults and children in an instructor/student role. Individuals who have committed crimes against the person would pose a potential danger to the students.

3. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving prohibited sexual conduct.

Reasons:

1. Under §1001.2514(b) of the Texas Education Code, the agency SHALL suspend or revoke the license of a driver education instructor, or refuse to issue or renew a license to a driver education instructor applicant, if the licensee or applicant has been convicted of an offense on conviction of which a defendant is required to register as a sex offender under Chapter 62, Texas Code of Criminal Procedure.

2. Licensees interact with adults and children in an instructor/student role. Individuals who have committed crimes involving prohibited sexual conduct would pose a potential danger to the students.

3. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving children as victims.

Reasons:

1. Licensees interact with children in an instructor/student role. Individuals who have committed crimes involving children as victims would pose a potential danger.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes against property such as theft, trespass, or burglary.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees would have access to the property of students in classrooms and vehicles.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving fraud, forgery, or deceptive trade practices.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees will often be involved in assessing the performance of students. Licensees would have the opportunity to prepare and submit false documents pertaining to the coursework or qualifications of students.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving the possession with intent to deliver, possession with intent to distribute, delivery, distribution or manufacture of drugs.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees are in a position to pressure and/or influence students to possess, deliver or distribute drugs.

2. A person who has committed such crimes would have the opportunity to engage in further similar conduct.

Crimes involving the operation of a motor vehicle, including driving while intoxicated, intoxication assault, intoxication manslaughter, reckless driving, and fleeing or evading a police officer.

Reasons:

1. Licensees interact with adults and children in an instructor/student role. Licensees teach proper driving. Persons with a history of operating a motor vehicle in a dangerous manner would not be appropriate persons to teach proper driving.

2. Criminal activity of this type reveals a lack of regard for the safety of others.

3. A person with a predisposition for criminal activity of this type would pose a risk to the public.

4. The in car instructor license would provide the opportunity to engage in or encourage others to engage in further similar conduct.

A copy of the complete Criminal Conviction Guidelines is posted on the Department's website and may be obtained at www.tdlr.texas.gov. You may also contact the Enforcement Division at (512) 539-5600 or by email at *enforcement@tdlr.texas.gov* to obtain a copy of the complete guidelines.

TRD-201601636
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: April 8, 2016

♦ ♦ ♦

Texas Lottery Commission

Scratch Ticket Game Number 1761 "Triple Winning 7's"

1.0 Name and Style of Scratch Ticket Game.

A. The name of Scratch Ticket Game No. 1761 is "TRIPLE Winning 7's". The play style is "key number match".

1.1 Price of Scratch Ticket Game.

A. The price for Scratch Ticket Game No. 1761 shall be $5.00 per Scratch Ticket.

1.2 Definitions in Scratch Ticket Game No. 1761.

A. Display Printing - That area of the Scratch Ticket outside of the area where the overprint and Play Symbols appear.

B. Latex Overprint - The removable scratch-off covering over the Play Symbols on the front of the Scratch Ticket.

C. Play Symbol - The printed data under the latex on the front of the Scratch Ticket that is used to determine eligibility for a prize. Each Play Symbol is printed in Symbol font in black ink in positive except for dual-image games. The possible black Play Symbols are: 01, 02, 03, 04, 05, 06, 08, 09, 10, 11, 12, 13, 14, 15, 16, 18, 19, 20, 21, 22, 23, 24, 25, 26, 28, 29, 30, 31, 32, 33, 34, 35, 36, 38, 39, 40, 7 SYMBOL, 777 SYMBOL, $5.00, $10.00, $20.00, $25.00, $50.00, $100, $500, $1,000, and $100,000.

D. Play Symbol Caption - The printed material appearing below each Play Symbol which explains the Play Symbol. One caption appears under each Play Symbol and is printed in caption font in black ink in positive. The Play Symbol Caption which corresponds with and verifies each Play Symbol is as follows:

Figure 1: GAME NO. 1761 - 1.2D

PLAY SYMBOL	CAPTION
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
18	ETN
19	NTN
20	TWY
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
36	TRSX
38	TRET
39	TRNI
40	FRTY
7 SYMBOL	DOUBLE
777 SYMBOL	TRIPLE
$5.00	FIV$
$10.00	TEN$
$20.00	TWY$
$25.00	TWFV$
$50.00	FFTY$
$100	ONHN
$500	FVHN
$1,000	ONTH
$100,000	100TH

E. Serial Number - A unique 13 (thirteen) digit number appearing under the latex scratch-off covering on the front of the Scratch Ticket. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 0000000000000.

F. Low-Tier Prize - A prize of $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $25.00, $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000 or $100,000.

I. Bar Code - A 24 (twenty-four) character interleaved two (2) of five (5) Bar Code which will include a four (4) digit game ID, the seven (7) digit Pack number, the three (3) digit Scratch Ticket number and the ten (10) digit Validation Number. The Bar Code appears on the back of the Scratch Ticket.

J. Pack-Scratch Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1761), a seven (7) digit Pack number, and a three (3) digit Scratch Ticket number. Scratch Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1761-0000001-001.

K. Pack - A Pack of the "TRIPLE Winning 7's" Scratch Ticket Game contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning Scratch Ticket - A Scratch Ticket which is not programmed to be a winning Scratch Ticket or a Scratch Ticket that does not meet all of the requirements of these Game Procedures, the State Lottery Act (Texas Government Code, Chapter 466), and applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401.

M. Scratch Ticket Game, Scratch Ticket or Ticket - Texas Lottery "TRIPLE Winning 7's" Scratch Ticket Game No. 1761.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general Scratch Ticket validation requirements set forth in Texas Lottery Rule §401.302, Instant Game Rules, these Game Procedures, and the requirements set out on the back of each Scratch Ticket. A prize winner in the "TRIPLE Winning 7's" Scratch Ticket Game is determined once the latex on the Scratch Ticket is scratched off to expose 45 (forty-five) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the PRIZE for that number. If a player reveals a "7" Play Symbol, the player wins DOUBLE the PRIZE for that symbol. If a player reveals a "777" Play Symbol, the player wins TRIPLE the PRIZE for that symbol! No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Scratch Ticket.

2.1 Scratch Ticket Validation Requirements.

A. To be a valid Scratch Ticket, all of the following requirements must be met:

1. Exactly 45 (forty-five) Play Symbols must appear under the Latex Overprint on the front portion of the Scratch Ticket;

2. Each of the Play Symbols must have a Play Symbol Caption underneath, unless specified, and each Play Symbol must agree with its Play Symbol Caption;

3. Each of the Play Symbols must be present in its entirety and be fully legible;

4. Each of the Play Symbols must be printed in black ink except for dual image games;

5. The Scratch Ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be present in their entirety and be fully legible;

7. The Serial Number must correspond, using the Texas Lottery's codes, to the Play Symbols on the Scratch Ticket;

8. The Scratch Ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The Scratch Ticket must not be counterfeit in whole or in part;

10. The Scratch Ticket must have been issued by the Texas Lottery in an authorized manner;

11. The Scratch Ticket must not have been stolen, nor appear on any list of omitted Scratch Tickets or non-activated Scratch Tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Scratch Ticket Number must be right side up and not reversed in any manner;

13. The Scratch Ticket must be complete and not miscut and have exactly 45 (forty-five) Play Symbols under the Latex Overprint on the front portion of the Scratch Ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Scratch Ticket Number on the Scratch Ticket;

14. The Serial Number of an apparent winning Scratch Ticket shall correspond with the Texas Lottery's Serial Numbers for winning Scratch Tickets, and a Scratch Ticket with that Serial Number shall not have been paid previously;

15. The Scratch Ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 45 (forty-five) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 45 (forty-five) Play Symbols on the Scratch Ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Scratch Ticket Serial Numbers must be printed in the Serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Scratch Ticket Number must be printed in the Pack-Scratch Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Scratch Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Scratch Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Scratch Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Scratch Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Scratch Ticket. In the event a defective Scratch Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Scratch Ticket with another unplayed Scratch Ticket in that Scratch Ticket Game (or a Scratch Ticket of equivalent sales price from any other current Texas Lottery Scratch Ticket Game) or refund the retail sales price of the Scratch Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets in a Pack will not have matching play data, spot for spot.

B. The top Prize Symbol will appear on every Ticket unless restricted by other parameters, play action or prize structure.

C. No matching non-winning YOUR NUMBERS Play Symbols on a Ticket.

D. No matching WINNING NUMBERS Play Symbols on a Ticket.

E. The "7" (DOUBLE) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

F. The "777" (TRIPLE) Play Symbol will only appear on intended winning Tickets as dictated by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TRIPLE Winning 7's" Scratch Ticket Game prize of $5.00, $10.00, $20.00, $25.00, $50.00, $100 or $500, a claimant shall sign the back of the Scratch Ticket in the space designated on the Scratch Ticket and present the winning Scratch Ticket to any Texas Lottery Retailer. The Texas Lottery Retailer shall verify the claim and, if valid, and upon presentation of proper identification, if appropriate, make payment of the amount due the claimant and physically void the Scratch Ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $25.00, $50.00, $100 or $500 Scratch Ticket Game. In the event the Texas Lottery Retailer cannot verify the claim, the Texas Lottery Retailer shall provide the claimant with a claim form and instruct the claimant on how to file a claim with the Texas Lottery. If the claim is validated by the Texas Lottery, a check shall be forwarded to the claimant in the amount due. In the event the claim is not validated, the claim shall be denied and the claimant shall be notified promptly. A claimant may also claim any of the above prizes under the procedure described in Section 2.3.B and Section 2.3.C of these Game Procedures.

B. To claim a "TRIPLE Winning 7's" Scratch Ticket Game prize of $1,000 or $100,000, the claimant must sign the winning Scratch Ticket and present it at one of the Texas Lottery's Claim Centers. If the claim is validated by the Texas Lottery, payment will be made to the bearer of the validated winning Scratch Ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TRIPLE Winning 7's" Scratch Ticket Game prize, the claimant must sign the winning Scratch Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, P.O. Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Scratch Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Scratch Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "TRIPLE Winning 7's" Scratch Ticket Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TRIPLE Winning 7's" Scratch Ticket Game, the Texas Lottery shall deposit the amount of the prize in a custodial bank account, with an adult member of the minor's family or the minor's guardian serving as custodian for the minor.

2.7 Scratch Ticket Claim Period. All Scratch Ticket prizes must be claimed within 180 days following the end of the Scratch Ticket Game or within the applicable time period for certain eligible military personnel as set forth in Texas Government Code §466.408. Any rights to a prize that is not claimed within that period, and in the manner specified in these Game Procedures and on the back of each Scratch Ticket, shall be forfeited.

2.8 Disclaimer. The number of prizes in a game is approximate based on the number of Scratch Tickets ordered. The number of actual prizes available in a game may vary based on number of Scratch Tickets manufactured, testing, distribution, sales and number of prizes claimed. A Scratch Ticket Game may continue to be sold even when all the top prizes have been claimed.

3.0 Scratch Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of a Scratch Ticket in the space designated, a Scratch Ticket shall be owned by the physical possessor of said Scratch Ticket. When a signature is placed on the back of the Scratch Ticket in the space designated, the player whose signature appears in that area shall be the owner of the Scratch Ticket and shall be entitled to any prize attributable thereto. Notwithstanding any name or names submitted on a claim form, the Executive Director shall make payment to the player whose signature appears on the back of the Scratch Ticket in the space designated. If more than one name appears on the back of the Scratch Ticket, the Executive Director will require that one of those players whose name appears thereon be designated by such players to receive payment.

B. The Texas Lottery shall not be responsible for lost or stolen Scratch Tickets and shall not be required to pay on a lost or stolen Scratch Ticket.

4.0 Number and Value of Scratch Ticket Prizes. There will be approximately 7,080,000 Scratch Tickets in Scratch Ticket Game No. 1761. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1761 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	736,320	9.62
$10	566,400	12.50
$20	264,320	26.79
$25	94,400	75.00
$50	81,420	86.96
$100	13,275	533.33
$500	2,006	3,529.41
$1,000	177	40,000.00
$100,000	5	1,416,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.03. The individual odds of winning for a particular prize level may vary based on sales, distribution, testing, and number of prizes claimed.

A. The actual number of Scratch Tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery Commission.

5.0 End of the Scratch Ticket Game. The Executive Director may, at any time, announce a closing date (end date) for the Scratch Ticket Game No. 1761 without advance notice, at which point no further Scratch Tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the Scratch Ticket closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing a Scratch Ticket, the player agrees to comply with, and abide by, these Game Procedures for Scratch Ticket Game No. 1761, the State Lottery Act (Texas Government Code, Chapter 466), applicable rules adopted by the Texas Lottery pursuant to the State Lottery Act and referenced in 16 TAC Chapter 401, and all final decisions of the Executive Director.

TRD-201601711
Bob Biard
General Counsel
Texas Lottery Commission
Filed: April 12, 2016

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North Central Texas Council of Governments

Request for Proposals: 511DFW Traveler Information System

The North Central Texas Council of Governments (NCTCOG) is requesting written proposals from firms to develop, operate, and maintain the 511DFW Traveler Information System. The North Central Texas Region currently operates 511DFW, a 511 Traveler Information System with public interfaces comprised of a website, web-based personalized My511, mobile apps and an Interactive Voice Response (IVR). NCTCOG has recently conducted an independent evaluation of the system. The outcome of the independent evaluation recommended enhancements to 511DFW. The new system is anticipated to incorporate existing 511DFW functionality and the recommended enhancements. This project will provide development, operations and maintenance in support of the 511DFW Traveler Information System and Exchange Network, for a minimum of three years, with options to renew or extend the maintenance period. The firm(s) will host the 511DFW operations and provide any necessary hardware, software, security patches and encryption.

Proposals must be received no later than 5:00 p.m., on Friday, May 27, 2016, by Marian Thompson, P.E., Transportation System Operations Supervisor, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas 76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, April 22, 2015.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201601709
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 12, 2016

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Request for Proposals: Clean Fleets North Texas Automated Vehicle Locator System

The North Central Texas Council of Governments (NCTCOG) is seeking a qualified vendor to provide a turnkey Automated Vehicle Locator System (AVLS) and associated on-going service to manage vehicle activities of grant recipients awarded through the NCTCOG Clean Fleets North Texas Call For Projects (CFP). The selected contractor will provide all needed parts, labor, materials, software, and hardware as necessary to equip 40 to 60 vehicles with a complete and functional AVLS per the conditions of the RFP. The selected contractor shall accommodate equipment installation on a rolling basis over the contract term and will be responsible for all equipment installation and repair activities including scheduling and providing all necessary equipment and components to the installer/repair person.

Proposals must be received no later than 5:00 p.m., on Friday, May 20, 2016, to Amy Hodges, Air Quality Planner II, North Central Texas Council of Governments, 616 Six Flags Drive, Arlington, Texas

76011. Copies of the Request for Proposals (RFP) will be available at www.nctcog.org/rfp by the close of business on Friday, April 22, 2016.

NCTCOG encourages participation by disadvantaged business enterprises and does not discriminate on the basis of age, race, color, religion, sex, national origin, or disability.

TRD-201601730
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: April 13, 2016

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Panhandle Regional Planning Commission

Legal Notice

The Panhandle Regional Planning Commission (PRPC) encourages applications from providers of training programs that lead to employment in the targeted occupations in the Panhandle Workforce Development Area. A current list of these occupations may be accessed through the Workforce Solutions Panhandle's website at: https://wspanhandle.com/PagesWSP/lib/LaborMarketTargetedOccupations.php.

Applications must be submitted through the online, automated Workforce Innovation and Opportunity Act (WIOA) Eligible Training Provider System (ETPS). For information or instructions about such submissions, please see http://tpcs.twc.state.tx.us or contact Leslie Hardin, PRPC's Workforce Development Training Coordinator, at (806) 372-3381 or *lhardin@theprpc.org*. Submissions will be accepted throughout the year and reviewed for certification by the Texas Workforce Commission (TWC).

TRD-201601675
Leslie Hardin
WFD Contracts Coordinator
Panhandle Regional Planning Commission
Filed: April 11, 2016

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Plateau Water Planning Group

Notice of Public Meeting

Plateau Water Planning Group (PWPG) - Region J

Kinney County Courthouse

District Courtroom

501 S. Ann Street

Brackettville, Texas

April 14, 2016 at 10:00 a.m.

Notice is hereby given that the Regional Water Planning Group (PWPG) - Region J will accept written and oral comments (not to exceed five (5) minutes per speaker) regarding the scope of activities to be considered during the Fifth Cycle of Regional Water Planning (2017-2021).

Questions related to the public meeting or requests for additional information should be referred to Jonathan Letz, Chairman, at (830) 792-2216 or submitted in writing to the address listed below.

All written public comments are due to the PWPG by 5:00 p.m. on April 13, 2016, and may be submitted to:

Mr. Jonathan Letz, Chairman

Plateau Water Planning Group (PWPG) - Region J

700 Main Street, Ste. 101

Kerrville, Texas 78028

TRD-201601624
Jonathan Letz
PWPG Chair
Plateau Water Planning Group
Filed: April 6, 2016

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Texas Department of Public Safety

Request for Proposals

Pursuant to §2167.054, Texas Government Code, the Texas Department of Public Safety (TXDPS) announces the issuance of Request for Proposal (RFP) #405-16-B0014791. TXDPS seeks a lease with an initial term that is effective from date of award until August 31, 2021, for warehouse and office space in McAllen, Texas, south of FM 495, north of the Rio Grande River, east of Conway Avenue (TX-107), and west of South Cage Boulevard (US-281). The awarded lease will have two (2) five (5) year options to renew.

The deadline for questions is May 9, 2016, at 10:00 a.m. CT and the deadline for proposals is May 23, 2016, at 10:00 a.m. CT. TXDPS reserves the right to accept or reject any or all proposals submitted. TXDPS is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TXDPS to pay for any costs incurred prior to the award of a contract.

Parties interested in obtaining a hard copy of the RFP should contact Deborah Goree, CTCM, PMP, Procurement & Contract Services, at (512) 462-6136 or Deborah.Goree@dps.texas.gov. The RFP will be released and available electronically on the Electronic State Business Daily (ESBD) at *http://esbd.cpa/state/tx/us* on April 22, 2016. Interested parties should periodically check the ESBD for updates to the RFP prior to submitting a response.

TRD-201601706
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Filed: April 12, 2016

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Public Utility Commission of Texas

Announcement of Application for State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas received an application on April 11, 2016, for a state-issued certificate of franchise authority (SICFA), pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act.

Project Title and Number: Application of Accordant Communications, LLC for a State-Issued Certificate of Franchise Authority, Project Number 45841.

The requested SICFA service area consists of Johnson, Hill, Ellis, and Galveston Counties.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text tele-

phones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 45841.

TRD-201601725
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on April 5, 2016, for a service provider certificate of operating authority (SPCOA), pursuant of the Public Utility Regulatory Act (PURA). Applicant intends to provide facilities-based, data and resale telecommunications services throughout the State of Texas.

Docket Title and Number: Application of Mobilitie Management, LLC for a Service Provider Certificate of Operating Authority, Docket Number 45806.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than April 29, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45806.

TRD-201601627
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Application for a Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on April 8, 2016, for a service provider certificate of operating authority, pursuant of the Public Utility Regulatory Act. Applicant intends to provide facilities-based, data and resale telecommunications throughout the state of Texas.

Docket Title and Number: Application of Airbus DS Communications, Inc. for a Service Provider Certificate of Operating Authority, Docket Number 45836.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than April 29, 2016. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45836.

TRD-201601729
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Application for Approval of Initial Leases and Rates

Notice is given to the public of an application by Ovation Acquisition I, L.L.C., Ovation Acquisition II, L.L.C. and Shary Holdings, L.L.C. (Purchasers), filed with the Public Utility Commission of Texas (Commission) on April 6, 2016, pursuant to §32.101 of the Public Utility Regulatory Act and 16 TAC §25.241 and §22.33.

Docket Style and Number: Application of Ovation Acquisition I, L.L.C. Ovation Acquisition II, L.L.C., and Shary Holdings, L.L.C. for Approval of Initial Leases and Rates of Oncor AssetCo, L.L.C., Docket Number 45815.

The Application: Ovation Acquisition I, L.L.C., Ovation Acquisition II, L.L.C. and Shary Holdings, L.L.C. filed an application for approval of initial leases and rates of Oncor AssetCo, L.L.C. In Docket No. 45188, the Commission approved with conditions the transfer of control and proposed restructuring of Oncor Electric Delivery Company, LLC (OEDC) resulting in an asset company and an operating company. Oncor AssetCo will own the transmission and distribution assets and lease such assets to OEDC in return for rental payments. The Order in Docket No. 45188, required Purchasers to file an application seeking Commission approval of the initial leases and rates by April 6, 2016. The Order also provided that if the Commission has not set the initial rates of Oncor AssetCo as final rates, before August 5, 2016, the authority granted in that Order to purchase and restructure Oncor expires and has no further effect.

Persons who wish to intervene in or comment upon this application should notify the Public Utility Commission of Texas. A request to intervene or for further information should be mailed to the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the Public Utility Commission at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. The deadline to intervene is April 26, 2016. All correspondence should refer to Docket Number 45815.

TRD-201601630
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Application to Amend a Service Provider Certificate of Operating Authority

On April 6, 2016, Verizon Select Services, Inc. filed an application with the Public Utility Commission of Texas (commission) to amend service provider certificate of operating authority number 60452. Applicant requests approval of a corporate restructuring.

Docket Style and Number: Application of Verizon Select Services, Inc. for Amendment to a Service Provider Certificate of Operating Authority, Docket Number 45822.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than April 29, 2016. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45822.

TRD-201601727

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Application to Obtain a Sewer Certificate of Convenience and Necessity

Notice is given to the public of the filing with the Public Utility Commission of Texas (Commission) of an application to obtain a sewer certificate of convenience and necessity (CCN) in Navarro, County.

Docket Style and Number: Application of Northshore Harbor Sewer, LLC to Obtain a Certificate of Convenience and Necessity in Navarro County, Docket Number 45823.

The Application: Northshore Harbor Sewer, LLC (Northshore) filed an application to obtain new sewer certificate of convenience and necessity in Navarro County. The total area being requested includes approximately 40,000 acres and 36 current customers.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. A deadline for intervention in this proceeding will be established. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45823.

TRD-201601660
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 5, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Brazos Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45807.

The Application: Brazos Telephone Cooperative, Inc. (BTC) filed an application with the commission for revisions to its Local Exchange Tariff to increase the Monthly Residential Access Line rate in the Olney Exchange from $15.95 to $16.55, and provide a Lifeline Area Discount of $0.40 in the Olney Exchange. BTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $18,681 in gross annual intrastate revenues. The Applicant has 3,702 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45807.

TRD-201601631
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 5, 2015, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of West Texas Rural Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45808.

The Application: West Texas Rural Telephone Cooperative, Inc. (West Texas Rural) filed an application with the commission for revisions to its Local Exchange Tariff to increase the Monthly Residence Access Line rate from $16.00 to $17.50, and increase the Lifeline Area Discount by $0.38 to $0.88. West Texas Rural proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $12,924 in gross annual intrastate revenues. The Applicant has 1,503 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 5, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 5, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45808.

TRD-201601632
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Community Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45813.

The Application: Community Telephone Company (CTC) filed an application with the commission for revisions to its Long Distance Message Telecommunications Service Tariff to increase residential rate to a unified $17.50, business rates to a unified $21.50 and eliminate the separate line item fee for Expanded Local Calling Service for all customers. The monthly rate for key systems and PBX trunks will be increased to a unified $26.00 for both services. CTC also proposes to reduce its monthly rate for Calling Name and Number Delivery from $6.50 to $3.00, and increase the Lifeline Area Discount between $0.45 and $0.58. CTC proposed an effective date of May 1, 2016. The estimated revenue increase to be recognized by CTC is $712.68 in gross annual intrastate revenues. CTC has 1,306 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45813.

TRD-201601633
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Coleman County Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45814.

The Application: Coleman County Telephone Cooperative, Inc. (CCTC) filed an application with the commission for revisions to its to its Member Services Tariff to unify monthly residential access line rates at $17.50 and eliminate the separate Expanded Local Calling Service (ELCS) fee line item, except in the Valera Exchange which will continue to receive the local calling scope associated with ELCS. Monthly rates for key systems and PBX trunks will be increased to a unified $19.50 and $20.50, respectively. CCTC also proposes to increase the Lifeline Area Discount by $0.51 in all exchanges except Valera. CCTC proposed an effective date of May 1, 2016. The estimated revenue increase to be recognized by CCTC is $31,727 in gross annual intrastate revenues. CCTC has 1,642 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45814.

TRD-201601634
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Brazoria Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45816.

The Application: Brazoria Telephone Company (BTC) filed an application with the commission for revisions to its Local Exchange Tariff to increase the Monthly Residential Access Line rates from $12.25 to $14.00 in all exchanges with the exception of the Brazoria and Churchill Exchanges whose rates will increase to $17.50. BTC also proposed an increase to the Lifeline Area Discount in the Brazoria Exchange to $0.65, Churchill Exchange to $0.97 and all other exchanges by $0.44. BTC proposed an effective date of May 1, 2016. The estimated revenue increase to be recognized by BTC is $60,900 in gross annual intrastate revenues. BTC has 2,900 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45816.

TRD-201601635

Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 7, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Industry Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45817.

The Application: Industry Telephone Company (ITC) filed an application with the commission for revisions to its Local Exchange Tariff to increase the Monthly Residential Access Line rates by $2.50 Lifeline Area Discount by $0.63. ITC proposed an effective date of May 15, 2016. The estimated revenue increase to be recognized by ITC is $49,718 in gross annual intrastate revenues. ITC has 2,034 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45817.

TRD-201601663
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Five Area Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45818.

The Application: Five Area Telephone Cooperative, Inc. filed an application with the commission for revisions to its Member Services Tariff to increase the Residential Monthly Access Line rates from $17.10 to $18.50 in the Bula Exchange and from $16.60 to $18.00 in the Lariat, Lazbuddie, Lehman, Maple and Needmore Exchanges. Five Area also proposes to increase the Lifeline Area Discount by $0.35. Five Area proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $9,778 in gross annual intrastate revenues. The Applicant has 819 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45818.

TRD-201601664
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2015, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of West Plains Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45819.

The Application: West Plains Telephone Cooperative, Inc. (West Plains) filed an application with the commission for revisions to its Local Exchange Tariff to increase the Monthly Local Exchange Service rates from $10.73 to $12.78 in the Earth and Springlake Exchanges; from $14.23 to $16.28 in the Muleshoe Exchange; from $10.98 to $13.03 in the Olton exchange; and from $11.94 to $13.99 in the Sudan Exchange. West Plains also proposes to increase the Lifeline Area Discount by $0.51 in all exchanges. West Plains proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $52,078 in gross annual intrastate revenues. The Applicant has 3,289 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45819.

TRD-201601665
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of XIT Rural Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45820.

The Application: XIT Rural Telephone Cooperative, Inc. filed an application with the commission for revisions to its Member services Tariff to increase the Monthly Rural Residential Access Line and Service Station Residential Line Service rates from $16.00 to $18.00 in all exchanges. XIT also proposes to increase the rate for Foreign Listing, a non-basic service, and increase the Lifeline Area Discount by $0.50. XIT proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the Applicant is $14,208 in gross annual intrastate revenues. The Applicant has 1,052 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 5, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 5, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45820.

TRD-201601666
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 6, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Big Bend Telephone Company for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45821.

The Application: Big Bend Telephone Company (Big Bend) filed an application with the commission for revisions to its Local Exchange Tariff to increase the basic service residential rates by $2.00 per month, and the Lifeline Area Discount by $0.50. Big Bend proposed an effective date of May 1, 2016. The estimated revenue increase to be recognized by the Applicant is $75,672 in gross annual intrastate revenues. The Applicant has 3,153 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45821.

TRD-201601667
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 8, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Hill Country Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45828.

The Application: Hill Country Telephone Cooperative, Inc. (HCTC) filed an application with the commission for revisions to its General Exchange tariff to include its current Extended Area Service and/or Expanded Local Calling Service fees in the base rate for both residential and business customers, and increase the Lifeline Area Discount by 25%. To offset the increase HCTC proposed to offer up to five features at no charge. The features include: Calling Name and Number Delivery (Caller ID), Call Waiting, Call Forwarding, Call Forwarding Busy, and Call Forwarding No Answer. HCTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $14,297 in gross annual intrastate revenues. The applicant has 12,674 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals

with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45828.

TRD-201601716
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Eastex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45829.

The Application: Eastex Telephone Cooperative, Inc. (Eastex) filed an application with the commission for revisions to its Member Services Tariff to increase the residential access line rates by $2.00 and the Lifeline Area Discount by $0.50. Eastex proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $344,838 in gross annual intrastate revenues. The applicant has 17,380 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45829.

TRD-201601718
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Peoples Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45830.

The Application: Peoples Telephone Cooperative, Inc. (PTC) filed an application with the commission for revisions to its Member Services Tariff to increase the residential access line rates by $2.00 and the Lifeline Area Discount to $0.88. PTC also proposed to eliminate the incidental service charge of $2.50 applicable every time a customer requests additions or changes. PTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $232,393 in gross annual intrastate revenues. The applicant has 9,707 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45830.

TRD-201601719
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Etex Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45832.

The Application: Etex Telephone Cooperative, Inc. (ETC) filed an application with the commission for revisions to its Local Exchange Tariff to increase the residential access line rates by $1.15 in the Mims Exchange and by $2.00 in the remaining exchanges. ETC proposed to increase the Lifeline Area Discount to $0.79 in the Mims Exchange and to $1.00 in all other ETC exchanges. ETC also seeks to include its current Expanded Local Calling Service fees in the base rate for both residential and business customers. ETC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $223,379 in gross annual intrastate revenues. The applicant has 10,688 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed

with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45832.

TRD-201601720
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

♦ ♦ ♦

Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Riviera Telephone Company, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45833.

The Application: Riviera Telephone Company, Inc. (RTC) filed an application with the commission for revisions to its Long Distance Message Telecommunications service tariff to increase single-line residential access line rates by $2.05 and the Lifeline Area Discount to $1.01. RTC also proposes to increase the non-recurring services: Subsequent Order Charge, Central Office Access Charge, Line Connection Charge, Returned Check Charge, and Maintenance of Service. RTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $16,256 in gross annual intrastate revenues. The applicant has 1,010 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45833.

TRD-201601721
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Colorado Valley Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45834.

The Application: Colorado Valley Telephone Cooperative, Inc. (CVTC) filed an application with the commission for revisions to its Local Exchange Tariff to increase the single-line residential access line rates by $1.65 and the Lifeline Area Discount by $0.41. CVTC also proposed to increase the single-line business access line rates by $2.60 and the PBX Trunk rates to $28.80. CVTC proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $113,704 in gross annual intrastate revenues. The applicant has 5,297 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45834.

TRD-201601722
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Poka Lambro Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45827.

The Application: Poka Lambro Telephone Cooperative, Inc. (Poka Lambro) filed an application with the commission for revisions to its Member Services Tariff to increase the residential and business access line rates by $1.10 and the Lifeline Area Discount to $1.03. Poka Lambro also proposed to include the Extended Area Service fees in the base rate for both residential and business customers. Poka Lambro proposed an effective date of June 1, 2016. The estimated revenue increase to be recognized by the applicant is $25,384 in gross annual intrastate revenues. The applicant has 1,923 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the commission by May 2, 2016. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45827.

TRD-201601724
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Intent to Implement a Minor Rate Change Pursuant to 16 TAC §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (Commission) on April 7, 2016, to implement a minor rate change pursuant to 16 TAC §26.171.

Tariff Control Title and Number: Notice of Electra Telephone Cooperative (Electra) for Approval of a Minor Rate Change Pursuant to 16 Tex. Admin. Code §26.171 and PURA Section 53, Subchapter G, Tariff Control Number 45831.

The Application: Electra Telephone Cooperative (Electra) filed an application with the Commission for revisions to its Long Distance Message Telecommunications Service Tariff to increase its residential access line rates by $1.50 and Lifeline Area Discount to $0.76. Electra proposed an effective date of May 1, 2016. The estimated revenue increase to be recognized by the applicant is $9,504 in gross annual intrastate revenues. The applicant has 528 access lines (residence and business) in service in the state of Texas.

If the Commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by May 2, 2016, the application will be docketed. The 5% limitation will be calculated based upon the total number of customers of record as of the calendar month preceding the Commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by May 2, 2016. Requests to intervene should be filed with the Commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the Commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing and speech-impaired individuals with text telephones (TTY) may contact the Commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 45831.

TRD-201601728
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Notice of Petition for Amendment to Certificate of Convenience and Necessity by Expedited Release

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) on April 4, 2016, of a petition to amend a certificate of convenience and necessity (CCN) by expedited release in Guadalupe County, Texas.

Docket Style and Number: Petition of Guadalupe Valley Development Corporation to Amend Green Valley Special Utility District's Certificate of Convenience and Necessity in Guadalupe County, Docket Number 45798.

The Application: Guadalupe Valley Development Corporation filed an application for expedited release of 159.496 acres from Green Valley Special Utility District's sewer CCN number 20973 in Guadalupe County.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas no later than May 5, 2016, by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 45798.

TRD-201601726
Adriana Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: April 13, 2016

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Texas State Soil and Water Conservation Board

Request for Proposals for the Fiscal Year 2017 Clean Water Act §319(h) Nonpoint Source Grant Program

PROPOSALS DUE: June 3, 2016

INTRODUCTION

This request for proposals (RFP) provides instructions and guidance for applicants seeking funding from the Texas State Soil and Water Conservation Board (TSSWCB) under the Clean Water Act (CWA) §319(h) Nonpoint Source (NPS) Grant Program. The U.S. Environmental Protection Agency (EPA) distributes funds appropriated by Congress annually to the TSSWCB under the authorization of CWA §319(h). TSSWCB then administers/awards these federal funds as grants to cooperating entities for activities that address the goals, objectives, and priorities stated in the *Texas NPS Management Program*. The *Texas NPS Management Program* is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by NPS water pollution. This document can be accessed online at http://www.tsswcb.texas.gov/files/docs/nps-319/npsmgmt-plans/2012mgmtprogram.pdf.

The types of agricultural and silvicultural NPS pollution prevention and abatement activities that can be funded with §319(h) grants include the following: implementation of nine-element watershed protection plans (WPPs) and the agricultural and silvicultural NPS portion of Total Maximum Daily Load (TMDL) Implementation Plans (I-Plans), surface water quality monitoring, data analysis and modeling, demonstration of innovative best management practices (BMPs), technical assistance to landowners for conservation planning, public outreach/education, development of nine-element WPPs including the formation and facilitation of stakeholder groups, and monitoring activities to determine the effectiveness of specific pollution prevention methods. Strictly research activities are not eligible for §319(h) grant funding.

The TSSWCB is requesting proposals for watershed assessment, planning, implementation, demonstration and education projects within the boundaries of impaired or threatened watersheds. The *2014 Texas Integrated Report* describes the water quality conditions for waterbodies in the state. All proposals must focus on the restoration and protec-

tion of water quality consistent with the goals, objectives, and priority watersheds and aquifers identified in the *Texas NPS Management Program.* Up to $1 million of the TSSWCB's FY2017 CWA §319(h) grant will be eligible for this RFP. No more than 10% of these funds may be utilized for groundwater projects. A competitive proposal process will be used so that the most appropriate and effective projects are selected for funding.

Project proposals should, where applicable, stress interagency coordination, demonstrate new or innovative technologies, use comprehensive strategies that have statewide applicability, and stress public participation. Examples of project proposals previously funded by TSSWCB are available at **http://www.tsswcb.texas.gov/managementprogram/browseactive.** Additionally, applicants are encouraged to review EPA's Grant Guidelines for the NPS Program available at **http://water.epa.gov/polwaste/nps/cwact.cfm** and EPA's expectations for well-crafted proposals described in the *EPA Region 6 Review Guide for CWA §319(h) Workplans* available at **http://www.tsswcb.texas.gov/files/docs/nps-319/rfps/EPAR6WPReview_Guide.pdf.**

This RFP does not set a maximum or minimum amount for individual projects; however, project funding generally ranges between $100,000 and $400,000 for a two to three-year project. The TSSWCB CWA §319(h) NPS Grant Program has a 60/40% match requirement; however, proposals that do not meet the minimum matching requirement will still be considered. The cooperating entity will be reimbursed up to 60% from federal funds and must contribute a minimum of 40% of the total costs to conduct the project. The match must be from non-federal sources and must be described in the budget justification. Reimbursable indirect costs are limited to no more than 15% of total federal direct costs.

Quarterly progress and final reports are the minimum project reporting requirements. All projects that include an environmental data collection, generation or compilation component (e.g., water quality monitoring, modeling, bacterial source tracking) must have a Quality Assurance Project Plan (QAPP), to be reviewed and approved by TSSWCB and the EPA. Project budgets and timelines should account for the development and review of QAPPs. More information on QAPPs and the *TSSWCB Environmental Data Quality Management Plan* is available at http://www.tsswcb.texas.gov/quality.

TSSWCB PRIORITIES

For this FY2017 RFP, the following priorities have been identified. Proposals that do not focus on these priorities are still welcomed but may rank lower than those that do focus on the priorities.

Priority Project Activities

• Implement WPPs and TMDL I-Plans (See priority areas listed below).

• WPP development initiatives (See Appendix C in *Texas NPS Management Program),* which include activities such as the formation of watershed groups or water quality data collection and analysis. More information on developing WPPs is available at http://www.tsswcb.texas.gov/wpp.

• Implement components of the *Texas Coastal NPS Pollution Control Program* in the Coastal Management Zone (http://www.tsswcb.texas.gov/coastalnps).

• Support use of federal Farm Bill Programs and Initiatives (National Water Quality Initiative (NWQI) and Gulf of Mexico Initiative (GoMI)) through Cooperative Conservation in impaired watersheds.

• Demonstration projects and/or development/delivery of education programs.

Priority Areas for WPP and TMDL Implementation Projects

• WPPs

- Arroyo Colorado
- Geronimo Creek
- Plum Creek (Segment 1810)
- Lampasas River
- Leon River
- Mill Creek
- South and North Llano Rivers
- Lower Nueces River
- Double Bayou
- Cedar Bayou
- Navasota River
- Attoyac Bayou

• TMDLs

- Adams and Cow Bayous (bacteria and dissolved oxygen)
- Lake O' the Pines (dissolved oxygen through phosphorus)
- Copano Bay, Mission and Aransas Rivers (bacteria)

For detailed information on these completed WPPs and adopted TMDLs, including links to the published documents, see http://www.tsswcb.texas.gov/watersheds.

ELIGIBLE ORGANIZATIONS

Grants will be available to public and private entities such as local municipal and county governments and other political subdivisions of the State (e.g., soil and water conservation districts), educational institutions, non-profit organizations, and state and federal agencies. Private organizations, for profit, may participate in projects as partners or contractors but may not apply directly for funding.

SELECTION PROCESS

Submitted proposals will be reviewed, scored, and ranked based on the evaluation and ranking criteria included in this RFP. A minimum scoring requirement (70%) is necessary for proposals to be eligible for consideration.

All applicants, unsuccessful and successful, will be notified. Those applicants whose proposals are recommended for funding will be contacted, and then TSSWCB will work with the applicant to revise and finalize the proposal prior to submittal to EPA. EPA must review and approve all proposals prior to TSSWCB awarding grant funds.

SUBMISSION PROCESS

To obtain a complete copy of TSSWCB's RFP and proposal submission packet, please visit http://www.tsswcb.texas.gov/managementprogram#rfp or contact Jana Lloyd at (254) 773-2250 ext. 224. All proposals must be submitted electronically (MS® Word) using the workplan template provided in this RFP; otherwise, proposals will be considered administratively incomplete and not considered for funding. All letters of support for the proposal, including letters from Project Partners confirming their role, must be received by the proposal due date to be considered. Submit proposals to jlloyd@tsswcb.texas.gov. Proposals must be received electronically by 5:00 p.m. CDT, June 3, 2016 to be considered.

FY2017 GRANT TIMELINE

Issuance of RFP - April 22, 2016

Deadline for Submission of Proposals - June 3, 2016

Proposal Evaluation by TSSWCB - June-July 2016

Notification of Selected Proposals/Unsuccessful Applicants - August 2016

Work with Applicants to Finalize Selected Proposals - August-September 2016

Review of Selected Proposals by EPA - October-November 2016

Submit Grant Application to EPA - February 2017

Contract Award - May 2017

Anticipated Project Start Date - June 1, 2017

TRD-201601618
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: April 6, 2016

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Texas Department of Transportation

Public Hearing Notice - Unified Transportation Program

The Texas Department of Transportation (department) will hold a public hearing on Thursday, May 12, 2016, at 10:00 a.m. at 118 East Riverside Drive, First Floor ENV Conference Room, in Austin, Texas to receive public comments on the proposed updates to the 2016 Unified Transportation Program (UTP).

The UTP is a 10-year program that guides the development and authorizes construction of transportation projects and projects involving aviation, public transportation, and the state's waterways and coastal waters. The Texas Transportation Commission has adopted rules located in Title 43, Texas Administrative Code, Chapter 16, governing the planning and development of transportation projects, which include guidance regarding public involvement related to adoption of the UTP and approval of any updates to the program.

Information regarding the proposed updates to the 2016 UTP will be available at each of the department's district offices, at the department's Transportation Planning and Programming Division offices located in Building 118, Second Floor, 118 East Riverside Drive, Austin, Texas, or (512) 486-5038, and on the department's website at: *http://www.txdot.gov/public_involvement/utp.htm.*

Persons wishing to speak at the hearing may register in advance by notifying the Transportation Planning and Programming Division, at (512) 486-5038 not later than Wednesday, May 11, 2016, or they may register at the hearing location beginning at 9:00 a.m. on the day of the hearing. Speakers will be taken in the order registered. Any interested person may appear and offer comments or testimony, either orally or in writing; however, questioning of witnesses will be reserved exclusively to the presiding authority as may be necessary to ensure a complete record. While any persons with pertinent comments or testimony will be granted an opportunity to present them during the course of the hearing, the presiding authority reserves the right to restrict testimony in terms of time or repetitive content. Groups, organizations, or associations should be represented by only one speaker. Speakers are requested to refrain from repeating previously presented testimony. Persons with disabilities who have special communication or accommodation needs or who plan to attend the hearing may contact the Transportation Planning and Programming Division, at 118 East Riverside Drive Austin, Texas 78704-1205, (512) 486-5038. Requests should be made no later than three days prior to the hearing. Every reasonable effort will be made to accommodate the needs.

Interested parties who are unable to attend the hearing may submit comments regarding the updates to the 2016 UTP to Lauren Garduño, Interim Director of the Transportation Planning and Programming Division, P.O. Box 149217, Austin, Texas 78714-9217. Interested parties may also submit comments regarding the updates to the 2016 UTP by phone at (800) 687-8108. In order to be considered, all comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on May 23, 2016.

TRD-201601715
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: April 13, 2016

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How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the *Texas Register* is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 40 (2015) is cited as follows: 40 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "40 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 40 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the *Texas Register* office, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using *Texas Register* indexes, the *Texas Administrative Code* section numbers, or TRD number.

Both the *Texas Register* and the *Texas Administrative Code* are available online at: http://www.sos.state.tx.us. The *Texas Register* is available in an .html version as well as a .pdf version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The *Texas Administrative Code (TAC*) is the compilation of all final state agency rules published in the *Texas Register*. Following its effective date, a rule is entered into the *Texas Administrative Code*. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the *TAC*.

The *TAC* volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete *TAC* is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The Titles of the *TAC*, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the *TAC* scheme, each section is designated by a *TAC* number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the *Texas Administrative Code*; *TAC* stands for the *Texas Administrative Code*; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the *Texas Administrative Code*, please look at the *Index of Rules*.

The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the *Texas Register*.

If a rule has changed during the time period covered by the table, the rule's *TAC* number will be printed with the *Texas Register* page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
1 TAC §91.1…….....950 *(P)*

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