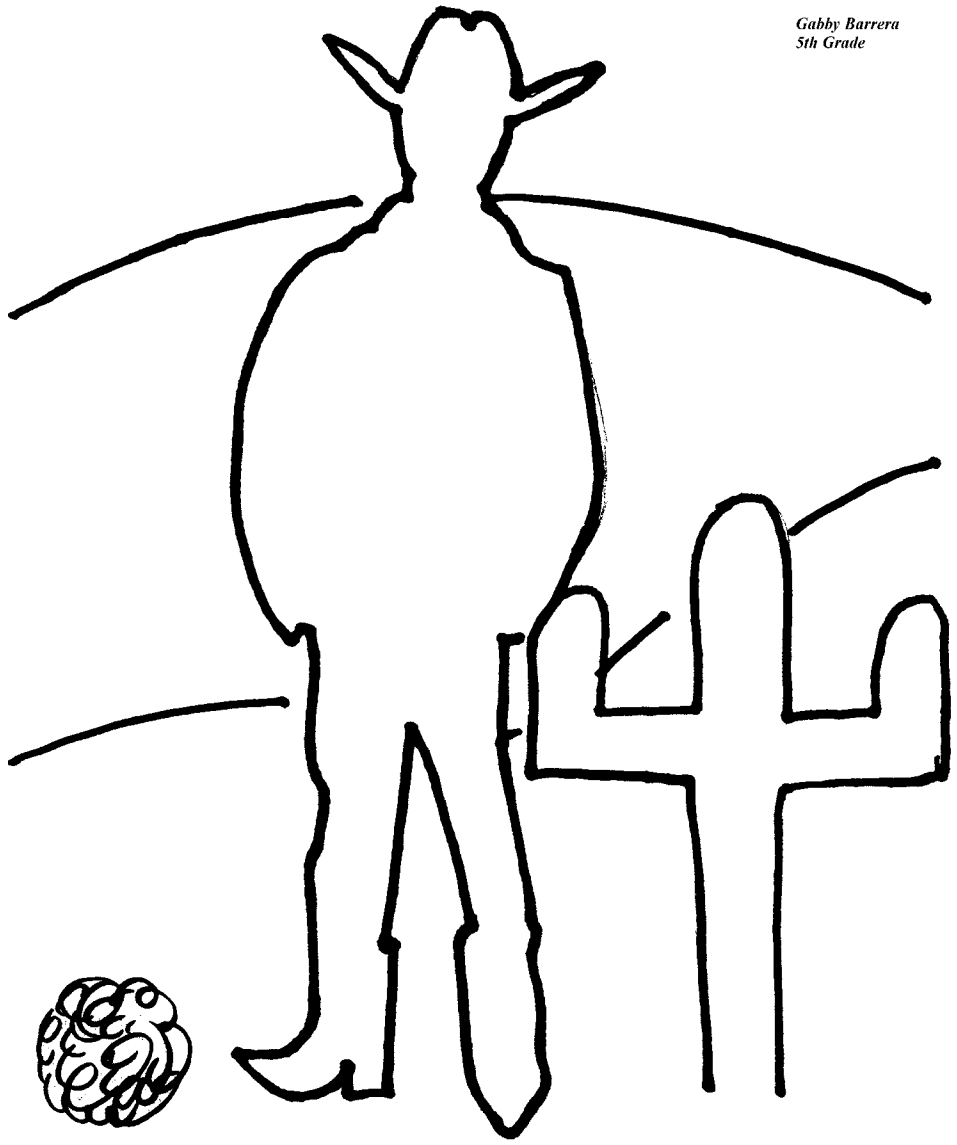
TEXAS REGISTER

Volume 37 Number 6 *February 10, 2012* *Pages 553 - 814*



Gabby Barrera
5th Grade

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

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

***Texas Register,* (ISSN 0362-4781, USPS 120-090),** is published weekly (52 times per year) for $211.00 ($311.00 for first class mail delivery) by LexisNexis Matthew Bender & Co., Inc., 1275 Broadway, Albany, N.Y. 12204-2694.

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

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

a section of the
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IN THIS ISSUE

WITHDRAWN RULES

ADOPTED RULES

RULE REVIEW

TABLES AND GRAPHICS

IN ADDITION

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, requires adoption of a rule on fewer than 30 days' notice. An emergency rule may be effective for not longer than 120 days and may be renewed once for not longer than 60 days (Government Code, §2001.034).

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.621

The Texas Department of Agriculture (the department) adopts on an emergency basis new §§19.615 - 19.621, which establish a quarantine to prevent the spread of a recently discovered citrus greening *(Candidatus Liberibacter asiaticus)* infection to non-infected areas. The department believes that immediate action is necessary to prevent the spread of this citrus greening infection to other commercial citrus groves, citrus nursery plant production areas of Texas, or other states, and adoption of this quarantine on an emergency basis is both necessary and appropriate.

The new sections: (1) require that any citrus plant (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) or detached citrus fruit containing or in close association with citrus leaves, stems, or plant debris located within the quarantined area be destroyed or treated to prevent the spread of the disease; and (2) prescribe specific restrictions on the handling and movement of quarantined articles from the quarantined area. The area subject to the emergency quarantine is located in Hidalgo County and is defined as all areas encompassed by a five-mile radius extending from the point in San Juan, Texas on FM 2557 halfway between the intersection of E. Moore Drive and FM 2557 and the intersection of El Gato Road and FM 2557.

This emergency quarantine is being established because the Texas Department of Agriculture (TDA) and United States Department of Agriculture (USDA) Animal and Plant Health Inspection Service have confirmed the detection of citrus greening in a tree in a commercial orange grove in San Juan, Texas in Hidalgo County. Citrus greening is a destructive plant disease that poses a threat to the state's citrus industry. The department took immediate action to quarantine a five-mile area surrounding the detection and issue an emergency seizure order, thereby preventing the movement of quarantine articles outside of the quarantined area, without proper treatment. The infected grove has been treated for the control of the Asian citrus psyllid, an insect that is the vector for spreading citrus greening to citrus trees.

The citrus and nursery industries in particular are in peril because without this emergency quarantine action, USDA could quarantine the entire state of Texas and, as a result, important export markets for citrus plants could be lost and all citrus plants would be subject to more costly production in enclosed structures under stringent requirements prior to export from the state. This emergency quarantine takes necessary steps to prevent the spread of the infection thus protecting the state's citrus fruit and nursery crops, agricultural industries of vital importance to the state of Texas.

New §19.615 states the basis for the quarantine and defines the quarantined pest. New §19.616 designates the areas subject to quarantine. New §19.617 lists the articles subject to the quarantine. New §19.618 provides restrictions on the movement of articles subject to the quarantine. New §19.619 provides consequences for failure to comply with quarantine restrictions. New §19.620 provides an appeal process for certain agency actions taken against a person for failure to comply with the quarantine restrictions or requirements. New §19.621 provides procedures for handling of discrepancies or other inconsistencies in textual descriptions in this subchapter with graphic representations. This emergency quarantine replaces the emergency citrus greening quarantine filed by the department on January 20, 2012, and published in the February 3, 2012, issue of the *Texas Register* (37 TexReg 433). It will be updated or replaced based upon new data or information.

The new sections are adopted on an emergency basis under the Texas Agriculture Code, §71.004, which authorizes the department to establish emergency quarantines; §71.007 which authorizes the department to adopt rules as necessary to protect agricultural and horticultural interests, including rules to provide for specific treatment of a grove or orchard or of infested or infected plants, plant products, or substances; §12.020 which authorizes the department to assess administrative penalties for violations of Texas Agriculture Code, Chapter 71; and the Texas Government Code, §2001.034, which provides for the adoption of administrative rules on an emergency basis, without notice and comment.

§19.615. Basis for Quarantine; Quarantined Pest - Dangerous Plant Disease (Proscribed Biological Entity).

(a) Quarantined pest is Citrus Greening. The department finds that Citrus Greening, *(Candidatus Liberibacter asiaticus)* is a dangerous plant disease that is not widely distributed in this state.

(b) Description of dangerous plant disease. Citrus Greening, scientific name *Candidatus Liberibacter asiaticus,* is a dangerous disease of citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera). Citrus greening is a bacterial disease that attacks the vascular system of plants. Once infected, there is no cure for a tree with citrus greening disease. In areas of the world where citrus greening is endemic, citrus trees decline and die with a few years. Citrus Greening is considered a serious disease by the United States Department of Agriculture (USDA) as well as many states.

(c) Establishment of quarantine. The department is authorized by the Texas Agriculture Code, §71.002, to establish a quarantine against the dangerous plant disease, Citrus Greening, identified in this section.

§19.616. Geographical Areas Subject to the Quarantine.

(a) The quarantined area (geographical areas subject to the quarantine) is located in Hidalgo County and is defined as all areas encompassed by a five-mile radius extending from the point in San Juan, Texas on FM 2557 halfway between the intersection of E. Moore Drive and FM 2557 and the intersection of El Gato Road and FM 2557.

(b) A map of the quarantined area may be obtained by contacting the department's Valley Regional Office, 900-B East Expressway 82, San Juan, Texas 78598, (956) 787-8866.

§19.617. Articles Subject to the Quarantine.

An article subject to the quarantine, or regulated article, is an item the handling of which is controlled, regulated, or restricted by Chapter 71 of the Texas Agriculture Code, this subchapter, and any department orders issued pursuant to this subchapter and Chapter 71, in order to prevent dissemination of the dangerous plant disease to areas located outside a quarantined area. The following articles are subject to the quarantine.

(1) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) located in the quarantined area;

(2) Detached citrus fruit in the quarantined area with attached citrus leaves, stems, or plant debris or in close association with citrus leaves, stems, or plant debris; and

(3) Citrus leaves, stems, or branches.

§19.618. Restrictions on Movement of Articles Subject to the Quarantine.

(a) A regulated article originally located within or moved into the quarantined area may not be moved outside the area except as otherwise provided by this subchapter.

(b) Citrus plants (any plant in genus Citrus, Eremocitrus, Microcitrus, Poncirus, or Fortunella, including orange jasmine and any hybrid, grafted or other plant having parentage in any of those genera) must be either:

(1) held without further movement within or outside the quarantined area and treated with a pesticide labeled for the control of Asian Citrus Psyllid and for use on those plants, in accordance with that label, for the duration of the emergency quarantine; or

(2) destroyed.

(c) Detached citrus fruit originating within or brought into a quarantined area may be moved outside the quarantined area if the harvested fruit is rendered free of all leaves, stems, plant debris, and the Asian citrus psyllid *(Diaphorina citri* Kuwayama) prior to movement outside of the area.

§19.619. Consequences for Failure to Comply with Quarantine Restrictions.

A person who fails to comply with quarantine restrictions or requirements or a department order relating to the quarantine is subject to administrative or civil penalties up to $10,000 per day for any violation of the order and to the assessment of costs for any treatment or destruction that must be performed by the Department in the absence of such compliance. Additionally, the department is authorized to seize and treat or destroy, or order to be treated or destroyed, any quarantined article that is found to be infested with the quarantined pest or, regardless whether infected or not, transported within, out of, or through the quarantined area in violation of this subchapter.

§19.620. Appeal of Department Action Taken for Failure to Comply with Quarantine Restrictions.

An order under the quarantine may be appealed according to procedures set forth in the Texas Agriculture Code, §71.010.

§19.621. Conflicts Between Graphical Representations and Textual Descriptions; Other Inconsistencies.

(a) In the event that discrepancies exist between graphical representations and textual descriptions in this subchapter, the representation or description creating the larger geographical area or more stringent requirements regarding the handling or movement of quarantined articles shall control.

(b) The textual description of the plant disease shall control over any graphical representation of the same.

(c) Where otherwise clear as to intent, the mistyping of a scientific or common name in this subchapter shall not be grounds for avoiding the requirements of this subchapter.

This agency hereby certifies that the emergency adoption has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200432
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 27, 2012
Expiration date: May 25, 2012
For further information, please call: (512) 463-4075

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

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

TITLE 1. ADMINISTRATION

PART 4. OFFICE OF THE SECRETARY OF STATE

CHAPTER 81. ELECTIONS

SUBCHAPTER B. EARLY VOTING

1 TAC §81.41

The Office of the Secretary of State, Elections Division, proposes new §81.41, concerning the preparation, storage, comparison, security, and retention of electronically recorded images of mail ballot applications, mail ballot carrier envelopes, mail ballot jacket envelopes, and mail ballots, as authorized by §21 and §22 of the Act of May 29, 2011, 82nd Legislature, R.S., House Bill 2817, Chapter 1164 ("Act").

The Act authorizes early voting clerks to electronically record the images of mail ballot applications, mail ballot carrier envelopes, mail ballot jacket envelopes, and mail ballots. The Act also authorizes the use of electronic images of voters' signatures taken from mail ballot applications and mail ballot carrier envelopes in the course of verification of those signatures by signature verification committees pursuant to §87.027(i), Election Code.

The proposed rule is consistent with the legislative intent of the Act, namely, to reduce the paperwork and simplify the administrative burden caused by voluminous mail-in voting in populous counties. By permitting a reduction in the amount of paper sent to the signature verification committees in those counties, the law and associated proposed rule are designed to encourage the timely processing of ballots by mail. The proposed rule also clarifies the procedures for preparing and retaining electronically recorded images of mail ballot materials.

Keith Ingram, Director of Elections, has determined that for the first five-year period the proposed rule is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the new rule.

Mr. Ingram also has determined that for the first five-year period the proposed rule is in effect, the public benefit anticipated as a result of enforcing the new rule will be to speed the processing of election returns in political territories that experience large volumes of voting by mail. There will be no direct adverse economic impact for small businesses or micro businesses. There will be no effect on individuals required to comply with the rule as proposed.

Request for Comments

Interested persons may submit written comments on the proposed rule to the Elections Division, Office of the Texas Secretary of State, P.O. Box 12060, Austin, Texas 78711-2060.

Comments may also be sent via e-mail to: elections@sos.state.tx.us. For comments submitted electronically, please include "Proposed Adoption of Rule §81.41" in the subject line. Comments must be received no later than 5:00 p.m. on March 12, 2012. Comments should be organized in a manner consistent with the organization of the proposed rule. Questions concerning the proposed rule may be directed to Elections Division, Office of the Texas Secretary of State, at (512) 463-5650.

The new rule is proposed pursuant to the rulemaking authority explicitly provided in §22 of the Act and by §31.003, Election Code, which provides the Office of the Secretary of State with the authority to obtain and maintain uniformity in the application, interpretation, and operation of provisions under the Texas Election Code and other election laws.

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

§81.41. Electronic Recording of Ballot Materials and Applications for Ballots by Mail.

The Office of Secretary of State implements the following procedures relating to voting by mail, as required by and pursuant to the Act of May 29, 2011, 82nd Legislature, R.S., Chapter 1164, §§21 - 22:

(1) In an election in which an early voting clerk has determined that pursuant to §87.027(a), Election Code, a signature verification committee shall be appointed, that early voting clerk may exercise further discretion by choosing to electronically record images of any or all of the following records of that election, for the purpose of achieving more timely and efficient ballot processing:

(A) applications for ballots to be voted by mail;

(B) statement of residence forms;

(C) copies of identification forms for voters who are designated as ID voters on the official list of registered voters;

(D) carrier envelopes; and

(E) ballots (including federal write-in and state write-in ballots).

(2) Except as outlined in this section, the review and verification of signatures by a signature verification committee using electronically recorded ballot materials and applications shall be conducted in the same manner as prescribed for the review of non-electronic election records.

(3) Prior to recording images of records relating to signature verification, it is recommended that an early voting clerk should confirm that all document imaging, storage, and retrieval software and hardware used for electronically-recorded mail ballot materials meets minimum technical standards recommended by the Texas Department of Information Resources ("TDIR") or any successor agency, as outlined and summarized in the Data and Electronic Records Management

Best Practices guide that was issued by TDIR on April 14, 2006, along with any revisions or amendments thereto.

(4) For purposes of illustration, but without limiting any other factors or considerations that may be adopted in assessing document scanning and imaging software and hardware, an early voting clerk should determine whether the software or hardware meets the following uniform standards, or successor standards that may be adopted to replace the following standards.

(A) ANSI/AIIM MS44-1988 (Revised 1993)--American National Standards Institute/American Institute for Information Management Recommended Practice for Quality Control of Image Scanners.

(B) ANSI/AIIM MS52-1991--Recommended Practice for the Requirements and Characteristics of Original Documents Intended for Optical Scanning.

(C) ANSI/AIIM MS55-1994--Recommended Practice for the Identification and Indexing of Page Components (Zones) for Automated Processing in an EIM (Electronic Image Management) Environment.

(D) ANSI/AIIM MS61-1996--Application Programming Interface (API) for Scanners in Document Imaging Systems.

(E) ANSI/AIIM TR15-1997--Planning Considerations, Addressing Preparation of Documents for Image Capture.

(F) ANSI/AIIM TR27-1996--Electronic Imaging Request for Proposal Guidelines.

(G) ANSI/AIIM TR32-1994--Paper Forms Design Optimization for Electronic Image Management.

(H) ANSI/AIIM TR40-1995--Suggested Index Fields for Documents in Electronic Image Management Environments.

(5) The electronic recording of any document related to voting by mail does not in any way permit or authorize the destruction of the original copy of that document, or limit or alter the legal requirement to secure and retain the original of that document for at least the minimum record retention period specified by federal or state law.

(6) The form or format of any original or duplicate early voting document, whether stored electronically or otherwise, does not in any way affect the availability of that document for public inspection or copying, as permitted or required by federal or state law. Similarly, the limitations or prohibitions against disclosure with respect to any early voting document or any information contained within any such document are neither expanded nor diminished by the form or format of that document or any duplicate made thereof.

(7) In an election in which the early voting clerk has determined that the signature verification committee will be supplied with electronically-recorded images of documents relating to voting by mail, the early voting clerk shall process early voting materials in the following manner.

(A) Upon receipt of each application for a ballot by mail, the early voting clerk shall record the electronic image of the application, and shall ensure that the image is electronically associated (by means of an electronic file designation, file name, code, or electronic tag) with the identity of the voter who has apparently applied for the ballot, and with the ballot style that is generated for that identified voter.

(B) The original of each application for a ballot by mail shall be stored in compliance with §§66.058, 86.014, 87.044, 87.104, 87.123, and 87.124, Election Code.

(C) Prior to mailing the ballot to the voter, the early voting clerk shall print the title and date of the election on the same side of the carrier envelope as the signature blank to be completed by the voter.

(D) Upon receipt of each carrier envelope that is timely received, the early voting clerk shall record the electronic image of the signature side of the envelope, and shall ensure that the image is electronically associated (by means of an electronic file designation, file name, code, or electronic tag) with the identity of the voter who has apparently signed the envelope, and with the correct ballot style for that voter.

(E) The original of each carrier envelope shall remain sealed pending the envelope's delivery to the early voting ballot board on Election Day, and shall be placed in a jacket envelope containing the associated application for a ballot by mail as required by §86.011 of the Election Code, and stored securely in the manner required by law.

(F) As required by §87.027(h), Election Code, the early voting clerk shall post a public notice of the time and date of delivery to the signature verification committee of any electronically recorded images of early voting ballot materials. The notice must be posted not later than two days prior to the delivery of that material, and the material must be delivered only during the period that the signature verification committee is operating.

(G) The electronically-recorded image of each carrier envelope and accompanying application for a ballot by mail must be organized as inseparable parts of an electronic data set or file associated with the identity of the voter who apparently applied for and cast the ballot.

(H) The electronically-recorded images provided to the signature verification committee must allow for the side-by-side comparison of signatures on the application for the ballot by mail and the carrier envelope. The signatures must be displayed with sufficiently high resolution to permit the ready identification of common features in each signature, such that a person of reasonable visual discernment and experience could determine that both signatures had been made by the same person.

(I) Upon reviewing the electronically-recorded images of voter signatures, the signature verification committee must signal or record which carrier envelopes were judged as having been signed by the same person who applied for the ballot, and which carrier envelopes had signatures that did not match the application signature, as required by §87.027(i), Election Code.

(i) Regardless of the method used (whether the "matched" versus "unmatched" record takes the form of two separate electronic files sorted into "matched" and "unmatched" signatures, a separate paper list, or a notation on the electronically recorded images of the individual carrier envelopes), the process must allow the matched and unmatched signatures to be reviewed by the early voting ballot board on Election Day.

(ii) Pursuant to §87.027(j), Election Code, the process must accommodate the early voting ballot board's authority to overturn a finding by the signature verification committee that two signatures did not match.

(iii) The process described in this subparagraph must not allow the early voting ballot board to overturn a finding by the signature verification committee that two signatures did match.

(J) On Election Day, the original sealed carrier envelopes must be retrieved and processed based on the early voting ballot board's final determinations, pursuant to the procedures described in §§87.041 - 87.044, Election Code.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200305
John Sepehri
General Counsel
Office of the Secretary of State
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 463-5650

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TITLE 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 3. OIL AND GAS DIVISION

16 TAC §3.107

The Railroad Commission of Texas (Commission) proposes new §3.107, relating to Penalty Guidelines for Oil and Gas Violations. On October 25, 2011, the Commission authorized staff to draft a proposed new rule to implement guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. During the 82nd Legislative Session, the Sunset Commission recommended that the Commission adopt its penalty guidelines in rule form, and that the rule should assign penalties to violations based on their risk and severity. With the proposed new rule, the Commission seeks to align all penalty guidelines with existing Pipeline Safety Division penalty guidelines, creating consistency and transparency agency-wide. The Commission proposes new §3.107 to provide a matrix for oil and gas rule violations.

The matrix includes typical penalty amounts for violations of the statutes cited above or the provisions of a rule adopted or an order, license, permit, or certificate issued under those statutes, as well as guidelines for penalty enhancements based on the severity of the violation, the culpability of the person charged, any prior violations within past seven years, and the amount of previous penalties for violations within the past seven years.

Proposed new subsection (a) states the Commission's policy on compliance and enforcement. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

Proposed new subsection (b) provides that the penalty amounts contained in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29.

Proposed new subsection (c) provides that the establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The typical penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

Proposed new subsection (d) lists factors the Commission considers in assessing a penalty. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations; the seriousness of the violation; any hazard to the health or safety of the public; and the demonstrated good faith of the person charged.

Proposed new subsection (e) provides that regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. This subsection also contains two tables. Table 1 shows the typical penalties for violations of provisions of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29. Table 1A shows the derivation of the factors by which additional penalty amounts for violations of §3.73 of this title, relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance. The factors are based on four components which, in combination, yield the factor by which an additional penalty amount of $1,000 is multiplied. The various combinations of the components are set forth in Table 1A; the factors range from one to 10.

Proposed new subsection (f) provides that for violations that involve threatened or actual pollution; result in threatened or actual

safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.

Proposed new subsection (g) sets forth penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Proposed new subsection (h) authorizes a penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

Proposed new subsection (i) concerns demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

Proposed new subsection (j) contains a penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.

Ramon Fernandez, Deputy Director, Oil and Gas Division, has determined that for each year of the first five years that the proposed new rule will be in effect there will be no fiscal implications for state government. The proposed new rule codifies penalty amounts, but the Commission does not anticipate penalty revenue to increase as a result. Revenue from administrative penalties is deposited to the State General Revenue Fund.

There are no fiscal implications for local governments.

Mr. Fernandez has also determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of enforcing the new rule will be an improvement in safety due to an increased awareness of both the importance of complying with oil and gas safety standards and practices and the potential penalties associated with not doing so. By establishing typical penalty amounts for additional violations of the oil and gas rules and increasing the typical penalties for some current violations, the Commission finds that the proposed new rule could result in a reduction in the number of violations and a corresponding increase in public safety.

The Commission has also developed an analysis of the probable economic cost to persons required to comply with the proposed new rule for each year of the first five years that it will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses or micro-businesses subject to the proposed rule, project the economic impact of the rule on small businesses and micro-businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider: if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses and micro-businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business or a micro-business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

The Commission has determined that any increased cost of compliance for entities filing an organization report ("operators"), regardless of status as a small business or micro-business, will be incurred only if the operator is in violation of Railroad Commission rules, and therefore can be viewed an avoidable cost. Based on the information available to the Commission regarding the entities that file organization reports, Mr. Fernandez concludes that it is extremely likely that a business that potentially could be affected by the proposed rule would be classified as a small business or micro-business, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of oil and gas activities fall within the category for crude petroleum and natural gas extraction. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2111 (Oil & Gas Extraction), for which there are listed 2,784 companies in Texas. This source further indicates that 2,582 companies (92.7 percent) are small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001.

The Commission has also determined that a regulatory flexibility analysis is not required because an operator will incur costs for administrative penalties only if the operator violates Commission rules, and therefore the penalty amounts can be viewed as an avoidable cost. Further, the Commission has determined that administering the statutory provisions related to penalties for violations of Texas Natural Resources Code, Chapter 113, and the Commission's oil and gas rules, requires that the penalty amounts imposed be punitive. Minimizing the adverse impacts on small businesses and micro-businesses of administrative penalties assessed for violations of the statute or Commission rules is not consistent with ensuring the health, safety, and environmental and economic welfare of the state.

The Commission finds that the proposed new rule likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed new rule is not a major environmental rule, because the rule does not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed rule does not exceed the express requirements of state law, and is not being adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Monday, March 12, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to Oil and Gas Docket No. 20-0274145. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Fernandez at (512) 463-6827. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the new rule pursuant to Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all persons owning or engaged in drilling or operating oil or gas wells in Texas and the authority to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission; and Texas Natural Resources Code, §81.0531, which gives the Commission authority to assess a penalty if a person violates provisions of Texas Natural Resources Code, Title 3, that pertain to safety or the prevention or control of pollution or the provisions of a rule, order, license, permit, or certificate that pertain to safety or the prevention or control of pollution that are issued under Title 3.

Texas Natural Resources Code, §§81.051, 81.052, and 81.0531, are affected by the proposed new rule.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, and 81.0531.

Cross-reference to statute: Texas Natural Resources Code, §§81.051, 81.052, and 81.0531.

Issued in Austin, Texas on January 24, 2012.

§3.107. Penalty Guidelines for Oil and Gas Violations.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank oil- and natural gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3; Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; or the provisions of a rule adopted or order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations;

(2) the seriousness of the violation;

(3) any hazard to the health or safety of the public; and

(4) the demonstrated good faith of the person charged.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit.

(1) Typical penalties for violations of Texas Natural Resources Code, Title 3; the provisions of Texas Water Code, Chapters 26, 27, and 29, that are administered and enforced by the Commission; and the provisions of a rule adopted or an order, license, permit, or certificate issued under Texas Natural Resources Code, Title 3, or Texas Water Code, Chapters 26, 27, and 29, are set forth in Table 1.
Figure: 16 TAC §3.107(e)(1)

(2) Typical penalties for violations of §3.73 of this title, relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance, include additional penalty amounts that are based on four components. In combination, these four components yield the factor by which an additional penalty amount of $1,000 is multiplied. The various combinations of the components are set forth in Table 1A.

(A) The first component is the length of the violation. A low rating means the violation has been in existence less than three months. A medium rating means the violation has been outstanding for more than three months and up to one year. A high rating means the violation has been outstanding for more than one year.

(B) The second component is production value. A low rating means the value of the production is less than $5,000. A medium rating means the value of the production is more than $5,000 and up to $100,000. A high rating means the value of the production is more than $100,000.

(C) The third component is the number of unresolved severances. A low rating means there are fewer than two unresolved severances. A medium rating means there are more than two and up to six unresolved severances. A high rating means there are more than six unresolved severances.

(D) The fourth component is the basis of the severance. The letter "N" indicates that the severance is not pollution related. The letter "Y" indicates that the severance is pollution related.
Figure: 16 TAC §3.107(e)(2)(D)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.
Figure: 16 TAC §3.107(f)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §3.107(g)
Figure 2: 16 TAC §3.107(g)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §3.107(j)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200314
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1295

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CHAPTER 8. PIPELINE SAFETY REGULATIONS
SUBCHAPTER B. REQUIREMENTS FOR ALL PIPELINES

16 TAC §8.135

The Railroad Commission of Texas (Commission) proposes to amend §8.135, relating to Penalty Guidelines for Pipeline Safety Violations. On October 25, 2011, the Commission authorized staff to draft proposed amendments to the current guidelines in Chapter 8 to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions; and for violations of Texas Utilities Code, §121.201, or a safety standard or rule adopted under that provision. During the 82nd Legislative Session, the Sunset Commission recommended that the Commission adopt its penalty guidelines in rule form, and that the rule should assign penalties to violations based on their risk and severity. Although the Commission has had a penalty guideline rule in place in Chapter 8 for some time, with the proposed amendments, the Commission seeks to align all penalty guidelines, creating consistency and transparency agency-wide.

The proposed amendments would add violations for rules adopted since the penalty guidelines were initially adopted, and will increase penalties for some violations that are currently in the rule. The matrix will include typical penalty amounts for violations of the statutes cited above or the provisions of a rule adopted or an order, license, permit, or certificate issued under those statutes, as well as guidelines for penalty enhancements based on the severity of the violation, the culpability of the person charged, any prior violations within past seven years, and the amount of previous penalties for violations within the past seven years.

Proposed new subsection (a) states the Commission's policy on compliance and enforcement. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank pipeline safety-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

Proposed subsection (b) is similar to current subsection (a), with citation and grammatical changes. This subsection continues to

provide that this section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or a safety standard or other rule prescribed or adopted under that provision.

Proposed subsection (c) is similar to current subsection (b), and provides that the establishment of these penalty guidelines in no way limits the Commission's authority and discretion to cite violations and assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or a safety standard or other rule prescribed or adopted under that provision, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

The Commission proposes to re-designate current subsection (c) as subsection (d); the text is unchanged. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant.

Proposed subsection (e) is similar to current subsection (d) and contains Table 1, the typical penalties for violations of provisions of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or a safety standard or other rule prescribed or adopted under that provision. The table includes proposed increases to guideline penalty amounts for violation of §3.70 of this title, relating to Pipeline Permits Required, and §8.51 of this title, relating to Organization Report, from $1,000 to $5,000; the removal of the line item for §8.110 of this title, cited as Operations and Maintenance Procedures; the amendment to the title of the rule for §8.201 of this title, relating to Pipeline Safety and Regulatory Program Fees; the addition of line entries for §8.206 of this title, relating to Risk Based Leak Survey Program, §8.207 of this title, relating to Leak Grading and Repair, §8.208 of this title, relating to Mandatory Removal and Replacement Program, and §8.209 of this title, relating to Distribution Facilities Replacements, all of which have proposed guideline penalty amounts of $5,000; the proposed increase in the penalty guideline amount for violations of §8.215 of this title, relating to Odorization of Gas, from $5,000 to $10,000; the proposed increase in the penalty guideline amount for violations of §8.230 of this title, relating to School Piping Testing, from $1,000 to $5,000; the proposed addition of a line entry for §8.235 of this title, relating to Natural Gas Pipelines Public Education and Liaison, for violations related to pipeline facilities located within 1,000 feet of a public school building or public school recreational area, with a guideline penalty amount of $5,000; the proposed increase in the penalty guideline amount for violations of §8.315 of this title, relating to Hazardous Liquids and Carbon Dioxide Pipelines or Pipeline Facilities Located within 1,000 Feet of Public School Building or Facility, from $2,500 to $5,000; the proposed addition of a line entries for violations related to requirements for corrosion control, maintenance, and gas distribution integrity management requirements, with penalty guideline amounts of $5,000 each; the proposed increase in penalty guideline amounts from $2,500 to $5,000 for violations related to qualification of pipeline personnel and public awareness; and a proposed increase in the penalty guideline amount from $500 to $1,000 for violations related to drug and alcohol testing.

Proposed subsection (f) is similar to current subsection (e) in setting forth penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation. As proposed, there are new enhancements for pollution and for any hazard to the health or safety of the public resulting from a violation in a range of $5,000 to $25,000; increased enhancements for impacts to residential or public areas and for exceeding pressure control limits in a range of $5,000 to $25,000; and proposed new enhancements for the seriousness of a violation and for violations that result in death or personal injury in a range of $5,000 to $25,000. The Commission proposes to remove the enhancement for time out of compliance, because the statutes provide that each day that a violation continues may be considered a separate violation.

Proposed subsection (g) is similar to current subsection (f), and pertains to penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both. The Commission does not propose any change to the current enhancement amounts.

Proposed subsection (h) is similar to current subsection (g), and allows for penalty reduction for settlement before hearing. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

Proposed subsection (i) is similar to current subsection (h) and provides that in determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing

of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

Proposed subsection (j) is similar to current subsection (i) and contains the penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction. Lines 1 through 42 of the table list specific sources of violations, show the recommended penalty amount, and leave a space to insert the recommended penalty amount, if any. Line 43 is a subtotal line, and line 44 is where any adjustment for settlement before hearing may be made. Line 45 is another subtotal; and lines 46 through 52 show penalty enhancements which may be added if the violation threatened or resulted in actual pollution or a safety hazard. Line 53 is for penalty enhancements because of the seriousness of the violation. Line 54 is another subtotal line; lines 55 and 56 are for penalty enhancements for reckless or intentional conduct. Lines 57 through 61 are for penalty enhancements based on the number of prior violations or warnings within the previous seven years. Lines 62 through 66 are for penalty enhancements based on the total amount of penalties assessed within the previous seven years. Line 67 is a subtotal line. Line 68 is where any adjustment for the demonstrated good faith of the person charged may be made; and line 69 is the total recommended penalty.

Mary ("Polly") Ross McDonald, Director, Pipeline Safety Division, has determined that for each of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state government. The Pipeline Safety Division currently administers the Pipeline Safety Program, including the citation of violations and the assessment of administrative penalties. Ms. McDonald anticipates that there will be no fiscal implication for the Railroad Commission because these programming changes will be handled as part of a general IT programming effort that is being funded by a grant. Ms. McDonald anticipates also that there may be fiscal implications for any state governmental entity that is required to comply with the Commission's pipeline safety rules. For example, certain state residential facilities are classified as master meter operators under the pipeline safety rules, and operators of those systems can be cited for violations of the safety rules applicable to master meter systems and assessed administrative penalties. It is not possible to anticipate the type or number of violations that a state governmental entity might commit; whether any of those violations could or would be subject to penalty enhancements; or whether a state governmental entity might elect to settle an enforcement action in exchange for a reduced penalty amount.

Ms. McDonald has also determined that for each of the first five years the proposed amendments will be in effect, there will be fiscal implications for local governments. Local governments, such as municipalities, that own and operate natural gas distribution systems are required to comply with pipeline safety standards for distribution facilities. It is not possible to anticipate the type or number of violations that a local government might commit; whether any of those violations could or would be subject to penalty enhancements; or whether a local government might elect to settle an enforcement action in exchange for a reduced penalty amount.

Ms. McDonald further anticipates that for the first year of the first five years that the proposed amendments will be in effect, enforcement of the penalty provisions may result in an increase in revenue to state government as new or increased penalties are assessed for violations. However, even though the proposed amendments add new violations and increase the typical penalties for others, if the number and/or type of violation changes, total penalty revenue could decrease. It is not possible to estimate the amount of the revenue, or whether that is an increase or decrease to current revenue, because the amount of penalty revenue will be entirely dependent on the extent of compliance or non-compliance with the proposed amendments. Ms. McDonald acknowledges that the revenue to the state derived from penalty payments could decrease as persons who are already familiar with the rules recognize the additional violations and the increased typical penalties for some violations and conform their conduct accordingly. The increased revenue to the state will not be revenue for the Railroad Commission; under Texas Natural Resources Code, §81.0531, revenue derived from administrative penalties is deposited to the State General Revenue Fund.

Ms. McDonald has also determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be an improvement in safety due to an increased awareness of both the importance of complying with pipeline safety standards and practices and the potential penalties associated with not doing so. By establishing typical penalty amounts for additional violations of the pipeline safety rules and increasing the typical penalties for some current violations, the Commission finds that the proposed amendments could result in a reduction in the number of violations and a corresponding increase in public safety.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission the number of their employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons engaged in the operation of gas gathering, transmission, and distribution pipelines and pipeline facilities and in the operation of pipelines and pipeline facilities for the gathering and transmission of hazardous liquids and carbon dioxide will be classified as small businesses or micro-businesses, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The North American Industrial Classification System (NAICS) sets forth categories of business types. Operators of gas, hazardous liquids, and carbon dioxide pipelines gathering and transmission lines fall with the general category of pipeline transportation. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB

3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 486, (Pipeline Transportation). For that category, there are listed 154 businesses in Texas, of which 106 (68.83%) are identified as small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001. Operators of gas distribution systems fall within the general category of natural gas distribution, listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 2212 (Natural Gas Distribution). There are 144 businesses listed in this category in Texas, of which 119 (82.64%) are identified as small businesses or micro-businesses, as those terms are defined in Texas Government Code, §2006.001.

The Commission anticipates no adverse economic effect on small businesses, micro-businesses, or individuals, primarily because the proposed amendments do not alter the current requirements imposed under Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions; and for violations of Texas Utilities Code, §121.201, or a safety standard or rule adopted under that provision. The proposed amendments would add violations to the penalty guidelines and would increase the typical penalty amounts for some violations. Entities that are required to comply with pipeline safety regulations will be able to avoid all adverse financial effects by complying with them. In addition, the Commission has determined that because the purpose of the proposed amendments is to improve the safety of pipeline operations, it is not feasible to reduce any economic impact of the rules. Safe operation of pipelines and pipeline facilities is essential regardless of whether the operator is a large corporation, a small business, a micro-business, or an individual. The proposed amendments are a refinement of the existing Commission authority to impose monetary penalties on entities that violate pipeline safety standards and rules; these are intended to deter non-compliance and, to be an effective deterrent, the penalty amounts must be punitive. The economic consequences can be avoided by compliance with the rules.

Pursuant to Texas Government Code, §2001.022, the Commission has determined that the proposed amendments in §8.135 will not affect any local economy; therefore, no local employment impact statement is required.

Pursuant to Texas Government Code, §2001.0225, the Commission has determined that the proposed amendments in §8.135 are not major environmental rules and therefore no regulatory analysis under that section is required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 5:00 p.m. on Monday, March 12, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to GUD Docket No. 10131. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Polly McDonald at (512) 463-7008 or David Flores at (512) 936-0959. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments under Texas Natural Resources Code, §81.051 and §81.052, which give the Commission jurisdiction over all common carrier pipelines in Texas, persons owning or operating pipelines in Texas, and their pipelines and oil and gas wells, and authorize the Commission to adopt all necessary rules for governing and regulating persons and their operations under the jurisdiction of the Commission as set forth in §81.051, including such rules as the Commission may consider necessary and appropriate to implement state responsibility under any federal law or rules governing such persons and their operations; Texas Natural Resources Code, §81.0531, which requires the Commission to adopt by rule guidelines to be used in determining the amount of the penalty for a violation of a provision of Texas Natural Resources Code, Title 3, or a rule, order, or permit relating to pipeline safety adopted under those provisions; Texas Natural Resources Code, §§117.001-117.102, which give the Commission jurisdiction over all pipeline transportation of hazardous liquids or carbon dioxide and over all hazardous liquid or carbon dioxide pipeline facilities as provided by 49 United States Code Annotated, §§60101, *et seq.;* and Texas Utilities Code, §121.201, which authorizes the Commission to adopt safety standards and practices applicable to the transportation of gas and to associated pipeline facilities within Texas to the maximum degree permissible under, and to take any other requisite action in accordance with, 49 United States Code Annotated, §§60101, *et seq.*

Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001-117.102; Texas Utilities Code, §121.201; and 49 United States Code Annotated, §§60101, *et seq.;* are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §§81.051, 81.052, 81.0531, and 117.001-117.102; Texas Utilities Code, §121.201; and 49 United States Code Annotated, §§60101, *et seq.*

Cross-reference to statute: Texas Natural Resources Code, Chapters 81 and Chapter 117; Texas Utilities Code, Chapter 121; and 49 United States Code Annotated, Chapter 601.

Issued in Austin, Texas, on January 24, 2012.

§8.135. Penalty Guidelines for Pipeline Safety Violations.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank pipeline safety-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) [~~(a)~~] Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531(d), and Texas

Utilities Code, §121.206(d). The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of [~~Title 3 of the~~] Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, [~~or Subchapter I (121.451 - 121.454)~~], or a safety standard or other rule prescribed or [~~relating to the transportation of gas and gas pipeline facilities~~] adopted under that provision [~~those provisions~~].

(c) [~~(b)~~] Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, or a safety standard or other rule prescribed or adopted under that provision, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) [~~(c)~~] Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(e) [~~(d)~~] Typical penalties. Typical penalties for violations of provisions of [~~Title 3 of the~~] Texas Natural Resources Code, Title 3, relating to pipeline safety, or of rules, orders, or permits relating to pipeline safety adopted under those provisions, and for violations of Texas Utilities Code, §121.201, [~~or Subchapter I (121.451 - 121.454),~~] or a safety standard or other rule prescribed or [~~relating to the transportation of gas and gas pipeline facilities~~] adopted under that provision [~~those provisions~~] are set forth in Table 1.
Figure: 16 TAC §8.135(e)
[~~Figure: 16 TAC §8.135(d)~~]

(f) [~~(e)~~] Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty, as shown in Table 2. The enhancement may be in any amount in the range shown for each type of violation.
Figure: 16 TAC §8.135(f)
[~~Figure: 16 TAC §8.135(e)~~]

(g) [~~(f)~~] Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §8.135(g)
Figure 2: 16 TAC §8.135(g)
[~~Figure 1: 16 TAC §8.135(f)~~]
[~~Figure 2: 16 TAC §8.135(f)~~]

(h) [~~(g)~~] Penalty reduction for settlement before hearing. The recommended penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) [~~(h)~~] Demonstrated good faith. In determining the total amount of any penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation [~~of the pipeline safety rules~~] or to mitigate the consequences of a violation [~~of the pipeline safety rules.~~]

(j) [~~(i)~~] Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §8.135(j)
[~~Figure: 16 TAC §8.135(i)~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200315
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1295

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CHAPTER 9. LP-GAS SAFETY RULES
SUBCHAPTER A. GENERAL REQUIREMENTS
16 TAC §9.15

The Railroad Commission of Texas (Commission) proposes new §9.15, relating to Penalty Guidelines for LP-Gas Safety Violations. On October 25, 2011, the Commission authorized staff to draft a proposed new rule to implement guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety, or the provisions of a rule, order, license, permit, or certificate issued under Texas Natural

Resources Code, Chapter 113; or of violations of regulations, codes, or standards that the Commission has adopted by reference. During the 82nd Legislative Session, the Sunset Commission recommended that the Commission adopt its penalty guidelines in rule form, and that the rule should assign penalties to violations based on their risk and severity. With the proposed new rule, the Commission seeks to align the penalty guidelines of the Alternative Energy Division with existing Pipeline Safety Division penalty guidelines, creating consistency and transparency agency-wide.

The Commission proposes new §9.15 to provide a penalty matrix for violations of Texas Natural Resources Code, Chapter 113, and the Commission's LP-gas safety rules. The matrix includes penalty amounts for any violation of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety, and for violations of specific rules in this chapter, as well as for those regulations, codes, or standards that the Commission has adopted by reference. The penalty matrix includes guidelines for penalty enhancements based on the severity of the violation, the culpability of the person charged, any prior violations within past seven years, and the amount of previous penalties for violations within past seven years.

Proposed new subsection (a) states the Commission's policy on compliance and enforcement. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees, certificate holders, and registrants to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LP-gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

Proposed new subsection (b) states that the provisions of this section are only guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety; of rules, orders, licenses, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

Proposed new subsection (c) provides that the establishment of these penalty guidelines in no way limits the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety; of rules, orders, licenses, permits, or certificates relating to LP-gas safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

Proposed new subsection (d) states that the amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant.

Proposed new subsection (e) states that regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of provisions of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety; of rules, orders, licenses, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.

Proposed new subsection (f) states that for violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.

Proposed new subsection (g) provides that for violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Proposed new subsection (h) pertains to penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

Proposed new subsection (i) provides that, in determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

Proposed new subsection (j) states that depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

Proposed new subsection (k) is the penalty calculation worksheet, shown in Table 5, which lists the typical penalty amounts for certain violations, the circumstances justifying enhancements

of a penalty and the amount of the enhancement, and the circumstances justifying a reduction in a penalty and the amount of the reduction.

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for each year of the first five years that the proposed new rule will be in effect there will be no fiscal implications for state government. The proposed new rule codifies penalty amounts, but the Commission does not anticipate an increase in either the number of violations cited or the penalty revenue as a result of administering or enforcing the new rule. Each year, the Commission's Alternative Energy Division processes approximately 65 penalties and the Commission deposits the revenue from these penalties of approximately $40,000 to the State General Revenue Fund.

There are no fiscal implications for local governments.

Mr. Osterhaus has also determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of enforcing the new rule will be an improvement in safety due to an increased awareness of both the importance of complying with LP-gas safety standards and practices and the potential penalties associated with not doing so. By establishing typical penalty amounts for additional violations of the LP-gas safety rules and increasing the typical penalties for some current violations, the Commission finds that the proposed new rule could result in a reduction in the number of violations and a corresponding increase in public safety.

The Commission has also developed an analysis of the probable economic cost to persons required to comply with the proposed new rule for each year of the first five years that it will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses or micro-businesses subject to the proposed rule, project the economic impact of the rule on small businesses and micro-businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider: if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses and micro-businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business or a micro-business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

The Commission has determined that any increased cost of compliance for LP-gas licensees, certificate holders, and registrants regardless of their status as a small business or micro-business, will be incurred only if the licensee or certificate holder violates Commission LP-gas rules, and therefore the penalty amounts can be viewed as an avoidable cost. Based on the information available to the Commission regarding the entities that are LP-gas licensees, certificate holders, and registrants, Mr. Osterhaus concludes that it is extremely likely that a business that potentially could be affected by the proposed new rule would be classified as a small business or micro-business, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types; sellers and dealers of LP-gas fall within the category for direct selling establishments. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 4543 (Direct Selling Establishments), for which there are listed 618 companies in Texas. This source further indicates that 587 companies (94.98%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.001.

The Commission has also determined that a regulatory flexibility analysis is not required because a licensee or certificate holder will incur costs for administrative penalties if the licensee or certificate holder violates Commission rules, and therefore the penalty amounts can be viewed as an avoidable cost. Further, the Commission has determined that administering the statutory provisions related to penalties for violations of Texas Natural Resources Code, Chapter 113, and the Commission's LP-gas rules, requires that the penalty amounts imposed be punitive. Minimizing the adverse impacts on small businesses and micro-businesses of administrative penalties assessed for violations of the statute or Commission rules is not consistent with ensuring the health, safety, and environmental and economic welfare of the state.

The Commission finds that the proposed new rule likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed new rule is not a major environmental rule, because the rule does not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed rule does not exceed the express requirements of state law, and is not being adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Monday, March 12, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to LP-Gas Docket No. 02308. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the new rule under Texas Natural Resources Code, §81.0531, which provides that if a person violates

provisions of Texas Natural Resources Code, Title 3, which pertain to safety or the provisions of a rule, order, license, permit, or certificate which pertain to safety and are issued under this title, the person may be assessed a penalty by the Commission; Texas Natural Resources Code, §113.051, which authorizes the Commission to adopt rules relating to any and all aspects or phases of the LP-gas industry that will protect or tend to protect the health, welfare, and safety of the general public; and Texas Natural Resources Code, §113.052, which authorizes the Commission to adopt by reference, in whole or in part, the published codes of the National Board of Fire Underwriters, the National Fire Protection Association, the American Society for Mechanical Engineers, and other nationally recognized societies or any one or more of these codes as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of containers, tanks, appliances, systems, and equipment for the transportation, storage, delivery, use, and consumption of LP-gas or any one or more of these purposes.

Texas Natural Resources Code, §§81.0531, 113.051, and 113.052, are affected by the proposed new rule.

Statutory authority: Texas Natural Resources Code, §§81.0531, 113.051, and 113.052.

Cross-reference to statute: Texas Natural Resources Code, §§81.0531, 113.051, and 113.052.

Issued in Austin, Texas on January 24, 2012.

§9.15. Penalty Guidelines for LP-Gas Safety Violations.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees, certificate holders, and registrants to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LP-gas-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety; of rules, orders, licenses, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety; of rules, orders, licenses, permits, or certificates relating to LP-gas safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of provisions of Texas Natural Resources Code, Chapter 113, relating to LP-gas safety; of rules, orders, licenses, permits, or certificates relating to LP-gas safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.
Figure: 16 TAC §9.15(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.
Figure: 16 TAC §9.15(f)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §9.15(g)
Figure 2: 16 TAC §9.15(g)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the

Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations, the circumstances justifying enhancements of a penalty and the amount of the enhancement, and the circumstances justifying a reduction in a penalty and the amount of the reduction. Figure: 16 TAC §9.15(k)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200316
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1295

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CHAPTER 13. REGULATIONS FOR COMPRESSED NATURAL GAS (CNG)

SUBCHAPTER A. SCOPE AND DEFINITIONS

16 TAC §13.15

The Railroad Commission of Texas (Commission) proposes new §13.15, relating to Penalty Guidelines for CNG Safety Violations. On October 25, 2011, the Commission authorized staff to draft a proposed new rule to implement guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 116, relating to compressed natural gas, or the provisions of a rule, order, license, permit, or certificate issued under Texas Natural Resources Code, Chapter 116; or of violations of regulations, codes, or standards that the Commission has adopted by reference. During the 82nd Legislative Session, the Sunset Commission recommended that the Commission adopt its penalty guidelines in rule form, and that the rule should assign penalties to different violations based on their risk and severity. With the proposed rule, the Commission seeks to align the enforcement procedures of the Alternative Energy Division with existing Pipeline Safety Division penalty guidelines, creating consistency and transparency agency-wide.

The Commission proposes new §13.15 to provide a penalty matrix for violations of Texas Natural Resources Code, Chapter 116, and the Commission's CNG safety rules. The matrix includes penalty amounts for any violation of Texas Natural Resources Code, Chapter 116, relating to compressed natural gas, and for violations of specific rules in this chapter, as well as for those regulations, codes, or standards that the Commission has adopted by reference. The penalty matrix includes guidelines for penalty enhancements based on the severity of the violation, the culpability of the person charged, any prior violations within past seven years, and the amount of previous penalties for violations within past seven years.

Proposed new subsection (a) states the Commission's policy on compliance and enforcement. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees and certificate holders to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank CNG-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

Proposed new subsection (b) states that the provisions of this section are only guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

Proposed new subsection (c) provides that the establishment of these penalty guidelines in no way limits the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

Proposed new subsection (d) states that the amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant.

Proposed new subsection (e) states that regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory maximum. Typical penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.

Proposed new subsection (f) states that for violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.

Proposed new subsection (g) provides that for violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Proposed new subsection (h) pertains to penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

Proposed new subsection (i) provides that, in determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

Proposed new subsection (j) states that depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

Proposed new subsection (k) is the penalty calculation worksheet, shown in Table 5, which lists the typical penalty amounts for certain violations, the circumstances justifying enhancements of a penalty and the amount of the enhancement, and the circumstances justifying a reduction in a penalty and the amount of the reduction.

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for each year of the first five years that the proposed new rule will be in effect there will be no fiscal implications for state government. The proposed new rule codifies penalty amounts, but the Commission does not anticipate an increase in either the number of violations cited or the penalty revenue as a result of administering or enforcing the new rule.

There are no fiscal implications for local governments.

Mr. Osterhaus has also determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of enforcing the new rule will be an improvement in safety due to an increased awareness of both the importance of complying with CNG safety standards and practices and the potential penalties associated with not doing so. By establishing typical penalty amounts for additional violations of the CNG safety rules and increasing the typical penalties for some current violations, the Commission finds that the proposed new rule could result in a reduction in the number of violations and a corresponding increase in public safety.

The Commission has also developed an analysis of the probable economic cost to persons required to comply with the proposed new rule for each year of the first five years that it will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses or micro-businesses subject to the proposed rule, project the economic impact of the rule on small businesses and micro-businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider: if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses and micro-businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business or a micro-business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

The Commission has determined that any increased cost of compliance for CNG licensees or certificate holders, regardless of their status as a small business or micro-business, will be incurred only if the licensee or certificate holder violates Commission rules, and therefore the penalty amounts can be viewed an avoidable cost. Based on the information available to the Commission regarding the entities that are CNG licensees or certificate holders, Mr. Osterhaus concludes that it is extremely likely that a business that potentially could be affected by the proposed new rule would be classified as a small business or micro-business, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types; sellers and dealers of CNG fall within the category for direct selling establishments. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 4543 (Direct Selling Establishments), for which there are listed 618 companies in Texas. This source further indicates that 587 companies (94.98%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002.

The Commission has also determined that a regulatory flexibility analysis is not required because a licensee or certificate holder will incur costs for administrative penalties if the licensee or certificate holder violates Commission rules, and therefore the penalty amounts can be viewed as an avoidable cost. Further, the Commission has determined that administering the statutory provisions related to penalties for violations of Texas Natural Resources Code, Chapter 116, and the Commission's CNG rules, requires that the penalty amounts imposed be punitive. Minimizing the adverse impacts on small businesses and micro-businesses of administrative penalties assessed for violations of the

statute or Commission rules is not consistent with the health, safety, and environmental and economic welfare of the state.

The Commission finds that the proposed new rule likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed new rule is not a major environmental rule, because the rule does not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed rule does not exceed the express requirements of state law, and is not being adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Monday, March 12, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to LP-Gas Docket No. 02309. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the new rule under Texas Natural Resources Code, §81.0531, which provides that if a person violates provisions of Texas Natural Resources Code, Title 3, which pertain to safety or the provisions of a rule, order, license, permit, or certificate which pertain to safety and are issued under this title, the person may be assessed a penalty by the Commission; Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public, and §116.013, which authorizes the Commission to adopt by reference, in whole or in part the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment.

Statutory authority: Texas Natural Resources Code, §§81.0531, 116.012 and 116.013.

Cross-reference to statute: Texas Natural Resources Code, §§81.0531, 116.012, and 116.013.

Issued in Austin, Texas on January 24, 2012.

§13.15. Penalty Guidelines for CNG Safety Violations.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees and certificate holders to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank CNG-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory maximum. Typical penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas; of rules, orders, licenses, permits, or certificates relating to CNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.
Figure: 16 TAC §13.15(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.
Figure: 16 TAC §13.15(f)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §13.15(g)
Figure 2: 16 TAC §13.15(g)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §13.15(k)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200321
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1295

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CHAPTER 14. REGULATIONS FOR LIQUEFIED NATURAL GAS (LNG)

SUBCHAPTER A. GENERAL APPLICABILITY AND REQUIREMENTS

16 TAC §14.2015

The Railroad Commission of Texas (Commission) proposes new §14.2015, relating to Penalty Guidelines for LNG Safety Violations. On October 25, 2011, the Commission authorized staff to draft a proposed new rule to implement guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Natural Resources Code, Chapter 116, relating to compressed natural gas and liquefied natural gas, or the provisions of a rule, order, license, permit, or certificate issued under Texas Natural Resources Code, Chapter 116; or of violations of regulations, codes, or standards that the Commission has adopted by reference. During the 82nd Legislative Session, the Sunset Commission recommended that the Commission adopt its penalty guidelines in rule form, and that the rule should assign penalties to different violations based on their risk and severity. With the proposed rule, the Commission seeks to align the enforcement procedures of the Alternative Energy Division with existing Pipeline Safety Division penalty guidelines, creating consistency and transparency agency-wide.

The Commission proposes new §14.2015 to provide a penalty matrix for violations of Texas Natural Resources Code, Chapter 116, and the Commission's LNG safety rules. The matrix includes penalty amounts for any violation of Texas Natural Resources Code, Chapter 116, relating to compressed natural gas or liquefied natural gas, and for violations of specific rules in this chapter, as well as for those regulations, codes, or standards that the Commission has adopted by reference. The penalty matrix includes guidelines for penalty enhancements based on the severity of the violation, the culpability of the person charged, any prior violations within past seven years, and the amount of previous penalties for violations within past seven years.

Proposed new subsection (a) states the Commission's policy on compliance and enforcement. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees and certificate holders to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LNG-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

Proposed new subsection (b) states that the provisions of this section are only guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas and liquefied natural gas; of rules, orders, licenses, permits, or certificates relating to LNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

Proposed new subsection (c) provides that the establishment of these penalty guidelines in no way limits the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3, Chapter 116,

relating to compressed natural gas and liquefied natural gas; of rules, orders, licenses, permits, or certificates relating to LNG safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

Proposed new subsection (d) states that the amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations, including the number of previous violations; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant.

Proposed new subsection (e) states that regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory maximum. Typical penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas and liquefied natural gas; of rules, orders, licenses, permits, or certificates relating to LNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.

Proposed new subsection (f) states that for violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.

Proposed new subsection (g) provides that for violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.

Proposed new subsection (h) pertains to penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

Proposed new subsection (i) provides that, in determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

Proposed new subsection (j) states that depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

Proposed new subsection (k) is the penalty calculation worksheet, shown in Table 5, which lists the typical penalty amounts for certain violations, the circumstances justifying enhancements of a penalty and the amount of the enhancement, and the circumstances justifying a reduction in a penalty and the amount of the reduction.

James Osterhaus, Director, LP-Gas Operations, Alternative Energy Division, has determined that for each year of the first five years that the proposed new rule will be in effect there will be no fiscal implications for state government. The proposed new rule codifies penalty amounts, but the Commission does not anticipate an increase in either the number of violations cited or the penalty revenue as a result of administering or enforcing the new rule.

There are no fiscal implications for local governments.

Mr. Osterhaus has also determined that for each year of the first five years the proposed new rule will be in effect, the public benefit anticipated as a result of enforcing the amendments will be an improvement in safety due to an increased awareness of both the importance of complying with LNG safety standards and practices and the potential penalties associated with not doing so. By establishing typical penalty amounts for additional violations of the LNG safety rules and increasing the typical penalties for some current violations, the Commission finds that the proposed new rule could result in a reduction in the number of violations and a corresponding increase in public safety.

The Commission has also developed an analysis of the probable economic cost to persons required to comply with the proposed new rule for each year of the first five years that it will be in effect, as well as the analysis required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses or micro-businesses subject to the proposed rule, project the economic impact of the rule on small businesses and micro-businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. The analysis must consider: if consistent with the health, safety, and environmental and economic welfare of the state, using regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses and micro-businesses. The state agency must include in the analysis several proposed methods of reducing the adverse impact of a proposed rule on a small business or a micro-business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is defined as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

The Commission has determined that any increased cost of compliance for LNG licensees or certificate holders, regardless of their status as a small business or micro-business, will be incurred only if the licensee or certificate holder violates Commission rules, and therefore the penalty amounts can be viewed an avoidable cost. Based on the information available to the Commission regarding the entities that are LNG licensees or certificate holders, Mr. Osterhaus concludes that it is extremely likely that a business that potentially could be affected by the proposed new rule would be classified as a small business or micro-business, as those terms are defined in Texas Government Code, §2006.001. The North American Industrial Classification System (NAICS) sets forth categories of business types; sellers and dealers of LNG fall within the category for direct selling establishments. This category is listed on the Texas Comptroller of Public Accounts website page entitled "HB 3430 Reporting Requirements-Determining Potential Effects on Small Businesses" as business type 4543 (Direct Selling Establishments), for which there are listed 618 companies in Texas. This source further indicates that 587 companies (94.98%) are small businesses or micro-businesses as defined in Texas Government Code, §2006.002.

The Commission has also determined that a regulatory flexibility analysis is not required because a licensee or certificate holder will incur costs for administrative penalties if the licensee or certificate holder violates Commission rules, and therefore the penalty amounts can be viewed as an avoidable cost. Further, the Commission has determined that administering the statutory provisions related to penalties for violations of Texas Natural Resources Code, Chapter 116, and the Commission's LNG rules, requires that the penalty amounts imposed be punitive. Minimizing the adverse impacts on small businesses and micro-businesses of administrative penalties assessed for violations of the statute or Commission rules is not consistent with the health, safety, and environmental and economic welfare of the state.

The Commission finds that the proposed new rule likely would not affect a local economy. Therefore, the Commission has not prepared a local employment impact statement pursuant to Texas Government Code, §2002.022.

The Commission has determined that the proposed new rule is not a major environmental rule, because the rule does not meet the requirements set forth in Texas Government Code, §2001.0225(a). The proposed rule does not exceed the express requirements of state law, and is not being adopted solely under the general powers of the agency.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Monday, March 12, 2012, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal as well as an online comment form will be available on the Commission's web site no later than the day after the open meeting at which the Commission approves publication of the proposal, giving interested persons over two additional weeks to review, analyze, draft, and submit comments. Comments should refer to LP-Gas Docket No. 02310. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Osterhaus at (512) 463-6692. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the new rule under Texas Natural Resources Code, §81.0531, which provides that if a person violates provisions of Texas Natural Resources Code, Title 3, which pertain to safety or the provisions of a rule, order, license, permit, or certificate which pertain to safety and are issued under this title, the person may be assessed a penalty by the Commission; Texas Natural Resources Code, §116.012, which authorizes the Commission to adopt rules and standards relating to liquefied natural gas activities to protect the health, welfare, and safety of the general public, and §116.013, which authorizes the Commission to adopt by reference, in whole or in part the published codes of nationally recognized societies as standards to be met in the design, construction, fabrication, assembly, installation, use, and maintenance of CNG or LNG components and equipment.

Statutory authority: Texas Natural Resources Code, §§81.0531, 116.012 and 116.013.

Cross-reference to statute: Texas Natural Resources Code, §§81.0531, 116.012, and 116.013.

Issued in Austin, Texas on January 24, 2012.

§14.2015. Penalty Guidelines for LNG Safety Violations.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging licensees and certificate holders to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank LNG-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

(b) Only guidelines. This section complies with the requirements of Texas Natural Resources Code, §81.0531. The penalty amounts contained in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas and liquefied natural gas; of rules, orders, licenses, permits, or certificates relating to LNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties. The typical minimum penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas and liquefied natural gas; of rules, orders, licenses, permits, or certificates relating to LNG safety adopted or issued under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.

(d) Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations, including the number of previous violations;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory maximum. Typical penalties for violations of provisions of Texas Natural Resources Code, Title 3, Chapter 116, relating to compressed natural gas and liquefied natural gas; of rules, orders, licenses, permits, or certificates relating to LNG safety adopted under those provisions; and of regulations, codes, or standards that the Commission has adopted by reference, are set forth in Table 1.
Figure: 16 TAC §14.2015(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual safety hazards, or that result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation, as shown in Table 2.
Figure: 16 TAC §14.2015(f)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §14.2015(g)
Figure 2: 16 TAC §14.2015(g)

(h) Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic penalty amount requested and not to any requested enhancements.

(i) Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes, but is not limited to, actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation or to mitigate the consequences of a violation.

(j) Other sanctions. Depending upon the nature of and the consequences resulting from a violation of the rules in this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §14.2015(k)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200322
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1295

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CHAPTER 18. UNDERGROUND PIPELINE DAMAGE PREVENTION

16 TAC §18.12

The Railroad Commission of Texas (Commission) proposes to amend §18.12, relating to Penalty Guidelines, to add new violations to the current list, to increase penalty amounts for some violations, and to include provisions for penalty enhancements for certain types of violations. On October 25, 2011, the Commission authorized staff to draft proposed amendments to implement guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; or the provisions of a rule or standard adopted or an order issued under any of these statutes, as they pertain to underground pipeline damage prevention. During the 82nd Legislative Session, the Sunset Commission recommended that the Commission adopt its penalty guidelines in rule form, and that the rule should assign penalties to violations based on their risk and severity. With the proposed amendments, the Commission seeks to align all penalty guidelines with existing Pipeline Safety penalty guidelines, creating consistency and transparency agency-wide.

Proposed new wording in subsection (a) states the Commission's policy on compliance and enforcement. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators, excavators, and other persons to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank underground pipeline damage prevention-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment

of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program.

Proposed new subsection (b) is reworded from existing wording in subsection (a) and will continue to provide that the penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of the requirements of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; or the provisions of a rule or standard adopted or an order issued under any of these statutes, as they pertain to underground pipeline damage prevention.

The Commission proposes new subsection (c), pertaining to Commission authority. As proposed, the subsection provides that the establishment of the penalty guidelines in no way limits the Commission's authority and discretion to cite violations and assess administrative penalties. The typical penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; and Texas Utilities Code, §121.201, and the provisions of a rule or standard adopted or an order issued under those statutes and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

Proposed subsection (d) is re-designated from current subsection (b); this subsection will continue to provide that the amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the person's history of previous violations or formal warnings, including the number of previous violations or formal warnings; the seriousness of the violation and of any pollution resulting from the violation; any hazard to the health or safety of the public; the degree of culpability; the demonstrated good faith of the person charged; and any other factor the Commission considers relevant, including but not limited to the number of locate requests received and responded to by an operator and the number of location notifications given by an excavator in the previous year.

The Commission proposes to add a new subsection (e) regarding typical penalties for violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012, and Texas Utilities Code, §121.201, relating to excavation in the vicinity of an underground pipeline, and for violations of a rule or standard adopted or an order issued under those statutes relating to excavation in the vicinity of an underground pipeline; the typical penalty amounts are set forth in Table 1. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. As proposed, Table 1 is similar to the table in existing subsection (e), but differs in that it does not include penalty enhancements, which the Commission proposes to set out in separate tables. In addition, the Commission proposes new penalties for failure to refresh an expired locate ticket ($1,000); failure to plan excavation to avoid damage or take reasonable steps to protect pipelines ($1,000); failure to confirm valid locate ticket ($1,000); failure to notify notification center for excavation activity after an emergency notice and the emergency condition ceased to exist ($1,000); failure to record and/or retain protocol agreement ($1,000); and failure of excavator to report pipeline damage to the operator ($2,000). The Commission also proposes to increase the typical penalties for some violations: failure to comply with Chapter 18 (from $1,000 to $2,500); failure to notify notification center (from $1,000 to $2,500); failure to mark excavation area or pipeline properly (from $1,000 to $2,500); failure to excavate with reasonable care within a tolerance zone (from $1,000 to $2,500); and failure to submit a Texas Damage Reporting Form (from $1,000 to $2,000). Finally, in Table 1, the Commission proposes to clarify the wording for some of the specific violations.

The Commission proposes to add a new subsection (f) relating to typical penalty enhancements for certain violations. These enhancements mirror those already in place for violations of Chapter 8 of this title, relating to Pipeline Safety Regulations. For violations that involve threatened or actual pollution, result in threatened or actual safety hazards, or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The typical enhancement may be in any amount in the range shown for each type of violation as shown in Table 2. For violations that involve threatened or actual pollution of a bay estuary or marine habitat, or that result in pollution in any location, the typical penalty enhancement would be $5,000 to $25,000. The same penalty enhancement range would apply to violations involving a threatened or actual safety hazard that results in death or personal injury; an impact to a residential or public area; a reportable incident or accident; any hazard to the health or safety of the public; and the increasing seriousness of the violation. A typical penalty enhancement of up to double the total penalty would apply to reckless conduct, and up to triple the total penalty for intentional conduct.

The Commission proposes to add a new subsection (g) relating to typical penalty enhancements for certain violators. These enhancements are similar to those already in place for violations of Chapter 8 of this title, relating to Pipeline Safety Regulations. For violations in which the person charged has a history of prior violations or warnings within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement would be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 of this subsection are intended to be used separately. Either guideline may be used where applicable, but not both.

In Table 3, the typical penalty enhancements are based on the number of prior violations or warnings within the previous seven years. For one prior violation or warning, the typical enhancement amount is double the penalty amount. For more than two but fewer than five prior violations or warnings, the typical enhancement amount is triple the penalty amount. For more than five but fewer than ten prior violations or warnings, the typical enhancement amount is four times the penalty amount. For ten or more prior violations or warnings, the typical enhancement amount is five times the penalty amount.

In Table 4, the typical penalty enhancements are based on the total dollar amount of prior penalties assessed within the previous seven years. If the prior penalties are less than $10,000, the typical enhancement amount is $1,000. For prior penalty amounts that total between $10,001 and $25,000, the typical enhancement amount is $2,500. For prior penalty amounts that total between $25,001 and $50,000, the typical enhancement

amount is $5,000. For prior penalty amounts that total between $50,001 and $100,000, the typical enhancement amount is $10,000. For prior penalty amounts that exceed $100,000, the typical enhancement amount is 10% of the total amount.

The Commission proposes to re-designate current subsections (c), (d), and (e) as subsections (h), (i), and (j), respectively, with no change to the current wording other than to add headings.

The Commission proposes to add a new subsection (k) that contains a new penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the typical amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction. Lines 1 through 21 of the table list specific conduct that is considered a violation of the rules in Chapter 18, show the specific rule or rules governing the conduct, the recommended penalty amount, and leave a space to insert the recommended penalty amount, if any. Line 22 is a subtotal line, and line 23 is where any adjustment for settlement before hearing may be made. Line 24 is another subtotal; and lines 25 through 30 show penalty enhancements which may be added if the violation threatened or resulted in actual pollution or a safety hazard. Line 31 is for penalty enhancements because of the seriousness of the violation. Line 32 is another subtotal line; lines 33 and 34 are for penalty enhancements for reckless or intentional conduct. Lines 35 through 38 are for penalty enhancements based on the number of prior violations or warnings within the previous seven years. Lines 39 through 43 are for penalty enhancements based on the total amount of penalties assessed within the previous seven years. Line 44 is a subtotal line. Line 45 is where any adjustment for the demonstrated good faith of the person charged may be made; and line 46 is the total recommended penalty.

Mary ("Polly") Ross McDonald, Director, Pipeline Safety Division, has determined that for each of the first five years the proposed amendments will be in effect, there will be no fiscal implications for state government. The Pipeline Safety Division currently administers the Damage Prevention Program, including the citation of violations and the assessment of administrative penalties. Ms. McDonald anticipates that there will be additional assistance required from the Commission's Information Technology Division (ITS) to make changes and additions to the damage prevention data collection program to add new violations and to amend wording and/or change the penalty amounts on existing violations. ITS has estimated 1,199 total hours will be required to build a new database, create forms, queries, and reports, with a total projected one-time cost of $97,000. There will be no fiscal implication for the Railroad Commission because these programming changes will be handled as part of a general IT programming effort that is being funded by a grant.

Ms. McDonald anticipates also that there will be no fiscal implications for at least one other state governmental entity that is required to comply with the Commission's damage prevention rules. Specifically, Texas Department of Transportation (TXDOT) maintenance crews operate as excavators in the vicinity of pipelines and thus are required to comply with the proposed amended rule. Currently, TXDOT employees performing certain activities and certain TXDOT contractors performing specific types of work in TXDOT rights of way are not required to provide notice of an excavation that exceeds a depth of 16 inches. Commission data show that TXDOT has not been penalized for violating the Commission's damage prevention rules and because that agency is complying with the rule as currently written, it seems unlikely that changes in penalty amounts would affect that agency.

Ms. McDonald has also determined that for each of the first five years the proposed amendments will be in effect, there will be fiscal implications for local governments. Local governments, such as municipalities that own and operate natural gas distribution systems, are required to mark their underground pipeline facilities in accordance with the marking requirements of the proposed amendments. In addition, local governments, such as counties with maintenance crews that may excavate in the vicinity of underground pipelines, are required to comply with the rules for excavation projects that exceed a depth of 16 inches. Commission damage prevention data show that local governments have been cited for violating the damage prevention rules and have paid amounts to settle enforcement actions. It is not possible to anticipate the type or number of violations that a local government might commit; whether any of those violations could or would be subject to penalty enhancements; or whether a local government might elect not to settle an enforcement action in exchange for a reduced penalty amount.

Ms. McDonald further anticipates that for the first year of the first five years that the proposed amendments will be in effect, enforcement of the penalty provisions may result in an increase in revenue to state government as new or increased penalties are assessed for violations. However, even though the proposed amendments add new violations and increase the typical penalties for others, if the number and/or type of violation changes, total penalty revenue could decrease. It is not possible to estimate the amount of the revenue, and whether that is an increase or decrease to current revenue, because the amount of penalty revenue will be entirely dependent on the extent of compliance or non-compliance with the proposed amendments. Ms. McDonald acknowledges that the revenue to the state derived from penalty payments could decrease as persons who are already familiar with the rules recognize the additional violations and increased typical penalties for some violations and conform their conduct accordingly. The increased revenue to the state will not be revenue for the Railroad Commission; under Texas Natural Resources Code, §81.0531, revenue derived from administrative penalties is deposited to the State General Revenue Fund.

Ms. McDonald has also determined that for each year of the first five years the proposed amendments will be in effect, the public benefit anticipated as a result of enforcing the amendments will be an improvement in safety due to an increased awareness of both the importance of using safe excavation practices and the potential penalties associated with not doing so. By establishing typical penalty amounts for additional violations of the damage prevention rules and increasing the typical penalties for some current violations, the Commission finds that the proposed amendments could result in a significant reduction in the number of incidents of excavation damage to underground pipelines and a corresponding increase in public safety.

Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, directs that, as part of the rulemaking process, a state agency prepare an economic impact statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Entities that perform activities under the jurisdiction of the Commission are not required to report to the Commission the number of their employees or their annual gross receipts, which are elements of the definitions of "micro-business" and "small business" in Texas Government Code, §2006.001; therefore, the Commission has no factual bases for determining whether any persons engaged in activities associated with excavation in the vicinity of underground pipelines will be classified as small businesses or micro-businesses, as those terms are defined. Specifically, Texas Government Code, §2006.001(2), defines a "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. Texas Government Code, §2006.001(1), defines "micro-business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has not more than 20 employees. The Commission expects that there are entities engaged in activities associated with excavation in the vicinity of underground pipelines that fall within the definition of a small business or micro-business.

The Commission anticipates no adverse economic effect on small businesses, micro-businesses, or individuals, primarily because the proposed amendments do not alter the current requirements imposed under Texas Utilities Code, Chapter 251, that an excavator request the location of underground lines 48 hours prior to commencing excavation activities that has been the law for 12 years, and with the requirements of Chapter 18 that excavators and operators have been required to comply with since September 1, 2007. The proposed amendments would add violations to the penalty guidelines and would increase the typical penalty amounts for some violations. Entities that are required to comply with the Chapter 18 rules will be able to avoid all adverse financial effects by complying with those rules. In addition, the Commission has determined that because the purpose of the proposed amendments is to improve the safety of excavation activities in the vicinity of underground pipelines, it is not feasible to reduce any economic impact of the rules. Damage to underground pipelines is dangerous regardless of whether the violator is a large corporation, a small business, a micro-business, or an individual. The proposed amendments do allow the Commission to impose monetary penalties on entities that violate the rules; these are intended to deter non-compliance and, to be an effective deterrent, the penalty amounts must be punitive. The economic consequences can be avoided by compliance with the rules.

Pursuant to Texas Government Code, §2001.022, the Commission has determined that the proposed amendments in Chapter 18 will not affect any local economy; therefore, no local employment impact statement is required.

Pursuant to Texas Government Code, §2001.0225, the Commission has determined that the proposed amendments in Chapter 18 are not major environmental rules and therefore no regulatory analysis under that section is required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Monday, March 12, 2012, which is 31 days after publication in the *Texas Register.* Comments should refer to GUD Docket No. 10130. The Commission has determined that a 30-day comment period provides interested persons a reasonable opportunity to submit data, views, or arguments, orally or in writing, as required by Texas Government Code, §2001.029(a), because although the proposal will not be published in the *Texas Register* until Friday, February 10, 2012, the event that initiates the formal comment period, the text of this rule proposal, including the preamble, will be posted on the Commission's web site beginning no later than the day following the day the Commission approves publication of the proposal in the *Texas Register,* giving interested persons over two additional weeks to review and analyze the proposal and to draft and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Polly McDonald at (512) 463-7008 or Kendall Smith, Deputy Director, Damage Prevention, at (512) 463-7047. The status of Commission rulemakings in progress is available at http://www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments pursuant to the authority of the Commission under Texas Natural Resources Code, §81.0531, Texas Natural Resources Code, §117.012, and Texas Utilities Code, §121.201. Texas Natural Resources Code, §81.0531, gives the Commission authority to assess a penalty if a person violates provisions of Texas Natural Resources Code, Title 3, that pertain to safety or the prevention or control of pollution or the provisions of a rule order, license, permit, or certificate that pertain to safety or the prevention or control of pollution that are issued under Title 3. Texas Natural Resources Code, §117.012, provides that the Commission shall adopt rules that include safety standards for and practices applicable to the intrastate transportation of hazardous liquids or carbon dioxide by pipeline and intrastate hazardous liquid or carbon dioxide pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches. Texas Utilities Code, §121.201(a)(1), states that the Commission may by rule prescribe or adopt safety standards for the transportation of gas and for gas pipeline facilities, including safety standards related to the prevention of damage to such a facility resulting from the movement of earth by a person in the vicinity of the facility, other than movement by tillage that does not exceed a depth of 16 inches. In addition, the Commission is acting under the authority delegated by Texas Health and Safety Code, §756.126. This provision states that the Commission shall adopt and enforce safety standards and best practices, including those described by 49 U.S.C. §6105, *et seq.,* relating to the prevention of damage by a person to a facility under the jurisdiction of the Commission.

Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; and Texas Health and Safety Code, §756.126, are affected by the proposed amendments.

Statutory authority: Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; and Texas Health and Safety Code, §756.126.

Cross-reference to statute: Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; and Texas Health and Safety Code, §756.126.

Issued in Austin, Texas on January 24, 2012.

§18.12. Penalty Guidelines.

(a) Policy. Improved safety and environmental protection are the desired outcomes of any enforcement action. Encouraging operators, excavators, and other persons to take appropriate voluntary corrective and future protective actions once a violation has occurred is an effective component of the enforcement process. Deterrence of violations through penalty assessments is also a necessary and effective component of the enforcement process. A rule-based enforcement penalty guideline to evaluate and rank underground pipeline damage prevention-related violations is consistent with the central goal of the Commission's enforcement efforts to promote compliance. Penalty guidelines set forth in this section will provide a framework for more uniform and equitable assessment of penalties throughout the state, while also enhancing the integrity of the Commission's enforcement program. [~~The penalty amounts shown in the table in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of the requirements of this chapter. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case.~~]

(b) Only guidelines. The penalty amounts shown in the tables in this section are provided solely as guidelines to be considered by the Commission in determining the amount of administrative penalties for violations of the requirements of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; Texas Utilities Code, §121.201; or the provisions of a rule or standard adopted or an order issued under any of these statutes, as they pertain to underground pipeline damage prevention.

(c) Commission authority. The establishment of these penalty guidelines shall in no way limit the Commission's authority and discretion to cite violations and assess administrative penalties. The typical penalties listed in this section are for the most common violations cited; however, this is neither an exclusive nor an exhaustive list of violations that the Commission may cite. The Commission retains full authority and discretion to cite violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012; and Texas Utilities Code, §121.201, and the provisions of a rule or standard adopted or an order issued under those statutes and to assess administrative penalties in any amount up to the statutory maximum when warranted by the facts in any case, regardless of inclusion in or omission from this section.

(d) [~~(b)~~] Factors considered. The amount of any penalty requested, recommended, or finally assessed in an enforcement action will be determined on an individual case-by-case basis for each violation, taking into consideration the following factors:

(1) the person's history of previous violations or formal warnings, including the number of previous violations or formal warnings;

(2) the seriousness of the violation and of any pollution resulting from the violation;

(3) any hazard to the health or safety of the public;

(4) the degree of culpability;

(5) the demonstrated good faith of the person charged; and

(6) any other factor the Commission considers relevant, including but not limited to the number of locate requests received and responded to by an operator and the number of location notifications given by an excavator in the previous year.

(e) Typical penalties. Regardless of the method by which the typical penalty amount is calculated, the total penalty amount will be within the statutory limit. Typical penalties for violations of Texas Health and Safety Code, §756.126; Texas Natural Resources Code, §117.012, and Texas Utilities Code, §121.201, relating to excavation in the vicinity of an underground pipeline and for violations of a rule or standard adopted or an order issued under those statutes relating to excavation in the vicinity of an underground pipeline are set forth in Table 1.
Figure: 16 TAC §18.12(e)

(f) Penalty enhancements for certain violations. For violations that involve threatened or actual pollution; result in threatened or actual safety hazards; or result from the reckless or intentional conduct of the person charged, the Commission may assess an enhancement of the typical penalty. The enhancement may be in any amount in the range shown for each type of violation as shown in Table 2.
Figure: 16 TAC §18.12(f)

(g) Penalty enhancements for certain violators. For violations in which the person charged has a history of prior violations or warnings within seven years of the current enforcement action, the Commission may assess an enhancement based on either the number of prior violations or the total amount of previous administrative penalties, but not both. The actual amount of any penalty enhancement will be determined on an individual case-by-case basis for each violation. The guidelines in Tables 3 and 4 are intended to be used separately. Either guideline may be used where applicable, but not both.
Figure 1: 16 TAC §18.12(g)
Figure 2: 16 TAC §18.12(g)

(h) [~~(c)~~] Penalty reduction for settlement before hearing. The recommended monetary penalty for a violation may be reduced by up to 50% if the person charged agrees to a settlement before the Commission conducts an administrative hearing to prosecute a violation. Once the hearing is convened, the opportunity for the person charged to reduce the basic monetary penalty is no longer available. The reduction applies to the basic monetary penalty amount requested and not to any requested enhancements.

(i) [~~(d)~~] Demonstrated good faith. In determining the total amount of any monetary penalty requested, recommended, or finally assessed in an enforcement action, the Commission may consider, on an individual case-by-case basis for each violation, the demonstrated good faith of the person charged. Demonstrated good faith includes but is not limited to actions taken by the person charged before the filing of an enforcement action to remedy, in whole or in part, a violation of the rules in this chapter or to mitigate the consequences of a violation of the rules in this chapter.

(j) [~~(e)~~] Other sanctions. Depending upon the nature of and the consequences resulting from a violation of this chapter, the Commission may impose a non-monetary penalty, such as requiring attendance at a safety training course, or may issue a warning.
[~~Figure: 16 TAC §18.12(e)~~]

(k) Penalty calculation worksheet. The penalty calculation worksheet shown in Table 5 lists the typical penalty amounts for certain violations; the circumstances justifying enhancements of a penalty and the amount of the enhancement; and the circumstances justifying a reduction in a penalty and the amount of the reduction.
Figure: 16 TAC §18.12(k)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200327
Mary Ross McDonald
Director, Pipeline Safety Division
Railroad Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

The Public Utility Commission of Texas (commission) proposes an amendment to §26.412, relating to the Lifeline Service Program, the repeal of the current §26.403, relating to Texas High Cost Universal Service Plan (THCUSP), and new §26.403, relating to Texas High Cost Universal Service Plan (THCUSP). The amendments and new section are made to conform with Senate Bill 980 and House Bill 2295 of the 82nd Legislature, Regular Session, enacted in 2011. Additionally, the amendments and new section are proposed to comply with current §26.403(g), which requires a review of the THCUSP within 90 days of the Federal Communications Commission's (FCC) adoption of an order implementing new or amended federal universal service support rules for rural, insular, and high cost areas. The FCC released such an order on November 18, 2011 in WC Docket No. 05-337. Project Number 39937 is assigned to this proceeding.

The proposed new §26.403 provides for a reduction in THCUSP support over a four-year period that is equal to the amount of additional revenue that each telecommunications provides calculates will be generated if that telecommunications provider were to charge a reasonable rate, as determined by the commission, for basic local telecommunications service to all residential customers.

Dr. Mark Bryant, Wholesale Market Economist, Competitive Markets Division, has determined that for each year of the first five-year period the proposed sections are in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Dr. Bryant has determined that for each year of the first five years that the sections are in effect, the public benefit anticipated as a result of enforcing the sections will be compliance with Senate Bill 980 and House Bill 2295. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing the sections. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking if requested pursuant to the APA, Texas Government Code §2001.029, at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for public hearing must be received by Thursday, March 1, 2012.

Comments on the proposal may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Thursday, March 1, 2012. Reply comments may be submitted by Friday, March 16, 2012. When commenting on the proposed sections, the commission is particularly interested in receiving specific, quantified estimates of how the proposed sections or any suggested amendments or alternatives to them will impact future disbursements from the Texas Universal Service Fund, and correspondingly, quantifications of the anticipated impact of the proposed sections or any suggested amendments or alternatives to them on customer rates. Sixteen copies of comments on the proposed sections and reply comments are required to be filed pursuant to §22.71(c) of this title. Comments and reply comments should be organized in a manner consistent with the organization of the sections. All comments should refer to Project Number 39937.

16 TAC §26.403

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Public Utility Commission of Texas or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

Cross Reference to Statutes: PURA §14.002, Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

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

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200429
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 936-7223

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16 TAC §26.403, §26.412

The new section and amendment are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

Cross Reference to Statutes: PURA §14.002, Senate Bill 980 of the 82nd Legislature, Regular Session and House Bill 2295 of the 82nd Legislature, Regular Session, which amended PURA §56.021.

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

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

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

(1) Benchmark--The per-line amount above which THCUSP support will be provided.

(2) Business line--The telecommunications facilities providing the communications channel that serves a single-line business customer's service address. For the purpose of this definition, a single-line business line is one to which multi-line hunting, trunking, or other special capabilities do not apply.

(3) Eligible line--A residential line or a single-line business line over which an ETP provides the service supported by the THCUSP through its own facilities, purchase of unbundled network elements (UNEs), or a combination of its own facilities and purchase of UNEs.

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

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

(c) Application. This section applies to telecommunications providers that have been designated ETPs by the commission pursuant to §26.417 of this title.

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

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

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

(B) tone dialing service;

(C) access to operator services;

(D) access to directory assistance services;

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

(F) telecommunications relay service;

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

(H) availability of an annual local directory;

(I) access to toll services; and

(J) lifeline service.

(2) Subsequent determinations.

(A) Initiation of subsequent determinations.

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

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

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

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

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

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

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

(e) Criteria for determining amount of support under THCUSP. The commission shall determine the amount of per-line support to be made available to ETPs in each eligible wire center. The amount of support available to each ETP shall be calculated using the base support amount as of the effective date of this section and applying the annual reductions as described in this subsection.

(1) Determining base support amount available to ETPs. The initial annual base support amount for an ETP shall be the annualized monthly THCUSP support amount as of the effective date of this section, less the annualized amount of support received by the ETP from the federal universal service fund. The initial per-line monthly support amount for a wire center shall be the monthly per-line support amount for the wire center as of the effective date of this section, less each wire center's pro rata share of the total monthly support received by the ETP from the federal universal service fund. The initial annual base support amount shall be reduced annually as described in paragraph (3) of this subsection.

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

(3) Annual reductions to THCUSP base support and per-line support recalculation. As part of the contested proceeding referenced in paragraph (2) of this subsection, each ETP shall calculate the amount of additional revenue that would result if the ETP were to charge the reasonable rate for basic local telecommunications service to all residential customers. Without regard to whether an ETP increases its rates for basic local telecommunications service to the reasonable rate, the ETP's annual base support shall be reduced on January 1 of each year for four consecutive years, with the first reduction occurring on January 1, 2013. The ETP's annual base support amount shall be reduced by 25% of the additional revenue calculated pursuant to this paragraph in each year of the transition period. This reduction shall be accomplished by reducing support for each wire center served by the ETP proportionally.

(4) Review of Support Amounts. The commission may review the amount of support provided to ETPs by the THCUSP at any time, upon its own motion or upon the motion of any affected party or commission staff.

(5) Limitation on availability of THCUSP support.

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

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

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

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

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

(B) the rate that the ETP is charging for residential and single-line business customers for the services described in subsection (d) of this section; and

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

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

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

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

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

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

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

§26.412. Lifeline Service Program.

(a) - (e) (No change.)

(f) Lifeline support and recovery of support amounts.

(1) Lifeline discount amounts. All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers:

(A) - (E) (No change.)

(F) Additional Texas High Cost Universal Service Plan (THCUSP) ILEC Area Discount--

(i) Beginning January 1, 2009, Lifeline providers operating in the service areas of Southwestern Bell Telephone Company d/b/a AT&T Texas, GTE Southwest Incorporated d/b/a Verizon Southwest, Central Telephone Company d/b/a Embarq, United Telephone Company d/b/a Embarq, and Windstream Communications Southwest, or their successors, (collectively, THCUSP ILECs) shall provide a reduction (THCUSP ILEC Area Discount) equal to 25% of any actual increase by a THCUSP ILEC to its residential basic network service rate that occurs in a THCUSP ILEC's Public Utility Regulatory Act (PURA) Chapter 58 regulated exchanges and is consistent with the Unanimous Settlement Agreement filed on April 8, 2008, and adopted by the commission in its Order filed on April 25, 2008, in Docket Number 34723, *Petition for Review of Monthly Line Support Amounts from the Texas High Cost Universal Service Plan, Pursuant to PURA §56.031 and P.U.C. Subst. R. §26.403* (Rate Increase) and with §26.403 of this title (relating to Texas High Cost Universal Service Plan (THCUSP)) adopted by the commission in Project Number 39937, *Rulemaking to Consider Amending Substantive Rule §26.403, Relating to the Texas High Cost Universal Service Plan and Substantive Rule §26.412, Relating to the Lifeline Service Program.*

(ii) - (vi) (No change.)

(2) (No change.)

(g) (No change.)

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200430
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 936-7223

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER II. EDUCATIONAL AIDE EXEMPTION PROGRAM

19 TAC §§21.1083 - 21.1086

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§21.1083 - 21.1086, concerning the Educational Aide Exemption Program. Specifically, the amendments to §21.1083 are proposed to bring program rules into compliance with provisions of Senate Bill 1, 82nd Legislature, First Special Session, which indicate that new persons entering the program in fall 2012 or later must be enrolled in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in Texas. Subsequent paragraphs in the section are renumbered accordingly. The amendment to §21.1084(c) clarifies that the provisions of that subsection will only apply if funding is provided for reimbursing institutions and the funding amount is not enough to cover all awards. The amendment to §21.1085(b)(2) clarifies that the student is to be reimbursed for the relevant tuition and fee charges if the institution chooses to make the exemption after the student has paid the charges. Amendments to §21.1085(c) indicate the Coordinating Board will not distribute application forms to colleges and students, but rather will post the summer and fall/spring applications on its website for the colleges to download and provide their students; that the colleges are not to make spring term awards unless they have confirmation from the relevant school districts that the students are to be employed for that term; and that the summer application will be posted on the Coordinating Board's website by March 1 of each year. Amendments to the title of §21.1086 and to §21.1086(b) and (c) indicate that the provisions of this section will come into play only if funds are made available for reimbursing institutions for the costs of the exemptions.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amended sections will be a clearer understanding of the requirements and restrictions of benefits under this subchapter. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under Texas Education Code, §54.363, formerly §54.214(e), which authorizes the Coordinating Board to adopt rules to administer the Educational Aide Exemption Program.

The amendments affect Texas Education Code, §54.363, formerly §54.214.

§21.1083. Eligible Students.

To receive an award through the Educational Aide Exemption Program, a student must:

(1) - (4) (No change.)

(5) if he or she received an exemption through this subchapter prior to the fall 2012 semester, be enrolled in courses required for teacher certification at the institution granting an exemption under this subchapter or (if enrolled in lower-level course-work), sign a statement indicating an intention to become certified as a teacher and teach in Texas;

(6) if he or she received his or her first award through this subchapter in fall 2012 or later, be enrolled at the institution granting an exemption under this subchapter in courses required for teacher certification in one or more subject areas determined by the Texas Education Agency to be experiencing a critical shortage of teachers at the public schools in this state;

(7) [~~(6)~~] meet the academic progress standards of the institution;

(8) [~~(7)~~] follow application procedures and schedules as indicated by the Board;

(9) [~~(8)~~] have a statement on file with the institution of higher education indicating the student is registered with the Selective Service System as required by federal law or is exempt from Selective Service registration under federal law; and

(10) [~~(9)~~] apply for an exemption by the end of the term for which the exemption is to apply.

§21.1084. The Application and Awarding Process.

(a) - (b) (No change.)

(c) If only limited funds are available [~~funds are limited~~]:

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

§21.1085. Award Amounts and Processing Cycle.

(a) (No change.)

(b) Form of Award - Exemption or Reimbursement.

(1) (No change.)

(2) If applications are processed and/or announced too late for the student to be exempted from such payments at registration, the student may be required to pay these charges first, and then be reimbursed by the institution [~~once reimbursement funds are received from the Board~~].

(c) Unique Requirements for Each Term.

(1) Fall awards are made on the basis of the original fall/spring application that will be posted on the Coordinating Board's website for institutions to download and provide to students.

(2) Spring awards are based on the original fall/spring application. If the student was not a recipient during the fall term, the original application functions as a stand-alone spring application. If the applicant also received a fall award, the spring award shall not be granted [~~requested~~] by the institution until the school or school district confirms to the institution that it will still be employing the applicant in the spring term.

(3) Summer awards are to be based on a summer application that will be posted on the Coordinating Board's website for institutions to download and provide to students [~~that will be distributed only upon confirmation that there is funding available for summer awards~~]. Institutions and school districts will be advised by the Board of the availability of the summer application [~~funds~~] by March 1 of each year. [~~At that time, the Board will distribute copies of the summer application and instructions to institutions and school districts.~~]

§21.1086. Reimbursements for Institutions if Funds are Available.

(a) (No change.)

(b) Requesting Reimbursements. If funds are available, in order to [~~To~~] request reimbursement for student awards, an institution [~~institutions~~] must complete and submit a Request for Reimbursement Form designed and distributed by the Board. Such forms must be submitted to the Board with sufficient documentation (student billing information) to confirm that the requests are being made for authorized charges.

(c) Disbursements by the Board. If funds are available, the [~~The~~] Board will process institutional Requests for Reimbursement and will subsequently have appropriate amounts transferred to institutions by the State Comptroller's office. Such funds are to be used by the institutions either to reimburse themselves (if they exempted the students from the payment of the relevant charges) or to reimburse students for the relevant charges they paid to the institution.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200409
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2012
For further information, please call: (512) 427-6114

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SUBCHAPTER SS. EXEMPTION PROGRAM FOR DEPENDENT CHILDREN OF PERSONS WHO ARE MEMBERS OF ARMED FORCES DEPLOYED ON COMBAT DUTY

19 TAC §§21.2270 - 21.2275

The Texas Higher Education Coordinating Board (Coordinating Board) proposes new §§21.2270 - 21.2275, concerning the Exemption Program for Dependent Children of Persons Who Are Members of Armed Forces Deployed on Combat Duty. Specifically, this exemption program is currently found also in §21.2111. Section 21.2111 will be proposed for repeal upon the effective date of the amendments to the Exemption Program for Veterans and their Dependents (the Hazlewood Act) that will be adopted at the Board meeting on January 26, 2012. The decision was made to propose the exemption program for the children of deployed members of the military as stand-alone rules so that they would be easier for people to locate. The new sections include information regarding the authority and purpose for the rules, definitions of terms used in the rules, eligibility requirements, and procedures governing the reimbursement of foregone tuition.

Dan Weaver, Assistant Commissioner for Business and Support Services, has estimated that, for each year of the first five years the new sections are in effect, there will be no fiscal implications to state or local government as a result of enforcing or administering the sections.

Mr. Weaver has also determined that, for each year of the first five years the new sections are in effect, the public benefits anticipated as a result of administering the sections will be increased participation by the dependent children of veterans who are deployed on active duty. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The new sections are proposed under the Texas Education Code, §54.2031(i), which provide the Coordinating Board with the authority to adopt any rules necessary to administer Texas Education Code, §54.2031.

The new sections affect Texas Education Code, §54.2031.

§21.2270. Authority and Purpose.

(a) Authority. The authority for this subchapter is provided in Texas Education Code, §54.2031, relating to an exemption for children of members of the Armed Forces of the United States who are deployed on active duty for the purpose of engaging in a combative military operation outside the United States.

(b) Purpose. The purpose of this subchapter is to provide procedures and criteria for the administration of an exemption program for the children of certain members of the Armed Forces of the United States.

§21.2271. Definitions.

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

(1) Board--The Texas Higher Education Coordinating Board.

(2) Dependent Child--A person who is a stepchild, biological or adopted child of a person and is claimed as a dependent for federal income tax purposes in the previous tax year or will be claimed as a dependent for federal income tax purposes for the current year.

(3) Entitled to pay resident tuition--A person is entitled to pay the resident tuition rate if he or she is a nonresident but is entitled, through a waiver authorized through the Texas Education Code, Chapter 54, Subchapter D to pay the resident tuition rate. Waivers for members of the Armed Forces are located in Texas Education Code, §54.241 (formerly §54.058).

(4) Texas Resident--A person who meets the requirements outlined in Texas Education Code, Chapter 54, Subchapter B, §54.052, to pay the resident tuition rate and therefore be classified as a resident of Texas for higher education purposes.

§21.2272. Tuition Exemption for Children of Military Service Members Who Are Deployed.

To the extent that funds are available for reimbursing institutions for foregone tuition revenues, institutions shall exempt an eligible child from the payment of resident tuition for every semester or academic term (beginning with the 2011 fall semester) for which a child demonstrates that he or she:

(1) is a dependent child of a member of the Armed Forces of the United States who is a Texas resident or entitled to pay resident tuition; and

(2) is a dependent child of a member who is deployed on active duty for the purpose of engaging in a combative military operation outside of the United States.

§21.2273. Eligibility Requirements.

To qualify for an exemption under this subchapter, a person must:

(1) submit satisfactory evidence to the institution that the applicant qualifies for the exemption;

(2) not have received the exemption for more than 150 semester credit hours, including the hours for which the student is currently enrolled; and

(3) not be in default on a loan made or guaranteed for educational purposes by the State of Texas.

§21.2274. Impact on Admissions.

In determining whether to admit a person to any certificate program or any baccalaureate, graduate, postgraduate, or professional degree program, an institution of higher education may not consider the fact that the person is eligible for an exemption under this subchapter.

§21.2275. Reimbursement of Foregone Tuition.

(a) An institution is not required to grant an exemption from the payment of tuition under this section if funding for reimbursing the institution for the revenues foregone is not provided by the Legislature.

(b) If notified by the Board that funds are available, an institution may apply to the Board for reimbursement for the tuition revenues foregone through this exemption.

(c) To the extent to which funds are made available by the Legislature, the Board will provide reimbursements to the institutions.

(d) If the Board determines at any time during a year that the appropriated funds are insufficient to cover the anticipated total of foregone tuition for that year, the Board may defer the processing of requests for reimbursements received after that date and provide institutions a prorated share of the available funds as of the end of the fiscal year.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200410
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2012
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER K. PROVISIONS FOR SCHOLARSHIPS FOR STUDENTS GRADUATING IN THE TOP 10 PERCENT OF THEIR HIGH SCHOOL CLASS

19 TAC §§22.197 - 22.202

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§22.197 - 22.202, concerning Provisions for Scholarships for Students Graduating in the Top 10 Percent of Their High School Class.

Specifically, the amendments to §22.197 remove the capitalization of the word "staff" in paragraphs (3) and (4) and provide a better definition for the term "financial need" as used in this subchapter.

Amendments to §22.198 list requirements that must be met by institutions in order to participate or continue to participate in the program and repercussions for failure to do so. The requirements include such things as exercising no discrimination in the identification of award recipients, maintaining a current agreement with the Coordinating Board to abide by the rules and regulations of the program, notifying the Coordinating Board staff and their students if they are placed on probation by their accrediting agency, maintaining adequate records for the disbursement of funds to eligible students, and meeting all program reporting requirements in a timely manner. The repercussions for failure to follow program requirements include required refunds to the Board of program funds and submission to program reviews.

The amendments to §22.199 clarify the requirements that students receiving an initial Top 10 Percent Scholarship award must meet, including: (1) graduation from a public or private high school in Texas while ranked in the top 10 percent of the graduating class; (2) submission of the Free Application for Federal Student Aid (FAFSA) in time to generate the Central Processing System (CPS) results in a non-rejected status, or the Texas Application for State Financial Aid (TASFA) to the financial aid office, by the deadline set each year by the Coordinating Board; (3) full-time enrollment as of the census date; and (4) registration with Selective Service or being exempt from that registration.

The amendments to §22.200 bring the section title more into alignment with its contents and revise subsection (c) to clarify that each year the Coordinating Board will establish a deadline by which students must submit their FAFSA or TASFA. The amendments also clarify that this deadline defines two "priority" levels of applicants. The Coordinating Board will process vouchers for students in the first "priority" level and then determine if additional funding is available to process vouchers for students in the second "priority" level. Obsolete language in subsection (c) was removed since high schools are no longer responsible for submitting to the Coordinating Board the names and addresses of potential award recipients. New language was added to indicate all awards are for the fall semester or terms only, and that no student may receive more than four awards through the program.

The amendments to §22.201 clarify how students can qualify for continuation awards, which students can qualify for extensions to the four-year award limit, and the documentation that institutions must keep for students granted an extension. The amendments also explain that completing a bachelor's degree terminates a student's eligibility to receive additional awards.

The amendments to §22.202 replace references to "Board Staff" with "Board staff" and clarify the process by which institutions request funds from the Coordinating Board.

Dan Weaver, Assistant Commissioner for Business and Support Services, has determined that for each year of the first five years

the amendments are in effect, there will be no significant fiscal implications to state or local government as a result of enforcing or administering the amended sections.

Mr. Weaver has also determined that for each year of the first five years the amendments are in effect the public benefit anticipated as a result of administering the amended sections will be a clearer understanding of program requirements. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the amendments as proposed. There is no impact on local employment.

Comments on the proposal may be submitted to Dan Weaver, P.O. Box 12788, Austin, Texas 78711; (512) 427-6165; dan.weaver@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, §61.027, which provides the Coordinating Board with general rulemaking authority, and Rider 35 to Article III of the General Appropriations Act of the 82nd Texas Legislature.

The amendments affect Rider 35 to Article III of the General Appropriations Act of the 82nd Texas Legislature, Regular Session, 2011.

§22.197. Definitions.

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

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

(3) Board staff [~~Staff~~]--The staff of the Texas Higher Education Coordinating Board.

(4) Cost of attendance--A Board staff-approved [~~Staff-approved~~] estimate of the expenses incurred by a typical student in attending a particular college. It includes direct educational costs (tuition, fees, books, and supplies) as well as indirect costs (room and board, transportation, and personal expenses).

(5) (No change.)

(6) Financial need--For this program, financial need is determined to exist if the cost of attendance less the expected family contribution less the Pell Grant eligibility amount is greater than zero. The cost of attendance and family contribution are to be determined in accordance with Board guidelines.

(7) - (14) (No change.)

§22.198. ~~[Relevant]~~ Institutions.

(a) Eligibility. [~~The provisions of this subchapter apply to persons attending any Texas institution of higher education.~~]

(1) Each institution of higher education as defined in §22.197 of this title (relating to Definitions) is eligible to participate in the program.

(2) No institution may, on the grounds of race, color, national origin, gender, religion, age, or disability exclude an individual from participation in, or deny the benefits of, the program described in this subchapter.

(3) Each eligible institution must follow the Civil Rights Act of 1964, Title VI (Public Law 88-353) in avoiding discrimination in admissions.

(b) Approval.

(1) Agreement. Each eligible institution must enter into an agreement with the Board, the terms of which shall be prescribed by the Commissioner.

(2) Approval Deadline. An institution must be approved by April 1 in order for qualified students enrolled in that institution to be eligible to receive grants in the following fiscal year.

(c) Responsibilities.

(1) Probation Notice. If the institution is placed on probation by its accrediting agency, it must immediately advise the Board and grant recipients of this condition and maintain evidence in each student's file to demonstrate that the student was so informed.

(2) Disbursements to Students.

(A) Documentation. The institution must maintain records to prove the receipt of program funds by the student or the crediting of such funds to the student's school account.

(B) Procedures in Case of Illegal Disbursements. If the Commissioner has reason for concern that an institution has disbursed funds for unauthorized purposes, Board staff will notify the Program Officer and financial aid officer and request a refund of the improper disbursement or proof that the awards were, indeed, made in keeping with program requirements. If this process does not lead to a resolution to the satisfaction of both parties, the Board will offer an opportunity for a hearing pursuant to the procedures outlined in Chapter 1 of this title (relating to Agency Administration). Thereafter, if the Board determines that funds have been improperly disbursed, the institution shall become primarily responsible for restoring the funds to the Board. No further disbursements of grants or scholarships shall be permitted to students at that institution until the funds have been repaid.

(3) Reporting and Refunds. All institutions must meet Board reporting requirements in a timely fashion. Such reporting requirements include reports of eligible students (new and continuing) as well as program year-end reports and the Financial Aid Database Report.

(4) Program Reviews. If selected for such by the Board, participating institutions must submit to program reviews of activities related to the program.

§22.199. Eligible Students.

To qualify for an initial award through this subchapter, a student must:

(1) have graduated from an accredited public or private high school in Texas while ranked in the top 10 percent of his or her graduating class (based on the student's ranking at the end of his or her seventh semester unless an institution of higher education uses a different semester in determining eligibility for admissions);

(2) have completed the Recommended or Distinguished Achievement High School Program or its equivalent in an accredited high school [~~or its equivalent~~];

(3) complete the Free Application for Federal Student Aid (FAFSA) or the Texas Application for State Financial Aid (TASFA);

(4) have unmet financial need as defined in §22.197(6) of this title (relating to Definitions); [~~when using the formula "Cost of Attendance minus EFC minus Pell Grants;"~~]

(5) be enrolled full time [~~enroll~~] in an institution of higher education in Texas as of the census date of the fall semester immediately following high school graduation;

(6) be classified as a resident of [~~a~~] Texas [~~resident~~]; and

(7) be registered with Selective Service or be exempt [enrolled full-time].

§22.200. Awards [Award Amounts and Notification of Potential Recipients].

(a) (No change.)

(b) Award Amount. Award amounts through this program may not exceed $2,000 unless the student is classified as a junior or senior at a public institution in Texas with a declared major in a shortage field and meets the satisfactory academic progress requirements outlined in §22.201 of this title (relating to Satisfactory Academic Progress), in which case the student may be eligible for a bonus of $2,000 to the extent funds are available [for such]. The total award amount for students with declared majors in shortage fields may not exceed $4,000.

(c) Priority Levels. Each year, the Board will establish a deadline by which students should either have their FAFSA submitted with the generated Central Processing System (CPS) results in a non-rejected status or their TASFA submitted to the financial aid office. Students who meet this deadline are considered "Priority 1" recipients. Those who do not meet this deadline are considered "Priority 2" recipients. The Board will first process vouchers to pay all eligible "Priority 1" recipients. A determination will then be made whether additional funding is available to issue funds to "Priority 2" recipients.

(d) Award Semester or Term. All awards through this program are for the fall semester or term only.

(e) Limit to Number of Awards. Under no circumstances shall a student receive more than four awards.

[(c) Notification of Potential Recipients. Each high school will submit names and addresses of students who may be eligible for the scholarship according to criteria developed by Coordinating Board staff.]

§22.201. Satisfactory Academic Progress.

(a) (No change.)

(b) To [Unless qualifying for an exception in keeping with subsection (d) of this section, to] qualify for an award in a subsequent year, each recipient of the Top 10 Percent Scholarship shall meet the following academic progress requirements as of the end of his or her most recent academic year. Exceptions to these requirements can only be made in keeping with the provisions of subsection (e) of this section:

(1) complete at least 75 percent of the hours attempted in his or her most recent twelve-month academic year, as determined by institutional policies;

(2) complete at least 30 semester credit hours in his or her most recent twelve-month academic year; and

(3) maintain an overall grade-point average of at least 3.25 on a four-point scale or its equivalent for all coursework completed at his or her current institution of higher education (or maintain a 3.00 on a four-point scale at the end of the sophomore and junior years if holding a declared major in a shortage area at the end of those years). A recipient who does not meet the academic progress requirements of his or her institution may not receive an award until the institution has determined that the student has raised his or her academic performance and program requirements have been met.

[(c) For students with declared majors in shortage areas at the end of the sophomore and junior year, each recipient of the Top 10 Percent Scholarship shall meet the following academic progress requirements to qualify for a subsequent award to the extent funds are available for such:]

[(1) complete at least 75 percent of the hours attempted in his or her most recent twelve-month academic year, as determined by institutional policies;]

[(2) complete at least 30 semester credit hours in his or her most recent twelve-month academic year; and]

[(3) maintain an overall grade-point average of at least 3.0 on a four-point scale or its equivalent for all coursework completed at his or her current institution of higher education. A recipient who does not meet the academic progress requirements may not receive an award until the institution has determined that the student has raised his or her academic performance and program requirements have been met.]

(c) [(d)] A grant recipient who is below program grade-point average requirements as of the end of a spring or summer term may appeal his or her grade-point average calculation if he or she has taken courses previously at one or more different institutions. In the case of such an appeal, the current institution (if presented with transcripts from the previous institutions) shall calculate an overall grade-point average, counting all classes and grade points previously earned. If the resulting grade-point average exceeds the program's academic progress requirement, a student may receive an award in the following fall term.

(d) [(e)] A [Unless granted a hardship postponement in accordance with subsection (f) of this section, a] student's eligibility for a Top 10 Percent Scholarship ends four years from the start of the semester or term in which the student received his or her [first disbursement of an] initial [Top 10 Percent] award unless he or she has been granted a hardship extension by the institution in accordance with subsection (e) of this section, or has completed a bachelor's degree, whichever occurs first.

(e) [(f)] In the event of a hardship or for other good cause, the Program Officer [program officer] at an eligible institution may allow an otherwise eligible person to receive a Top 10 Percent Scholarship award while the student's grade-point average, [or] completion rate, and/or number of completed hours fall [falls] below the satisfactory academic progress requirements of subsection [(a) or] (b) of this section. Such conditions may include, but are not limited to[, but include]:

(1) a showing of a severe illness or other debilitating condition that may affect the student's academic performance;

(2) an indication that the student is responsible for the care of a sick, injured, or needy person and that the student's provision of care may affect his or her academic performance; or

(3) the requirement of fewer than twelve hours to complete one's degree plan.

(f) [(g)] The Program Officer [program officer] may grant an extension of the four-year limit [year limits] found in subsection (d) [(e)] of this section in the event of hardship, but no student may receive more than four awards. Documentation justifying the extension must be kept as a part of the student's record. The institution must identify each student granted an extension and the length of the extension so that Board staff can appropriately monitor each student's period of eligibility [in the student's files and the institution must identify students granted extensions and the length of their extensions to the Board Staff so that it may appropriately monitor each student's period of eligibility].

(g) [(h)] Each institution shall adopt a hardship policy under this section and have the policy available in writing in the financial aid office for public review upon request.

§22.202. Processing and Awarding Cycle.

(a) Board staff [~~The Board Staff~~] is responsible for publishing and disseminating general information and program rules for the program described in this subchapter.

(b) (No change.)

(c) Form of Award: Institutional Reimbursement. Institutions shall exempt recipients from the payment of tuition and fees (up to the amount of the scholarship) and then request reimbursement from Board staff [~~the Board Staff~~].

(d) Requesting Reimbursements. To request reimbursement for student awards, institutions must [~~complete and~~] submit separate files of all eligible initial and renewal award recipients to the Board. Information included in these files is used by the Board staff to determine priority funding categories of eligible students. Information concerning the creation and submission of these files will be provided to institutions by Board staff [~~a Request for Reimbursement Form designed and distributed by the Board Staff~~].

(e) Disbursements by Board staff [~~the Board Staff~~]. Board staff [~~The Board Staff~~] will process institutional reimbursement request files [~~Requests for Reimbursement~~] at least once a month and will subsequently have appropriate amounts transferred to institutions or the institutions' fiduciary agents by the State Comptroller's office.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200411
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: April 25, 2012
For further information, please call: (512) 427-6114

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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 61. SCHOOL DISTRICTS
SUBCHAPTER AA. COMMISSIONER'S RULES ON SCHOOL FINANCE

19 TAC §61.1012

The Texas Education Agency (TEA) proposes an amendment to §61.1012, concerning contracts and tuition. The section establishes provisions relating to contracts and tuition for education outside a school district. The proposed amendment would modify the rule to reflect changes in statute made by House Bill (HB) 3646, 81st Texas Legislature, 2009, and to more closely match other existing statutory provisions.

Through 19 TAC §61.1012, adopted to be effective September 7, 2000, the commissioner exercised rulemaking authority relating to contracts and tuition for education outside a school district. In accordance with the Texas Education Code (TEC), §25.039 and §42.106, as those sections existed on September 7, 2000, the rule established definitions, explained tuition charges for transfer students, and described the maximum tuition amount allowed for property value adjustment.

The rule was first amended to be effective March 28, 2004, to reflect changes in statute made by HB 1619, 78th Texas Legislature, 2003. These changes modified the TEC, §25.039 and §42.106, to allow a district to charge tuition at a rate higher than the rate limit established in statute, yet limited a district's tuition-related adjustments to property value to adjustments prescribed by the calculated limit. The rule was last amended to be effective May 4, 2008, to incorporate new elements of the state funding system that were adopted in HB 1, 79th Texas Legislature, Third Called Session, 2006, and delineate the revised tuition calculation to reflect those changes. The amendments permitted a district to continue receiving the adjustment to property values to the extent that the district was reimbursed for its tuition costs. The amendments limited the use of the adjusted property values so that a district was not reimbursed for tuition costs more than once. The amendments also removed several expired provisions and updated references to statutory citations.

The proposed amendment to 19 TAC §61.1012 would reflect changes in statute made by HB 3646, 81st Texas Legislature, 2009. These changes modified the TEC, §42.106, to provide for an allotment instead of a property value adjustment for tuition paid by certain districts. The proposed amendment would also modify the calculation of the tuition limit used to calculate the allotment to more closely match the statutory description of this limit.

The proposed amendment would have no procedural or reporting implications. The proposed amendment would have no locally maintained paperwork requirements.

Shirley Beaulieu, associate commissioner for finance/chief financial officer, has determined that for the first five-year period the amendment is in effect there will be fiscal implications for state and local government. The proposed amendment would change the calculation of the tuition limit that is used in determining the tuition allotment. As a result, the total amount of the tuition allotment paid by the TEA is estimated to fall from $308,540 to $208,817, a savings to the state of $99,722 from the Foundation School Program (FSP) during each year of fiscal years 2012-2016. Affected school districts and open-enrollment charter schools will experience an estimated loss of revenue from FSP funds of $99,722 statewide during each year of fiscal years 2012-2016.

Ms. Beaulieu has determined that for each year of the first five years the amendment is in effect the public benefit anticipated as a result of enforcing the amendment would be to ensure the rule language and the tuition limit that is used in determining the tuition allotments for school districts is based on current law. There is no anticipated economic cost to persons who are required to comply with the proposed amendment.

There is no direct adverse economic impact for small businesses and microbusinesses; therefore, no regulatory flexibility analysis, specified in Texas Government Code, §2006.002, is required.

The public comment period on the proposal begins February 10, 2012, and ends March 12, 2012. Comments on the proposal may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701, (512) 475-1497. Comments may also be submitted electronically to *rules@tea.state.tx.us* or faxed to (512) 463-5337. A request for a public hearing on the proposal submitted under the Administrative Procedure Act must be received by the commissioner of education not more than 14

calendar days after notice of the proposal has been published in the *Texas Register* on February 10, 2012.

The amendment is proposed under the TEC, §25.039 and §42.106, which authorize the commissioner of education to specify by rule the amount of tuition to be paid under contract for education of students outside a district.

The amendment implements the TEC, §25.039 and §42.106.

§61.1012. Contracts and Tuition for Education Outside District.

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

(1) Home district--District of residence of a transferring student.

(2) Receiving district--District to which a student is transferring for the purpose of obtaining an education.

(3) Tuition--Amount charged to the home district by the receiving district to educate the transfer student.

(b) Tuition charge for transfer students. For the purposes of calculating the tuition allotment [~~adjusting the property value~~] of the home district as authorized by the Texas Education Code (TEC), §42.106, the amount of tuition that may be attributed to a home district for a transfer student in payment for that student's education may not exceed an amount per enrollee calculated for each receiving district. The calculated limit applies only to tuition paid to a receiving district for the education of a student at a grade level not offered in the home district. Tuition may be set at a rate higher than the calculated limit if both districts enter a written agreement, but the calculated tuition limit will be used in the calculation of the tuition allotment [~~adjusted property value~~] for the home district. The calculation will use the most currently available data in an ongoing school year to determine the limit that applies to the subsequent school year. For purposes of this section, the number of students enrolled in a district will be appropriately adjusted to account for students ineligible for the Foundation School Program funding and those eligible for half-day attendance.

(1) Calculated tuition limit. Beginning with the limit for the 2012-2013 school year, the calculated tuition limit is the sum of the excess maintenance and operations (M&O) revenue per enrollee and the excess debt revenue per enrollee, as calculated in paragraphs (2) and (3) of this subsection, respectively.

(2) [~~(1)~~] Excess M&O [~~maintenance and operations (M&O)~~] revenue per enrollee. A district's excess M&O revenue per enrollee is defined as the sum of state aid in accordance with the TEC, Chapter 42, Subchapters B, C, and F, plus the state aid generated in accordance with the TEC, §42.2516(b)[~~, and any reductions to state aid made in accordance with TEC, §42.2516(g) and §42.2516(h)~~]. These state aid amounts are added to M&O tax collections, and the sum is divided by enrollment to determine the amount of total state and local revenue per enrolled student. The amount of state aid gained by the addition of one transfer student is subtracted from the total amount of state and local revenue per student to determine the revenue shortfall created by the addition of one student. M&O taxes exclude the local share of any lease purchases funded in the Instructional Facilities Allotment (IFA) as referenced in the TEC, Chapter 46, Subchapter A, and taxes paid to a tax increment fund authorized by the Texas Tax Code, Chapter 311.

(A) The data for this calculation are derived from the Public Education Information Management System (PEIMS) fall data submission (budgeted M&O tax collections and student enrollment) and the legislative payment estimate [~~Legislative Payment Estimate~~] (LPE) data (Foundation School Program [~~(FSP)~~] student counts and property value).

(B) The state aid gained by the receiving district from the addition of one transfer student is computed by the commissioner of education. The calculation assumes that the transfer student participates in the special programs at the average rate of other students in the receiving district.

(3) [~~(2)~~] Excess debt revenue per enrollee. A district's excess debt revenue per enrollee is defined as interest and sinking fund [~~(I&S)~~] taxes budgeted to be collected that surpass the taxes equalized by the IFA pursuant to the TEC, Chapter 46, Subchapter A, and the Existing Debt Allotment (EDA) pursuant to the TEC, Chapter 46, Subchapter B, divided by enrollment.

(A) The local share of the IFA for bonds is subtracted from debt taxes budgeted to be collected as reported through the PEIMS. The local share of the EDA is subtracted from debt taxes budgeted to be collected as reported through the PEIMS only if the district receives a payment for the state share of the EDA.

(B) The estimate of enrollment includes transfer students.

[~~(3) Base tuition limit. The base tuition limit per transfer student for the receiving district is a percentage of its state and local entitlement per enrollee from both tiers of the FSP. The entitlement includes the Texas Education Agency's estimate for the current year for the total of allotments in accordance with TEC, Chapter 42, Subchapters B and C, plus the state and local shares of the guaranteed yield allotment (GYA) in accordance with TEC, Subchapter F, which includes additional state aid for tax reduction in accordance with TEC, §42.2516(b).~~]

[~~(A) For this purpose, the GYA is calculated as the product of the guaranteed level (GL) multiplied by weighted average daily attendance (WADA), then multiplied by district tax rate (DTR), and finally multiplied by 100 for tax effort that is described in TEC, §42.302(a-1) and (a-3), as applicable.~~]

[~~(B) Beginning with the 2008-2009 school year, the GL paid in accordance with TEC, §42.302(a-1)(2), is applicable to the first $.06 by which the district's M&O tax rate exceeds the rate equal to the district's 2005 adopted tax rate and the state compression rate, as determined under TEC, §42.2516(a).~~]

[~~(C) For the 2006-2007 and 2007-2008 school years, the GL paid in accordance with TEC, §42.302(a-1)(2), is applicable to the first $.04 by which the district's M&O tax rate exceeds the rate equal to the district's 2005 adopted tax rate and the state compression rate, as determined under TEC, §42.2516(a). This subparagraph expires September 1, 2008.~~]

[~~(4) Calculated tuition limit. The calculated tuition limit is the sum of the excess M&O revenue per enrollee, the excess debt revenue per enrollee, and the base tuition limit, as calculated in subsections (b)(1), (b)(2), and (b)(3) of this section, respectively.~~]

(4) [~~(5)~~] Notification and appeal process. In the spring of each school year, the commissioner will provide each district with its calculated tuition limit and a worksheet with a description of the derivation process. A district may appeal to the commissioner if it can provide evidence that the use of projected student counts from the LPE in making the calculation is so inaccurate as to result in an inappropriately low authorized tuition charge and undue financial hardship. A district that used significant nontax sources to make any of its debt service payments during the base year for the computation may appeal to the commissioner to use projections of its tax collections for the year

for which the tuition limit will apply. The commissioner's decision regarding an appeal is final.

~~[(c) Maximum tuition amount in property value adjustment. The maximum tuition amount to be used in the adjustment to property value is limited to the amount per student computed in subsection (b)(4) of this section.]~~

~~[(1) The adjusted property values will be applied to the calculation of state aid as described in the following subparagraphs.]~~

~~[(A) Beginning with the 2008-2009 school year and subsequent school years, this adjustment to property values will be made in the calculation of state aid in accordance with TEC, §42.302(a-1)(1). Unadjusted property values will be used to calculate state aid in accordance with TEC, §42.302(a-1)(2) and (a-1)(3).]~~

~~[(B) For the 2006-2007 and the 2007-2008 school years, this adjustment to property values will be made in the calculation of state aid in accordance with TEC, §42.302(a-3)(1). Unadjusted property values will be used to calculate state aid in accordance with TEC, §42.302(a-3)(2) and (a-1)(3). This subparagraph expires September 1, 2008.]~~

~~[(C) The tax rate used to calculate the adjustment to property values will be adjusted to ensure that the property value adjustment provides sufficient state aid to cover the cost of the maximum tuition amount or the actual tuition amount, whichever is lesser.]~~

~~[(2) The adjustment to property values of the home district may not result in an increase of revenue to the home school district that exceeds 10% of the total tuition paid to the receiving district to educate the transfer student(s).]~~

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200448
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 77. ADVERTISING AND PUBLIC COMMUNICATION

22 TAC §77.2

The Texas Board of Chiropractic Examiners (Board) proposes an amendment to §77.2, concerning Publicity.

The proposed amendment includes in subsection (a) a reference to §77.5, relating to misleading claims.

Additionally, the proposed amendment removes the word "registered" from subsections (b) - (f), which allows the Board to regulate by this rule facilities operating without a current certificate of registration. Previously, the Board was restricted to regulating the public communications and advertising of "registered facilities" by this rule.

Also, the proposed amendment adds subsection (h), requiring licensees or facilities to identify research studies relied upon in making public claims. This will allow the public greater access to information regarding claims made in advertisements and public communications.

It is also proposed to add subsection (i), placing limitations on the advertisement of services as "free." The Board has received complaints in the past about services that were advertised as free, but then ultimately charged to the patient pursuant to "small print" or "loopholes." This proposed amendment will require licensees and facilities to detail what services will be performed as part of the "free" service, whether those services are "free" or will require an additional charge, and whether a report of findings for an evaluation is included in the "free" service. The effective date of this subsection will be June 1, 2012, so as to allow licensees adequate time to conform to this amendment if adopted.

Finally, the Board proposes adding subsection (j), which makes clear that §77.2 and §77.5 apply to any advertising, communications or telemarketing done by or on behalf of a licensee or facility. This is intended to allow the Board to regulate a licensee or facility pursuant to these rules, even though the actual advertisement, communication or telemarketing was not physically done by that licensee or facility, but instead by an employee, student or other agent.

Yvette Yarbrough, Executive Director, has determined that, for each year of the first five years that this amendment will be in effect, there will be no additional cost to state or local governments.

Ms. Yarbrough has also determined that, for each year of the first five years that this amendment will be in effect, the public benefit of this amendment will be better information provided to the public by licensees and facilities in all advertising, public communications and telemarketing. Ms. Yarbrough has also determined that there will be no adverse economic effect to individuals and small or micro businesses during the first five years that this amendment will be in effect. There may be some cost involved for licensees amending existing advertisements, but this expense should be minimal.

Comments on the proposed amendment and/or a request for a public hearing on the proposed amendment may be submitted to Yvette Yarbrough, Executive Director, Texas Board of Chiropractic Examiners, 333 Guadalupe St., Tower III, Suite 825, Austin, Texas 78701, fax: (512) 305-6705, no later than 30 days from the date that this proposed amendment is published in the *Texas Register.*

The amendment is proposed under Texas Occupations Code §201.152, relating to rules and §201.155, relating to restrictions on advertising. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.155 states that the Board may adopt rules restricting advertising to prohibit false, misleading or deceptive practices.

No other statutes, articles, or codes are affected by the proposed amendment.

§77.2. Publicity.

(a) A registered facility or licensee shall not, on behalf of himself, his partner, associate, or any other licensee or facility affiliated with him, use or participate in the use of any form of public commu-

nication which contains a false, fraudulent, misleading, deceptive, or unfair statement of claim, or which has the tendency or capacity to mislead or deceive the general public, as defined in §77.5 of this title (relating to Misleading Claims).

(b) In any form of public communication, a licensee or [~~registered~~] facility shall not describe services that are inconsistent with the practice of chiropractic as described under §75.17 of this title (relating to Scope of Practice)[~~, relating to scope of practice~~].

(c) A licensee or [~~registered~~] facility engaging in, or authorizing another to engage in telemarketing of prospective patients shall not misrepresent to the person called any association with an insurance company or another doctor of chiropractic or another chiropractic group or facility.

(1) A licensee, [~~registered~~] facility, or their agent, engaging in telemarketing shall not promise successful chiropractic treatment of injuries or make any other communication which would be prohibited under subsection (a) of this section.

(2) A licensee, [~~registered~~] facility, or their agent, engaging in telemarketing are required, at the start of each call, to inform the person called who they are (caller's name) and who they represent (clinic/doctor).

(3) A licensee or [~~registered~~] facility engaging in telemarketing, either directly or through an agent, shall keep a copy of each script used for calling and a log of all calls made that shall include the date, telephone number, and the name of each person called. Such scripts and logs shall be maintained for a minimum of two years.

(d) Licensees or [~~registered~~] facilities that intend to include a testimonial as part of any form of public communication shall maintain a signed statement from that person or group to support any statements that may be used in any public communication for a minimum of two years from publication of the testimonial.

(e) Licensees or [~~registered~~] facilities shall clearly differentiate a chiropractic office, clinic, or facility from another business or enterprise in any form of public communication.

(f) Licensees shall identify themselves as either "doctor of chiropractic," "DC," or "chiropractor" in all forms of public communication. If each licensee that practices in a [~~registered~~] facility has identified themselves as required in this subsection [~~above~~], then the facility name need not include "chiropractic" or similar language.

(g) In any form of public communication using the phrase "Board Certified" or similar terminology associated with any credentials, a licensee must identify the board certifying said credentials.

(h) In any form of public communication, if a licensee or facility makes a claim based on one or more research studies, the licensee or facility shall clearly identify the relevant research study or studies and make copies of such research studies available to the board or the public upon request.

(i) In any form of public communication, a licensee or facility shall not advertise any service as "free" unless the public communication clearly and specifically states:

(1) all the component services which will or might be performed at the time of, or as part of, the service;

(2) as to each such component service, whether that service will be free or, if not, the exact amount which will be charged for it; and

(3) if a component service is an evaluation, whether the report of findings will be free or, if not, the exact amount which will be charged for the report of findings.

(4) The effective date of this subsection is June 1, 2012.

(j) This section and §77.5 of this title apply to all advertising, communications, or telemarketing done by or on behalf of a licensee or facility, including activities conducted by employees, students being mentored by the licensee, or other agents.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200427
Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6716

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 329. LICENSING PROCEDURE

22 TAC §329.1

The Texas Board of Physical Therapy Examiners proposes amendments to §329.1, regarding General Licensure Requirements and Procedures. The amendments would update rules to reflect changes to procedures, eliminate a copy of the diploma as proof of program completion and graduation, and reflect the addition of the mailing address as contact information.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be clearer guidelines for applicants. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the rule as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§329.1. General Licensure Requirements and Procedures.

(a) Requirements. All applications for licensure shall include:

(1) a completed [~~, notarized~~] board application form with a recent color photograph of the applicant;

(2) the non-refundable application fee as set by the executive council;

(3) a successfully completed board jurisprudence exam on the Texas Physical Therapy Practice Act and board rules; and

(4) documentation of academic qualifications.

(A) For applicants who completed their physical therapy education in the U.S., the documentation required is:

(i) a transcript sent directly to the board from the degree-granting institution showing enrollment in the final semester of an accredited PT or PTA program, [~~an official transcript showing completion of an accredited physical therapy or physical therapist assistant program,~~] as provided in §453.203 of the Act; and

~~*[(ii)* a photocopy of the diploma or certificate awarded, showing graduation from a PT or PTA program; or]~~

(ii) [~~(iii)~~] a statement signed by the program director or other authorized school official, notarized or with the school seal affixed, stating that the applicant has successfully completed the PT or PTA program.

(B) For applicants who completed their physical therapy education outside of the U.S., the documentation required is set out in §329.5 of this title (relating to Licensing Procedures [~~Procedure~~] for Foreign-Trained [~~Foreign-trained~~] Applicants).

(b) Licensure by examination. If an applicant has not passed the national licensure exam, the applicant must also meet the requirements in §329.2 of this title (relating to License [~~Licensure~~] by Examination [~~examination~~]).

(c) Licensure by endorsement. If the applicant is licensed as a PT or PTA in another state or jurisdiction of the U.S., the applicant must also meet the requirements as stated in §329.6 of this title (relating to Licensure by Endorsement [~~endorsement~~]).

(d) Application expiration. An application for licensure is valid for one year after the date it is received by the board.

(e) False information. An applicant who submits an application containing false information may be denied licensure by the board.

(f) Rejection. Should the board reject an application for licensure, the reasons for the rejection will be stated. The applicant may submit additional information and request reconsideration by the board. If the applicant remains dissatisfied, a hearing may be requested as specified in the Act, §453.352.

(g) Changes to licensee information. Applicants and licensees must notify the board in writing of changes in residential, mailing, or business addresses [~~and business address~~] within 30 days of the change. For a name change at time of renewal, the licensee must submit a copy of the legal document enacting the name change with the renewal application.

(h) Replacement copy of license. The board will issue a copy of a license to replace one lost or destroyed upon receipt of a written request and the appropriate fee from the licensee. The board will issue a new original license after a name change upon receipt of a written request, the appropriate fee, and a copy of the legal document enacting the name change.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200413
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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22 TAC §329.5

The Texas Board of Physical Therapy Examiners proposes amendments to §329.5, regarding Licensing Procedures for Foreign-Trained Applicants. The amendments would add H1-B visa holders to the list of applicants eligible for an exemption from English language proficiency requirements, if they meet the other requirements of the exemption. They would also reinsert language exempting graduates of foreign CAPTE-accredited programs from the educational evaluation.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be more efficient licensing of competent foreign-trained physical therapists. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§329.5. Licensing Procedures for Foreign-Trained Applicants.

A foreign-trained applicant must complete the license application process as set out in §329.1 of this title (relating to General Licensure Requirements and Procedures [~~Licensing Procedure~~]). In addition, the applicant must submit the following:

(1) An evaluation of professional education and training prepared by a board approved credentialing entity. The board will

maintain a list of approved credentialing entities on the agency website.

(A) The evaluation must:

(i) be based on the Course Work Tool (CWT) adopted by the Federation of State Boards of Physical Therapy, specifically the version of the tool appropriate to the year the applicant graduated from the foreign physical therapy program; and

(ii) provide evidence and documentation that the applicant's education is substantially equivalent to the education of a physical therapist who graduated from a physical therapy education program accredited by the Commission on Accreditation in Physical Therapy Education (CAPTE); and

(iii) establish that the institution at which the applicant received his physical therapy education is recognized by the Ministry of Education or the equivalent agency in that country.

(B) If the credentialing entity determines that the physical therapy education is substantially equivalent, but no evidence is found of specific required courses or content areas, the applicant is responsible for remedying those deficiencies. The applicant may use college credit obtained through applicable College Level Examination Placement (CLEP) or other college advanced placement exams to remedy any deficiencies in general education.

(C) An evaluation prepared by board-approved credentialer reflects only the findings and conclusions of the credentialer, and shall not be binding on the board. In the event that the board determines that the applicant's education is not substantially equivalent to an entry-level physical therapy program accredited by CAPTE, the board will notify the applicant in writing stating the reasons why the applicant's education is not substantially equivalent.

(D) If the applicant received an entry-level physical therapy degree from a CAPTE-accredited program located outside the U.S., the program is considered equivalent to a domestic CAPTE-accredited physical therapy program, and the applicant is exempt from meeting the requirements of the CWT.

(2) Proof of English language proficiency. A foreign-trained applicant must demonstrate the ability to communicate in English by making the minimum score accepted by the board on the TOEFL tests administered by the Educational Testing Service (ETS).

(A) This requirement is waived for graduates of entry-level physical therapy programs in Australia, Canada (except Quebec), Ireland, New Zealand and the United Kingdom.

(B) Minimum acceptable scores are as follows:

(i) Paper-based TOEFL tests (pbt) - TOEFL (reading/comprehension) 580; TWE (writing/essay) 5.0; TSE (speaking) 50;

(ii) Computer-based TOEFL tests (cbt) - TOEFL (reading/comprehension) 237; TWE (writing/essay) 5.0; TSE (speaking) 50;

(iii) Internet-based (ibt) - Writing 24; Speaking 26; Reading Comprehension 21; Listening Comprehension 18.

(C) The board may grant an exception to the English language proficiency requirements under the following conditions:

(i) the applicant holds a current license in physical therapy in another state and has been licensed in another state in the U.S. for 10 years prior to application; or

(ii) the applicant submits satisfactory proof that he/she is a citizen or lawful permanent resident of the U.S. or a current U.S. H-1B visa holder, and has attended four or more years of secondary or post-secondary education in the U.S.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200414
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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CHAPTER 337. DISPLAY OF LICENSE

22 TAC §337.1

The Texas Board of Physical Therapy Examiners proposes amendments to §337.1, regarding License and Renewal Certificate. The amendments delete references to the wallet-sized certificate, which is being eliminated.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be increased fiscal efficiency of state government. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§337.1. License and Renewal Certificate.

Displayed reproduction of the original license and/or the [~~biennial~~] renewal certificate is unauthorized. The original license and renewal certificate must be displayed in the principal place of practice. [~~The wallet-sized certificate of license renewal may be presented for identification.~~] Reproduction of the original license and/or renewal certificate is authorized for institutional file purpose only.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200412
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.1

The Texas Board of Physical Therapy Examiners proposes amendments to §341.1, regarding Requirements for Renewal. The amendments establish that the board's secure website is the appropriate resource for verification of license status (e.g., active, inactive, expired). The amendments eliminate the requirement that a person have a paper copy of their license in hand in order to provide those services. It also eliminates the use of the online transaction receipt as proof of licensure.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be increased fiscal efficiency of state government. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.1. Requirements for Renewal.

(a) Biennial renewal. Licensees are required to renew their licenses every two years by the end of the month in which they were originally licensed. A licensee may not provide physical therapy services without a current license. The Board will maintain a secure resource for verification of license status and expiration date on its website. [~~or renewal certificate in hand. If a license expires after all required items are submitted, but before the licensee receives the renewal certificate, the licensee may not provide physical therapy services. A licensee who completes the renewal process online prior to the expiration of his license may use the printed transaction receipt in lieu of the renewal certificate for the period of time specified on the receipt.~~]

(b) General requirements. The renewal application is not complete until all required items are received by the board. The components required for license renewal are:

(1) a signed renewal application form or the online equivalent, documenting completion of board-approved continuing competence activities, as described in §341.2 of this title (relating to Continuing Competence Requirements);

(2) the renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence examination.

(c) Notification of license expiration. The board will send notification to each licensee at least 30 days prior to the license expiration date. The licensee bears the responsibility for ensuring that the license is renewed.

(d) Late renewal. A renewal application is late if all required items are not postmarked prior to the expiration date of the license. Licensees who do not submit all required items prior to the expiration date are subject to late fees as described.

(1) If the license has been expired for 90 days or less, the late fee is one-half of the examination fee for the license.

(2) If the license has been expired for more than 90 days but less than one year, the late fee is equal to the examination fee for the license. Licensees who are more than 90 days late in renewing a license are not included in the audit as described in §341.2 of this title, and must submit documentation of completion of continuing competence activities at time of renewal.

(3) If the license has been expired for one year or longer, the person may not renew the license. To obtain a new license, the applicant must take and pass the national examination again and comply with the requirements and procedures for obtaining an original license set by §329.1 of this title (relating to General Licensure Requirements and Procedures).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200415
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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22 TAC §341.8

The Texas Board of Physical Therapy Examiners proposes amendments to §341.8, regarding Inactive Status. The amendments delete references to the renewal certificate, which will no longer be mailed.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be

no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be increased fiscal efficiency of state government. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§341.8. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right or privilege to practice physical therapy in Texas. The Board may allow a licensee who is not actively engaged in the practice of physical therapy in Texas to inactivate the license instead of renewing it at time of renewal. A licensee may remain on inactive status for no more than six consecutive years.

(b) Requirements for initiation of inactive status. The components required to put a license on inactive status are:

(1) a signed renewal application form, documenting completion of board-approved continuing competence activities for the current renewal period, as described in §341.2 of this title (relating to [~~, concerning~~] Continuing Competence Requirements);

(2) the inactive fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence exam.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every two years. The components required to maintain the inactive status are:

(1) a signed renewal application form, documenting completion of board-approved continuing competence activities for the current renewal period, as described in §341.2 of this title[~~, concerning Continuing Competence Requirements~~];

(2) the inactive renewal fee, and any late fees which may be due; and

(3) a passing score on the jurisprudence exam.

(d) Requirements for reinstatement of active status. A licensee on inactive status may request a return to active status at any time. [~~After the licensee has submitted a complete application for reinstatement, the board will send a renewal certificate for the remainder of the current renewal period to the licensee.~~]

(1) The components required to return to active status are:

(A) a signed renewal application form, documenting completion of board-approved continuing competence activities for the current renewal period, as described in §341.2 of this title[~~, concerning Continuing Competence Requirements~~];

(B) the renewal fee, and any late fees which may be due; and

(C) a passing score on the jurisprudence exam.

(2) The Board will allow the licensee to substitute one of the following actions for the continuing education requirements:

(A) re-take and pass the national licensure exam;

(B) attend a university review course pre-approved by the board; or

(C) complete an internship (equal to 150 hours of continuing education) pre-approved by the board.

(e) Licensees on inactive status are subject to the audit of continuing education as described in §341.2 of this title[~~, concerning Continuing Competence Requirements~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200416
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §347.5

The Texas Board of Physical Therapy Examiners proposes an amendment to §347.5, regarding Requirements for Registered Facilities. The amendment deletes references to the renewal certificate, which will no longer be mailed.

John P. Maline, Executive Director, has determined that for the first five-year period the amendment is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendment.

Mr. Maline has also determined that for each year of the first five-year period the amendment is in effect the public benefit will be increased fiscal efficiency of state government. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendment. There are no anticipated costs to individuals who are required to comply with the amendment as proposed.

Comments on the proposed amendment may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received

no later than 30 days from the date the proposed amendment is published in the *Texas Register.*

The amendment is proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendment.

§347.5. Requirements for Registered Facilities.

(a) Each facility must have a designated physical therapist in charge. A registered facility is required to report the name and license number of a new physical therapist in charge no later than 30 days after the change occurs.

(b) A registered facility must display the registration certificate in a prominent location in the facility where it is available for inspection by the public. A registration certificate issued by the board is the property of the board and must be surrendered on demand by the board.

(c) A registered facility is subject to random inspection to verify compliance with the Act and this chapter by authorized personnel of the board at any reasonable time.

(d) A registered facility must notify the board within 30 days of any change to the name, physical/street address or mailing address. In the event of a name or physical address change, the owner must obtain a new registration certificate [~~and renewal certificate (if applicable),~~] showing the correct information.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200417
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

22 TAC §347.8

The Texas Board of Physical Therapy Examiners proposes amendments to §347.8, regarding Change in Facility Ownership. The amendments eliminate references to the facility renewal certificate, which will no longer be mailed, and establish that the board's secure website is the appropriate resource for verification of registration status (e.g., current, expired). It also deletes the requirement that the previous owner of a facility return the facility registration certificate when the facility is closed.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be increased fiscal and administrative efficiency of state government. Mr. Maline has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§347.8. Change in Facility Ownership.

(a) When a facility changes ownership, the new owner must register it as a new facility, and the previous owner must request in writing that the registration of the original facility be withdrawn, within 30 days. A change of ownership takes place when one of the following occurs:

(1) a sole proprietor (individual) incorporates or changes to a partnership;

(2) a partnership incorporates or changes to a sole proprietor;

(3) a corporation dissolves and changes its status to a partnership or sole proprietor;

(4) a sole proprietor (individual), partnership or corporation purchases, sells or transfers the ownership to another individual, partnership or corporation.

(b) If there is a change of managing partners in a partnership or managing officers in a corporation, the owner of the facility must send the board written notification within 30 days. For purposes of this subsection, managing officers are defined as the top four executive officers, including the corporate officer in charge of physical therapy facility operations. The written notification shall include the effective date of such change and the following information for the new managing partners or officers:

(1) name and title;

(2) home address;

(3) date of birth; and

(4) social security number.

[~~(c) The new or former owner of a facility must return the previous registration certificate and current renewal certificate to the board within 30 days of the change of ownership. In lieu of the actual documents, the Board may accept a notarized statement from the new or former owner that the certificates have been destroyed or lost.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200418
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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22 TAC §347.9

The Texas Board of Physical Therapy Examiners proposes amendments to §347.9, regarding Renewal of Registration. The amendments delete references to the facility renewal certificate, which is being eliminated, and establish that the recognized source of valid, current information about the status of a facility registration is the board's website. The amendments will establish that once a current registration can be validated on the board's website, physical therapy services may be provided at that facility. They also eliminate the use of the online transaction receipt as proof of renewal of registration.

In addition, the amendments eliminate the delayed status, which is used by a very small number of registered facilities to allow them to remain registered without providing services due to the lack of a Therapist in Charge. In the future, facilities that do not have a Therapist in Charge at time of renewal will be required to close the facility and reopen at a later date.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be increased fiscal efficiency of state government. Mr. Maline has determined that since the cost of renewal is the same as the cost of registration, the fiscal impact will be very slight on the few facilities affected. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§347.9. Renewal of Registration.

(a) The owner of a physical therapy facility must renew the registration annually. Licensees may not provide physical therapy services in a facility if the registration is not current.

(b) Requirements to renew a facility registration are:

(1) a renewal application signed by the owner, managing partner or officer, or a person authorized by the owner to complete the renewal;

(2) a list of all PTs and PTAs working at the facility, including license and social security numbers;

(3) the renewal fee as set by the executive council, and any late fees which may be due; and

(4) a physical therapist in charge form with the signature of the physical therapist.

(c) The renewal date of a facility registration is the last day of the month in which the registration was originally issued, or as synchronized with the first facility registered by an owner.

(d) The board will notify a facility at least 30 days prior to the registration expiration date. The facility bears the responsibility for ensuring that the registration is renewed. Failure to receive notification from the board does not exempt the facility from paying the renewal fee in a timely manner.

(e) Physical Therapy services may not be provided at a facility without a current registration. The Board will maintain a secure resource for verification of registration status and expiration date on its website. [~~The facility renewal certificate must be displayed with the original certificate and is the property of the board. A facility for which the renewal process is completed online prior to the expiration of the registration may use the printed transaction receipt in lieu of the certificate for the period of time specified on the receipt.~~]

(f) A facility will be allowed to renew without a late fee if the renewal application and fee are received prior to the expiration date. However, the renewal is not complete [~~will not be considered complete and the board will not issue the renewal certificate~~] prior to the receipt of the signed physical therapist in charge form and a list of the name(s) of the PTs and PTAs working at that facility. Physical therapy services may not be provided at the facility until the facility registration is current [~~certificate is displayed in a prominent location in the facility where it is available for inspection by the public~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200419
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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22 TAC §347.12

The Texas Board of Physical Therapy Examiners proposes amendments to §347.12, regarding Restoration of Registration. The amendments delete references to the renewal certificate, which will no longer be mailed, and clarifies that notification of facility closure must be in writing.

John P. Maline, Executive Director, has determined that for the first five-year period the amendments are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the amendments.

Mr. Maline has also determined that for each year of the first five-year period the amendments are in effect the public benefit will be increased fiscal efficiency of state government. Mr. Ma-

line has determined that there will be no costs or adverse economic effects to small or micro businesses, therefore an economic impact statement or regulatory flexibility analysis is not required for the amendments. There are no anticipated costs to individuals who are required to comply with the amendments as proposed.

Comments on the proposed amendments may be submitted to Nina Hurter, PT Coordinator, Texas Board of Physical Therapy Examiners, 333 Guadalupe, Suite 2-510, Austin, Texas 78701; email: nina.hurter@ptot.texas.gov. Comments must be received no later than 30 days from the date the proposed amendments are published in the *Texas Register.*

The amendments are proposed under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Texas Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 453, Texas Occupations Code is affected by the amendments.

§347.12. Restoration of Registration.

(a) When a facility fails to renew its registration before the expiration date, the facility may restore the registration by completing the renewal requirements and paying renewal and restoration fees as set out by the Executive Council.

(1) If the facility registration has been expired for 90 days or less, the facility may renew by paying the required renewal fee and a restoration fee that is one-half of the renewal fee.

(2) If the facility registration has been expired for more than 90 days but less than one year, the facility may renew by paying all unpaid renewal fees and a restoration fee that is equal to the renewal fee.

(3) If the facility registration has been expired for more than one year, the facility may renew the registration by paying all unpaid renewal fees and a restoration fee which is double the renewal fee.

(b) The owner of a facility may cancel a facility registration if physical therapy services will no longer be provided at that facility. To cancel a registration, the owner must notify the board in writing [~~and return the registration certificate and the current renewal certificate (if applicable) to the board~~]. If the owner decides to resume the provision of physical therapy services at a future date, the facility registration may be restored with the previous expiration date by meeting the requirements in §347.9 of this title (relating to Renewal of Registration).

(c) An owner may not register a new facility in lieu of renewal or restoration of a previously registered facility in the same location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200420
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 571. LICENSING

SUBCHAPTER A. GENERAL

22 TAC §571.1

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.1, concerning Definitions.

The amendment to §571.1 adds to and changes the definitions of defined words used in Chapter 571 as necessary to include equine dental providers as licensees. These amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers, and required that the Board administer a jurisprudence examination to candidates for equine dental provider licensure under Texas Occupations Code §801.261 and §801.264.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be minimal increased cost to state government required to conduct licensing examinations and review licensing applications for the newly licensed equine dental providers. The increased cost to the state required to enforce the rules for licensed equine dental providers will be offset by the reduction in the costs the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will incur minor economic costs associated with complying with the proposed rule for each of the first five years that the rule is in effect, due to the costs associated with the fees and time required to take the Board's jurisprudence examination for equine dental providers, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers licensed after September 1, 2012 take a jurisprudence examination prior to licensure. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to take a jurisprudence examination and incur the resulting costs.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed revisions is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered

to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(e), which states that the Board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.1. Definitions.

The following words and terms, when used in the Veterinary Licensing Act (Chapter 801, Texas Occupations Code) or the Rules of the Board (Texas Administrative Code, Title 22, Part 24, Chapters 571 - 577) shall have the following meaning:

(1) Board--the Texas Board of Veterinary Medical Examiners.

(2) EDPE--Equine Dental Provider Examination.

(3) [~~(2)~~] Locally derived scaled score--the equivalent of the criterion referenced passing point for the national examination or the NAVLE.

(4) [~~(3)~~] Name on license--licenses will be issued to successful applicants in the name of the individual as it appears on the birth certificate, court order, marriage license, or documentation of naturalization.

(5) [~~(4)~~] National Board of Veterinary Medical Examiners (NBVME)--the organization responsible for producing, administering and scoring the NAVLE.

(6) [~~(5)~~] National examination--the examination in existence and effective prior to the inauguration date of the NAVLE and which consists of the national board examination (NBE) and the clinical competency test (CCT).

(7) [~~(6)~~] North American Veterinary Licensing Examination (NAVLE)--the examination which replaced the national examination in the year 2000.

(8) [~~(7)~~] Passing Score--an examination score of at least 75 percent on the national examination and NAVLE which is based on a locally derived scaled score, and an examination score of at least 85 percent on either the SBE or the EDPE. The examination score on either the SBE or the EDPE is valid for one year past the date of the examination.

(9) [~~(8)~~] SBE--State Board Examination.

(10) [~~(9)~~] School or college of veterinary medicine--a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA). Applicants who are graduates of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA are eligible provided that the applicant presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) certificate.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200359
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.5

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.5, concerning Qualifications for a Veterinary License.

The amendment to §571.5 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. These changes do not alter the substance or meaning of the rule. These amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The equivalent provision for equine dental provider licensees is proposed as a new rule, §571.6, which is also proposed elsewhere in this issue of the *Texas Register.*

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians. Ms. Oria has determined that there will be no additional economic cost to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.5. Qualifications for Veterinary License.

(a) To be eligible for veterinary licensure, an applicant must present satisfactory proof to the Board that the applicant:

(1) is at least the age of majority;

(2) has obtained at least a passing score on:

(A) the NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(B) the national examination if an applicant sat for that examination prior to the inauguration date of the NAVLE; and

(C) the SBE; and.

(3) is a graduate of a school or college of veterinary medicine that is approved by the Board.

(b) The Board may refuse to issue a veterinary license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401.

(c) An applicant may petition the Board in writing for an exception to subsection (a)(2)(A) or (B) of this section. In deciding whether to grant the petition, the Board may consider:

(1) the availability of the national examination or NAVLE at the time the petitioner originally applied for licensure;

(2) the number of years the petitioner has been in active practice;

(3) petitioner's license status and standing in other jurisdictions;

(4) petitioner's status as a diplomate in an AVMA recognized veterinary specialty; and

(5) any other factors that may be related to petitioner's request for an exception.

(d) As a condition of granting an exception under subsection (c)(2) of this section, the Board may impose additional requirements that are reasonably necessary to assure that the petitioner is competent to practice veterinary medicine in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200360
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.6

The Texas Board of Veterinary Medical Examiners (Board) proposes new §571.6, concerning Qualifications for Equine Dental Provider Licensure.

Proposed new §571.6 sets requirements for licensure for equine dental providers. With respect to structure and passing score on the jurisprudence examination, the proposed new rule parallels §571.5, which sets the requirements for veterinary licensure. The other requirements in proposed new §571.6 for licensure of equine dental providers were created by the Texas Legislature in House Bill (HB) 414, 82nd Legislative Session, and codified in Texas Occupations Code §801.261.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be minimal increased costs to state government required to conduct licensing examinations and review licensing applications for the newly licensed equine dental providers. The increased cost to the state required to enforce the rules for licensed equine dental providers will be offset by the reduction in costs that the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will incur minor economic costs associated with complying with the proposed rule for each of the first five years that the rule is in effect, due to the costs associated with the licensure fees and time required to take the Board's jurisprudence examination for equine dental providers, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rule regarding equine dental providers is necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers take a jurisprudence examination prior to licensure. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to take a jurisprudence examination and incur the resulting costs.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed revisions is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(e), which states that the Board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.6. Qualifications for Equine Dental Provider License.

(a) To be eligible for licensure as an equine dental provider, an applicant must present satisfactory proof to the Board that the applicant:

(1) has obtained at least a passing score of 85 on the EDPE; and

(2) is certified by the International Association of Equine Dentists or other Board-approved entity.

(b) The Board may refuse to issue an equine dental provider license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200361
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.7

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.7, concerning Veterinary Licensing Eligibility.

The amendment to §571.7 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. These amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The proposed changes do not alter the substance or meaning of the rule. Other minor changes have been made to conform references in §571.7 to renumbered definitions in §571.1, also proposed elsewhere in this issue of the *Texas Register.*

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians. Ms. Oria has determined that there will be no additional economic cost to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.7. Veterinary Licensing Eligibility.

(a) An applicant for a veterinary license may apply for the SBE provided that the applicant is a graduate of an approved and accredited veterinary medical school or college, as defined in §571.1(9) of this title (relating to Definitions).

(b) An applicant for a veterinary license may sit for the NAVLE provided that the applicant is a graduate of:

(1) an approved and accredited veterinary medical school or college, as defined in §571.1(10) [~~(9)~~] of this title; or

(2) a veterinary medical school or college not approved and accredited, but who is enrolled in the ECFVG or PAVE certification program, and meets the requirements of subsection (c) of this section, if applicable.

(c) When applying for the NAVLE through NBVME, an applicant who is a graduate of a veterinary medical school or college not approved and accredited, and is enrolled in the ECFVG or PAVE certification program, shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program to be considered eligible to apply for the NAVLE.

(d) A person must first take and pass the national examination or the NAVLE in order to apply for the SBE.

(e) A candidate for the NAVLE must take the examination within the testing window in which the candidate is authorized for testing. A candidate, who fails to take the examination within the appropriate testing window or fails to obtain a passing score on NAVLE, and desires to take the examination during a subsequent testing window must comply with NBVME application requirements.

(f) Eligibility Prior to Graduation. An applicant for a veterinary license who has not graduated from veterinary medical school may apply for the SBE provided the following conditions have been met:

(1) An applicant must be enrolled in an approved and accredited veterinary medical school or college as defined in §571.1(10) [~~(9)~~] of this title and must obtain a document from the dean of the school or college from which the applicant expects to graduate certifying that the applicant is within 60 days of completion of a veterinary college program and is expected to graduate.

(2) An applicant enrolled in a joint or combined degree program who has completed the applicant's veterinary medical education but has not received a diploma or transcript certifying the award of the applicant's DVM degree, must obtain a letter from the dean of the school or college of veterinary medicine stating that the applicant did in fact graduate before the applicant is eligible to sit for the SBE.

(3) To apply for the NAVLE through NBVME, a candidate shall, at the time an application is submitted, demonstrate that the candidate is:

(A) a student enrolled in an approved and accredited school or college of veterinary medicine as defined in §571.1(10) [~~(9)~~] of this title, and who has submitted a document from the dean of the school or college from which the student expects to graduate, certifying that the applicant is within eight months of the student's expected graduation date and is expected to graduate, and has demonstrated compliance with all of the NBVME's testing requirements for the NAVLE; or

(B) a graduate of a school or college of veterinary medicine not approved and accredited, who is enrolled in the ECFVG or PAVE certification program and shall submit proof that the applicant passed all English language proficiency tests required by the certification program of choice and must have completed all other requirements of each program.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200362
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.9

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.9, concerning Special Veterinary Licenses.

The amendment to §571.9 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. The amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Legislature did not extend special licenses to equine dental providers; under Texas Occupations Code §801.256, only veterinarians can obtain special licenses. The proposed changes do not alter the substance or meaning of the rule. Other minor changes have been made to correct capitalization.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians. Ms. Oria has determined that there will be no additional economic cost to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.256(c), which states that the Board shall adopt rules relating to the issuance of a special license.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.9. Special Veterinary Licenses.

(a) General requirements for special veterinary licensure; examination scores; issuance and renewal.

(1) The Board [~~board~~] shall schedule a jurisprudence examination at least once a year for applicants for special veterinary licenses.

(2) An applicant for a special veterinary license under §801.256(a)(1) - (3), Texas Occupations Code, must:

(A) be at the age of majority;

(B) be a graduate of a Board [~~board~~] approved veterinary program at an institution of higher education or possess an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; or

(C) provide to the Board [~~board~~] a written affirmation by the dean of a Board [~~board~~] approved veterinary program at an institution of higher education in this state or the executive director of the Texas Animal Health Commission or the executive director of the Texas Veterinary Medical Diagnostic Laboratory that the applicant:

(i) meets a critical need for staffing at the institution of higher education or the Texas Animal Health Commission or the Texas Veterinary Medical Diagnostic Laboratory; and

(ii) is certified by a nationally recognized veterinary specialty board or is eligible for that certification; and

(D) pass the Board's [~~board's~~] jurisprudence examination. The applicant must submit a completed application for examination to the Board [~~board~~] by no later than forty-five (45) days prior to the examination date. The completed application includes payment of examination fees and certification from the applicant's employer attesting to the applicant's employment position.

(3) For purposes of this section, a "Board [~~board~~] approved veterinary program at an institution of higher education" means any program which is recognized and accredited by an appropriate body of the American Veterinary Medical Association (AVMA).

(4) The applicant must submit with his application a written statement from his employer describing the applicant's official duties that require the issuance of a special license under §801.256(a)(1) - (3), Texas Occupations Code. Upon completion of the jurisprudence examination, the Board [~~board~~] shall notify the applicant by letter of his score. For candidates who attain a passing score of 85 percent, the letter shall constitute the special license for limited practice in the State of Texas.

(5) A special veterinary license will be issued for the calendar year in which the requirements for licensure have been met. Annually thereafter, a renewal certificate will be issued upon receipt of a registration renewal form which has been re-certified by the employing official and payment of the annual registration fee.

(6) A special veterinary license is subject to the renewal requirements set out in §801.303, Texas Occupations Code.

(7) An applicant who fails the jurisprudence examination for a special veterinary license and wishes to be re-examined will be required to resubmit an application and fees for a later scheduled jurisprudence examination.

(b) Applicant requirements for unrepresented or under represented specialty practice, as further defined in subsection (c) of this section. An applicant for a special license to practice a veterinary medicine specialty in this state must:

(1) be a graduate of a board approved veterinary program at an institution of higher education as defined in §571.15(a)(3) of this title (relating to Temporary Veterinary License) or possess an ECFVG or PAVE Certificate;

(2) present proof of a current active license in good standing in another state or jurisdiction of the United States that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801;

(3) not currently be holding a special veterinary license under this section; and

(4) have a certification from an employing sponsor or controlling authority approved by the board that the need for a special veterinary license exists.

(c) The board may issue a special veterinary license to an applicant for an unrepresented or under represented specialty practice if the board finds that:

(1) there is a need, shortage, or demand for the specialty practice in the State of Texas;

(2) the applicant is competent to practice veterinary medicine in the particular specialty; and

(3) the applicant has taken and passed the jurisprudence examination for special veterinary license.

(d) Change of special veterinary license status. A request by the holder of a special veterinary license to change the license from one category to another must be submitted to the Board [~~board~~] for approval.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200363

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.11

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.11, concerning Provisional Veterinary Licensure.

The proposed amendment to §571.11 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. The proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Legislature did not extend provisional licensing to equine dental providers; under Texas Occupations Code §801.257, only veterinarians can obtain provisional licenses.

Proposed §571.11 is also amended to include a new subsection allowing veterinarians who are the spouses of active-duty members of the United States armed forces, and who have been licensed in Texas within the preceding five years but whose license has been cancelled for failure to renew while the licensee lived in another state for at least six months, to attain a provisional license. This proposed amendment is intended to fulfill the mandate of Senate Bill (SB) 1733, 82nd Legislative Session, which requires that state agencies adopt rules for the issuance of licenses to licensees who have been licensed in Texas within the past five years but have allowed the license to expire while living in another state for six months and are spouses of active-duty members of the armed forces, with "alternative demonstrations of competency" to meet the requirements for obtaining the license. The Board has determined that allowing a military spouse meeting the requirements described above to return to licensure through a provisional license without having to go before the Board to petition for licensure is an appropriate "alternative demonstration of competency" in accordance with SB 1733. Because the military spouses applying for a provisional veterinary license under proposed amended §571.11 will already have been licensed and therefore will have already provided the Board with much of the information necessary for a provisional license, the list of information required for the provisional license has been removed. This proposed amendment is intended to remove any confusion or redundancy in documentation requirements, and does not represent a change in Board policy.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians, and to allow military spouses previously licensed in Texas to re-

turn to Texas and reinstate their licenses more quickly and easily. Ms. Oria has determined that there will be no increased economic cost to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.11. Provisional Veterinary Licensure.

(a) The Board may issue a provisional veterinary license to a person seeking regular veterinary licensure in Texas. The Board may not issue, reissue, extend, or renew a provisional veterinary license to an individual who has previously taken and failed any examination offered by the Board and required to obtain a Texas veterinary license.

(b) The Board may grant a provisional veterinary license containing specific practice restrictions to a person who meets the following criteria:

(1) present proof of a current active license in good standing in another state or jurisdiction of the United States that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801;

(2) proof of receipt of a passing score on the national examination or NAVLE, except that the Board may, upon written petition of the applicant, provide an exception to this requirement based on the applicant's satisfaction of the other requirements of this section and consideration of factors set out in §571.5(c) of this title (relating to Qualifications for Veterinary License);

(3) a passing score of 85 percent on the Board's jurisprudence examination;

(4) payment of the required application fee;

(5) proof of graduation from a college of veterinary medicine accredited by the Council on Education of the American Veterinary Medical Association (AVMA) or an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate; and

(6) proof of veterinary experience, which may be satisfied by letter of reference from at least two licensed veterinary employers or licensed veterinary colleagues with direct knowledge of the applicant's veterinary practice and experience.

(c) The Board's Executive Director will issue a provisional veterinary license to an applicant following verification of the requirements set out in subsection (b) of this section and receipt of the documents and fee required in subsection (d) of this section.

(d) An applicant for a provisional veterinary license must submit completed information on an application form designated by the Board, together with the [~~following~~] required supporting documentation.[~~:~~]

[~~(1) a letter of good standing from each jurisdiction in which the applicant is currently licensed or has been previously licensed;~~]

[~~(2) a certified copy of the applicant's veterinary school transcript including a graduation date;~~]

[~~(3) a certified copy of the applicant's birth certificate;~~]

[~~(4) a certified report from the official reporting service verifying that the applicant passed the national examination or the NAVLE, subject to a petition by the applicant for an exception to this requirement in accordance with subsection (b)(2) of this section; and~~]

[~~(5) an application fee in an amount set by the Board and contained in §577.15 of this title (relating to Fee Schedule).~~]

(e) An applicant for a veterinary license, who is the spouse of an active duty member of the United States armed forces and held a veterinary license in this state within the preceding five years that was cancelled for failure to renew while the applicant lived in another state for at least six months, may apply for a provisional license and is exempt from the requirements of subsection (b) of this section, except that the applicant must attain a passing score of 85 percent on the Board's jurisprudence examination, and pay the required application fee.

(f) [~~(e)~~] A provisional veterinary license is valid until the earlier of:

(1) 14 days after the first available regularly scheduled SBE;

(2) announcement of the results of the first available SBE; or

(3) cancellation, if the provisional licensee fails to appear at the first available regularly scheduled SBE held after the issuance of the provisional license.

(g) [~~(f)~~] The Board shall process any additional requirements necessary to complete a provisional veterinary licensee's application for regular licensure within 180 days after the issuance of a provisional veterinary license. The Board is not required to conduct a licensure examination if a regularly scheduled SBE does not occur within the 180-day period.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200364
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.13

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.13, concerning Temporary Veterinary Licensure During Declared State of Disaster.

The amendment to §571.13 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. The amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The provision does not apply to equine dental providers because equine dentistry is not typically an emergency need in a declared state of disaster, while emergency veterinary care for injured animals after a natural disaster is often essential. These changes do not alter the substance or meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for emergency licensure of veterinarians. Ms. Oria has determined that there will be no additional economic cost to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register*.

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.13. Temporary Veterinary Licensure During Declared State of Disaster.

(a) An individual who is licensed to practice veterinary medicine in any of the United States may be issued a temporary veterinary license during a state of disaster declared by the Governor of the State of Texas under the following circumstances:

(1) The applicant must complete an Application for Temporary Emergency License.

(2) The Board will verify that the veterinarian is licensed in the states indicated in the Application and will confirm good standing.

(3) The applicant must file an application with the Texas Department of Public Safety for a controlled substances registration.

(4) An application fee and the SBE are waived.

(b) A veterinarian granted a temporary emergency license under this section shall abide by the Texas Veterinary Licensing Act and the Board's rules. Violations of the Act, Board rules, or the temporary emergency license will subject the temporary licensee to disciplinary action by the Board.

(c) A temporary veterinary license issued under this rule will be valid for 120 days or until the end of the declaration of disaster, whichever is earlier.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200365
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.15

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.15, concerning Temporary Veterinary License.

The proposed amendment to §571.15 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. The proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Legislature did not extend temporary licenses to equine dental providers; under Texas Occupations Code §801.258, only veterinarians can obtain temporary licenses.

The proposed amendment also contains changes necessitated by Senate Bill (SB) 811, which amended Texas Occupations Code §801.258 to allow veterinarians to obtain temporary licenses if they had been licensed in good standing in a foreign country, and removed the requirement that a veterinarian seeking a temporary license first pass the Board's jurisprudence examination. Other minor changes have been made to correct capitalization.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be minor increases in costs to state government associated with more veterinarians seeking temporary licensure, but that those costs will be offset by additional revenues from the fees paid by the veterinarians seeking temporary licensure. Ms. Oria does not anticipate any additional costs to local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to allow consulting veterinarians, who are often specialists, to obtain a temporary veterinary license more easily and quickly, which should enhance the quality and variety of veterinary medical care available in Texas. Ms. Oria has determined that there will be the minor economic cost of licensing fees to individuals required to comply with the rule, but those costs should be offset by the professional fees the veterinarians will obtain from consulting or practicing veterinary medicine in Texas on a temporary basis. Ms. Oria has determined that there will be no negative effect on small businesses and micro businesses. Indeed, there may be a minor positive effect for small and micro businesses, as small veterinary practices will be able to obtain temporary licenses for consulting veterinarians from foreign states or countries more easily under the revised rule. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.258, which states that the Board by rule may provide for the issuance of a temporary license to practice veterinary medicine.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.15. Temporary Veterinary License.

(a) The board may issue a temporary veterinary license to an applicant who:

(1) is at the age of majority; and

(2) is a graduate of a school or college of veterinary medicine that is approved by the Board and accredited by the Council on Education of the American Veterinary Medical Association (AVMA); or

(3) is a graduate of a school or college of veterinary medicine not accredited by the Council on Education of the AVMA and presents satisfactory proof to the Board that the applicant is a graduate of a school or college of veterinary medicine and possesses an Educational Commission for Foreign Veterinary Graduates (ECFVG) Certificate or a Program for Assessment of Veterinary Education Equivalence (PAVE) Certificate. The Board may refuse to issue a license to an applicant who meets the qualification criteria but is otherwise disqualified as provided in the Texas Occupations Code, §801.401; and

(4) has attained a passing score of at least 75% on:

(A) The NAVLE if an applicant sits for that examination subsequent to its inauguration date; or

(B) The national examinations referred to as the NBE (National Board Examination) and the CCT (Clinical Competency Test) required prior to the inauguration date of the NAVLE; and

(5) presents proof of a current active license in good standing in another state or jurisdiction of the United States or foreign country that has licensing requirements substantially equivalent to the requirements of the Veterinary Licensing Act, Texas Occupations Code Chapter 801; and

(6) at the time of application, is not subject to final or pending disciplinary action in any foreign country, state or jurisdiction in which the applicant is now licensed or has ever held a license; and

(7) presents proof of having earned a minimum of 17 hours of acceptable continuing education related to veterinary medicine or general scientific subjects within 12 months preceding application for temporary license.

(b) The applicant who earns the temporary veterinary license must be under general supervision of a Texas licensed veterinarian who possesses an active, current license in the state of Texas.

(c) The applicant for a temporary veterinary license shall submit to the Board a complete application in the form designated by the Board with the supporting required documentation as set out in subsection (a) of this section, as well as:

(1) A letter of good standing not older than six months from each jurisdiction in which the applicant is currently actively licensed or has been previously licensed;

(2) a certified copy of the applicant's veterinary school transcript including a graduation date;

(3) a certified copy of the applicant's birth certificate;

(4) a certified report from the official reporting service verifying that the applicant passed the national examination or the NAVLE, subject to a petition by the applicant for an exception to this requirement in accordance with §571.5(c) of this title (relating to Qualifications for Veterinary License);

(5) official verification of board certification if applicant is certified by a nationally recognized veterinary specialty board, if applicable; and

(6) an application fee in an amount set by the Board and contained in §577.15 of this title (relating to Fee Schedule).

(d) The temporary veterinary license application and all supporting documentation must be received in the board office PRIOR to being issued a temporary veterinary license. A temporary veterinary license will only be issued once the applicant's file is complete and ALL required, supporting documentation and fee has been received[~~, and the applicant has passed the SBE~~]. The Board's Executive Director will issue a temporary veterinary license to an applicant following verification of the requirements set out in subsections (a) - (c) of this section[~~, successfully completing the SBE~~], and receipt of the documents and fee required. [~~The SBE results are valid for two years following passage date. If an applicant fails the SBE for the temporary veterinary license, the applicant may take the SBE once more within a year, with no additional fee.~~]

(e) The temporary veterinary license is valid only for a specific purpose per issuance. A temporary veterinary license granted under this section is valid for 30 days from the date of original issue, per temporary veterinary license issued. The temporary veterinary license should be available for review at the place of practice for the period the applicant is in Texas under the temporary veterinary license.

(f) The temporary veterinary license is not renewable nor can it be reissued. The applicant must cease and desist the practice of veterinary medicine the day after the expiration of the temporary veterinary license. Continued practice of veterinary medicine without the valid,

temporary veterinary license is a violation of current laws and rules and is viewed as the practice of veterinary medicine without a license. Disciplinary action can be taken and includes, but is not limited to, the refusal of the Board [~~board~~] to issue a second temporary veterinary license, for which the applicant may otherwise be eligible, and possibly the issuance of a future, regular license.

(g) An applicant may request a second temporary veterinary license within the same calendar year, provided no more than two temporary veterinary licenses are issued per applicant. After the second temporary veterinary license, if the applicant wishes to continue to practice in the State of Texas, he/she must seek regular licensing and must be eligible for such regular license as set out in current laws and rules governing the issuance of a regular license in the State of Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200366
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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SUBCHAPTER B. EXAMINATIONS

22 TAC §571.21

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.21, concerning application for the State Board Examination (SBE) for veterinarians and the Equine Dental Provider Examination (EDPE) for equine dental providers.

The proposed amendment to §571.21 adds the jurisprudence examination for equine dental provider applicants to the rule regarding application for licensee examinations. The proposed amendments include other minor changes necessary to apply the rule to applicants for licensure as an equine dental provider. These proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers, and required that the Board administer a jurisprudence examination to candidates for equine dental provider licensure under Texas Occupations Code §801.261 and §801.264. The proposed amendments also include minor capitalization corrections.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rules are in effect, there will be minimal increased cost to state government required to conduct licensing examinations and review licensing applications for the newly licensed equine dental providers. The increased cost to the state required to enforce the rules for licensed equine dental providers will be offset by the reduction in the costs the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rules. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will incur minor economic costs associated with complying with the proposed rule for each of the first five years that the rule is in effect, due to the costs associated with the fees and time required to take the Board's jurisprudence examination for equine dental providers, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers licensed after September 1, 2012 take a jurisprudence examination prior to licensure. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to take a jurisprudence examination and incur the resulting costs.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of the proposed revisions is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, §801.253, which states that the Board may conduct licensing examinations for veterinarians as provided by board rule, and §801.151(e), which states that the Board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.21. Application for the SBE and EDPE.

The applicant for either the SBE or the EDPE shall apply on the appropriate form furnished by the Board. The completed application, including the completion of any terms and conditions as set forth by a Board order and the payment of appropriate fees, must be received at the Board offices no later than 45 days prior to the date of the [~~SBE~~] examination for which the applicant desires to sit.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200367

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.23

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.23, concerning Veterinary Licensing Examination.

The proposed amendment to §571.23 clarifies that the provision applies only to veterinary licensees, and not to equine dental provider licensees. Currently, there is no national licensing examination for equine dental providers similar to the NAVLE examination for veterinarians, and therefore §571.23, which discusses the NAVLE examination, is not relevant to equine dental providers. The proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The proposed changes do not alter the substance or meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians. Ms. Oria has determined that there will be no additional economic costs to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.23. Veterinary Licensing Examination.

(a) Results of National Board Examinations. The Board will accept certified scores issued by the:

(1) American Association of Veterinary State Boards (AAVSB), or its successor, for the national examination; and

(2) the official reporting service for the NAVLE.

(b) Score Information. All requests for information on examination scores shall be processed as follows:

(1) All requests from other state licensing boards for an applicant's raw scores on the national examination or NAVLE will be referred to the official reporting service for those examinations.

(2) All requests from other state licensing boards for an applicant's locally derived scale scores on the national examination or NAVLE will be based upon national data submitted by the official reporting service for those examinations.

(3) Upon written request of an applicant, the Board will certify the score of the SBE to another state licensing board. Upon written request of an applicant, the Board will make national examination or NAVLE scores available for informational purposes only to another state licensing board but will not certify the scores.

(4) The Board will not disclose any actual examination documents or materials.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200368
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.25

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.25, concerning reapplication for State Board Examination for veterinarians (SBE) and the equine dental provider examination (EDPE).

The proposed amendment to §571.25 adds the jurisprudence examination for equine dental provider applicants to the rule regarding reapplication for licensee examinations when an applicant misses or fails a licensing examination. The proposed amendments include other minor changes necessary to apply the rule to applicants for licensure as equine dental providers. These proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers, and required that the Board administer a jurisprudence examination to candidates for equine dental provider licensure under Texas Occupations Code §801.261 and §801.264.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rules are in effect, there will be minimal increased cost to state government required to conduct licensing examinations and review licensing applications for the newly licensed equine dental providers. The increased cost to the state required to enforce the rules for licensed equine dental providers will be offset by the reduction in the costs the Board previously spent on enforcing the unlicensed

practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will incur minor economic costs associated with complying with the proposed rule for each of the first five years that the rule is in effect, due to the costs associated with the fees and time required to take the Board's jurisprudence examination for equine dental providers, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the requirement that equine dental providers licensed after September 1, 2012 take a jurisprudence examination prior to licensure. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to take a jurisprudence examination and incur the resulting costs.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be the public benefit anticipated as a result of the proposed revisions is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, §801.253, which states that the Board may conduct licensing examinations for veterinarians as provided by board rule, and §801.151(e), which states that the Board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.25. Reapplication for SBE and EDPE.

(a) An applicant for either the SBE or EDPE must submit a new application and the current fees at least 45 days prior to the date of the examination [~~SBE~~] for which the applicant desires to sit, if the applicant:

(1) does not appear for the scheduled examination; or

(2) fails to attain a passing score on the scheduled examination.

(b) The Board shall refund the examination fee for either the SBE or EDPE if the applicant:

(1) provides notice of not less than fourteen (14) days before the date of the examination, that the applicant is unable to take the examination; or

(2) is unable to take the examination because of an emergency.

(c) For purposes of subsection (b)(2) of this section, an "emergency" shall be defined as any immediate, unforeseen event that would render a person unable or unfit to take an examination, and may include a death in the family or an injury or other event that could be reasonably considered to be an emergency. Matters of inconvenience or failure to satisfy an examination prerequisite, shall not be considered an emergency.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200369
Loris Jones
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Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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SUBCHAPTER D. LICENSE RENEWALS

22 TAC §571.54

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.54, concerning Retired Veterinary License Status.

The proposed amendments to §571.54 clarify that the provision applies only to veterinary licensees, and not to equine dental provider licensees. The amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Texas Legislature did not extend retired status to equine dental providers under Texas Occupations Code §801.304, and therefore §571.54 does not apply to equine dental providers. These changes do not alter the substance or meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for retired veterinary license status. Ms. Oria has determined that there will be no additional economic cost to individuals required to comply with the amended rule. Ms. Oria has determined that there will be no measurable

effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.54. Retired Veterinary License Status.

(a) "Retirement" means the voluntary and permanent conclusion of a veterinary licensee's practice of veterinary medicine.

(b) If a veterinary licensee retiring for the first time requests reinstatement of his license in the same renewal year in which he retired, the licensee must:

(1) pay the annual renewal fee plus a $25 administrative processing fee to reinstate the license; and

(2) comply with the following continuing education requirements:

(A) If a retired veterinary licensee has maintained an annual average of 17 hours of approved continuing education, no additional continuing education hours will be required.

(B) If a retired veterinary licensee has maintained an annual average of less than 17 hours of approved continuing education, the retired licensee must complete 34 hours of continuing education in the twelve months immediately following reinstatement.

(c) If a veterinary licensee has been retired for longer than one renewal period, the retired veterinary licensee may reinstate the license by:

(1) petitioning the Board in writing for reinstatement and completing an examination for reinstatement application with supporting documentation and fees; and

(2) submitting to reexamination and complying with all requirements for obtaining an original license. At the discretion of the Board, the petitioner may be required to take and pass the NAVLE prior to applying for and taking the SBE.

(d) By no later than 30 days before the end of the current renewal year in which a licensee's veterinary license is retired for the first time, the Board shall inform the retired veterinary licensee that he or she may:

(1) apply to reinstate the license in accordance with subsection (b) of this section; or

(2) remain in retired status.

(e) The retired veterinary licensee shall notify the Board of his or her decision by no later than the end of the current renewal year in which the licensee's veterinary license is retired for the first time.

(f) If the retired veterinary licensee decides to remain in retired status, he or she will no longer receive license renewal notices and will not be required to renew his or her retired veterinary license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200370
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.55

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.55, concerning Delinquent Letters sent to licensees who fail to renew their licenses on time.

The proposed amendments to §571.55 clarify that the provision applies to all licensees, veterinarians and equine dental providers alike. The proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The proposed changes do not otherwise alter the substance of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be minimal additional costs to state or local governments as a result of enforcing or administering the rule as proposed, due to having to send letters to delinquent equine dental licensees as well as veterinary licensees. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's procedure for notifying licensees that their renewal is delinquent. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.55. Delinquent Letters.

The executive director shall prepare annually delinquency letters addressed to all licensees who are delinquent on March 10th of each calendar year. A one-year delinquency letter shall be mailed to each delinquent licensee [~~veterinarian~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200371
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.56

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.56, concerning a Military Service Fee Waiver.

The proposed amendments to §571.56 clarify that the provision applies only to veterinary licensees, and not to equine dental provider licensees. The amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The Texas Legislature did not extend the military service fee waiver to equine dental providers under Texas Occupations Code §801.304, and therefore §571.56 does not apply to equine dental providers. These changes do not alter the substance or meaning of the rule.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for veterinarians seeking a fee waiver following discharge from military service. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.56. Military Service Fee Waiver.

Upon submission of a DD214, the active license renewal fee is waived for the remainder of the calendar year in which the veterinary licensee is discharged from military service. A current year renewal certificate will be issued to the veterinary licensee in the same manner as if the active renewal fee had been paid for that particular year. A veterinary licensee's [~~Licensee's~~] submission of a DD214 places his or her license in active status allowing the veterinary practitioner to practice in the State of Texas or renew their Texas license in inactive status the year following military separation. The waiver of the fee for the balance of the calendar year in which an applicant is discharged from the military service is to be applicable only to those veterinarians who have served at least one year on extended active duty.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200372
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.59

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.59, concerning Expired Veterinary Licenses.

The proposed amendments to §571.59 clarify that the provision applies only to veterinary licensees, and not to equine dental provider licensees. These amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The equivalent provision for equine dental provider licensees is proposed as a new rule, §571.60, which is also proposed elsewhere in this issue of the *Texas Register.*

The proposed amendments to §571.59 also include a new subsection allowing veterinarians who are the spouses of active-duty members of the United States armed forces and who have been licensed in Texas within the preceding five years but whose license has been cancelled for failure to renew while the licensee lived in another state for at least six months to attain a provi-

sional license under amended §571.11, which is also proposed elsewhere in this issue of the *Texas Register.* This proposed amendment is intended to fulfill the mandate of Senate Bill (SB) 1733, 82nd Legislative Session, which requires that state agencies adopt rules for the issuance of licenses to licensees who have been licensed in Texas within the past five years but have allowed the license to expire while living in another state for six months and are spouses of active-duty members of the armed forces, with "alternative demonstrations of competency" to meet the requirements for obtaining the license. The Board has determined that allowing a military spouse meeting the requirements described above to return to licensure through a provisional license without having to go before the Board to petition for licensure is an appropriate "alternative demonstration of competency" in accordance with SB 1733.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment to the rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.59. Expired Veterinary Licenses.

(a) A veterinarian's license expires on March 1 of each calendar year and is considered delinquent. On or before March 1, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) A veterinary licensee who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. Subject to subsections [~~subsection~~] (c) and (d) of this section, the licensee must take and pass the SBE and comply with §571.3 of this title (relating to Criminal History Evaluation Letters).

(c) A veterinary licensee who is the spouse of a person serving on active duty as a member of the armed forces of the United States who has failed to renew his or her license for a period of one year or more may receive a provisional license in accordance with §571.11(e) of this title (relating to Provisional Veterinary Licensure).

(d) [~~(c)~~] A licensee who has failed to renew his or her license for a period of one year or more may reinstate the licensee's expired license without taking and passing the SBE if the licensee:

(1) previously had a Texas license and lived and/or practiced in Texas;

(2) moved to another state and is licensed and practices in that state;

(3) has been practicing in the other state during the past two years preceding application for reinstatement in Texas;

(4) intends to return to and practice in Texas;

(5) furnishes a letter of good standing from all states where the licensee is currently licensed; and

(6) submits a complete application for license reinstatement within two years of the date the license expired and could not be renewed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200373
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.60

The Texas Board of Veterinary Medical Examiners (Board) proposes new §571.60, concerning Expired Equine Dental Provider Licenses.

Proposed new §571.60 sets out how an equine dental provider licensee can go into and come out of expired status. The proposed new rule parallels §571.59, which sets the requirements for expired veterinary licenses. The Texas Legislature in House Bill (HB) 414, 82nd Legislative Session, gave the Board authority to license and regulate equine dental providers and did not exempt equine dental providers from the restriction under Texas Occupations Code §801.303 regarding expired licenses.

Proposed new §571.60 also includes a subsection allowing equine dental providers who are the spouses of active-duty members of the United States armed forces and who have been licensed in Texas within the preceding five years but whose licenses have been cancelled for failure to renew while the licensees lived in another state for at least six months to reinstate retired licenses without going before the Board. This proposal is intended to fulfill the mandate of Senate Bill (SB) 1733, 82nd Legislative Session, which requires that state agencies adopt rules for the issuance of licenses to licensees who have been licensed in Texas within the past five years but

have allowed their licenses to expire while living in another state for six months and are spouses of active-duty members of the armed forces, with "alternative demonstrations of competency" to meet the requirements for obtaining the license. The Board has determined that allowing a military spouse meeting the requirements described above to return to licensure through a provisional license without having to go before the Board to petition for licensure is an appropriate "alternative demonstration of competency" in accordance with SB 1733.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rule is in effect, there will be minimal increased cost to state government required to conduct licensing examinations and review licensing applications for the newly licensed equine dental providers. The increased cost to the state required to enforce the rules for licensed equine dental providers will be offset by the reduction in the costs the Board previously spent on enforcing the unlicensed practice of veterinary medicine by unlicensed equine dentists. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rules. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of the proposed rule.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will incur minor economic costs associated with complying with the proposed rule for each of the first five years that the rule is in effect, due to the costs associated with the fees and time required to take the Board's jurisprudence examination for equine dental providers, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rule regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed new rule, including, but not limited to, the requirement that equine dental providers licensed after September 1, 2012, take a jurisprudence examination prior to licensure. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to pay licensing fees, and take a jurisprudence examination and incur the resulting costs.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit of the proposed new rule is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.151(e), which states that the Board shall adopt rules to implement a jurisprudence examination for licensed equine dental providers.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.60. Expired Equine Dental Provider Licenses.

(a) An equine dental provider's license expires on March 1 of each calendar year and is considered delinquent. On or before March 1, a licensee must renew an unexpired license, in writing, by paying the required fee and furnishing all information required by the Board for renewal.

(b) An equine dental provider licensee who has failed to renew his or her license for a period of one year or more and wishes to reinstate the license may be required to appear before the Board to explain why the licensee allowed the license to expire and the licensee's reasons for wanting it reinstated. The licensee must take and pass the EDPE and comply with §571.3 of this title (relating to Criminal History Evaluation Letters).

(c) An equine dental provider licensee who is the spouse of a person serving on active duty as a member of the armed forces of the United States who held an equine dental provider license in Texas within the past five years, and has failed to renew his or her license for a period of one year or more while the licensee was living in another state for at least six months, may reinstate his or her license without appearing before the Board. The licensee must still take and pass the EDPE and complying with §571.3 of this title.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200374
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.61

The Texas Board of Veterinary Medical Examiners (Board) proposes an amendment to §571.61, concerning Inactive Veterinary License Status.

The proposed amendments to §571.61 clarify that the provision applies only to veterinary licensees, and not to equine dental provider licensees. These proposed amendments are necessitated by House Bill (HB) 414, 82nd Legislative Session, which gave the Board the authority to license and regulate equine dental providers. The equivalent provision for equine dental provider licensees is proposed as a new rule, §571.62, which is also proposed elsewhere in this issue of the *Texas Register.* The proposed amendments to §571.61 also include minor corrections to capitalization.

Proposed §571.61 is amended to clarify when a licensee's inactive license will be cancelled if the licensee fails to renew, at the end of the ninth consecutive year, because the previous wording "after ten years" had caused confusion among licensees about whether the inactive years had to be consecutive, and whether the license expired at the beginning of the tenth year or after the

expiration of the tenth year. This amendment reflects the Board's long-standing interpretation of this rule and is not intended to change the meaning of the rule.

Nicole Oria, Executive Director, Texas Board of Veterinary Medical Examiners, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the Board's requirements for licensure of veterinarians. Ms. Oria has determined that there will be no economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed amendment from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The amendment is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.306, which states that the Board by rule may provide for the placement of a license holder on inactive status.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.61. Inactive Veterinary License Status.

(a) Application. A veterinary licensee may request his/her license be placed on inactive status, whether or not he/she is practicing within the State of Texas, provided:

(1) his or her current license is active and is in good standing;

(2) a request in writing, on the form prescribed by the Board [~~board~~], is made for his or her license to be placed on official inactive status; and

(3) the original request is made during the annual license renewal period between January 1 and February 28; provided however, that subsequent requests for continued inactive status may be accepted by the Board at any time during the renewal year if accompanied by the appropriate delinquent penalty.

(b) Restrictions. The following restrictions shall apply to veterinary licensees whose licenses are on inactive status:

(1) Except as provided in §801.004, Texas Occupations Code, the licensee may not engage in the practice of veterinary medicine or otherwise provide treatment to any animal in the State of Texas.

(2) If the licensee possesses or obtains a federal Drug Enforcement Administration (DEA) and/or a Department of Public Safety (DPS) controlled substances registration for a Texas location, the licensee must comply with §573.43 and §573.50 of this title (relating to Misuse of DEA Narcotics Registration and Controlled Substances Records Keeping for Drugs on Hand, respectively).

(c) Return to Active Status. A veterinary licensee on inactive status wishing to practice veterinary medicine within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to veterinary licensees applying to return to active status.

(1) A veterinarian licensed and practicing in another state or jurisdiction must prove he or she is in good standing in that state or jurisdiction.

(2) A licensee on inactive status must pay the total annual renewal fee, less the amount of the inactive annual renewal fee, plus a $25 administrative processing fee to obtain a regular license. The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

(d) Continuing Education Requirements

(1) If a veterinary licensee on inactive status requesting a return to regular license status has maintained an annual average of 17 hours of continuing education, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than 17 hours, the licensee will be placed on regular license status but must complete 34 hours of continuing education in the twelve months immediately following the licensee's attaining of regular license status.

(2) For the year of reactivation, proof of 17 hours of continuing education shall not be required for an active veterinary license renewal in the year following reactivation.

(3) For purposes of this subsection, the terms "year" and "annual" mean the calendar year.

(e) Cancellation of Inactive License. A veterinary license maintained on inactive status will be automatically cancelled at the end of nine consecutive [~~after ten~~] years. A new veterinary license will be issued only upon completion of all requirements for licensure. During the ninth consecutive year of inactive status, the Board will notify the inactive veterinary licensee that during the following year, his or her license must be on regular status or the license will be cancelled.

(f) Annual Renewal Fees. The annual fee for a veterinary license on inactive status shall be as set by the Board in §577.15 of this title (relating to Fee Schedule).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200375
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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SUBCHAPTER D. LICENSE RENEWALS

The Texas Board of Veterinary Medical Examiners (Board) proposes the repeal of §571.62, concerning Default on Student Loan, and new §571.62, concerning Inactive Equine Dental Provider Licenses. The language of the rule proposed for repeal, regarding default on student loan, has been renumbered to §571.63, and is proposed elsewhere in this issue of the *Texas Register.*

Proposed new §571.62 sets out how an equine dental provider licensee can go into and come out of inactive status. The proposed new rule parallels §571.61, which sets the requirements for inactive veterinary licenses. The Texas Legislature in House Bill (HB) 414, 82nd Legislative Session, gave the Board authority to license and regulate equine dental providers, and did not exempt equine dental providers from being able to go on inactive status under Texas Occupations Code §801.306, regarding inactive licenses.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the proposed rules are in effect, there will be minimal increased cost to state government required to process requests for inactive license status and reactivation of licenses for equine dental providers. Ms. Oria does not anticipate any fiscal implications for local government as a result of the proposed rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has determined that equine dental providers, including micro-businesses operating as equine dental provider practices, will experience minor economic cost increase associated with complying with the proposed rule for each of the first five years that the rules are in effect, due to the costs associated with the inactive license fees, but the legal employment and advertising opportunities that come with licensure should outweigh these costs. The Board estimates that there are approximately 30 equine dental provider micro-businesses in Texas. The proposed rules regarding equine dental providers are necessary to implement HB 414, which required that equine dental providers be licensed and regulated by the Board. In HB 414, the Texas Legislature itself set many of the parameters that are creating costs for equine dental providers under the proposed rule revisions including, but not limited to, the provision that allows equine dental providers to go on inactive status. Thus, the Board determined that there are no legal and feasible alternatives or other less expensive methods of regulating equine dental providers without requiring them to incur the inactive licensure fee costs that offset the cost to the state of processing inactive status applications.

Ms. Oria has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit anticipated as a result of the proposed revisions is that the public will be able to rely on the training and quality of service from the regulation of licensed equine dental providers, as well as the clarification of the process for equine dental providers to go on inactive status.

The Texas Board of Veterinary Medical Examiners invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

22 TAC §571.62

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.306, which states that the Board by rule may provide for the placement of a license holder on inactive status.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.62. Default on Student Loan.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200376
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.62

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter, and §801.306, which states that the Board by rule may provide for the placement of a license holder on inactive status.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.62. Inactive Equine Dental Provider License Status.

(a) Application. An equine dental provider licensee may request his/her license be placed on inactive status, whether or not he/she is practicing within the State of Texas, provided:

(1) his or her current license is active and is in good standing;

(2) a request in writing, on the form prescribed by the Board, is made for his or her license to be placed on official inactive status; and

(3) the original request is made during the annual license renewal period between January 1 and February 28; provided however, that subsequent requests for continued inactive status may be accepted by the Board at any time during the renewal year if accompanied by the appropriate delinquent penalty.

(b) Restrictions. Except as provided in §801.004, Texas Occupations Code, an equine dental provider licensee whose license is on

inactive status may not engage in the practice of equine dentistry in the State of Texas.

(c) Return to Active Status. An equine dental provider licensee on inactive status wishing to practice equine dentistry within the State of Texas must receive written approval from the Board prior to returning to active status. In addition to other information which may be requested or required by the Board, the following conditions apply to licensees applying to return to active status.

(1) An equine dental provider licensed and practicing in another state or jurisdiction must prove he or she is in good standing in that state or jurisdiction.

(2) An equine dental provider licensee on inactive status must pay the total annual renewal fee, less the amount of the inactive annual renewal fee, plus a $25 administrative processing fee to obtain a regular license. The regular annual renewal fee shall not be prorated for applications to return to active status made after the annual renewal period.

(d) Continuing Education Requirements.

(1) If an equine dental provider licensee on inactive status requesting a return to regular license status has maintained an annual average of 6 hours of continuing education, not including any portion of the reactivation year, the licensee will be placed on regular license status without any additional requirements. If the average annual continuing education is less than 6 hours, the licensee will be placed on regular license status but must complete 12 hours of continuing education in the twelve months immediately following the licensee's attaining of regular license status.

(2) For the year of reactivation, proof of 6 hours of continuing education shall not be required for an active license renewal in the year following reactivation.

(3) For purposes of this subsection, the terms "year" and "annual" mean the calendar year.

(e) Cancellation of Inactive License. An equine dental provider license maintained on inactive status will be automatically cancelled at the end of nine consecutive years. A new license will be issued only upon completion of all requirements for licensure. During the ninth consecutive year of inactive status, the Board will notify the inactive equine dental provider licensee that during the following year, his or her license must be on regular status or the license will be cancelled.

(f) Annual Renewal Fees. The annual fee for an equine dental provider license on inactive status shall be as set by the Board in §577.15 of this title (relating to Fee Schedule).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200377
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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SUBCHAPTER D. LICENSE RENEWALS

The Texas State Board of Veterinary Medical Examiners (Board) proposes the repeal of §571.63, concerning Default on Child Support, and new §571.63, concerning Default on Student Loan. The proposed new language of §571.63 addresses default on student loans, and has been renumbered from §571.62. Aside from minor capitalization corrections, the language of the proposed rule is otherwise completely unchanged from the language that previously appeared as §571.62. The language of the rule proposed for repeal, regarding default on child support, has been renumbered to §571.65, and is also proposed elsewhere in this issue of the *Texas Register.*

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rules are in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rules.

Ms. Oria has also determined that for each year of the first five years the rules are in effect, the anticipated public benefit will be to clarify the consequences for licensees who default on their student loans. Ms. Oria has determined that there will be no added economic cost to individuals required to comply with the rules. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposal from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

22 TAC §571.63

(Editor's note: The text of the following section proposed for repeal will not be published. The section may be examined in the offices of the Texas Board of Veterinary Medical Examiners or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.63. Default on Child Support.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200378

Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.63

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.63. Default on Student Loan.

(a) Denial. The Board may deny an application for a license if it receives information from an administering entity that the applicant has defaulted on a student loan or has breached a student loan repayment contract by failing to perform his or her service obligation under the contract. The Board may rescind a denial under this subsection upon receipt of information from an administering entity that the applicant whose application was denied is now in good standing.

(b) Renewal.

(1) The Board shall not renew a license of a licensee who is in default of a student loan or a repayment agreement except as provided in paragraph (2) of this subsection.

(2) For a licensee in default of a loan or repayment agreement, the Board shall renew the license if the licensee presents to the board a certificate certifying that:

(A) the licensee has entered into a repayment agreement on the defaulted loan; or

(B) the licensee is not in default on the loan or on the repayment agreement.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200379
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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22 TAC §571.65

The Texas State Board of Veterinary Medical Examiners (Board) proposes new §571.65, concerning Default on Child Support. The proposed new rule has been renumbered from §571.63. Aside from minor capitalization corrections, the language of the proposed rule is otherwise unchanged from the language that previously appeared as §571.63.

Nicole Oria, Executive Director, has determined that for each year of the first five years that the rule is in effect there will be no additional costs to state or local governments as a result of enforcing or administering the rule as proposed. Ms. Oria has determined that there will be no reduction in costs for either state or local governments as a result of enforcing or administering this rule. Ms. Oria has further determined that there will be no loss or increase in revenue to the state or to local governments as a result of enforcing or administering the rule. Moreover, Ms. Oria has determined that there will be no local employment impact as a result of adoption of the proposed rule.

Ms. Oria has also determined that for each year of the first five years the rule is in effect, the anticipated public benefit will be to clarify the consequences for licensees who default on their child support obligations. Ms. Oria has determined that there will be no added economic cost to individuals required to comply with the rule. Ms. Oria has determined that there will be no measurable effect on small businesses and micro businesses. There is no anticipated difference in cost of compliance between small and large businesses.

The Texas Board of Veterinary Medical Examiners invites comments on the proposed new rule from any member of the public. A written statement should be mailed or delivered to Loris Jones, Texas Board of Veterinary Medical Examiners, 333 Guadalupe, Suite 3-810, Austin, Texas 78701-3942, by facsimile (FAX) to (512) 305-7574, or by e-mail to vet.board@tbvme.state.tx.us. Comments will be accepted for 30 days following publication in the *Texas Register.*

The new rule is proposed under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

Texas Occupations Code, Chapter 801, is affected by this proposal.

§571.65. Default on Child Support.

The Board shall suspend and/or deny a renewal of a license upon receipt of a final order suspending a license under Chapter 232 of Texas Family Code for failure to pay child support and/or where the Office of the Attorney General has notified the Board to suspend and/or not renew a license for failure to pay child support.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200380
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-7563

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 60. COMPLIANCE HISTORY

30 TAC §§60.1 - 60.3

The Texas Commission on Environmental Quality (commission or TCEQ) proposes amendments to §§60.1 - 60.3.

Background and Summary of the Factual Basis for the Proposed Rules

The commission proposes revisions to Chapter 60 to implement certain requirements of House Bill (HB) 2694, regarding compliance history. HB 2694, 82nd Legislature, 2011, §§4.01 - 4.05 and 4.07, amended Texas Water Code (TWC), Chapter 5, Subchapter Q, requiring the commission to make changes to the compliance history rule. The purpose of this proposed rulemaking is to allow the commission to use new standards instead of the existing uniform standard for evaluating and using compliance history. In addition, the proposed rulemaking modifies the components and formula of compliance history in order to provide a more accurate measure of regulated entities' performance and make compliance history a more effective regulatory tool.

HB 2912, 77th Legislature, 2001, §4.01, amended TWC, Chapter 5, by adding Subchapter Q, TWC, §5.753, that required the commission to "develop a uniform standard for evaluating compliance history." At the time, the process for measuring or comparing compliance history across the commission's programs for air, water, and waste was inconsistent. In addition to the traditional use of compliance history in permitting and enforcement decisions, this new performance-based regulation allowed the commission to use compliance history when determining eligibility for voluntary incentive programs. The idea behind these programs was to use compliance history to provide incentives for regulated entities to do more to protect the environment than law requires by making available benefits, such as regulatory flexibility and exemptions from some inspections. In late 2001 and early 2002, TCEQ held stakeholder meetings to develop this new system of compliance history. TCEQ interpreted the uniform standard to mean using an identical objective formula for all entities across all program areas. The compliance history system has remained unchanged since implementation.

In calculating compliance history, TCEQ currently assigns points for different components that when computed in an equation produce a numerical score for each regulated entity. Generally, the lower the score, the better the classification. For instance, noncompliance issues, such as enforcement actions taken against a facility, adds points and proactive approaches towards compliance, such as participating in voluntary programs, subtracts points.

The commission currently recalculates compliance history scores annually based on information from the previous five years, and classifies regulated entities as poor, average, or high performers. HB 2912 also required the commission to assess the compliance history of entities for which it does not have compliance information. The commission classifies these entities as average by default.

Section 4.01 of HB 2694 amends TWC, §5.751 to add TWC, Chapter 32, and Texas Health and Safety Code (THSC), Chapter 375, regarding applicability. Persons and entities covered by those chapters will now be subject to the compliance history rule.

Section 4.04 of HB 2694 amends TWC, §5.753(a) to remove the requirement for a uniform standard for evaluating compliance history, and replaces the uniform standard with a standard that ensures consistency and may account for differences among regulated entities.

Section 4.04 of HB 2694 amends TWC, §5.753(b) to remove enforcement actions from other states and the federal government, except actions by the United States Environmental Protection Agency (EPA), as mandatory components of compliance history and to clarify that enforcement actions from the EPA are mandatory components to the extent readily available to the commission.

Section 4.04 of HB 2694 amends TWC, §5.753(d) to limit the inclusion of notices of violation (NOV) as a mandatory component of compliance history to NOVs one-year-old or less. In addition, the commission must include a prominently displayed statement emphasizing the NOV is only an allegation and not proof of an actual violation.

Section 4.04 of HB 2694 adds TWC, §5.753(d-1) to prohibit the commission from including a self-reported violation under Title V of the Federal Clean Air Act as an NOV for compliance history purposes, unless the commission issues a written NOV or the self-reported violation results in a final enforcement order or judgment.

Section 4.05 of HB 2694 amends TWC, §5.754(a) and (e) to clarify that the commission may, but is not required to, consider compliance history classifications when using compliance history in commission decisions regarding permitting, enforcement, announced inspections, and participation in innovative programs.

Section 4.05 of HB 2694 amends TWC, §5.754(b)(1) to rename the compliance history classifications from poor, average, and high performers to unsatisfactory, satisfactory, and high performers. The amendment clarifies that unsatisfactory performers perform below minimal acceptable performance standards established by the commission and that high performers have an above-satisfactory compliance record.

Section 4.05 of HB 2694 amends TWC, §5.754(b)(2) and (d) to allow the commission to establish a category of unclassified performers for which the commission does not have adequate compliance information about the site and to allow the commission to require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

Section 4.05 of HB 2694 amends TWC, §5.754(b)(3) to require the commission to consider both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the Federal Clean Air Act.

Section 4.05 of HB 2694 amends TWC, §5.754(c)(2) to modify the classification of repeat violators. The commission must consider the size and complexity of the site at which the violations occurred, and limit consideration to violations of the same nature and same environmental media that occurred in the previous five years. The number of sites is no longer included as a criterion for repeat violator classification.

Section 4.05 of HB 2694 amends TWC, §5.754(c)(3) to require that compliance history classifications consider the size and complexity of the site, including whether the site is subject to Title V of the Federal Clean Air Act, and the potential for a violation at the site that is attributable to the nature and complexity of the site.

Section 4.05 of HB 2694 adds TWC, §5.754(e-1) to prohibit the amount of penalty enhancement or escalation attributed to compliance history from exceeding 100% of the base penalty for an

individual violation as determined by the commission's penalty policy.

Section 4.05 of HB 2694 amends TWC, §5.754(h) to state that persons classified as unsatisfactory performers are no longer prohibited from receiving announced investigations.

Section 4.07 of HB 2694 adds TWC, §5.756(e) to require a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information, before compliance performance information about a site may be placed on the Internet.

Section by Section Discussion

§60.1, Compliance History

The proposal amends §60.1(a) by adding TWC, Chapter 32, and THSC, Chapter 375, as required by HB 2694.

The commission proposes revisions to §60.1(a)(6) and (7) to address compliance histories calculated under the existing rule and the proposed rule. HB 2694, §4.31, has a savings clause for the commission to continue to use its current standard. The commission will continue to use the version of the rule in effect at the time the compliance history classification was calculated in accordance with §60.1(b). For example, if an application for a permit is received by the executive director, then the version of Chapter 60 in effect at the time the application is received will be the version used for compliance history purposes. Therefore, the compliance history rating generated under the existing version of this chapter will remain in effect for any actions applicable under that chapter. The commission may consider new compliance history information as it deems necessary.

In the existing rule, the compliance period for NOVs is five years. The proposal amends §60.1(b) to change the compliance period for NOVs to one year except as used in proposed §60.2(f) for determination of repeat violator. In evaluating repeat violators, the commission will review a five-year period for NOVs. The compliance period remains unchanged for all other compliance history components.

The proposal amends §60.1(c)(1), (3), (7), (9) and (13) to change the components of compliance history.

Section §60.1(c)(1) is being revised because HB 2694 no longer requires the commission to include consent decrees or criminal convictions of the federal government unless they are readily available.

The proposal amends §60.1(c)(3) to reflect the changes the legislature made to TWC, §5.754 regarding the readily available components to be considered in compliance history. The commission shall now consider enforcement orders, court judgments, consent decrees, and criminal convictions relating to environmental rules of the EPA that are readily available to the commission as a component of compliance history. This section has also been revised to remove from consideration enforcement orders, court judgments, and criminal convictions of other states as a component of compliance history in accordance with HB 2694.

The proposal amends §60.1(c)(7) regarding NOVs. Under the proposal, the components would include all written NOVs for a period of one year from the date of issuance for each NOV. NOVs will be considered for a five-year compliance period for determination of the repeat violator status. In the Compliance History Report, NOVs will be preceded with the statement, "A notice of violation represents a written allegation of a violation of a specific regulatory requirement from the commission to a regulated entity. A notice of violation is not a final enforcement action nor proof that a violation has actually occurred," as required by HB 2694. Information received by the commission as required by Title V of the Federal Clean Air Act (42 United States Code (USC), §7661 *et seq.)* may not be included as an NOV component of compliance history unless the executive director issues a written NOV. The executive director has historically evaluated deviation reports during an investigation prior to making a compliance determination. An NOV would only be issued for deviations if the executive director's staff documented a violation. This is the current practice of the executive director.

The proposal amends §60.1(c)(9) relating to environmental management systems (EMS) to specify that the commission will consider an EMS approved under Chapter 90 as a positive component of compliance history.

The proposal amends §60.1(c)(13) to remove the name and address of the staff person as a compliance history component from the rule language. While this information will continue to be on the Compliance History Report, it is not a compliance-related component of the compliance history.

Section 60.1(d) has remained unchanged. Change of ownership remains a component of compliance history and any change of ownership will be shown on the compliance history. Any previous NOVs or orders will be assessed against new owners for the applicable compliance period, which is consistent with how it has been applied by the commission in the past.

§60.2, Classification

The proposal amends §60.2(a)(1) - (a)(3) to change the classification nomenclature from high, average, and poor performers to high, satisfactory, and unsatisfactory performers. Under the proposal, a high performer has an above-satisfactory compliance record. A satisfactory performer generally complies with environmental regulations. An unsatisfactory performer performs below minimal acceptable performance standards established by the commission. The change in nomenclature is present in §60.2(g)(2)(B) and (C), (3), (3)(A), (3)(A)(iii), (3)(B), (3)(B)(i), and (ii), and §60.3.(a)(2), (3), (3)(A) - (C), (6), (b), (c)(1), (d), (d)(3), and (e). This change has been applied throughout this section as applicable.

The legislature has revised the statute to allow the commission to establish a category of unclassified performers, or regulated entities for which the commission does not have adequate compliance information about the site. The proposal amends §60.2(b) to change the current category from "average performer by default" to "unclassified." The executive director considers any site that does not have compliance history points attributable to violation points, chronic excessive emissions points, repeat violator points, or self-audit points to be unclassified. Unclassified performers will include sites where the executive director may not have investigated the site in the last five years. The nomenclature change removes the implication that a regulated entity with no compliance information generally complies with environmental regulations.

The commission proposes adding §60.2(c). HB 2694 eliminates the commission's uniform standard for evaluating compliance history and allows the commission to account for differences among regulated entities. HB 2694 directs the commission to account for operation, complexity, and size of a site when determining compliance history. In order to more effectively compare regulated entities against those similarly situated,

the proposal adds groupings based on the North American Industry Classifications System (NAICS). The executive director selected NAICS because it is a nationally recognized standard applicable to all industries and is currently information readily available to the commission. The executive director initially proposes to organize regulated entities by the following groups: 1) NAICS codes 44711 and 44719, Gas Stations with Convenience Stores and other Gas Stations; 2) NAICS code 32411, Oil and Petroleum Refineries; 3) NAICS code 211, Oil and Gas Extraction; 4) NAICS code 212, Mining; 5) NAICS code 325, Chemical Manufacturing; 6) NAICS code 2211, Electric Power Generation; 7) NAICS code 562212, Solid Waste Landfills; 8) NAICS code 22132, Sewage Treatment Facilities; 9) NAICS code 23, Construction; 10) NAICS code 3273, Cement and Concrete Product Manufacturing; 11) NAICS codes 5621,56221, 562213, 562219, Waste Management (exclude landfills); 12) NAICS code 11, Agriculture, Forestry, Fishing, and Hunting; and 13) All Other Regulated Entities. For reporting purposes, the sites would be grouped according to their reported primary NAICS group which reflects their primary business. The executive director recognizes that the use of NAICS codes is not an exact means to determine the complexity of a site, but that similar businesses may have similar levels of complexity. The executive director also recognizes that the current NAICS codes for some regulated entities are incorrect as reported to the commission. Therefore, other readily available information, such as complexity points gathered under proposed §60.2(e), may also be used for reporting purposes to group similarly complex entities.

The commission reletters existing §60.2(c) as proposed §60.2(d) due to the inclusion of proposed §60.2(c).

The commission proposes §60.2(e), concerning complexity points, to address the requirements of TWC, §5.754(b)(3), which states that the commission, in classifying a person's compliance history, must take into account both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject to Title V of the Federal Clean Air Act (USC, §7661 *et seq.).* HB 2694 directs the commission to account for complexity and size for sites when determining compliance history. In addition, HB 2694 removed the number of facilities owned or operated by a person as a consideration for establishing criteria for classifying a repeat violator. The proposed rule removes existing §60.2(d)(3) relating to the number of sites in Texas owned or operated by a person. The commission recognizes that the compliance history of widely varying types of sites requires various means to determine overall complexity. In this proposed rule, the commission has broadened the scope of data used to determine a site's complexity. Data available to the commission has improved significantly since the existing rule was written. The points assigned under proposed §60.2(e) are based upon criteria points found in existing §60.2(d). The rulemaking proposes to utilize complexity points for all sites. The term "complexity points" includes program participation, size, and nonattainment points. Under the existing rule, complexity points refer to those points assigned based upon the types of permits at the site, which is now known as "program participation" points.

In proposed §60.2(e)(1), the commission would assign every site "program participation" points ranging from factors of four, three, two, or one, based generally upon the site's program authorizations. A site will receive points for each of its program authorizations. As required by HB 2694, Title V Federal Operating Permits have been added to §60.2(e)(1)(C)(i). This is not included under the existing compliance history rule. Other program authorizations and registrations, that are not included in the existing rule, such as Edwards Aquifer authorizations, Enclosed Structures constructed over a closed Municipal Solid Waste (MSW) landfill permits and registrations, Industrial Hazardous Waste registrations, Medical Waste permits, Radioactive Waste storage or processing license; Petroleum Storage Tanks registrations, Stage II Vapor Recovery registrations, Sludge permits or registrations, Stormwater permits, and Uranium licenses are proposed to be added in proposed §60.2(e)(1)(D).

Sites with permits and/or authorizations in the following program areas including: Radioactive Waste Disposal; Hazardous or Industrial Non-Hazardous Storage Processing or Disposal; MSW Type I; Prevention of Significant Deterioration; Phase I Municipal Separate Storm Sewer System; and Texas Pollutant Discharge Elimination Discharge System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major, will receive four points for each permit type issued to a person at a site. Sites with permits and/or authorizations in the following program areas including: Underground Injection Control Class I/III; MSW Type I Arid Exempt; MSW Type IV, V, or VI; MSW Tire Registration; and TPDES or NPDES Industrial or Municipal Minor, will receive three points for each permit type issued to a person at the site. Sites with permits and/or authorizations in the following program areas including: Title V Federal Operating Permits; New Source Review individual permit; and any other individual site-specific water quality permit not referenced previously or any water quality general permit, will receive two points. Other registrations and authorizations readily available to the executive director that are applicable to the compliance history rule including: Edwards Aquifer; Enclosed Structures constructed over a closed MSW landfill; Industrial Hazardous Waste; Medical Waste; Radioactive Waste; Petroleum Storage Tanks; Stage II Vapor Recovery; Sludge; Stormwater; permit by rule requiring submission of a PI-7 under Chapter 106; and Uranium will receive one point.

Under proposed §60.2(e)(2), the commission proposes to assign points based upon the size of the site. Under the existing rule, size points are addressed under §60.2(d)(4). The commission recognizes that the point structure for size under the existing rule is limiting and does not account for a meaningful range of size for very complex sites. Under the existing rule, the points assigned to size for each media ranged from one to four points which did not allow enough degree of separation between large sites and small sites. Under the proposed rule, the executive director has changed the points assigned to each media for size. One measure of size is the number of points of emission, discharge, or potential release to the environment at the site. Generally, each of these points or facilities requires authorization which adds additional regulatory oversight and increased complexity. The commission currently has information on size through Facility Identification Numbers (FINs), Water Quality external outfalls, and Active Hazardous Waste Management Units (AHWMU). The commission is currently reviewing additional readily available data sets for all media that may be used to more accurately represent the size of a site.

Under the proposal, the points assigned to the size factor for FINs will be calculated by multiplying the total number of FINs at a site by 0.01 and rounded up to nearest whole number. The size factor for Water Quality external outfalls and AHWMUs will be based on the number of external outfalls and number of AHWMUs. A site with ten or more external outfalls or 50 or more AHWMUs will receive ten points. A site with at least five but

fewer than ten external outfalls or at least 20 but fewer than 50 AHWMUs will receive five points. A site with at least two, but fewer than five external outfalls or at least ten but fewer than 20 AHWMUs will receive three points. A site with at least one external outfall or at least one, but fewer than ten AHWMUs will receive one point.

The commission proposes §60.2(e)(2)(D) to assign points to small entities. Small entities are proposed to be assigned three points to account for the complexity that arises from being a small entity. A small entity is defined as: a city with a population of less than 5,000; a county with a population of less than 25,000; or a small business. A small business is defined as any person, firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees. A business that is a wholly owned subsidiary of a corporation shall not qualify as a small business if the parent organization does not qualify as a small business. The definition of small entity comes from the TCEQ's Enforcement Standard Operating Procedures. The commission recognizes that size alone cannot account for the complexity that a small entity faces, and therefore proposes to add a separate provision of size points for those entities.

Proposed §60.2(e)(3) addresses points for sites located in nonattainment areas. Points for sites located in nonattainment areas are in §60.2(d)(5) under the existing rule and no changes are recommended. The commission would continue to assign every site located in a nonattainment area one point.

HB 2694 requires changes to the way in which the commission evaluates repeat violators. Previously, in determining whether or not an entity was a repeat violator, the commission evaluated all major violations that occurred during the five-year compliance period. Under the proposed rule, in accordance with HB 2694, the commission will limit consideration to only those violations that are of the same nature and the same environmental media that occurred in the preceding five years. The commission analyzed different methods to define "same nature." The commission proposes to define same nature as violations that have the same root citation at the subsection level. For example, all rules under §334.50 (e.g. §334.50(a) or (b)(2)) would be considered same nature. If a person is determined to be a repeat violator, the impact to the compliance history calculation remains the same as in the existing rule and 500 points will be added to the compliance history calculation. If the person is not a repeat violator, then zero points will be added to the calculation.

The proposal replaces the term "criteria points" with "complexity points" throughout §60.2(f).

The commission proposes §60.2(f)(1)(A) - (C), replacing existing §60.2(d)(1)(A) - (C). Proposed §60.2(f)(1)(A) - (C) removes the range of complexity points used to determine if a person is a repeat violator, simplifying the language. Under the proposal, a person is a repeat violator when: the site has had a major violation(s) documented on at least two occasions and has less than a total of nine complexity points; the site has had a major violation(s) documented on at least three occasions and has less than a total of 25 complexity points; or the site has had a major violation(s) documented on at least four occasions.

The proposal moves "Repeat Violator Exemption" from existing §60.2(d)(6) to proposed §60.2(f)(2).

The proposal moves "Formula" from existing §60.2(e) to proposed §60.2(g).

The current formula used for calculating compliance history is:

Figure 1: 30 TAC Chapter 60--Preamble

The commission proposes the following revised formula:

Figure 2: 30 TAC Chapter 60--Preamble

The commission proposes §60.2(g)(1)(D) to incorporate a positive factor in the site's compliance history rating regarding compliance with orders. The site will receive the full amount of violation points attributable to an order for the first two years. Two years after the effective date of the order, if the entity is compliant with all ordering provisions and has resolved all violations, the points attributable to that order will be reduced. The reduction will be 25% for year three, 50% for year four, and 75% for year five. The commission proposes this new reduction to encourage compliance and encourage maintaining compliance.

Proposed §60.2(g)(1)(E) and (F) amend the multipliers used to calculate points assigned to violations contained in NOVs. Under the proposal, major violations shall be multiplied by ten (currently five in the existing rule) and moderate violations shall be multiplied by four (currently three in the existing rule). The commission is proposing this change to ensure the weight of the violations is more appropriate.

Proposed §60.2(g)(1)(L) amends the multipliers used to calculate points assigned to violations disclosed as a result of an audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995, as amended, and the site was granted immunity from an administrative or civil penalty for that violation(s) by the agency. Under the proposal, major violations shall be multiplied by ten (currently five in the existing rule) and moderate violations shall be multiplied by four (currently three in the existing rule). The commission is proposing this change to ensure the weight of the violations is more appropriate.

The commission proposes to revise existing §60.2(e)(1)(L) to proposed §60.2(g)(1)(M) to reflect that only investigations which do not result in a documented violation will be considered. The number of investigations conducted during the compliance period that do not document any violations will be multiplied by 0.1 and added to the number of complexity points in §60.2(e). Investigations that do not document any violations will be the only investigations considered in the compliance history formula. The number of investigations that do not document any violations multiplied by 0.1 shall be rounded up to the nearest whole number. The executive director reviewed the investigations applicable to compliance history and determined that approximately 91% of all investigations do not result in documented violations. The executive director proposes this change to further encourage incentives for compliance. Investigations that do not result in documented violations more accurately reflect a positive component of compliance history. The commission will continue its current practice and will not include investigations that are the result of a complaint regardless of whether or not violations are documented.

The commission proposes to revise existing §60.2(e)(1)(M) to proposed §60.2(g)(1)(N) to incorporate the changes made to TWC, §5.755(b). An EMS is a way for sites to receive a reduction to their compliance history rating. The amount of reduction for implementing an EMS has not changed and remains at 10%. The commission proposes to add incentives for entities that participate in other commission supported voluntary pollution reduction or early compliance programs. The commission proposes a reduction of 5% for each of the voluntary pollution reduction or early compliance programs applicable to a site. The total amount

of reduction available to an entity implementing an EMS (10%) and participating in other commission supported voluntary reduction or early compliance programs (5% each) is 25%. The commission currently supports three programs: 1) Pollution Prevention Site Assistance; 2) Clean Texas Voluntary Pollution Reduction; and 3) Compliance Commitment.

Proposed §60.2(g)(2) changes the site rating ranges for each classification based on the proposed formula. A high performer is defined as having fewer than 0.10 points. A satisfactory performer is defined as having 0.10 points to 55 points. An unsatisfactory performer is defined as having more than 55 points.

The proposal amends existing §60.2(e)(3) to proposed §60.2(g)(3)(A) and (B)(i) and (ii) to correspond to the new point ranges in §60.2(g)(2). Proposed §60.2(g)(3)(A) states that the executive director may reclassify a site with 55 points based on the listed mitigating factors. Proposed §60.2(g)(3)(B)(i) and (ii) states that reclassification of a site under these clauses shall be applicable to a satisfactory performer with 55 points.

The proposal moves §60.2(f) in the existing rule to §60.2(h). Under the existing rule a person classification is assigned by averaging the site ratings of all the sites owned and/or operated by that person in the State of Texas. Under the proposed rule, the executive director would assign a classification to a person by adding the complexity weighted site ratings of all the sites owned and/or operated by that person in the State of Texas. Each site that a person is affiliated to will receive a point value based on the compliance history rating at the site multiplied by the percentage of complexity points that site represents of the person's total complexity points for all sites. This is depicted in the formula below.

Figure 3: 30 TAC Chapter 60--Preamble

Each of these calculated amounts will be added together to determine the person's compliance history rating.

The proposal moves existing §60.2(g), to §60.2(i). The proposal revises the notice of classification to incorporate changes to TWC, §5.756. Every September 1, the executive director calculates new person and site classification ratings for compliance history. The compliance history ratings are published on the commission's Web site 30 days after the completion of a quality assurance, quality control (QAQC) review period conducted by executive director's staff. The commission regulates over 220,000 sites, some of which have more than one owner or operator. The executive director will only conduct a QAQC review of compliance history calculations where the person or site has a rating above zero. A QAQC review will not be conducted on persons or sites who rank unclassified or have a rating of zero. TWC, §5.756 included a 30-day period for the owner or operator of the site to review and comment on the information. During the QAQC review, owners or operations who wish to review and comment on the compliance history information must submit a Compliance History Review Form. The Compliance History Review Form must be submitted by August 15 of each year and must be submitted annually to the commission. The executive director will publish a press release on the commission's Web site on or about July 15 to remind the regulated community of the compliance history QAQC review period. A person may file an appeal of the classification in accordance with proposed §60.3(e). The commission will post on the commission's Web site the compliance history rating for a person and site on or about November 1 of each year. The commission will still allow for an owner or operator of the regulated entity to submit a correction request, in accordance with proposed §60.3(f) at any time for review by executive director's staff.

§60.3, Use of Compliance History

This section describes activities the commission may take if a site is classified as an unsatisfactory performer. Language in §60.3(b)(3) is revised to reflect changes in HB 2694 which provides flexibility to the commission in conducting investigations announced or unannounced.

The proposal amends §60.3(e) and (e)(4). Section 60.3(e) is amended to state that a person or site classification may be appealed only if the person or site is classified as either an unsatisfactory performer or a satisfactory performer with 45 points or more. The existing rule states that 30 points or more are needed to appeal. The change is necessary based on the proposed changes to the compliance history formula. Section 60.3(e)(4) is amended to state that any replies to an appeal must be filed no later than 15 days after the filing of the appeal to provide the commission with a more reasonable amount of time to reply. The existing rule provides ten days.

Fiscal Note: Costs to State and Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment section, 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 rulemaking implements certain sections of HB 2694 and relates to the use of standards for evaluating and using compliance history for entities regulated by the commission. The proposed rules replace the uniform standard for evaluating compliance history with a standard that ensures consistency and may account for differences among regulated entities.

The proposed rules would clarify that enforcement actions from the EPA are mandatory components to the extent that they are readily available to the commission. The proposed rules would limit the inclusion of NOVs as a mandatory component of compliance history to those that are one-year-old or less and would prohibit the commission from including a self-reported violation under Title V of the Federal Clean Air Act as an NOV for compliance history purposes, unless the commission issues a written NOV or the self-reported violation results in a final enforcement order or judgment. The proposed rules include subsurface area drip disposal systems and the removal of convenience switches as programs that are now subject to the compliance history rule.

The proposed rules would clarify that the commission may, but is not required, to consider compliance history classifications when using compliance history in commission decisions regarding permitting, enforcement, announced inspections, and participation in innovative programs. The proposed rules would rename the compliance history classifications from poor, average, and high performers to unsatisfactory, satisfactory, and high performers. The proposed rules would allow the commission to establish a category of unclassified performers for which the commission does not have adequate compliance information and would allow the commission to require a compliance inspection to determine an entity's eligibility for participation in a program that requires a high level of compliance.

The proposed rules would require the commission to consider both positive and negative factors related to the operation, size, and complexity of the site, including whether the site is subject

to Title V of the Federal Clean Air Act. The commission must consider the size and complexity of the site at which the violations occurred, and limit consideration to violations of the same nature and same environmental media that occurred in the previous five years. The number of sites is no longer included as a criterion for repeat violator classification.

The proposed rules would prohibit the amount of penalty enhancement or escalation attributed to compliance history from exceeding 100% of the base penalty for an individual violation as determined by the commission's penalty policy.

In order to implement the proposed rules, the agency will need to modify the Consolidated Compliance and Enforcement Data System (CCEDs), the Central Registry system, and the compliance history application in order to accommodate changes to the compliance history formula resulting from this rulemaking. The agency Web site will need to be updated to reflect the proposed changes. HB 2694 requires the agency to implement a quality assurance and control procedure, including a 30-day period for the owner or operator of the site to review and comment on the information, before compliance performance information about a site may be placed on the Internet. All of the aforementioned changes are anticipated to cost the agency between $90,000 and $150,000 in fiscal year 2012 with the majority of the funds allocated to database updates for CCEDS and Central Registry. No additional funding was appropriated to the agency to implement the changes so the agency will use available resources. Agency costs after fiscal year 2012 are expected to be minimal.

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 compliance with state law through the implementation of a more effective and transparent compliance history evaluation and classification system.

The proposed rulemaking is not expected to have fiscal implications for any individuals or businesses. Although all regulated entities for which compliance history is currently applicable will fall into the new classification and rating system, no components are being added to the current formula which would result in negative consequences and the overall impact is anticipated to be minor with no adverse fiscal impacts. The proposed rules do not impose new regulatory requirements or fees.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the proposed rules. The proposed rules do not add new regulatory requirements or fees. Even though regulated entities for which compliance history is currently applicable will fall into a new classification and rating system, no components are being added to the current formula which would result in negative consequences for small or micro-business.

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 to comply with state law and do not adversely affect a small or micro-business in a material way for the first five years that 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

The commission reviewed the proposed rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. A "major environmental rule" means a rule, the specific intent of which, is to protect the environment or reduce risks to human health from 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 because the rulemaking merely adds the new requirements relating to the components of compliance history. The commission has determined that the proposed rulemaking does not fall under the definition of a "major environmental rule" because the proposed amendments are primarily designed to clarify the existing regulatory requirements and implement the statutory provisions. The primary purpose of the proposed rulemaking is to implement HB 2694, 82nd Legislature, 2011, §§4.01 - 4.05 and 4.07, which amended TWC, Chapter 5, Subchapter Q, requiring changes to the compliance history rule. The proposed rulemaking revises the standards for use and evaluation of compliance history.

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(a), only applies to a major environmental rule, the result of which is to: 1) exceed a standard set by federal law, unless the rule is specifically required by state law; 2) exceed an express requirement of state law, unless the rule is specifically required by federal law; 3) exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program; or 4) adopt a rule solely under the general powers of the agency instead of under a specific state law. This rulemaking does not meet any of these four applicability requirements because this rulemaking: 1) does not exceed any standard set by federal law; 2) does not exceed the requirements of state law; 3) does not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement any state and federal program; and 4) is not proposed solely under the general powers of the agency, but rather under specific authorizing statutes as referenced in the Statutory Authority section of this preamble.

Takings Impact Assessment

The commission evaluated the proposed rules and performed an assessment of whether these proposed rules constitute a takings under Texas Government Code, Chapter 2007. The specific purpose of the rules is to implement the statutory provisions of TWC, §§5.751 - 5.754 and 5.756. The proposed rules provide for standards for evaluating and using compliance history.

Promulgation and enforcement of the proposed amendments would constitute neither a statutory nor a constitutional taking of private real property. Specifically, the proposed regulations do not affect a landowner's rights in real property because the clarification in the rulemaking does not burden (constitutionally) nor

restrict or limit the owner's right to property and reduce its value by 25% or more beyond that which would exist in the absence of the proposed clarification of the regulations. In other words, there are no burdens imposed on private real property under this rulemaking because they only establish a new procedural mechanism for compliance history. Therefore, the proposed rules do not have any impact on the use or enjoyment of private real property, and there would be no reduction in value of property as a result of this rulemaking.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the rule include: 31 TAC §501.12(1), to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas (CNRAs); 31 TAC §501.12(2), to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone; 31 TAC §501.12(3), to minimize loss of human life and property due to the impairment and loss of protective features of CNRAs; 31 TAC §501.12(5), to balance the benefits from economic development and multiple human uses of the coastal zone, the benefits from protecting, preserving, restoring, and enhancing CNRAs, the benefits from minimizing loss of human life and property, and the benefits from public access to and enjoyment of the coastal zone; 31 TAC §501.12(6), to coordinate agency and subdivision decision-making affecting CNRAs by establishing clear, objective policies for the management of CNRAs; 31 TAC §501.12(7), to make agency and subdivision decision-making affecting CNRAs efficient by identifying and addressing duplication and conflicts among local, state, and federal regulatory and other programs for the management of CNRAs; and 31 TAC §501.12(8), to make agency and subdivision decision-making affecting CNRAs more effective by employing the most comprehensive, accurate, and reliable information and scientific data available and by developing, distributing for public comment, and maintaining a coordinated, publicly accessible geographic information system of maps of the coastal zone and CNRAs at the earliest possible date. The commission has reviewed these rules for consistency with applicable goals of the CMP and determined that the rules are consistent with the intent of the applicable goals and will not result in any significant adverse effect to CNRAs.

CMP policies applicable to the proposed rules include: 31 TAC §501.19, Construction and Operation of Solid Waste Treatment, Storage, and Disposal Facilities; 31 TAC §501.20, Prevention, Response, and Remediation of Oil Spills; 31 TAC §501.21, Discharge of Municipal and Industrial Wastewater to Coastal Waters; 31 TAC §501.22, Nonpoint Source (NPS) Water Pollution; 31 TAC §501.23, Development in Critical Areas; 31 TAC §501.25, Dredging and Dredged Material Disposal and Placement; 31 TAC §501.28, Development Within Coastal Barrier Resource System Units and Otherwise Protected Areas on Coastal Barriers; and 31 TAC §501.32, Emission of Air Pollutants. This rulemaking does not relax existing standards for issuing permits related to the construction and operation of solid waste treatment, storage, and disposal facilities in the coastal zone or for governing the prevention of, response to, and remediation of coastal oil spills. This rulemaking does not relax existing commission rules and regulations governing the discharge of municipal and industrial wastewater to coastal waters, nor does it affect the requirement that the agency consult with the Department of State Health Services regarding wastewater discharges that could significantly adversely affect oyster reefs. This rulemaking does not relax the existing requirements that state agencies and subdivisions with the authority to manage NPS pollution cooperate in the development and implementation of a coordinated program to reduce NPS pollution in order to restore and protect coastal waters. Further, it does not relax existing requirements applicable: to areas with the potential to develop agricultural or silvicultural NPS water quality problems; to on-site disposal systems; to underground storage tanks; or to Texas Pollutant Discharge Elimination System permits for storm water discharges. This rulemaking does not relax the standards related to dredging, the discharge of dredge material, compensatory mitigation, and authorization of development in critical areas or to dredging, the discharge, disposal, and placement of dredged material, compensatory mitigation, and the authorization of development in critical areas. This rulemaking does not relax existing standards for issuing permits related to development of infrastructure within Coastal Barrier Resource System Units and Otherwise Protected Areas. Rather, the intent of the rulemaking is to increase compliance with existing standards and rule requirements. This rulemaking has been conducted consistent with the THSC, Chapter 382. Promulgation and enforcement of these rules will not violate (exceed) any standards identified in the applicable CMP goals and policies.

As required by §281.45(a)(3) and 31 TAC §505.11(b)(2), relating to actions and rules subject to the CMP, commission rules governing air pollutant emissions must be consistent with the applicable goals and policies of the CMP. The commission reviewed the rulemaking for consistency with the CMP goals and policies in accordance with the rules of the Coastal Coordination Council, and determined that the rulemaking is consistent with the applicable CMP goals and policies. The CMP goal applicable to this rulemaking is the goal to protect, preserve, and enhance the diversity, quality, quantity, functions, and values of CNRAs (31 TAC §501.12(l)). The CMP policy applicable to this rulemaking is the policy (31 TAC §501.32) that commission rules comply with federal regulations in 40 Code of Federal Regulations (CFR) to protect and enhance air quality in the coastal area (31 TAC §501.32).

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 March 6, 2012 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. The commission is interested in all comments related to this proposed rulemaking and specifically requests comments on proposed §60.2(e)(2) with regard to how the agency can account for various sized regulated entities within program areas or media other than those program areas or media currently contemplated by the proposed rule language.

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. Requests should be made as far in advance as possible.

Submittal of Comments

Written comments may be submitted to Michael Parrish, 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://www5.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 2011-032-060-CE. The comment period closes March 12, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact David Van Soest, Office of Compliance and Enforcement at (512) 239-0468.

Statutory Authority

House Bill 2694 granted rulemaking authority to the commission under Texas Water Code (TWC), §5.754 to establish a set of standards for the classification and use of compliance history. The amendments are proposed under Texas Health and Safety Code (THSC), §361.017 and §361.024, which provide the commission with authority to adopt rules necessary to carry out its power and duties under the Texas Solid Waste Disposal Act; THSC, §382.017, which provides the commission with the authority to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; and THSC, §401.051, which provides the commission with authority to adopt rules and guidelines relating to the control of sources of radiation under the Texas Radiation Control Act. The amendments are also authorized under TWC, §5.103, which provides the commission with authority to adopt any rules necessary to carry out its powers and duties under this code and other laws of this state and to adopt rules repealing any statement of general applicability that interprets law or policy; and TWC, §5.105, which authorizes the commission to establish and approve all general policy of the commission by rule.

The proposed amendments implement TWC, §§5.751 - 5.754 and 5.756, relating to the standard for evaluating compliance history.

§60.1. Compliance History.

(a) Applicability. The provisions of this chapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26, [~~and~~] 27, and 32 and Texas Health and Safety Code (THSC), Chapters 361, 375, 382, and 401.

(1) Specifically, the agency will utilize compliance history when making decisions regarding:

(A) the issuance, renewal, amendment, modification, denial, suspension, or revocation of a permit;

(B) enforcement;

(C) the use of announced investigations; and

(D) participation in innovative programs.

(2) For purposes of this chapter, the term "permit" means licenses, certificates, registrations, approvals, permits by rule, standard permits, or other forms of authorization.

(3) With respect to authorizations, this chapter only applies to forms of authorization, including temporary authorizations, that require some level of notification to the agency, and which, after receipt by the agency, requires the agency to make a substantive review of and approval or disapproval of the authorization required in the notification or submittal. For the purposes of this rule, "substantive review of and approval or disapproval" means action by the agency to determine, prior to issuance of the requested authorization, and based on the notification or other submittal, whether the person making the notification has satisfied statutory or regulatory criteria that are prerequisites to issuance of such authorization. The term "substantive review or response" does not include confirmation of receipt of a submittal.

(4) Notwithstanding paragraphs (2) and (3) of this subsection, this chapter does not apply to certain permit actions such as:

(A) voluntary permit revocations;

(B) minor amendments and nonsubstantive corrections to permits;

(C) Texas pollutant discharge elimination system and underground injection control minor permit modifications;

(D) Class 1 solid waste modifications, except for changes in ownership;

(E) municipal solid waste Class I modifications, except for temporary authorizations and municipal solid waste Class I modifications requiring public notice;

(F) permit alterations;

(G) administrative revisions; and

(H) air quality new source review permit amendments which meet the criteria of §39.402(a)(3)(A) - (C) and (5)(A) - (C) of this title (relating to Applicability to Air Quality Permits and Permit Amendments) and minor permit revisions under Chapter 122 of this title (relating to Federal Operating Permits Program).

(5) Further, this chapter does not apply to occupational licensing programs under the jurisdiction of the commission.

(6) Not later than September 1, 2012 [~~Beginning February 1, 2002~~], the executive director shall develop compliance histories with the components specified in this chapter. Until the commission adopts that method, the executive director shall continue in effect the standards and use of compliance history for any action (permitting, enforcement, or otherwise) that were in effect before September 1, 2012.

(7) Beginning September 1, 2012 [~~2002~~], this chapter shall apply to the use of compliance history in agency decisions relating to:

(A) applications submitted on or after this date for the issuance, amendment, modification, or renewal of permits;

(B) inspections and flexible permitting;

(C) a proceeding that is initiated or an action that is brought on or after this date for the suspension or revocation of a permit or the imposition of a penalty in a matter under the jurisdiction of the commission; and

(D) applications submitted on or after this date for other forms of authorization, or participation in an innovative program, except for flexible permitting.

(8) If a motion for reconsideration or a motion to overturn is filed under §50.39 or §50.139 of this title (relating to Motion for Reconsideration; and Motion to Overturn Executive Director's Decision) with respect to any of the actions listed in paragraph (4) of this subsection, and is set for commission agenda, a compliance history shall be prepared by the executive director and filed with the Office of the Chief Clerk no later than six days before the Motion is considered on the commission agenda.

(b) Compliance period. The compliance history period includes the five years prior to the date the permit application is received by the executive director; the five-year period preceding the date of initiating an enforcement action with an initial enforcement settlement offer or the filing date of an Executive Director's Preliminary Report, whichever occurs first; for purposes of determining whether an announced investigation is appropriate, the five-year period preceding an investigation; or the five years prior to the date the application for participation in an innovative program is received by the executive director. The compliance history period may be extended beyond the date the application for the permit or participation in an innovative program is received by the executive director, up through completion of review of the application. Except as used in §60.2(f) of this title (relating to Classification) for determination of repeat violator, notices of violation may only be used as a component of compliance history for a period not to exceed one year from the date of issuance.

(c) Components. The compliance history shall include multimedia compliance-related information about a person, specific to the site which is under review, as well as other sites which are owned or operated by the same person. The components are:

(1) [~~any final~~] enforcement orders, court judgments, [~~consent decrees,~~] and criminal convictions of this state [~~and the federal government~~] relating to compliance with applicable legal requirements under the jurisdiction of the commission [~~or the United States Environmental Protection Agency~~]. "Applicable legal requirement" means an environmental law, regulation, permit, order, consent decree, or other requirement;

(2) notwithstanding any other provision of the TWC, orders developed under TWC, §7.070 and approved by the commission on or after February 1, 2002;

(3) to the extent readily available to the executive director, [~~final~~] enforcement orders, court judgments, consent decrees, and criminal convictions relating to violations of environmental rules [~~laws~~] of the United States Environmental Protection Agency [~~other states~~];

(4) chronic excessive emissions events. For purposes of this chapter, the term "emissions event" is the same as defined in THSC, §382.0215(a);

(5) any information required by law or any compliance-related requirement necessary to maintain federal program authorization;

(6) the dates of investigations;

(7) all written notices of violation for a period not to exceed one year from the date of issuance of each notice of violation, including written notification of a violation from a regulated person, issued on or after September 1, 1999, except for those administratively determined to be without merit [~~and specifying each violation of a state environmental law, regulation, permit, order, consent decree, or other requirement~~];

(8) the date of letters notifying the executive director of an intended audit conducted and any violations disclosed under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995;

(9) an [~~the type of~~] environmental management system under Chapter 90 of this title (relating to Innovative Programs) [~~systems~~], if any, used for environmental compliance;

(10) any voluntary on-site compliance assessments conducted by the executive director under a special assistance program;

(11) participation in a voluntary pollution reduction program; and

(12) a description of early compliance with or offer of a product that meets future state or federal government environmental requirements.[~~; and~~]

[~~(13) the name and telephone number of an agency staff person to contact for additional information regarding compliance history.~~]

(d) Change in ownership. In addition to the requirements in subsections (b) and (c) of this section, if ownership of the site changed during the five-year compliance period, a distinction of compliance history of the site under each owner during that five-year period shall be made. Specifically, for any part of the compliance period that involves a previous owner, the compliance history will include only the site under review. For the purposes of this rule, a change in operator shall be considered a change in ownership if the operator is a co-permittee.

§60.2. Classification.

(a) Classifications. Beginning September 1, 2002, the executive director shall evaluate the compliance history of each site and classify each site and person as needed for the actions listed in §60.1(a)(1) of this title (relating to Compliance History). On September 1, 2003, and annually thereafter, the executive director shall evaluate the compliance history of each site, and classify each site and person. For the purposes of classification in this chapter, and except with regard to portable units, "site" means all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location. A "site" for a portable regulated unit or facility is any location where the unit or facility is or has operated. Each site and person shall be classified as:

(1) a high performer, which has an above-satisfactory [~~average~~] compliance record;

(2) a satisfactory [~~an average~~] performer, which generally complies with environmental regulations; or

(3) an unsatisfactory [~~a poor~~] performer, which performs below minimal acceptable performance standards established by the commission [~~average~~].

(b) Inadequate information. For purposes of this rule, "inadequate information" shall be defined as no compliance information. If there is no compliance information about the site at the time the executive director develops the compliance history classification, then the classification shall be designated as "unclassified." [~~"average performer by default."~~] The executive director may conduct an investigation to develop a compliance history.

(c) Groupings. Sites will be divided into groupings based on North American Industry Classifications Systems (NAICS) codes or other information available to the executive director.

(d) [~~(c)~~] Major, moderate, and minor violations. In classifying a site's compliance history, the executive director shall determine whether a documented violation of an applicable legal requirement is of major, moderate, or minor significance.

(1) Major violations are:

(A) a violation of a commission enforcement order, court order, or consent decree;

(B) operating without required authorization or using a facility that does not possess required authorization;

(C) an unauthorized release, emission, or discharge of pollutants that caused, or occurred at levels or volumes sufficient to cause, adverse effects on human health, safety, or the environment;

(D) falsification of data, documents, or reports; and

(E) any violation included in a criminal conviction, which required the prosecutor to prove a culpable mental state or a level of intent to secure the conviction.

(2) Moderate violations are:

(A) complete or substantial failure to monitor, analyze, or test a release, emission, or discharge, as required by a commission rule or permit;

(B) complete or substantial failure to submit or maintain records, as required by a commission rule or permit;

(C) not having an operator whose level of license, certification, or other authorization is adequate to meet applicable rule requirements;

(D) any unauthorized release, emission, or discharge of pollutants that is not classified as a major violation;

(E) complete or substantial failure to conduct a unit or facility inspection, as required by a commission rule or permit;

(F) any violation included in a criminal conviction, for a strict liability offense, in which the statute plainly dispenses with any intent element needed to be proven to secure the conviction; and

(G) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner that could cause an unauthorized or noncompliant release, emission, or discharge of pollutants.

(3) Minor violations are:

(A) performing most, but not all, of a monitoring or testing requirement, including required unit or facility inspections;

(B) performing most, but not all, of an analysis or waste characterization requirement;

(C) performing most, but not all, of a requirement addressing the submittal or maintenance of required data, documents, notifications, plans, or reports; and

(D) maintaining or operating regulated units, facilities, equipment, structures, or sources in a manner not otherwise classified as moderate.

(e) Complexity Points. All sites classified shall have complexity points as follows:

(1) Program Participation Points. A site shall be assigned Program Participation Points based upon its types of authorizations, as follows:

(A) four points for each permit type listed in clauses (i) - (vi) of this subparagraph issued to a person at a site:

(i) Radioactive Waste Disposal;

(ii) Hazardous or Industrial Non-Hazardous Storage Processing or Disposal;

(iii) Municipal Solid Waste Type I;

(iv) Prevention of Significant Deterioration;

(v) Phase I--Municipal Separate Storm Sewer System; and

(vi) Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major;

(B) three points for each type of authorization listed in clauses (i) - (v) of this subparagraph issued to a person at a site:

(i) Underground Injection Control Class I/III;

(ii) Municipal Solid Waste Type I AE;

(iii) Municipal Solid Waste Type IV, V, or VI;

(iv) Municipal Solid Waste Tire Registration; and

(v) TPDES or NPDES Industrial or Municipal Minor;

(C) two points for each permit type listed in clauses (i) and (iii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Title V Federal Operating Permit;

(ii) New Source Review individual permit; and

(iii) any other individual site-specific water quality permit not referenced in subparagraph (A) or (B) of this paragraph or any water quality general permit;

(D) one point for each type of authorization listed in clauses (i) - (xii) of this subparagraph issued to a person at a site or utilized by a person at a site:

(i) Edwards Aquifer registration;

(ii) Enclosed Structure permit or registration relating to the use of land over a closed Municipal Solid Waste landfill;

(iii) Industrial Hazardous Waste registration;

(iv) Medical Waste permit;

(v) Other types of Municipal Solid Waste permits or registrations not listed in subparagraphs (A) - (C) of this paragraph;

(vi) Petroleum Storage Tank registration;

(vii) Radioactive Waste Storage or Processing license;

(viii) Sludge registration or permit;

(ix) Stage II Vapor Recovery registration;

(x) Stormwater permit;

(xi) Permit by Rule requiring submission of a PI-7 under Chapter 106 of this title (relating to Permits by Rule); and

(xii) Uranium license.

(2) Size. Every site shall be assigned points based upon size as determined by the following:

(A) Facility Identification Numbers (FINs): The total number of FINS at a site will be multiplied by 0.01 and rounded up to the nearest whole number.

(B) Water Quality external outfalls:

(i) 10 points for a site with ten or more external outfalls;

(ii) 5 points for a site with at least five, but fewer than ten, external outfalls;

(iii) 3 points for sites with at least two, but fewer than five, external outfalls; and

(iv) 1 point for sites with one external outfall;

(C) Active Hazardous Waste Management Units (AHWMUs):

(i) 10 points for sites with 50 or more AHWMUs;

(ii) 5 points for sites with at least 20, but fewer than 50, AHWMUs;

(iii) 3 points for sites with at least ten, but fewer than 20, AHWMUs; and

(iv) 1 point for sites with at least one but fewer than ten AHWMUs.

(D) Small Entities shall receive 3 points. A small entity is defined as: a city with a population of less than 5,000; a county with a population of less than 25,000; or a small business. A small business is defined as any person, firm, or business which employs, by direct payroll and/or through contract, fewer than 100 full-time employees. A business that is a wholly owned subsidiary of a corporation shall not qualify as a small business if the parent organization does not qualify as a small business.

(3) Nonattainment area points. Every site located in a nonattainment area shall be assigned 1 point.

(4) The subtotals from paragraphs (1) - (3) of this subsection shall be summed.

(f) [~~(d)~~] Repeat violator.

(1) Repeat violator criteria. A person may be classified as a repeat violator at a site when, on multiple, separate occasions, [~~a~~] major violations of the same nature and the same environmental media [~~violations(s)~~] occurs during the preceding five-year compliance period as provided in subparagraphs (A) - (C) of this paragraph. Same nature is defined as violations that have the same root citation at the subsection level. For example, all rules under §334.50 of this title (relating to Release Detection) (e.g. §334.50(a) or (b)(2) of this title) would be considered same nature. The total complexity [~~criteria~~] points for a site equals the sum of points assigned to a specific site in subsection (e) [~~paragraphs (2) - (5)~~] of this section [~~subsection~~]. A person is a repeat violator at a site when:

(A) the site has had a major violation(s) documented on at least two occasions and has less than a total of 9 complexity [~~criteria~~] points ranging from 0 to 8;

(B) the site has had a major violation(s) documented on at least three occasions and has less than a total of 25 complexity [~~criteria~~] points ranging from 9 to 24; or

(C) the site has had a major violation(s) documented on at least four occasions [~~and has total criteria points greater than~~ 24].

[~~(2) Complexity points. A site shall be assigned complexity points based upon its types of permits, as follows:~~]

[~~(A) four points for each permit type listed in clauses (i) - (vi) of this subparagraph issued to a person at a site:~~]

[~~*(i)* Radioactive Waste Disposal;~~]

[~~*(ii)* Hazardous or Industrial Non-Hazardous Storage Processing or Disposal;~~]

[~~*(iii)* Municipal Solid Waste Type I;~~]

[~~*(iv)* Prevention of Significant Deterioration;~~]

[~~*(v)* Phase I--Municipal Separate Storm Sewer System; and~~]

[~~*(vi)* Texas Pollutant Discharge Elimination System (TPDES) or National Pollutant Discharge Elimination System (NPDES) Industrial or Municipal Major;~~]

[~~(B) three points for each permit type listed in clauses (i) - (v) of this subparagraph issued to a person at a site:~~]

[~~*(i)* Underground Injection Control Class I/III;~~]

[~~*(ii)* Municipal Solid Waste Type I AE;~~]

[~~*(iii)* Municipal Solid Waste Type IV, V, or VI;~~]

[~~*(iv)* Municipal Solid Waste Tire Registration; and~~]

[~~*(v)* TPDES or NPDES Industrial or Municipal Minor;~~]

[~~(C) two points for each permit type listed in clauses (i) and (ii) of this subparagraph issued to a person at a site or utilized by a person at a site:~~]

[~~*(i)* New Source Review individual permit or permit by rule requiring submission of a PI-7 under Chapter 106 of this title (relating to Permits by Rule); and~~]

[~~*(ii)* any other individual site-specific water quality permit not referenced in subparagraph (A) or (B) of this paragraph or any water quality general permit.~~]

[~~(3) Number of sites points. The following point values are assigned based on the number of sites in Texas owned or operated by a person:~~]

[~~(A) 1 point when a person owns or operates one site only;~~]

[~~(B) 2 points when a person owns or operates two sites only;~~]

[~~(C) 3 points when a person owns or operates three sites only;~~]

[~~(D) 4 points when a person owns or operates four sites only;~~]

[~~(E) 5 points when a person owns or operates five sites only;~~]

[~~(F) 6 points when a person owns or operates six to ten sites;~~]

[~~(G) 7 points when a person owns or operates 11 to 100 sites; and~~]

[~~(H) 8 points when a person owns or operates more than 100 sites.~~]

[~~(4) Size. Every site shall be assigned points based upon size as determined by the following:~~]

[~~(A) Facility Identification Numbers (FINs):~~]

[~~*(i)* 4 points for sites with 600 or more FINs;~~]

[~~*(ii)* 3 points for sites with at least 110, but fewer than 600, FINs;~~]

[~~*(iii)* 2 points for sites with at least 44, but fewer than 110, FINs; and~~]

[(iv) ~~1 point for sites with at least one but fewer than 44 FINs;]~~

~~[(B) Water Quality external outfalls:]~~

[(i) ~~4 points for a site with ten or more external outfalls;]~~

[(ii) ~~3 points for a site with at least five, but fewer than ten, external outfalls;]~~

[(iii) ~~2 points for sites with at least two, but fewer than five, external outfalls; and]~~

[(iv) ~~1 point for sites with one external outfall;]~~

~~[(C) Active Hazardous Waste Management Units (AHWMUs):]~~

[(i) ~~4 points for sites with 50 or more AHWMUs;]~~

[(ii) ~~3 points for sites with at least 20, but fewer than 50, AHWMUs;]~~

[(iii) ~~2 points for sites with at least ten, but fewer than 20, AHWMUs; and]~~

[(iv) ~~1 point for sites with at least one but fewer than ten AHWMUs.]~~

~~[(5) Nonattainment area points. Every site located in a nonattainment area shall be assigned 1 point.]~~

(2) [~~(6)~~] Repeat violator exemption. The executive director shall designate a person as a repeat violator as provided in this subsection, unless the executive director determines the nature of the violations and the conditions leading to the violations do not warrant the designation.

(g) [~~(e)~~] Formula. The executive director shall determine a site rating based upon the following method.

(1) Site rating. For the time period reviewed, the following calculations shall be performed based upon the compliance history at the site.

(A) The number of major violations contained in:

(i) any adjudicated final court judgments and default judgments, shall be multiplied by 160;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 140;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 120;

(iv) any final prohibitory emergency orders issued by the commission shall be multiplied by 120;

(v) any agreed final enforcement orders without a denial of liability shall be multiplied by 100; and

(vi) any agreed final enforcement orders containing a denial of liability shall be multiplied by 80.

(B) The number of moderate violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 115;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 95;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 75;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 60; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 45.

(C) The number of minor violations contained in:

(i) any adjudicated final court judgments and default judgments shall be multiplied by 45;

(ii) any non-adjudicated final court judgments or consent decrees without a denial of liability shall be multiplied by 35;

(iii) any non-adjudicated final court judgments or consent decrees containing a denial of liability, adjudicated final enforcement orders, and default orders, shall be multiplied by 25;

(iv) any agreed final enforcement orders without a denial of liability shall be multiplied by 20; and

(v) any agreed final enforcement orders containing a denial of liability shall be multiplied by 15.

(D) The total number of points assigned for all resolved violations in subparagraphs (A) - (C) of this paragraph will be reduced based on achievement of compliance with all ordering provisions. For the first two years after the effective date of the enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s), the site will receive the total number of points assigned for violations in subparagraphs (A) - (C) of this paragraph. If all violations in subparagraphs (A) - (C) of this paragraph are resolved and compliance with all ordering provisions is achieved, for each enforcement order(s), court judgment(s), consent decree(s), and criminal conviction(s) over:

(i) two years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.75;

(ii) three years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.50; and

(iii) four years old, the points associated with the violations in subparagraphs (A) - (C) of this paragraph will be multiplied by 0.25.

(E) [~~(D)~~] The number of major violations contained in any notices of violation shall be multiplied by 10 [~~5~~].

(F) [~~(E)~~] The number of moderate violations contained in any notices of violation shall be multiplied by 4 [~~3~~].

(G) [~~(F)~~] The number of minor violations contained in any notices of violation shall be multiplied by 1.

(H) [~~(G)~~] The number of counts in all criminal convictions:

(i) under Texas Water Code (TWC), §§7.145, 7.152, 7.153, 7.162(a)(1) - (5), 7.163(a)(1) - (3), 7.164, 7.168 - 7.170, 7.176, 7.182, 7.183, and all felony convictions under the Texas Penal Code, TWC, Texas Health and Safety Code (THSC), or the United States Code (USC) shall be multiplied by 500; and

(ii) under TWC, §§7.147 - 7.151, 7.154, 7.157, 7.159, 7.160, 7.162(a)(6) - (8), 7.163(a)(4), 7.165 - 7.167, 7.171, 7.177 - 7.181, and all misdemeanor convictions under the Texas Penal Code, TWC, THSC, or the USC shall be multiplied by 250.

(I) [~~(H)~~] The number of chronic excessive emissions events shall be multiplied by 100.

(J) [~~(I)~~] The subtotals from subparagraphs (A) - (I) [~~(H)~~] of this paragraph shall be summed.

(K) [~~(J)~~] If the person is a repeat violator as determined under subsection (f) [~~(d)~~] of this section, then 500 points shall be added to the total in subparagraph (J) [~~(I)~~] of this paragraph. If the person is not a repeat violator as determined under subsection (f) [~~(d)~~] of this section, then zero points shall be added to the total in subparagraph (J) [~~(I)~~] of this paragraph.

(L) [~~(K)~~] If the total in subparagraph (K) [~~(J)~~] of this paragraph is greater than zero, then:

(i) subtract 1 point from the total in subparagraph (K) [~~(J)~~] of this paragraph for each notice of an intended audit submitted to the agency during the compliance period; or

(ii) if a violation(s) was disclosed as a result of an audit conducted under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995, as amended, and the site was granted immunity from an administrative or civil penalty for that violation(s) by the agency, then the following number(s) shall be subtracted from the total in subparagraph (K) [~~(J)~~] of this paragraph:

(I) the number of major violations multiplied by 10 [~~5~~];

(II) the number of moderate violations multiplied by 4 [~~3~~]; and

(III) the number of minor violations multiplied by 1.

(M) [~~(L)~~] The result of the calculations in subparagraphs (J) - (L) [~~(I)~~ - ~~(K)~~] of this paragraph shall be divided by the number of investigations conducted during the compliance period multiplied by 0.1 plus the number of complexity points in subsection (e) of this section. Investigations that do not document any violations will be the only ones counted in the compliance history formula. The number of investigations multiplied by 0.1 shall be rounded up to the nearest whole number [~~one~~]. If the value is less than zero, then the site rating shall be assigned a value of zero. For the purposes of this chapter, an investigation is a review or evaluation of information by the executive director or executive director's staff or agent regarding the compliance status of a site, excluding those investigations initiated by citizen complaints. An investigation, for the purposes of this chapter, may take the form of a site assessment, file or record review, compliance investigation, or other review or evaluation of information. [~~All sites with a classification of "average performer by default" are assigned 3.01 points.~~]

(N) [~~(M)~~] If the person receives certification of an environmental management system (EMS) under Chapter 90 of this title (relating to Innovative Programs [~~Regulatory Flexibility and Environmental Management Systems~~]) and has implemented the EMS at the site for more than one year, then multiply the result in subparagraph (M) [~~(L)~~] of this paragraph by 0.9. If the person receives credit for a voluntary pollution reduction program or for early compliance, then multiply the result in subparagraph (M) of this paragraph by 0.95 for each commission supported voluntary program. The maximum reduction that a site's compliance history may be reduced through voluntary programs in this subparagraph is 0.75.

(2) Point ranges. The executive director shall assign the site a classification based upon the compliance history and application of the formula in paragraph (1) of this subsection to determine a site rating, utilizing the following site rating ranges for each classification:

(A) fewer than 0.10 points--high performer;

(B) 0.10 points to 55 [~~45~~] points--satisfactory [~~average~~] performer; and

(C) more than 55 [~~45~~] points--unsatisfactory [~~poor~~] performer.

(3) Mitigating factors. The executive director shall evaluate mitigating factors for a site classified as an unsatisfactory [~~a poor~~] performer.

(A) The executive director may reclassify the site from unsatisfactory [~~poor performer~~] to satisfactory [~~average~~] performer with 55 [~~45~~] points based upon the following mitigating factors:

(i) other compliance history components included in §60.1(c)(10) - (12) of this title;

(ii) implementation of an EMS not certified under Chapter 90 of this title at a site for more than one year;

(iii) a person, all of whose other sites have a high or satisfactory [~~average~~] performer classification, purchased a site with an unsatisfactory [~~a poor~~] performer classification or became permitted to operate a site with an unsatisfactory [~~a poor~~] performer classification if the person entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance prior to the effective date of this rule; and

(iv) voluntarily reporting a violation to the executive director that is not otherwise required to be reported and that is not reported under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995, or that is reported under the Texas Environmental, Health, and Safety Audit Privilege Act, 74th Legislature, 1995 but is not granted immunity from an administrative or civil penalty for that violation(s) by the agency.

(B) When a person, all of whose other sites have a high or satisfactory [~~average~~] performer classification, purchased a site with an unsatisfactory [~~a poor~~] performer classification or became permitted to operate a site with an unsatisfactory [~~a poor~~] performer classification and the person contemporaneously entered into a compliance agreement with the executive director regarding actions to be taken to bring the site into compliance, the executive director:

(i) shall reclassify the site from unsatisfactory [~~poor~~] performer to satisfactory [~~average~~] performer with 55 [~~45~~] points until such time as the next annual compliance history classification is performed; and

(ii) may, at the time of subsequent compliance history classifications, reclassify the site from unsatisfactory [~~poor~~] performer to satisfactory [~~average~~] performer with 55 [~~45~~] points based upon the executive director's evaluation of the person's compliance with the terms of the compliance agreement.

(h) [~~(f)~~] Person classification. The executive director shall assign a classification to a person by adding [~~averaging~~] the complexity weighted site ratings of all the sites owned and/or operated by that person in the State of Texas. Each site that a person is affiliated to will receive a point value based on the compliance history rating at the site multiplied by the percentage of complexity points that site represents of the person's total complexity points for all sites. Each of these calculated amounts will be added together to determine the person's compliance history rating.

(i) [~~(g)~~] Notice of classifications. Notice of person and site classifications shall be posted on the commission's website after [~~within~~] 30 days from [~~after~~] the completion of the classification. The notice of classification shall undergo a quality assurance, quality

control review period. An owner or operator of a site may review the pending compliance history rating upon request by submitting a Compliance History Review Form to the commission by August 15 each year.

§60.3. Use of Compliance History.

(a) Permitting.

(1) Permit actions subject to compliance history review. For permit actions subject to compliance history review identified in §60.1(a) of this title (relating to Compliance History), the agency shall consider compliance history when preparing draft permits and when deciding whether to issue, renew, amend, modify, deny, suspend, or revoke a permit by evaluating the person's:

(A) site-specific compliance history and classification; and

(B) aggregate compliance history and classification, especially considering patterns of environmental compliance.

(2) Review of permit application. In the review of any application for a new, amended, modified, or renewed permit, the executive director or commission may require permit conditions or provisions to address an applicant's compliance history. Unsatisfactory [~~Poor~~] performers are subject to any additional oversight necessary to improve environmental compliance.

(3) Unsatisfactory [~~Poor~~] performers and repeat violators.

(A) If a site is classified as an unsatisfactory [~~a poor~~] performer, the agency shall:

(i) deny or suspend a person's authority relating to that site to discharge under a general permit issued under Chapter 205 of this title (relating to General Permits for Waste Discharges); and

(ii) deny a permit relating to that site for, or renewal of, a flexible permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification).

(B) If a site is classified as an unsatisfactory [~~a poor~~] performer, upon application for a permit, permit renewal, modification, or amendment relating to that site, the agency may take the following actions, including:

(i) deny or amend a solid waste management facility permit;

(ii) deny an original or renewal solid waste management facility permit; or

(iii) hold a hearing on an air permit amendment, modification, or renewal, and, as a result of the hearing, deny, amend, or modify the permit.

(C) If a site is classified as an unsatisfactory [~~a poor~~] performer or repeat violator and the agency determines that a person's compliance history raises an issue regarding the person's ability to comply with a material term of its hazardous waste management facility permit, then the agency shall provide an opportunity to request a contested case hearing for applications meeting the criteria in §305.65(8) of this title (relating to Renewal).

(D) Upon application for permit renewal or amendment, the commission may deny, modify, or amend a permit of a repeat violator.

(E) The commission shall deny an application for permit or permit amendment when the person has an unacceptable compliance history based on violations constituting a recurring pattern of conduct that demonstrates a consistent disregard for the regulatory process, including a failure to make a timely and substantial attempt to correct the violation(s). This includes violation of provisions in commission orders or court injunctions, judgments, or decrees designed to protect human health or the environment.

(4) Additional use of compliance history.

(A) The commission may consider compliance history when:

(i) evaluating an application to renew or amend a permit under Texas Water Code (TWC), Chapter 26;

(ii) considering the issuance, amendment, or renewal of a preconstruction permit, under Texas Health and Safety Code (THSC), Chapter 382; and

(iii) making a determination whether to grant, deny, revoke, suspend, or restrict a license or registration under THSC, Chapter 401.

(B) The commission shall consider compliance history when:

(i) considering the issuance, amendment, or renewal of a permit to discharge effluent comprised primarily of sewage or municipal waste;

(ii) considering if the use or installation of an injection well for the disposal of hazardous waste is in the public interest under TWC, Chapter 27;

(iii) determining whether and under which conditions a preconstruction permit should be renewed; and

(iv) making a licensing decision on an application to process or dispose of low-level radioactive waste from other persons.

(5) Revocation or suspension of a permit. Compliance history classifications shall be used in commission decisions relating to the revocation or suspension of a permit.

(6) Repeat violator permit revocation. In addition to the grounds for revocation or suspension under TWC, §7.302 and §7.303, the commission may revoke a permit of a repeat violator if classified as an unsatisfactory [~~a poor~~] performer, or for cause, including:

(A) a criminal conviction classified as major under §60.2(d)(1)(E) [~~§60.2(c)(1)(E)~~] of this title (relating to Classification);

(B) an unauthorized release, emission, or discharge of pollutants classified as major under §60.2(d)(1)(C) [~~§60.2(c)(1)(C)~~] of this title;

(C) repeatedly operating without required authorization; or

(D) documented falsification.

(b) Investigations. If a site is classified as an unsatisfactory [~~a poor~~] performer, then the agency:

(1) may provide technical assistance to the person to improve the person's compliance with applicable legal requirements;

(2) may increase the number of investigations performed at the site; and

(3) may [~~shall~~] perform any investigations unannounced.

(c) Enforcement. For enforcement decisions, the commission may address compliance history and repeat violator issues through both penalty assessment and technical requirements.

(1) Unsatisfactory [~~Poor~~] performers are subject to any additional oversight necessary to improve environmental compliance.

(2) The commission shall consider compliance history classification when assessing an administrative penalty.

(3) The commission shall enhance an administrative penalty assessed on a repeat violator.

(d) Participation in innovative programs. If the site is classified as an unsatisfactory [~~a poor~~] performer, then the agency:

(1) may recommend technical assistance; or

(2) may provide assistance or oversight in development of an environmental management system (EMS) and require specific environmental reporting to the agency as part of the EMS; and

(3) shall prohibit that person from participating in the regulatory flexibility program at that site. In addition, an unsatisfactory [~~a poor~~] performer is prohibited from receiving additional regulatory incentives under its EMS until its compliance history classification has improved to at least a satisfactory [~~an average~~] performer.

(e) Appeal of classification. A person or site classification may be appealed only if the person or site is classified as either an unsatisfactory [~~a poor~~] performer or a satisfactory [~~average~~] performer with 45 [~~30~~] points or more. An appeal under this subsection shall be subject to the following procedures.

(1) An appeal shall be filed with the executive director no later than 45 days after notice of the classification is posted on the commission's website.

(2) An appeal shall state the grounds for the appeal and the specific relief sought. The appeal must demonstrate that if the specific relief sought is granted, a change in site or person classification will result. The appeal must also include all documentation and argument in support of the appeal.

(3) Upon filing, the appellant shall serve a copy of the appeal including all supporting documentation by certified mail, return receipt requested, as provided in subparagraphs (A) and (B) of this paragraph.

(A) If an appeal of a person's classification is filed by a person other than the person classified, a copy shall be served on the person classified.

(B) If an appeal of a site classification is filed by a person other than the permit holder(s) or the owner of the classified site, a copy shall be served on the owner and permit holder (if different) of the classified site.

(4) Any replies to an appeal must be filed no later than 15 [~~ten~~] days after the filing of the appeal.

(5) In response to a timely filed appeal and any replies, the executive director may affirm or modify the classification.

(6) The executive director shall mail notice of his decision to affirm or modify the classification to the appellant, any person filing a reply, and the persons identified in paragraph (3)(A) and (B) of this subsection no later than 60 days after the filing of the appeal. An appeal is automatically denied on the 61st day after the filing of the appeal unless the executive director mails notice of his decision before that day.

(7) The executive director's decision is effective and for purposes of judicial review, constitutes final and appealable commission action on the date the executive director mails notice of his decision or the date the appeal is automatically denied.

(8) During the pendency of an appeal to the executive director or judicial review of the executive director's decision under this subsection, the agency shall not, for the person or site for which the classification is under appeal or judicial review:

(A) conduct an announced investigation;

(B) grant or renew a flexible permit under THSC, Chapter 382;

(C) allow participation in the regulatory flexibility program under TWC, §5.758; or

(D) grant authority to discharge under a general permit under TWC, §26.040(h).

(f) Corrections of classifications. The executive director, on his own motion or the request of any person, at any time may correct any clerical errors in person or site classifications. If a person classification is corrected, the executive director shall notify the person whose classification has been corrected. If a site classification is corrected, the executive director shall notify the site owner and permit holder (if different). If the correction results in a change to a classification that is subject to appeal under subsection (e) of this section, then an appeal may be filed no later than 45 days after posting of the correction on the commission's website. Clerical errors under this section include typographical errors and mathematical errors.

(g) Compliance history evidence. Any party in a contested case hearing may submit information pertaining to a person's compliance history, including the underlying components of classifications, subject to the requirements of §80.127 of this title (relating to Evidence). A person or site classification itself shall not be a contested issue in a permitting or enforcement hearing.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200400
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Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 239-2548

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CHAPTER 90. INNOVATIVE PROGRAMS

The Texas Commission on Environmental Quality (TCEQ, agency, or commission) proposes the repeal of §§90.1, 90.2, 90.10, 90.12, 90.14, 90.16, 90.18, 90.20, 90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42, 90.44, 90.50, 90.52, 90.54, 90.56, 90.58, 90.60, 90.62, 90.64, 90.66, 90.68, 90.70, and 90.72; and proposes new §§90.1 - 90.3, 90.10 - 90.16, 90.20 - 90.24, 90.30, and 90.31.

Background and Summary of the Factual Basis for the Proposed Rules

As required by House Bill (HB) 2694, Article 4, §§4.01, 4.06, and 4.08, 82nd Legislature, 2011 the proposed rules are offered to implement incentive based programs under a statutory Strategically Directed Regulatory Structure, including Regulatory Flexibility Orders (RFOs), and Environmental Management Systems

(EMS) requiring the repeal, reorganization, and amendments to the existing rules under Chapter 90.

The proposed rulemaking implements HB 2694, Article 4, §§4.01, 4.06, and 4.08, which amend Texas Water Code (TWC), §§5.751, 5.755, and 5.758. The amendments to the TWC changed the standard for TCEQ to manage its environmental incentives and innovative programs. Therefore, TCEQ proposes to consolidate and reorganize the rules regarding these environmental incentives and innovative programs into a single subchapter, deleting duplicative requirements on applicants and the agency. Additional amendments to the rule are proposed to provide clarity and remove unnecessary restrictions on the TCEQ's ability to issue RFOs and to recognize EMS.

Section by Section Discussion

In order to remove duplicative and unnecessary restrictions, the proposed rulemaking reorganizes and clarifies the incentive programs into single new Subchapter A, Incentive Programs, which is derived from the consolidation of Subchapter A, Purpose, Applicability, and Eligibility; Subchapter B, General Provisions; Subchapter C, Regulatory Incentives for Using Environmental Management Systems; and Subchapter D, Strategically Directed Regulatory Structure. The references to classification are deleted as required by HB 2694, §4.06.

§90.1, Purpose

Proposed new §90.1 establishes that the purpose of the chapter is to implement TWC, §§5.755, 5.758, 5.127. New §90.1 consolidates the purpose statements from repealed §90.1 and §90.50.

§90.2, Applicability

Proposed new §90.2 consolidates the applicability from repealed Subchapters A and D. In addition to other statutory chapters listed, TWC, Chapter 32 and Texas Health and Safety Code (THSC), Chapter 375 were added in accordance with changes to TWC, §5.751. New §90.2 lists regulatory activities from applicable statutory chapters that create the incentive program rules offered in proposed Chapter 90. Specifically, subsurface area drip disposal systems under TWC, Chapter 32 and removal of convenience switches under THSC, Chapter 375 will now be eligible for consideration under these programs.

§90.3, Definitions

Proposed new §90.3 consolidates the definition sections from repealed §90.30 and §90.58. Definitions are proposed to provide meaning to the terms: applicable legal requirement, certified, enhanced environmental performance, environmental aspect, environmental impact, environmental management system, independent assessor, innovative program, maximum environmental benefit, permit, public participation, region, site, strategically directed regulatory structure, and voluntary measure. Definitions for applicable legal requirement, environmental management system, innovative program, permit, region, and strategically directed regulatory structure are derived from statute.

§90.10, Strategically Directed Regulatory Structure

Proposed new §90.10 clarifies that the Strategically Directed Regulatory Structure is a statutorily required structure to provide incentives for enhanced environmental performance as required by TWC, §5.755. Proposed new §90.10 creates a regulatory framework for innovative programs that provide incentives for enhanced environmental performance.

§90.11, Eligibility

Proposed new §90.11 specifies the eligibility requirements for participation in innovative programs under the Strategically Directed Regulatory Structure.

§90.12, Incentives

Proposed new §90.12 specifies the criteria that the executive director will use when determining whether to provide an incentive for participation in innovative programs.

§90.13, Application for Incentives

Proposed new §90.13 outlines the requirements a person must follow to apply for a regulatory incentive. It allows incentives to be requested through participation in one of the listed programs and outlines the minimum information and demonstrations required by the application.

§90.14, Review by Executive Director Required

Proposed new §90.14 specifies that a person receiving incentives must submit a progress report to the executive director every two years and lists the requirements of the progress report. It requires that incentive be terminated for failure to provide enhanced environmental performance. It requires a person to give the executive director notice if the person terminates use of the incentives.

§90.15, Termination of Regulatory Incentives Under the Strategically Directed Regulatory Structure

Proposed new §90.15 offers procedures allowing either the recipient of the incentives or the executive director to terminate the incentives or to require a new permit, permit amendment, or other authorization necessary to achieve regulatory compliance. It also provides timelines for achieving compliance with requirements for which incentives were provided.

§90.16, Public Notice, Comment, and Hearing

Proposed new §90.16 consolidates the Public Notice, Comment, and Hearing sections from repealed §90.16 and §90.70. It requires public participation in the form of public notice, comment, and hearings as a threshold requirement for applicants to receive regulatory incentives. It provides minimum requirements for exemptions from regulations that do not require public notice, public comment, and public hearing. For example, incentives provided under an approved EMS are exempt from requirements of this section. If no exemption applies, the applicant must use the process required by the regulations from which the applicant is seeking exemption.

§90.20, Regulatory Flexibility

Proposed new §90.20 clarifies that a regulatory flexibility order may exempt an applicant from a requirement or rule by applying an alternative method or standard. It also clarifies that a violation of an order is equivalent to a violation of the exempted rule or requirement.

§90.21, Application for a Regulatory Flexibility Order

Proposed new §90.21 details the necessary components of an application for an RFO. HB 2694, §4.08 states that alternatives will now be as protective rather than more protective than the current method or standard. The provisions allowing for a cost recovery agreement moved from repealed §90.12 to new §90.21(b)(7) and no longer rely on the rates established in Chapter 333, Voluntary Cleanup Programs.

§90.22, Commission Action on an Application

Proposed new §90.22 describes that commission action should comply with application and other authorizations processing rules found at 30 TAC Chapter 50, Subchapter B and clarifies the additional components the commission can consider in making a decision as well as provisions to be included in an order.

§90.23, Amendment/Renewal

Proposed new §90.23 details the requirements for submitting an amendment or renewal request for an RFO and the effect of an existing RFO while it is undergoing timely renewal.

§90.24, Termination

Proposed new §90.24 details the procedures for terminating an RFO by the recipient or the commission, including an opportunity for a show cause hearing.

§90.30, Minimum Standards for Environmental Management Systems

Proposed new §90.30 details the minimum requirements of an EMS implementation of which may allow for eligibility for incentives. It proposes a new requirement that the EMS be certified by an independent third party.

§90.31, Review of Incentive Applications for Environmental Management Systems

Proposed new §90.31 outlines the process for review by the executive director. It clarifies that public notice, comment, and hearing are not required for incentives provided for EMS and that the executive director will maintain a list of incentives available.

Fiscal Note: Costs To State And Local Government

Jeffrey Horvath, Analyst in the Strategic Planning and Assessment Section, has determined that for the first five-year period the proposed rules are in effect, no fiscal implications are anticipated for the commission or for other units of state or local government as a result of the administration or enforcement of the proposed rules. The proposed rulemaking implements certain provisions of HB 2694 which amended the commission's authority to establish a regulatory process that encourages the use of a variety of innovative and alternative programs. Participation in these innovative and alternative programs is voluntary and therefore fiscal implications would only be anticipated for those entities who determine it is in their best interest to participate.

The rulemaking proposes to make changes related to TCEQ's environmental incentives and innovative programs as required by HB 2694. The proposed rules also intend to consolidate and reorganize provisions regarding environmental incentives and innovative programs and to provide clarity and remove unnecessary restrictions on the TCEQ's ability to issue regulatory flexibility orders and to recognize EMS. As required by HB 2694, the proposed rules include subsurface area drip disposal systems and the removal of convenience switches as programs that are now eligible for consideration for the commission's innovative and alternative programs. The proposed rules also incorporate language required by HB 2694 which states that RFO alternatives must be as protective as the current method or standard rather than more protective than the current method or standard. Under current rules, a $250 application fee is required for RFO applications. The current rules also allow the executive director to execute a cost recovery agreement with entities who apply for an RFO if the executive director determines that the application is significant and complex enough to warrant cost recovery. The cost recovery agreement would allow the commission to recover costs incurred for administrative review, technical review, and hearings associated with the application. The proposed rules do not change application fee requirements or the ability of the executive director to execute a cost recovery agreement. The commission has processed few, if any, applications for Regulatory Flexibility Orders over the last ten years. The proposed rulemaking may increase the number of applications, but any increase is not expected to 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 compliance with state law and more clear and concise requirements for the commission's innovative and alternative programs.

No fiscal implications are anticipated for industry, businesses, or individuals as a result of the implementation or administration of the proposed rules. The proposed rules do not affect current regulatory requirements on businesses or individuals. Participation in the commission's innovative and alternative programs is voluntary and therefore fiscal implications would only be anticipated for those entities who determine it is in their best interest to participate.

Small Business and Micro-Business Assessment

No adverse fiscal implications are anticipated for small or micro-businesses as a result of the implementation of the proposed rules. The proposed rules do not increase or decrease regulatory requirements for small or micro-businesses.

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 rules do not adversely affect small or micro-businesses and are proposed in order to comply with the legislative requirements of HB 2694.

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 the rulemaking in light of the regulatory analysis requirements of Texas Government Code, §2001.0225, and determined that the rulemaking is not subject to Texas Government Code, §2001.0225 because it does not meet the definition of a "major environmental rule" as defined in that statute. Furthermore, it does not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). Although these rules are proposed to protect the environment and reduce the risk to human health from environmental exposure, they would not be a major environmental rule because they would not 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.

Furthermore, the proposed rules do not meet any of the four applicability requirements listed in Texas Government Code, §2001.0225(a). The rules would not exceed a standard set by federal law because standards in the proposed rules are

in accordance with the corresponding federal regulations, and they do not exceed an express requirement of state law. The proposed rules do not exceed a requirement of a delegation agreement or contract between the state and an agency or representative of the federal government to implement a state and federal program. The rulemaking proposes rules under specific state law (TWC, §§5.127, 5.131, 5.755, and 5.758). Finally, this rulemaking is not being proposed on an emergency basis either to protect the environment or to reduce risks to human health from environmental exposure.

Takings Impact Assessment

In accordance with Texas Government Code, §2007.043, the commission has prepared a takings impact assessment for the proposed rules. The following is a summary of that assessment. The specific purpose of the proposed rules is to streamline the TCEQ's EMS program and other incentives relating to RFOs. Promulgation and enforcement of the proposed rules would not affect private property mainly because it would not require anyone to do anything; everything it proposes is strictly voluntary. The proposed standards are not more stringent than existing standards as the 2011 legislation requires that the program be as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply; and not inconsistent with federal law. For these reasons, the proposed rules would not be a burden to private real property and would not constitute a taking under Texas Government Code, Chapter 2007. The proposed rules would not affect a landowner's rights in private real property.

Consistency with the Coastal Management Program

The commission reviewed the proposed rulemaking and found that the proposal is subject to the Texas Coastal Management Program (CMP) in accordance with the Coastal Coordination Act, Texas Natural Resources Code, §§33.201 *et seq.,* and therefore must be consistent with all applicable CMP goals and policies. The commission conducted a consistency determination for the proposed rules in accordance with Coastal Coordination Act Implementation Rules, 31 TAC §505.22 and found the proposed rulemaking is consistent with the applicable CMP goals and policies.

CMP goals applicable to the proposed rules include: 1) to protect, preserve, restore, and enhance the diversity, quality, quantity, functions, and values of coastal natural resource areas; and 2) to ensure sound management of all coastal resources by allowing for compatible economic development and multiple human uses of the coastal zone.

CMP policies applicable to the proposed rules include 31 TAC §§501.19, 501.21, 501.22, 501.23, 501.25 and 501.32. These policies govern permit conditions for which regulatory flexibility could be sought from the commission. However, the proposed amendments to the Regulatory Flexibility Program would still require that alternative methods proposed be as protective of the environment as the method or standard prescribed.

These rules implement programs designed in most cases to encourage enhanced benefits to the environment. The rules provide incentives to applicants in exchange for benefits to the environment. The Strategically Directed Regulatory Structure and EMS programs encourage entities to go beyond compliance in managing environmental concerns. The Regulatory Flexibility Program will be used to identify alternative methods of compliance that provide a clear benefit to the environment and may not be inconsistent with federal law.

Promulgation and enforcement of these rules will not violate or exceed any standards identified in the applicable CMP goals and policies because the proposed rules are consistent with these CMP goals and policies, because these rules do not create or have a direct or significant adverse effect on any coastal natural resource areas, and because the proposed rules are voluntary, encourage innovative approaches to environmental compliance and alternative methods must be as protective of the environment as the prescribed method or standard.

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.

Submittal of Comments

Written comments may be submitted to Charlotte Horn, 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://www5.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 2011-047-090-AD. The comment period closes March 12, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html.* For further information, please contact David Greer, Pollution Prevention and Education Unit, (512) 239-5344.

SUBCHAPTER A. PURPOSE, APPLICABILITY, AND ELIGIBILITY

30 TAC §90.1, §90.2

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization for these repeals is derived from TWC, §5.127, and amended TWC, §§5.751, 5.755, and 5.758, which together require the commission to promulgate rules that establish a regulatory process that encourages the use of a variety of innovative and alternative programs, such as environmental management systems; and includes regulatory flexibility orders and other incentives for regulated entities. The proposed repeals also relate to the incentives the commission will use to encourage the use of strategically directed regulatory structure to provide incentives and regulatory flexibility to issue exemption orders for those same regulated entities. TWC, §5.122, delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. Finally, these repeals are also proposed under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take

other administrative action that the agency deems necessary to implement legislation.

The proposed repeals are offered to implement House Bill 2694, 82nd Legislature, 2011, Article 4, §§4.01, 4.06, and 4.08, which created the revisions to compliance and enforcement programs, including amendments to TWC, §§5.751, 5.755, and 5.758.

§90.1. Purpose.

§90.2. Applicability and Eligibility.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200404
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER B. GENERAL PROVISIONS

30 TAC §§90.10, 90.12, 90.14, 90.16, 90.18, 90.20

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization for these repeals is derived from TWC, §5.127, and amended TWC, §§5.751, 5.755, and 5.758, which together require the commission to promulgate rules that establish a regulatory process that encourages the use of a variety of innovative and alternative programs, such as environmental management systems; and includes regulatory flexibility orders and other incentives for regulated entities. The proposed repeals also relate to the incentives the commission will use to encourage the use of strategically directed regulatory structure to provide incentives and regulatory flexibility to issue exemption orders for those same regulated entities. TWC, §5.122, delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. Finally, these repeals are also proposed under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed repeals are offered to implement House Bill 2694, 82nd Legislature, 2011, Article 4, §§4.01, 4.06, and 4.08, which created the revisions to compliance and enforcement programs including amendments to TWC, §§5.751, 5.755, and 5.758.

§90.10. Application for a Regulatory Flexibility Order.

§90.12. Additional Fees; Cost Recovery.

§90.14. Commission Action on Application.

§90.16. Public Notice, Comment, and Hearing.

§90.18. Amendment/Renewal.

§90.20. Termination.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200405
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER C. REGULATORY INCENTIVES FOR USING ENVIRONMENTAL MANAGEMENT SYSTEMS

30 TAC §§90.30, 90.32, 90.34, 90.36, 90.38, 90.40, 90.42, 90.44

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization for these repeals is derived from TWC, §5.127, and amended TWC, §§5.751, 5.755, and 5.758, which together require the commission to promulgate rules that establish a regulatory process that encourages the use of a variety of innovative and alternative programs, such as environmental management systems; and includes regulatory flexibility orders and other incentives for regulated entities. The proposed repeals also relate to the incentives the commission will use to encourage the use of strategically directed regulatory structure to provide incentives and regulatory flexibility to issue exemption orders for those same regulated entities. TWC, §5.122, delegates to the executive director the commission's

authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. Finally, these repeals are also proposed under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed repeals are offered to implement House Bill 2694, 82nd Legislature, 2011, Article 4, §§4.01, 4.06, and 4.08, which created the revisions to compliance and enforcement programs including amendments to TWC, §§5.751, 5.755, and 5.758.

§90.30. Definitions.
§90.32. Minimum Standards for Environmental Management Systems.
§90.34. Regulatory Incentives.
§90.36. Review of an Environmental Management System by the Executive Director.
§90.38. Requests for Modification of State or Federal Regulatory Requirements.
§90.40. Executive Director Action on Request for Regulatory Incentives through the Use of an Environmental Management System.
§90.42. Termination of Regulatory Incentives under an Environmental Management System.
§90.44. Motion to Overturn.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200406
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER D. STRATEGICALLY DIRECTED REGULATORY STRUCTURE

30 TAC §§90.50, 90.52, 90.54, 90.56, 90.58, 90.60, 90.62, 90.64, 90.66, 90.68, 90.70, 90.72

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Commission on Environmental Quality or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

Statutory Authority

The repeals are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization for these repeals is derived from TWC, §5.127, and amended TWC, §§5.751, 5.755, and 5.758, which together require the commission to promulgate rules that establish a regulatory process that encourages the use of a variety of innovative and alternative programs, such as environmental management systems; and includes regulatory flexibility orders and other incentives for regulated entities. The proposed repeals also relate to the incentives the commission will use to encourage the use of strategically directed regulatory structure to provide incentives and regulatory flexibility to issue exemption orders for those same regulated entities. TWC, §5.122, delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. Finally, these repeals are also proposed under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed repeals are offered to implement House Bill 2694, 82nd Legislature, 2011, Article 4, §§4.01, 4.06, and 4.08, which created the revisions to compliance and enforcement programs including amendments to TWC, §§5.751, 5.755, and 5.758.

§90.50. Purpose.
§90.52. Applicability.
§90.54. Single Point of Contact.
§90.56. Eligibility.
§90.58. Definitions.
§90.60. Incentives.
§90.62. Application.
§90.64. Requests for Modification of State or Federal Regulatory Requirements.
§90.66. Review by Executive Director Required.
§90.68. Termination of Regulatory Incentives Under the Strategically Directed Regulatory Structure.
§90.70. Public Notice and Comment.
§90.72. Notice of Proposed Final Action.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200407
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 239-0779

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SUBCHAPTER A. INCENTIVE PROGRAMS

30 TAC §§90.1 - 90.3, 90.10 - 90.16, 90.20 - 90.24, 90.30, 90.31

Statutory Authority

The new rules are proposed under Texas Water Code (TWC), §5.012, which provides that the commission is the agency responsible for implementing the constitution and laws of the state relating to the conservation of natural resources and protection of the environment; TWC, §5.103 and §5.105, which provide the commission with authority to adopt rules; and specific statutory authorization for these proposed new rules is derived from TWC, §5.127, and amended TWC, §§5.751, 5.755, and 5.758, which

together require the commission to promulgate rules that establish a regulatory process that encourages the use of a variety of innovative and alternative programs, such as environmental management systems; and includes regulatory flexibility orders and other incentives for regulated entities. The proposed new rules also relate to the incentives the commission will use to encourage the use of strategically directed regulatory structure to provide incentives and regulatory flexibility to issue exemption orders for those same regulated entities. TWC, §5.122, delegates to the executive director the commission's authority to act on an application or other request to issue, renew, reopen, transfer, amend, extend, withdraw, revoke, terminate, or modify a permit, license, certificate, registration or other authorization, or approval. Finally, these new rules are also proposed under Texas Government Code, §2001.006, which provides state agencies the authority to adopt rules or take other administrative action that the agency deems necessary to implement legislation.

The proposed new rules are offered to implement House Bill 2694, 82nd Legislature, 2011, Article 4, §§4.01, 4.06, and 4.08, which created the revisions to compliance and enforcement programs, including amendments to TWC, §§5.751, 5.755, and 5.758.

§90.1. Purpose.

The purpose of this chapter is to establish rules provided for in Texas Water Code (TWC), §5.755, relating to incentives for enhanced environmental performance under a Strategically Directed Regulatory Structure; TWC, §5.758, relating to commission issuance of Regulatory Flexibility Orders for an exemption for an applicant who proposes an alternative method or alternative standard to control or abate pollution; and TWC, §5.127, relating to Environmental Management Systems.

§90.2. Applicability.

(a) The provisions of this subchapter are applicable to all persons subject to the requirements of Texas Water Code (TWC), Chapters 26, 27, and 32; and Texas Health and Safety Code (THSC), Chapters 361, 375, 382, and 401. The applicable regulatory activities include, but are not limited to:

(1) discharges to surface water and groundwater regulated under TWC, Chapter 26;

(2) petroleum storage tanks regulated under TWC, Chapter 26;

(3) disposal of waste by underground injection regulated under TWC, Chapter 27;

(4) systems for subsurface area drip disposal regulated under TWC, Chapter 32;

(5) management and disposal of industrial solid waste, hazardous waste, or municipal solid waste (including composting, sewage sludge, and water treatment sludge) regulated under THSC, Chapter 361;

(6) removal of convenience switches and the convenience switch recovery program under THSC, Chapter 375;

(7) emission sources of air contaminants regulated under THSC, Chapter 382; and

(8) management and disposal of radioactive material waste regulated under THSC, Chapter 401.

(b) This subchapter does not apply to occupational licensing programs or other programs specifically exempted by statute.

(c) Regulatory Flexibility Orders shall not authorize exemptions to statutes or regulations for storing, handling, processing, or disposing of low-level radioactive materials.

§90.3. Definitions.

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

(1) Applicable legal requirement--A state or federal environmental law, regulation, permit, order, consent decree, or other requirement.

(2) Certified--For purposes of this chapter, a documented third party decision that the environmental management system meets the minimum standards of a recognized environmental management system standard.

(3) Enhanced environmental performance--An activity by a person, including any measurable voluntary action undertaken by a person to improve environmental quality, which:

(A) reduces or eliminates discharges or emissions of pollutants to an extent that is greater than required by applicable legal requirements;

(B) provides an overall reduction of discharges or emissions of pollutants from a site to an extent that is greater than required by applicable legal requirements;

(C) reduces a negative impact on air, water, land, natural resources, or human health to an extent that is greater than required by applicable legal requirements; or

(D) is otherwise determined by the executive director to improve environmental quality to an extent greater than required by applicable legal requirements.

(4) Environmental aspect--Element of a person's activities, products, or services that can interact with the environment.

(5) Environmental impact--Any change to the environment, whether adverse or beneficial, wholly or partially resulting from a person's activities, products, or services regarding a specific site.

(6) Environmental management system--A documented management system to address applicable environmental regulatory requirements that includes organizational structure, planning activities, responsibilities, practices, procedures, processes, and resources for developing, implementing, achieving, reviewing, and maintaining an environmental policy directed toward continuous improvement.

(7) Independent assessor--A person or team of people, at least one of whom has appropriate professional credentials and experience to review an environmental management system. The assessor(s) must not have contributed to the development of the system being assessed.

(8) Innovative program--

(A) a program developed by the commission under Texas Water Code (TWC), Chapter 5, Subchapter Q, Performance Based Regulation; TWC, Chapter 26 or 27; or Texas Health and Safety Code (THSC), Chapters 361, 382, or 401; that provides incentives to a person in return for benefits to the environment that exceed benefits that would result from compliance with applicable legal requirements;

(B) the flexible permit program administered by the agency under THSC, Chapter 382, and defined in Chapter 116, Subchapter G of this title (relating to Flexible Permits);

(C) the regulatory flexibility program described in §90.20 of this title (relating to Regulatory Flexibility);

(D) the Environmental Management Systems program described in §90.30 of this title (relating to Minimum Standards for Environmental Management Systems);

(E) a program established under THSC, §382.401, and defined in Chapter 101, Subchapter C of this title (relating to Voluntary Supplemental Leak Detection Program), to encourage the use of alternative technology for detecting leaks or emissions of air contaminants; or

(F) other voluntary programs administered by the agency's Small Business and Environmental Assistance Division or that division's successor designated as innovative by the executive director.

(9) Maximum environmental benefit--The overall long-term goal of the agency for environmental improvement which is accomplished by enhanced environmental performance over time from individual reductions in discharges or emissions of pollutants by persons who reduce the negative impacts on water, air, land, natural resources, or human health to an extent that is greater than required by applicable legal requirements.

(10) Permit--A license, certificate, registration, approval, permit by rule, standard permit, or other form of authorization issued by the agency under the Texas Water Code or Texas Health and Safety Code.

(11) Public participation--Activities by a person under this subchapter intended to enhance public input that are not otherwise required by law or by commission rules.

(12) Region--A region of the agency's Field Operations Division or that division's successor.

(13) Site--Except with regard to portable units, all regulated units, facilities, equipment, structures, or sources at one street address or location that are owned or operated by the same person. Site includes any property identified in the permit or used in connection with the regulated activity at the same street address or location. A site for a portable regulated unit or facility is any location where the unit or facility is or has operated.

(14) Strategically directed regulatory structure--A program that is designed to use innovative programs to provide maximum environmental benefit and to reward compliance performance.

(15) Voluntary measure--A program with specific performance measures undertaken by a person to improve environmental quality that is not required by rule or law.

§90.10. Strategically Directed Regulatory Structure.

The Strategically Directed Regulatory Structure establishes a framework for innovative programs to provide for enhanced environmental performance and to reward compliance performance.

§90.11. Eligibility.

(a) Except as provided in subsection (b) or (c) of this section, a person whose application to participate in an innovative program or whose application for an incentive meets the minimum standards of §90.13 of this title (relating to Application for Incentives) shall be eligible to receive regulatory incentives under this chapter.

(b) A person who has incurred a judgment in a suit brought by the Texas or United States attorney general against the site for which the person is requesting regulatory incentives, is ineligible to participate in an innovative program or to receive regulatory incentives at that site for a period of five years after the date the judgment was final.

(c) A person who has been convicted of an environmental crime regarding the site for which the person is requesting to participate in an innovative program or requesting regulatory incentives is ineligible to receive regulatory incentives through participation in an innovative program under this chapter for a period of three years after the date of the conviction.

(d) A person shall be accepted into a strategically directed regulatory structure by meeting the criteria and standards for the following:

(1) regulatory flexibility under §90.20 of this title (relating to Regulatory Flexibility);

(2) incentives for using an environmental management system under §90.30 of this title (relating to Minimum Standards for Environmental Management Systems);

(3) programs authorized as innovative by the executive director;

(4) flexible permits under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification); or

(5) other programs set forth under this subchapter.

(e) Incentives provided under one innovative program do not guarantee the providing of incentives offered under another innovative program, except where those incentives are equivalent.

§90.12. Incentives.

(a) In providing incentives for enhanced environmental performance, the executive director shall offer incentives based on:

(1) a person's and/or site's compliance history; and

(2) a person's voluntary measures, including participation in innovative programs, to improve environmental quality. The executive director may give favorable consideration to voluntary measures that are related to the specific media for which a person is requesting incentives or participation in an innovative program.

(b) In providing incentives, the executive director may also consider any other factor that the executive director finds relevant that leads to enhanced environmental performance.

(c) The incentives the executive director may offer for participation in innovative programs include, but are not limited to:

(1) one point of contact for coordinating innovative programs;

(2) technical assistance provided by the agency;

(3) accelerated access to agency information;

(4) modification of state regulatory requirements that do not increase existing emission or discharge limits or decrease public involvement;

(5) flexibility in regulatory processes;

(6) public recognition; and

(7) inclusion of the use of an Environmental Management System in a site's compliance history and compliance summaries.

(d) An innovative program offered as part of the strategically directed regulatory structure must be consistent with other law and any requirement necessary to maintain federal program authorization, including the provisions of any agreements between the agency and the federal government.

§90.13. Application for Incentives.

(a) A person who applies to the executive director for a regulatory flexibility project or to use an environmental management sys-

tem under this chapter, or for a flexible permit under Chapter 116 of this title (relating to Control of Air Pollution by Permits for New Construction or Modification) or another program designated as innovative under Texas Water Code (TWC), §5.752(2), does not need to submit another application under this section's requirements, unless the person requests an additional incentive not available to the person in the program in which the person is already participating or applying to participate. Compliance with this requirement does not relieve the person from complying with all other applicable legal requirements.

(b) If a person seeks incentives under this section that are not available under specific innovative programs designated in this chapter, Chapter 116 of this title, or other programs designated as innovative under TWC, §5.752(2), the person must submit an application to the executive director to receive incentives available under this section. Within 30 days after receipt of an application under this section, the executive director shall mail written notification informing the person that the application is administratively complete or that it is deficient.

(1) If the application is deficient, the notification shall specify the deficiencies, and allow the person 30 days from the date of the notice to provide the requested information. If the person does not submit an adequate response within the allotted time, the application will be returned without further action by the executive director.

(2) Additional technical information may be requested within 60 days after issuance of an administrative completeness letter. If the person does not provide the requested technical information within 30 days after the date of the request, the application will be returned without further action by the executive director.

(3) If an application is returned under paragraph (1) or (2) of this subsection, the person may file a new application at any time.

(4) The person may request in writing that the executive director allow additional time for a person to submit information regarding the person's application to use an innovative program or to request an incentive.

(c) In making a determination of eligibility, the executive director shall review the application submitted under this section, as well as the person's and site's compliance history.

(d) An application for participation in the strategically directed regulatory structure must, at a minimum, include:

(1) a narrative summary of the proposal or project, including the specific statutes or commission rules under which participation is being sought;

(2) a specific reference to the appropriate permit provision or citation to a regulation if the person's request is to modify an existing state or federal regulatory requirement;

(3) a detailed explanation, including a demonstration as appropriate, that the proposal or project is:

(A) more protective of the environment and the public health than the method or standard prescribed by the statute or commission rules that would otherwise apply; and

(B) not inconsistent with federal law, including any requirement for a federally approved or authorized program;

(4) a description of any public participation component associated with the proposal or project;

(5) where appropriate, a project schedule which includes a proposal for monitoring, recordkeeping, and/or reporting of environmental performance and compliance;

(6) any documented results from the project or estimates of future project outcomes demonstrating that the project produces a measurable environmental improvement that enhances environmental performance;

(7) an explanation of how the project will be consistent with the needed outcome/regional plan if the applicant chooses a project that will address a regional environmental issue identified in the agency's strategic plan, as amended; and

(8) any necessary additional information as determined by the executive director.

(e) The application must be signed and must certify that all information is true, accurate, and complete to the best of the signatory's knowledge.

(f) An original and two copies of the signed application shall be submitted to the executive director for review, and one additional copy shall be submitted to the appropriate regional office for the region in which the site is located.

(g) A person whose application is approved by the executive director must maintain records and other supporting information to show that voluntary environmental measures associated with incentives approved by the executive director are being carried out and are resulting in enhanced environmental performance. All records and data shall be retained at the site and/or shall be readily available for review by an agency representative or any local air pollution control program with jurisdiction for a period of three years after the date of any record or sample, measurement, report, application, or certification. This period may be extended by the executive director.

§90.14. Review by Executive Director Required.

(a) Any person who is receiving incentives under this subchapter shall submit a progress report to the executive director every two years from the date of initial written approval from the executive director for the incentives, documenting the enhanced environmental performance of the project, including:

(1) a demonstration that the results are more protective of the environment than the method or standard prescribed by the statute or commission rule that would otherwise apply;

(2) specific measurable results of the project and how these contribute toward environmental improvements;

(3) documentation of any public participation component; and

(4) how the results achieved compare to the results projected in the application.

(b) If the executive director finds that a person's voluntary environmental measures no longer provide for enhanced environmental performance, the executive director shall begin termination proceedings under §90.15 of this title (relating to Termination of Regulatory Incentives Under the Strategically Directed Regulatory Structure).

(c) If a person suspends or terminates voluntary environmental measures associated with incentives provided by the executive director, that person must notify the executive director within ten calendar days after the occurrence.

§90.15. Termination of Regulatory Incentives Under the Strategically Directed Regulatory Structure.

(a) Termination by the recipient.

(1) A person who receives regulatory incentives for a site under this subchapter may terminate the regulatory incentives at any

time by sending a notice of termination to the executive director by certified mail.

(2) If the incentives received by the person or site included exemptions from state or federal requirements, the person or site must be in full compliance with all requirements for which exemptions were provided within 30 days after notice of termination is mailed to the executive director. If a new permit, permit amendment, or other authorization is necessary in order for the person to achieve compliance, an administratively complete application for such authorization shall be submitted to the executive director within 30 days after notice of termination is mailed to the executive director.

(b) Termination by the executive director.

(1) Noncompliance with the terms and conditions of regulatory incentives offered under the Strategically Directed Regulatory Structure, a Regulatory Flexibility Order, an environmental management system, or this chapter, may result in termination of the regulatory incentives.

(2) The executive director may also terminate incentives under this chapter if the executive director finds that the person or site receiving incentives is not complying with other applicable legal requirements.

(3) If the executive director determines that a person who is provided regulatory incentives under this subchapter no longer meets the requirements of this subchapter, the executive director shall notify the person in writing within 90 days after the deficiencies are documented.

(4) If the noted deficiencies are not corrected and supporting documentation submitted within 90 days after receipt of the notification, regulatory incentives shall be terminated.

(5) If the incentives received by the person or site included exemptions from state or federal requirements, the person or site must be in full compliance with all requirements for which exemptions were provided within 30 days after termination by the executive director. If a new permit, permit amendment, or other authorization is necessary in order for the person to achieve compliance, an administratively complete application for such permit or authorization shall be submitted within 30 days after termination by the executive director. Upon written request, the executive director may allow an additional amount of time not to exceed 90 days from the date the incentive is terminated for a person to achieve compliance with applicable legal requirements or apply for proper authorization.

§90.16. Public Notice, Comment, and Hearing.

(a) Applicants for participation in innovative programs with specific notice, comment, and hearing requirements shall follow the requirements under subsections (c) and (d) of this section, unless the applicant is only requesting additional incentives under this chapter.

(b) If an applicant for incentives under this chapter requests an exemption from a statute or commission rule, the applicant shall comply with all public notice, comment, and hearing requirements associated with the statute or commission rule for which the applicant is seeking an exemption, except as provided in subsection (c) of this section.

(c) If the specific innovative program or statute or commission rule for which an applicant is seeking an exemption does not require public notice or an opportunity for comment, the following requirements shall apply.

(1) The applicant shall publish notice of the application at least once in a newspaper of general circulation in the county where the facility or site requesting incentives is located or proposed to be located. The notice shall be published within 30 days after the application is determined to be administratively complete. Notice under this section shall not be published in a font size smaller than that normally used in the newspaper's classified advertising section.

(2) The executive director shall accept public comment for 30 days after the last publication of the notice of application.

(d) Notice under this section shall include, at a minimum:

(1) a brief description of the proposal and of the business conducted at the facility or activity described in the application;

(2) a brief description of the incentive(s) or regulatory flexibility requested;

(3) the name and address of the applicant and, if different, the location of the facility for which incentives or regulatory flexibility under this chapter are sought;

(4) the name and address of the agency;

(5) the name, address, and telephone number of an agency contact person from whom interested persons may obtain further information;

(6) a brief description of the public comment procedures and the time and place of any public meeting or public hearing; and

(7) the date by which comments or requests for hearing must be received by the executive director.

§90.20. Regulatory Flexibility.

(a) The commission by issuance of a Regulatory Flexibility Order may exempt an applicant from a requirement of a statute or commission rule regarding the control or abatement of pollution if the applicant proposes to control or abate pollution by an alternative method or by applying an alternative standard.

(b) A violation of an order issued under this section is punishable as if it were a violation of the statute or rule from which the order provides an exemption.

§90.21. Application for a Regulatory Flexibility Order.

(a) An application for a Regulatory Flexibility Order (RFO) must be submitted to the executive director.

(b) The application must include:

(1) a narrative summary of the proposal, including the specific statutes or commission rules for which an exemption is being sought;

(2) a detailed explanation, including a demonstration as appropriate, that the proposed alternative is:

(A) as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply; and

(B) not inconsistent with federal law, including any requirement for a federally approved or authorized program;

(3) evidence that the alternative the applicant proposes is as protective of the environment and the public health as the method or standard prescribed by the statute or commission rule that would otherwise apply;

(4) an implementation schedule which includes a proposal for monitoring, recordkeeping, and/or reporting, where appropriate, of environmental performance and compliance under the RFO;

(5) an identification, if applicable, of any proposed transfers of pollutants between media;

(6) a description of efforts made or proposed to involve the local community and to achieve local community support;

(7) an application fee of $250. The executive director may determine that the application for an RFO constitutes a significant and complex application for which the recovery of all reasonable costs for review and approval by the commission is appropriate. Upon notice to the applicant of such finding, the applicant shall execute a cost recovery agreement in a form approved by the executive director. Recoverable costs include costs incurred by the commission for administrative review, technical review, and hearings associated with the application; and

(8) any other information requested from the applicant by the executive director during the application review period.

(c) The application must be signed by the applicant or its duly authorized agent and must certify that all information is accurate and complete.

(d) The applicant shall submit an original and two copies of the signed application to the executive director for review, and shall send one additional copy to the commission's regional office for the region in which the facility is located.

(e) The applicant shall comply with public notice, comment, and hearing requirements in §90.16 of this title (relating to Public Notice, Comment, and Hearing).

§90.22. Commission Action on an Application.

(a) Commission action on an application under this chapter shall comply with the provisions set forth in Chapter 50, Subchapter B of this title (relating to Action by the Commission), as applicable.

(b) The commission may consider in its decision, among other factors, the applicant's compliance history and efforts made to involve the local community and achieve local community support.

(c) The commission's order must provide a description of the alternative method or standard and condition the exemption on compliance with the method or standard as the order prescribes.

§90.23. Amendment/Renewal.

(a) An application for amendment or renewal of an Regulatory Flexibility Order (RFO) may be filed in the same manner as an original application under this subchapter.

(b) If renewal procedures have been initiated at least 180 days prior to the RFO expiration date, the existing RFO will remain in effect, and will not expire until commission action on the timely application for renewal is final.

§90.24. Termination.

(a) By the recipient.

(1) A recipient of an Regulatory Flexibility Order (RFO) may terminate the RFO at any time by sending a notice of termination to the executive director by certified mail.

(2) The recipient must be in compliance with all applicable statutes or commission rules at the time of termination.

(b) By the executive director.

(1) Noncompliance with the terms and conditions of an RFO, or any provision of this chapter, may result in the executive director's termination of an RFO after the executive director provides written notice of the noncompliance to the recipient and the recipient is given an opportunity of not less than 30 days from the date the notice was mailed to show cause why the RFO should not be terminated. Procedures for requesting a show cause hearing before the commission shall be included in the executive director's written notice.

(2) In the event an RFO is terminated, the executive director may specify an appropriate and reasonable transition period to allow the recipient to come into full compliance with all applicable commission requirements, including time to apply for any necessary agency permits or other authorizations.

§90.30. Minimum Standards for Environmental Management Systems.

A person may be eligible to receive regulatory incentives under this chapter if the site's environmental management system (EMS):

(1) includes a written environmental policy directed toward continuous improvement;

(2) identifies the environmental aspects at the site;

(3) prioritizes these environmental aspects by the significance of the impacts at the site;

(4) sets the priorities, goals, and targets for continuous improvement in environmental performance and for ensuring compliance with applicable environmental laws, regulations, and permit conditions;

(5) assigns clear responsibility for implementation, training, monitoring, and taking corrective action and for ensuring compliance with applicable environmental laws, regulations, and permit conditions;

(6) requires written documentation of the implementation procedures and the results;

(7) requires evaluation and refinement of the EMS to demonstrate improved attainment of the priorities, goals, and targets of the system; and

(8) has been certified to a recognized environmental management system standard by an independent third party.

§90.31. Review of Incentive Applications for Environmental Management Systems.

(a) A person must submit written documentation of the Environmental Management System (EMS) for a specific site as part of a written request for approval of the site's EMS to the executive director to be eligible to receive regulatory incentives under this chapter. The documentation must include:

(1) the environmental policy statement as required in §90.30(1) of this title (relating to Minimum Standards for Environmental Management Systems);

(2) scope of the EMS, including programmatic, geographic area, sites, facilities, or units included in the EMS;

(3) the prioritized environmental aspects for the site as required in §90.30(2) and (3) of this title;

(4) environmental improvement goals and targets for continuous improvement in environmental performance as required in §90.30(4) of this title;

(5) list of any independent certifications that have been completed on the EMS;

(6) main point of contact on the EMS;

(7) any other information requested by the executive director during the review period; and

(8) signature of the requestor or the duly authorized agent, that certifies that all information is accurate, and complete.

(b) Requests for incentives under this section do not require public notice, comment, and hearing under §90.16 of this title (relating to Public Notice, Comment, and Hearing).

(c) The executive director will notify the person who submitted the request for review of whether the EMS qualifies for regulatory incentives under this chapter. If the EMS does not qualify for regulatory incentives under this chapter, the executive director will send the person who requested a review of the EMS a notice detailing where the EMS does not meet the standards in §90.30 of this title.

(d) If a person receives regulatory incentives under this section for a specific site, the executive director will require an additional independent reassessment of the EMS at least every three years from the date of the initial assessment. Results of this reassessment must be provided to the executive director.

(e) The executive director will maintain a list of incentives available to a person whose EMS is eligible to receive regulatory incentives under this chapter.

(f) Regulatory incentives provided under this section may not be claimed or utilized without approval from the executive director.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200408
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 239-0779

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 1. CENTRAL ADMINISTRATION
SUBCHAPTER A. PRACTICE AND PROCEDURES
DIVISION 1. PRACTICE AND PROCEDURES

34 TAC §1.5

The Comptroller of Public Accounts proposes an amendment to §1.5, concerning initiation of a hearing. The amendment is to allow granting of a late-filed hearings request if a taxpayer does not receive notice of a determination or refund denial.

John Heleman, 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. Heleman 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 allowing taxpayers greater opportunities to initiate a hearing. 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 Robin Robinson, Deputy General Counsel, General Counsel Division, P.O. Box 13528, Austin, Texas 78711-3528 or by email at robin.robinson@cpa.state.tx.us.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with authority to prescribe, adopt, and enforce rules relating to the administration and enforcement provisions of Tax Code, Title 2.

The amendments implement Tax Code, §§111.008, 111.009, 111.022, and 111.105, addressing notice requirements and establishing the time period for requesting hearings on redeterminations and refunds.

§1.5. Initiation of a Hearing.

(a) Redetermination hearing. If a taxpayer disagrees with the agency's deficiency or jeopardy determination, the taxpayer may request a redetermination hearing by timely submitting to the agency a written request for redetermination. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.7 of this title (relating to Content of Statement of Grounds; Preliminary Conference). To be considered timely, the request for a hearing must be filed within 30 days from the date of the deficiency determination or within 20 days from the date of the jeopardy determination. If the written request with the Statement of Grounds cannot be submitted within the applicable time limit, the taxpayer may request an extension as provided by §1.6 of this title (relating to Extensions of Time for Initiating Hearing Process). A request for a redetermination hearing that is not submitted within the original time limit or before the expiration of an extended time limit will not be granted, unless it is established by clear and convincing evidence that the notice of the determination was not delivered to the address as it appears in the comptroller records. A taxpayer who cannot obtain a redetermination hearing may pay the determination and request a refund in order to raise any objection to the determination.

(b) Required documentary evidence at the audit conference. When a taxpayer timely requests a redetermination hearing, the agency may request in writing that the taxpayer produce documentary evidence for inspection that would support the taxpayer's Statement of Grounds. The written request may specify that resale or exemption certificates to support tax-free sales must be submitted within 60 days from the date of the request. Resale or exemption certificates that are not submitted within the 60-day time limit will not be accepted as evidence to support a claim of tax-free sales.

(c) Refund hearing. If a taxpayer disagrees with the agency's denial of a refund claim, the taxpayer may request a refund hearing by timely submitting to the agency a written request for a refund hearing. This written request must include a Statement of Grounds that complies with the requirements set forth by §1.7 of this title and Tax Code, §111.104. To be considered timely, the request for a hearing must be filed within 30 days from the date of the denial. If the written request with the Statement of Grounds cannot be submitted within the applicable time limit, the taxpayer may request an extension as provided by §1.6 of this title. A request for a refund hearing that is not submitted within the original time limit or before the expiration of an extended time limit will not be granted, unless it is established by clear and convincing evidence that the notice of the refund denial was not delivered to the address as it appears in comptroller records. If no grounds are stated as a basis for the claim, a hearing will not be granted and the claim will be denied. If the claim is granted for any tax amount, any

corresponding penalty and interest amount previously paid will be refunded.

(d) Notice to a taxpayer's address as it appears in comptroller records is deemed proper notice. An untimely hearings request shall not be granted if the taxpayer did not provide the comptroller with a correct mailing address or update the comptroller on an address change.

(e) [~~(d)~~] Hearings involving licenses and permits. The agency will initiate hearings concerning the denial, suspension, or revocation of licenses or permits by sending written notice to the taxpayer, which notice will include a statement of the matters asserted and procedures to be followed.

(f) [~~(e)~~] An oral hearing under Tax Code, §154.1142 or §155.0592, will be set if requested by the permit holder within 15 calendar days of the receipt of the notice of violation(s). See, §1.14 of this title (relating to Notice of Setting for Certain Cigarette, Cigar, and Tobacco Tax Cases).

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200393
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 1. TEXAS DEPARTMENT OF PUBLIC SAFETY

CHAPTER 15. DRIVER LICENSE RULES
SUBCHAPTER B. APPLICATION REQUIREMENTS--ORIGINAL, RENEWAL, DUPLICATE, IDENTIFICATION CERTIFICATES

37 TAC §15.25

The Texas Department of Public Safety (the department) proposes amendments to §15.25, concerning Address. These amendments are required by the 82nd Texas Legislature, 2011, SB 1292, which added Texas Transportation Code, §521.1211, requiring the department to issue driver licenses displaying an alternate address for eligible peace officers. The amendments to §15.25 inform the public of what will be required of applicants for issuance of an eligible peace officer's driver license with an alternate address.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be no fiscal implications for state government, local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period that the rule is in effect the public benefit anticipated as a result of the amended rule will be that qualified peace officers will be informed of the requirements to obtain a driver license displaying an alternate address.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.1211, which authorizes the department to adopt rules for the issuance of a driver's license to a peace officer that omits the license holder's actual residence address and includes, as an alternative, an address that is in the municipality or county of the peace officer's residence and is acceptable to the department.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.25. Address.

The address requirement for a driver license and identification certificate is:

(1) - (10) (No change.)

(11) Peace officers, as defined in the Code of Criminal Procedure, Article 2.12, may use an alternate address on their driver license under Texas Transportation Code, §521.1211. The alternate address will be the street address of the courthouse in the county of the officer's residence. An eligible officer must:

(A) Apply in person for an original or duplicate driver license and surrender any other driver license issued to the applicant by the department or another state. No online transactions will be allowed for issuance of duplicate or renewed licenses issued under this paragraph.

(B) Present license issued by Texas Commission on Law Enforcement Officer Standards and Education (TCLEOSE) and Peace Officer Identification Card and Badge issued by employing agency to establish eligibility.

(C) Provide the actual current residence address for department records and mailing purposes.

(D) Not later than 30 days after the license holder ceases to be a peace officer, apply to the department for issuance of a duplicate license that displays the person's actual current residence address.

(E) Not later than 30 days after a name change and/or residence address change, notify the department of the change and obtain a duplicate license.

(F) Pay the required fee for changes to the driver license.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200440
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 424-5848

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37 TAC §15.38

The Texas Department of Public Safety (the department) proposes amendments to §15.38, concerning Fee Exemption. These amendments are required by the 82nd Texas Legislature, 2011, HB 1148, which amended Texas Transportation Code, §521.426(a), requiring the department to waive the issuance fee for identification certificates to qualified disabled veterans. The amendments to §15.38 inform the public of what will be required of applicants for issuance of a no-cost identification certificate and also clarify the rule language for easier understanding.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rule is in effect, there will be fiscal implications for state government, but no fiscal implications for local government, or local economies. The fiscal impact for state government cannot be determined as there is no available data to support the number of individuals who may request a no-cost identification certificate. The cost for production and issuance of the card is $1.67 each.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rule as proposed. There is no anticipated economic cost to individuals who are required to comply with the rule as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has determined that for each year of the first five-year period the rule is in effect the public benefit anticipated as a result of the amended rule will be that qualified disabled veterans will be informed of the requirements to obtain a no-cost identification certificate.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to this rule. Accordingly, the department is not required to complete a takings impact assessment regarding this rule.

Comments on this proposal may be submitted to Janie Smith, Driver License Division, Texas Department of Public Safety, P.O. Box 4087 (MSC 0300), Austin, Texas 78773; by fax to (512) 424-5233; or by email to DLDrulecomments@dps.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

This amendment is proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work, and Texas Transportation Code, §521.426(b), which authorizes the department to adopt rules relating to the proof of entitlement to a no-cost driver's license or election identification certificate to eligible applicants.

Texas Government Code, §411.004(3) and Texas Transportation Code, Chapter 521 are affected by this proposal.

§15.38. Fee Exemption.

(a) A veteran of service in the armed forces of the United States is eligible for exemption from payment of issuance fees for an original, renewal, examination, or duplicate driver license or personal identification certificate if the veteran meets the following requirements: [~~Veterans desiring fee exemptions for driver license must present proof of eligibility.~~]

[~~(1) Veterans who are:~~]

(1) [~~(A)~~] was honorably discharged from the armed services of the United States;

(2) [~~(B)~~] has an armed service-related disability of at least [~~who have~~] 60% [~~or more service-connected disability~~]; and

(3) [~~(C)~~] receives [~~who receive~~] compensation from the United States because of the armed service-related disability [~~federal government because of the disability are exempt from original, renewal, examination, or duplicate driver license fees~~].

(b) [~~(2)~~] Any disabled veteran may waive their [~~his~~] fee exemption for a driver license or identification certificate. Application and payment of fee will be considered as such a waiver and no refund of fee will be made.

(c) [~~(3)~~] If not already part of the record, proof of eligibility for the fee exemption must be provided by mail or in-person with the issuance of the driver license or identification certificate. [~~When renewing by mail, the proof of eligibility must be submitted with the renewal by mail invitation.~~]

(d) [~~(4)~~] These provisions do not apply to applicants for a commercial driver license (CDL) or to an applicant subject to the registration requirements of Code of Criminal Procedure, Chapter 62.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200441
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 424-5848

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CHAPTER 21. EQUIPMENT AND VEHICLE SAFETY STANDARDS

37 TAC §§21.1 - 21.7, 21.9

The Texas Department of Public Safety (the department) proposes amendments to §21.1 and proposes new §§21.2 - 21.7 and 21.9, concerning Equipment and Vehicle Safety Standards. Amendments to §21.1 are filed simultaneously with the repeal of current §§21.2 - 21.4 and 21.7 and proposed new §§21.2 - 21.7 and 21.9. The amendments to §21.1 and the simultaneous repeal of and proposed new §§21.2 - 21.7 and 21.9 are necessary to reorganize existing language and improve the clarity of Chapter 21. The chapter title is also changed from "Equipment and Vehicle Standards" to "Equipment and Vehicle Safety Standards" to better describe the contents of Chapter 21.

The amendments to §21.1 are necessary to improve clarity by renaming the section from "Standards for Vehicle Equipment" to "Standards for Vehicle Safety" and by moving existing language relating to the Standards for Vehicle Performance (originally §21.1(d) and (e)) to new §21.2, by moving the Standards for Sunscreening (originally §21.1(f)) to new §21.3, and by moving the Standards for Safety Guards or Flaps (originally §21.1(g)) to new §21.4. Additional amendments to §21.1 are necessary to clarify that the "Standards" and "Terms and/or Definitions" apply to Chapter 21, rather than only §21.1.

Except for the following revisions, the original language from former §21.1(d) - (g) is transferred to new §§21.2 - 21.4.

Language from §21.1(g)(9) which relates to sunscreening devices and vehicle inspection is moved for clarity, ensuring references to sunscreening devices are located in the appropriate section of the rule to new §21.3, concerning Standards for Sunscreening.

New §21.4, Standards for Safety Guards or Flaps, incorporates language added to Texas Transportation Code, §547.606 as a result of 82nd Legislature, 2011, HB1330, relating to safety guards or flaps. The statutory changes, effective September 1, 2011, provide that safety guards or flaps also apply to certain vehicles with at least two super single tires and provides the definition for a "super single tire."

New language has been added to new §21.4 to provide that safety guards or flaps may be held in place by structure as well as by weight, clarifying that a safety guard or flap held in place by a frame or other device is in compliance with the regulation. Additional new language to §21.4 clarifies that the 12-inch tolerance for safety guards or flaps only applies when the vehicle is standing still or otherwise not in motion and that safety guards or flaps, which are designed to be flexible, may swing with the wind currents created by the motion of a commercial motor vehicle, so long as they continue to perform the function for which they were designed, that is, blocking particles thrown backward by the rear tires.

Collectively, these additions to new §21.4 ensure that laws related to safety guards or flaps are enforced in a more uniform manner.

Language from former §21.7, concerning Safety Chains, is moved to proposed new §21.5, concerning Standards for Safety Chains. The following revision has been made to the original text. The effective date referenced in the proposed new §21.7(b)(3) is clearly stated and language clarifying that safety chains are not required to be crossed, but in all cases must be connected in a manner to ensure the tow-bar does not drop to the ground if it fails or become disconnected from the towing vehicle has been added.

Language from previously existing §21.2 is transferred to proposed new §21.6, concerning Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear. The original language is modified to remove the specific requirement of $10,000 of medical benefits and clarify that the amount of benefits required by Texas Transportation Code, §661.003 will be determined by the Texas Department of Insurance. The original language from former §21.2(f) - (i) is deleted and is not included in the new §21.6.

Language from §21.3 is transferred to new proposed §21.7, concerning Certification of Certain Vehicles. No changes were made to the original text. Language from §21.4 is transferred to new proposed §21.9, concerning Slow-Moving Vehicle Emblem Standards. Again, no changes were made to the original text.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period the rules are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the rules as proposed. There is no anticipated economic cost to individuals who are required to comply with the rules as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these rules. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

Comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

The amendments and new rules are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.66 and §547.101 are affected by this proposal.

§21.1. Standards for Vehicle Safety [~~Equipment~~].

(a) Under §547.101 of the Texas Transportation Code, the department may adopt standards for vehicle equipment to protect the public and to enforce federal motor vehicle safety standards. Department standards duplicate those of the United States that apply to the same aspect of vehicle equipment or, if there is no federal standard, a standard issued or endorsed by recognized national standard-setting organizations or agencies. This chapter [~~section~~] contains standards for motor vehicle equipment adopted by the department.

(b) Terms and/or Definitions. Unless specifically defined in the Texas Transportation Code, Federal Motor Vehicle Safety Standards (FMVSS, 49 CFR Part 571), or rules adopted by the Texas Department of Public Safety (DPS), the terms used in this chapter [~~section~~] have the meanings commonly ascribed to them in the fields of vehicle equipment manufacture, vehicle equipment regulation, and vehicle inspection, unless the context clearly indicates otherwise.

(c) Vehicle equipment--A [~~means~~ a] system, part, or device that is manufactured or sold as original equipment, replacement equipment, an accessory for a vehicle, or a device or article manufactured or sold to protect a driver or passenger of a vehicle.

[~~(d) Standards--Federal Motor Vehicle Safety Standard (FMVSS). The performance standard for vehicle equipment established by the Texas Department of Public Safety shall be identical to the applicable federal standard.~~]

[~~(1) Lamps, Reflective Devices, and Associated Equipment--FMVSS 108:~~]

[~~(A) backup lamp;~~]

[~~(B) clearance lamp;~~]

[~~(C) hazard warning lamp, signal, flashers, and switches;~~]

[~~(D) headlamp--sealed and nonsealed beam and housing;~~]

[~~(E) identification lamp;~~]

[~~(F) license plate lamp;~~]

[~~(G) parking lamp (front position lamps);~~]

[~~(H) reflex reflector;~~]

[~~(I) intermediate side reflex reflectors;~~]

[~~(J) replacement lenses;~~]

[~~(K) school bus alternating warning lamp, signal, flashers, and switches;~~]

[~~(L) side marker lamp;~~]

[~~(M) intermediate side marker lamps;~~]

[~~(N) stop signal lamp;~~]

[~~(O) high-mounted stop lamp;~~]

[~~(P) tail lamp (rear position lamps);~~]

[~~(Q) turn signal lamp, signal, flashers, and switches; and~~]

[~~(R) conspicuity systems (retroreflective and reflex reflectors for truck tractors, and trailers over 80 inches wide and with gross vehicle weights over 10,000 pounds).~~]

[~~(2) Warning Devices--FMVSS 125. This standard applies to devices, without self-contained energy sources, designed to be carried in motor vehicles and used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.~~]

[~~(3) Safety glass and glazing--FMVSS 205.~~]

[~~(4) Seat belts--FMVSS 209.~~]

[~~(e) Standards--Society of Automotive Engineers. The performance standard for vehicle equipment established by the Texas Department of Public Safety in which no federal standard is in effect shall be identical to the applicable standard adopted by the Society of Automotive Engineers (SAE).~~]

[~~(1) Lighting devices (auxiliary)--SAE:~~]

[~~(A) auxiliary low beam (passing lamp)--J582;~~]

[~~(B) driving lamp--J581;~~]

[~~(C) fog lamp--J583;~~]

[~~(D) spot lamp--J591;~~]

[~~(E) high mounted stop and turn signal lamp--J186;~~]

[~~(F) cornering lamp--J852;~~]

[~~(G) side turn signal lamp--J914;~~]

[~~(H) flashing warning lamp for emergency vehicle--J595;~~]

[~~(I) 360-degree emergency warning lamp--J845.~~]

[~~(2) Special vehicle equipment--SAE:~~]

[~~(A) warning lamp alternating flashers--J1054;~~]

[~~(B) motorcycle auxiliary front lamps--J1306.~~]

[~~(f) Sunscreening, reflective, and privacy window devices.~~]

[~~(1) In this subsection, the following words and terms have the following meanings:~~]

[~~(A) Sunscreening device--A glazing, film material, or device for reducing the effects of visible sunlight and/or preventing observation. This does not include glazing or film material without visible tinting providing protection from the effects of ultraviolet light because this type of sunlight is not visible to the human eye.~~]

[~~(B) Light transmittance--The ratio of the amount of total visible light to pass through a product or material to the amount of total visible light falling on the product or material and the glazing.~~]

[~~(C) Luminous reflectance--The ratio of the amount of total visible light that is reflected outward by a product or material to the amount of total visible light falling on the product or material.~~]

[(D) Driver rear visibility requirement--To meet this requirement a motor vehicle must be equipped with outside mirrors on both the left and right sides of the vehicle that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle.]

[(E) Multipurpose vehicles are those designated as such by the vehicle manufacturer. Sports utility vehicle (SUV) or similar terms denote the vehicle as multipurpose. Generally, it is a motor vehicle designed to carry 10 or fewer persons constructed on either a truck chassis or a passenger vehicle chassis, with special features for occasional off-road use.]

[(2) Originally equipped, factory installed, and/or replacement windows meeting the specifications of the vehicle manufacturer. Equipment standards employed in the manufacture of new motor vehicles for first time sale are preemptive under federal law. FMVSS 205, incorporating American National Standards Institute (ANSI) Z26.1, allows inclusion of sunscreening device features into the glazing of vehicle safety glass. All sunscreening devices used as standard equipment, optional equipment, or in replacement parts, adhering to the federal standard at the time of vehicle manufacture are authorized. In general, the amount of sunscreening devices and other glazing features allowed under the federal standard depends on the location of the window and the vehicle type classification. Subparagraphs (A) - (C) provide a summary of the federal restrictions for window glazing (tint).]

[(A) Windshields.]

[(i) The AS-1 area is the portion of the windshield based on driver seating configuration where the driver must have forward visibility.]

[(ii) The windshield may also have a glazing shade band for driver comfort. This shading band is generally above the AS-1 area.]

[(iii) An AS-1 line indicator, if present, denotes the boundary of the AS-1 area and the shading band. If the AS-1 line indicator is not present, generally, the shade band should not extend further than approximately five inches from the top of the windshield.]

[(iv) The safety glass used for all vehicle windshields below the AS-1 line must have a 70% light transmittance value.]

[(v) The glazing in the shade band area may have less than a 70% light transmittance.]

[(B) Side Windows. The vehicle type determines the specific window requirements.]

[(i) Passenger vehicles.]

[(I) All moveable side windows must have a 70% light transmittance value over the entire surface area of the window.]

[(II) Fixed windows to the rear of the driver may have shading bands with less than 70% light transmittance at the uppermost top as with the windshield.]

[(ii) All buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles.]

[(I) Side windows to the immediate left and right of the operator must have a 70% light transmittance value over the entire surface area of the window.]

[(II) Side windows to the rear of the driver have no restrictions on sunscreening.]

[(C) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.]

[(i) If vehicle has left and right outside mirrors (no driver rear visibility requirement), there is no minimum light transmission requirement.]

[(ii) If vehicle is not equipped with both a left and right side outside mirrors, the rear window must have a 70% light transmittance value for the area used for driver visibility. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The glazing in the shade band area is authorized to have less than 70% light transmittance.]

[(3) After-market sunscreening devices. The following standards and specifications apply to after-market sunscreening devices applied in conjunction with window glazing (vehicle safety glass) meeting federal standards.]

[(A) All installed after-market sunscreening devices will be measured in combination with the vehicle's original equipment (window glass).]

[(B) Windshields. No after-market sunscreening devices shall be installed, affixed, or applied to a vehicle windshield below the AS-1 line, or five inches from the top of the windshield if the AS-1 line annotation is not present.]

[(i) If an additional sunscreening device is used above the AS-1 area of the windshield, the light transmittance value, in combination with the original windshield glazing, must be 25% or more.]

[(ii) The luminous reflectance of any additional sunscreening devices used above the AS-1 area of the windshield must be 25% or less.]

[(iii) An installed after-market sunscreening device used on the windshield may not be of a red, blue, or amber color.]

[(C) Side Windows. The vehicle type determines the specific windows affected.]

[(i) Passenger vehicles. All side windows of the vehicle must have at least a 25% light transmittance value and luminous reflectance of 25% or less, over the entire surface area of the window.]

[(ii) Buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles. Windows to the immediate left and right of the operator must have at least a 25% light transmittance value and luminous reflectance of 25% or less, over the entire surface area of the window. Side windows to the rear of the driver, both left and right, have no minimum requirement for light transmission.]

[(D) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.]

[(i) If vehicle has left and right outside mirrors (no driver rear visibility requirement), there is no minimum light transmission requirement.]

[(ii) If vehicle is not equipped with both a left and right side outside mirrors, the rear window must have a 25% light transmittance value for the area used for driver visibility value. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The shade band area is authorized to have less than 25% light transmittance. The device must have a luminous reflectance of 25% or less.]

[(4) Window covers and other window privacy devices.]

[(A) The use of curtains, blinds, drapes, or stick-on novelty designs in the rear window or windows is not prohibited if the window(s) are not required for driver rear visibility.]

[(B) Louvered materials, when installed as designed, shall not reduce the area of driver rear visibility below 50% as measured on a horizontal plane. When such materials are used in conjunction with the rear window, the measurement shall be made based upon the driver's view from the inside rearview mirror.]

[(5) This subsection does not apply to:]

[(A) a motor vehicle that is not registered in this state;]

[(B) a vehicle that is maintained by a law enforcement agency and used for law enforcement purposes;]

[(C) a vehicle that is used to regularly to transport passengers for a fee and authorized to operate under license or permit by a local authority;]

[(D) a direction, destination, or termination sign on a passenger common carrier motor vehicle, if the sign does not interfere with the vehicle operator's view of approaching traffic;]

[(E) a window that has a United States, state, or local certificate placed on or attached to it as required by law;]

[(F) an adjustable nontransparent sun visor mounted forward of the side windows and not attached to the glass; and]

[(G) a rearview mirror.]

[(6) Medical exceptions.]

[(A) Not withstanding the foregoing provisions of this subsection, a motor vehicle operated by or regularly used to transport any person with a medical condition which renders them susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on all the windows except the windshield, with sunscreening devices that reduces the light transmittance to value of less than 25%. An untinted film or glaze may be applied to the AS-1 area of the windshield of a motor vehicle provided the total visible light transmittance is not reduced by a value of 5%. Vehicles equipped with sunscreening devices under this medical exception shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle has in his possession a certificate issued by the Department of Public Safety.]

[(B) The Department of Public Safety shall issue such certificates only upon application by the affected individual accompanied by a signed statement from a licensed physician or licensed optometrist]

[(i) identifying with reasonable specificity the person seeking the certificate and]

[(ii) stating that, in the physician's or optometrist's professional opinion, the equipping of vehicle with sunscreening devices is necessary to safeguard the health of the person seeking the certificate. Applications should be addressed to: Texas Department of Public Safety, Texas Highway Patrol, P.O. Box 4087, Austin, Texas 78773-0500.]

[(C) Medical exemption certificates issued under this section shall be valid so long as the condition requiring the use of the sunscreening devices persists, the prescription expires, or until the vehicle is sold, whichever first occurs.]

[(7) Manufacturer and installer requirements.]

[(A) In this subparagraph, the following terms have the following meaning:]

[(i) Manufacturer--A person or business engaged in the manufacturing or assembling of a sunscreening device; or fabricates, laminates, or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.]

[(ii) Installer--Any person or business engaged for hire in the installation of sunscreening device products or materials designed to be used in conjunction with vehicle glazing material for the purpose of reducing the effects of the sun.]

[(B) Each manufacturer shall obtain certification from the Texas Department of Public Safety of sunscreening devices used on the side windows of passenger vehicles and windows immediately to the left and right of the vehicle operator on all other vehicles. To obtain certification the manufacturer will provide test results that the product or material manufactured or assembled complies with the light transmittance and reflectivity requirements of this section.]

[(C) Each manufacturer shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the following information: manufacturer (name or registration number), and statement--complies with DPS, or 37 Texas Administrative Code (TAC).]

[(D) Each manufacturer shall include instructions with the sunscreening device, product, or material for proper installation, including the affixing of the label required by this section.]

[(E) No installer or business shall apply or affix to the windows of any motor vehicle in this state a sunscreening device that is not in compliance with requirements of this section.]

[(F) At a minimum, installers shall affix the label described in subsection (f)(7)(C) of this section between the sunscreening device and the lower rearward corner of the driver's left side window which is legible from the outside of the vehicle.]

[(g) Safety guards or flaps.]

[(1) Safety guards or flaps are required on all trucks, trailers, or semitrailers (in combination with a towing vehicle), if the rearmost axle of the vehicle (or combination) has four tires or more. They are not required on buses, pole trailers, motor homes, or truck tractors.]

[(2) Safety guards or flaps shall be located and suspended behind the rearmost wheels of such vehicle or if in combination behind the rearmost wheels of such combination to within eight inches of the surface of the roadway.]

[(3) A tolerance of four inches will be allowed.]

[(4) Safety guards or flaps shall be at least as wide as the tires they are protecting.]

[(5) When trailers and semitrailers are operated in combination with a towing vehicle, safety guards or flaps will be required on the rearmost axle of such combination.]

[(6) Safety guards or flaps shall be of metal, rubber, rubberized material, or other substantial material, capable of remaining in place back of rear wheels by their own weight while the said vehicle is being operated.]

[(7) The construction of safety guards or flaps will be such that they will remain in proper place back of rear wheels and will be rigid enough to prevent slush, mud, or gravel being transmitted from the vehicle's rear wheels to the windshield of the following vehicle.]

[(8) Safety guards or flaps should be securely mounted, as wide as the tire that it is protecting, not split or torn to the extent that

~~it is ineffective and the bottom edge of the safety guard or flap shall be no more than 12 inches from the surface of the roadway.]~~

~~[(9) Refer to §23.42 and §23.78 of this title (relating to Inspection of Sunscreening Devices (Glass Tinting) by Official Vehicle Inspection Stations and Instructions and Guidelines) for adopted vehicle inspection procedures.]~~

§21.2. Standards for Vehicle Performance.

(a) Standards--Federal Motor Vehicle Safety Standard (FMVSS). The performance standard for vehicle equipment established by the Texas Department of Public Safety shall be identical to the applicable federal standard.

(1) Lamps, Reflective Devices, and Associated Equipment--FMVSS 108:

(A) backup lamp;

(B) clearance lamp;

(C) hazard warning lamp, signal, flashers, and switches;

(D) headlamp--sealed and nonsealed beam and housing;

(E) identification lamp;

(F) license plate lamp;

(G) parking lamp (front position lamps);

(H) reflex reflector;

(I) intermediate side reflex reflectors;

(J) replacement lenses;

(K) school bus alternating warning lamp, signal, flashers, and switches;

(L) side marker lamp;

(M) intermediate side marker lamps;

(N) stop signal lamp;

(O) high-mounted stop lamp;

(P) tail lamp (rear position lamps);

(Q) turn signal lamp, signal, flashers, and switches; and

(R) conspicuity systems (retroreflective and reflex reflectors for truck tractors, and trailers over 80 inches wide and with gross vehicle weights over 10,000 pounds).

(2) Warning Devices--FMVSS 125. This standard applies to devices, without self-contained energy sources, designed to be carried in motor vehicles and used to warn approaching traffic of the presence of a stopped vehicle, except for devices designed to be permanently affixed to the vehicle.

(3) Safety glass and glazing--FMVSS 205.

(4) Seat belts--FMVSS 209.

(b) Standards--Society of Automotive Engineers (SAE). The performance standard for vehicle equipment established by the Texas Department of Public Safety in which no federal standard is in effect shall be identical to the applicable standard adopted by the Society of Automotive Engineers.

(1) Lighting devices (auxiliary)--SAE:

(A) auxiliary low beam (passing lamp)--J582;

(B) driving lamp--J581;

(C) fog lamp--J583;

(D) spot lamp--J591;

(E) high mounted stop and turn signal lamp--J186;

(F) cornering lamp--J852;

(G) side turn signal lamp--J914;

(H) flashing warning lamp for emergency vehicle--J595; and

(I) 360-degree emergency warning lamp--J845.

(2) Special vehicle equipment--SAE:

(A) warning lamp alternating flashers--J1054; and

(B) motorcycle auxiliary front lamps--J1306.

§21.3. Standards for Sunscreening, Reflective, and Privacy Window Devices.

(a) In this section, the following words and terms have the following meanings:

(1) Sunscreening device--A glazing, film material, or device for reducing the effects of visible sunlight and/or preventing observation. This does not include glazing or film material without visible tinting providing protection from the effects of ultraviolet light because this type of sunlight is not visible to the human eye.

(2) Light transmittance--The ratio of the amount of total visible light to pass through a product or material to the amount of total visible light falling on the product or material and the glazing.

(3) Luminous reflectance--The ratio of the amount of total visible light that is reflected outward by a product or material to the amount of total visible light falling on the product or material.

(4) Driver rear visibility requirement--To meet this requirement a motor vehicle must be equipped with outside mirrors on both the left and right sides of the vehicle that are located so as to reflect to the driver a view of the highway through each mirror a distance of at least 200 feet to the rear of the vehicle.

(5) Multipurpose vehicles are those designated as such by the vehicle manufacturer. Sports utility vehicle (SUV) or similar terms denote the vehicle as multipurpose. Generally, it is a motor vehicle designed to carry 10 or fewer persons constructed on either a truck chassis or a passenger vehicle chassis, with special features for occasional off-road use.

(6) Manufacturer--A person or business engaged in the manufacturing or assembling of a sunscreening device; or fabricates, laminates, or tempers a safety glazing material, incorporating, during the manufacturing process, the capacity to reflect or reduce the transmission of light.

(7) Installer--Any person or business engaged for hire in the installation of sunscreening device products or materials designed to be used in conjunction with vehicle glazing material for the purpose of reducing the effects of the sun.

(b) Originally equipped, factory installed, and/or replacement windows meeting the specifications of the vehicle manufacturer. Equipment standards employed in the manufacture of new motor vehicles for first time sale are preemptive under federal law. Federal Motor Vehicle Safety Standard 205, incorporating American National Standards Institute (ANSI) Z26.1, allows inclusion of sunscreening device features into the glazing of vehicle safety glass. All sunscreening devices used as standard equipment, optional equipment, or in replacement parts, adhering to the federal standard at the time

of vehicle manufacture are authorized. In general, the amount of sunscreening devices and other glazing features allowed under the federal standard depends on the location of the window and the vehicle type classification. Paragraphs (1) - (3) provide a summary of the federal restrictions for window glazing (tint).

(1) Windshields.

(A) The AS-1 area is the portion of the windshield based on driver seating configuration where the driver must have forward visibility.

(B) The windshield may also have a glazing shade band for driver comfort. This shading band is generally above the AS-1 area.

(C) An AS-1 line indicator, if present, denotes the boundary of the AS-1 area and the shading band. If the AS-1 line indicator is not present, generally, the shade band should not extend further than approximately five inches from the top of the windshield.

(D) The safety glass used for all vehicle windshields below the AS-1 line must have a 70% light transmittance value.

(E) The glazing in the shade band area may have less than a 70% light transmittance.

(2) Side Windows. The vehicle type determines the specific window requirements.

(A) Passenger vehicles.

(i) All moveable side windows must have a 70% light transmittance value over the entire surface area of the window.

(ii) Fixed windows to the rear of the driver may have shading bands with less than 70% light transmittance at the uppermost top as with the windshield.

(B) All buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles.

(i) Side windows to the immediate left and right of the operator must have a 70% light transmittance value over the entire surface area of the window.

(ii) Side windows to the rear of the driver have no restrictions on sunscreening.

(3) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.

(A) If vehicle has left and right outside mirrors (no driver rear visibility requirement), there is no minimum light transmission requirement.

(B) If vehicle is not equipped with both a left and right side outside mirrors, the rear window must have a 70% light transmittance value for the area used for driver visibility. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The glazing in the shade band area is authorized to have less than 70% light transmittance.

(c) After-market sunscreening devices. Standards and specifications described in this subsection apply to after-market sunscreening devices applied in conjunction with window glazing (vehicle safety glass) meeting federal standards.

(1) All installed after-market sunscreening devices will be measured in combination with the vehicle's original equipment (window glass).

(2) Windshields. No after-market sunscreening devices shall be installed, affixed, or applied to a vehicle windshield below the AS-1 line, or five inches from the top of the windshield if the AS-1 line annotation is not present.

(A) If an additional sunscreening device is used above the AS-1 area of the windshield, the light transmittance value, in combination with the original windshield glazing, must be 25% or more.

(B) The luminous reflectance of any additional sunscreening devices used above the AS-1 area of the windshield must be 25% or less.

(C) An installed after-market sunscreening device used on the windshield may not be of a red, blue, or amber color.

(3) Side Windows. The vehicle type determines the specific windows affected.

(A) Passenger vehicles. All side windows of the vehicle must have at least a 25% light transmittance value and luminous reflectance of 25% or less, over the entire surface area of the window.

(B) Buses, vans, club wagons, motor homes, trucks and truck tractors, and multipurpose vehicles. Windows to the immediate left and right of the operator must have at least a 25% light transmittance value and luminous reflectance of 25% or less, over the entire surface area of the window. Side windows to the rear of the driver, both left and right, have no minimum requirement for light transmission.

(4) Rear (back) windows for passenger, bus, van, club wagon, motor home, truck and truck tractor, and multipurpose vehicles.

(A) If vehicle has left and right outside mirrors (no driver rear visibility requirement), there is no minimum light transmission requirement.

(B) If vehicle is not equipped with both a left and right side outside mirrors, the rear window must have a 25% light transmittance value for the area used for driver visibility value. A glazing shade band is authorized at the topmost portion of the rear window, as with the windshield. The shade band area is authorized to have less than 25% light transmittance. The device must have a luminous reflectance of 25% or less.

(d) Window covers and other window privacy devices.

(1) The use of curtains, blinds, drapes, or stick-on novelty designs in the rear window or windows is not prohibited if the window(s) are not required for driver rear visibility.

(2) Louvered materials, when installed as designed, shall not reduce the area of driver rear visibility below 50% as measured on a horizontal plane. When such materials are used in conjunction with the rear window, the measurement shall be made based upon the driver's view from the inside rearview mirror.

(e) This section does not apply to:

(1) a motor vehicle that is not registered in this state;

(2) a vehicle that is maintained by a law enforcement agency and used for law enforcement purposes;

(3) a vehicle that is used to regularly to transport passengers for a fee and authorized to operate under license or permit by a local authority;

(4) a direction, destination, or termination sign on a passenger common carrier motor vehicle, if the sign does not interfere with the vehicle operator's view of approaching traffic;

(5) a window that has a United States, state, or local certificate placed on or attached to it as required by law;

(6) an adjustable nontransparent sun visor mounted forward of the side windows and not attached to the glass; and

(7) a rearview mirror.

(f) Medical exceptions.

(1) Not withstanding the foregoing provisions of this subsection, a motor vehicle operated by or regularly used to transport any person with a medical condition which renders them susceptible to harm or injury from exposure to sunlight or bright artificial light may be equipped, on all the windows except the windshield, with sunscreening devices that reduces the light transmittance to value of less than 25%. An untinted film or glaze may be applied to the AS-1 area of the windshield of a motor vehicle provided the total visible light transmittance is not reduced by a value of 5%. Vehicles equipped with sunscreening devices under this medical exception shall not be operated on any highway unless, while being so operated, the driver or an occupant of the vehicle has in his possession a certificate issued by the Texas Department of Public Safety.

(2) The Texas Department of Public Safety shall issue such certificates only upon application by the affected individual accompanied by a signed statement from a licensed physician or licensed optometrist which:

(A) identifies with reasonable specificity the person seeking the certificate; and

(B) states that, in the physician's or optometrist's professional opinion, the equipping of vehicle with sunscreening devices is necessary to safeguard the health of the person seeking the certificate. Applications should be addressed to: Texas Department of Public Safety, Texas Highway Patrol, P.O. Box 4087, Austin, Texas 78773-0500.

(3) Medical exemption certificates issued under this subsection shall be valid so long as the condition requiring the use of the sunscreening devices persists, the prescription expires, or until the vehicle is sold, whichever first occurs.

(g) Manufacturer and installer requirements.

(1) Each manufacturer shall obtain certification from the Texas Department of Public Safety of sunscreening devices used on the side windows of passenger vehicles and windows immediately to the left and right of the vehicle operator on all other vehicles. To obtain certification the manufacturer will provide test results that the product or material manufactured or assembled complies with the light transmittance and reflectivity requirements of this section.

(2) Each manufacturer shall provide a label with a means for permanent and legible installation between the material and each glazing surface to which it is applied that contains the following information: manufacturer (name or registration number), and a statement that complies with this chapter.

(3) Each manufacturer shall include instructions with the sunscreening device, product, or material for proper installation, including the affixing of the label required by this section.

(4) No installer or business shall apply or affix to the windows of any motor vehicle in this state a sunscreening device that is not in compliance with requirements of this section.

(5) At a minimum, installers shall affix the label described in subsection (g)(3) of this section between the sunscreening device and the lower rearward corner of the driver's left side window which is legible from the outside of the vehicle.

(h) Refer to §23.42 and §23.78 of this title (relating to Inspection of Sunscreening Devices (Glass Tinting) by Official Vehicle Inspection Stations and Instructions and Guidelines) for adopted vehicle inspection procedures.

§21.4. Standards for Safety Guards or Flaps.

(a) Safety guards or flaps are required on all trucks, trailers, or semitrailers (in combination with a towing vehicle), if the rearmost axle of the vehicle (or combination) has four tires or more, or at least two super single tires. They are not required on buses, pole trailers, motor homes, or truck tractors. In this section, "super single tire" means a wide-base, single tire that may be used in place of two standard tires on the same axle.

(b) Safety guards or flaps shall be located and suspended behind the rearmost wheels of such vehicle or if in combination behind the rearmost wheels of such combination to within eight inches of the surface of the roadway.

(c) A tolerance of four inches will be allowed.

(d) Safety guards or flaps shall be at least as wide as the tires they are protecting.

(e) When trailers and semitrailers are operated in combination with a towing vehicle, safety guards or flaps will be required on the rearmost axle of such combination.

(f) Safety guards or flaps shall be of metal, rubber, rubberized material, or other substantial material, capable of remaining in place back of rear wheels by their own weight or structure while the said vehicle is being operated.

(g) The construction of safety guards or flaps will be such that they will remain in proper place back of rear wheels and will be rigid enough to prevent slush, mud, gravel, and other roadway material or debris being transmitted from the vehicle's rear wheels to the windshield of the following vehicle.

(h) Safety guards or flaps should be securely mounted, as wide as the tire that it is protecting, not split or torn to the extent that it is ineffective and the bottom edge of the safety guard or flap shall be no more than 12 inches from the surface of the roadway while the vehicle is standing still, or otherwise not in motion.

(i) A flexible safety guard or flap may swing upwards and backwards while the vehicle is moving, so long as the safety guard or flap continues to block the trajectory of slush, mud, gravel, and other roadway material or debris which would otherwise be transmitted to the windshield of a following vehicle while both vehicles are in motion.

§21.5. Standards for Safety Chains.

(a) A person may not operate a passenger car or light truck while towing a trailer, semitrailer, house trailer, or another motor vehicle on a public highway unless safety chains of a type approved by the department are attached in a manner approved by the department from the trailer, semitrailer, house trailer, or drawn motor vehicle to the towing vehicle.

(b) Exceptions.

(1) Does not apply to trailers, or semitrailers, used for agricultural purposes.

(2) Does not apply to trailers, semitrailers, house trailers, or drawn motor vehicles operated in compliance with the Federal Motor Carrier Safety Regulations.

(3) Does not apply to trailers, semitrailers, house trailers, or drawn motor vehicles which are equipped with safety chains installed by the original manufacture before the effective date of this section, August 18, 1994.

(4) Does not apply to fifth wheel or gooseneck semitrailers.

(c) Definition of Terms.

(1) House trailer--A trailer or semitrailer:

(A) which is designed, constructed, and equipped as a dwelling place, living abode, or sleeping place (either permanently or temporarily) and equipped for use as a conveyance on streets and highways; or

(B) whose chassis and exterior shell is designed and constructed for use as a house trailer, as defined in subparagraph (A) of this paragraph, but which is used instead permanently or temporarily for the services, or for any other commercial purpose except the transportation of property for hire or the transportation of property for distribution by a private carrier.

(2) Light truck--Any truck with a manufacturer's rated carrying capacity not to exceed 2,000 pounds and is intended to include those trucks commonly known as pickup trucks, panel delivery trucks and carryall trucks.

(3) Motor vehicle--A self-propelled or towed vehicle used to transport passengers or property upon a public highway.

(4) Passenger car--A motor vehicle, other than a motorcycle, golf cart, light truck, or bus, designed or used primarily for the transportation of persons.

(5) Safety chains--A series of metal links or rings connected to or fitted into one another, and are inclusive of the hooks, coupling devices, and other connections, necessary in the coupling together of a towing or towed vehicle.

(6) Semitrailer--Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so constructed that some part of its weight and that of its load rests upon or is carried by another vehicle.

(7) Trailer--Every vehicle with or without motive power, other than a pole trailer, designed for carrying persons or property and for being drawn by a motor vehicle and so connected that no part of its weight rests upon the towing vehicle.

(8) Truck--Every motor vehicle designed, used, or maintained primarily for transportation of property.

(d) Specifications for safety chains.

(1) Two separate and individual safety chains shall be used simultaneously in all situations where safety chains are required.

(2) The two safety chains will be of equal length, long enough to permit free turning of the vehicles without placing stress on the chains, and attached to the towing vehicle equidistant right and left of the point at which the vehicles are connected. The safety chains must be connected to the towed and towing vehicles and to the tow-bar in a manner which prevents the tow-bar from dropping to the ground in the event it fails or becomes disconnected. In no event will the safety chains be allowed to contact the road surface during movement of the vehicles.

(3) Safety chains shall be of sufficient strength to prevent the vehicles from separating in the event the towed vehicle disengages from the towing vehicle under ordinary towing conditions.

(4) Safety chains must be attached to either side of the tongue or connecting apparatus of the towed vehicle, equidistant forward and aft of the hitch or connector. They shall not be directly welded to the towed vehicle, but rather shall be connected by means of bolts, pins, or other secure connecting methods, that meet necessary strength requirements.

(e) Enforcement Policy. When the use of safety chains are required in accordance with subsection (a) of this section, enforcement actions should be initiated against all persons apprehended who are operating a towing and towed vehicle in combination:

(1) without both safety chains securely attached;

(2) when safety chains are improperly attached to the degree that one or both are in contact with surface of the road;

(3) when the failure of either or both safety chains or the manner in which they are attached allow the vehicles to become disconnected or allow the tongue or connecting apparatus of the towed vehicle to come into contact with the road surface during ordinary towing operations; or

(4) when the failure of either or both safety chains or the manner in which they are attached results in an accident.

§21.6. Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear.

(a) Minimum safety standards. The Federal Motor Vehicle Safety Standard, Number 218, concerning Motorcycle Helmets, and all amendments thereto, is adopted by the department as the minimum standard for motorcycle helmets sold for and worn by motorcycle operators and passengers on public roadways in Texas.

(b) Motorcycle helmet exemption. Persons 21 years old or older are exempt from wearing a motorcycle helmet if they:

(1) have successfully completed a motorcycle operator training course as approved under Texas Transportation Code, Chapter 662; or

(2) are covered by a health insurance plan providing the person with medical benefits for injuries incurred as a result of an accident while operating or riding upon a motorcycle.

(c) Motorcycle operator training course. A motorcycle operator training course is defined as being a basic or advanced motorcycle operator training course approved by the department and meeting or exceeding the educational standards of the Motorcycle Safety Foundation.

(1) The department-approved advanced motorcycle operator training course is the minimum requirement for licensed motorcyclists with their own motorcycle and protective equipment. The basic motorcycle operator training course approved by the department in the same reference is acceptable.

(2) The department-approved basic motorcycle operator training course is required for new or inexperienced motorcyclists, persons without a valid motorcycle driver license or persons without their own motorcycle or protective equipment.

(d) Proof of successful completion. Proof of successful completion of a department-approved motorcycle operator training course is a motorcycle operator training course completion card, MSB-8, annotated for the basic or advanced motorcycle operator training course, as applicable. A completion card from another state or military base indicating that the course attended meets or exceeds the educational standards of the Motorcycle Safety Foundation is acceptable.

(e) Health insurance plan. A health insurance plan is defined as an individual, group, blanket, or franchise insurance policy, insurance agreement, group hospital services contract, health maintenance organization membership, or employee benefit plan that provides benefits for health care services or for medical or surgical expenses incurred as a result of an accident.

(f) Proof of compliance. The Texas Department of Insurance shall prescribe a standard proof of health insurance for issuance to persons who are at least 21 years of age and covered by a health insurance plan described in subsection (b)(2) of this section.

§21.7. Certification of Certain Vehicles.

(a) Certification required. Mopeds will be certified by the department.

(b) Certification procedures. Any person, firm, or corporation desiring certification shall submit to the department a properly attested verification affidavit form, DL-48, which will be furnished upon request.

(c) List of certified vehicles. The department will furnish upon request a list of certified makes and models to the public.

(d) Cancellation or suspension of certification certificate. If, at any time, it is discovered that any certified vehicle does not comply with the required specifications, the department will cancel the certificate of certification covering said make and model; provided that the manufacturer is entitled to 30 days notice of such proposed cancellation of certificate during which time he shall have an opportunity to submit proof that the make and model number in question does in fact comply with these specifications.

§21.9. Slow-Moving Vehicle Emblem Standards.

The American Society of Agricultural Engineers, Standard S276 and all amendments thereto, except visibility requirements and mounting requirements, is adopted by the department as the standard for slow-moving vehicle emblems used in Texas.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200443
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 424-5848

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CHAPTER 21. EQUIPMENT AND VEHICLE STANDARDS

37 TAC §§21.2 - 21.4, 21.7

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Texas Department of Public Safety or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Texas Department of Public Safety (the department) proposes the repeal of §§21.2 - 21.4 and 21.7, concerning Equipment and Vehicle Standards. The repeal of these sections is filed simultaneously with amendments to §21.1 and proposed new §§21.2 - 21.7 and 21.9 and is necessary to reorganize existing language and improve the clarity of Chapter 21.

Denise Hudson, Assistant Director, Finance, has determined that for each year of the first five-year period these repeals are in effect there will be no fiscal implications for state or local government, or local economies.

Ms. Hudson has also determined that there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeals as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeals as proposed. There is no anticipated negative impact on local employment.

In addition, Ms. Hudson has also determined that for each year of the first five-year period the proposal is in effect, the public benefit anticipated as a result of enforcing the proposal will be to ensure to the public greater compliance by motor carriers with all of the statutes and regulations pertaining to the safe operation of commercial vehicles in this state.

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

The department has determined that Chapter 2007 of the Texas Government Code does not apply to these repeals. Accordingly, the department is not required to complete a takings impact assessment regarding this repeals.

Comments on this proposal may be submitted to Major David Palmer, Texas Highway Patrol Division, Texas Department of Public Safety, P.O. Box 4087, Austin, Texas 78773-0500, (512) 424-2775. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

These repeals are proposed pursuant to Texas Government Code, §411.004(3), which authorizes the Public Safety Commission to adopt rules considered necessary for carrying out the department's work and Texas Transportation Code, §547.101, which authorizes the Department of Public Safety to adopt standards for vehicle equipment.

Texas Government Code, §411.004(3) and Texas Transportation Code, §547.66 and §547.101 are affected by this proposal.

§21.2. Motorcycle Operator and Passengers Protective Headgear Minimum Safety Standards and Exemption for Motorcycle Protective Headgear.

§21.3. Certification of Certain Vehicles.

§21.4. Slow-Moving Vehicle Emblem Standards.

§21.7. Safety Chains.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200442
D. Phillip Adkins
General Counsel
Texas Department of Public Safety
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 424-5848

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PART 14. INDEPENDENT OMBUDSMAN

CHAPTER 601. INDEPENDENT OMBUDSMAN

The Independent Ombudsman (IO) proposes the repeal and replacement of §§601.1, 601.4, 601.8, 601.12, 601.15, and 601.19, concerning Independent Ombudsman. The new rules will address statutory changes enacted in Senate Bill 653 (82nd Texas Legislature). The agency name changes from "Office of the Independent Ombudsman of the Texas Youth Commission" to "Independent Ombudsman".

New §601.1 defines terms related to the IO program.

New §601.4 provides general information about the policies and procedures of the agency. The policies and procedures promote awareness of IO information among the public and among the youth who are committed to Texas Juvenile Justice Department (TJJD) facilities. The policies and procedures shall be followed by staff of the IO.

New §601.8 addresses the handling of complaints. The rule provides a framework for the IO staff to receive and handle complaints in a timely and thorough manner. The rule also provides a process for the investigation and resolution of complaints and requires maintaining of documentation.

New §601.12 establishes a process of review and inspection of TJJD facilities. The rule requires periodic inspection of TJJD facilities, provides areas of review to include review of education services, facility security, TJJD's general treatment program, and review of facility safety. The rule requires that the IO staff make findings and provide those findings to appropriate TJJD leadership and provide findings to the Ombudsman.

New §601.15 sets forth the reporting requirements the IO will follow, including quarterly reports to the governor, the auditor, and other state leadership. These reports will cover the work of the ombudsman and the results of any review or investigation conducted by the IO. The rule also requires the IO to immediately report to the same state leadership any particularly serious or flagrant inappropriate activities concerning TJJD. The adoption of this rule is required by Human Resources Code §261.055.

New §601.19 establishes procedures for providing TJJD the opportunity to respond to IO reports. It also provides a deadline for TJJD to submit responses to IO reports, as required by Texas Human Resource Code §261.060(b).

Ms. Debbie Unruh, Certifying Officer for the IO, has determined that, for the first five-year period the proposed sections are in effect, there are no foreseeable fiscal implications for state or local governments as a result of enforcing or administering the sections.

Ms. Unruh also has determined that, for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the new rules will be consistency and accountability in the handling of all matters within the jurisdiction of the IO. There will be no effect on small or micro businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed.

Comments on the proposal may be submitted to Emily Childs, Administrative Assistant, Independent Ombudsman for the Texas Juvenile Justice Department, 6400 FM 969, Austin, Texas 78724.

37 TAC §§601.1, 601.4, 601.8, 601.12, 601.15, 601.19

(Editor's note: The text of the following sections proposed for repeal will not be published. The sections may be examined in the offices of the Independent Ombudsman or in the Texas Register office, Room 245, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are authorized under the authority of Texas Human Resources Code, §261.058, which directs the IO to adopt rules to establish policies and procedures for the operation of the IO. The office is further authorized to adopt rules that establish procedures for the IO to issue reports and for the TJJD to review and comment on certain IO reports, which are prepared pursuant to Human Resources Code §261.060.

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

§601.1. Definitions.
§601.4. General Information.
§601.8. Complaints and Inquiries.
§601.12. Review and Inspection of Facilities.
§601.15. Reporting.
§601.19. Texas Youth Commission Response to Ombudsman Reports.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200349
Debbie Unruh
Chief Ombudsman
Independent Ombudsman
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 919-5063

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37 TAC §§601.1, 601.4, 601.8, 601.12, 601.15, 601.19

The new rules are authorized under the authority of Texas Human Resources Code, §261.058, which directs the IO to adopt rules to establish policies and procedures for the operation of the IO. The office is further authorized to adopt rules that establish procedures for the IO to issue reports and for the TJJD to review and comment on certain IO reports, which are prepared pursuant to Human Resources Code §261.060.

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

§601.1. Definitions.

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

(1) Complaint--Any grievance or expression of dissatisfaction or concern regarding a matter within the jurisdiction of the Texas Juvenile Justice Department (TJJD).

(2) Life Threatening Situation--An allegation that contains specific information indicating a youth may be at substantial risk of personal injury, serious or irreparable harm, or death.

(3) Ombudsman--The Governor's official appointed to respond to complaints and inquiries from the public regarding the operations of the TJJD.

(4) Proponent--The TJJD staff responsible for a particular operational function.

(5) Public--Any person other than a TJJD employee or a youth under TJJD jurisdiction.

(6) Response--A letter, facsimile, e-mail, or telephone call that:

(A) acknowledges receipt of a complaint;

(B) provides preliminary information, if any is available;

(C) indicates actions are being taken; or

(D) provides information about the outcome of actions taken by TJJD.

(7) Workday--Monday through Friday, excluding state and national holidays and days when offices are closed at the direction of the ombudsman.

§601.4. General Information.

(a) The ombudsman shall create and maintain uniform policies and procedures for the Independent Ombudsman (IO).

(b) The ombudsman shall ensure compliance with IO policies and procedures by all IO staff.

(c) The ombudsman shall promote awareness of the following information among the public and youth committed to the Texas Juvenile Justice Department (TJJD):

(1) how the IO may be contacted;

(2) the purpose of the IO; and

(3) the services that the IO provides.

(d) The ombudsman shall ensure that the TJJD executive director, the Office of the Governor, and members of the Texas Legislature are apprised of any problematic, systemic trends.

§601.8. Complaints.

(a) Purpose. The purpose of this rule is to establish the process by which complaints may be filed with and handled by the Independent Ombudsman (IO).

(b) General Information.

(1) The name, mailing address, and phone number used for the purpose of directing complaints to the IO, and a link to the IO website shall be available on the Texas Juvenile Justice Department (TJJD) website, as well as on informational material distributed by the IO.

(A) IO staff shall process complaints from the public.

(B) IO staff shall conduct investigations of complaints if it is determined that the complaint is not alleging criminal behavior and:

(i) a youth committed to TJJD or the youth's family may be in need of assistance; or

(ii) a systemic issue in the TJJD provision of services is raised by the complaint.

(2) Any IO employee or agent may receive a complaint and is required to ensure it is given to the correct person for resolution.

(3) The IO shall request that complaints be provided in writing, although verbal complaints and inquiries shall be accepted.

(4) The IO shall request that complaints contain specific relevant details, including:

(A) the name of any involved party(ies);

(B) the TJJD number of any youth involved in the complaint; and

(C) any locations, dates, and times.

(5) All IO staff responding to a complaint from the public shall act in a courteous manner and in accordance with established IO policies.

(c) Investigation and Resolution of Complaints.

(1) IO staff shall use every means appropriate to obtain as much information as possible regarding a complaint in order to provide a complete and thorough response. Investigative paths may include, but are not limited to:

(A) research of policies and procedures for general operations questions;

(B) research of available records regarding a youth on TJJD database systems;

(C) requesting information/investigation from the appropriate proponent. All investigations are evaluated to ensure they are complete and thorough;

(D) consulting with other individuals or entities, outside of TJJD, who are knowledgeable of an issue addressed in the complaint or inquiry; or

(E) referring complaints regarding youth protection issues or alleged criminal conduct to the TJJD Office of Inspector General (OIG).

(2) Following an IO investigation, the deputy ombudsman will draft a response and provide a copy to the ombudsman.

(3) The ombudsman or the ombudsman's designee shall periodically review all closed complaints to ensure that the inquiry or complaint has been addressed.

(d) Response Timeframes.

(1) All complaints shall be responded to in a timely manner.

(2) Allegations of life threatening situations involving youth-on-youth or staff-on-youth behavior and allegations of sexual assault shall be reported immediately (same day received) to the OIG and the ombudsman by the appropriate deputy ombudsman.

(e) Documentation of Complaints.

(1) An information file shall be maintained for each complaint filed. At a minimum, the following information shall be included in the file:

(A) the name of the person who filed the complaint;

(B) the date the complaint was received;

(C) the subject matter of the complaint;

(D) the name of each person contacted in relation to the complaint;

(E) a summary of the results of the review or investigation of the complaint; and

(F) an explanation of the reason the file was closed, if the file was closed without taking action.

(2) Files shall be retained in accordance with the IO records retention schedule.

§601.12. Review and Inspection of Facilities.

(a) The purpose of this section is to establish the process by which staff of the Independent Ombudsman (IO) inspect facilities operated by or under contract with the Texas Juvenile Justice Department (TJJD).

(b) All facilities operated by or under contract with TJJD shall be periodically inspected by the ombudsman or deputy ombudsman.

(c) Each facility shall be evaluated for its delivery of services to youth to ensure that the rights of youth are fully observed. Inspection of a facility shall include, but is not limited to:

(1) review of education services to ensure compliance with applicable TJJD policy and federal and state laws;

(2) review of facility security to ensure compliance with TJJD policy;

(3) review of the general treatment program administered to youth in the facility to ensure compliance with TJJD policy; and

(4) review of facility safety.

(d) Upon completion of a facility inspection, the IO staff shall provide appropriate leadership within TJJD written documentation detailing the findings of the facility inspection.

(e) IO staff shall file with the ombudsman a complete report documenting the findings and recommendations resulting from a facility inspection and the response from TJJD.

§601.15. Reporting.

(a) The ombudsman shall submit on a quarterly basis to the governor, the lieutenant governor, the state auditor, and each member of the legislature a report that is both aggregated and disaggregated by individual facility and describes:

(1) the work of the ombudsman;

(2) the results of any review or investigation undertaken by the ombudsman, including reviews or investigation of services contracted by the Texas Juvenile Justice Department (TJJD); and

(3) any recommendations that the ombudsman has in relation to the duties of the ombudsman.

(b) The ombudsman shall immediately report to the governor, the lieutenant governor, the speaker of the house of representatives, the state auditor, and the office of the inspector general of TJJD, any particularly serious or flagrant:

(1) case of abuse or injury of a child committed to TJJD;

(2) problem concerning the administration of a TJJD program or operation;

(3) problem concerning the delivery of services in a facility operated by or under contract with TJJD; or

(4) interference by TJJD with an investigation conducted by the Independent Ombudsman.

§601.19. Texas Juvenile Justice Department Response to Ombudsman Reports.

(a) Purpose. The purpose of this section is to establish procedures for providing the Texas Juvenile Justice Department (TJJD) with an opportunity to review and comment on reports issued by the Independent Ombudsman (IO) concerning TJJD.

(b) The IO shall accept, both before and after publication of the following IO reports, comments from TJJD concerning those reports:

(1) quarterly reports issued under Human Resources Code §261.055;

(2) reports concerning serious or flagrant circumstances issued under Human Resources Code §261.055(b); and

(3) any other formal reports containing findings and making recommendations concerning systemic issues that affect TJJD.

(c) The IO shall ensure that reports described in subsection (b) of this section are in a format to which TJJD can easily respond.

(d) Pursuant to Human Resources Code §261.060(b), TJJD may not submit comments after the 30th day after the date the report on which TJJD is commenting is published.

(e) After receipt of comments from TJJD regarding a report issued by the IO, whether the comments are received before or after publication of the report, the ombudsman is not obligated to change the report.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200350
Debbie Unruh
Chief Ombudsman
Independent Ombudsman
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 919-5063

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 12. TEXAS BOARD OF OCCUPATIONAL THERAPY EXAMINERS

CHAPTER 369. DISPLAY OF LICENSES

40 TAC §369.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §369.1, concerning Display of Licenses. The amendment removes the requirement of the agency to mail the renewal card.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline 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 a fiscal efficiency as licensees will be able to print their proof of licensure from the board's website. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, or through email: augusta@ptot.texas.gov.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§369.1. Display of Licenses.

(a) Licenses must be displayed in accordance with the Act, §454.214.

(b) The original license [~~and renewal certificate~~] must be prominently displayed in the licensee's principal place of business as designated by the licensee. [~~The wallet-sized license renewal certificate must be carried by the licensee when in other practice settings.~~] Reproduction of the original license [~~and/or renewal certificate~~] is only authorized for institutional file purposes and not for public display.

(c) A licensee shall not make any alteration(s) on a license [~~and/or renewal certificate~~].

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200424
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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CHAPTER 370. LICENSE RENEWAL

40 TAC §370.1

The Texas Board of Occupational Therapy Examiners proposes an amendment to §370.1, concerning License Renewal. The amendment removes mailing the renewal card, while making the licensure certificate available for download from the board's website.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rule is in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rule.

Mr. Maline 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 agency fiscal efficiency. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rule as proposed.

Comments on the proposal may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, or through email: augusta@ptot.texas.gov.

The amendment is proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§370.1. License Renewal.

(a) Licensee Renewal: Licensees are required to renew their licenses every two years by the end of their birth month. A licensee may not provide occupational therapy services without a current license. The licensee' expiration date is displayed on the board's website and should be considered evidence of current licensure. Licensees and employers should verify licenses and registrations on the board's website [~~or renewal certificate in hand. If a license expired after all required items are submitted but before the licensee received the renewal certificate, the licensee may not provide occupational therapy services until the certificate is in hand~~].

(1) General Requirements. The renewal application is not complete until the board receives all required items. The components required for license renewals are:

(A) signed renewal application form, or online equivalent verifying completion of 30 hours of continuing education, as per Chapter 367 of this title (relating to Continuing Education);

(B) the renewal fee and any late fees which may be due;

(C) a passing score on the online jurisprudence [~~Jurisprudence~~] exam; [~~and~~]

(D) any additional forms the board may require; and[~~.~~]

(E) the licensee's physical address.

(2) The licensee is responsible for ensuring that the license is renewed, whether receiving a renewal notice or not.

(3) Online Renewal. Licensees may submit and pay for [~~complete~~] their renewal [~~online~~] but the renewal process is not complete until the board's website verification reflects the renewal date [~~can only continue to practice with their online receipt for 30 days from the date on the receipt~~].

(A) Licensees who do not have a Social Security Number on file will be unable to renew online.

(B) Licensees who are inactive status, or who wish to change their current status must renew with a paper application before the expiration date.

(C) Licensees who want to change their name on their license must submit a copy of court documents with the new name [~~before the renewal process so that the renewal card reflects the new name~~]. Changing the wall license requires a replacement license fee. [~~Should the change occur out of the renewal process sequence, the licensee must pay for a duplicate renewal card and/or wall license.~~]

(b) Restrictions to Renewal/Restoration

(1) The board will not renew a license if a licensee has defaulted with the Student Loan Corporation (TGSLC). Upon notice from

TGSLC that a repayment agreement has been established, the license shall be renewed.

(2) The board will not renew a license if the licensee has defaulted on a court or attorney general's notice of child support. Upon receipt that repayment has been established, the license shall be renewed.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200425
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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CHAPTER 371. INACTIVE AND RETIRED STATUS

40 TAC §371.1, §371.2

The Texas Board of Occupational Therapy Examiners proposes amendments to §371.1, concerning Inactive Status, and §371.2, concerning Retired Status. The amendments allow expired licensees to restore the license to active status according to 40 TAC §370.3, concerning Restoration of a Texas License.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline also 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 rules will be an easier path back to licensure. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, or through email: augusta@ptot.texas.gov.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§371.1. Inactive Status.

(a) Inactive status indicates the voluntary termination of the right to practice occupational therapy by a licensee in good standing with the board. The board may allow an individual who is not actively engaged in the practice of occupational therapy to put a license on inactive status at the time of renewal. A licensee may remain on inactive status for no more than three renewals or six consecutive years, and may not represent him or herself as an Occupational Therapist or Occupational Therapy Assistant.

(b) Required components to put a [~~an~~] license on inactive status are:

(1) Signed renewal application form documenting completion of the required continuing education as described in Chapter [~~chapter~~] 367 of this title (relating to[~~, concerning~~] Continuing Education); and

(2) The inactive fee and any late fees which may be due.

(3) A passing score on the online jurisprudence exam.

(c) Requirements for renewal of inactive status. An inactive licensee must renew the inactive status every 2 years. The components required to maintain the inactive status are:

(1) Signed renewal application form, documenting completion of the required continuing education as described in Chapter [~~chapter~~] 367 of this title[~~, concerning Continuing Education~~]; and

(2) The renewal fee and any late fees which may be due.

(3) A passing score on the online jurisprudence exam.

(d) Requirements for reinstatement to active status. A licensee on inactive status may request to return to active status at any time after[~~. After~~] the licensee has submitted a complete application for reinstatement[~~, the board will send a renewal certificate for the remainder of the current renewal period to the licensee~~].

[~~(1)~~] The components required to return to active status [~~statues~~] are:

(1) [~~(A)~~] Signed paper renewal application form;

(2) [~~(B)~~] The renewal fee and any late fees which may be due;

(3) [~~(C)~~] A passing score on the online jurisprudence exam; and

(4) Proof of the required continuing education, if required.

(e) [~~(2)~~] If the licensee has not completed the required continuing education, he or she may follow the methods to restore the license according to §370.3 of this title (relating to Restoration of a Texas License) [~~retake the national licensure exam~~].

§371.2. Retired Status.

(a) The Retired Status is available for an occupational therapy practitioner whose only practice is the provision of voluntary charity care without monetary compensation.

(1) "voluntary charity care" means occupational therapy services provided as a volunteer with no compensation, for a charitable organization as defined in §84.003 of the Texas Civil Practice and Remedies Code. This includes any bona fide charitable, religious, prevention of cruelty to children or animals, youth sports and youth recreational, neighborhood crime prevention or patrol, or educational organization (excluding fraternities, sororities, and secret societies), or other organization organized and operated exclusively for the promotion of social welfare by being primarily engaged in promoting the common good and general welfare of the people in the community, including these type of organizations with a Section 501(c)(3) or (4) exemption from federal income tax, some Chambers of commerce, and volunteer centers certified by the Department of Public Safety.

(2) "compensation" means direct or indirect payment of anything of monetary value.

(3) The designation used by the retired status licensee is Occupational Therapist Registered, Retired (OTR, Ret) or Occupational Therapist, Retired (OT, Ret), or Certified Occupational Therapy Assistant, Retired (COTA, Ret) or Occupational Therapy Assistant, Retired (OTA, Ret).

(b) To be eligible for retired status, a licensee must hold a current license on active or inactive status.

(c) Requirements for initial retired status are:

(1) a completed and notarized application form;

(2) a passing score on the online jurisprudence exam;

(3) the completed continuing education for the current renewal period; and

(4) the retired status fee and any late fees which may be due.

(d) Requirements for renewal of retired status. A licensee on retired status must renew every two years before the expiration date. The retired occupational therapy practitioner shall submit:

(1) the retired status renewal form;

(2) a passing score on the online jurisprudence exam;

(3) the retired renewal fee and any late fee which may be due; and

(4) completion of 6 hours of Type 2 continuing education each license renewal period, as described in §367.1 of this title (relating to Continuing Education).

(e) Requirements for return to active status. A licensee who has been on retired status less than one year must submit the regular license renewal fee and the late fee as described in §370.1 of this title (relating to License Renewal). A licensee who has been on retired status for more than one year must follow the procedures for §370.3 of this title (relating to Restoration of Texas License). [~~retake and pass the national examination to return the license to active status. The licensee must submit:~~]

[~~(1) a complete and notarized application;~~]

[~~(2) a passing score on the jurisprudence exam;~~]

[~~(3) a passing score on the recent retaking of the national examination; and~~]

[~~(4) the initial application fee.~~]

(f) The occupational therapy practitioner may continue to renew the retired status license indefinitely.

(g) Licensees on retired status are subject to the audit of continuing education as described in §367.3 of this title (relating to Continuing Education Audit).

(h) A retired occupational therapy practitioner is subject to disciplinary action under the OT Practice Act.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200426

John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

CHAPTER 376. REGISTRATION OF FACILITIES

40 TAC §376.6, §376.8

The Texas Board of Occupational Therapy Examiners proposes amendments to §376.6, concerning Renewal of Registration Application, and §376.8, concerning Restoration of a Registration. The amendments eliminate the mail out of the renewal card or certificate and require facilities to check the board's website for verification of current status. The amendments eliminate facilities' ability to use the financial transaction receipt for proof of renewal.

The facility will not be allowed to renew the facility's registration without a current Therapist in Charge, whose name and license number are on file with the board.

John P. Maline, Executive Director of the Executive Council of Physical Therapy and Occupational Therapy Examiners, has determined that for the first five-year period the rules are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the rules.

Mr. Maline also 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 rules will be the ability to verify registration through the board's website and ability to print out a registration certificate. There will be no effect on small businesses. There is no anticipated economic cost to persons who are required to comply with the rules as proposed.

Comments on the proposal may be submitted to Augusta Gelfand, OT Coordinator, Texas Board of Occupational Therapy Examiners, 333 Guadalupe Street, Suite 2-510, Austin, Texas 78701, or through email: augusta@ptot.texas.gov.

The amendments are proposed under the Occupational Therapy Practice Act, Title 3, Subtitle H, Chapter 454, Occupations Code, which provides the Texas Board of Occupational Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

Title 3, Subtitle H, Chapter 454 of the Occupations Code is affected by this proposal.

§376.6. Renewal of Registration Application.

(a) An individual or entity registered as a facility [~~an Occupational Therapy Facility~~] under this Rule must renew its registration annually. Licensee may not provide occupational therapy services in a facility if the registration is not current.

(b) Requirements to renew a facility are:

(1) a renewal signed by the owner, managing partner or officer, or a person authorized by the owner to complete the form and the OT or OTR-in-charge;

(2) a list of all occupational therapy practitioners working at the facility;

(3) the renewal fee as set by the Executive Council, and any late fees, which may be due; and

(4) an Occupational Therapist-in-Charge form with the signature of the occupational therapist.

(c) The annual renewal date of a facility [~~Occupational Therapy Facility~~] registration is the last day of the month in which the registration was originally issued, or as synchronized with the first facility registered by an owner. The owner of OT facilities may request that the renewal date of the OT facilities be synchronized with the PT facilities in the same locations.

(d) The board will notify the facility [~~Occupational Therapy Facility~~] at least 30 days before the registration expiration date. An individual or entity offering occupational therapy bears the responsibility for ensuring that the registration is renewed. Failure to receive a renewal notice from the board does not exempt the requirement to pay the renewal fee in a timely manner.

(e) Occupational therapy services may not be provided at a facility without a current facility registration. The current registration expiration date as displayed on the board's website is considered evidence of the current registration. [~~The Occupational Therapy Facility renewal certificate must be displayed with the original certificate and is the property of the board.~~]

[~~(f) An Occupational Therapy Facility will be allowed to renew without a late fee if the renewal application and fee are received prior to the expiration date. However, the board will not issue the certificate until the Board receives the signed OT or OTR-in-Charge form and a list of the name(s) of the occupational therapy practitioners employed at that facility.~~]

§376.8. Restoration of Registration.

(a) When an individual or entity fails to renew the registration of a facility [~~an Occupational Therapy Facility~~] within the renewal month, the facility [~~Occupational Therapy Facility~~] may restore the registration by completing the renewal requirements including paying fees as set by the Executive Council.

(1) If the facility [~~Occupational Therapy Facility~~] registration has been expired for 90 days or less, the registration may be renewed by paying the required renewal fee and a restoration fee that is one-half of the renewal fee.

(2) If the facility [~~Occupational Therapy Facility~~] registration has been expired for more than 90 days but less than one year, the registration may be renewed by paying all unpaid renewal fees and a restoration fee that is equal to the renewal fee.

(3) If the facility [~~Occupational Therapy Facility~~] registration has been expired for one year or more, the registration may be renewed by paying all unpaid renewal fees and a restoration fee which is double the renewal fee.

(b) The owner may cancel a facility [~~an Occupational Therapy Facility~~] registration if occupational therapy services will no longer be provided at that facility [~~Occupational Therapy Facility~~]. To cancel registration the owner must notify the board in writing [~~and return the registration certificate and the current renewal certificate (if applicable)~~]. If the owner decides to resume the provision of occupational services at a future date, the facility [~~Occupational Therapy Facility~~] registration may be restored with the previous expiration date by meeting the requirements in §376.6 of this title (relating to Renewal of Registration).

(c) A facility [~~An Occupational Therapy Facility~~] may not be registered as a new facility in lieu of renewal or restoration of a previously registered facility in the same location.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200428
John P. Maline
Executive Director
Texas Board of Occupational Therapy Examiners
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 305-6900

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER B. PUBLIC MEETINGS AND HEARINGS

43 TAC §1.4, §1.5

The Texas Department of Transportation (department) proposes amendments to §1.4, concerning Public Access to Commission Meetings; and §1.5, concerning Public Hearings, both concerning public comment.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 1420, 82nd Legislature, Regular Session, 2011, the department's sunset bill, amended Transportation Code, §201.802(a), to require the Texas Transportation Commission (commission) to develop and implement policies that provide the public with a reasonable opportunity to appear before the commission and speak on any issue under the jurisdiction of the department, rather than under the jurisdiction of the commission, as required before the amendment. The commission previously implemented the policies that were required under the previous statute. This rule amends the current rules to clarify that the commission will hear public comment on an issue within the jurisdiction of the department. The change will have little, if any, effect on the commission's operations. The commission is ultimately responsible for the operation of the department and for the related policy-making decisions; therefore, the jurisdiction of the commission includes all of the matters that are within the jurisdiction of the department.

Amendments to §1.4 change the word "commission" to "department" in subsections (c)(2) and (d)(1) as required by the statutory change. The change to subsection (c)(2) authorizes the chair to place an item on a commission meeting agenda if the chair determines that the proposed item is within the jurisdiction of the department and concerns a matter with sufficient public interest to justify its placement on the agenda. The change to subsection (d)(1) provides that at each regular business meeting after consideration of the posted agenda, the commission will receive public comment on any other matter that is under the jurisdiction of the department.

Amendments to §1.5 change the word "commission" to "department" in subsection (a)(8). The change authorizes the commis-

sion to hold public hearings to accept public comment on any issue under the jurisdiction of the department if acceptance of the public comment is required by law or considered appropriate by the commission.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be that the current practices and statutory requirements are accurately reflected in the rules of the department and commission. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §1.4 and §1.5 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on March 12, 2012.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.802.

§1.4. Public Access to Commission Meetings.

(a) Purpose. This section provides policies and procedures governing public access to the commission in order to facilitate that access and maximize public participation in the decision-making process, while ensuring orderly and effective conduct of meetings.

(b) Posted agenda items. A person may speak before the commission on any matter on a posted agenda by submitting a request, in a form and manner as prescribed by the department, prior to the matter being taken up by the commission. A person speaking before the commission on an agenda item will be allowed an opportunity to speak:

(1) prior to a vote by the commission on the item; and

(2) for a maximum of three minutes, except as provided in subsection (g)(6) of this section.

(c) New agenda items.

(1) A person may request the addition of an item to the commission agenda by submitting, no less than 20 days prior to the date which has been set for the next meeting, the following information:

(A) the name and address of the person making the request;

(B) a clear and concise statement of the subject of the proposed agenda item; and

(C) a brief summary of the action sought.

(2) If the chair determines that the proposed item is within the jurisdiction of the department [~~commission~~] and that the proposed item concerns a matter in which there is sufficient public interest to warrant consideration by the commission as an agenda item, the chair may place the matter on the posted agenda for the next or a subsequent meeting, consistent with available time.

(d) Open comment period.

(1) At the conclusion of the posted agenda of each regular business meeting the commission will allow an open comment period, not to exceed one hour, to receive public comment on any other matter that is under the jurisdiction of the department [~~commission~~].

(2) A person desiring to appear under this subsection must complete a registration form, as provided by the department, prior to the beginning of the open comment period.

(3) Except as provided in subsection (g)(6) of this section, each person will be allowed to speak for a maximum of three minutes for each presentation in the order in which he or she registered.

(e) Disability accommodation. Persons with disabilities who have special communication or accommodation needs and who plan to attend a meeting may contact the office of the secretary to the commission in Austin. Requests should be made at least two days before a meeting. The department will make every reasonable effort to accommodate these needs.

(f) Notice. For each commission meeting an agenda will be filed with the Office of the Secretary of State in accordance with the requirements of the Open Meetings Act, Government Code, Chapter 551.

(g) Conduct and decorum. The commission will receive public input as authorized by this section, subject to the following guidelines.

(1) Questioning of those making presentations will be reserved to commissioners and the department's administrative staff.

(2) Organizations, associations, or groups are encouraged to present their commonly held views, and same or similar comments, through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a meeting must leave the meeting room if ordered to do so by the chair.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(6) The time allotted for presentations or comments under this section may be increased or further limited by the chair, or, in the chair's absence, the acting chair, as may be appropriate to assure opportunity for the maximum number of persons to appear.

(h) Waiver. Subject to the approval of the chair, a requirement of this section may be waived in the public interest if necessary for the performance of the responsibilities of the commission or the department.

§1.5. Public Hearings.

(a) Subject of hearings. The commission may hold public hearings to:

(1) consider the adoption of rules, in accordance with the Administrative Procedure Act, Government Code, Chapter 2001;

(2) receive evidence and testimony concerning the desirability of acquiring dredge material disposal sites and of any widening, relocation, or alteration of the main channel of the Gulf Intracoastal Waterway, in accordance with Transportation Code, Chapter 51;

(3) provide for public input regarding the design, schematic layout, and environmental impact of transportation projects, in accordance with Transportation Code, §203.021, and Chapter 2 of this title (relating to Environmental Review of Transportation Projects) [~~§2.42 of this title (relating to Federal-Aid Transportation Projects) and §2.43 of this title (relating to Non Federal-Aid Transportation Projects)~~];

(4) consider maximum prima facie speed limits on highways in the state highway system that are near public or private elementary or secondary schools or institutions of higher education, in accordance with Transportation Code, §545.357;

(5) annually receive public input on the commission's highway project selection process and the relative importance of the various criteria on which the commission bases its project selection decisions, in accordance with Transportation Code, §201.602;

(6) receive comments from interested persons prior to converting a segment of the non-tolled state highway system to a toll project under Transportation Code, §228.203;

(7) receive comments from interested parties prior to approving any financial assistance under Transportation Code, §21.111, relating to aviation facilities development; and

(8) provide, when deemed appropriate by the commission or when otherwise required by law, for public input regarding any other issue under the jurisdiction of the department [~~commission~~].

(b) Authorized representative. The executive director or an employee of the department designated by the executive director may conduct public hearings held under subsection (a)(1), (3), (7), and (8) of this section.

(c) Conduct and decorum. Public hearings will be conducted in a manner that maximizes public access and input while maintaining proper decorum and orderliness, and will be governed by the following guidelines.

(1) Questioning of those making presentations will be reserved to commissioners, the executive director, or, if applicable, the presiding officer.

(2) Organizations, associations, or groups are encouraged to present their commonly held views and same or similar comments through a representative member where possible.

(3) Presentations shall remain pertinent to the issue being discussed.

(4) A person who disrupts a public hearing must leave the hearing room if ordered to do so by the chair or the presiding officer.

(5) Time allotted to one speaker may not be reassigned to another speaker.

(d) Disability accommodation. Persons with disabilities who have special communication or accommodation needs and who plan to attend a hearing to be held by the commission may contact the office of the secretary to the commission in Austin. In the case of a hearing to be conducted by the department, those persons may contact the public affairs officer whose address and telephone number appear in the public notice for that hearing. Requests should be made at least two days before the hearing. The department will make every reasonable effort to accommodate these needs.

(e) Language accommodation. For a hearing held in an area with a substantial Spanish speaking population, the department will provide:

(1) notice of the hearing in both English and Spanish; and

(2) upon request, Spanish translation.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200394
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 463-8683

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CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

The Texas Department of Transportation (department) proposes amendments to §10.6, concerning Conflict of Interest; and §10.102, concerning Grounds for Sanctions.

EXPLANATION OF PROPOSED AMENDMENTS

The department is proposing these amendments to expand the definition of conflict of interest to include revolving door restrictions for certain former upper-level employees and to add additional consequences to the current sanction provisions for violating the new prohibitions.

Amendments to §10.6 expand the definition of conflict of interest to include certain activities that former upper-level department employees may perform on behalf of their new employers. The rule imposes a two-year ban on former upper-level administrators of the department, in subsection (b)(1), and a one-year ban on former district engineers, division directors, office directors, and region directors, in subsection (b)(2), that prohibits them from soliciting business from the department or attempting to influence the Texas Transportation Commission (commission) on behalf of a business entity. The ban does not apply for interim positions. Subsection (b)(3) prohibits all former employees whose last salary was at or above the level of the state's Salary Group A17 from working for a business entity on any matter that they worked on while employed by the department. Subsection (b)(3) is similar to the prohibition in Government Code, §572.054(b), which is subject to statutory interpretation by the Texas Ethics Commission. The department will follow the ethic commission's opinions related to that statutory provision in making its determinations under subsection (b)(3). The amendments to §10.6 are needed in order to provide a fair and unbiased contracting system and to ensure high standards of ethics and fairness in the administration of the department's programs.

The amendments to §10.6 apply to current employees of the department and recent retirees. Appeals would be handled through existing appeals processes. A disqualification could be appealed by the filing of a protest, denial of payment could be appealed by

the filing of a contract claim, and regular sanctions will be handled through the sanction appeal process.

Amendments to §10.102 allow the department to impose non-sanction consequences for entities whose employees violate the new provisions of §10.6 under a contract with the department. In addition to possible sanctions, the department may disqualify an entity from participating in the contract or it may refuse to pay the entity for any work performed by the former employee under the contract. This amendment is intended to deter violations of the proposed revolving door restrictions and to provide the department with an appropriate remedy should a violation occur.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each year of the first five years in which the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Bob Jackson, General Counsel, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Jackson has also determined that for each year of the first five years in which the sections are in effect, the public benefit anticipated as a result of enforcing or administering the amendments will be improved integrity in the department's contracting processes. There are no anticipated economic costs for persons required to comply with the sections as proposed. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the proposed amendments to §10.6 and §10.102 may be submitted to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483. The deadline for receipt of comments is 5:00 p.m. on March 12, 2012.

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §10.6

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.6. Conflict of Interest.

(a) For the purposes of this chapter, a conflict of interest is a circumstance arising out of existing or past activities, business interests, contractual relationships, or organizational structure of an entity, or a familial or domestic living relationship between a department employee and an employee of the entity, and because of which:

(1) the entity's objectivity in performing the scope of work sought by the department is or might be affected; or

(2) the entity's performance of services on behalf of the department or participation in an agreement with the department provides or may reasonably appear to provide an unfair competitive advantage to the entity or to a third party.

(b) A for-profit entity, including a sole proprietorship, has a conflict of interest if:

(1) an individual who held a senior administrative position of the department solicits business from or attempts to influence a decision of the commission or department on behalf of that entity within two years after the date of the individual's separation from the department;

(2) an individual who held a position that is at or above the level of district engineer, division director, office director, or region director but that is not a senior administrative position solicits business from or attempts to influence a decision of the commission or department on behalf of that entity within one year after the date of the individual's separation from the department; or

(3) a former department employee whose last salary from the department was at or above the minimum amount prescribed for salary group A17 of the state position classification salary schedule performs work on behalf of that entity regarding a specific investigation, application, request for ruling or determination, contract, claim, or judicial or other proceeding in which the former employee participated, whether through personal involvement or within the former employee's official responsibility, while employed by the department.

(c) For the purpose of subsection (b) of this section, "senior administrative position" means the position of executive director or a position that is:

(1) at or above the level of district engineer, division director, office director, or region director; and

(2) directly accountable to the commission or the executive director.

(d) Subsections (b)(1) and (2), and (c) of this section do not apply to a position that is designated as an interim position.

(e) For the purpose of subsection (b)(3) of this section, an individual participated in a matter if the individual made a decision or recommendation on the matter, approved, disapproved, or gave advice on the matter, conducted an investigation related to the matter, or took a similar action related to the matter.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200395
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 463-8683

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SUBCHAPTER C. REQUIRED CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

43 TAC §10.102

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

None.

§10.102. Consequences of Violation [~~Grounds for Sanctions~~].

(a) An entity's violation of §10.101 of this subchapter (relating to Required Conduct) is a ground for the imposition of sanctions, score reduction, or removal from precertification status under this chapter.

(b) In addition to any consequences imposed under subsection (a) of this section, the department may disqualify an entity with a conflict of interest described by §10.6(b) of this chapter (relating to Conflict of Interest) from participating in a contract to which the conflict applies, or may deny payment for work performed by the former department employee under the contract.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200396
Bob Jackson
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 463-8683

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PART 3. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

CHAPTER 57. AUTOMOBILE BURGLARY AND THEFT PREVENTION AUTHORITY

43 TAC §57.36

The Automobile Burglary and Theft Prevention Authority (ABTPA) proposes amendments to §57.36, concerning the level of funding for projects receiving ABTPA grant funds. ABTPA has statutory authority to determine funding levels. Proposed changes to subsection (e) are made to include a provision for grantees to expend the cash match contribution before the end of the current grant period. Currently, a cash match is required to be expended prior to any grant funds received. Expended match contributions should enable grant projects to operate effectively throughout the year and not have a significant adverse effect on the financial status of the entire county or city in which the project resides. Other changes in text are proposed for grammar, consistency and format.

Charles Caldwell, Director of the ABTPA, has determined that for each year of the first five years that the rule, as proposed for amendment, will be in effect, there may be some fiscal implications to state and local governments who are ABTPA grantees, as a result of enforcing or administering the rule as proposed for amendment. An actual dollar amount cannot be determined. The fiscal implications for a particular governmental body will be determined by the amount of funds requested by a governmental body above the funding level of the grantee's award and the requirement that the cash match contributions be expended prior to the ABTPA funds awarded, for each funding year. It is not anticipated that any mandatory increase or decrease in expenses as result of these proposed amendments will occur since participation by state and local governments is permissive. There will be no other fiscal implications to state government as a result of enforcing or administering the rule, as proposed for amendment.

Mr. Caldwell has also determined that, for each year of the first five years the rule as amended will be in effect, the public will benefit by sufficient funding from both ABTPA and grantees of successful ABTPA projects. Additionally, for the same period of time, Mr. Caldwell has determined that there is no anticipated economic costs to persons required to comply with the rule as proposed for amendment, except as already explained above in the fiscal implications for governmental bodies that are ABTPA grantees. For the same period, there is no anticipated adverse economic effect on small or micro businesses with the amendments as proposed.

Comments on the proposal may be submitted to Charles Caldwell, Director, Automobile Burglary and Theft Prevention Authority, 4000 Jackson Avenue, Austin, Texas 78731, for a period of 30 days following publication in this issue of the *Texas Register.*

The amendments are proposed under Texas Civil Statutes, Article 4413(37), §6(a). The ABTPA interprets §6(a) as authorizing it to adopt rules implementing its statutory powers and duties, which include determining levels of funding and conditions for ABTPA grant projects as part of its plan for providing financial support to combat automobile theft and economic automobile theft as required by §7 and §8 of Article 4413(37).

Cross Reference to Statutes: Article 4413(37), §§6(a), 7, 8.

§57.36. Level of Funding for Grant Projects.

(a) - (d) (No change)

(e) A grantee awarded ABTPA funds must expend its 20% cash contribution before the end of the current grant period [~~prior to the expenditure of any ABTPA funds~~].

(f) A grantee, in an 80% funding year, may apply for additional funding above 80% of the second year award, including for the consolidation of existing grant programs, [~~or~~] the inclusion of new agencies in a current grant program or based on the availability of funds.

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 25, 2012.

TRD-201200348
Charles Caldwell
Director
Automobile Burglary and Theft Prevention Authority
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 374-5101

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PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 207. PUBLIC INFORMATION

SUBCHAPTER A. ACCESS TO OFFICIAL RECORDS

43 TAC §§207.2 - 207.5

The Texas Department of Motor Vehicles (department) proposes amendments to Chapter 207, Subchapter A, §207.2, Definitions; §207.3, Public Access; §207.4, Cost of Copies of Official Records; and §207.5, Electronic Access to Department Records, all concerning Public Information.

EXPLANATION OF PROPOSED AMENDMENTS

The amendments to §§207.2 - 207.5 are necessary to clarify that certain types of motor vehicle information are considered personal and therefore confidential.

The department's motor vehicle records contain personal information, as defined by Transportation Code, §730.003(6), including social security numbers, names, addresses, and medical or disability information. The Texas statutory definition is based on federal law, 18 United States Code §2721 et seq. License plate numbers are also considered information subject to nondisclosure by the Texas Attorney General, Open Records Decision No. 684 (2009).

The amendments to §§207.2 - 207.5 remove the procedures related to this confidential information from these sections. The information will be moved to Chapter 217, Vehicle Titles and Registration, new Subchapter F, Motor Vehicle Record Information.

FISCAL NOTE

Linda Flores, Chief Financial Officer, has determined that for each year of the first five years the amendments as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the amendments.

Randy Elliston, Director of the Vehicle Titles and Registration Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the amendments.

PUBLIC BENEFIT AND COST

Mr. Elliston has also determined that for each year of the first five years the amendments are in effect, the public benefit anticipated as a result of enforcing or administering the amendments is clarification regarding the protection of personal information.

There are no anticipated economic costs for persons required to comply with the amendments as the information is being moved to a new subchapter. There will be no adverse economic effect on small businesses.

SUBMITTAL OF COMMENTS

Written comments on the amendments may be submitted to Randy Elliston, Director of the Vehicle Titles and Registration Division, Texas Department of Motor Vehicles, 4000 Jackson Avenue, Building 1, Austin, Texas 78731. The deadline for receipt of comments is 5:00 p.m. on March 12, 2012.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §1002.001, which provides the Board of the Texas Department of Motor Vehicles with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 552; Transportation Code, §502.008, and Transportation Code, Chapter 730; and 18 U.S.C. §2721 et seq.

§207.2. Definitions.

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

(1) - (4) (No change.)

~~[(5) Personal information--Information that identifies an individual, including an individual's photograph or computerized image, social security number, driver identification number, personal identification certificate number, name, address other than the postal routing code, telephone number, and medical or disability information. The term does not include information contained in an accident report prepared under Transportation Code, Chapters 550 or 601, driving or equipment-related violations, or driver's license or registration status.]~~

(5) ~~[(6)]~~ Programming--The process of producing a sequence of instructions that can be executed by a computer.

~~[(7) Political subdivision--A county, municipality, local board, or other governmental body of this state having authority to provide a public service.]~~

~~[(8) Service agreement--A contractual agreement that allows individuals, businesses, or state governmental agencies or institutions to access the department's vehicle registration records.]~~

~~[(9) Vehicle registration record--Information contained in the department's files that reflects, but is not limited to, the make, vehicle identification number, year, model, body style, and license number of a motor vehicle, and the name, address, and social security number of the registered owner.]~~

(6) ~~[(10)]~~ Written request--A request made in writing, including electronic mail, electronic media, and facsimile transmission.

§207.3. Public Access.

(a) Request for records.

(1) Submittal of request. A person seeking public information shall submit a request in writing to the department.

(A) (No change.)

(B) A request made by electronic mail shall be sent via the department's World Wide Web site, located at http://www.txdmv.gov/ [~~http://www.dmv.state.tx.us/~~].

(2) (No change.)

~~[(3) Vehicle title and registration information.]~~

~~[(A) The department will provide certain vehicle registration information by telephone or upon receipt of a written request. Requested information will be released in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730.]~~

~~[(B) The department will provide a written form for requests for motor vehicle registration information. A completed and properly executed form must include, at a minimum:]~~

~~*[(i)* the name and address of the requestor;]~~

~~*[(ii)* the Texas license number, title or document number, or vehicle identification number of the motor vehicle about which information is requested;]~~

~~*[(iii)* a statement that the requested information may only be released if the requestor is the subject of the record, if the re-~~

questor has written authorization for release from the subject of the record, or if the intended use is for one of the permitted uses indicated on the form;]

[(iv) a statement that the information is requested for a lawful and legitimate purpose in accordance with Transportation Code, §502.008;]

[(v) a certification that the statements made on the form are true and correct; and]

[(vi) the signature of the requestor.]

[(C) The department will provide vehicle registration information by license number by telephone only in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730, and only if requested by:]

[(i) a peace officer acting in an official capacity; or]

[(ii) an official of the state, city, town, county, special district, or other political subdivision, utilizing the obtained information for tax purposes or for the purpose of determining eligibility for a state public assistance program.]

[(D) A person may not receive information under this paragraph unless the person presents current photo identification containing a unique identification number and the document is a:]

[(i) driver's license or state identification certificate issued by a state or territory of the United States;]

[(ii) United States or foreign passport;]

[(iii) unexpired United States military identification card; or]

[(iv) unexpired United States Department of Homeland Security or United States Citizenship and Immigration Services identification document.]

(b) Production of records. Except as provided in subsections [(a),] (d), (e), and (f) of this section, the department will provide copies, or promptly produce, official department records for inspection, duplication, or both. If the requested information is unavailable for inspection at the time of the request because it is in active use or otherwise not readily available, the department will certify this fact, in writing, within 10 business days after the date the information is requested to the applicant and specify a date, within a reasonable time when the record will be available for inspection or duplication.

(c) - (h) (No change.)

(i) Correction of non-license information. This subsection does not apply to license amendment procedures. An individual may request the correction of information about that individual in the following manner:

(1) A request to correct information may be submitted in writing or through the department's World Wide Web site, located at http://www.txdmv.gov/ [http://www.dmv.state.tx.us/]. The request must be directed to division director responsible for the information.

(2) - (7) (No change.)

§207.4. Cost of Copies of Official Records.

(a) Standard costs. The following table lists charges for copies and related services.

Figure: 43 TAC §207.4(a)

(b) - (f) (No change.)

§207.5. Electronic Access to Department Records.

[(a)] Electronic on-line delivery systems. The department will provide certain information through a departmental World Wide Web Site [(http://www.dmv.state.tx.us)]. Information concerning doing business with the department, news about the department, and motor vehicles-related information will be provided through this web site.

[(b) Electronic access to vehicle title and registration information.]

[(1) Information available. The department will make motor vehicle registration, title, and vehicle ownership information available electronically to an individual, agency, or business in accordance with 18 U.S.C. §2721 et seq., Transportation Code, §502.008, and Transportation Code, Chapter 730 under the terms of a written service agreement.]

[(2) 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 registration information;]

[(C) notification regarding the charges provided in §207.4 of this subchapter;]

[(D) termination and default provisions;]

[(E) service hours for access to motor vehicle records for on-line access;]

[(F) the contractor's signature;]

[(G) a statement that the use of registration 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]

[(H) the statements required by §207.3(a)(3)(B) of this subchapter.]

[(3) 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 provided in §207.3 of this subchapter;]

[(iv) a statement that the use of registration 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 §207.3(a)(3)(B) of this subchapter;]

[(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 (TLETS) access is exempt from the payment of fees.~~]

[~~(c) 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 (b) of this section.~~]

This agency hereby certifies that the proposal has been reviewed by legal counsel and found to be within the agency's legal authority to adopt.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200439
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Earliest possible date of adoption: March 11, 2012
For further information, please call: (512) 467-3853

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 19. QUARANTINES AND NOXIOUS AND INVASIVE PLANTS

SUBCHAPTER X. CITRUS GREENING QUARANTINE

4 TAC §§19.615 - 19.621

The Texas Department of Agriculture withdraws the emergency adoption of new §§19.615 - 19.621 which appeared in the February 3, 2012, issue of the *Texas Register* (37 TexReg 433).

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200433
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: January 27, 2012
For further information, please call: (512) 463-4075

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TITLE 43. TRANSPORTATION

PART 10. TEXAS DEPARTMENT OF MOTOR VEHICLES

CHAPTER 207. PUBLIC INFORMATION

SUBCHAPTER A. ACCESS TO OFFICIAL RECORDS

43 TAC §§207.2 - 207.5

The Texas Department of Motor Vehicles withdraws the proposed amendments to §§207.2 - 207.5 which appeared in the August 26, 2011, issue of the *Texas Register* (36 TexReg 5319).

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200438
Brett Bray
General Counsel
Texas Department of Motor Vehicles
Effective date: January 30, 2012
For further information, please call: (512) 467-3853

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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 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS

SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.415

The Public Utility Commission of Texas (commission) adopts an amendment to §26.415, concerning the Specialized Telecommunications Assistance Program (STAP), without changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7634).

The purpose of the amendment is to simplify the process by which vendors and service providers deliver STAP devices and services.

The commission received no comments on the proposed amendment.

The amendment is adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2011), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically, §56.151, which requires the commission and the Texas Commission for the Deaf and Hard of Hearing to establish the STAP; and §56.154(a), which requires the commission to pay the vendor or service provider, using monies from the universal service fund, within 45 days after receiving a voucher issued pursuant to the STAP.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.002, 56.151, and 56.154.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200358

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Effective date: February 15, 2012
Proposal publication date: November 11, 2011
For further information, please call: (512) 936-7223

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PART 4. TEXAS DEPARTMENT OF LICENSING AND REGULATION

CHAPTER 68. ELIMINATION OF ARCHITECTURAL BARRIERS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 68, §§68.10, 68.30, 68.31, 68.50, 68.65, 68.74, 68.76, 68.80, 68.101, and 68.102; and the repeal of §68.103 and §68.104, regarding the Elimination of Architectural Barriers program, without changes to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5584) and will not be republished. Section 68.100 is adopted without changes to the proposed text, but with changes to the 2012 Edition of the Texas Accessibility Standards (TAS) adopted by reference. The adoption takes effect March 15, 2012.

The amendments and repeals align current rules with federal law by adopting the 2012 edition of the Texas Accessibility Standards, and complies with House Bill (HB) 1055, 81st Legislature, Regular Session (2009) which extended the time frame for design professionals to have documents printed. A summary of the proposed amendments and repeals were included in the notice of proposed rules published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5584).

The Department drafted and distributed the proposed amendments and repeals to persons internal and external to the agency. The proposed amendments and repeals were published in the *Texas Register* on September 2, 2011. The 30-day public comment period closed on October 3, 2011. The Department also publically posted the 2012 TAS on its website and referenced the posting in the published rule filing with *Texas Register.* The Department received public comments from 21 interested parties on the 2012 TAS and the proposed rules: Accessibility Professionals Association (APA); Bureau Veritas North America, Inc.; City of Waco; Chesney Morales Architects and Associates, Inc.; GSC Architects; English Architects; K+K Associates, LLP; KSQ Architects, PC; Abadi Accessibility; Accessibility Check; The Access Partnership, LP; Code Consulting Group; Garza Bomberger and Associates; American Construction Investigations, Ltd.; The National Floor

Safety Institute; KAHickman Architects and Interior Designers; American Construction Investigations; Kitter and Pate Design Associations; and 3 individuals.

On October 13, 2011, the Architectural Barriers Advisory Committee met to review public comments and recommended no changes to the proposed rules in response to comments received. The public comments are summarized below, followed by the Department's responses.

Comment: Three commenters requested that the exemptions for Path of Travel and Safe Harbor as provided in 28 CFR §35.151(b)(4)(ii)(C), 28 CFR §36.403(a)(2), and 28 CFR §36.403(d) be added to the 2012 TAS.

Department Response: The Department added a definition in section 106 of the 2012 TAS that provides a definition for Safe Harbor and provides scoping in section 202.4 of the 2012 TAS. The text is based on the Code of Federal Regulations (CFR) §35.151(b)(4)(ii)(C) and §36.403(a)(2) for Path of Travel.

Comment: One commenter expressed concerns about how safe harbor will affect large facilities such as hotels that have golf courses and swimming pools in terms of having to bring their facilities into compliance with the 2102 TAS or 2010 SAD by March 15, 2012.

Department Response: Safe harbor is applicable only to the path of travel elements and if those elements are in compliance with the 1994 TAS, they would not be required to bring them into compliance with the 2012 TAS until there is construction since the Texas Architectural Barriers Act is a construction law. However, the owners will still have an obligation to comply with the 2010 SAD and safe harbor is not applicable to elements such as golf courses and swimming pools; therefore, when they do construction to meet their federal obligations, this will also require compliance with the 2012 TAS. Safe harbor is referenced in the 2012 TAS in section 106.5.57 Definitions and 202.4 Alterations Affecting Primary Function Areas.

Comment: One commenter requested the Department incorporate or alter various sections of the 2012 TAS to reflect similar language in the proposed federal Guidelines for Public Rights-of-Way.

Department Response: As the referenced federal guidelines are not yet an enforceable standard, the Department will continue to address public right-of-way projects in 16 TAC §68.102.

Comment: One commenter recommended that the graphics on the cover page of the draft 2012 TAS be revised to indicate that the 2012 TAS = 2010 Standards. The APA requested the reference to "2010 SAD" on the cover page be substituted with "2010 Standards."

Department Response: As the reference to the federal standards on the draft 2012 TAS were added for illustrative purposes only and will not be included in the final document, no action is necessary.

Comment: One commenter commented on §105 of the 2012 TAS and requested the Department provide copies of all of the reference standards for inspection at offices throughout the State and guidance added to the Registered Accessibility Specialist (RAS) procedures regarding the onsite inspection process for each of the referenced codes. They also requested that the Department require and ensure the availability of adequate continuing education training on the referenced standards.

Department Response: The Department will include direction in the new Texas Accessibility Academy sufficient to satisfy compliance with the 2012 TAS.

Comment: One commenter suggested that the Department improve the definition of Circulation Path in 2012 TAS §106.5.19 to be consistent with the definition in ANSI A117.1 and to add an advisory note to clarify that requirements regarding protruding object hazards apply to any area a visually impaired person may travel.

Department Response: The Department has provided the identical definition of Circulation Path as defined in the federal 2010 Standards. No change is necessary.

Comment: One commenter suggested that the Department improve the definition of Curb Ramp in 2012 TAS §106.4.23 [assumed to ref. §106.5.23] to be consistent with Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way, published July 26, 2011.

Department Response: The Department has provided the identical definition of Curb Ramp as defined in the federal 2010 Standards. The Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way are not enforceable. No change is necessary.

Comment: One commenter questioned if there will be an area of religious ritual exemption added to the 2012 Texas Accessibility Standards.

Department Response: The Department considers the exemption in §68.30(8) as sufficient.

Comment: One commenter requested clarification of the meaning of the effective date for compliance to the 2012 TAS. Does it mean submitted for permit review, permitted for construction, or finished construction (certificate of occupancy)?

Department Response: The Department has proposed an effective date of March 15, 2012. The applicability of the 2012 TAS for new construction or alterations will be based on the date the last application for a building permit or permit extension is certified to be complete by a state, county or local government; or the date the last application for a building permit or permit extension is received by a state, county, or local government, where the government does not certify the completion of applications; or the commencement of construction or alterations, if no permit is required. Furthermore, the Department agrees to monitor applicability issues as they arise and address them as is appropriate.

Comment: One commenter inquired about whether a project permitted on March 11, 2012, would be under the 1994 TAS standard?

Department Response: The Department policy would consider when the project was permitted, constructed, renovated, or modified prior to March 15, 2012, to determine the applicability of the appropriate standards. Given the example, it would likely be under the 1994 TAS. However, the Department will take this policy consideration under advisement and determine the appropriate application as cases arise.

Comment: One commenter inquired about Texas Department of Licensing and Regulation (TDLR) methods of notifying the design professionals of the 2012 TAS and effective dates in regards to permitting.

Department Response: The Department will contact the licensing agencies such as TBAE, TPBE, and BOMA and also broad-

cast electronic Department listserv messages which are some of the outreach resources and tools used to inform design professionals.

Comment: One commenter inquired about government projects that have already been registered and reviewed but may not get funded or started before March 15, 2012, and whether they will be allowed to use the 1994 TAS or required to use the 2012 TAS.

Department Response: Public projects are also required to comply with federal requirements and may need to comply with the strictest standard.

Comment: One commenter asked whether the permit process means that one has been filed or one has been issued?

Department Response: The Department welcomes input from the association about different scenarios that may occur and will address them on the Department's Frequently Asked Questions (FAQ) page on the Department's website.

Comment: One commenter expressed opinion that registering a project and acquiring a TDLR number is similar to permitting.

Department Response: If TDLR allows a project to be constructed under the 1994 TAS solely because of project registration, this could result in conflict with federal requirements.

Comment: One commenter asked whether there would be a transition period where it will be allowed to be designed under 2012 TAS before March 15, 2012.

Department Response: That concept was discussed at other meetings and may be considered as a variance. The Department will monitor the situation.

Comment: One commenter proposed to retain the exception for fire stations in 16 TAC §68.104.

Department Response: The 2012 TAS makes reference to employee workspace which would include the areas previously exempted by §68.104, and believes the new 2012 TAS will sufficiently address the requirements; however, the Department will consider a Technical Memorandum addressing this matter should the need arise.

Comment: One commenter suggested that the Department include 28 CFR §36.406(b) that clarifies advisory notes, appendix notes, and figures are not enforceable, and suggested the Department include any items in the advisory text that should be requirements in the 2012 TAS.

Department Response: The Department added this provision in §201.1 of the 2012 TAS.

Comment: One commenter suggested the Department clarify whether a variance is required to use a platform lift [ref. §410] where existing side constraints appear to prohibit the use of a ramp or elevator.

Department Response: The Department will add the word "technically" in TAS §206.7.5 before "infeasible."

Comment: One commenter proposed additional text be added to the 2012 TAS §406.1, either as advisory or a requirement, addressing curb ramp requirements as contained in the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of Way, published July 26, 2011.

Department Response: The Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way are not enforceable. No change is necessary.

Comment: One commenter proposed additional text be added to 2012 TAS §406.4, addressing curb ramp requirements as contained in the Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of Way, published July 26, 2011.

Department Response: The Proposed Accessibility Guidelines for Pedestrian Facilities in the Public Right-of-Way are not enforceable. No change is necessary.

Comment: One commenter requested that the Department clarify in the 2012 TAS §502.6, that each accessible parking space must have a sign.

Department Response: The Department disagrees as this would conflict with the federal requirements in the 2010 Standards for facilities with four or fewer parking spaces. Section 216.5 identifies where signs are required and where exceptions are allowed.

Comment: One commenter expressed concerns about how a RAS can be expected to review and inspect under the 2012 TAS if the training is not given until the fall.

Department Response: The training will occur this fall, not next fall, which is prior to March 15, 2012 which is the proposed effective date.

Comment: One commenter inquired about whether the RAS training would qualify for CEU credit.

Department Response: The Department will make every effort to award CEU credit for training on the new standards.

Comment: One commenter asked whether technical memos would be obsolete after the 2012 TAS goes into effect.

Department Response: The current technical memos will still be applicable to projects constructed under the 1994 TAS, but will not be applicable to compliance with the 2012 TAS.

Comment: One commenter requested that TDLR consider changing the AB Rules to allow a RAS to assist in the design process and give possible design solutions to the owner or design professional.

Department Response: This may be considered in the future; however, is not incorporated into the adopted rules.

Comment: One commenter expressed concerns that the 2012 TAS and 2010 SAD contain advisory notes and asked that it be clarified whether the advisory notes will be enforceable in the 2012 TAS and if so, requested that text from the advisory notes be removed and added to the text for the standards to avoid confusion.

Department Response: Just as in the federal standards, the advisory notes are provided for informational purposes only and are not mandatory. In most cases, advisory notes clarify the meaning of a requirement or provide recommendations for good practice.

Comment: One commenter asked that the statement about the advisory notes in the CFR be added to the 2012 TAS or the language clarified as to whether the advisory notes will be enforced.

Department Response: The Department will add the reference to the advisory notes from the CFR to the 2012 TAS.

Comment: One commenter expressed concern that there is no link to the revised 2012 TAS document on the *Texas Register.*

Department Response: The 2012 has been available on our website in advance and during the posting of the proposed rules

in the *Texas Register.* In addition, the *Texas Register* posting provided a website address where this material could be found.

Comment: One commenter asked that TDLR make the intent of the advisory notes clear since some things like children's mounting heights were previously required and only advisory notes in the 2012 TAS.

Department Response: Advisory in this context means that it is not required or mandatory, it does not prohibit the use of children's mounting heights.

Comment: One commenter expressed concerns that Texas should continue to be the leader in accessibility and that it is sad to see Texas just take the 2010 SAD "as is" to avoid confusion.

Department Response: The Department believes the standards are appropriate and consistent with the desire of the public, the Advisory Committee, and the Commission to be consistent with federal standards.

Comment: One commenter asked whether independent persons will be allowed to do investigations for TDLR or is there a possibility that this might happen.

Department Response: Not at this time.

Comment: One commenter expressed concerned about getting adequate training for other standards referenced in the 2012 TAS.

Department Response: The Department understands the concern, and expects there will be adequate training available.

Comment: One commenter invited TDLR to the annual APA conference and offered assistance in trainings.

Department Response: No response is necessary.

Comment: One commenter asked if restrooms built with children's mounting heights, would have to be changed to adult heights since the children's heights are advisory.

Department Response: The intent of the advisory is to clarify the exception permitting use of children's mounting heights. Although the advisory does not require the use of children's mounting heights, they have prescribed dimensions for when they are provided.

Comment: One commenter asked if during an inspection children's mounting height are used, what should be done.

Department Response: The advisory's intent is to allow the use of the children's mounting heights. The Department will apply common sense to the application of the 2012 TAS and emphasized that the advisory notes give flexibility. The Department will add language that advisory notes are "advisory." FAQs will also be developed to address common questions.

Comment: One commenter suggested adding a definition for the term "level" to the new TAS standards.

Department Response: The Department will take this under advisement. No action is necessary at this time.

Comment: One commenter offered several comments including suggestions on hospital accessibility and the offer to eliminate the term "common area" as unnecessary. The term "elevator" should be omitted and replaced with "accessible route."

Department Response: The Department will take these suggestions under advisement. No action is necessary at this time.

Comment: One commenter stated that the advisory comments under 206.2.3 are not clear.

Department Response: The advisory comments are not mandatory. The Department will take this under advisement. No further action is necessary at this time.

Comment: One commenter stated that the figure in 404.2.4.3 appears to not address how deep the maximum dimension of the door frame.

Department Response: The Department will review the figure and take any corrective action under advisement should it determine this necessary.

Comment: One commenter stated that toilet facilities are not usable when oversized toilet paper dispensers protrude into the leg room area.

Department Response: The Department will take this comment under advisement.

Comment: One commenter asked a question concerning the total number of accessible rooms necessary in a future dormitory project.

Department Response: The Department will be happy to assist this commenter on the question; however, this is not a comment in support of or requesting change to the 2012 TAS or the proposed rules. No response is necessary.

Comment: One commenter provided comment asking to omit the term "slip resistant" and use instead the term "high-traction."

Department Response: The Department will take this under advisement for future consideration.

Comment: One commenter asked what section in the 2010 TAS will apply to ticketing counters, reception and information counters. He further asked questions on vertical clearance and parking spaces in the 2010 TAS.

Department Response: The Department will be happy to assist the commenter with the questions; however, the question does not address the posted 2012 TAS or the proposed rules. No response is necessary.

16 TAC §§68.10, 68.30, 68.31, 68.50, 68.65, 68.74, 68.76, 68.80, 68.100 - 68.102

The amendments are adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469, which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adopted amendments are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adoption.

§68.100. Technical Standards and Technical Memoranda.

(a) The Texas Commission of Licensing and Regulation adopts by reference the 2012 Edition of the Texas Accessibility Standards (TAS), effective March 15, 2012.

(b) The Texas Commission of Licensing and Regulation may publish Technical Memoranda to provide clarification of technical matters relating to the Texas Accessibility Standards, if such memoranda have been reviewed by the Elimination of Architectural Barriers Advisory Committee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200450
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 15, 2012
Proposal publication date: September 2, 2011
For further information, please call: (512) 463-7348

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16 TAC §68.103, §68.104

The repeal is adopted under Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapter 51 and Texas Government Code, Chapter 469. No other statutes, articles, or codes are affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 30, 2012.

TRD-201200451
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Effective date: March 15, 2012
Proposal publication date: September 2, 2011
For further information, please call: (512) 463-7348

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CHAPTER 83. COSMETOLOGISTS

The Texas Commission of Licensing and Regulation (Commission) adopts amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 83, §§83.10, 83.20, 83.21, 83.23, 83.25, 83.26, 83.31, 83.51, 83.70 - 83.72, 83.74, 83.80, 83.100, 83.102, 83.104 - 83.106, 83.112, and 83.120; adopts the repeal of §83.75; and adopts new §83.115, regarding the cosmetology program.

The amendments to §§83.10, 83.20, 83.21, 83.23, 83.25, 83.26, 83.31, 83.51, 83.70, 83.74, 83.80, 83.100, 83.102, 83.104 - 83.106, and 83.112; and the repeal of §83.75 are adopted without changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8293) and will not be republished. The amendments to §§83.71, 83.72, and 83.120; and new §83.115 are adopted with changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8293) and are republished. The adoption takes effect February 17, 2012.

The adopted rules are necessary to implement Senate Bill 1170 (SB 1170), 82nd Legislature, Regular Session (2011), which amended Texas Occupations Code, Chapters 1601, 1602 and 1603 and are also in response to the Texas Commission of Licensing and Regulation's rule simplification initiative.

The amendments add a definition for "eyelash extension application" and "eyelash extension specialist," change the term "facialist" to "esthetician," add definitions for "preparation" and "tweezing technique" and eliminate the definition and licensing requirements of "registered examination proctor." The amendments create new license types for eyelash extension specialist and esthetician/manicurist and create a cross-over license that allows a barber to take a 300 hour course to qualify to take the operator examination.

The amendments reduce cosmetology school minimum square footage requirements, amend the refund policy calculation, and allow for early examination for the written portion of the operator exam. In addition, the amendments add a definition for "sanitize or sanitization" and eliminate the requirement that autoclaves, ultraviolet sanitizers and dry heat sterilizers be listed with the United States Food and Drug Administration (FDA).

The amendments also reduce the number of required continuing education hours from six to four and, for persons over 65 years of age, from two hours to one. They also add the esthetician/manicurist specialty license, eyelash extension specialty license, and non-renewable shampoo apprentice permit to the types of licenses that have a term of two years and clarify that a student permit does not expire. The license term for examination proctor is deleted.

The amendments expand the options a license holder has when displaying her/his license to allow for posting at the work station or at the salon reception desk and eliminate the requirement that a licensee make appointments to provide services to incapacitated or deceased persons through a salon.

The amendments give schools the option of using credit hours or clock hours and define the term "withdrawal or termination." The amendments also establish minimum equipment requirements for teaching the operator, esthetician, manicure, esthetician/manicure, and eyelash extension curriculums. They establish minimum equipment requirements for salons and booth renters applying eyelash extensions and add health and safety standards for persons who perform eyelash extension application services.

The amendments also address curriculum requirements for the following license types: class A barber to cosmetology operator, esthetician/manicure, eyelash extension, cosmetology instructor (750 hours), and cosmetology instructor (500 hours with one year experience) and eliminate the requirement that cosmetology students complete a minimum number of practical applications.

A summary of the proposed amendments, repeal, and new rule was included in the notice of proposed rules published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8293).

The Department drafted and distributed the proposed amendments, repeal, and new rule to persons internal and external to the agency and published in the *Texas Register* on December 9, 2011 (36 TexReg 8293). The 30-day public comment period closed on January 9, 2012. The Department received public comment from the following individuals and businesses: Extreme Lashes, R. Jones, Donna Duffy, Total Transforma-

tion Institute of Cosmetology, Sonia Alonzo, Irene Menchaca, Cassandra Monahan, Mary Lindsay of San Jacinto College South, Joe Arrington of McLennan Community College, Jane Doe, Robyn Hasselle, Brenda Tambur, Karinne VandeBerg, Tommy Nguyen, Linda Davenport, Vanessa Berlanga, Zayd Soufi, Lyn Nueno, Stephanie Fleece, Dara Bermick, Margarete Farias, Jarika Jefferson, Dakarai Larriett, Dana Wilson, Nicholas Flevaris of The Lashe, Inc., Angel Nails of Extreme Lashes, Rita Schimelpfening, Steve Bresnan for Novalash, Inc., Amy Joseph, Lindsay Layne, Amber Herrera, Amy Dickerson, Cathy Gutierrez, Priscilla Smith, Kristen Ely, Pamela White, Ashley Schnitzius, Christie Dick, Lavish Lashes, David King, Mary Dana, Marisa Arnved, Letha M. Steele and Joanne Jurica. On January 9, 2012, the Cosmetology Advisory Board met to review public comments and recommend changes to the proposed rules in response to comments received. The public comments are summarized below, followed by the Department's responses.

Several comments related to recommendations for statutory changes outside the Department's authority. One commenter objected to the change in the eligibility for an operator instructor license from 250 hours of education with two years experience to 500 hours of education with one year experience. One commenter objected to the rule reducing continuing education hours for people 65 years of age or older and instead suggested that the reduction should apply to those 62 years of age or older. Another commenter stated that the school equipment requirement for a minimum of 10 students seems arbitrary. There were several comments stating that the scope of practice for eyelash extension specialists should be expanded to include make-up application. Additional comments included suggested changes to rules not currently the subject of proposed amendments.

Comment: One commenter suggested that proposed §83.20(f) which provides that a person may be a cosmetology instructor if they have one year of work experience and have a degree in education or completed 15 semester credit hours of education courses within the past 10 years, should be clarified to limit or specifically define the types of education courses and education degrees that can be considered.

Department Response: The Department will take these comments under advisement. No action is necessary at this time.

Comment: Several commenters objected to proposed §83.115(a) which would require the use of disposable gloves to apply eyelash extensions. The commenters stated that because the procedure is non-invasive and there is no exposure to bodily fluids, disposable gloves are unnecessary. In addition, gloves make application difficult, limit dexterity, are uncomfortable for the licensee and client and may cause harm to persons with latex allergies.

Department Response: The Department agrees with these comments and the rule as adopted eliminates the requirement to wear disposable gloves when applying eyelash extensions.

Comment: One commenter objected to proposed §83.115(c) which would require a head drape when providing lash extension services. The commenter stated that head drapes are unnecessary from a health and safety standard and uncomfortable for the client.

Department Response: The Department agrees with this comment and the rule as adopted eliminates the requirement to provide a head drape when providing eyelash extension services.

Comment: There were many comments regarding proposed §83.71(e)(5) which establishes equipment requirements for eyelash extension salons and §83.71(g)(4) which establishes equipment requirements for booth renters. Several commenters suggested that "one facial bed or massage table" should be expanded to "one facial bed or massage table that allows the consumer to lie completely flat" because using a bed that does not lie completely flat is not safe, efficient or comfortable for the client. Commenters also stated that a flat bed more effectively protects client's eyes and makes application easier.

Department Response: The Department agrees with these comments and the rule as adopted expands the language to "one facial bed or massage table that allows the consumer to lie completely flat."

Comment: Additional comments relating to eyelash extension salon equipment included changing the requirement of a "lighted magnifying glass" to a "lamp with an extendable arm" that can extend over the facial bed or "a light" because all lash specialists need a bright light to clearly see the client's lash line while only some lash specialists need magnifying lenses.

Commenters stated that a lamp is preferred over a magnifying glass because the magnifying glass is bulky, limits visibility since it cannot be easily manipulated, and has a tendency to form condensation on the lens. Further, since lash specialists are currently performing this service safely without the use of magnifying equipment and are currently educated without the aid of a magnifying glass, the requirement of a magnifying glass is unnecessary.

Department Response: The Advisory Board agreed with these comments and the rule as adopted changes the term "lighted magnifying glass" to a "lamp."

Comment: There were several more comments to proposed §83.71 which included modifying the stool or chair requirement to "adjustable" stool or chair because being able to elevate the stool or chair to the height of the facial bed will allow the lash specialist the ability to adjust his or her position for different clients.

One commenter stated that required equipment should include a bolster to place under the client's knees to alleviate pressure on the client's back and make breathing easier.

Another commenter stated that the addition of an air purifier and fume extractor would ensure that facilities have proper ventilation. Another commenter stated that a waste receptacle should be required for each lash specialist practicing in a salon since many items will need to be disposed of throughout the cleansing and application process. Another commenter stated that equipment requirements should include the addition of a side table to hold supplies.

Department Response: The Advisory Board declined to make these requested changes because the proposed rules have been drafted to establish minimum equipment requirements and lash specialists can provide this additional equipment in their salons if they choose.

Comment: One commenter stated that proposed §83.72 requires schools to provide both a wet sanitizer and dry sanitizer which unnecessarily increases operating expenses with no additional gain from a health and safety perspective. The commenter suggests revising the published rule to state that "either wet or dry sanitizers" be supplied.

Department Response: The Advisory Board did not make the suggested change because wet and dry sanitizers are used for different purposes and both are necessary.

Comment: Another commenter stated that proposed §83.72 which requires schools to have either a VCR or DVD player should be changed to reflect less antiquated and more contemporary educational expectations.

Department Response: The Advisory Board agreed with these comments and the rule as adopted changes the term "VCR or DVD" to "audio/visual equipment."

Comment: There were two comments regarding proposed §83.72 which required schools to provide whirlpool foot spas when they teach the manicure curriculum. The commenters stated that whirlpool foot spas are unsanitary, dangerous, and difficult to clean and that many salons use high-end foot basins with no circulation systems or they use disposable liner systems. The commenters stated that schools shouldn't be required to provide this equipment in their classrooms.

Department Response: The Department agrees with these comments and the rule as adopted now gives schools the option of providing either "a whirlpool foot spa or foot basin."

Comment: One commenter noted that even though FDA approval is no longer required for sterilizers or sanitizers, the Department should consider establishing this requirement because the statute does not forbid such a requirement.

Department Response: The Department disagrees with this comment. While the statute does not forbid such a requirement being established, the Department believes that to do so would frustrate the legislative intent of Senate Bill 1170 to expand industry options for sanitizing or sterilizing tools and implements.

Comment: Another commenter requested that the Department provide more guidance and clarification regarding proposed §83.72(f) on the meaning of "on duty" and how the 25 students to one full-time instructor is to be computed, suggesting that "on-duty" could be clarified to include long-distance/internet learning. Also, that the Department consider establishing some minimum face-to-face instructional component with the time focused on practical skill development and responses to student questions.

Department Response: The Department will take these comments under advisement. No action is necessary at this time.

Comment: Another commenter stated that proposed §83.115 which gives eyelash extension application service providers the option of using a liquid sanitizer instead of hand washing should be eliminated. To ensure health and safety standards, licensee should be required to wash hands with soap and water prior to performing services.

Department Response: The Department agrees with the comment to eliminate the option to use hand sanitizers in lieu of soap and water for eyelash extension specialists and the rule as adopted reflects the change.

Comment: Three individuals affiliated with eyelash extension businesses recommended that the curriculum requirements of proposed §83.120 should be changed to require more time for hands-on application training to ensure that students demonstrate the technical and cognitive ability to provide safe and hygienic services. The commenters recommended increasing the eyelash extension lash application curriculum from 130 hours to 190 and decreasing theory hours in the same amount so that the total curriculum hours remain 320.

Department Response: The Department agrees with these comments and the rule as adopted increases practical lash application hours from 130 hours to 190 hours and reduces theory hours by 60.

16 TAC §§83.10, 83.20, 83.21, 83.23, 83.25, 83.26, 83.31, 83.51, 83.70 - 83.72, 83.74, 83.80, 83.100, 83.102, 83.104 - 83.106, 83.112, 83.115, 83.120

The amendments and new rule are adopted under Texas Occupations Code, Chapters 51, 1601, 1602, and 1603, which authorize the Department's governing body, the Commission, to adopt rules as necessary to implement these chapters and any other law establishing a program regulated by the Department.

The statutory provisions affected by the adoption are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the adoption.

§83.71. Responsibilities of Beauty Salons, Specialty Salons, Dual Shops, and Booth Rentals.

(a) Each establishment must have a copy of the current law and rules book.

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) Salons may lease space to an independent contractor who holds a booth rental (independent contractor) license. The lessor to an independent contractor must maintain a list of all renters that includes the name of renter and the cosmetology license number of the renter. The lessor must supply the department inspector with a list of renters upon request.

(d) Each salon shall comply with the following requirements:

(1) a sink with hot and cold running water;

(2) an identifiable sign with the salon's name;

(3) a suitable receptacle for used towels/linen;

(4) one wet disinfectant soaking container;

(5) a clean, dry, debris-free storage area;

(6) a minimum of one covered trash container; and

(7) if providing manicure or pedicure nail services, an autoclave, dry heat sterilizer or ultraviolet sanitizer.

(e) In addition to the requirements of subsection (d):

(1) beauty salons shall provide the following equipment for each licensee present and providing services:

(A) one working station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls.

(2) manicure salons shall provide the following equipment for each licensee present and providing services:

(A) one manicure table with light;

(B) one manicure stool; and

(C) one professional client chair for each manicure station.

(3) esthetician salons shall provide the following equipment for each licensee present and providing services:

(A) one facial bed or chair; and

(B) one mirror.

(4) combination esthetician/manicure salons shall provide the following equipment:

(A) the requirements for manicure salon; and

(B) the requirements for esthetician salon.

(5) eyelash extension salons shall provide the following equipment for each licensee present and providing services:

(A) one facial bed or massage table that allows the consumer to lie completely flat;

(B) one lamp; and

(C) one stool or chair.

(6) wig salons shall provide the following equipment for each licensee present and providing services:

(A) one mannequin table, station, or styling bar to accommodate a minimum of 10 hairpieces;

(B) one wig dryer; and

(C) two canvas wig blocks.

(7) hair weaving salons shall provide the following equipment for each licensee present and providing services:

(A) one work station;

(B) one styling chair; and

(C) a sufficient amount of shampoo bowls for licensees providing hair weaving services.

(8) hair braiding salons shall provide the following equipment for each licensee present and providing services:

(A) one work station; and

(B) one styling chair.

(9) Dual shops shall:

(A) comply with all requirements of the Act and this chapter applicable to beauty salons;

(B) comply with all requirements of Texas Occupations Code, Chapter 1601, and 16 TAC Chapter 82 applicable to barbershops; and

(C) if the shop is without the services of at least one licensed barber (or cosmetologist) for a period of 90 days or more:

(i) not place any advertisement or display any sign or symbol indicating that the shop offers barbering (or cosmetology) services; and

(ii) remove any existing sign or symbol indicating that the shop offers barbering (or cosmetology) services.

(f) All booth rental (independent contractor) licensees must have the following items:

(1) one wet disinfectant soaking container;

(2) a clean, dry, debris-free storage area;

(3) a suitable receptacle for used towels/linen; and

(4) a current law and rules book.

(g) In addition to the requirements in subsection (f), booth rental (independent contractor) licensees must have the following items.

(1) If practicing in a beauty salon, one work station and one styling chair.

(2) If practicing in an esthetician salon, one facial bed or chair and one mirror, wall hung or hand held.

(3) If practicing in a manicure salon, one manicure table with a light, one manicure stool, and one chair, professional in appearance.

(4) If practicing in an eyelash extension salon, one facial bed or massage table that allows the consumer to lie completely flat, one stool or chair and one lamp.

(h) Booth rental (independent contractor) licensees must comply with all state and federal laws relating to independent contractors.

(i) A booth rental (independent contractor) licensee may provide the cosmetology service(s) authorized by the independent contractor's cosmetology license.

(j) Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

§83.72. Responsibilities of Beauty Culture Schools.

(a) Each establishment must have a copy of the current law and rules book.

(b) Each establishment is responsible for compliance with the health and safety standards of this chapter.

(c) Any alterations of a cosmetology establishment's floor plan must be done in accordance with this chapter and the Act.

(d) The curricula shall be posted in a conspicuous place in the school. A current syllabus and lesson plan for each course shall be maintained by the school and be available for inspection.

(e) Unless the context clearly indicates otherwise, when used in this section the term "student-instructor" shall mean a student permit holder who is enrolled in an instructor curriculum of a beauty culture school.

(f) Schools must have not less than one full-time licensed instructor on duty for each 25 students in attendance, including evening classes. A school may not enroll more than three student-instructors for each licensed instructor teaching in the school on a full-time basis. The student-instructor shall at all times work under the direct supervision of the full-time licensed instructor and may not service clients, but will concentrate on teaching skills. A licensed instructor must be physically present during all curriculum activities No credit for instructional hours can be granted to a cosmetology student unless such hours are accrued under the supervision of a licensed instructor.

(g) Schools must maintain one album to display each student permit, including affixed picture, of each enrolled student. The permits shall be displayed in alphabetical order by last name, then alphabetical order by first name, and, if more than one student has the same name, by student permit number.

(h) Schools may use a time clock to track student hours and maintain a daily record of attendance or schools may use credit hours.

(i) Schools using time clocks shall post a sign at the time clock that states the following department requirements:

(1) Each student must personally clock in/out for himself/herself.

(2) No credit shall be given for any times written in, except in a documented case of time clock failure or other situations approved by the department.

(3) If a student is in or out of the facility for lunch, he/she must clock out.

(4) Students leaving the facility for any reason, including smoking breaks, must clock out, except when an instructional area on a campus is located outside the approved facility, that area is approved by the department and students are under the supervision of a licensed instructor.

(j) Students are prohibited from preparing hour reports or supporting documents. Student-instructors may prepare hour reports and supporting documents; however only school owners and school designees, including licensed instructors, may electronically submit information to the department in accordance with this chapter. No student permit holder, including student-instructors, may electronically submit information to the department under this chapter.

(k) A school must properly account for the credit hours granted to each student. A school shall not engage in any act directly or indirectly that grants or approves student credit that is not accrued in accordance with this chapter. A school must maintain and have available for a department and/or student inspection the following documents for a period of the student's enrollment through 48 months after the student completes the curriculum, withdraws, or is terminated:

(1) daily record of attendance;

(2) the following documents if a time clock is used:

(A) time clock record(s);

(B) time clock failure and repair record(s); and

(C) field trip records in accordance with §83.120(d)(5);

(3) all other relevant documents that account for a student's credit under this chapter.

(l) Schools using time clocks shall, at least one time per month submit to the department an electronic record of each student's accrued clock hours in a manner and format prescribed by the department. A school's initial submission of clock hours shall include all hours accrued at the school. Delayed data submission(s) are permitted only upon department approval, and the department shall prescribe the period of time for which a school may delay the electronic submission of data, to be determined on a case by case basis. Upon department approval, a school may submit data required under this subsection in an alternate manner and format as determined by the department, if the school demonstrates that the requirements of this subsection would cause a substantial hardship to the school.

(m) Schools using credit hours shall, at the end of the course or module or if the student drops or withdraws, submit to the department an electronic record of each student's accrued credit hours in a manner and format prescribed by the department.

(n) Schools changing from clock hours to credit hours shall submit to the department their curriculum for approval before making the change.

(o) Except for a documented leave of absence, schools shall electronically submit a student's withdrawal or termination to the department within 10 calendar days after the withdrawal or termination. Except for a documented leave of absence, a school shall terminate a student who does not attend a cosmetology curriculum for 30 days.

(p) Public schools shall electronically submit a student's accrual of 500 hours in math, lab science, and English.

(q) All areas of a school or campus are acceptable as instructional areas for a public cosmetology school, provided that the instructor is teaching cosmetology curricula required under §83.120.

(r) A private cosmetology school or post-secondary school may provide cosmetology instruction to public high school students by contracting with the school district and complying with Texas Education Agency law and rules. A public high school student receiving instruction under such contract is considered to be a public high school student enrolled in a public school cosmetology program for purposes of the Act and department rules.

(s) Schools may establish school rules of operation and conduct, including rules relating to absences and clothing, that do not conflict with this chapter.

(t) Beauty culture schools must have a classroom separated from the laboratory area by walls extending to the ceiling and equipped with the following equipment to properly instruct a minimum of ten students enrolled at the school:

(1) if using a time clock to track student hours, one day/date formatted computer time clock;

(2) desks and chairs or table space for each student in attendance;

(3) medical dictionary;

(4) audio/visual equipment;

(5) a dispensary containing a sink with hot and cold running water and space for storage and dispensing of supplies and equipment;

(6) a suitable receptacle for used towels/linens;

(7) 2 covered trash cans in lab area; and

(8) one large wet disinfectant soaking container.

(9) If offering the operator curriculum the following equipment must be available in adequate number for student use:

(A) shampoo bowl and shampoo chair;

(B) heat processor or hand-held hair dryer and heat cap or therapeutic light;

(C) cold wave rods;

(D) thermal iron (electric or non-electric);

(E) styling station covered with a non-porous material that can be cleaned and disinfected, with mirror and styling chair (swivel or hydraulic);

(F) mannequin with sufficient hair, with table or attached to styling station;

(G) professional hand clippers;

(H) professional hand held dryer;

(I) manicure table and stool;

(J) facial chair or bed;

(K) lighted magnifying glass;

(L) dry sanitizer; and

(M) wet sanitizer.

(10) If offering the esthetician curriculum the following equipment must be available in adequate number for student use:

(A) facial chair;

(B) lighted magnifying glass;

(C) woods lamp;

(D) dry sanitizer;

(E) steamer machine;

(F) brush machine for cleaning;

(G) vacuum machine;

(H) high frequency machine for disinfection, product penetration, stimulation;

(I) galvanic machine for eliminating encrustations, product penetration;

(J) paraffin bath and paraffin wax;

(K) facial bed;

(L) mannequin head; and

(M) wet sanitizer.

(11) If offering the manicure curriculum the following equipment must be available in adequate number for student use:

(A) an autoclave, dry-heat sterilizer or ultra-violet sanitizer;

(B) complete manicure table with light;

(C) client chair;

(D) student stool or chair;

(E) whirlpool foot spa or foot basin;

(F) electric nail file;

(G) UV light curing system;

(H) paraffin bath and paraffin wax; and

(I) air brush system.

(12) If offering the esthetician/manicure curriculum, the equipment required for the esthetician curriculum as listed in paragraph (10); and the equipment required for the manicure curriculum as listed in paragraph (11); including a wax warmer and paraffin warmer for each service, in adequate number for student use.

(13) If offering the eyelash extension curriculum; the following equipment must be available in adequate number for student use:

(A) facial bed or massage table that allows the consumer to lie completely flat;

(B) stool or chair;

(C) lamp;

(D) mannequin head;

(E) wet sanitizer; and

(F) dry sanitizer.

(u) Cosmetology establishments shall display in the establishment, in a conspicuous place clearly visible to the public, a copy of the establishment's most recent inspection report issued by the department.

§83.115. Health and Safety Standards--Eyelash Extension Application Services.

(a) A licensee offering the eyelash extension application service shall wash his or her hands with soap and water prior to performing any services on a client.

(b) Equipment, implements, and materials shall be properly cleaned and disinfected prior to providing services.

(c) Chairs and beds, including headrests, shall be cleaned and disinfected after providing services to each client. The chair and beds shall be made of or covered in a non-porous material that can be disinfected.

(d) After each client, the following implements shall be cleaned and disinfected: tweezers, nasal aspirator or electric eyelash dryer and other items used for a similar purpose.

(e) The following implements are single-use items and shall be discarded in a trash receptacle after use: disposable gloves, tissues, disposable wipes, fabric strips, surgical tape, eye pads, extensions, cotton swabs, face mask, brushes, extension pads and other items used for a similar purpose.

(f) The following items that are used during services shall be replaced with clean items for each client: disposable and terry cloth towels, hair caps, headbands, brushes, gowns, spatulas that contact skin or products from multi-use containers.

(g) A licensee shall use only properly labeled semi-permanent glue and semi-permanent glue remover that must be used according to the manufacturer's instructions.

(h) Extensions must be stored in a sealed bag or covered container and shall be kept in a clean dry, debris-free storage area.

§83.120. Technical Requirements--Curriculum.

(a) Operator Curricula.
Figure: 16 TAC §83.120(a)

(b) Specialist Curricula.
Figure: 16 TAC §83.120(b)

(c) Instructor Curricula.
Figure: 16 TAC §83.120(c)

(d) Field Trips.

(1) Cosmetology related field trips are permitted under the following conditions for students enrolled in the following courses and the guidelines under this subsection must be strictly followed.

(2) A student may obtain the following field trip curriculum hours:

(A) a maximum of 75 hours out of the 1,500 hours operator course;

(B) a maximum of 50 hours out of the 1,000 hours operator course;

(C) a maximum of 30 hours for the manicure course;

(D) a maximum of 30 hours for the esthetician course;

(E) a maximum of 60 hours for the esthetician/manicurist course;

(F) a maximum of 15 hours for the eyelash extension course;

(G) a maximum of 30 hours for students taking the 750 hour instructor course; and

(H) a maximum of 20 hours for students taking the 500 hour instructor course.

(3) Unless provided by this subsection, field trips are not allowed for specialty courses.

(4) Students must be under the supervision of a licensed instructor from the school where the student is enrolled at all times during the field trip. The instructor-student ratio required in a school is required on a field trip.

(5) Complete documentation is required, including student names, instructor names, activity, location, date, and duration of the activity.

(6) No hours are allowed for travel.

(7) Prior department approval is not required.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200434
Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Effective date: February 17, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 463-7348

♦ ♦ ♦

16 TAC §83.75

The repeal is adopted under Texas Occupations Code, Chapters 51, 1601, 1602, and 1603 which authorize the Commission, the Department's governing body, to adopt rules as necessary to implement this chapter and any other law establishing a program regulated by the Department.

The statutory provisions affected by the repeal are those set forth in Texas Occupations Code, Chapters 51, 1601, 1602, and 1603. No other statutes, articles, or codes are affected by the adopted repeal.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200435
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Texas Department of Licensing and Regulation
Effective date: February 17, 2012
Proposal publication date: December 9, 2011
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TITLE 22. EXAMINING BOARDS

PART 3. TEXAS BOARD OF CHIROPRACTIC EXAMINERS

CHAPTER 75. RULES OF PRACTICE

22 TAC §75.1

The Texas Board of Chiropractic Examiners (Board) adopts an amendment to §75.1, concerning Grossly Unprofessional Conduct, with changes to the proposed text as published in the September 30, 2011, issue of the *Texas Register* (36 TexReg 6413). As such, the adopted rule will be republished.

The adopted amendment will add "or are intended to result" to subsection (a)(4), which is a change from the published proposed amendment. This subsection concerns the exploitation of patients through the fraudulent use of chiropractic services. The amendment makes clear that attempted exploitation of patients, which does not result in financial gain for the licensee or a third party, is still grossly unprofessional conduct if it was intended to result in financial gain for that licensee or third party. This language is a change from the proposed language "or may result" in response to one comment received at the Board's November 17, 2011, meeting. The commenter expressed concern that the language "or may result" was overly broad and could lead to insurance companies filing complaints resulting from billing disputes. The Board discussed the wording and believes that the language "or are intended to result" will discourage complaints based on billing disputes. The goal of this amendment is to prevent fraudulent attempted overtreating/overcharging.

Additionally, the adopted amendment will amend subsection (b), concerning sexual misconduct. The amendments clarify both sexual impropriety and sexual intimacy to make clear what the Board intends as sexual misconduct.

Subsection (b)(1)(A) adds "statements" to the prohibited actions, and also adds "sexually suggestive" to the previously existing standards of seductive or sexually demeaning. Subsection (b)(1)(B) includes "sexual comments which demonstrate a lack of respect for the patient's privacy" as sexual impropriety. Additionally, subsection (b)(1)(C) and (D) clarify that the requests must be of patients.

Subsection (b)(2) clarifies what constitutes sexual intimacy. The previous definition included conduct that is sexual or may be reasonably interpreted as sexual. The Board feels that this definition was not adequate and now defines sexual intimacy as conduct "intended to cause, is likely to cause, or may be reasonably interpreted to cause . . . stimulation of a sexual nature." This definition is clearer and focuses on the intent of the conduct.

Finally, the adopted amendment will add subsection (e) to address patient dressing and undressing. The rule as previously written did not provide any guidelines for providing appropriate gowns/draping and facilities for patient dressing and undressing. Because of the personal nature of such activities by patients, the Board has explicitly stated in this amendment that licensees should provide appropriate gowns/draping and private facilities for dressing and undressing. Two comments were received on the proposed amendment to this subsection at the Board's November 17 meeting. One commenter stated that the term "gowns" was not adequate, as some providers use draping instead of gowns. Therefore, the Board adopts the language "gowns and/or draping" instead of "gowns" in response to this comment. This is a change from the published proposed amendment. Additionally, the second commenter expressed concern

that a patient who is unable to dress or undress himself may need assistance from the licensee. Under the language in the proposed subsection (e), this would not be allowed. In response to this comment, the Board adopts subsection (e) without the sentence "[a] licensee should not be present in the room when a patient is dressing or undressing." This is also a change from the published proposed amendment.

One final comment was received on the proposed amendment during the comment period. The comment was not based on any proposed language, but instead on language previously existing in the rule. The commenter stated that the language in subsection (a)(4) reading "as determined by accepted standards of the chiropractic profession" should be changed, because he believes there are no accepted standards of the chiropractic profession. The Board disagrees. The accepted standards of the chiropractic profession can be established like the standards of any other profession. Court cases and administrative hearings provide the opportunity for expert testimony that can be used to establish the accepted standards of the chiropractic profession. As such, no change was made in response to this comment.

This amendment is adopted under Texas Occupations Code §201.152, relating to rules, and §201.502(a)(7), relating to grounds for refusal, revocation or suspension of a license. Section 201.152 authorizes the Board to adopt rules necessary to regulate the practice of chiropractic. Section 201.502(a)(7) authorizes the Board to refuse, revoke, or suspend a license for a licensee's grossly unprofessional conduct.

§75.1. Grossly Unprofessional Conduct.

(a) Grossly unprofessional conduct when applied to a licensee or chiropractic, facility includes, but is not limited to the following:

(1) maintaining unsanitary or unsafe equipment;

(2) failing to use the word "chiropractor," "Doctor, D.C.," or "Doctor of Chiropractic, D.C." in all advertising medium, including signs and letterheads;

(3) engaging in sexual misconduct with a patient within the chiropractic/patient relationship;

(4) exploiting patients through the fraudulent use of chiropractic services which result or are intended to result in financial gain for a licensee or a third party. The rendering of chiropractic services becomes fraudulent when the services rendered or goods or appliances sold by a chiropractor to a patient are clearly excessive to the justified needs of the patient as determined by accepted standards of the chiropractic profession;

(5) submitting a claim for chiropractic services, goods or appliances to a patient or a third-party payer which contains charges for services not actually rendered or goods or appliances not actually sold;

(6) failing to disclose, upon request by a patient or his or her duly authorized representative, the full amount charged for any service rendered or goods supplied.

(b) Sexual misconduct as used in subsection (a)(3) of this section means:

(1) sexual impropriety, which may include:

(A) any behavior, gestures, statements, or expressions which may reasonably be interpreted as inappropriately seductive, sexually suggestive or sexually demeaning;

(B) inappropriate sexual comments about and to a patient or former patient including sexual comments about an individual's body or sexual comments which demonstrate a lack of respect for the patient's privacy;

(C) requesting unnecessary details of sexual history or sexual likes and dislikes from a patient;

(D) making a request to date a patient;

(E) initiating conversation regarding the sexual problems, preferences, or fantasies of the licensee;

(F) kissing or fondling of a sexual nature; or

(G) any other deliberate or repeated comments, gestures, or physical acts not constituting sexual intimacies but of a sexual nature; or

(2) sexual intimacy, which may include engaging in any conduct by a person or between persons that is intended to cause, is likely to cause, or may be reasonably interpreted to cause to either person stimulation of a sexual nature, such as:

(A) sexual intercourse;

(B) genital contact;

(C) oral to genital contact;

(D) genital to anal contact;

(E) oral to anal contact;

(F) oral to oral contact;

(G) touching breasts;

(H) touching genitals;

(I) encouraging another to masturbate in the presence of the licensee;

(J) masturbation by the licensee when another is present; or

(K) any bodily exposure of normally covered body parts.

(c) It is a defense to a disciplinary action under subsection (a)(3) of this section if the patient was no longer emotionally dependent on the licensee when the sexual impropriety or intimacy began, and the licensee terminated his or her professional relationship with the person more than six months before the date the sexual impropriety or intimacy occurred.

(d) It is not a defense under subsection (a)(3) of this section if the sexual impropriety or intimacy with the patient occurred:

(1) with the consent of the patient;

(2) outside professional treatment sessions; or

(3) off the premises regularly used by the licensee for the professional treatment of patients.

(e) Licensees must respect a patient's dignity at all times and should provide appropriate gowns and/or draping and private facilities for dressing and undressing.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200421

Yvette Yarbrough
Executive Director
Texas Board of Chiropractic Examiners
Effective date: February 16, 2012
Proposal publication date: September 30, 2011
For further information, please call: (512) 305-6716

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PART 16. TEXAS BOARD OF PHYSICAL THERAPY EXAMINERS

CHAPTER 321. DEFINITIONS

22 TAC §321.1

The Texas Board of Physical Therapy Examiners adopts amendments to §321.1, regarding Definitions, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6854).

The amendments change the definition of "foreign-trained applicant" and rearrange the definitions.

The amendments update the definition of "foreign-trained applicant" to reflect the changes in physical therapy education in the last 20 years and correct an error in alphabetization.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200309
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 13, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900

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CHAPTER 341. LICENSE RENEWAL

22 TAC §341.6

The Texas Board of Physical Therapy Examiners adopts amendments to §341.6, regarding License Restoration, with changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6854).

The amendments add subsection (d) that establishes a process by which the spouse of a person serving on active duty as a member of the armed forces of the U.S. could restore a physical therapy license and include alternative methods of establishing competence. The change in the adoption corrects a reference in subsection (d).

The amendments eliminate licensure barriers for the spouses of active military personnel.

No comments were received regarding the proposed changes.

The amendments are adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§341.6. License Restoration.

(a) Eligibility. A person whose license has been expired for one year or longer may restore the license without reexamination if she or he holds a current license in another state, and has actively practiced in another state, for the two years preceding the application for restoration.

(b) Duration. The original expiration date of a restored license will be adjusted so that the license will expire two years after the month of restoration.

(c) Requirements. The components required for restoration of a license are:

(1) a notarized restoration application;

(2) a passing score on the jurisprudence examination;

(3) a fee equal to the cost of the license examination fee;

(4) Verification of Licensure from all states in which the applicant holds or has held a license; and

(5) a history of employment for the two years preceding the application.

(d) The board may restore the license to an applicant who is the spouse of a person serving on active duty as a member of the armed forces of the U.S., who has, within the five years preceding the application date, held the license in this state that expired while the applicant lived outside of this state for at least six months. In addition to the requirements listed in subsection (c)(1) - (3) of this section, the application for restoration shall include:

(1) official documentation of current active duty of the applicant's spouse;

(2) official documentation of residence outside of Texas for a period of no less than six months, including the date the applicant's license expired; and

(3) demonstration of competency. Competency may be demonstrated in one of the following ways:

(A) verification of current licensure in good standing in another state, district or territory of the U.S.;

(B) reexamination with a passing score on the national physical therapy exam;

(C) completion of an advanced degree in physical therapy within the last five years; or

(D) successful completion of a practice review tool and continuing competence activities as specified by the board.

(e) Renewal of a restored license. To renew a license that has been restored, a licensee must comply with all requirements in §341.1 of this title (relating to Requirements for Renewal).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200310
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 13, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900

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CHAPTER 346. PRACTICE SETTINGS FOR PHYSICAL THERAPY

22 TAC §346.1

The Texas Board of Physical Therapy Examiners adopts an amendment to §346.1, regarding Educational Settings, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6855).

The amendment eliminates a barrier to the efficient provision of physical therapy services in the school setting.

The amendment eliminates the specific requirement that a PT review the Individual Education Program every 30 days and requires PTs and PTAs to follow the rules in Chapter 322 of this title, regarding reevaluation, documentation and supervision, if a PT or PTA is providing "hands-on" physical therapy treatment in the school setting.

Four comments were received from individuals regarding the proposed change. Three were in favor of the rule, and one found the meaning of the new language somewhat unclear.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200311
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 13, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900

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22 TAC §346.3

The Texas Board of Physical Therapy Examiners adopts an amendment to §346.3, regarding Early Childhood (ECI) Setting, with changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6856).

The amendment will eliminate references to services outside the scope of physical therapy practice. The change in the adoption completes the deletion of references to Developmental Services intended by the rule amendment.

The amendment deletes references to Developmental Services, which are not part of the physical therapy scope of practice and which PTs and PTAs may no longer provide within the framework of the ECI program.

No comments were received regarding the proposed change.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

§346.3. Early Childhood (ECI) Setting.

(a) In the provision of early childhood services through the Early Childhood Intervention (ECI) program, the physical therapist conducts appropriate screenings, evaluations, and assessments to determine needed services to fulfill family-centered goals. When a child is determined by the PT to be eligible for physical therapy, the PT provides written recommendations to the Interdisciplinary Team as to the amount of specific services needed by the child.

(b) Subject to the provisions of §322.1 of this title (relating to Provision of Services), the PT implements physical therapy services in accordance with the recommendations accepted by the Interdisciplinary Team, as stated in the Individual Family Service Plan (IFSP).

(c) The types of services which require a referral from a qualified licensed healthcare practitioner include the provision of individualized specially designed instructions, direct physical modeling or hands-on demonstration of activities with a child who has been determined eligible to receive physical therapy. Additionally, a referral is required for services that include the direct provision of treatment and/or activities which are of such a nature that they are only conducted with the child by a physical therapist or physical therapist assistant.

(d) The physical therapist may provide general consultation or other program services to address child/family-centered issues.

(e) Evaluation and reevaluation in the educational setting will be conducted in accordance with federal mandates under Part C of the Individuals with Disabilities Education Act (IDEA), 20 USC §1436, or when warranted by a change in the child's condition, and include onsite reexamination of the child. The Plan of Care (Individual Family Service Plan) must be reviewed by the PT every 30 days to determine if revisions are necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200312
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 13, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900

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CHAPTER 347. REGISTRATION OF PHYSICAL THERAPY FACILITIES

22 TAC §347.6

The Texas Board of Physical Therapy Examiners adopts an amendment to §347.6, regarding Exemptions to Registration, without changes to the proposed text as published in the October 14, 2011, issue of the *Texas Register* (36 TexReg 6857).

The amendment provides greater access to physical therapy services for families who are eligible for those services as provided by the Early Childhood Intervention (ECI) program.

The amendment will exempt locations where ECI services take place from the facility registration requirement.

No comments were received regarding the proposed change.

The amendment is adopted under the Physical Therapy Practice Act, Title 3, Subtitle H, Chapter 453, Occupations Code, which provides the Texas Board of Physical Therapy Examiners with the authority to adopt rules consistent with this Act to carry out its duties in administering this Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 24, 2012.

TRD-201200313
John P. Maline
Executive Director
Texas Board of Physical Therapy Examiners
Effective date: February 13, 2012
Proposal publication date: October 14, 2011
For further information, please call: (512) 305-6900

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TITLE 28. INSURANCE

PART 2. TEXAS DEPARTMENT OF INSURANCE, DIVISION OF WORKERS' COMPENSATION

CHAPTER 180. MONITORING AND ENFORCEMENT

The Commissioner of Workers' Compensation (Commissioner), Texas Department of Insurance (Department), Division of Workers' Compensation (Division) adopts amendments to §§180.1, 180.3, 180.5, 180.8, and 180.27, relating to Definitions, Compliance Audits, Access to Workers' Compensation Related Records and Information, Notices of Violation; Notices of Hearing; Default Judgments, and Restoration, respectively; and adopts new §§180.4, 180.9, and 180.10, relating to On-Site Visits, Proposals for Decision, and Ex Parte Emergency Cease and Desist Orders, respectively. The amendments to §180.1 and 180.3; and new §180.4 and §180.10 are adopted with changes to the proposed text as published in the September 23, 2011, issue of the *Texas Register* (36 TexReg 6238). These changes are more fully discussed below. These changes do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. The amendments to §§180.5, 180.8, and 180.27; and new §180.9 are adopted without changes to the proposed text as published in the September 23, 2011, issue of the *Texas Register* (36 TexReg 6238), and these sections will not be republished.

In accordance with Government Code §2001.033(a)(1), the Division's reasoned justification for these rules is set out in this order, which includes the preamble. The preamble contains a summary of the factual basis of the rules, a summary of comments received from interested parties, the names of entities who commented and whether they were in support of or in opposition to the adoption of the rule, and the reasons why the Division agrees or disagrees with the comments and recommendations.

The Division published an informal draft of the proposed amendments and new rules on the Division's website for informal comment on July 8, 2011. There were 11 informal comments received. Following formal proposal of the amendments and new rules, the Division conducted a public hearing on October 17, 2011. The public comment period closed October 24, 2011. The Division received 9 formal public comments.

These adopted amendments and new rules implement statutory changes in House Bill (HB) 2605, enacted by the 82nd Legislature, Regular Session, effective September 1, 2011 (HB 2605) that impact the Division's system monitoring and enforcement authority under the Texas Workers' Compensation Act (Act). Specifically, these legislative changes relate to: (1) the Commissioner's authority to issue the final decision in Division enforcement cases in which a proposal for decision is sent to the Commissioner from the State Office of Administrative Hearings (SOAH); (2) the Commissioner's authority to ex parte issue emergency cease and desist orders; and (3) the Division's authority to conduct announced and unannounced on-site visits when reviewing the operations of a person regulated by the Division. These adopted rules also contain changes that clarify and update existing rules in this chapter in accordance with the provisions of Labor Code, Title 5 and provide the Division with greater flexibility when performing system monitoring and enforcement activities under the Act.

First, HB 2605 amended Labor Code §402.073 to require an administrative law judge (ALJ) at SOAH who presides over an enforcement hearing under Labor Code §415.034 to propose a decision to the Commissioner for final consideration and decision by the Commissioner. Newly adopted §180.9 contains these new provisions that expand the Commissioner's authority to issue decisions in all Division enforcement cases heard at SOAH. This adopted section also contains necessary provisions moved from §180.27(a) - (c) related to the issuance of final orders by the Commissioner that describe the effects of sanctions. The changes to this adopted rule are necessary to update, organize, and clarify the rule.

The amendments to Labor Code §402.073 by HB 2605 are also reflected in amendments to adopted §180.8 that relate to the informal disposition by default of enforcement cases and motions to set aside default orders and reopen the record. The adopted amendments to §180.8 conform the rule to reflect the Commissioner's expanded authority as the final decision-maker in all Division enforcement cases heard at SOAH. These adopted amendments to §180.8 also clarify the procedures that the charged party who has defaulted must follow when seeking to set aside the default order and reopen the record and the procedures are adopted in accordance with applicable

provisions in Government Code, Chapter 2001, Subchapter F. Specifically, the adopted amendments clarify the timeframe within which a motion to set aside a default order and reopen the record must be filed with the Division. These adopted amendments clarify that such motions must be filed with the Division's Chief Clerk of Proceedings prior to the time the Commissioner's order becomes final as provided by Government Code, Chapter 2001, Subchapter F, specifically, Government Code §2001.144. These adopted amendments also state that a motion to set aside a default order and reopen the record is not a motion for rehearing pursuant to provisions of Government Code, Chapter 2001, Subchapter F. A motion for rehearing is required in order to exhaust administrative remedies for purposes of judicial review. Even after the Commissioner has entered a default order and the case has been dismissed from the SOAH docket, the charged party who has defaulted may still file a motion for rehearing under Government Code, Chapter 2001, Subchapter F, specifically, Labor Code §2001.146.

Second, HB 2605 amended Labor Code §414.005 to expand the authority of the Division to conduct on-site visits to the person's premises, including unannounced on-site visits, when reviewing the operations of a person regulated by the Division. These amendments require the Commissioner by rule to prescribe the procedures to be used for on-site visits, including specifying the types of records subject to inspection during the on-site visits.

Adopted §180.4 prescribes the procedures the Division will follow when conducting announced and unannounced on-site visits and specifies the types of records that are subject to inspection during the on-site visit. The adopted procedures are designed to provide system participants with notice of the procedures the Division will use to conduct on-site visits. This includes written notice of when and where the Division will conduct these visits and, unless the visit is unannounced, 10 day written notice to the participant of when and where the on-site visit will occur. These procedures are also designed to allow for an on-site visit to be conducted in the most efficient, time-effective, and least intrusive manner possible. These procedures further these goals because they provide the system participant with written notice that will specify the alleged violation(s) that is the subject of the visit, the types of records that must be made available during the visit, and the date, time, location, and conditions of the visit. The written notice will also provide the system participant with contact information for the Division staff representative who the system participant can contact if the system participant has any questions about the visit. The written notice will also require the system participant to designate a general contact person who will assist the Division during the on-site visit. Providing this information pertaining to the on-site visit to the system participant will allow the system participant to understand the issues and parameters of the visit. Designating contact persons for both the Division and the system participant will allow the parties to better coordinate on the various issues that may arise during the visit such as the location and production of the records requested by the Division.

Further, as required by HB 2605, adopted §180.4 specifies the types of records that will be subject to inspection during an on-site visit. The Division has included in this list records that are routinely created and maintained by the various system participants in the workers' compensation system and that are relevant to the various types of investigations and other system monitoring activities routinely conducted by the Division. For example, included in this list are claim files, payment records, and billing records. These are records that are routinely created and maintained by system participants in the course of their participation in the workers' compensation system. Further, these types of records contain information that is relevant to investigations and monitoring activities routinely conducted by the Division, such as investigating and monitoring compliance with statutes and rules governing health care provider billing and reimbursements by insurance carriers.

Third, HB 2605 enacted Labor Code §415.0211 which authorizes the Commissioner to ex parte issue an emergency cease and desist order if the Commissioner believes a person regulated by the Division is engaging in conduct violating a law, rule, or order and the Commissioner believes that the alleged conduct will result in harm to the health, safety, or welfare of another person. This statute provides the procedure whereby the person affected by the emergency cease and desist order is to be served with the order and the procedure for contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH.

Newly adopted §180.10 provides the procedures involved for the Division's ex parte emergency cease and desist orders. This new rule incorporates into its provisions Labor Code §415.0211 provisions that set out the legal standard that governs the issuance of an ex parte emergency cease and desist order, the manner in which a person subject to the order may request a hearing at SOAH to contest the order, the time frames in which the request for hearing must be made and hearing must be held, and the Commissioner's authority to issue the final order following the hearing and a proposal for decision issued from the ALJ at SOAH to the Commissioner. Adopted §180.10 also enacts provisions that are designed to provide the person who is the subject of the order with notice of the charges and of the acts, methods, or practices the person is ordered to immediately cease and desist from. For example, this order will contain the name of the person against whom the order is issued; the alleged conduct the Commissioner believes the person is engaging in that is a violation that will result in harm to the health, safety, or welfare of another person; a reference to the specific statute, rule, or order found to have been violated; and a statement of the legal authority and jurisdiction under which the order is issued. This adopted rule is also designed to provide the person subject to the order with notice of how to appeal the order. This adopted rule will require the order to contain a reference to the time limit for requesting a hearing to contest the order, a reference to the statute or statutes in which the time limit is contained, and a statement that the burden of requesting the hearing is on the person against whom the order is issued. This adopted rule also provides that in a hearing before SOAH, the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the Division to show why the order should be affirmed. Newly adopted §180.10 is consistent with Labor Code §415.0211.

In addition to the amendments and new rules adopted pursuant to the requirements of HB 2605, these adopted rules make changes in this chapter that clarify and update existing rules in accordance with the provisions of Labor Code, Title 5 and that provide the Division with greater flexibility when performing system monitoring and enforcement activities under the Act.

First, adopted amendments in §180.1 delete text that stated that compliance audits are conducted using a census or statistical sampling. Census and statistical sampling could require a large amount of data, records, and information for auditing from the

system participant subject to the audit, which can increase audit costs for system participants and prolong the length of the audit unnecessarily. The Division has removed this text in order to give the Division greater flexibility in selecting the sample size when performing compliance audits. It will also allow the Division to continue to conduct census or statistical sampling when warranted as well as perform other types of compliance audits as resources permit. Additionally, the results of census or statistical sampling were necessary in the past in determining the amount of a penalty to impose under the Division's repealed penalty matrix because census and statistical sampling ensured that the findings of the audit were representative of overall performance in the area being audited. The rules that pertained to the penalty matrix were superseded by legislative amendments in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). Therefore, those provisions that related to census and statistical sampling are no longer necessary.

Adopted amendments to §180.3 delete provisions that relate to the publication of a final audit report on the Division's internet website when there is a subsequent follow-up audit. The deletion of this text will provide the Division flexibility when deciding whether to publish a final audit report on the Division's website or when to remove a published audit report from its website. Additionally, the deleted text is no longer necessary because an additional follow-up audit may not always be performed; or, if one is performed, it may not be sufficiently similar to the initial audit.

Adopted amendments permit the Division to specify the format and manner in which a system participant must make available to the Division workers' compensation related records and information requested by the Division. Common examples of the manner of transmission the Division would specify might include hand delivery, transmission by mail, and transmission by electronic means such as fax and email. Common examples of a format the Division would specify might include hardcopies of the information and electronic formats such as Excel spreadsheets. Allowing the Division to specify the format and manner in which information and records must be provided during a particular compliance audit, investigation, or other monitoring activity will allow the Division to conduct a particular audit, investigation, or other monitoring activity in the most efficient and accurate manner possible, thereby minimizing audit costs and reducing unnecessary intrusion for the subject of the audit. There may be circumstances surrounding a particular audit, investigation, or monitoring activity where one manner of transmission or format is preferable over another. For example, if the Division's receipt of the information is time critical, an electronic transmission would be preferable over transmission by mail. Additionally, if during an audit the Division is requesting large amounts of similar data that relates to multiple workers' compensation claims, an electronic format such as an Excel spreadsheet containing the requested data would be preferable over hard copies of records containing the data.

Finally, these adopted rules are intended to provide clarity to the rules contained in this chapter. For example, the adopted amendments provide more clarity as to the meaning of the terms "compliance audit" and "conviction" as those terms are used in Chapter 180. This adoption also deletes defined terms that are no longer used in Chapter 180. To conform to current nomenclature this adoption also makes changes in terminology such as changing the term "rules" to "division rule," "audit" to "compliance audit," and "commission" to "division."

The Division has changed some of the proposed language in the text of the rule as adopted in response to public comments received.

The Division received a comment recommending that the Division make a non-substantive grammatical correction to the definition for "agent" in adopted §180.1(3). In response to this comment, the Division deleted the second "with" in the first sentence of the definition.

Another comment stated that proposed §180.4(d) would preclude any on-site visit because merely observing can be interference. In response to this comment and to clarify the intent of this provision the Division modified adopted §180.4(d) to state that an on-site visit must not disturb a health care provider's actual provision of health care to a patient.

The Division also received a comment stating that proposed §180.4(e)(3) and (g) contradict each other. In response the Division has adopted the text in §180.4(g) which states that the person subject to an on-site visit shall make available to the Division in the format and manner specified by the Division all records specified in the written notice. Adopted subsection (g) also provides that the written notice may specify for inspection any records related to the person's participation in the workers' compensation system including those records listed in subsection (g)(1) - (14). The Division also clarified §180.4(g)(13) by replacing "DWC forms" with "division forms". This change was not in response to a comment and is a non-substantive clarification.

The Division received a comment that there must be some credible evidence or a complaint or other independent information upon which to reasonably base the belief and any resultant cease and desist order. In response to this comment the Division added the language "upon application by division staff" to adopted §180.10(a) to clarify that the Commissioner's decision to issue a cease and desist order is based on the information included in the application provided to the Commissioner. In practice, this application is also attached to any cease and desist order issued to allow the affected person to see the information that was used as a basis for the Commissioner's decision.

The Division received comments stating that the burden of proof in a hearing contesting an emergency cease and desist order should be on the Division and not on the person contesting the emergency cease and desist order at SOAH. In response, the Division adopted language in §180.10(d) that provides that in a hearing before SOAH the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the Division to show why the order should be affirmed. Also, the word "affected" has been added to the word "person" in adopted subsection (c) of this rule to be consistent with the language used in adopted §180.10(b)(5). This change is not in response to comment and is a clarifying and non-substantive change.

Finally, the word "calendar" has been deleted in §180.3(c)(2) and §180.4(e)(1) because unless the term "working days" or "business days" is used calendar days is meant. These changes are not in response to comment and are non-substantive changes intended to make these rules consistent with other Division rules, including §102.3(b).

Section 180.1 sets forth the definitions for terms used in Chapter 180 of this title. The adopted amendments to this section are necessary in order to provide clarity to defined terms. The adopted amendments clarify the definition of terms such as

"compliance audit" and "conviction" and delete defined terms that are no longer used in Chapter 180.

Section 180.3 sets out the Division's process for compliance audits. The adopted amendments to this section are necessary in order to make clarifying changes in terminology used in this section, and to provide the Division with flexibility when deciding whether to publish a final audit report on the Division's website.

Section 180.4 sets out the Division's process for on-site visits. This new adopted rule is necessary to implement legislative changes in HB 2605 that authorize the Division to conduct on-site visits when reviewing the operations of a person regulated by the Division. This adopted rule prescribes the procedures to be used for both announced and unannounced on-site visits and specifies the types of records subject to inspection.

Section 180.5 sets forth requirements for the Division's access to workers' compensation related records and information. The adopted amendments to this section are necessary to clarify terminology used in this section. The amendments are also necessary to provide the Division with flexibility in determining the manner and format in which information requested by the Division must be provided to the Division.

Section 180.8 establishes the Division's procedures for issuing notices of violation, notices of hearing, and processing default judgments. The adopted amendments to this section are necessary to clarify terminology used in this section. The adopted amendments clarify that the Commissioner issues the final order in Division enforcement cases heard at SOAH. The amendments are also necessary to clarify the process a charged party must follow when filing a motion to set aside a default order and reopen the record.

Section 180.9 sets out the process for the final adjudication by the Division of proposals for decision from SOAH. This new rule conforms to legislative changes in HB 2605 that expand the Commissioner's authority to issue the final order in all Division enforcement cases heard at SOAH. The adopted rule also makes amendments designed to clarify the Division's processes when issuing an order following a proposal for decision.

Section 180.10 sets out the Division's process for ex parte emergency cease and desist orders. This new adopted rule is necessary because it sets out the process the Division will follow in the issuance of an ex parte emergency cease and desist order. This adopted rule prescribes the contents of an emergency cease and desist order, sets out the procedures for appealing an emergency cease and desist order, and sets out how a party may request a stay of an emergency cease and desist order.

Section 180.27 sets out the Division's process for restoration of doctor practice privileges removed under Labor Code §408.0231. The amendments to this section are necessary to delete provisions in this rule that relate to proposals for decision in Division enforcement cases heard at SOAH. These deleted provisions are recodified and amended in newly adopted §180.9.

COMMENTS AND AGENCY'S RESPONSE TO COMMENTS.

§180.1: A commenter states that the Division is proposing a new definition for "compliance audit" in which the requirement that the audits are conducted using a census or statistical sampling is deleted. The commenter does not agree with removing this statistical sampling because it may result in skewed results. The commenter is concerned that removal of the statistical sampling or census requirement will move the Division away from independence and objectivity in an audit and towards more of an investigative function. The commenter believes that the Division confuses the difference between a compliance audit and an on-site visit and requests that the language requiring the use of a census or statistical sampling not be removed from the definition.

Agency Response: The Division clarifies that one of its functions under the Act, specifically Labor Code Chapter 414, is to conduct investigations relating to alleged violations of the Act, Division rules or Commissioner orders and decisions. The procedures for compliance audits are contained in adopted §180.3 and the procedures for on-site visits (both announced and unannounced) are contained in adopted §180.4. The Division disagrees that it is necessary to retain the "census or statistical sampling" language in the definition of "compliance audit." "Census or statistical sampling" could require a large amount of data, records, and information for auditing from the system participant subject to the audit. The Division has removed this text in order to give the Division greater flexibility in selecting the sample size when performing compliance audits. It will also allow the Division to continue to conduct census or statistical sampling when warranted as well as other types of compliance audits as resources permit. Additionally, the results of census or statistical sampling were necessary in the past in determining the amount of a penalty to impose under the Division's repealed penalty matrix because census and statistical sampling ensured that the findings of the audit were representative of overall performance in the area being audited. However, the rules that pertained to the penalty matrix were superseded by legislative amendments in House Bill (HB) 7, enacted by the 79th Legislature, Regular Session, effective September 1, 2005 (HB 7). Therefore, those provisions that related to census and statistical sampling are no longer necessary.

§180.1: A commenter states that in the context of the proposed rules the definition for "agent" is overly broad, vague, and confusing. The commenter states as an example a situation where an insurance carrier contracts with a telephone company such as AT&T to provide telephone services so that the insurance carrier can meet the requirements of the Division's rules. The commenter states that under §180.1(4), AT&T would be an agent of the insurance carrier to fulfill duties under the Division rules.

Agency Response: The Division disagrees that the definition of "agent" in §180.1 is overly broad, vague, or confusing. As adopted, §180.1(3) defines "agent" as "[a] person with whom a system participant utilizes or contracts for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and rules. This definition is clear and provides the public with sufficient notice as to who is considered an agent. The Division disagrees with the commenter that AT&T would be considered an agent of the insurance carrier under the circumstances described by the commenter. Section 180.1(3) is intended to cover only those persons who are acting on the behalf of the system participant for the purpose of providing claims service or fulfilling a duty imposed on the system participant by Labor Code, Title 5 or rules. Under the circumstances described by the commenter, AT&T is not an "agent" as defined by §180.1(3) because AT&T is merely providing a service to the insurance carrier and not acting on behalf of the insurance carrier for the purpose of providing claims service or fulfilling a duty imposed upon the insurance carrier by Labor Code, Title 5 and Division rules.

§180.1: A commenter states that the Division should strike the first "with" in the definition for "agent" because the definition is not grammatically correct as written.

Agency Response: The Division agrees with the commenter that there is a grammatical error in the first sentence of the definition of "agent." The Division has corrected this error by striking the second "with" in the first sentence of this definition.

§180.3 General Comment

A commenter supports proposed §180.3, especially retaining in this rule notice requirements for compliance audits. The commenter appreciates the Division's efforts to clarify the difference between on-site visits and compliance audits. The commenter also supports retaining in this rule language regarding claim files and other workers' compensation records. Finally, the commenter accepts the Division's explanation and examples regarding "format and manner" and supports that change.

Agency Response: The Division appreciates the supportive comment.

§180.3: A commenter disagrees with "the Division's decision to remove the language from §180.3 in its earlier [informal] proposal providing for unannounced compliance audits." The commenter believes that "there are instances where the nature of the alleged violation would justify an unannounced audit" and "§180.3 should continue to provide the Division with the authority to conduct an unannounced compliance audit."

Agency Response: The Division disagrees with including in adopted §180.3 language providing for unannounced compliance audits. A "compliance audit" is an "official examination of compliance with one or more duties under the Act or rules." These types of audit are formal, preplanned audits and prior notice to the system participant has traditionally been provided pursuant to §180.3. Provisions that would allow the Division to conduct unannounced compliance audits are not necessary because the Division has the authority pursuant to Labor Code §414.005 and adopted §180.4 to conduct unannounced on-site visits when reviewing the operations of a person regulated by the Division.

§180.3: A commenter states that §180.3 provides that the Division shall conduct compliance audits of the workers' compensation records of system participants and their agents for compliance with the Act and the Division's rules. The commenter further states that the term "workers' compensation records" appears to be set out in proposed §180.4(g). The commenter states that the definition of "workers' compensation records" as applied to proposed §180.3 is in conflict with the attorney-client and attorney work product privileges and §180.3 is invalid.

Agency Response: The Division clarifies that §180.3 governs compliance audits conducted by the Division and §180.4 governs on-site visits conducted by the Division. The provisions in §180.4(g) apply to documents requested during on-site visits conducted by the Division. The provisions in §180.4 do not limit the documents that can be requested during a compliance audit under §180.3. Further, the Division disagrees that §180.3 is invalid because it conflicts with the attorney-client privilege or attorney work product privilege. Should a system participant assert the attorney-client or attorney work product privilege during a compliance audit, the Division will address the asserted privilege in accordance with the applicable law related to the attorney-client or attorney work product privilege.

§180.3(b): A commenter believes that the Division has no legal authority to conduct an audit at any system participant's office and would be trespassing in conducting an on-site audit unless the system participant consents to the audit. The commenter states that consent may be actual, apparent, implied or legal, and that legal consent may be an easement or a license. The commenter states that since chiropractors, doctors, lawyers, nurses, pharmacists, physical therapists, and occupational therapists do not hold licenses from the Division, there is no legal consent for conducting an audit on their premises.

Agency Response: The Division disagrees that there is no legal authority for the Division to conduct an audit at a system participant's office. The Division notes that most compliance audits will not be conducted at a system participant's premises; however, if a compliance audit does include an on-site visit the Division will comply with the procedures in adopted §180.4 which is adopted pursuant to the statutory authority in Labor Code §414.005 as amended by HB 2605.

§180.3(d)(1): A commenter states that proposed §180.3(d)(1) requires that a system participant designate a general contact person who shall provide reasonable access to requested personnel. Commenter states that the Division has no legal authority to compel access to a person's home or office and cites Government Code §311.016(2) which defines "shall" as imposing a duty to do some act and states that courts have consistently interpreted the word "shall" to be a mandatory directive.

Agency Response: The Division disagrees that it lacks the authority granted in adopted §180.3(d)(1). The Division notes that most compliance audits will not be conducted at a system participant's premises; however, if a compliance audit does include an on-site visit the Division will comply with the procedures in adopted §180.4 which is adopted pursuant to the statutory authority in Labor Code §414.005 as amended by HB 2605.

§180.3(h): A commenter disagrees with the decision to make publishing of the final audit report discretionary on the Division's website. This commenter states that any educational benefit will be lost if the existence of an audit demonstrating noncompliance is not made public, and that the publication of audits illustrating non-compliance is one of the primary reasons for conducting such an audit. The commenter believes that the system works best when system participants have access to complete information and that goal will be undermined if the results of the original audit demonstrating noncompliance are not published.

Agency Response: The Division disagrees with the recommendation to publish all final audit reports. Publishing final audit reports on the Division's website has always been discretionary and the adopted amendments give the Division more flexibility in determining when to publish an audit report on its website. However, publication on the Division's website is not the only avenue in which the public may access a final audit report.

§180.3(j) and (k): A commenter states that proposed §180.3(j) and (k) would deprive a system participant of due process of law by denying a hearing before payment must be made for costs associated with a compliance audit.

Agency Response: The Division disagrees. As stated in this adopted rule, the Division has the authority to require payment of expenses in connection with audits to the extent permitted by the Act and Division rules. The Division has statutory authority to require payment of expenses in connection with audits under different provisions of the Labor Code, including §413.015(b) and (c) and §414.004(c). Labor Code §413.015(b) and (c) require the Commissioner by rule to require insurance carriers pay for the expense of reviews and audits performed by the Division of the payments made by insurance carriers for charges for medical services provided under the Act. Labor Code §414.004(c)

requires insurance carriers, other than governmental entities, to pay the reasonable expenses, including travel expenses, of an auditor who audits the workers' compensation records at the office of the insurance carrier. Nothing prohibits an auditee from contacting the Division to discuss the bill or seek clarification.

§180.3 and §180.4: Commenters suggest that the Division should clarify the criteria for the selection of an unannounced or announced visit and the scope of each type of visit. A commenter opines that HB 2605 requires that §180.3 and §180.4 separate announced from unannounced powers to more clearly enhance system participant understanding of Division expectations and authority. A commenter believes that §180.4 should contain an explanation of the circumstances under which unannounced visits will occur, and that unannounced visits be used sparingly and with the goals of cost-control and efficiency in mind. Commenters believe that the authority to conduct an unannounced on-site visit should be limited, and that any unannounced visit is an "extraordinary remedy" that might set a "dangerous precedent." A commenter believes that unannounced visits should be limited to circumstances in which there is egregious conduct, or there is a probability of imminent harm to workers or to the general public. A commenter states that such a limitation should include cases where workers will be harmed or there is fraud. A commenter suggested language be added that provides that an on-site visit be conducted "pursuant to evidence of a pattern or practice of violations of the Texas Workers' Compensation Act or adopted rules of the Texas Workers' Compensation Commission" to ensure that an on-site visit is not based on one alleged violation of a benign or merely administrative nature.

Agency Response: The Division disagrees. The Division declines to provide criteria for the selection of an unannounced or announced visit or to adopt the recommendations of the commenters in the adopted rules because the decision to conduct an announced or unannounced on-site visit will be determined on a case by case basis. Labor Code §414.005(b) states that "As often as the commissioner considers necessary, the commissioner or the investigation unit may review the operations of a person regulated by the division, including an agent of the person performing functions regulated by the division, to determine compliance with this subtitle." The Division disagrees that the adopted rules, specifically §180.3 and §180.4 are unclear regarding the procedures for conducting compliance audits, announced on-site visits, or unannounced on-site visits. The Division has provided procedures in the adopted rules that clarify the differences between compliance audits, announced on-site visits, and unannounced on-site visits. The Division also generally agrees with the philosophy behind the goals of cost-control and efficiency. Including these recommendations may have the adverse consequence of unduly limiting the Division's authority to conduct an on-site visit when necessary under the circumstances existing at the time. Whether to conduct an on-site visit and, if so, whether the visit should be announced or unannounced should be determined by the facts and circumstances surrounding the alleged violations.

§§180.3, 180.4, and 180.5: The commenter states that the Division may not conduct any unannounced on-site visit for the purpose of conducting an audit, inspection, and obtaining records. A commenter opines that these proposed rules are invalid because the law allowing for unannounced visits is unconstitutional under both the Fourth Amendment to the United States Constitution and the Texas Constitution, Article I, §9 and §29. Commenter states that the legislature had no authority to permit unannounced visits, and provides numerous Texas and Federal court cases regarding rights to privacy. The commenter states that because these proposed rules are based on the statute which is unconstitutional, the rules fall with the statute.

Agency Response: The Division disagrees that the adopted rules pertaining to unannounced visits are invalid because they are based on a statute that violates Article 1, §9 and §29, of the Texas Constitution and the Fourth Amendment to the United States Constitution. Labor Code §414.005 allows the Commissioner or the investigation unit, as often as the Commissioner considers necessary, to review the operations of a person regulated by the Division, including an agent of the person, to determine compliance with the Act. This statute authorizes the Division to conduct an on-site visit to the person's premises during this review and the on-site visit may be unannounced. During an on-site visit the person must make available to the Division all records relating to the person's participation in the workers' compensation system. Further, this statute requires the Commissioner by rule to prescribe the procedures to be used for announced and unannounced on-site visits including specifying the types of records subject to inspection. This rule is adopted pursuant to this legislative directive. Labor Code §414.005 and these rules adopted thereto provide for reasonable on-site visits and inspections and do not violate the state and federal constitutional provisions cited by commenter. Pursuant to this statute and these adopted rules only persons regulated by the Division and their agents could be subject to an on-site visit, and an on-site visit will only involve laws and regulations under the Act. The adopted rules define the scope of an on-site visit and limit the discretion of the Division's staff conducting the visit. For example, the adopted rule requires prior or contemporaneous written notice of the visit, and this notice will specify the date, time, location, and conditions of the visit, the alleged violations that are the subject of the visit, and the types of records that must be made available to the Division during the visit.

§180.3(e) and §180.5(a): A commenter states that proposed §180.3(e) and §180.5(a) should be limited to compelling production of documents in a format in which they already exist. The commenter states that any requirement that a system participant provide information to the Division in a format prescribed by the Commissioner is limited to the extent of the Commissioner's subpoena power, which is limited to records or information that is within the "possession, custody or control" as used in the Texas Rules of Civil Procedure. The commenter recommends §180.3(e) read as follows: "System participants shall make available for review any records or information contained in §180.5 (relating to Workers' Compensation Related Records and Information) that is the subject of the compliance audit in an available format and accessible manner specified by the division."

Agency Response: The Division disagrees that §180.3(e) and 180.5(a) should be limited to compelling production of documents in a format in which they already exist. The Division also disagrees that the Commissioner's authority to prescribe a format is limited to the extent of the Commissioner's subpoena power. Labor Code §402.00128 lists the general powers and duties of the Commissioner. Specifically, Labor Code §402.00128(b)(10) grants the Commissioner broad authority to prescribe the form, manner, and procedure for the transmission of information to the Division. This authority is distinct from the Commissioner's authority to issue subpoenas to compel the production of documents which is granted by Labor Code §402.00128(b)(3). Furthermore, this authority to specify the format in which information must be transmitted to the Division

pursuant to §180.3(e) and 180.5(a) furthers the legislative goals in Labor Code §402.021(a) allowing the Division to "promptly detect and appropriately address acts or practices of noncompliance with [the Texas Workers' Compensation Act] and rules adopted under [the Act]" as provided in Labor Code §402.021(b)(7).

§180.4 General Comment

A commenter initially had concerns that on-site visits would disrupt a physician's practice. The commenter states that the Division addressed these concerns in the formal proposal. The commenter does not oppose participants providing information during an on-site visit in the "format and manner" specified by the Division, as long as the format and manner specified are reasonable and strongly supports this change.

Agency Response: The Division appreciates the supportive comment. The Division notes that in response to other comments the Division has clarified the intent of §180.4(d). Adopted §180.4(d) states that an on-site visit must not disturb a health care provider's actual provision of health care to a patient.

§180.4: A commenter states that with regard to "on-site audit without notice" under §180.4, this proposal is not workable for carriers and suggests a minimum 10-day written notice be provided to carriers in advance of a visit. The commenter suggests that such notice include the specific purpose of the visit, any data which may be requested, and the format in which that data should be provided by the carrier.

Agency Response: The Division disagrees with providing a minimum 10-day written notice in advance of an unannounced on-site visit. HB 2605 gives the Division the authority to conduct an unannounced on-site visit when reviewing the operations of a regulated person, and requiring a minimum 10-day written notice in advance of an unannounced visit as suggested by the commenter would render the visit an announced visit.

The Division notes that this adopted rule requires written notice by the Division for both announced and unannounced visits. The written notice will specify the alleged violation(s) that is the subject of the on-site visit, the types of records that must be available during the on-site visit, and the format in which the system participant subject to the on-site visit must make requested information available to the Division.

§180.4(b): A commenter states that it appears the only system participants that the Division may conduct announced on-site visits to the person's premises are workers' compensation insurance carriers. As support for this argument, the commenter states that chiropractors, doctors, lawyers, nurses, pharmacists, pharmacies and physical therapists are regulated by other state agencies. The commenter appears to argue that the Division does not have the statutory authority to subject these persons to an announced on-site visit because the Division does not "regulate" these persons. Therefore, the commenter states that the announced on-site visits and the records subject to inspection rules are in violation of law and invalid.

The commenter further states that proposed §180.4(b) provides that when reviewing the operations of a system participant to determine compliance with the Act or Division rules, the Division may conduct on-site visits to the system participant's premises. The commenter cites the definition of "system participant" in §180.1(25) and states that "[u]nder this broad definition lawyers who represent doctors, employers, health care providers and injured workers are system participants." The commenter states that the Division lacks authority to conduct on-site audits whether announced or unannounced of chiropractors, doctors, lawyers, nurses, pharmacists and pharmacies, physical and occupational therapists. Finally, the commenter states that the "Division should clarify specifically what professions it contends it can regulate under proposed rule 180.4."

Agency Response: The Division disagrees that it lacks authority to conduct on-site visits to the premises of the persons and entities listed by commenter. The Division regulates lawyers, health care providers, and other system participants to the extent of their participation in the Texas workers' compensation system and in accordance with Labor Code, Title 5, Division rules, and other applicable laws and rules. For example, Labor Code Chapter 415 contains statutory provisions applicable to insurance carriers, health care providers, and representatives of injured employees that set out prohibited acts the commission of which would constitute an administrative penalty. This chapter authorizes the Commissioner to assess an administrative penalty against a person who commits an administrative violation. The Commissioner may also impose any sanctions or other remedy authorized by the Act. The Division also disagrees that the rule is unclear as to which professions it contends it can regulate. The rule clearly applies to all system participants and that term is defined in adopted §180.1(25). Additionally, other state agencies do not have the authority to monitor and enforce the Act and Division rules. The Act places that authority directly on the Commissioner of Workers' Compensation and the Division. The Division will work with other state agencies to investigate potential violations and may make additional referrals to those agencies in conjunction with the Division's own enforcement actions as necessary if potential violations under the purview of those agencies are identified.

§180.4(d): A commenter states that health care providers and their patients have an expectation of privacy and non-workers' compensation patients have rights to keep their health care records and reports private. The commenter states that §180.4(d) would preclude any on-site visit because merely observing can be interference. The commenter also states that the on-site visit would constitute a trespass.

Agency Response: The Division disagrees that all on-site visits involving a health care provider's premises will disturb a health care provider's provision of health care to injured employees. The intent of the rule as proposed was to prevent disturbing the actual provision of health care to a patient and not to prohibit an on-site visit at a health care provider's premises. In order to clarify this intent the Division has modified adopted §180.4(d) to state that an on-site visit must not disturb a health care provider's actual provision of health care to a patient. The adopted rule minimizes the likelihood of an unreasonable interference with a health care provider's provision of health care. The Division also disagrees that an on-site visit of a health care provider's premises would constitute a trespass because Labor Code §414.005 authorizes the Division to conduct an on-site visit to the premises of a person regulated by the Division.

§180.4(e): A commenter supports the proposed provision in §180.4(e)(2) which provides that the Division will specify in the written notice of on-site visit the alleged violation(s) that is the subject of the visit. The commenter strongly supports this change because it ensures that these visits will not be conducted without evidence of wrongdoing and the participant will be apprised of the alleged violations.

Agency Response: The Division appreciates the supportive comment.

§180.4(e)(2): A commenter states that because the Division must provide a written notice that contains the specific alleged violation that is the reason for each on-site visit, "each on-site visit must be precipitated by a reasonably-supported belief that certain facts exist that would reasonably constitute a prima facie violation (i.e. that all of the factual and legal elements that constitute a violation under rule or statute are in existence at the time of the visit and that these elements are the sole supporting basis for the visit and make up the basis for the belief)." The commenter seeks a clarification of whether the specific alleged violation in the written notice will contain these written facts or only contain the alleged violation without the benefit of notice of the alleged supporting facts. The commenter states that arbitrary visits could occur if no facts are contained in the notice. The commenter believes that if facts are set out in the notice then the subject of the on-site visit may be able to explain the acts set out in the notice and avoid the need for the full visit.

Agency Response: The Division does not agree that the Division must show a "prima facie violation" because the statute does not require this standard prior to performing an on-site visit. Providing the person with the alleged violation(s) is sufficient information to define the scope of the on-site visit. Further, an on-site visit is an investigatory tool used to gather facts when the Division has reason to believe there may be a violation.

§180.4(e)(3) and (g): A commenter states that during an on-site visit the system participant shall make available to the Division in the format and manner specified by the Division all records relating to the person's participation in the workers' compensation system upon request. The commenter states there is no limit in proposed subsection (g) as to the records that must be made available either for announced or unannounced on-site visits and §180.4(e)(3) and (g) appear to contradict each other.

Agency Response: The Division agrees with the commenter that these two provisions need clarification. Proposed §180.4(g) was intended to specify the types of records that may be subject to on-site inspections conducted by the Division whereas proposed §180.4(e)(3) was intended to provide the person subject to the on-site visit with notice of the types of records the person must make available to the Division during the particular on-site visit described in the written notice. In order to clarify this intent, the Division has changed the text proposed in §180.4(g) to provide that during an on-site visit the system participant shall make available to the Division in the format and manner specified by the Division all records specified in the written notice under §180.4(e). Adopted subsection (g) further provides that the written notice may specify for inspection any records related to the person's participation in the workers' compensation system including those records listed in subsection (g)(1) - (14).

§180.4(f): A commenter states that the designated contact person may be away from an office during an unannounced on-site visit and that based on the proposed rule as written, the system participant may be liable for an administrative violation merely because the contact person is away from the office. The commenter further states the proposed rule exceeds the Division's authority and amounts to a new or additional power for the purpose of administrative expediency, and that this subsection is invalid as it exceeds the agency's authority.

Agency Response: The Division disagrees that this adopted rule exceeds the Division's authority. Labor Code §414.005 authorizes the Division to conduct announced and unannounced on-site visits when reviewing the operations of a person regulated by the Division. This statute requires the Commissioner by rule to prescribe the procedures to be used for these on-site visits. This rule is adopted pursuant to this legislative authority. This adopted rule requires the person who is the subject of the on-site visit to designate a general contact person at the premises, and this contact person must provide access to requested personnel and information, respond to the needs of Division staff and to inquiries by Division staff and be familiar with the system participant's procedures and recordkeeping systems that are related to the records and information requested during the on-site visit. Whether the Division pursues a violation will be determined under all the facts and circumstances existing at the relevant time.

§180.4(g): A commenter is concerned about the scope of information potentially required in this section. The commenter states that some of the information listed is not applicable to health care providers, and does not believe it would be appropriate for the Division to require a physician to provide payroll data to the Division. The commenter requests language similar to proposed §180.5, which requires that a system participant provide access to information "related to issues being reviewed or investigated," be placed in §180.4(g) to clarify that a participant will not be required to provide information unrelated to the specific issue under review.

Agency Response: The Division disagrees with commenter that clarification to this rule is necessary. The Division will determine what information is related to issues being reviewed during an on-site visit. The list in the adopted subsection (g) is not targeted toward any specific system participant. Not every item on the list will be required of every system participant; rather, the list contains records and information the Division may request on a case-by-case basis. If an on-site visit is conducted then the Division will provide written notice to the system participant which will describe the types of records that must be made available to the Division during the visit in accordance with adopted §180.4.

§180.4(g)(3), (4), (5), (6), (12), and (14): A commenter states that these rules violate the attorney-client privilege and work product doctrine.

Agency Response: The Division disagrees that §180.4(g)(3), (4), (5), (6), (12), and (14) violate the attorney-client privilege and attorney work product privilege. These rules describe records that are typically created and maintained by system participants, including health care providers and insurance carriers, in the course of their participation in the workers' compensation system. If a system participant asserts the attorney-client or attorney work product privilege in response to a Division request, the Division will address the asserted privilege in accordance with the applicable law related to the attorney-client or attorney work product privilege. The adopted rules conform to the applicable requirements of the statutes amended and added by HB 2605.

§180.5: A commenter states that the proposed rule is confusing as to whether copies can be provided to the Division or if access to the records is given, and then the Division can specify the format and manner of provision of the copies. The commenter thinks that the Division should set out in the proposed rule the manner and format of the copies.

Agency Response: The Division disagrees and declines to set out in this rule the format and manner in which every conceivable document now and in the future is to be provided to the Division. The Division declines this recommendation because specifying

a specific manner and format by rule may have unintended technological consequences such as formats becoming outdated or unsupported. The Division has historically attempted to work with system participants when requesting access to records or copies of records in order to minimize the intrusion to the system participant while obtaining the information the Division needs in a format that can be efficiently analyzed. The rule clearly requires access to the records and information requested by the Division and allows the Division to specify the format and manner in which the information must be provided to the Division.

§180.8(c) and (d): A commenter recommends that the notice of the hearing at SOAH include cautionary language explaining that the charged party has twenty days from the date of receipt of the hearing notice to file an answer or responsive pleading or risk being in default for failing to do so. The commenter opines that it is fairly exacting to establish a default based on the failure to answer and in order to mitigate the negative consequences of default, it is essential that charged parties be notified of the requirement to respond and the consequence of failing to do so.

Agency Response: The Division disagrees because the Division already includes this cautionary language in the Notice of Hearing and therefore it is not necessary to include it in the rule. Non-response to the Notice of Violation will trigger a hearing at SOAH and issuance of the Notice of Hearing. A party may be subject to a default judgment if the party does not file a written response to a Notice of Hearing or does not appear at the hearing. If the party defaults, the party may file a written motion to set aside the default order and reopen the record. A motion by the charged party to set aside the default order and reopen the record shall be granted by the Commissioner if the charged party establishes that the failure to file a written response or to attend the hearing was "neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident."

§180.8(e), (f), and (g): A commenter requests that this provision be modified to make clear that a party who appears at the hearing will not be in default because the party failed to file an answer. The harm associated with failing to file an answer can be corrected if the party appears and participates in the SOAH hearing. The commenter does not believe it is appropriate for the Division to seek informal disposition of an administrative violation due to the failure to file an answer if the party appears at the hearing. Commenter says that "As it is proposed §180.8(f) provides that the Division can seek informal disposition against a party who is in default either by failing to file an answer or by failing to appear at the hearing." Commenter believes that §180.8(e) should be a revised to limit default only to those charged parties who fail to appear at the hearing.

Agency Response: The Division disagrees that these provisions should be modified. A party may be subject to a default judgment if the party does not file a written response to a Notice of Hearing or does not appear at the hearing. If a person fails to answer and the Division seeks informal disposition by default it will do so before the hearing date. If before the hearing date the Division has not sought informal disposition by default and the party appears at the hearing, the Division will not seek the informal disposition and the party may participate in the hearing. If the party defaults, the party may file a written motion to set aside the default order and reopen the record. A motion by the charged party to set aside the default order and reopen the record shall be granted by the Commissioner if the charged party establishes that the failure to file a written response or to attend the hearing was "neither intentional nor the result of conscious indifference, and that such failure was due to a mistake or accident."

§180.10: A commenter agrees with the creation of a procedure for the Commissioner to issue an emergency cease and desist order in those instances where the Commissioner believes that a system participant is engaged in conduct that violates a law, rule, or order and further believes that the alleged conduct will result in harm to the health, safety, or welfare of another person. The commenter requests that this provision be modified to include a mechanism for a system participant to file a request for an emergency cease and desist order when a system participant believes that the criteria for such an order exists. The commenter believes that the development of such a process would help ensure that the full benefit of this provision is recognized.

Agency Response: The Division disagrees that this rule should be modified to include a mechanism for a system participant to file a request for an emergency cease and desist order when a system participant believes that the criteria for such an order exist. The Division notes that a system participant may file a complaint with the Division pursuant to §180.2 and in that complaint request that an emergency cease and desist order be issued by the Commissioner. However, the Division's determination of whether to seek an emergency cease and desist order against a system participant must be determined on a case by case basis using the criteria laid out in adopted §180.10(a).

§180.10: A commenter states that the timeframes and burden of proof provisions may not provide carriers with an opportunity to gather sufficient information within the 10day time period to properly prepare a defense for the hearing. The commenter also states that once a motion for stay is submitted, it is not required that notice of the denial of the stay be given causing the carrier to move forward with defense in the event the stay is not granted. The commenter feels it appropriate to require notice of action on a motion for a stay.

Agency Response: Labor Code §415.0211(d) requires a hearing on an emergency cease and desist order to be held not later than the 10th day after the date the Commissioner receives the request for hearing, and this adopted rule is consistent with that statutory provision. However, Labor Code §415.0211(d) and this adopted rule provide that the parties may mutually agree on a later hearing date.

The Division also notes that in response to other comments, the Division has deleted proposed text in this rule that would have placed the burden of proof at this hearing on the party subject to the emergency cease and desist order and instead clarified that the burden of proof at this hearing is on the Division.

With regard to the commenter's comments regarding a request to stay an emergency cease and desist order, the Division notes the adopted rule provides for notice to the requesting party when the Commissioner grants the party's motion for stay. However, this adopted rule provides that a motion for stay is denied if not granted before the date of the show cause hearing. A provision requiring the Division to provide a notice of action in this circumstance is not necessary because this rule already deems a request for stay denied if not granted by the date of the show cause hearing.

§180.10: Commenters believe that the rule should state that the burden of proof in an ex parte emergency cease and desist order hearing should be on the Division.

Agency Response: The Division agrees and has adopted language in §180.10(d) that provides that in a hearing before SOAH, the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the Division to show why the order should be affirmed.

§180.10: A commenter states the term "emergency" should be clarified. Commenter opines that the general phrase "harm to the health, safety or welfare of another person" is overly-broad with respect to the emergency designation itself, which is not defined by the rule. The commenter believes that since the emergency order is in effect during any contest or stay request, a potentially unwarranted and significant ancillary harm may be incurred against the ordered party and harm can be inflicted on the ordered person. The commenter states that the Division should consider further clarifying conduct and harm that rises to the level of an emergency, supporting the issuance of a cease and desist order under this provision.

Agency Response: The Division disagrees that the term "emergency" should be clarified for purposes of §180.10 or that it should clarify what conduct and harm would rise to the level of an emergency. Labor Code §415.0211 authorizes the Commissioner to ex parte issue an emergency cease and desist order if the Commissioner believes a person regulated by the Division is engaging in conduct that violates a law, rule or order and that the conduct will result in harm to the health, safety, or welfare of another person. This adopted rule mirrors this statutory provision, and this provision provides a sufficiently clear standard upon which to decide whether to issue an emergency cease and desist order. This statute provides the procedure whereby the person affected by the emergency cease and desist order is to be served with the order and the procedure for contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH. Labor Code §415.0211 requires the Commissioner to issue an order that "contains a statement of the charges." This adopted rule is consistent with the requirements of Labor Code §415.0211.

§180.10(a)(2): A commenter states that in subsection (a)(2) there is no standard of proof to support the belief set out in the rule. The commenter opines that there must be some credible evidence or a complaint or other independent information upon which to reasonably base the belief and any resultant order. The commenter states, "simply believing that a person is engaging in conduct that is a violation is not enough, there must be some basis for the belief and that basis should be set out in the rule, i.e., a complaint, document." The commenter states "otherwise there is no safeguard in the rule to avoid unnecessary and disruptive site visits."

Agency Response: Although the commenter mentions "site visits" in this comment, the Division construes this comment as a comment on proposed §180.10(a)(2) regarding ex parte emergency cease and desist orders. The Division agrees that this rule should contain a provision that requires some information to be provided to the Commissioner upon which the Commissioner would base his belief and any resulting emergency ex parte cease and desist order. The Division did anticipate its process regarding ex parte emergency cease and desist orders to include a staff application to the Commissioner that requests an emergency cease and desist order and that sets out the reasons for that request. The Division therefore has added "upon application by division staff" to subsection (a) so that it reads "The commissioner ex parte may issue an emergency cease and desist order upon application by division staff if . . ."

§180.10(b): A commenter states that in subsection (b) the ex parte cease and desist orders should be required to contain information specifying what particular harm to the health, safety, or welfare will result absent the order. The commenter also states that without a date or time frame being required for any alleged conduct, there is a possibility of stale or otherwise un-actionable conduct being the basis for the ex parte order.

Agency Response: The Division disagrees. The cease and desist order will include a description of the alleged conduct that is a violation that the Commissioner believes will result in harm to the health, safety, or welfare of another person. This is sufficient to provide the person with notice of the basis upon which the order was issued. Further, the application by Division staff will be sent with the cease and desist order to the person who is the subject of the order and will contain details behind the request and issuance of the cease and desist order. Labor Code §415.0211 authorizes the Commissioner to ex parte issue an emergency cease and desist order if the Commissioner believes a person regulated by the Division is engaging in conduct that violates a law, rule or order and that the conduct will result in harm to the health, safety, or welfare of another person. This statute provides the procedures whereby the person affected by the emergency cease and desist order is to be served with the order and the procedure for contesting the order at SOAH. This statute also gives the Commissioner the final decision making authority in the appeal of an emergency cease and desist order following a proposal for decision from SOAH. Labor Code §415.0211 requires the Commissioner to issue an order that "contains a statement of the charges." This adopted rule is consistent with the requirements of Labor Code §415.0211.

COMMENTING FOR AND AGAINST THE SECTIONS.

For, with changes: ACE Group; American Insurance Association; Insurance Council of Texas; Office of Injured Employee Counsel; Property Casualty Insurers Association of America; State Office of Risk Management; Texas Medical Association

Against: John D. Pringle, P.C.

SUBCHAPTER A. GENERAL RULES FOR ENFORCEMENT

28 TAC §§180.1, 180.3 - 180.5, 180.8 - 180.10

The amendments and new sections are adopted under Labor Code Chapter 414; Government Code Chapter 2001; Government Code §2001.056; Labor Code §§402.00111, 402.00114(a)(2), 402.00115, 402.00116(a) and (b), §402.00128(b), 402.021(b)(7) - (9), 402.061, 402.072(a), 402.073(b) and (c), 402.074, 414.003 - 414.005, 415.0211, and 415.034. Labor Code Chapter 414 pertains to the enforcement of compliance and practice requirements, which includes monitoring duties, compilation and use of information, performance review of insurance carriers and the investigation unit. Government Code Chapter 2001 pertains to the administrative law governing minimum standards of uniform practice and procedures for state agencies and the judicial review of state agency actions. Government Code §2001.056 provides that unless precluded by law, an informal disposition may be made of a contested case by stipulation, agreed settlement, consent order, or default. Labor Code §402.00111 provides that except as otherwise provided by Labor Code, Title 5, the Commissioner shall exercise all executive authority, including

rulemaking authority, under Labor Code, Title 5. Labor Code §402.00114(a)(2) requires the Division to ensure that Labor Code, Title 5 and other laws regarding workers' compensation are executed. Labor Code §402.00115 requires the Division to efficiently implement Labor Code, Title 5 and Division rules. Labor Code §402.00116(a) provides that the Commissioner of Workers' Compensation is the Division's chief executive and administrative officer and shall administer and enforce Labor Code, Title 5, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or the Commissioner. Labor Code §402.00116(b) provides that the Commissioner has the powers and duties vested in the Division by Labor Code, Title 5 and other workers' compensation laws of this state. Labor Code §402.00128(b) provides that the Commissioner or the Commissioner's designee may investigate misconduct; hold hearings; issue subpoenas to compel the attendance of witnesses and the production of documents; administer oaths; take testimony directly or by deposition or interrogatory; assess and enforce penalties established under Labor Code, Title 5; enter appropriate orders as authorized by Labor Code, Title 5; institute an action in the Division's name to enjoin the violation of Labor Code, Title 5; initiate an action under Labor Code §410.254 to intervene in a judicial proceeding; prescribe the form, manner, and procedure for the transmission of information to the Division; correct clerical errors in the entry of orders; and exercise other powers and perform other duties as necessary to implement and enforce Labor Code, Title 5. Labor Code §402.021(b)(7) - (9) requires the workers' compensation system of this state to promptly detect and appropriately address acts or practices of noncompliance with the Act and rules adopted under the Act; effectively educate and clearly inform system participants of the person's responsibilities under the system and how to appropriately interact with the system; and take maximum advantage of technological advances to provide the highest levels of service possible to system participants and to promote communication among system participants. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement the Act. Labor Code §402.072(a) states that the Division may impose sanctions against any person regulated by the Division under the Act. Labor Code §402.073(b) states that in a case in which a hearing is conducted by the State Office of Administrative Hearings under Labor Code §413.031 or Labor Code §413.055, the administrative law judge who conducts the hearing for the SOAH shall enter the final decision in the case after completion of the hearing. Labor Code §402.073(c) states that in a case in which a hearing is conducted in conjunction with Labor Code §§402.072, 407.046, 408.023, or 415.034, and in other cases under this subtitle that are not subject to Labor Code §402.073(b), the ALJ who conducts the hearing for the SOAH shall propose a decision to the Commissioner for final consideration and decision by the Commissioner. Labor Code §402.074 requires the Division to effectively implement statutory goals and the standards and requirements adopted under Labor Code, Title 5. Labor Code §414.003 requires the Division to compile and maintain statistical and other information as necessary to detect practices or patterns of conduct by persons subject to monitoring under Labor Code, Chapter 414, that violate the Act, Division rules, or an order or decision of the Commissioner, or otherwise adversely affects the workers' compensation system of this state. Labor Code §414.004 requires the Division to regularly review the workers' compensation records of insurance carriers to ensure compliance with the Act. Insurance carriers, their agents, and those with whom the insurance carrier has contracted with to provide, review, or monitor services under the Act are required by this statute to cooperate with the Division, make available to the Division any records or other information, and allow the Division access to the information at reasonable times at the person's offices. Labor Code §414.005 states that the Division shall maintain an investigation unit to conduct investigations relating to alleged violations of the Act, Commissioner rules, or a Commissioner order or decision, with particular emphasis on violations of Chapters 415 and 416. As often as the Commissioner considers necessary, the Commissioner or the investigation unit may review the operations of a person regulated by the Division, including an agent of the person performing functions regulated by the Division, to determine compliance with the Act. The review described by subsection (b) of this statute may include on-site visits to the person's premises. The Commissioner is not required to announce an on-site visit in advance. During an on-site visit, a person regulated by the Division shall make available to the Division all records relating to the person's participation in the workers' compensation system. The Commissioner is required to adopt rules that prescribe the procedures to be used for both announced and unannounced on-site visits authorized under this section, including specifying the records subject to inspection. Labor Code §415.0211 provides the procedures for the issuance of an ex parte emergency cease and desist order and criteria by which the order may be issued. Labor Code §415.034 states that on request of the charged party or the Commissioner, the SOAH shall set a hearing and the hearing shall be conducted in the manner provided for a contested case under Chapter 2001, Government Code.

§180.1. Definitions.

The following words and terms, when used in this chapter, shall have the following meanings.

(1) Act--The Texas Workers' Compensation Act, Labor Code, Title 5, Subtitle A.

(2) Administrative violation--A violation, failure to comply with, or refusal to comply with the Act, or a rule, order, or decision of the commissioner. This term is synonymous with the terms "violation" or "violate."

(3) Agent--A person with whom a system participant utilizes or contracts for the purpose of providing claims service or fulfilling duties under Labor Code, Title 5 and rules. The system participant who utilizes or contracts with the agent may also be responsible for the administrative violations of that agent.

(4) Appropriate credentials--The certification(s), education, training, and experience to provide the health care that an injured employee is receiving or is requesting to receive.

(5) Commissioner--The commissioner of workers' compensation.

(6) Complaint--A written submission to the division alleging a violation of the Act or rules by a system participant.

(7) Compliance Audit (also Performance Review)--An official examination of compliance with one or more duties under the Act and rules. A compliance audit does not include monitoring or review activities involving the Medical Advisor or the Medical Quality Review Panel.

(8) Conviction or convicted--

(A) A system participant is considered to have been convicted when:

(i) a judgment of conviction has been entered against the system participant in a federal, state, or local court;

(ii) the system participant has been found guilty in a federal, state, or local court;

(iii) the system participant has entered a plea of guilty or nolo contendere (no contest) that has been accepted by a federal, state, or local court;

(iv) the system participant has entered a first offender or other program and judgment of conviction has been withheld; or

(v) the system participant has received probation or community supervision, including deferred adjudication.

(B) A conviction is still a conviction until and unless overturned on appeal even if:

(i) it is stayed, deferred, or probated;

(ii) an appeal is pending; or

(iii) the system participant has been discharged from probation or community supervision, including deferred adjudication.

(9) Department--Texas Department of Insurance.

(10) Division--Texas Department of Insurance, Division of Workers' Compensation.

(11) Emergency--As defined in §133.2 of this title (relating to Definitions). This definition does not apply to "emergency" as used in the term "ex parte emergency cease and desist orders."

(12) Frivolous--That which does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(13) Frivolous complaint--A complaint that does not have a basis in fact or is not warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

(14) Immediate post-injury medical care--That health care provided on the date that the injured employee first seeks medical attention for the workers' compensation injury.

(15) Notice of Violation (NOV)--A notice issued to a system participant by the division when the division has found that the system participant has committed an administrative violation and the division seeks to impose a sanction in accordance with Labor Code, Title 5 or division rules.

(16) Peer Review--An administrative review by a health care provider performed at the insurance carrier's request without a physical examination of the injured employee.

(17) Remuneration--Any payment or other benefit made directly or indirectly, overtly or covertly, in cash or in kind, including, but not limited to, forgiveness of debt.

(18) Rules--The division's rules adopted under Labor Code, Title 5.

(19) Sanction--A penalty or other punitive action or remedy imposed by the commissioner on an insurance carrier, representative, injured employee, employer, or health care provider, or any other person regulated by the division under the Act, for an administrative violation.

(20) SOAH--The State Office of Administrative Hearings.

(21) System Participant--A person or their agent subject to the Act or a rule, order, or decision of the commissioner.

§180.3. Compliance Audits.

(a) The division shall conduct Compliance Audits of the workers' compensation records of system participants and their agents for compliance with the Act and division rules.

(b) The division may conduct a compliance audit at the offices of a system participant or at any location the division deems appropriate. During a compliance audit, the division may, at its discretion, utilize persons in addition to division staff to provide additional expertise.

(c) The division shall provide reasonable notice in advance of a compliance audit. That notice shall:

(1) be in writing;

(2) be sent at least 10 days before the compliance audit is to be performed;

(3) specify the information that must be made available;

(4) list the name and telephone number of the audit coordinator; and

(5) specify the date, time, location, and conditions of the compliance audit.

(d) The system participant being audited (auditee) shall designate a general contact person and a contact person at each relevant location to coordinate the compliance audit. That contact person shall:

(1) provide reasonable access to requested personnel and information;

(2) respond to reasonable needs of auditors on-site or to inquiries by auditors; and

(3) be familiar with the system participant's procedures and recordkeeping systems related to the scope of the compliance audit.

(e) System participants (which may include those who are not being audited but whose records are necessary to conduct an audit of another system participant), upon request, shall make available for review claim files and other workers' compensation records in the format and manner specified by the division.

(f) Initial findings of the compliance audit will be provided in writing to the auditee.

(g) The auditee may prepare and file with the division a management response to the initial findings. The response may include proposed corrective actions. If such a response is provided, the division shall review the response and shall adjust its findings if deemed appropriate.

(h) Final compliance audit reports may be published on the division's Internet website and shall be redacted to not include any confidential claim file information.

(i) The division, should it deem it appropriate or upon request of a licensing or certification authority, shall provide the appropriate licensing or certification authority with a copy of all final compliance audit reports (redacted in accordance with subsection (h) of this section) and the auditee's response to the final compliance audit report, if any.

(j) To the extent permitted by the Act and division rules, the division shall submit a bill to the auditee for the actual expenses associated with the compliance audit, including audit staff time, additional expertise, travel and per diem expenses, and copying costs.

(k) The auditee shall submit payment by check, made payable to the order of the Texas Department of Insurance, for the expenses within 25 days after receipt of the bill.

§180.4. On-Site Visits.

(a) As often as it considers necessary, the division may review the operations of a system participant to determine compliance with the Act or division rules.

(b) When reviewing the operations of a system participant to determine compliance with the Act or division rules, the division may conduct on-site visits to the system participant's premises. On-site visits may be announced or unannounced.

(c) The on-site visit will occur during the system participant's normal business hours.

(d) An on-site visit must not disturb a health care provider's actual provision of health care to a patient.

(e) The division shall provide written notice of each announced and unannounced on-site visit. This notice shall:

(1) be sent at least 10 days before the on-site visit unless the on-site visit is unannounced in which case the notice will be provided at the time of the on-site visit;

(2) specify the alleged violation(s) that is the subject of the on-site visit;

(3) specify the types of records that must be made available during the on-site visit;

(4) list the name and telephone number of the division staff representative; and

(5) specify the date, time, location, and conditions of the on-site visit.

(f) The person who is the subject of the on-site visit shall designate a general contact person at the premises. During the on-site visit the contact person shall:

(1) provide access to requested personnel and information;

(2) respond to the needs of division staff and to inquiries by division staff; and

(3) be familiar with the system participant's procedures and recordkeeping systems that are related to the records and information requested during the on-site visit.

(g) The person subject to an on-site visit shall make available to the division in the format and manner specified by the division all records specified in the written notice provided under subsection (e) of this section. A written notice may specify for inspection any records related to the person's participation in the workers' compensation system, including:

(1) claim files;

(2) medical records and reports;

(3) payment records;

(4) billing records;

(5) electronic records;

(6) communications;

(7) adjustor notes;

(8) accident reports;

(9) notifications of lost time;

(10) notifications of injuries;

(11) payroll data and wage statements;

(12) investigative reports;

(13) filed division forms; and

(14) contracts.

§180.10. Ex Parte Emergency Cease and Desist Orders.

(a) The commissioner ex parte may issue an emergency cease and desist order upon application by division staff if:

(1) the commissioner believes a person regulated by the division under Labor Code, Title 5 is engaging in conduct violating a law, rule or order; and

(2) the commissioner believes that the alleged conduct under paragraph (1) of this subsection will result in harm to the health, safety, or welfare of another person.

(b) The order must contain the following information:

(1) the name and last known address of the person against whom the order is entered;

(2) the alleged conduct that the commissioner believes the person regulated by the division under Labor Code, Title 5 is engaging in that is a violation of a law, rule, or order and that the commissioner believes will result in harm to the health, safety, or welfare of another person;

(3) a statement that the person is to immediately cease and desist from the acts, methods, or practices stated in the order;

(4) the rights of the person against whom the order is entered with regard to requesting a hearing to contest the order. (This statement must include a reference to the specific statute, rule, or order found to have been violated, a statement of the legal authority and jurisdiction under which the order is issued, specific reference to the time limit for requesting a hearing to contest the order, and reference to the statute or statutes in which the time limit is contained. This statement must include the fact that the burden of requesting the hearing is on the person against whom the order was entered);

(5) a statement that the order is final on the 31st day after the date the affected person receives the order unless the affected person requests a hearing; and

(6) a statement regarding the actions that may be taken or sanctions that may be imposed against the person against whom the order was entered in the event of violation of the order.

(c) A request for a hearing to contest the order must be requested not later than the 30th day after the date the affected person receives the order and must:

(1) be in writing;

(2) be directed to the commissioner and filed with the division's chief clerk of proceedings; and

(3) state the grounds for the request to set aside or modify the order.

(d) On receiving a request for a hearing the division shall serve notice of the time and place of the hearing at the State Office of Administrative Hearings (SOAH). The hearing shall be held not later than the 10th day after the date the commissioner receives the request for a hearing unless the parties mutually agree to a later hearing date. At the hearing, the person requesting the hearing is entitled to show cause why the order should not be affirmed and the burden of proof is on the division to show why the order should be affirmed.

(e) Agreements to hold the hearing at a later date must be in writing. The person who is adversely affected by the issuance of the ex parte emergency cease and desist order and who desires a hearing regarding such order must file any such agreement with the division's chief clerk of proceedings before the expiration of the 10th day after the date the request for hearing is received.

(f) Following receipt of the proposal for decision from SOAH regarding the hearing the commissioner shall review the proposed decision of the administrative law judge and wholly or partly affirm, modify, or set aside the order. If the commissioner modifies, amends, or changes a recommended finding of fact or conclusion of law, or order of the administrative law judge, the commissioner's final order shall state the legal basis and the specific reasons for the change.

(g) Pending a hearing, the order continues in effect unless the order is stayed by the commissioner.

(h) If the person against whom the order was entered submits a motion for stay of the ex parte emergency cease and desist order, the motion may be granted by the commissioner before the date of the show cause hearing. If the parties agree to a later show cause hearing date pursuant to subsection (d) of this section, the motion for stay may be granted by the commissioner before the date of the show cause hearing upon written motion by any party to the hearing. If the motion for stay is granted, notice shall be sent to the requesting party that the order has been stayed in whole or in part and what part of the order continues to be in effect. If the motion is not granted before the date of the show cause hearing the motion is denied and notice is not required of the denial.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2012.

TRD-201200345
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: February 14, 2012
Proposal publication date: September 23, 2011
For further information, please call: (512) 804-4703

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SUBCHAPTER B. MEDICAL BENEFIT REGULATION

28 TAC §180.27

The amendments are adopted under Labor Code §§402.00111, 402.00116(a) and (b), 402.00128(b), and 402.061. Labor Code §402.00111 provides that except as otherwise provided by Labor Code, Title 5, the Commissioner of Workers' Compensation shall exercise all executive authority, including rulemaking authority, under Labor Code, Title 5. Labor Code §402.00116(a) provides that the Commissioner is the Division's chief executive and administrative officer and shall administer and enforce Labor Code, Title 5, other workers' compensation laws of this state, and other laws granting jurisdiction to or applicable to the Division or the Commissioner. Labor Code §402.00116(b) provides that the Commissioner has the powers and duties vested in the Division by Labor Code, Title 5 and other workers' compensation laws of this state. Labor Code §402.00128(b) provides that the Commissioner or the Commissioner's designee may investigate misconduct; hold hearings; issue subpoenas to compel the attendance of witnesses and the production of documents; administer oaths; take testimony directly or by deposition or interrogatory; assess and enforce penalties established under this title; enter appropriate orders as authorized by this title; institute an action in the Division's name to enjoin the violation of Labor Code, Title 5; initiate an action under Labor Code §410.254 to intervene in a judicial proceeding; prescribe the form, manner, and procedure for the transmission of information to the Division; correct clerical errors in the entry of orders; and exercise other powers and perform other duties as necessary to implement and enforce Labor Code, Title 5. Labor Code §402.061 provides that the Commissioner shall adopt rules as necessary for the implementation and enforcement of the Act.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 25, 2012.

TRD-201200346
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Effective date: February 14, 2012
Proposal publication date: September 23, 2011
For further information, please call: (512) 804-4703

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TITLE 30. ENVIRONMENTAL QUALITY

PART 1. TEXAS COMMISSION ON ENVIRONMENTAL QUALITY

CHAPTER 111. CONTROL OF AIR POLLUTION FROM VISIBLE EMISSIONS AND PARTICULATE MATTER

SUBCHAPTER A. VISIBLE EMISSIONS AND PARTICULATE MATTER

DIVISION 4. MATERIALS HANDLING, CONSTRUCTION, ROADS, STREETS, ALLEYS, AND PARKING LOTS

30 TAC §111.147

The Texas Commission on Environmental Quality (TCEQ or commission) adopts an amendment to §111.147.

Section 111.147 is adopted *with* change to the proposed text as published in the September 2, 2011, issue of the *Texas Register* (36 TexReg 5640) and the text will be republished.

The adopted amendment to §111.147 will be submitted to the United States Environmental Protection Agency (EPA) as a revision to the state implementation plan (SIP).

Background and Summary of the Factual Basis for the Adopted Rule

Under the 1990 Federal Clean Air Act (FCAA) Amendments, the City of El Paso (El Paso area) was designated nonattainment under FCAA, §107(d)(4)(B) for particulate matter (PM) with an aerodynamic diameter less than or equal to a nominal ten micrometers (PM_{10}) National Ambient Air Quality Standard (NAAQS) and subsequently classified as a moderate PM_{10} nonattainment area. In November 1991, the Texas Air Control Board (TACB), a predecessor agency of the TCEQ, submitted the El Paso PM_{10} Attainment Demonstration SIP revision. The SIP revision included PM control measures in §111.147. The control measures adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area.

In 1991, a Memorandum of Understanding (MOU) between the City of El Paso (the City) and the TACB was approved to outline the responsibilities and regulatory requirements for both parties. This MOU was replaced with a Memorandum of Agreement (MOA) with the City in 2001 with the same requirements.

On November 21, 2003, the El Paso Metropolitan Planning Organization submitted a letter requesting that the TCEQ develop a PM_{10} redesignation request and maintenance plan. On December 28, 2009, the TCEQ requested information from the City to ascertain what efforts the City has taken to support a request for redesignation. In a response letter dated January 29, 2010, the City indicated the following: the City has programs funded annually in the City's capital improvement budget and in the Street Department operations budget in an effort to comply with environmental regulations; the City has committed to an alley paving program at a level in alignment with its own internal budgetary capacities, not at the rate of 15 miles per year as required under §111.147; the City maintains an inventory of street and alley paving efforts to document the current status and projections for future paving activities; and the City's Air Quality Program conducts surveillance and investigations to ensure compliance with, and enforcement of, the Chapter 111 rules.

For the site reporting Federal Reference Method (FRM) PM_{10} data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM_{10} 24-hour NAAQS. Subsequent data from the City indicates that from 1991 through 2010, the percentage of unpaved alleys has significantly decreased from 66% to 16% of the total alleys in the El Paso area, with approximately 23 miles of unpaved alleys remaining. Any new alleys must be paved by developers in accordance with a city ordinance. Furthermore, the City discontinued garbage collection in alleys in 1997, so the traffic in alleys has been dramatically reduced, and reclaimed asphalt pavement (RAP) has been used to cover some unpaved alleys, which has proven to be as effective as paving. In addition, the City has also been performing PM control measures that are not required by §111.147 or the MOA. For the site reporting FRM PM_{10} data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM_{10} 24-hour NAAQS, and with the minimal amount of unpaved alleys remaining in the El Paso area, the paving rate requirement in §111.147 should no longer be considered necessary for attainment of the 1997 PM_{10} NAAQS. The adopted rulemaking will revise §111.147 to provide the City with alternative methods of PM control consistent with maintenance of the standard. The adopted rulemaking also revises §111.147 to allow the City to sweep streets at reduced frequencies, since the progress made by the City's alley and road paving programs has reduced the overall amount of fugitive dust in the El Paso area. Finally, the City indicated that it will continue to include street and alley paving and sweeping in its annual budget for maintenance of the standard. Based on these substitute and supplemental actions, compliance with the anti-backsliding provisions in FCAA, §110(l) is demonstrated.

Consistent with the amendments to §111.147 in this adoption package, revisions to the 2001 MOA are proposed for adoption concurrent with this rulemaking adoption.

Demonstrating Noninterference Under FCAA, §110(l)

The commission provides the following information to clarify why the amendment to §111.147(1)(E) and (2) will not negatively impact the status of the state's attainment with the PM_{10} NAAQS.

The requirement for reasonable notice and public hearing was satisfied through a public hearing held on September 27, 2011. The public comment period began on September 2, 2011, and ended October 3, 2011. According to the EPA draft guidance issued on June 8, 2005, *Demonstrating Noninterference Under Section 110(l) of the Clean Air Act When Revising a State Implementation Plan,* areas have two options available to demonstrate noninterference for affected pollutant(s). This preamble provides details of the identified existing measures that the commission will use to establish compliance with option one of the EPA's draft guidance: substitution of one measure by another with equivalent or greater emissions reduction/air quality benefits.

Background

In accordance with the FCAA and EPA guidance, the TACB was required to demonstrate either attainment of the standard by December 31, 1994, or demonstrate that attainment by that date was impracticable. FCAA, §179B provided that moderate nonattainment areas would not be redesignated as serious if the state could demonstrate that such areas would achieve attainment by the deadline if it were not for air quality impacts caused by another country. In response to the FCAA §179B provision, the TACB demonstrated attainment of the PM_{10} NAAQS through dispersion modeling of United States emissions alone. Furthermore, the EPA guidance contained in the *PM_{10} Moderate Area SIP Guidance: Final Staff Work Product*, April 2, 1991, prescribed that SIPs for moderate PM_{10} nonattainment areas contain quantitative milestones to be achieved every three years, and that the SIP revisions demonstrate reasonable further progress (RFP) towards attainment. However, the TACB submitted information establishing that an RFP demonstration was not strictly applicable. Specifically, based on the international impacts provision in FCAA, §179B, the TACB demonstrated that the El Paso nonattainment area would attain the PM_{10} NAAQS both at the time of the SIP revision in 1991 and at the time compliance would be required under the SIP in 1994, based on modeling of United States emissions alone. Therefore, there are currently no more requirements for a demonstration of reductions to United States emissions.

However, to help minimize PM_{10} impacts from El Paso sources, the TACB adopted several new or enhanced control measures in its 1991 SIP revision. These measures included revisions to §§111.111, 111.141, 111.145, and 111.147.

The control measures adopted in §111.147 required paving as a method of dust control in the El Paso area for specified roads and added a requirement that alleys be paved at the rate of 15 miles per year. Section 111.147 also set frequencies for street sweeping in designated sections of the El Paso area. The EPA-ap-

proved 1991 El Paso PM_{10} Attainment Demonstration SIP revision includes the PM control measures in Chapter 111.

Conclusion

The City has decreased the percentage of unpaved alleys from 66% to 16% between 1991 and 2010. Also, for the monitoring site reporting FRM PM_{10} data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM_{10} 24-hour NAAQS.

The City also put in place provisions that the unpaved alley inventory will not increase because a city ordinance requires developers to pave any new alleys. Furthermore, the City discontinued garbage collection in alleys in 1997, so the traffic in alleys has been dramatically reduced. City action to reduce airborne PM_{10} has also reduced the need to sweep streets at the frequencies specified under the current rule, and RAP, which has been proven to be as effective as paving, has been used to cover some unpaved alleys. In addition, the City also continues to include alley paving and maintenance in its annual budget. Because the El Paso area is monitoring attainment of the PM_{10} NAAQS based on the monitoring site reporting FRM PM_{10} data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), with the City's current practices in place, revising §111.147 to reflect these current practices would not interfere with the El Paso area's ability to attain and maintain the PM_{10} NAAQS.

Section Discussion

The adoption amends §111.147(1)(E) to remove the requirement to pave alleys at the rate of 15 miles per year and replace it with the following requirements: 1) all new alleys must be paved; 2) unpaved alleys may not be used for residential garbage and recycling collection; and 3) RAP may be used as an alternate means of PM control for alleys. Based on comments received, the commission revised §111.147(1)(E) by adding the terms "unpaved" and "residential" to clarify that some commercial trash collection routes may still occur in paved alleys, and future growth may require trash receptacles to be located in paved alleys for newly developed residential areas. The adoption also amends §111.147(2) to change the sweeping frequency requirement from four times per year to three times per year in the city limits and from six times per week to four times per week in the central business district.

Final Regulatory Impact Analysis Determination

The commission reviewed the adopted rulemaking in light of the regulatory impact analysis requirements of Texas Government Code, §2001.0225, and determined that this 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 that statute. A major environmental rule means a rule, the specific intent of which is to protect the environment or reduce risks to human health from environmental exposure and that may adversely affect in a material way the economy, productivity, competition, jobs, the environment, or the public health and safety of the state or a sector of the state. The adopted rulemaking is not a major environmental rule because the revisions to Chapter 111 will allow more flexibility for the City to continue to comply with the 1997 PM_{10} NAAQS. For the monitoring site reporting FRM PM_{10} data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM_{10} 24-hour NAAQS. The adopted rule revision will remove specific requirements for the number of miles of alleys to be paved per year, will allow the use of RAP as an alternate means of PM control for preexisting unpaved alleys, and will decrease the number of times that soil is to be removed from public thoroughfares from four to three times per year for those previously specified areas within the city limits, and from six to four times per week within the central business district. The public benefit anticipated from the changes in the adopted rule will be continued attainment with PM_{10} NAAQS, and continued protection of public health and safety in El Paso. For the monitoring site reporting FRM PM_{10} data for all three years from 2007 through 2009 (Socorro AQS ID 481410057), there were no exceedances of the PM_{10} 24-hour NAAQS.

The adopted revisions will not 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 adopted rule revision will not have a fiscal impact on individuals or large businesses in El Paso since it gives the City more flexibility than current rules and reflects current practices in El Paso for PM_{10} control on roads, streets, and alleys. The commission invited public comment regarding the draft regulatory impact analysis determination during the public comment period. No comments were received on the draft regulatory impact analysis determination.

Takings Impact Assessment

The commission evaluated this rulemaking action and performed an analysis of whether the adopted rule constitutes a taking under Texas Government Code, Chapter 2007. The primary purpose of the rulemaking is to provide more flexibility for the City to continue to comply with the 1997 PM_{10} NAAQS. This rulemaking does not affect private property in a manner that restricts or limits an owner's right to the property that would otherwise exist in the absence of the governmental action. Promulgation and enforcement of this adopted rulemaking is neither a statutory nor a constitutional taking because it does not affect private real property. Specifically, the subject adopted regulations do not affect a landowner's rights in real property because this rulemaking does not burden (constitutionally); nor restrict or limit the landowner's right to property and reduce its value by 25% or more beyond that which would otherwise exist in absence of the regulations. Therefore, this rule does not constitute a taking under Texas Government Code, Chapter 2007.

Consistency with the Coastal Management Program

The commission reviewed the adopted rulemaking and found the adoption is a rulemaking identified in the Coastal Coordination Act Implementation Rules, 31 TAC §505.11(b)(2), relating to rules subject to the Coastal Management Program, and will, therefore, require that goals and policies of the Texas Coastal Management Program (CMP) be considered during the rulemaking process.

The commission reviewed this rulemaking for consistency with the CMP goals and policies in accordance with the regulations of the Coastal Coordination Council and determined that the rulemaking will not affect any coastal natural resource areas because the rules only affect counties outside the CMP area and is, therefore, consistent with CMP goals and policies.

The commission invited public comment regarding the consistency with the CMP during the public comment period. No comments were received concerning the Texas CMP.

Effect on Sites Subject to the Federal Operating Permits Program

The commission has reviewed this adopted rulemaking and determined that, although §111.147 is an applicable requirement

of 30 TAC Chapter 122, the adopted changes would only affect paving and street sweeping requirements for the City, not individual emission units at sites. Therefore, the adopted changes do not affect sites subject to the Federal Operating Permits Program.

Public Comment

A public hearing was offered on September 27, 2011. The hearing was not officially opened because no party indicated a desire to give comment. The public comment period opened on September 2, 2011, and closed on October 3, 2011. Two written comments were received from the City.

Response to Comments

Comment

The City recommended adding the terms "unpaved" and "residential" to proposed §111.147(1)(E)(ii) because some trash pick-up routes do occur in alleys. In addition, future incorporation of Smart Growth Community Development will require trash receptacles to be located in alleys for newly developed residential areas.

Response

The commission agrees with the City's addition of language to §111.147(1)(E) and has made the suggested changes. The additional terms clarify the commission's intent that garbage collection be conducted in paved alleys. Furthermore, the terms give the City flexibility to continue to allow for smart growth in residential areas and maintain compliance with the PM_{10} standard.

Comment

The City also recommended adding the phrase "which are under the jurisdiction of the City of El Paso and which have been designated as public thoroughfares" to §111.147(1)(F).

Response

The City's suggested change to §111.147(1)(F) is beyond the scope of this rulemaking. No change has been made to the rule based on this comment.

Statutory Authority

The amendment is adopted under Texas Water Code (TWC), §5.103, concerning Rules, and TWC, §5.105, concerning General Policy, which authorize the commission to adopt rules necessary to carry out its powers and duties under the TWC. The amendment is also adopted under Texas Health and Safety Code (THSC), Texas Clean Air Act, §382.002, concerning Policy and Purpose, which establishes the commission's purpose to safeguard the state's air resources, consistent with the protection of public health, general welfare, and physical property; THSC, §382.011, concerning General Power and Duties, which authorizes the commission to control the quality of the state's air; THSC, §382.012, concerning State Air Control Plan, which authorizes the commission to prepare and develop a general, comprehensive plan for the control of the state's air; THSC, §382.017, concerning Rules, which authorizes the commission to adopt rules consistent with the policy and purposes of the Texas Clean Air Act; THSC, §382.0172, concerning international border areas; and THSC, §382.0173 concerning Adoption of Rules Regarding Certain State Implementation Plan Requirements and Standards of Performance for Certain Sources. The adopted amendment implements THSC, §§382.002, 382.011, 382.012, 382.017, 382.0172, and 382.0173.

§111.147. Roads, Streets, and Alleys.

No person may cause, suffer, allow, or permit any public, industrial, commercial, or private road, street, or alley to be used without taking at least the following precautions to achieve control of dust emissions:

(1) application of asphalt, water, or suitable oil or chemicals on the following unpaved surfaces, except in the City of El Paso and the Fort Bliss Military Reservation, except as noted in §111.141 of this title (relating to Geographic Areas of Application and Date of Compliance), where the use of paving materials is the only acceptable method of dust control, unless otherwise specified:

(A) industrial facility roadways--all major in-plant roads and all truck or other heavy-duty vehicle pathways. Major in-plant roads shall be defined as those which are designed to accommodate two-way traffic and are at least 30 feet wide at at least one point, measuring the distance from the edge of the undisturbed earth on either side of the established roadway. The executive director, with the concurrence of the United States Environmental Protection Agency, may grant a waiver from the requirement to pave an industrial facility roadway if the owner of the roadway demonstrates that the cost of paving is economically unreasonable compared to other methods of dust control specified in this paragraph;

(B) public thoroughfares--all roads and streets to which the public has general access;

(C) commercial roads--all roads that serve as access for more than 50 employees or as access to more than 10 heavy-duty truck parking spaces;

(D) residential roads--all roads that serve as access for more than 20 residence and/or apartment units;

(E) alleys--in the City of El Paso, alleys must meet the following requirements:

(i) all new alleys must be paved;

(ii) unpaved alleys may not be used for residential garbage and recycling collection; and

(iii) reclaimed asphalt pavement (RAP) may be used as an alternate means of particulate matter control for alleys; and

(F) levee roads--in the City of El Paso, all levee roads and access to such roads must be controlled with the application of asphalt, or suitable oil or chemicals;

(2) removal from public thoroughfares, as necessary, of soil or other materials, except for sand applied for the specific purpose of snow or ice control. In the City of El Paso, removal of soil must be by mechanical sweepers or their equivalent at the rate of three times per year for all public thoroughfares within the city limits and four times per week or as necessary for public thoroughfares within the central business district. For the purpose of this section, the central business district is defined as that area bordered by Loop 375 to the south, Santa Fe Street to the west, Missouri Street to the north, and Kansas Street to the east. The City of El Paso shall spot clean dirty roadways, and shall maintain street sweeping records for two years. Sand applied for the specific purpose of snow or ice control must be removed as soon as such control is no longer necessary.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200403
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Effective date: February 16, 2012
Proposal publication date: September 2, 2011
For further information, please call: (512) 239-0779

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TITLE 31. NATURAL RESOURCES AND CONSERVATION

PART 10. TEXAS WATER DEVELOPMENT BOARD

CHAPTER 358. STATE WATER PLANNING GUIDELINES

SUBCHAPTER B. DATA COLLECTION

31 TAC §358.6

The Texas Water Development Board ("TWDB") adopts an amendment to 31 TAC §358.6, regarding Water Loss Audits. Related amendments to §363.12, regarding General, Legal, and Fiscal Information; §371.34, regarding Required Water Conservation Plan; and §375.43, regarding Required Water Conservation Plan, are adopted elsewhere in this issue. The amendment is adopted without changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8341).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects entities receiving financial assistance from the TWDB. Prior to HB 3090, retail public utilities that provided potable water were required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding is required to perform and submit an annual water loss audit. Any retail public utility that does not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF ADOPTED AMENDMENT.

§358.6. Water Loss Audits.

Under §358.6, all retail public utilities that provide potable water service were required to perform and submit to the TWDB a water loss audit every five years, by each March 31st, computing the utility's most recent annual system water loss under methods developed by the TWDB. Also, any such utility that fails to submit the required water loss audit is ineligible for financial assistance for a water supply project from all of the TWDB's loan programs except the Rural Water Assistance Fund (RWAF) and the Water Infrastructure Fund (WIF). Under the adopted amendment, both RWAF and WIF will be included.

The adopted amendment of §358.6(a) will provide that retail public utilities that provide potable water and that receive TWDB financial assistance will be required to perform and provide an annual water loss audit in accordance with the requirements of Texas Water Code §16.0121. Retail public utilities that received financial assistance from the TWDB prior to September 1, 2011, and that have an outstanding loan from the TWDB or active loan forgiveness or grant agreement with the TWDB shall submit a water loss audit to the executive administrator by May 1, 2013, and by May 1st annually thereafter during the term of the loan or the loan forgiveness or grant agreement. This deadline is required in Section 2 of House Bill 3090. Retail public utilities that receive financial assistance from the TWDB after September 1, 2011, shall submit a water loss audit no later than the next May 1st that is at least one year after the receipt of financial assistance and by every May 1st thereafter during the term of the loan or the loan forgiveness or grant agreement. This deadline allows each retail public utility at least one year after it commences receiving financial assistance to collect data necessary for its water loss audit. Entities that do not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years, beginning May 1, 2016, and every five years thereafter. The adopted amendment also clarified that the methodology for the water loss audits will be developed by the Executive Administrator, rather than the Board members of the TWDB.

The adopted amendment of §358.6(b) adds references to Texas Water Code, Chapter 15, Subchapters Q and R (the Water Infrastructure Fund and the Rural Water Assistance Fund) to the list of TWDB financial assistance programs for which an entity is ineligible if it has not submitted a complete water loss audit, because under Texas Water Code §16.053(j), an applicant for financial assistance from either of these two programs for a water supply project is required to submit a water loss audit. The adopted amendment also deletes the reference to Subchapter P (the Colonia Self Help Program) because an applicant for financial assistance from this program is not required to submit a water loss audit under Texas Water Code §16.053(j).

The adopted amendment of §358.6 also deletes the word "form" from the phrase "water loss audit form," as it is unnecessary.

PUBLIC COMMENTS.

No comments were received on the proposed amendment.

STATUTORY AUTHORITY.

The amendment is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200354
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: February 15, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 463-8061

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CHAPTER 363. FINANCIAL ASSISTANCE PROGRAMS
SUBCHAPTER A. GENERAL PROVISIONS
DIVISION 2. GENERAL APPLICATION PROCEDURES

31 TAC §363.12

The Texas Water Development Board ("TWDB") adopts an amendment to 31 TAC §363.12, regarding General, Legal, and Fiscal Information. Related amendments to §358.6, regarding Water Loss Audits; §371.34, regarding Required Water Conservation Plan; and §375.43, regarding Required Water Conservation Plan, are adopted elsewhere in this issue. The amendment is adopted without changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8343).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects entities receiving financial assistance from the TWDB. Prior to HB 3090, retail public utilities that provided potable water were required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding is required to perform and submit an annual water loss audit. Any retail public utility that does not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF ADOPTED AMENDMENTS.

§363.12. General, Legal, and Fiscal Information.

The adopted amendment to §363.12 requires an applicant that is a retail public utility that provides potable water to submit its most recent water loss audit in accordance with §358.6 of this title (relating to Water Loss Audits), unless it has previously been submitted.

PUBLIC COMMENTS.

No comments were received on the proposed amendment.

STATUTORY AUTHORITY.

The amendment is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200355

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Effective date: February 15, 2012
Proposal publication date: December 9, 2011
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CHAPTER 371. DRINKING WATER STATE REVOLVING FUND
SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §371.34

The Texas Water Development Board ("TWDB") adopts an amendment to 31 TAC §371.34, regarding Required Water Conservation Plan. Related amendments to §358.6, regarding Water Loss Audits; §363.12, regarding General, Legal and Fiscal Information; and §375.43, regarding Required Water Conservation Plan, are adopted elsewhere in this issue. The amendment is adopted without changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8344).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects entities receiving financial assistance from the TWDB. Prior to HB 3090, retail public utilities that provided potable water were required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding is required to perform and submit an annual water loss audit. Any retail public utility that does not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF ADOPTED AMENDMENT.

§371.34. Required Water Conservation Plan and Water Loss Audit.

The adopted amendment to §371.34 adds "and Water Loss Audit" to the title of the rule and adds a requirement that an applicant that is a retail public utility that provides potable water must submit its most recent water loss audit in accordance with §358.6 (relating to Water Loss Audits), unless it has previously been submitted.

PUBLIC COMMENTS.

No comments were received on the proposed amendment.

STATUTORY AUTHORITY.

The amendment is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200356
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: February 15, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 463-8061

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CHAPTER 375. CLEAN WATER STATE REVOLVING FUND

SUBCHAPTER D. APPLICATION FOR ASSISTANCE

31 TAC §375.43

The Texas Water Development Board ("TWDB") adopts an amendment to 31 TAC §375.43, regarding Required Water Conservation Plan. Related amendments to §358.6, regarding Water Loss Audits; §363.12, regarding General, Legal, and Fiscal Information; and §371.34, regarding Required Water Conservation Plan, are adopted elsewhere in this issue. The amendment is adopted without changes to the proposed text as published in the December 9, 2011, issue of the *Texas Register* (36 TexReg 8346).

BACKGROUND AND SUMMARY OF THE FACTUAL BASIS FOR THE ADOPTED AMENDMENT.

In 2011, the 82nd Texas Legislature passed House Bill 3090, amending Texas Water Code §16.0121, which affects entities receiving financial assistance from the TWDB. Prior to HB 3090, retail public utilities that provided potable water were required to perform and submit to the TWDB a water loss audit every five years computing the utility's most recent annual system water loss. According to HB 3090, any such retail public utility that receives TWDB funding is required to perform and submit an annual water loss audit. Any retail public utility that does not receive financial assistance from the TWDB will continue to be required to perform and file a water loss audit every five years.

DISCUSSION OF ADOPTED AMENDMENT.

§375.43. Required Water Conservation Plan and Water Loss Audit.

The adopted amendment to §375.43 adds "and Water Loss Audit" to the title of the rule and adds a requirement that an applicant that is a retail public utility that provides potable water must submit its most recent water loss audit in accordance with §358.6 (relating to Water Loss Audits), unless it has previously been submitted.

PUBLIC COMMENTS.

No comments were received on the proposed amendment.

STATUTORY AUTHORITY.

The amendment is adopted under the authority of Texas Water Code §6.101, which authorizes the TWDB to adopt rules necessary to carry out the powers and duties of the TWDB.

This rulemaking affects Texas Water Code, Chapters 15, 16, and 17.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 26, 2012.

TRD-201200357
Kenneth L. Petersen
General Counsel
Texas Water Development Board
Effective date: February 15, 2012
Proposal publication date: December 9, 2011
For further information, please call: (512) 463-8061

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER H. TAX RECORD REQUIREMENTS

34 TAC §9.3031

The Comptroller of Public Accounts adopts an amendment to §9.3031, concerning rendition forms, without changes to the proposed text as published in the December 23, 2011, issue of the *Texas Register* (36 TexReg 8746).

This amendment is adopted to delete the reference to Form 50-160, Mobile Homes Rendition of Taxable Property, which is no longer being published.

The agency received a comment from an individual inquiring as to whether §9.3031 and Tax Code, §1.085 are inconsistent, commenting that "[l]anguage in the 9.3031 rule seems to require Comptroller approval of electronic rendition forms/format, while 1.085 appears to give chief appraiser authority to develop format independent of Comptroller." The agency disagrees with the comment and no change was made. Tax Code, §1.085(e)(2) provides that the comptroller by rule "may prescribe acceptable media, formats, content, and methods for the electronic transmission of . . . renditions . . . ." The current amendment to §9.3031 (deletion of reference to a rendition form that is no longer being published) is adopted pursuant to Tax Code, §22.24, that provides authority for the comptroller to prescribe rendition forms. However, §9.3031 is authorized by both Tax Code, §22.24 and Tax Code, §1.085. Section 9.3031, in its entirety, constitutes a rule that "prescribe[s] acceptable media, formats, content, and methods for the electronic transmission of . . . renditions . . ." as provided under, and authorized by, Tax Code, §1.085(e)(2). Tax Code, §1.085(f) provides for chief appraiser determinations of "medium, format, content, and method" only "[i]f the comptroller has not prescribed the media, format, content, and method." Thus, §9.3031 and Tax Code, §1.085, are consistent with regard to the subject of the commenter's inquiry.

The amendment is adopted pursuant to Tax Code, §22.24.

This section implements Tax Code, §22.24.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200402
Ashley Harden
General Counsel
Comptroller of Public Accounts
Effective date: February 16, 2012
Proposal publication date: December 23, 2011
For further information, please call: (512) 475-0387

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

The Health and Human Services Commission (HHSC) adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.315, 700.316, 700.320, 700.323, and 700.328 - 700.330; the repeal of §§700.317 - 700.319, 700.321, 700.327, 700.331 - 700.333, and 700.346; and new §§700.331, 700.346, and 700.347, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7801).

The justification for the changes is to update eligibility rules: (1) to incorporate a new placement setting referred to as "Supervised Independent Living;" (2) create one Extended Foster Care program in response to federal guidance and state legislative changes related to extended foster care, return to care, and trial independence; and (3) to delete unnecessary provisions covered by federal law, simplify language and bring the rules into conformity with current practice.

The Fostering Connections to Success and Increasing Adoptions Act of 2008, P.L. 110-351 ("Fostering Connections"), authorized state Title IV-E agencies to claim Federal Financial Participation (FFP) for young adults who choose to remain in foster care between the ages of 18 and 21 in order to receive additional support for their transition to independence. In recognition of the needs of this population, Fostering Connections further authorized states to claim FFP for young adults in foster care who reside in certain supervised independent living settings, referred to in these rules as "Supervised Independent Living" or "SIL" placements. This was accomplished through a change in the federal definition of a child-care institution for young adults to include "a supervised setting in which the individual is living independently." (See 42 U.S.C. §672(c)). SIL placements will be offered to young adults who are in the extended foster care program as a placement option along with other traditional foster care placements.

Following guidance from the federal Administration for Children and Families issued July 9, 2010 on the SIL placement option as well as other aspects of Fostering Connections (See Program Instruction ACYF-CB-PI-10-11, July 9, 2010, page 9), DFPS has worked with HHSC to develop appropriate rate methodologies for SIL providers and to complete other necessary implementation steps, including the adoption of these rules. DFPS anticipates being able to offer the SIL placement option to young adults in extended foster care beginning December 1, 2012.

Because the characteristics of SIL placements differ in part from existing foster care placements, DFPS is amending its rules to address the new placement setting. The rate setting methodology for SIL placements, using pro forma rate analysis, was proposed to this Council at the June Council meeting, and HHSC held a rate hearing concerning the proposal in September of last year.

The federal guidance on Fostering Connections referenced above also made FFP available to states for young adults who age out of foster care and temporarily live independently of the foster care system, but who later return to foster care for additional support. (See PI-10-11 at 5-7.) The federal guidance deems such youth to be engaged in a trial independence (TI) period during their absence from foster care, and provides for the continuation of Title IV-E eligibility for youth who return to foster care within a minimum of six months, up to a maximum of 12 months if a court has ordered a TI period of 12 months. Prior to this federal guidance, Title IV-E funding was generally not available to young adults who leave the foster care system and later return to foster care. As a result, DFPS's "Return to Care" program for young adults who return to foster care after age 18 was entirely state-funded and only served those young adults who participated in a relatively limited set of educational/vocational options, e.g., the program was not available for young adults in college, or who were working.

In addition, the July 2010 federal guidance clarified certain conditions that must apply to all young adults in extended foster care in order to receive FFP, the most significant of which is that the family court must continue to have jurisdiction over the young adult while in extended foster care and during any TI period. In order to maximize FFP for extended foster care, the Texas Legislature enacted amendments to the Texas Family Code that incorporate the federal guidance. Specifically, Article 63 of Senate Bill 1 and Article 11 of House Bill 79, of the First Called Session of the 82nd Legislative Session amended Chapter 263, Subchapter G Family Code to automatically extend the court's jurisdiction over all youth in extended foster care, and to continue such jurisdiction during a TI period of not less than six months, or for such longer period as the court may order up to a maximum of 12 months.

Because the concept of TI from PI-10-11 is a broadening of FFP to the states for the extended foster care program, Texas will, in a fiscally neutral manner, be able to combine what had been referred to as the "Return to Care" program into one Extended Foster Care program that will permit young adults to remain in care or return to care during or after a TI period, up until the young adult's 21st birthday, so long as a DFPS-approved placement is available and the young adult meets the eligibility criteria contained in these amended rules, including agreeing to monthly caseworker visits and continued court oversight.

In addition to the above changes, DFPS is updating a number of the rules in Chapter 700, Subchapter C of this title (relating to Eligibility for Child Protective Services), as there are multiple provisions that unnecessarily duplicate controlling federal law, are inconsistent with current practices, and lead to confusion.

A summary of the changes is described below.

The amendment to §700.315 updates the section to include the extended foster care program and clarifies language.

The amendment to §700.316: (1) updates placement and care and age requirements to reflect adults in extended foster care; (2) adds SIL placements (via the definition of a "child-care institution") as a placement type that can receive foster care maintenance payments; (3) incorporates requirements regarding foster family homes that move out of state; (4) deletes resource and income requirements, because they are not eligibility criteria for foster care and relate instead to offsets covered by §700.330; (5) deletes lump sum provision as it offers no substantive clarification to the public; (6) deletes unnecessary provisions related to the prior extended foster care program and moves criteria for the current program to new §700.346; (7) clarifies that aging out youth in DADS guardianship are eligible for foster care maintenance payments but are not otherwise subject to the same eligibility requirements as the general extended foster care population; (8) specifies situations in which a child is ineligible for any foster care assistance; and (9) clarifies and updates terminology and cites.

Section 700.317 and §700.318 are repealed because the rules offer no clarification or guidance that is not contained in controlling federal law and state law respectively.

Section 700.319 is repealed because it is not necessary.

Section 700.320 is updated to reflect current practice.

Section 700.321 is repealed because it is an unnecessary repetition of the federal guidance on point.

The amendment to §700.323: (1) strengthens and clarifies controls on the approval process for temporary absences from non-emergency foster care; (2) deletes the distinction between authorized and non-authorized absences; and (3) adds that foster care providers are not entitled to reimbursement during a young adult's TI.

Section 700.327 is repealed because it is not needed.

The amendment to §700.328: (1) consolidates current subsections (a) and (d) and eliminates unnecessary language addressed by DFPS residential contracts; (2) updates the consolidated subsection for current practice, including changes to accommodate the Foster Care Redesign project; (3) updates the rule to reflect that rate setting is now conducted by HHSC and DFPS no longer has any authority to exempt a provider from the cost reporting requirements for DFPS contractors; (4) adds SIL providers and Single Source Continuum Contractors to the rule and makes clarifying edits to ensure consistency in terminology; and (5) updates terminology.

The amendment to §700.329 clarifies existing language.

The amendment to §700.330: (1) clarifies the rule by bringing it into conformity with current practice and simplifying language; and (2) ensures consistency with state law prohibiting any deduction from money earned by a child in foster care.

Section 700.331 is repealed and adopted as new. New §700.331: (1) consolidates current §700.331 and §700.332 into one rule; (2) brings the language into conformity with current practice; and (3) better notifies the public of DFPS' practices with respect to SSI income. As a result of the change §700.332 is also repealed.

Section 700.333 is repealed because it is not needed.

Section 700.346 is repealed and adopted as new. New §700.346: (1) provides for a unified extended foster care program with a single set of eligibility criteria; (2) provides that participation in the program is contingent on the availability of an approved placement; (3) clarifies eligibility criteria and brings the criteria into conformity with current practice; (4) clarifies that youth can transition between eligible activities in extended foster care; and (5) provides that young adults may return to extended foster care if they satisfy the eligibility criteria for the extended foster care program.

New §700.347 provides criteria for a young adult to enter and remain in a SIL placement or be moved to another placement.

The sections will function by ensuring that young adults in Extended Foster Care can avail themselves of a SIL living option that more closely resembles that of their non-foster-care peers, that young adults will have greater access to extended foster care without any increase in costs to the state due to maximization of federal funding, and that eligibility for foster care assistance is clarified for the public generally.

To solicit input on SIL prior to the public comment period, provider workgroup meetings were held from March 2009 to July 2009. A survey was sent out to residential providers and foster parents to solicit input on appropriate supervision of youth (both minor and young adults). A Request for Information (RFI 530-1--0002) was released in October of 2009, and a public forum was held on November 23, 2009. A draft Request for Proposal (RFP) for SIL was issued in 2011 and open for public comment through January 27, 2012.

No comments were received regarding adoption of the sections.

40 TAC §§700.315, 700.316, 700.320, 700.323, 700.328 - 700.331, 700.346, 700.347

The amendments and new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new sections implement P.L. 110-351, Fostering Connections Act, which provides for the use of Title IV-E for SIL placements; Texas Family Code §264.101, which provides for the payment of foster care maintenance for young adults 18 and older who are meeting certain employment or educational criteria; and Article 63 of Senate Bill 1 and Article 11 of House Bill 79 of the 1st Called Session of the 82nd Texas Legislature, which provide for extended court jurisdiction during trial independence and for certain court hearings for young adults in extended foster care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200297
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: February 12, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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40 TAC §§700.317 - 700.319, 700.321, 700.327, 700.331 - 700.333, 700.346

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement P.L. 110-351, Fostering Connections Act, which provides for the use of Title IV-E for SIL placements; Texas Family Code §264.101, which provides for the payment of foster care maintenance for young adults 18 and older who are meeting certain employment or educational criteria; and Article 63 of Senate Bill 1 and Article 11 of House Bill 79 of the 1st Called Session of the 82nd Texas Legislature, which provide for extended court jurisdiction during trial independence and for certain court hearings for young adults in extended foster care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200298
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: February 12, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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SUBCHAPTER F. RELEASE HEARINGS

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §§700.601 - 700.605; and new §§700.601 - 700.608, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7808).

The justification for the repeals and new sections is to improve DFPS's ability to prevent abuse or neglect of children and vulnerable adults by decentralizing the process of releasing Child Protective Services (CPS) findings to outside parties that have control over a designated perpetrator's access to children and vulnerable adults. Also, the rules in this subchapter have been changed to question and answer format for a more plain English approach to make the rules easier to read and understand.

New §700.601: (1) clarifies the definition of "release" by naming certain entities to which abuse or neglect finding information can be disclosed (such as employers and licensing boards) and specifying that disclosure may be made if the designated perpetrator has access to children and/or vulnerable adults; (2) adds new definitions for a "designated perpetrator" and "sustained perpetrator" for clarity; (3) adds a new definition for "vulnerable adults" which is a new basis to release abuse or neglect finding information when there is a risk of harm; (4) deletes unnecessary language; and (5) updates terminology.

New §700.602: (1) decentralizes the release process by changing the approval authority to the Managing Regional Attorney and Regional Director for the region that issued the abuse or neglect finding; and (2) clarifies and updates terminology.

New §700.603: (1) revises to whom the designated perpetrator sends a request for an appeal; (2) clarifies that the designated perpetrator is responsible for notifying DFPS of any change in address; (3) deletes from the repealed rule any CPS discretionary administrative review requirements; and (4) clarifies and updates terminology.

New §700.604 deletes from the repealed rule CPS discretionary administrative review requirements and clarifies and updates terminology.

New §700.605 describes the process DFPS will take once a release hearing is requested by a designated perpetrator.

New §700.606 describes the procedural rules that will be followed in a release hearing conducted by the State Office of Administrative Hearings (SOAH).

New §700.607 describes what actions a SOAH Administrative Law Judge may take regarding a CPS finding.

New §700.608 describes what happens when a designated perpetrator fails to appear at a release hearing that the designated perpetrator requested.

The sections will function by ensuring that decisions about whether to release findings will be made quicker, thus supporting the preventing of abuse or neglect by persons who have previously abused or neglected children and may pose a risk to any child or vulnerable adult under his or her care.

No comments were received regarding adoption of the repeals and new sections.

40 TAC §§700.601 - 700.605

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and

the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement HRC §40.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200302
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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40 TAC §§700.601 - 700.608

The new sections are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The new sections implement HRC §40.002.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200303
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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SUBCHAPTER O. FOSTER AND ADOPTIVE HOME DEVELOPMENT

40 TAC §700.1501

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1501, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7811).

The justification for the amendment is to correctly state the current practice of reviewing requests for variances and waivers to minimum standards for relative foster homes. The Residential Child Care Licensing Division is responsible for the review of all requests for variances and waivers to minimum standards, including the request made for relative foster homes. As a regulated child placing agency (CPA), the Foster and Adoptive Home Development (FAD) program of Child Protective Services does not have the statutory authority to process its own waiver and variance requests.

The amendment will function by ensuring that the public will better understand FAD's practices because the rule will correctly state the current practice for processing waivers and variances.

No comments were received regarding adoption of the amendment.

The amendment is adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendment implements HRC §42.042(i) and §42.048(c), which grants the authority to promulgate minimum standards for CPAs regarding waivers and variances.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200299
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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CHAPTER 732. CONTRACTED SERVICES

SUBCHAPTER L. CONTRACT ADMINISTRATION

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.203, 732.226, and 732.238; the repeal of §732.214 and §732.229; and new §732.229, without changes to the proposed text as published in the November 18, 2011, issue of the *Texas Register* (36 TexReg 7812).

The justification for the adoption is to update the contracting rules.

The amendment to §732.203: (1) increases from 54 to 60 months the total period of time that a competitively procured contract may last; (2) creates a waiver process that allows the Commissioner of DFPS to extend a contract beyond 60 months

if doing so is in the best interests of the state and enforcement of the 60-month rule would create an undue hardship for DFPS; and (3) deletes an obsolete paragraph regarding outsourcing.

Section 732.214 is repealed, and the information is adopted in new §732.229.

The amendment to §732.226 eliminates the programmatic/ancillary dichotomy DFPS uses to review and approve subcontracts and allows DFPS to retain the right to approve or disapprove of the use of any particular subcontractor.

Section 732.229 is repealed and adopted as new. New §732.229: (1) combines the current procurement debriefing rule (§732.214) into this rule, which is modeled on the protest rules of HHSC, the Texas Attorney General, and the Texas Comptroller; (2) adds definitions to clarify the terms and positions involved in the initial protest and the appeal process; (3) clarifies when and how a provider may protest; and (4) adds timeframes so DFPS will have definite timeframes to comply with in cases of protests.

The amendment to §732.238 broadens the circumstances under which DFPS may make advance payments to contractors.

The sections will function by providing greater clarity in rules governing DFPS procurements and contracts, including when and how a provider may protest an award of a contract.

No comments were received regarding adoption of the sections.

40 TAC §§732.203, 732.226, 732.229, 732.238

The amendments and new section are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The amendments and new section implement Human Resources Code §40.058.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200300
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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40 TAC §732.214, §732.229

The repeals are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; and HRC §40.021, which provides that the Family and Protective Services Council shall study and make recommendations to the Executive Commissioner and the Commissioner regarding rules governing the delivery of services to persons who are served or regulated by the department.

The repeals implement Human Resources Code §40.058.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 23, 2012.

TRD-201200301
Gerry Williams
General Counsel
Department of Family and Protective Services
Effective date: March 1, 2012
Proposal publication date: November 18, 2011
For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 3. PUBLIC INFORMATION

SUBCHAPTER C. COMPLAINT RESOLUTION

The Texas Department of Transportation (department) adopts the repeal of §3.20 and new §3.20; amendments to §§3.21 - 3.24; the repeal of §3.25, and new §3.25 and §3.26, all concerning complaint resolution. The repeal of §3.20 and new §3.20; amendments to §§3.21 - 3.24; the repeal of §3.25, and new §3.25 and §3.26 are adopted without changes to the proposed text as published in the November 11, 2011, issue of the *Texas Register* (36 TexReg 7647) and will not be republished.

EXPLANATION OF ADOPTED REPEALS, NEW SECTIONS, AND AMENDMENTS

Senate Bill 1420 (SB 1420), 82nd Legislature, Regular Session, 2011, made changes to Transportation Code, §201.801, related to complaint resolution. The repeals, new sections, and amendments incorporate those statutory changes into the department's existing rules related to complaint resolution. They prescribe the policies and procedures by which complaints may be filed, by which submitted complaints will be recorded and resolved, and by which the department will notify customers of its complaint process. The adoption standardizes the department's complaint resolution process and facilitates submission of complaints through the use of technologies that were not available when the rules were initially adopted.

Current §3.20 is repealed and replaced with a new §3.20, which sets out the new requirements adopted by the legislature in SB 1420 for handling customer complaints. The new provisions restate parts of Transportation Code, §201.801, and require the department to maintain a system to promptly and efficiently act on complaints filed with the department; to maintain information about the parties to and the subject matter of a complaint, a sum-

mary of the review or investigation of the complaint, and the disposition of the complaint; to periodically notify the parties to the complaint of its status until final disposition unless notice would jeopardize an undercover investigation; and to make information available describing its procedures for complaint investigation and resolution. The new section states that the subchapter prescribes the policies and procedures applicable to the department's complaint process.

Amendments to §3.21 exempt from the application of the subchapter reports and investigation requests that are made to the department's internal compliance office. The department has a separate process for handling internal compliance matters.

Amendments to §3.22 recognize that an electronic complaint is a form of written complaint. The amendments add a definition of the term "person" to clarify that the term includes individuals, organizations, and all other legal entities. That definition is accompanied by changing the phrase "person or organization," which is used in the current rules, to "person" throughout the subchapter. The amendments delete the definition of "resolution letter" because it is no longer used in the subchapter. The amendments also delete the definition of "resolved" because it was meaningless and the matter is addressed in a substantive provision in §3.25.

Amendments to §3.23 clarify that a written complaint should be addressed to the Public Information Officer. The "Report-a-Pothole" toll-free number has been added as an option for submitting an oral complaint. Those amendments update the rules to reflect the ways that information is currently collected by the department. The amendments also add language to authorize the filing of an electronic complaint through the department's Internet site or by submitting an email to AskTxDOT@txdot.gov. The amendments delete current subsection (d) which states that complaints will not be accepted through the Internet.

Amendments to §3.24 delete the requirements that information about the ways for filing complaints be printed on the state travel maps and accompany applications and other information provided to entities regulated by the department. Much of the deleted language is no longer relevant because of the growth of electronic communication methods. The amendments reflect that printed material and mailings, which were previously used to communicate with the public, are no longer a significant means of communication. The department has broad authority to determine the most effective methods to provide information to the public concerning complaint filing procedures in order to facilitate submission of complaints to the department and therefore the listing of those specific methods is no longer necessary.

Current §3.25 is repealed and replaced with new §3.25 and §3.26. New §3.25 removes the requirement that to be reviewed a complaint must be "found to be valid." All complaints filed under §3.23 will be reviewed and resolved. The changes provide that the department will determine the actions that have been or will be taken on the complaint or that no action will be taken. The department will advise the complainant of the actions taken or to be taken or that a determination has been made to take no action and the reason for that determination. Finally, if the department has not made a determination on the complaint within 90 days after it is received, the department periodically will notify the complainant of the progress that is being made on the complaint until it is resolved. A complaint is considered to be resolved when the department informs the complainant of the determination that the department has made on the complaint.

New §3.26 reflects the changes to the requirements made by SB 1420 for the collection, analysis, and reporting of complaint information by the department. Subsection (a) provides that the department will maintain a computer database for complaints. The database will contain information on all complaints concerning the department whether filed with a business office of a district, division, office, or region of the department. It will contain the information appropriate for the compilation and analysis of detailed complaint data. In addition to the information that is required to be kept under the current rules the database will include the length of time required to provide a response to the customer from the date the complaint was received and if applicable, the county and district where the person, thing, or condition that is the subject of the complaint is located. New subsection (b) states that the department will provide detailed statistics and analyze trends on a district and division basis and will analyze trends related to similar complaints. New subsection (c) states that the department will report complaint information monthly to region, division, and office directors, district engineers, and other upper level positions and quarterly to the Texas Transportation Commission (commission). The new provisions of §3.26 will standardize and facilitate department analysis of complaint statistics and trend analysis, in order to identify needed improvements.

COMMENTS

No comments on the proposed repeals, new sections, and amendments were received.

43 TAC §3.20, §3.25

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §201.801, which requires the commission to adopt rules to establish the department's complaint resolution process.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.801.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200397
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: February 16, 2012
Proposal publication date: November 11, 2011
For further information, please call: (512) 463-8683

♦ ♦ ♦

43 TAC §§3.20 - 3.26

STATUTORY AUTHORITY

The new sections and amendments are adopted under Transportation Code, §201.101, which provides the commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code,

§201.801, which requires the commission to adopt rules to establish the department's complaint resolution process.

CROSS REFERENCE TO STATUTE

Transportation Code, §201.801.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on January 27, 2012.

TRD-201200398
Bob Jackson
General Counsel
Texas Department of Transportation
Effective date: February 16, 2012
Proposal publication date: November 11, 2011
For further information, please call: (512) 463-8683

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

Office of the Attorney General

Title 1, Part 3

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 53, concerning Municipal Securities. The text of the rule sections will not be republished. The review is in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

The OAG proposes to review Chapter 53, Municipal Securities, Subchapter A, Approval of Municipal Securities by Attorney General, §§53.1 - 53.30; Subchapter B, Approval of City and County General Obligation Bonds, §53.41 and §53.42; Subchapter C, Approval of City Revenue Bonds, Notes, and Warrants, §53.51; Subchapter D, Approval of School District Bonds, §53.61 and §53.62; Subchapter E, Approval of Issues of Certificates of Obligation, §§53.71 - 53.88; Subchapter F, Approval of Municipal Utility District Bonds, §§53.101 - 53.111; Subchapter G, Approval of Pollution Control Bonds and Bonds Issued Pursuant to River Authority Supply Contracts, §53.131; Subchapter H, Approval of Bonds Issued by Institutions of Higher Education, §§53.141 - 53.143; Subchapter I, Approval of Bonds to be Issued by Local Government for the Construction of Sports Centers, §53.151 and §53.152; Subchapter J, Requirements of the Approval of Securities with Respect to Criminal Justice Facilities, §§53.161 - 53.165; Subchapter K, Approval of San Antonio River Authority and Pollution Control District Bonds, §53.171; Subchapter L, General Requirements for Nonprofit Corporation Bonds, §§53.181 - 53.184; Subchapter M, Development Corporation Bonds, §§53.193 - 53.200; Subchapter N, Health Facilities Development Corporation Bonds, §§53.211 - 53.217; Subchapter O, Housing Finance Corporation Bonds, §§53.227 - 53.233; and Subchapter P, Other Corporation Bonds; §§53.244 - 53.250.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Tom Griess, Assistant Attorney General, Public Finance Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-2929, thomas.griess@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200381
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

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The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 55, concerning Child Support Enforcement. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to John O'Connell, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, mail code 044, Austin, Texas 78711-2017, (512) 460-6266, john.oconnell@cs.oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200382
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 59, §§59.1 - 59.3, concerning Collections. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The

review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Ronald Del Vento, Division Chief, Bankruptcy and Collections Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4936, ronald.delvento@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200383
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 60, concerning Texas Crime Victim Services Grant Programs. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Debra Owens, Division Chief, Grants Administration Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 936-1728, debra.owens@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200384
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

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The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 61, concerning Crime Victims' Compensation. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Kristen Huff, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711-2198, (512) 936-1240, kristen.huff@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200385
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 62, concerning Sexual Assault Prevention and Crisis Services. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Kristen Huff, Assistant Attorney General, Crime Victim Services Division, Office of the Attorney General, P.O. Box 12198, Austin, Texas 78711-2198, (512) 936-1240, kristen.huff@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200386
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

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The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 64, concerning Standards of Operation for Local Court-Appointed Volunteer Advocate Programs. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to

these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Debra Owens, Division Chief, Grants Administration Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 936-1728, debra.owens@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200387
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 65, concerning Standards of Operation for Local Children's Advocacy Centers. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Debra Owens, Division Chief, Grants Administration Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 936-1728, debra.owens@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200388
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

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The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 66, concerning Family Trust Fund Disbursement Procedures. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to John O'Connell, Deputy Director, Legal Counsel Division, Office of the Attorney General, (physical address) 5500 East Oltorf, Austin, Texas 78741, or (mailing address) P.O. Box 12017, mail code 044, Austin, Texas 78711-2017, (512) 460-6266, john.oconnell@cs.oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200389
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1 Administration, Part 3, Office of the Attorney General, Chapter 68, concerning Negotiation and Mediation of Certain Contract Disputes. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Jack Hohengarten, Assistant Attorney General, Financial Litigation Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-3503, jack.hohengarten@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200390
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 69, Central Purchasing, Subchapter A, concerning Procedures for Vendor Protests of Procurements, and Subchapter B, concerning Historically Underutilized Business Program. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional

30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Dave Liebich, Deputy Director of Purchasing, Budget and Purchasing Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-4509, david.liebich@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200391
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

♦ ♦ ♦

The Office of the Attorney General (OAG) files this Notice of Intention to Review Texas Administrative Code, Title 1, Part 3, Office of the Attorney General, Chapter 69, Central Purchasing, Subchapter C, concerning Management of Vehicles. The text of these sections will not be republished. The review is conducted in accordance with Texas Government Code §2001.039, which requires state agencies to review and consider their administrative rules for readoption, amendment, or repeal every four years. The review will include an assessment of whether the reasons for initially adopting the rules continue to exist.

For 30 days following the publication of this notice, the OAG will accept public comments regarding the review. Any proposed changes to these rules as a result of the review will be published in the Proposed Rules section of the *Texas Register* and will be open for an additional 30 day public comment period prior to final adoption or repeal by the OAG.

Comments regarding this rule review should be directed to Bill Dodson, Division Director, Support Services Division, Office of the Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 475-3388, william.dodson@oag.state.tx.us.

For further information regarding this publication, please contact Zindia Thomas, Agency Liaison, at (512) 936-9901.

TRD-201200392
Jay Dyer
Deputy Attorney General
Office of the Attorney General
Filed: January 26, 2012

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Texas Education Agency

Title 19, Part 2

The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 100, Charters, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 100 are organized under the following subchapters: Subchapter A, Open-Enrollment Charter Schools; and Subchapter B, Home-Rule School District Charters.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 100, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201200444
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 30, 2012

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The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 100, Charters, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC Chapter 100 are organized under Subchapter AA, Commissioner's Rules Concerning Open-Enrollment Charter Schools.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 100, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 100, Subchapter AA, begins February 10, 2012, and ends March 12, 2012. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201200445
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 30, 2012

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The State Board of Education (SBOE) proposes the review of 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the SBOE in 19 TAC Chapter 129 are organized under the following subchapters: Subchapter A, Student Attendance Allowed; and Subchapter B, Student Attendance Accounting.

As required by the Texas Government Code, §2001.039, the SBOE will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapters A and B, continue to exist. The comment period begins with the publication of this notice and must last a minimum of 30 days.

Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201200446
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 30, 2012

♦ ♦ ♦

The Texas Education Agency (TEA) proposes the review of 19 TAC Chapter 129, Student Attendance, pursuant to the Texas Government Code, §2001.039. The rules being reviewed by the TEA in 19 TAC

Chapter 129 are organized under Subchapter AA, Commissioner's Rules.

As required by the Texas Government Code, §2001.039, the TEA will accept comments as to whether the reasons for adopting 19 TAC Chapter 129, Subchapter AA, continue to exist.

The public comment period on the review of 19 TAC Chapter 129, Subchapter AA, begins February 10, 2012, and ends March 12, 2012. Comments or questions regarding this rule review may be submitted to Cristina De La Fuente-Valadez, Rulemaking, Texas Education Agency, 1701 North Congress Avenue, Austin, Texas 78701-1494, (512) 475-1497. Comments may also be submitted electronically to rules@tea.state.tx.us or faxed to (512) 463-5337.

TRD-201200447
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Filed: January 30, 2012

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Texas Department of Transportation

Title 43, Part 1

In accordance with Government Code, §2001.039, the Texas Department of Transportation (department) files this notice of intention to review Texas Administrative Code, Title 43, Part 1, Chapter 5, Finance; Chapter 15, Financing and Construction of Transportation Projects; and Chapter 27, Toll Projects.

The department will accept comments regarding whether the reasons for adopting these rules continue to exist. The comment period will last 30 days beginning with the publication of this notice of intention to review.

Comments regarding this rule review may be submitted in writing to Bob Jackson, General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483.

TRD-201200480
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: February 1, 2012

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Adopted Rule Reviews

Texas Department of Transportation

Title 43, Part 1

The Texas Department of Transportation (department) files notice of the completion of review and the readoption of 43 TAC Part 1, Chapter 28, Oversize and Overweight Vehicles and Loads, Subchapter F, Highway Crossings by Oversize and Overweight Vehicles and Loads; Subchapter G, Port of Brownsville Authority Permits; and Subchapter H, Chambers County Permits.

This review and readoption has been conducted in accordance with Government Code, §2001.039. The Texas Transportation Commission has reviewed these rules and determined that the reasons for adopting them continue to exist.

The department received no comments on the proposed rule review, which was published in the November 25, 2011, issue of the *Texas Register* (36 TexReg 8073).

This concludes the review of 43 TAC Chapter 28.

TRD-201200399
Bob Jackson
General Counsel
Texas Department of Transportation
Filed: January 27, 2012

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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: 16 TAC §3.107(e)(1)

Table 1. Typical Penalties

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.2	Commission denied access	$1,000
16 TAC §3.3	missing/insufficient signs: well	$500
16 TAC §3.3	missing/insufficient signs: entrance	$1,000
16 TAC §3.3	missing/insufficient signs: battery	$1,000
16 TAC §3.5(a)	no drilling permit: filed but not approved	$5,000
16 TAC §3.5(a)	no drilling permit: no application filed	$10,000
16 TAC §3.8(b)	pollution of surface or subsurface water	$1,000 minimum
16 TAC §3.8(d)(1)	improper disposal of oil and gas waste: enhance for actual or threatened pollution: dry pit area	$500 base penalty plus $0.30/sq. ft.
16 TAC §3.8(d)(1)	improper disposal of oil and gas waste: enhance for actual or threatened pollution: wet pit area	$500 base penalty plus $0.50/sq. ft.
16 TAC §3.8(d)(2)	use of prohibited pits: fresh water pit area	$2,500 base plus $0.25 sq. ft.
16 TAC §3.8(d)(2)	use of prohibited pits: salt water or other fluid area	$2,500 base plus $0.75 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: fresh water pit area	$2,500 base plus $0.25 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: salt water or other fluid pit area	$2,500 base plus $0.75 sq. ft.
16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: dry	$2,500
16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: wet	$5,000
16 TAC §3.9(1)	no permit to dispose or inject	$5,000
16 TAC §3.9(9)(A)	no tubing and packer or improperly set	$2,000
16 TAC §3.9(9)(B)	no pressure observation valve	$1,000 per valve
16 TAC §3.9(12)	no test, failed test, or no Form H-5	$5,000
16 TAC §3.13(b)(1)(B)	open casing/tubing	$1,000 to $5,000
16 TAC §3.13(b)(1)(C)	inadequate wellhead control	$5,000
16 TAC §3.13(b)(2)	inadequate surface casing	$2,000
16 TAC §3.14(a)(2)	failure to file Form W-3A	$2,500
16 TAC §3.14(a)(3)	failure to notify of setting plugs	$1,500
16 TAC §3.14(b)(1)	failure to file Form W-3	$5,000
16 TAC §3.14(b)(2)	failure to plug onshore well	$2,000 plus $1/ft. of total depth
16 TAC §3.14(b)(2)	failure to plug bay, estuary, or inland waterway well	$15,000 plus $2 per foot of total depth, subject to statutory maximum
16 TAC §3.14(b)(2)	failure to plug offshore well	$50,000 plus $5 per foot of total depth, subject to statutory maximum
16 TAC §3.14(d)(1)-(11)	failure to follow general plugging requirement	$1,000
16 TAC §3.14(d)(12)	failure to remove miscellaneous loose junk and trash	$1,000
16 TAC §3.14(d)(12)	failure to remove tanks, vessels, and related piping	$2,500
16 TAC §3.14(d)(12)	failure to empty tanks, vessels, and related piping	$5,000
16 TAC §3.15(f)(7)	failure to test prior to reactivating well	$1,000
16 TAC §3.15(f)(2)(A)	failure to disconnect electricity	$5,000
16 TAC §3.15(f)(2)(A)	failure to purge vessels	$7,500
16 TAC §3.15(f)(2)(A)	failure to remove equipment	$10,000
16 TAC §3.16(b) and (c)	failure to file completion records/logs	$2,500
16 TAC §3.17	Bradenhead violations: no valve; no access; or pressure on it	$1,000 to $2,500
16 TAC §3.20(a)(1)	failure to notify of incident	$2,500 to $5,000
16 TAC §3.21(a)-(i)	improper fire prevention	$1,000
16 TAC §3.21(j)	inadequate dike/firewall	$2,500
16 TAC §3.21(k)	swabbing without authority	$1,000 per well
16 TAC §3.21(l)	improper electric power lines	$2,000

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.22	no nets	compliance
16 TAC §3.35(a)	failure to notify of lost logging tool	$5,000
16 TAC §3.35(b)	failure to properly abandon lost logging tool	$5,000
16 TAC §3.36(c)(5)(B)	improper storage tank signs in a non-public area	$1,000
16 TAC §3.36(c)(5)(B)	improper storage tank signs in a public area	$2,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a non-public area	$1,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a public area	$2,000
16 TAC §3.36(c)(6)(A)	improper entry signs in a populated public area	$5,000
16 TAC §3.36(c)(6)(B)	failure to fence specific area at a well	$5,000
16 TAC §3.36(c)(6)(B)	failure to fence specific area at a battery	$10,000
16 TAC §3.36(c)(6)(C)	materials provision	$2,500
16 TAC §3.36(c)(8)	failure to maintain H_2S equipment	$5,000
16 TAC §3.36(c)(9)(Q)	failure to update contingency plan	$2,500
16 TAC §3.36(c)(9)(N)	failure to notify of H_2S contingency plan activation	more than 6 hours up to 12 hours-$5,000
16 TAC §3.36(c)(9)(N)	failure to notify of H_2S contingency plan activation	12 hours or more-$10,000
16 TAC §3.36(c)(14)	failure to notify of H_2S release	more than 6 hours up to 12 hours-$5,000
16 TAC §3.36(c)(14)	failure to notify of H_2S release	12 hours or more-$10,000
16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; no injury	$5,000
16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; injury or death	$10,000
16 TAC §3.36(c)(12)(F)	failure to notify of drill stem test in H_2S formation	$2,000
16 TAC §3.36(c)(13)	failure to have H_2S trained personnel	$5,000 per person
16 TAC §3.36(d)(1)(E)	failure to file Form H-9; non-public area	$1,000
16 TAC §3.36(d)(1)(E)	failure to file Form H-9; public area	$10,000
16 TAC §3.36(d)(2)	failure to identify well as sour on completion report	$10,000
16 TAC §3.36(d)(3)	intentional failure to file written report of H_2S release	$3,000
16 TAC §3.36(d)(3)	failure to file written report of emergency H_2S release	$5,000
16 TAC §3.46(a)	no permit to dispose or inject	$5,000
16 TAC §3.46(g)(1)	no tubing and packer or improperly set	$2,000
16 TAC §3.46(g)(2)	no pressure observation valve	$1,000 per valve
16 TAC §3.46(j)	no test, failed test, or no Form H-5	$5,000
16 TAC §3.57	reclamation plant operation violation	$1,000
16 TAC §3.73(a)	failure to notify of pipeline connection	$1,000
16 TAC §3.73(h)	reconnecting, transporting from well/lease without approved Form P-4	$1,000 minimum; see Table 1A for additional amount
16 TAC §3.73(j)	reporting, producing, injecting, disposing without approved Form P-4	$1,000 minimum; see Table 1A for additional amount
16 TAC §3.81	improper brine mining injection well operation	$1,000
16 TAC §3.95	improper underground salt formation liquid or liquefied hydrocarbon storage facility operation	$2,000
16 TAC §3.96	improper underground productive or depleted reservoir gas storage facility operation	$2,000
16 TAC §3.97	improper underground salt formation gas storage facility operation	$2,000
16 TAC §3.98	improper hazardous waste disposal operation	$2,000
16 TAC §3.99(d)(2)	improper protection/isolation of usable quality water	$2,500 per well
16 TAC §3.99(e)	improper cathodic protection well construction	$1,000 per well
16 TAC §3.99(g)	failure to file completion report	$1,000 per well
16 TAC §3.100(d)(2)	failure to permit seismic/core holes penetrating usable quality water	$1,000 per hole
16 TAC §3.100(f)	failure to properly plug seismic/core holes	$1,000 per hole

Oil & Gas Rule/Statute	General Description	Guideline Minimum Penalty Amount or Range
16 TAC §3.100(g)	failure to file final survey report	$5,000 per survey
16 TAC §3.106(b)	commenced construction of a sour gas pipeline facility without a permit	$10,000
16 TAC §3.106(e)	published notice with egregious errors/omissions	$5,000
16 TAC §3.106(f)	provided pipeline plat with egregious errors/omissions	$5,000
Tex. Nat. Res. Code. §91.143	false filing	$1,000 per form

Figure: 16 TAC §3.107(e)(2)(D)

Table 1A. Calculation of Typical Additional Penalty Amounts for Violations of 16 TAC §3.73, relating to Pipeline Connection; Cancellation of Certificate of Compliance; Severance

Length of Violation Low: < 3 mos. Medium: High: > 1 yr.	Production Value Low: < $5,000 Medium: High: > $100,000	Unresolved Severances Low: < 2 Medium: Iligh: > 6	Basis of Severance N: non-pollution related Y: pollution related	Factor
low	low	low	N	1.0
low	low	medium	N	1.5
low	low	high	N	1.5
low	medium	low	N	1.5
low	medium	medium	N	3.5
low	medium	high	N	5.0
low	high	low	N	4.5
low	high	medium	N	7.0
low	high	high	N	7.5
medium	low	low	N	1.5
medium	low	medium	N	2.5
medium	low	high	N	3.5
medium	medium	low	N	3.5
medium	medium	medium	N	5.0
medium	medium	high	N	8.0
medium	high	low	N	8.5
medium	high	medium	N	9.0
medium	high	high	N	10.0
high	low	low	N	2.5
high	low	medium	N	3.5
high	low	high	N	3.5
high	medium	low	N	4.5
high	medium	medium	N	7.5
high	medium	high	N	8.0
high	high	low	N	10.0
high	high	medium	N	10.0
high	high	high	N	10.0
low	low	low	Y	1.5
low	low	medium	Y	2.0
low	low	high	Y	2.5
low	medium	low	Y	3.0
low	medium	medium	Y	5.0
low	mcdium	high	Y	7.5
low	high	low	Y	5.0
low	high	medium	Y	8.0
low	high	high	Y	8.5
medium	low	low	Y	2.0
medium	low	medium	Y	3.5
medium	low	high	Y	7.0
medium	medium	low	Y	7.0

Length of Violation Low: < 3 mos. Medium: High: > 1 yr.	Production Value Low: < $5,000 Medium: High: > $100,000	Unresolved Severances Low: < 2 Medium: High: > 6	Basis of Severance N: non-pollution related Y: pollution related	Factor
medium	medium	medium	Y	7.5
medium	medium	high	Y	8.5
medium	high	low	Y	9.0
medium	high	medium	Y	9.5
medium	high	high	Y	10.0
high	low	low	Y	3.0
high	low	medium	Y	4.0
high	low	high	Y	5.0
high	medium	low	Y	5.0
high	medium	medium	Y	8.5
high	medium	high	Y	9.0
high	high	low	Y	10.0
high	high	medium	Y	10.0
high	high	high	Y	10.0

Figure: 16 TAC §3.107(f)

Table 2. Penalty Enhancements

Evidentiary Factors	Threatened or Actual Pollution	Safety Hazard	Severity of Violation
Agricultural land or sensitive wildlife habitat	$1,000 to $5,000		
Endangered or threatened species	$2,000 to $10,000		
Bay, estuary or marine habitat	$5,000 to $25,000		
Minor freshwater source (minor aquifer, seasonal watercourse)	$2,500 to $7,500		
Major freshwater source (major aquifer, creeks, rivers, lakes and reservoirs)	$5,000 to $25,000		
Impacted residential/public areas		$1,000 to $15,000	
Hazardous material release		$2,000 to $25,000	
Reportable incident/accident		$5,000 to $25,000	
Well in H_2S field		up to $10,000	
Time out of compliance			$100 to $2,000 / month
Reckless conduct of operator			double total penalty
Intentional conduct of operator			triple total penalty

Figure 1: 16 TAC §3.107(g)

Table 3. Penalty enhancements based on number of prior violations within seven years

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §3.107(g)

Table 4. Penalty Enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §3.107(j)

Table 5. Penalty Calculation Worksheet

	Oil & Gas Rule/Statute	General Description	Typical Minimum Penalty from Table I	Penalty Tally
1	16 TAC §3.2	Commission denied access	$1,000	$
2	16 TAC §3.3	missing/insufficient signs: well	$500	$
3	16 TAC §3.3	missing/insufficient signs: entrance	$1,000	$
4	16 TAC §3.3	missing/insufficient signs: battery	$1,000	$
5	16 TAC §3.5(a)	no drilling permit: filed but not approved	$5,000	$
6	16 TAC §3.5(a)	no drilling permit: no application filed	$10,000	$
7	16 TAC §3.8(b)	pollution of surface or subsurface water	$1,000 minimum	$
8	16 TAC §3.8(d)(1)	improper disposal of oil and gas waste: enhance for actual or threatened pollution: dry pit area	$500 base penalty plus $0.30/sq. ft.	$
9	16 TAC §3.8(d)(1)	improper disposal of oil and gas waste; enhance for actual or threatened pollution: wet pit area	$500 base penalty plus $0.50/sq. ft.	$
10	16 TAC §3.8(d)(2)	use of prohibited pits: fresh water pit area	$2,500 base plus $0.25 sq. ft.	$
11	16 TAC §3.8(d)(2)	use of prohibited pits: salt water or other fluid area	$2,500 base plus $0.75 sq. ft.	$
12	16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: fresh water pit area	$2,500 base plus $0.25 sq. ft.	$
13	16 TAC §3.8(d)(4)(G)(i)(I), (II)	reserve pits: salt water or other fluid pit area	$2,500 base plus $0.75 sq. ft.	$
14	16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: dry	$2,500	$
15	16 TAC §3.8(d)(4)(G)(i)(III), (IV)	workover and other pits: wet	$5,000	$
16	16 TAC §3.9(1)	no permit to dispose or inject	$5,000	$
17	16 TAC §3.9(9)(A)	no tubing and packer or improperly set	$2,000	$
18	16 TAC §3.9(9)(B)	no pressure observation valve	$1,000 per valve	$
19	16 TAC §3.9(12)	no test, failed test, or no Form H-5	$5,000	$
20	16 TAC §3.13(b)(1)(B)	open casing/tubing	$1,000 to $5,000	$
21	16 TAC §3.13(b)(1)(C)	inadequate wellhead control	$5,000	$
22	16 TAC §3.13(b)(2)	inadequate surface casing	$2,000	$
23	16 TAC §3.14(a)(2)	failure to file Form W-3A	$2,500	$
24	16 TAC §3.14(a)(3)	failure to notify of setting plugs	$1,500	$
25	16 TAC §3.14(b)(1)	failure to file Form W-3	$5,000	$
26	16 TAC §3.14(b)(2)	failure to plug onshore well	$2,000 plus $1/ft. of total depth	$
27	16 TAC §3.14(b)(2)	failure to plug bay, estuary, or inland waterway well	$15,000 plus $2 per foot of total depth, subject to statutory maximum	$
28	16 TAC §3.14(b)(2)	failure to plug offshore well	$50,000 plus $5 per foot of total depth, subject to statutory maximum	$
29	16 TAC §3.14(d)(1)-(11)	failure to follow general plugging requirement	$1,000	$
30	16 TAC §3.14(d)(12)	failure to remove miscellaneous loose junk and trash	$1,000	$
31	16 TAC §3.14(d)(12)	failure to remove tanks, vessels, and related piping	$2,500	$
32	16 TAC §3.14(d)(12)	failure to empty tanks, vessels, and related piping	$5,000	$
33	16 TAC §3.15(l)(7)	failure to test prior to reactivating well	$1,000	$
34	16 TAC §3.15(f)(2)(A)	failure to disconnect electricity	$5,000	$
35	16 TAC §3.15(f)(2)(A)	failure to purge vessels	$7,500	$
36	16 TAC §3.15(f)(2)(A)	failure to remove equipment	$10,000	$
37	16 TAC §3.16(b) and (c)	failure to file completion records/logs	$2,500	$
38	16 TAC §3.17	Bradenhead violations: no valve; no access; or pressure on it	$1,000 to $2,500	$
39	16 TAC §3.20(a)(1)	failure to notify of incident	$2,500 to $5,000	$
40	16 TAC §3.21(a)-(i)	improper fire prevention	$1,000	$
41	16 TAC §3.21(j)	inadequate dike/firewall	$2,500	$
42	16 TAC §3.21(k)	swabbing without authority	$1,000 per well	$
43	16 TAC §3.21(l)	improper electric power lines	$2,000	$
44	16 TAC §3.22	no nets	compliance	

	Oil & Gas Rule/Statute	General Description	Typical Minimum Penalty from Table 1	Penalty Tally
45	16 TAC §3.35(a)	failure to notify of lost logging tool	$5,000	$
46	16 TAC §3.35(b)	failure to properly abandon lost logging tool	$5,000	$
47	16 TAC §3.36(c)(5)(B)	improper storage tank signs in a non-public area	$1,000	$
48	16 TAC §3.36(c)(5)(B)	improper storage tank signs in a public area	$2,000	$
49	16 TAC §3.36(c)(6)(A)	improper entry signs in a non-public area	$1,000	$
50	16 TAC §3.36(c)(6)(A)	improper entry signs in a public area	$2,000	$
51	16 TAC §3.36(c)(6)(A)	improper entry signs in a populated public area	$5,000	$
52	16 TAC §3.36(c)(6)(B)	failure to fence specific area at a well	$5,000	$
53	16 TAC §3.36(c)(6)(B)	failure to fence specific area at a battery	$10,000	$
54	16 TAC §3.36(c)(6)(C)	materials provision	$2,500	$
55	16 TAC §3.36(c)(8)	failure to maintain H_2S equipment	$5,000	$
56	16 TAC §3.36(c)(9)(Q)	failure to update contingency plan	$2,500	$
57	16 TAC §3.36(c)(9)(N)	failure to notify of H_2S contingency plan activation	more than 6 hours up to 12 hours-$5,000	$
58	16 TAC §3.36(c)(9)(N)	failure to notify of H_2S contingency plan activation	12 hours or more-$10,000	$
59	16 TAC §3.36(c)(14)	failure to notify of H_2S release	more than 6 hours up to 12 hours-$5,000	$
60	16 TAC §3.36(c)(14)	failure to notify of H_2S release	12 hours or more-$10,000	$
61	16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site: no injury	$5,000	$
62	16 TAC §3.36(c)(11)-(12), except (12)(F)	failure to follow requirements at drill/workover site; injury or death	$10,000	$
63	16 TAC §3.36(c)(12)(F)	failure to notify of drill stem test in H_2S formation	$2,000	$
64	16 TAC §3.36(c)(13)	failure to have H_2S trained personnel	$5,000 per person	$
65	16 TAC §3.36(d)(1)(E)	failure to file Form H-9; non-public area	$1,000	$
66	16 TAC §3.36(d)(1)(F)	failure to file Form H-9; public area	$10,000	$
67	16 TAC §3.36(d)(2)	failure to identify well as sour on completion report	$10,000	$
68	16 TAC §3.36(d)(3)	intentional failure to file written report of H_2S release	$3,000	$
69	16 TAC §3.36(d)(3)	failure to file written report of emergency H_2S release	$5,000	$
70	16 TAC §3.46(a)	no permit to dispose or inject	$5,000	$
71	16 TAC §3.46(g)(1)	no tubing and packer or improperly set	$2,000	$
72	16 TAC §3.46(g)(2)	no pressure observation valve	$1,000 per valve	$
73	16 TAC §3.46(j)	no test, failed test, or no Form H-5	$5,000	$
74	16 TAC §3.57	reclamation plant operation violation	$1,000	$
75	16 TAC §3.73(a)	failure to notify of pipeline connection	$1,000	$
76	16 TAC §3.73(h)	reconnecting, transporting from well/lease without approved Form P-4	$1,000 minimum; see Table 1A for additional amount	$
77	16 TAC §3.73(j)	reporting, producing, injecting, disposing without approved Form P-4	$1,000 minimum; see Table 1A for additional amount	$
78	16 TAC §3.81	improper brine mining injection well operation	$1,000	$
79	16 TAC §3.95	improper underground salt formation liquid or liquefied hydrocarbon storage facility operation	$2,000	$
80	16 TAC §3.96	improper underground productive or depleted reservoir gas storage facility operation	$2,000	$
81	16 TAC §3.97	improper underground salt formation gas storage facility operation	$2,000	$
82	16 TAC §3.98	improper hazardous waste disposal operation	$2,000	$
83	16 TAC §3.99(d)(2)	improper protection/isolation of usable quality water	$2,500 per well	$
84	16 TAC §3.99(e)	improper cathodic protection well construction	$1,000 per well	$
85	16 TAC §3.99(g)	failure to file completion report	$1,000 per well	$

	Oil & Gas Rule/Statute	General Description	Typical Minimum Penalty from Table 1	Penalty Tally
86	16 TAC §3.100(d)(2)	failure to permit seismic/core holes penetrating usable quality water	$1,000 per hole	$
87	16 TAC §3.100(f)	failure to properly plug seismic/core holes	$1,000 per hole	$
88	16 TAC §3.100(g)	failure to file final survey report	$5,000 per survey	$
89	16 TAC §3.106(b)	commenced construction of a sour gas pipeline facility without a permit	$10,000	$
90	16 TAC §3.106(e)	published notice with egregious errors/omissions	$5,000	$
91	16 TAC §3.106(f)	provided pipeline plat with egregious errors/omissions	$5,000	$
92	Tex. Nat. Res. Code, §91.143	false filing	$1,000 per form	$
93	**Subtotal of typical penalty amounts from Table 1 (lines 1-92, inclusive)**			$
94	**Reduction for settlement before hearing: up to 50% of line 93 amt.**		____ %	$
95	**Subtotal: amount shown on line 93 less applicable settlement reduction on line 94**			$
	Penalty enhancement amounts for threatened or actual pollution from Table 2			
96	Agricultural land or sensitive wildlife habitat		$1,000 to $5,000	$
97	Endangered or threatened species		$2,000 to $10,000	$
98	Bay, estuary or marine habitat		$5,000 to $25,000	$
99	Minor freshwater source (minor aquifer, seasonal watercourse)		$2,500 to $7,500	$
100	Major freshwater source (major aquifer, creeks, rivers, lakes and reservoirs)		$5,000 to $25,000	$
	Penalty enhancement amounts for safety hazard from Table 2			
101	Impacted residential/public areas		$1,000 to $15,000	$
102	Hazardous material release		$2,000 to $25,000	$
103	Reportable incident/accident		$5,000 to $25,000	$
104	Well in H_2S field		up to $10,000	$
	Penalty enhancement amounts for severity of violation from Table 2			
105	Time out of compliance		$100 to $2,000 each month	$
106	**Subtotal: amount shown on line 95 plus all amounts on lines 96 through 105, inclusive**			$
	Penalty enhancements for culpability of person charged from Table 2			
107	Reckless conduct of operator		double line 106 amount	$
108	Intentional conduct of operator		triple line 106 amount	$
	Penalty enhancements for number of prior violations within past seven years from Table 3			
109	One		$1,000	$
110	Two		$2,000	$
111	Three		$3,000	$
112	Four		$4,000	$
113	Five or more		$5,000	$
	Penalty enhancements for amount of penalties within past seven years from Table 4			
114	Less than $10,000		$1,000	$
115	Between $10,000 and $25,000		$2,500	$
116	Between $25, 000 and $50,000		$5,000	$
117	Between $50,000 and $100,00		$10,000	$
118	Over $100,000		10% of total amt.	$
119	**Subtotal: Line 95 amt. plus amts. on line 107 and/or 108 plus the amt. shown on any line from 109 through 118, inclusive**			$
120	**Reduction for demonstrated good faith of person charged**			$
121	**TOTAL PENALTY AMOUNT: amount on line 119 less any amount shown on line 120**			$

Figure: 16 TAC §8.135(e)

Table 1. Typical Penalties

Rule	Guideline Penalty Amount
16 TAC §3.70-Pipeline Permits Required	$5,000
16 TAC §8.1-General Applicability and Standards	$5,000
16 TAC §8.51-Organization Report	$5,000
16 TAC §8.101-Pipeline Integrity Assessment and Management Plans	$5,000
16 TAC §8.105-Records	$5,000
16 TAC §8.115-Construction Commencement Report	$5,000
16 TAC §8.201-Pipeline Safety and Regulatory Program Fees	10% of amt. due
16 TAC §8.203-Supplemental Regulations	$5,000
16 TAC §8.205-Written Procedure for Handling Natural Gas Leak Complaints	$5,000
16 TAC §8.206- Risk Based Leak Survey Program	$5,000
16 TAC §8.207-Leak Grading and Repair	$5,000
16 TAC §8.208- Mandatory Removal and Replacement Program	$5,000
16 TAC §8.209- Distribution Facilities Replacements	$5,000
16 TAC §8.210-Reports	$5,000
16 TAC §8.215-Odorization of Gas	$10,000
16 TAC §8.220-Master Metered Systems	$5,000
16 TAC §8.225-Plastic Pipe Requirements	$5,000
16 TAC §8.230-School Piping Testing	$5,000
16 TAC §8.235-Natural Gas Pipelines Public Education and Liaison	$5,000
16 TAC §8.235-Proximity to Public Schools Located within 1,000 Feet	$5,000
16 TAC §8.240-Discontinuance of Service	$10,000
16 TAC §8.301-Records and Reporting	$5,000
16 TAC §8.305-Corrosion Control	$2,500
16 TAC §8.310-Hazardous Liquids and Carbon Dioxide Public Education and Liaison	$5,000
16 TAC §8.315-Hazardous Liquids and Carbon Dioxide Pipeline Located within 1,000 Feet of Public School	$5,000
49 CFR 192.613-Continuing surveillance	$5,000
49 CFR 192.619-Maximum allowable operating pressure	$5,000
49 CFR 192.625-Odorization of gas	$5,000
49 CFR 192 Subpart I- Requirements for Corrosion Control	$5,000
49 CFR 192 Subpart M-Maintenance	$5,000
49 CFR 192 Subpart N-Qualification of Pipeline Personnel	$5,000
49 CFR 192, Subpart O-Pipeline Integrity Management	$5,000
49 CFR 192, Subpart P- Gas Distribution Pipeline Integrity Management	$5,000
49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline	$1,000
49 CFR Part 193-Liquefied Natural Gas Facilities: Federal Safety Standards	$1,000
49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline	$1,000
49 CFR Part 195.401-General Requirements	$5,000
49 CFR Part 195.406-Maximum Operating Pressure	$5,000
49 CFR Part 195.440-Public Awareness	$5,000
49 CFR Part 195.452-Integrity Management	$5,000
49 CFR Part 195 Subpart G-Qualification of Pipeline Personnel	$5,000
49 CFR Part 199-Drug and Alcohol Testing	$1,000

Figure: 16 TAC §8.135(f)

Table 2. Penalty Enhancements

For violations that involve:	Threatened or actual pollution	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Bay estuary or marine habitat	$5,000 to $25,000		
Pollution resulting from the violation	$5,000 to $25,000		
Impact to a residential or public area		$5,000 to $25,000	
Hazardous material release		$2,000 to $25,000	
Reportable incident or accident		$5,000 to $25,000	
Exceeding pressure control limits		$5,000 to $25,000	
Any hazard to the health or safety of the public		$5,000 to $25,000	
The seriousness of the violation			$5,000 to $25,000
Death or personal injury			$5,000 to $25,000
Affected area exceeds 100 square feet			$10 per square foot
Reckless conduct of person charged			Up to double the total penalty
Intentional conduct of person charged			Up to triple the total penalty

Figure 1: 16 TAC §8.135(g)

Table 3. Penalty enhancements based on number of prior violations within seven years

Number of violations or warnings in the seven years prior to action	Guideline Enhancement Amount
One	Double penalty amount
More than two but fewer than five	Triple penalty amount
More than five but fewer than ten	Four times penalty amount
More than ten	Five times penalty amount

Figure 2: 16 TAC §8.135(g)

Table 4. Guideline Penalty enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Guideline Enhancement amount
Less than $10,000	$1,000
Between $10,001 and $25,000	$2,500
Between $25,001 and $50,000	$5,000
Between $50,001 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §8.135(j)

Table 5. Penalty calculation worksheet

	Violations from Table 1	Typical Penalty Amounts from Table 1	Penalty Tally
1	16 TAC §3.70-Pipeline Permits Required	$5,000	$
2	16 TAC §8.1-General Applicability and Standards	$5,000	$
3	16 TAC §8.51-Organization Report	$5,000	$
4	16 TAC §8.101-Pipeline Integrity Assessment and Management Plans	$5,000	$
5	16 TAC §8.105-Records	$5,000	$
6	16 TAC §8.115-Construction Commencement Report	$5,000	$
7	16 TAC §8.201-Pipeline Safety and Regulatory Program Fees	10% of amt. due	$
8	16 TAC §8.203-Supplemental Regulations	$5,000	$
9	16 TAC §8.205-Written Procedure for Handling Natural Gas Leak Complaints	$5,000	$
10	16 TAC §8.206- Risk Based Leak Survey Program	$5,000	$
11	16 TAC §8.207-Leak Grading and Repair	$5,000	$
12	16 TAC §8.208- Mandatory Removal and Replacement Program	$5,000	$
13	16 TAC §8.209- Distribution Facilities Replacements	$5,000	$
14	16 TAC §8.210-Reports	$5,000	$
15	16 TAC §8.215-Odorization of Gas	$10,000	$
16	16 TAC §8.220-Master Metered Systems	$5,000	$
17	16 TAC §8.225-Plastic Pipe Requirements	$5,000	$
18	16 TAC §8.230-School Piping Testing	$5,000	$
19	16 TAC §8.235-Natural Gas Pipelines Public Education and Liaison	$5,000	$
20	16 TAC §8.235-Proximity to Public Schools Located within 1,000 Feet	$5,000	$
21	16 TAC §8.240-Discontinuance of Service	$10,000	$
22	16 TAC §8.301-Records and Reporting	$5,000	$
23	16 TAC §8.305-Corrosion Control	$2,500	$
24	16 TAC §8.310-Hazardous Liquids and Carbon Dioxide Public Education and Liaison	$5,000	$
25	16 TAC §8.315-Hazardous Liquids and Carbon Dioxide Pipeline Located within 1,000 Feet of Public School	$5,000	$
26	49 CFR 192.613-Continuing surveillance	$5,000	$
27	49 CFR 192.619-Maximum allowable operating pressure	$5,000	$
28	49 CFR 192.625-Odorization of gas	$5,000	$
29	49 CFR 192 Subpart I- Requirements for Corrosion Control	$5,000	$
30	49 CFR 192 Subpart M-Maintenance	$5,000	$
31	49 CFR 192 Subpart N-Qualification of Pipeline Personnel	$5,000	$
32	49 CFR 192, Subpart O-Pipeline Integrity Management	$5,000	$
33	49 CFR 192, Subpart P- Gas Distribution Pipeline Integrity Management	$5,000	$
34	49 CFR Part 192-Transportation of Natural and Other Gas by Pipeline	$1,000	$
35	49 CFR Part 193-Liquefied Natural Gas Facilities: Federal Safety Standards	$1,000	$
36	49 CFR Part 195-Transportation of Hazardous Liquids by Pipeline	$1,000	$
37	49 CFR Part 195.401-General Requirements	$5,000	$
38	49 CFR Part 195.406-Maximum Operating Pressure	$5,000	$
39	49 CFR Part 195.440-Public Awareness	$5,000	$
40	49 CFR Part 195.452-Integrity Management	$5,000	$

	Violations from Table 1	Typical Penalty Amounts from Table 1	Penalty Tally
41	49 CFR Part 195 Subpart G-Qualification of Pipeline Personnel	$5,000	$
42	49 CFR Part 199-Drug and Alcohol Testing	$1,000	$
43	**Subtotal of typical penalty amounts from Table 1 (lines 1-42, inclusive)**		$
44	**Reduction for settlement before hearing: up to 50% of line 43 amt.**	_____ %	$
45	**Subtotal: amount shown on line 43 less applicable settlement reduction from line 44**		$
	Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2		
46	Bay, estuary, or marine habitat	$5,000-$25,000	$
47	Pollution resulting from the violation	$5,000 to $25,000	$
48	Impact to a residential or public area	$5,000 to $25,000	$
49	Hazardous material release	$2,000-$25,000	$
50	Reportable incident or accident	$5,000-$25,000	$
51	Exceeding pressure control limits	$5,000 to $25,000	$
52	Any hazard to the health or safety of the public	$5,000 to $25,000	$
	Penalty enhancements for severity of violation from Table 2		
53	Affected area exceeds 100 square feet	$10/square foot	$
54	**Subtotal: amount on line 45 plus all amounts on lines 46 through 53, inclusive**		$
	Penalty enhancements for culpability of person charged from Table 2		
55	Reckless conduct of person charged	double line 54 amt.	$
56	Intentional conduct of person charged	triple line 54 amt.	$
	Penalty enhancements for number of prior violations within past seven years from Table 3		
57	One	$1,000	$
58	Two	$2,000	$
59	Three	$3,000	$
60	Four	$4,000	$
61	Five or more	$5,000	$
	Penalty enhancements for amount of penalties within past seven years from Table 4		
62	Less than $10,000	$1,000	$
63	Between $10,000 and $25,000	$2,500	$
64	Between $25, 000 and $50,000	$5,000	$
65	Between $50,000 and $100,00	$10,000	$
66	Over $100,000	10% of total amt.	$
67	**Subtotal: amount on line 54 plus amounts on lines 55 and/or 56 plus the amount shown on any one line from 57 through 66, inclusive**		$
68	**Reduction for demonstrated good faith of person charged**		$
69	**TOTAL PENALTY AMOUNT: amount on line 67 less any amount shown on line 68**		$

Figure: 16 TAC §9.15(e)

Table 1. LP-Gas Penalty Schedule Guideline

LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
Tex. Nat. Res. Code, Chapter 113	Any violation of Chapter 113, Texas Natural Resources Code	$1,000-2,500
16 TAC §9.4(a)	Retention of records	$500
16 TAC §9.4d	Licensee and registrant obligations	$2,500
16 TAC §9.7(a)	Performing LP-gas activities without proper certification and/or license	$500
16 TAC §9.7d	Copies of licenses and/or certifications	$100
16 TAC §9.7g	Company representative and/or branch manager	$500
16 TAC §9.7(h)	License renewals lapse, 1-2 months	$500
16 TAC §9.7(h)	License renewals lapse, 3-4 months	$750
16 TAC §9.7(h)	License renewals lapse, 5-6 months	$1,000
16 TAC §9.7(h)	License renewals lapse, more than 6 months	$1,000-2,500
16 TAC §9.9	Requirements for certificate renewal	$250
16 TAC §9.11	Employee transfers	$100
16 TAC §9.12	Trainees	$500-$1,000
16 TAC §9.13	General installers and repairman exception	$500-1,000
16 TAC §9.17	Designation and responsibilities of company reps	$500
16 TAC §9.21	Franchise tax certification and assumed name certificates	$500
16 TAC §9.22	Changes in ownership, form or name of dealership	$500
16 TAC §9.23	Limitation/avoidance of licensee liability	$2,500
16 TAC §9.26	Insurance and self-insurance requirements	$1,000
16 TAC §9.28	Reasonable safety provisions	$2,500
16 TAC §9.32	Consumer safety notification	$500
16 TAC §9.35	Written procedure for leak check	$100-500
16 TAC §9.36(a)	Report of an LP-gas incident/accident	$1,000
16 TAC §9.36(c)	Completed Form 20	$100
16 TAC §9.36(e)	Category P must notify supplier of incident	$250
16 TAC §9.41	Testing LP-gas systems in school facilities	$1,000
16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 1-5 occurrences	$100
16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 6-10 occurrences	$200
16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), >10 occurrences	$500
16 TAC §9.101(c)	Filings for stationary installations Form 500 (>= 10,000 gal AWC)	$1,000
16 TAC §9.109	Physical inspection of stationary installation	$250-1,000
16 TAC §9.113	Maintenance	$250-1,000
16 TAC §9.114(a)	Odorization in accordance with NFPA 58	$500-2,500
16 TAC §9.126(a)-(b)	All appurtenances and equipment shall be listed	$1,000
16 TAC §9.126(c)	Licensee or operator of equipment not listed but approved for use by manufacturer shall maintain documentation	$250
16 TAC §9.129	Manufacturer's nameplate and markings	$1,000

LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §9.131	200 PSIG working pressure stationary vessels	$500-1,000
16 TAC §9.132	Sales to unlicensed individuals	$1,000
16 TAC §9.134	Connecting container to piping	$250-1,000
16 TAC §9.135	Unsafe or unapproved containers, cylinders or piping	$500-2,500
16 TAC §9.136	Filling DOT containers	$500-2,500
16 TAC §9.137	Inspection of containers at each filling	$500
16 TAC §9.140	Uniform protection standards	$100-750
16 TAC §9.141	Uniform safety requirements	$100-750
16 TAC §9.142	LP-gas storage and installation requirements	$100-500
16 TAC §9.143	Bulkhead, internal valve, ball valve and ESV protection	$500-2,500
16 TAC §9.201	Applicability (includes 49 CFR 100-185)	$500-2,500
16 TAC §9.202	Registration and transfer of LP-gas transports	$500-1,500
16 TAC §9.203	School bus, public transportation, mass and special transit	$100-500
16 TAC §9.204	Maintenance of vehicles	$250-1,000
16 TAC §9.206	Vehicle identification labels	$50-100
16 TAC §9.208	Testing requirements	$250-1,000
16 TAC §9.211	Markings	$250
16 TAC §9.212	Manifests	$250
16 TAC §9.301	NFPA 54 adopted by reference unless otherwise listed	$250-2,500
16 TAC §9.301	NFPA 54 Section 7.1.2.1 underground piping cover requirements	$250-750
16 TAC §9.301	NFPA 54 Section 7.1.7.1 connection of plastic piping	$500-1,000
16 TAC §9.301	NFPA 54 Section 7.1.7.3 tracer wire	$100-500
16 TAC §9.301	NFPA 54 Section 7.7.2.1 cap all outlets	$100-500
16 TAC §9.301	NFPA 54 Section 8.2.3 test for leakage	$1,500
16 TAC §9.301	NFPA 54 Section 9.1.1.2 appliance installation	$500-1,000
16 TAC §9.301	NFPA 54 Section 9.6.7 sediment trap	$100-500
16 TAC §9.301	NFPA 54 Section12.2 venting of appliances	$500-1,000
16 TAC §9.306	Room heaters in public buildings	$250-1,000
16 TAC §9.307	Identification of converted appliances	$100-250
16 TAC §9.308	Identification of piping installation	$100-250
16 TAC §9.311	Special exceptions for appliance connectors and piping support on agricultural and industrial structures	$100-500
16 TAC §9.312	Certification requirements for joining methods	$500
16 TAC §9.401	NFPA 58 adopted by reference unless otherwise listed	$250-2,500
16 TAC §9.401	NFPA 58 Section 6.3.1 (distance from container), first occurrence	$500
16 TAC §9.401	NFPA 58 Section 6.3.1 (distance from container), 2nd occurrence	$750
16 TAC §9.401	NFPA 58 Section 6.3.1 (distance from container), 3 or more occurrences	$1,000
16 TAC §9.401	NFPA 58 Section 5.2.2.2 and 11.3.1.5 (requalification of cylinders), 1-10 cylinders	$500
16 TAC §9.401	NFPA 58 Section 5.2.2.2 and 11.3.1.5 (requalification of cylinders), 11-20 cylinders	$750
16 TAC §9.401	NFPA 58 Section 5.2.2.2 and 11.3.1.5 (requalification of cylinders), >20 cylinders	$1,000
16 TAC §9.401	NFPA 58 Section 9.4.8 (chock blocks)	$100-250

LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §9.403	Sections in NFPA 58 not adopted by reference or adopted with change or additional requirements	$250-2,500

Figure: 16 TAC §9.15(f)

Table 2. LP-Gas Penalty Enhancements

For violations that involve:	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Death or personal injury	$5,000 to $20,000	
Taking facility out of service	$1,000 to $5,000	
Gas ignition or release requiring emergency response	$1,000 to $15,000	
Damage to LP-gas installation or vehicle	$1,000 to $5,000	
Property damage exceeding $5,000	$1,000 to $15,000	
Rerouting of traffic or evacuation of premises	$1,000 to $5,000	
Time out of compliance		$100 to $2,000 for each month
Reckless conduct of person charged		Up to double the total penalty
Intentional conduct of person charged		Up to triple the total penalty

Figure 1: 16 TAC §9.15(g)

Table 3. Penalty enhancements based on number of prior violations within seven years

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §9.15(g)

Table 4. Penalty enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §9.15(k)

Table 5. LP-Gas Penalty Worksheet

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
1	Tex. Nat. Res. Code, Chapter 113	Any violation of Chapter 113, Texas Natural Resources Code	$1,000-2,500	$
2	16 TAC §9.4(a)	Retention of records	$500	$
3	16 TAC §9.4d	Licensee and registrant obligations	$2,500	$
4	16 TAC §9.7(a)	Performing LP-gas activities without proper certification and/or license	$500	$
5	16 TAC §9.7d	Copies of licenses and/or certifications	$100	$
6	16 TAC §9.7g	Company representative and/or branch manager	$500	$
7	16 TAC §9.7(h)	License renewals lapse, 1-2 months	$500	$
8	16 TAC §9.7(h)	License renewals lapse, 3-4 months	$750	$
9	16 TAC §9.7(h)	License renewals lapse, 5-6 months	$1,000	$
10	16 TAC §9.7(h)	License renewals lapse, more than 6 months	$1,000-2,500	$
11	16 TAC §9.9	Requirements for certificate renewal	$250	$
12	16 TAC §9.11	Employee transfers	$100	$
13	16 TAC §9.12	Trainees	$500-$1,000	$
14	16 TAC §9.13	General installers and repairman exception	$500-1,000	$
15	16 TAC §9.17	Designation and responsibilities of company reps	$500	$
16	16 TAC §9.21	Franchise tax certification and assumed name certificates	$500	$
17	16 TAC §9.22	Changes in ownership, form or name of dealership	$500	$
18	16 TAC §9.23	Limitation/avoidance of licensee liability	$2,500	$
19	16 TAC §9.26	Insurance and self-insurance requirements	$1,000	$
20	16 TAC §9.28	Reasonable safety provisions	$2,500	$
21	16 TAC §9.32	Consumer safety notification	$500	$
22	16 TAC §9.35	Written procedure for leak check	$100-500	$
23	16 TAC §9.36(a)	Report of an LP-gas incident/accident	$1,000	$
24	16 TAC §9.36(c)	Completed Form 20	$100	$
25	16 TAC §9.36(e)	Category P must notify supplier of incident	$250	$
26	16 TAC §9.41	Testing LP-gas systems in school facilities	$1,000	$
27	16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 1-5 occurrences	$100	$
28	16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), 6-10 occurrences	$200	$
29	16 TAC §9.101(b)	Filings for stationary installations Form 501 (< 10,000 gal AWC), >10 occurrences	$500	$

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
30	16 TAC §9.101(c)	Filings for stationary installations Form 500 (>= 10,000 gal AWC)	$1,000	$
31	16 TAC §9.109	Physical inspection of stationary installation	$250-1,000	$
32	16 TAC §9.113	Maintenance	$250-1,000	$
33	16 TAC §9.114(a)	Odorization in accordance with NFPA 58	$500-2,500	$
34	16 TAC §9.126(a)-(b)	All appurtenances and equipment shall be listed	$1,000	$
35	16 TAC §9.126(c)	Licensee or operator of equipment not listed but approved for use by manufacturer shall maintain documentation	$250	$
36	16 TAC §9.129	Manufacturer's nameplate and markings	$1,000	$
37	16 TAC §9.131	200 PSIG working pressure stationary vessels	$500-1,000	$
38	16 TAC §9.132	Sales to unlicensed individuals	$1,000	$
39	16 TAC §9.134	Connecting container to piping	$250-1,000	$
40	16 TAC §9.135	Unsafe or unapproved containers, cylinders or piping	$500-2,500	$
41	16 TAC §9.136	Filling DOT containers	$500-2,500	$
42	16 TAC §9.137	Inspection of containers at each filling	$500	$
43	16 TAC §9.140	Uniform protection standards	$100-750	$
44	16 TAC §9.141	Uniform safety requirements	$100-750	$
45	16 TAC §9.142	LP-gas storage and installation requirements	$100-500	$
46	16 TAC §9.143	Bulkhead, internal valve, ball valve and ESV protection	$500-2,500	$
47	16 TAC §9.201	Applicability (includes 49 CFR 100-185)	$500-2,500	$
48	16 TAC §9.202	Registration and transfer of LP-gas transports	$500-1,500	$
49	16 TAC §9.203	School bus, public transportation, mass and special transit	$100-500	$
50	16 TAC §9.204	Maintenance of vehicles	$250-1,000	$
51	16 TAC §9.206	Vehicle identification labels	$50-100	$
52	16 TAC §9.208	Testing requirements	$250-1,000	$
53	16 TAC §9.211	Markings	$250	$
54	16 TAC §9.212	Manifests	$250	$
55	16 TAC §9.301	NFPA 54 adopted by reference unless otherwise listed	$250-2,500	$
56	16 TAC §9.301	NFPA 54 Section 7.1.2.1 underground piping cover requirements	$250-750	$
57	16 TAC §9.301	NFPA 54 Section 7.1.7.1 connection of plastic piping	$500-1,000	$
58	16 TAC §9.301	NFPA 54 Section 7.1.7.3 tracer wire	$100-500	$
59	16 TAC §9.301	NFPA 54 Section 7.7.2.1 cap all outlets	$100-500	$
60	16 TAC §9.301	NFPA 54 Section 8.2.3 test for leakage	$1,500	$
61	16 TAC §9.301	NFPA 54 Section 9.1.1.2 appliance installation	$500-1,000	$
62	16 TAC §9.301	NFPA 54 Section 9.6.7 sediment trap	$100-500	$

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
63	16 TAC §9.301	NFPA 54 Section12.2 venting of appliances	$500-1,000	$
64	16 TAC §9.306	Room heaters in public buildings	$250-1,000	$
65	16 TAC §9.307	Identification of converted appliances	$100-250	$
66	16 TAC §9.308	Identification of piping installation	$100-250	$
67	16 TAC §9.311	Special exceptions for appliance connectors and piping support on agricultural and industrial structures	$100-500	$
68	16 TAC §9.312	Certification requirements for joining methods	$500	$
69	16 TAC §9.401	NFPA 58 adopted by reference unless otherwise listed	$250-2,500	$
70	16 TAC §9.401	NFPA 58 Section 6.3.1 (distance from container), first occurrence	$500	$
71	16 TAC §9.401	NFPA 58 Section 6.3.1 (distance from container), 2nd occurrence	$750	$
72	16 TAC §9.401	NFPA 58 Section 6.3.1 (distance from container), 3 or more occurrences	$1,000	$
73	16 TAC §9.401	NFPA 58 Section 5.2.2.2 and 11.3.1.5 (requalification of cylinders), 1-10 cylinders	$500	$
74	16 TAC §9.401	NFPA 58 Section 5.2.2.2 and 11.3.1.5 (requalification of cylinders), 11-20 cylinders	$750	$
75	16 TAC §9.401	NFPA 58 Section 5.2.2.2 and 11.3.1.5 (requalification of cylinders), >20 cylinders	$1,000	$
76	16 TAC §9.401	NFPA 58 Section 9.4.8 (chock blocks)	$100-250	$
77	16 TAC §9.403	Sections in NFPA 58 not adopted by reference or adopted with change or additional requirements	$250-2,500	$
78	**Subtotal of typical penalty amounts from Table 1 (lines 1-77, inclusive)**			$
79	**Reduction for settlement before hearing: up to 50% of line 78 amt.**		_____%	$
80	**Subtotal: amount shown on line 78 less applicable settlement reduction on line 79**			$
	Penalty enhancement amounts for threatened or actual safety hazard from Table 2			
81	Death or personal injury		$5,000 to $20,000	$
82	Taking facility out of service		$1,000 to $5,000	$
83	Gas ignition or release requiring emergency response		$1,000 to $15,000	$
84	Damage to LP-gas installation or vehicle		$1,000 to $5,000	$
85	Property damage exceeding $5,000		$1,000 to $15,000	$
86	Rerouting of traffic or evacuation of premises		$1,000 to $5,000	$
	Penalty enhancement for severity of violation from Table 2			
87	Time out of compliance		$100 to $2,000/ mo.	$
88	**Subtotal: amount shown on line 81 plus all amounts on lines 81 through 87, inclusive**			$
	Penalty enhancements for culpability of person charged from Table 2			
89	Reckless conduct of person charged		Up to double line X	$

	LP-Gas Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
90	Intentional conduct of person charged		Up to triple line X	$
Penalty enhancements for number of prior violations within past seven years from Table 3				
91	One		$1,000	$
92	Two		$2,000	$
93	Three		$3,000	$
94	Four		$4,000	$
95	Five or more		$5,000	$
Penalty enhancements for amount of penalties within past seven years from Table 4				
96	Less than $10,000		$1,000	$
97	Between $10,000 and $25,000		$2,500	$
98	Between $25,000 and $50,000		$5,000	$
99	Between $50,000 and $100,000		$10,000	$
100	Over $100,000		10% of total amount	$
101	**Subtotal: Line 88 amt. plus amts. on line 89 and/or 90 plus the amt. shown on any line from 91 through 100, inclusive**			$
102	**Reduction for demonstrated good faith of person charged**			$
103	**TOTAL PENALTY AMOUNT: amount on line 101 less any amount shown on line 102**			$

Figure: 16 TAC §13.15(e)

Table 1. CNG Penalty Schedule Guidelines

CNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
Tex. Nat. Res. Code, Chapter 116	Any violation of Chapter 116, Texas Natural Resources Code	$1,000-2,500
16 TAC §13.22	Odorization	$1,000-2,500
16 TAC §13.24	Filing required for school and transit vehicles	$100-500
16 TAC §13.25	Filings for stationary installations Form 1501: 1-5 occurrences	$100
16 TAC §13.25	Filings for stationary installations Form 1501: 6-10 occurrences	$200
16 TAC §13.25	Filings for stationary installations Form 1501: >10 occurrences	$500
16 TAC §13.25	Filings for stationary installations Form 1500	$1,000
16 TAC §13.26	Construction of cylinders and pressure vessels	$1,000
16 TAC §13.27	Pressure relief devices	$1,000
16 TAC §13.28	Pressure gauges	$250
16 TAC §13.29	Pressure regulators	$500-1,000
16 TAC §13.30	Piping	$500-1,000
16 TAC §13.31	Valves	$500-1,000
16 TAC §13.32	Hose and hose connections	$500-1,000
16 TAC §13.33	Compression equipment	$500-1,500
16 TAC §13.34	Vehicle fuel connection	$500
16 TAC §13.36	CNG incident/accident report	$1,000
16 TAC §13.38	Removal from CNG service	$1,000-2,500
16 TAC §13.39	Filing unapproved cylinders	$500-1,500
16 TAC §13.40	Manufacturer's nameplates and ASME markings	$1,000
16 TAC §13.61	License and related fees; lapse 1-2 months	$500
16 TAC §13.61	License and related fees; lapse 3-4 months	$750
16 TAC §13.61	License and related fees; lapse 5-6 months	$1,000
16 TAC §13.61	License and related fees; lapse >6 months	$1,000-2,500
16 TAC §13.62	Insurance requirements	$1,000
16 TAC §13.67	Change in ownership	$250
16 TAC §13.68	Dealership name change	$250
16 TAC §13.69	Registration and transfer of transports	$500-1,500
16 TAC §13.70	Examination requirements and renewals	$250
16 TAC §13.72	Operations supervisor	$500
16 TAC §13.73	Employee transfers	$100
16 TAC §13.93	General requirements	$100-750
16 TAC §13.94	Locations of installations	$500-1,000
16 TAC §13.95	Installation of cylinders and appurtenances	$100-750
16 TAC §13.96	Installation of pressure relief devices	$1,000
16 TAC §13.97	Installation of pressure regulators	$500-1,000
16 TAC §13.98	Installation of pressure gauges	$250-1,000
16 TAC §13.99	Installation of piping and hoses	$250-1,000
16 TAC §13.100	Testing	$1,000
16 TAC §13.101	Emergency shutdown equipment	$1,000
16 TAC §13.102	Electrical equipment	$100-500
16 TAC §13.103	Stray or impressed currents and bonding	$100-500

CNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §13.104	Operations	$500-1,500
16 TAC §13.105	Fire protection	$100-250
16 TAC §13.106	Maintenance	$250-1,000
16 TAC §13.107	Dispenser accuracy	$250
16 TAC §13.132	System component qualification	$500
16 TAC §13.133	Installation of fuel supply cylinders	$250-1,500
16 TAC §13.134	Installation of venting systems	$250
16 TAC §13.135	Installation of piping	$250-500
16 TAC §13.136	Installation of valves	$250-500
16 TAC §13.137	Installation of pressure gauges	$100-500
16 TAC §13.138	Installation of pressure regulators	$500-1,000
16 TAC §13.139	Installation of fueling connection	$500
16 TAC §13.140	Labeling	$100
16 TAC §13.141	System testing	$1,000
16 TAC §13.142	Maintenance and repair	$250-1,000
16 TAC §13.143	Venting of CNG to atmosphere	$250-750
16 TAC §13.184	General requirements	$750
16 TAC §13.185	Installation	$500-1,000
16 TAC §13.186	Outdoor installations	$250
16 TAC §13.187	Installation of pressure relief valves	$100-500
16 TAC §13.189	Pressure regulation	$250-750
16 TAC §13.190	Piping and hose	$250-1,000
16 TAC §13.191	Testing	$1,000
16 TAC §13.192	Installation of emergency shutdown equipment	$250-1,000
16 TAC §13.193	Operation	$500-1,000
16 TAC §13.194	Maintenance and inspection	$250-1,000

Figure: 16 TAC §13.15(f)

Table 2. CNG Penalty Enhancements

For violations that involve:	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Death or personal injury	$5,000 to $20,000	
Taking facility out of service	$1,000 to $5,000	
Gas ignition or release requiring emergency response	$1,000 to $15,000	
Damage to CNG installation or vehicle	$1,000 to $5,000	
Property damage exceeding $5,000	$1,000 to $15,000	
Rerouting of traffic or evacuation of premises	$1,000 to $5,000	
Time out of compliance		$100 to $2,000 for each month
Reckless conduct of person charged		Up to double the total penalty
Intentional conduct of person charged		Up to triple the total penalty

Figure 1: 16 TAC §13.15(g)

Table 3. Penalty enhancements based on number of prior violations within seven years

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §13.15(g)

Table 4. Penalty enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §13.15(k)

Table 5. CNG Penalty Worksheet

	CNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
1	Tex. Nat. Res. Code, Chapter 116	Any violation of Chapter 116, Texas Natural Resources Code	$1,000-2,500	$
2	16 TAC §13.22	Odorization	$1,000-2,500	$
3	16 TAC §13.24	Filing required for school and transit vehicles	$100-500	$
4	16 TAC §13.25	Filings for stationary installations Form 1501: 1-5 occurrences	$100	$
5	16 TAC §13.25	Filings for stationary installations Form 1501: 6-10 occurrences	$200	$
6	16 TAC §13.25	Filings for stationary installations Form 1501: >10 occurrences	$500	$
7	16 TAC §13.25	Filings for stationary installations Form 1500	$1,000	$
8	16 TAC §13.26	Construction of cylinders and pressure vessels	$1,000	$
9	16 TAC §13.27	Pressure relief devices	$1,000	$
10	16 TAC §13.28	Pressure gauges	$250	$
11	16 TAC §13.29	Pressure regulators	$500-1,000	$
12	16 TAC §13.30	Piping	$500-1,000	$
13	16 TAC §13.31	Valves	$500-1,000	$
14	16 TAC §13.32	Hose and hose connections	$500-1,000	$
15	16 TAC §13.33	Compression equipment	$500-1,500	$
16	16 TAC §13.34	Vehicle fuel connection	$500	$
17	16 TAC §13.36	CNG incident/accident report	$1,000	$
18	16 TAC §13.38	Removal from CNG service	$1,000-2,500	$
19	16 TAC §13.39	Filing unapproved cylinders	$500-1,500	$
20	16 TAC §13.40	Manufacturer's nameplates and ASME markings	$1,000	$
21	16 TAC §13.61	License and related fees; lapse 1-2 months	$500	$
22	16 TAC §13.61	License and related fees; lapse 3-4 months	$750	$
23	16 TAC §13.61	License and related fees; lapse 5-6 months	$1,000	$
24	16 TAC §13.61	License and related fees; lapse more than 6 months	$1,000-2,500	$
25	16 TAC §13.62	Insurance requirements	$1,000	$
26	16 TAC §13.67	Change in ownership	$250	$
27	16 TAC §13.68	Dealership name change	$250	$
28	16 TAC §13.69	Registration and transfer of transports	$500-1,500	$
29	16 TAC §13.70	Examination requirements and renewals	$250	$
30	16 TAC §13.72	Operations supervisor	$500	$
31	16 TAC §13.73	Employee transfers	$100	$
32	16 TAC §13.93	General requirements	$100-750	$
33	16 TAC §13.94	Locations of installations	$500-1,000	$
34	16 TAC §13.95	Installation of cylinders and appurtenances	$100-750	$
35	16 TAC §13.96	Installation of pressure relief devices	$1,000	$
36	16 TAC §13.97	Installation of pressure regulators	$500-1,000	$
37	16 TAC §13.98	Installation of pressure gauges	$250-1,000	$
38	16 TAC §13.99	Installation of piping and hoses	$250-1,000	$
39	16 TAC §13.100	Testing	$1,000	$

	CNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
40	16 TAC §13.101	Emergency shutdown equipment	$1,000	$
41	16 TAC §13.102	Electrical equipment	$100-500	$
42	16 TAC §13.103	Stray or impressed currents and bonding	$100-500	$
43	16 TAC §13.104	Operations	$500-1,500	$
44	16 TAC §13.105	Fire protection	$100-250	$
45	16 TAC §13.106	Maintenance	$250-1,000	$
46	16 TAC §13.107	Dispenser accuracy	$250	$
47	16 TAC §13.132	System component qualification	$500	$
48	16 TAC §13.133	Installation of fuel supply cylinders	$250-1,500	$
49	16 TAC §13.134	Installation of venting systems	$250	$
50	16 TAC §13.135	Installation of piping	$250-500	$
51	16 TAC §13.136	Installation of valves	$250-500	$
52	16 TAC §13.137	Installation of pressure gauges	$100-500	$
53	16 TAC §13.138	Installation of pressure regulators	$500-1,000	$
54	16 TAC §13.139	Installation of fueling connection	$500	$
55	16 TAC §13.140	Labeling	$100	$
56	16 TAC §13.141	System testing	$1,000	$
57	16 TAC §13.142	Maintenance and repair	$250-1,000	$
58	16 TAC §13.143	Venting of CNG to atmosphere	$250-750	$
59	16 TAC §13.184	General requirements	$750	$
60	16 TAC §13.185	Installation	$500-1,000	$
61	16 TAC §13.186	Outdoor installations	$250	$
62	16 TAC §13.187	Installation of pressure relief valves	$100-500	$
63	16 TAC §13.189	Pressure regulation	$250-750	$
64	16 TAC §13.190	Piping and hose	$250-1,000	$
65	16 TAC §13.191	Testing	$1,000	$
66	16 TAC §13.192	Installation of emergency shutdown equipment	$250-1,000	$
67	16 TAC §13.193	Operation	$500-1,000	$
68	16 TAC §13.194	Maintenance and inspection	$250-1,000	$
69	**Subtotal of typical penalty amounts from Table 1 (lines 1-68, inclusive)**			$
70	**Reduction for settlement before hearing: up to 50% of line 69 amt.**		_____%	$
71	**Subtotal: amount shown on line 69 less applicable settlement reduction on line 70**			$
	Penalty enhancement amounts for threatened or actual safety hazard from Table 2			
72	Death or personal injury		$5,000-20,000	$
73	Taking facility out of service		$1,000-5,000	$
74	Gas ignition or release requiring emergency response		$1,000-15,000	$
75	Damage to CNG installation or vehicle		$1,000-5,000	$
76	Property damage exceeding $5,000		$1,000-15,000	$
77	Rerouting of traffic or evacuation of premises		$1,000-5,000	$
	Penalty enhancement for severity of violation from Table 2			
78	Time out of compliance		$100-$2,000/mo.	$
79	**Subtotal: amount shown on line 71 plus all amounts on lines 72-78, inclusive**			$
	Penalty enhancements for culpability of person charged from Table 2			
80	Reckless conduct of person charged		Up to double line 79	$
81	Intentional conduct of person charged		Up to triple line 79	$
	Penalty enhancements for number of prior violations within past seven years from Table 3			

	CNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
82	One		$1,000	$
83	Two		$2,000	$
84	Three		$3,000	$
85	Four		$4,000	$
86	Five or more		$5,000	$
	Penalty enhancements for amount of penalties within past seven years from Table 4			
87	Less than $10,000		$1,000	$
88	Between $10,000 and $25,000		$2,500	$
89	Between $25,000 and $50,000		$5,000	$
90	Between $50,000 and $100,000		$10,000	$
91	Over $100,000		10% of total amt.	$
92	**Subtotal: Line 79 amt. plus amt. on line 80 and/or 81 plus the amt. shown on any line from 82-91, inclusive**			$
93	**Reduction for demonstrated good faith of person charged**			$
94	**TOTAL PENALTY AMOUNT: amount on line 92 less any amount shown on line 93**			$

Figure: 16 TAC §14.2015(e)

Table 1. LNG Penalty Schedule Guidelines

LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
Tex. Nat. Res. Code, Chap. 116	Any violation of Chapter 116, Texas Natural Resources Code	$1,000-2,500
16 TAC §14.2016	License renewals lapse, 1-2 months	$500
16 TAC §14.2016	License renewals lapse, 3-4 months	$750
16 TAC §14.2016	License renewals lapse, 5-6 months	$1,000
16 TAC §14.2016	License renewals lapse, more than 6 months	$1,000-2,500
16 TAC §14.2019	Certification requirements	$500-1,500
16 TAC §14.2020	Employee transfer	$100
16 TAC §14.2025	Designation of outlet/operations supervisor	$500
16 TAC §14.2031	Insurance requirements	$1,000
16 TAC §14.2034	Self-insurance requirements	$1,000
16 TAC §14.2037	Components of LNG stationary installations not specifically covered	$1,000-1,500
16 TAC §14.2040	Stationary installation notification requirements LNG Form 2019: 1-5 occurrences	$100
16 TAC §14.2040	Stationary installation notification requirements LNG Form 2019: 6-10 occurrences	$200
16 TAC §14.2040	Stationary installation notification requirements LNG Form 2019: more than 10 occurrences	$500
16 TAC §14.2040	Stationary installation notification requirements: LNG Form 2500	$1,000
16 TAC §14.2043	Temporary installations	$250
16 TAC §14.2046	Filings for school bus, mass transit and special transit vehicles	$100-500
16 TAC §14.2049	Accident report	$1000
16 TAC §14.2101	Uniform protection requirements	$1,00-750
16 TAC §14.2104	Uniform safety requirements	$100-750
16 TAC §14.2107	Stationary LNG storage containers	$1000
16 TAC §14.2110	LNG container installation distance requirements	$750-1,500
16 TAC §14.2113	Maintenance tanks	$250-1,000
16 TAC §14.2116	Transfer of LNG	$250
16 TAC §14.2119	Transport vehicle loading and unloading facilities and procedures	$500-1,500
16 TAC §14.2122	Transfer systems	$250-1,000
16 TAC §14.2125	Hoses and arms	$250-750
16 TAC §14.2128	Communications and lighting	$500-750
16 TAC §14.2131	Fire protection	$750-1,500
16 TAC §14.2134	Container purging procedures	$250-1,000
16 TAC §14.2137	Employee safety and training	$500-1,500
16 TAC §14.2140	Inspection and maintenance	$250-1,000
16 TAC §14.2304	General facility design	$1,000
16 TAC §14.2307	Indoors fueling	$500-1,000
16 TAC §14.2307	Indoor fueling stations notice requirements: LNG Form 2500	$1,000
16 TAC §14.2310	Emergency refueling	$1,000

LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §14.2313	Fuel dispensing systems	$250-1,000
16 TAC §14.2319	Automatic fuel dispenser safety requirements	$250-1,000
16 TAC §14.2322	Protection of automatic and other dispensers	$750
16 TAC §14.2325	LNG transport unloading at fuel facilities	$500-1,500
16 TAC §14.2328	Training, written instructions and procedures	$100-1,000
16 TAC §14.2401	General provisions for piping systems and components	$1,000
16 TAC §14.2404	Piping materials	$250-1,000
16 TAC §14.2407	Fittings used in piping	$250-1,000
16 TAC §14.2410	Valves	$250-1,000
16 TAC §14.2413	Installation of piping	$250-1,000
16 TAC §14.2416	Installation of valves	$250-1,000
16 TAC §14.2419	Welding at piping installations	$1,000
16 TAC §14.2422	Pipe marking and identification	$100-500
16 TAC §14.2425	Pipe supports	$250
16 TAC §14.2428	Inspection and testing of piping	$1,000
16 TAC §14.2431	Welded pipe tests	$1,000
16 TAC §14.2434	Purging of piping systems	$250-750
16 TAC §14.2437	Pressure and relief valves in piping	$1,000
16 TAC §14.2440	Corrosion control	$750-1,500
16 TAC §14.2501	Liquid level gauging	$1,000
16 TAC §14.2504	Pressure gauges	$250-500
16 TAC §14.2507	Vacuum gauges	$250-500
16 TAC §14.2510	Emergency failsafe	$1,000
16 TAC §14.2513	Electrical equipment	$100-500
16 TAC §14.2516	Electrical grounding and bonding	$100-500
16 TAC §14.2604	Systems component qualification	$500
16 TAC §14.2607	Vehicle fuel containers	$100-1,000
16 TAC §14.2610	Installation of vehicle fuel containers	$100-750
16 TAC §14.2613	Engine fuel delivery equipment	$250-1,000
16 TAC §14.2616	Installation of venting systems and monitoring sensors	$250-750
16 TAC §14.2619	Installation of piping	$250-500
16 TAC §14.2622	Installation of valves	$250-500
16 TAC §14.2625	Installation of pressure gauges	$100-500
16 TAC §14.2628	Installation of pressure regulators	$500-1,000
16 TAC §14.2631	Wiring	$100
16 TAC §14.2634	Vehicle fueling connection	$500
16 TAC §14.2637	Signs and labeling	$100
16 TAC §14.2640	System testing	$1,000
16 TAC §14.2643	Maintenance and repair	$250-1,000
16 TAC §14.2701	DOT requirements	$1,000
16 TAC §14.2704	Registration and transfer of LNG transports	$500-1,500
16 TAC §14.2705	Decals or letter of authority and fees	$100
16 TAC §14.2707	Testing requirements	$1,000
16 TAC §14.2710	Markings	$250
16 TAC §14.2713	Pressure gauge	$100-500
16 TAC §14.2716	Supports	$1,000

LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range
16 TAC §14.2719	Electrical equipment and lighting	$100-500
16 TAC §14.2722	Liquid level gauging devices	$1,000
16 TAC §14.2725	Exhaust system	$100-250
16 TAC §14.2728	Extinguishers required	$100-250
16 TAC §14.2731	Manifests	$250
16 TAC §14.2734	Transfer of LNG on public highways, streets or alleys	$250-1,000
16 TAC §14.2737	Parking of LNG transports and container delivery vehicles	$250-500
16 TAC §14.2740	Uniform protection standards	$100-750
16 TAC §14.2746	Delivery of inspection report to licensee	$100
16 TAC §14.2749	Issuance of LNG Form 2004 decal	$500-1,500

Figure: 16 TAC §14.2015(f)

Table 2. LNG Penalty Enhancements

For violations that involve:	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Death or personal injury	$5,000 to $20,000	
Taking facility out of service	$1,000 to $5,000	
Gas ignition or release requiring emergency response	$1,000 to $15,000	
Damage to LNG installation or vehicle	$1,000 to $5,000	
Property damage exceeding $5,000	$1,000 to $15,000	
Rerouting of traffic or evacuation of premises	$1,000 to $5,000	
Time out of compliance		$100 to $2,000 for each month
Reckless conduct of person charged		Up to double the total penalty
Intentional conduct of person charged		Up to triple the total penalty

Figure 1: 16 TAC §14.2015(g)

Table 3. Penalty enhancements based on number of prior violations within seven years

Number of violations in the seven years prior to action	Enhancement amount
One	$1,000
Two	$2,000
Three	$3,000
Four	$4,000
Five or more	$5,000

Figure 2: 16 TAC §14.2015(g)

Table 4. Penalty enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	Enhancement amount
Less than $10,000	$1,000
Between $10,000 and $25,000	$2,500
Between $25,000 and $50,000	$5,000
Between $50,000 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §14.2015(k)

Table 5. LNG Penalty Worksheet

	LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
1	Tex. Nat. Res. Code, Chap. 116	Any violation of Chapter 116, Texas Natural Resources Code	$1,000-2,500	$
2	16 TAC §14.2016	License renewals lapse, 1-2 months	$500	$
3	16 TAC §14.2016	License renewals lapse, 3-4 months	$750	$
4	16 TAC §14.2016	License renewals lapse, 5-6 months	$1,000	$
5	16 TAC §14.2016	License renewals lapse, >6 months	$1,000-2,500	$
6	16 TAC §14.2019	Certification requirements	$500-1,500	$
7	16 TAC §14.2020	Employee transfer	$100	$
8	16 TAC §14.2025	Designation of outlet/operations supervisor	$500	$
9	16 TAC §14.2031	Insurance requirements	$1,000	$
10	16 TAC §14.2034	Self-insurance requirements	$1,000	$
11	16 TAC §14.2037	Components of LNG stationary installations not specifically covered	$1,000-1,500	$
12	16 TAC §14.2040	Stationary installation notification requirements: LNG Form 2019 -- 1-5 occurrences	$100	$
13	16 TAC §14.2040	Stationary installation notification requirements: LNG Form 2019 -- 6-10 occurrences	$200	$
14	16 TAC §14.2040	Stationary installation notification requirements: LNG Form 2019 -- >10 occurrences	$500	$
15	16 TAC §14.2040	Stationary installation notification requirements: LNG Form 2500	$1,000	$
16	16 TAC §14.2043	Temporary installations	$250	$
17	16 TAC §14.2046	Filings for school bus, mass transit and special transit vehicles	$100-500	$
18	16 TAC §14.2049	Accident report	$1000	$
19	16 TAC §14.2101	Uniform protection requirements	$1,00-750	$
20	16 TAC §14.2104	Uniform safety requirements	$100-750	$
21	16 TAC §14.2107	Stationary LNG storage containers	$1000	$
22	16 TAC §14.2110	LNG container installation distance requirements	$750-1,500	$
23	16 TAC §14.2113	Maintenance tanks	$250-1,000	$
24	16 TAC §14.2116	Transfer of LNG	$250	$
25	16 TAC §14.2119	Transport vehicle loading and unloading facilities and procedures	$500-1,500	$
26	16 TAC §14.2122	Transfer systems	$250-1,000	$
27	16 TAC §14.2125	Hoses and arms	$250-750	$
28	16 TAC §14.2128	Communications and lighting	$500-750	$
29	16 TAC §14.2131	Fire protection	$750-1,500	$
30	16 TAC §14.2134	Container purging procedures	$250-1,000	$
31	16 TAC §14.2137	Employee safety and training	$500-1,500	$
32	16 TAC §14.2140	Inspection and maintenance	$250-1,000	$
33	16 TAC §14.2304	General facility design	$1,000	$
34	16 TAC §14.2307	Indoors fueling	$500-1,000	$

	LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
35	16 TAC §14.2307	Indoor fueling stations notice requirements: LNG Form 2500	$1,000	$
36	16 TAC §14.2310	Emergency refueling	$1,000	$
37	16 TAC §14.2313	Fuel dispensing systems	$250-1,000	$
38	16 TAC §14.2319	Automatic fuel dispenser safety requirements	$250-1,000	$
39	16 TAC §14.2322	Protection of automatic and other dispensers	$750	$
40	16 TAC §14.2325	LNG transport unloading at fuel facilities	$500-1,500	$
41	16 TAC §14.2328	Training, written instructions and procedures	$100-1,000	$
42	16 TAC §14.2401	General provisions for piping systems and components	$1,000	$
43	16 TAC §14.2404	Piping materials	$250-1,000	$
44	16 TAC §14.2407	Fittings used in piping	$250-1,000	$
45	16 TAC §14.2410	Valves	$250-1,000	$
46	16 TAC §14.2413	Installation of piping	$250-1,000	$
47	16 TAC §14.2416	Installation of valves	$250-1,000	$
48	16 TAC §14.2419	Welding at piping installations	$1,000	$
49	16 TAC §14.2422	Pipe marking and identification	$100-500	$
50	16 TAC §14.2425	Pipe supports	$250	$
51	16 TAC §14.2428	Inspection and testing of piping	$1,000	$
52	16 TAC §14.2431	Welded pipe tests	$1,000	$
53	16 TAC §14.2434	Purging of piping systems	$250-750	$
54	16 TAC §14.2437	Pressure and relief valves in piping	$1,000	$
55	16 TAC §14.2440	Corrosion control	$750-1,500	$
56	16 TAC §14.2501	Liquid level gauging	$1,000	$
57	16 TAC §14.2504	Pressure gauges	$250-500	$
58	16 TAC §14.2507	Vacuum gauges	$250-500	$
59	16 TAC §14.2510	Emergency failsafe	$1,000	$
60	16 TAC §14.2513	Electrical equipment	$100-500	$
61	16 TAC §14.2516	Electrical grounding and bonding	$100-500	$
62	16 TAC §14.2604	Systems component qualification	$500	$
63	16 TAC §14.2607	Vehicle fuel containers	$100-1,000	$
64	16 TAC §14.2610	Installation of vehicle fuel containers	$100-750	$
65	16 TAC §14.2613	Engine fuel delivery equipment	$250-1,000	$
66	16 TAC §14.2616	Installation of venting systems and monitoring sensors	$250-750	$
67	16 TAC §14.2619	Installation of piping	$250-500	$
68	16 TAC §14.2622	Installation of valves	$250-500	$
69	16 TAC §14.2625	Installation of pressure gauges	$100-500	$
70	16 TAC §14.2628	Installation of pressure regulators	$500-1,000	$
71	16 TAC §14.2631	Wiring	$100	$
72	16 TAC §14.2634	Vehicle fueling connection	$500	$
73	16 TAC §14.2637	Signs and labeling	$100	$
74	16 TAC §14.2640	System testing	$1,000	$
75	16 TAC §14.2643	Maintenance and repair	$250-1,000	$
76	16 TAC §14.2701	DOT requirements	$1,000	$
77	16 TAC §14.2704	Registration and transfer of LNG transports	$500-1,500	$

	LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
78	16 TAC §14.2705	Decals or letter of authority and fees	$100	$
79	16 TAC §14.2707	Testing requirements	$1,000	$
80	16 TAC §14.2710	Markings	$250	$
81	16 TAC §14.2713	Pressure gauge	$100-500	$
82	16 TAC §14.2716	Supports	$1,000	$
83	16 TAC §14.2719	Electrical equipment and lighting	$100-500	$
84	16 TAC §14.2722	Liquid level gauging devices	$1,000	$
85	16 TAC §14.2725	Exhaust system	$100-250	$
86	16 TAC §14.2728	Extinguishers required	$100-250	$
87	16 TAC §14.2731	Manifests	$250	$
88	16 TAC §14.2734	Transfer of LNG on public highways, streets or alleys	$250-1,000	$
89	16 TAC §14.2737	Parking of LNG transports and container delivery vehicles	$250-500	$
90	16 TAC §14.2740	Uniform protection standards	$100-750	$
91	16 TAC §14.2746	Delivery of inspection report to licensee	$100	$
92	16 TAC §14.2749	Issuance of LNG Form 2004 decal	$500-1,500	$
93	**Subtotal of typical penalty amounts from Table 1 (lines 1-92, inclusive)**			$
94	**Reduction for settlement before hearing: up to 50% of line 92 amt.**			$
95	**Subtotal: amount shown on line 93 less applicable settlement reduction on line 94**			$
	Penalty enhancement amounts for threatened or actual safety hazard from Table 2			
96	Death or personal injury		$5,000-20,000	$
97	Taking facility out of service		$1,000-5,000	$
98	Gas ignition or release requiring emergency response		$1,000-15,000	$
99	Damage to LNG installation or vehicle		$1,000-5,000	$
100	Property damage exceeding $5,000		$1,000-$15,000	$
101	Rerouting of traffic or evacuation of premises		$1,000-5,000	$
	Penalty enhancement for severity of violation from Table 2			
102	Time out of compliance		$100-2,000/mo.	$
103	**Subtotal: amount shown on line 95 plus all amounts on lines 96 through 102, inclusive**			$
	Penalty enhancements for culpability of person charged from Table 2			
104	Reckless conduct of person charged		Up to double line 103	$
105	Intentional conduct of person charged		Up to triple line 103	$
	Penalty enhancements for number of prior violations within past seven years from Table 3			
106	One		$1,000	$
107	Two		$2,000	$
108	Three		$3,000	$
109	Four		$4,000	$
110	Five or more		$5,000	$
	Penalty enhancements for amount of penalties within past seven years from Table 4			
111	Less than $10,000		$1,000	$
112	Between $10,000 and $25,000		$2,500	$
113	Between $25,000 and $50,000		$5,000	$
114	Between $50,000 and $100,000		$10,000	$

	LNG Rule/Statute	General Description	Typical Minimum Penalty Amount/Range	Penalty Tally
115	Over $100,000		10% of total amt	$
116	**Subtotal: Line 103 amt. plus amt. on line 104 and/or 105 plus the amt. shown on any line from 106-116, inclusive**			$
117	**Reduction for demonstrated good faith of person charged**			$
118	**TOTAL PENALTY AMOUNT: amount on line 116 less any amount shown on line 117**			$

Figure: 16 TAC §18.12(e)

Table 1. Typical Penalties

Rule and violation	Guideline Penalty Amount
16 TAC §18.1-Failure to comply with Chapter 18	$2,000
16 TAC §18.3-Failure to notify notification center	$2,500
16 TAC §18.3-Failure to include method for positive response	$1,000
16 TAC §18.3-Failure to use white lining where appropriate	$1,000
16 TAC §18.3-Failure to conduct a required face-to-face meeting	$1,000
16 TAC §18.3; §18.9-Failure to establish sufficient protocols when required	$1,000
16 TAC §18.3-Failure to refresh an expired locate ticket	$1,000
16 TAC §18.4-Failure to plan excavation to avoid damage or take reasonable steps to protect pipelines	$1,000
16 TAC §18.4-Failure to wait the required time to excavate	$1,000
16 TAC §18.4-Failure to give second notice when required	$1,000
16 TAC §18.4-Failure to confirm valid locate ticket	$1,000
16 TAC §18.4-Failure to protect locate markings	$1,000
16 TAC §18.5-Failure to provide positive response on first or second notice	$1,000
16 TAC §18.5-Failure to keep record of positive response	$1,000
16 TAC §18.5; §18.11-Failure to notify of no positive response	$1,000
16 TAC §§18.6-18.8-Failure to mark excavation area or pipeline properly	$2,500
16 TAC §18.6-Failure to notify notification center for excavation activity after an emergency notice and the emergency condition ceased to exist	$1,000
16 TAC §18.9-Failure to record and/or retain protocol agreement	$1,000
16 TAC §18.10-Failure to excavate with reasonable care within Tolerance Zone	$2,500
16 TAC §18.11-Failure to submit a Texas Damage Reporting Form	$2,000
16 TAC §18.11-Failure of excavator to report pipeline damage to operator	$2,000

Figure: 16 TAC §18.12(f)

Table 2. Guideline Penalty Enhancements

For violations that involve:	Threatened or actual pollution	Threatened or actual safety hazard	Severity of violation or culpability of person charged
Bay estuary or marine habitat	$5,000 to $25,000		
Pollution resulting from the violation	$5,000 to $25,000		
Death or personal injury		$5,000 to $25,000	
Impact to a residential or public area		$5,000 to $25,000	
Reportable incident or accident		$5,000 to $25,000	
Any hazard to the health or safety of the public		$5,000 to $25,000	
The seriousness of the violation		$5,000 to $25,000	
Reckless conduct of person charged			Up to double the total penalty
Intentional conduct of person charged			Up to triple the total penalty

Figure 1: 16 TAC §18.12(g)

Table 3. Guideline penalty enhancements based on number of prior violations or warnings within seven years

Number of violations or warnings in the seven years prior to action	Guideline Enhancement Amount
One	Double penalty amount
More than two but fewer than five	Triple penalty amount
More than five but fewer than ten	Four times penalty amount
More than ten	Five times penalty amount

Figure 2: 16 TAC §18.12(g)

Table 4. Guideline penalty enhancements based on total amount of prior penalties within seven years

Total administrative penalties assessed in the seven years prior to action	**Guideline Enhancement amount**
Less than $10,000	$1,000
Between $10,001 and $25,000	$2,500
Between $25,001 and $50,000	$5,000
Between $50,001 and $100,000	$10,000
Over $100,000	10% of total amount

Figure: 16 TAC §18.12(k)

Table 5. Penalty calculation worksheet

	Violations from Table 1	Typical penalty amounts from Table 1	
1	16 TAC §18.1-Failure to comply with Chapter 18	$2,000	$
2	16 TAC §18.3-Failure to notify notification center	$2,500	$
3	16 TAC §18.3-Failure to include method for positive response	$1,000	$
4	16 TAC §18.3-Failure to use white lining where appropriate	$1,000	$
5	16 TAC §18.3-Failure to conduct a required face-to-face meeting	$1,000	$
6	16 TAC §18.3; §18.9-Failure to establish sufficient protocols when required	$1,000	$
7	16 TAC §18.3-Failure to refresh an expired locate ticket	$1,000	$
8	16 TAC §18.4-Failure to plan excavation to avoid damage or take reasonable steps to protect pipelines	$1,000	$
9	16 TAC §18.4-Failure to wait the required time to excavate	$1,000	$
10	16 TAC §18.4-Failure to give second notice when required	$1,000	$
11	16 TAC §18.4-Failure to confirm valid locate ticket	$1,000	$
12	16 TAC §18.4-Failure to protect locate markings	$1,000	$
13	16 TAC §18.5-Failure to provide positive response on first or second notice	$1,000	$
14	16 TAC §18.5-Failure to keep record of positive response	$1,000	$
15	16 TAC §18.5; §18.11-Failure to notify of no positive response	$1,000	$
16	16 TAC §§18.6-18.8-Failure to mark excavation area or pipeline properly	$2,500	$
17	16 TAC §18.6-Failure to notify notification center for excavation activity after an emergency notice and the emergency condition ceased to exist	$1,000	$
18	16 TAC §18.9-Failure to record and/or retain protocol agreement	$1,000	$
19	16 TAC §18.10-Failure to excavate with reasonable care within Tolerance Zone	$2,500	$
20	16 TAC §18.11-Failure to submit a Texas Damage Reporting Form	$2,000	$
21	16 TAC §18.11-Failure of excavator to report pipeline damage to operator	$2,000	$
22	**Subtotal of typical penalty amounts from Table 1 (lines 1-21, inclusive)**		$
23	**Reduction for settlement before hearing: up to 50% of line 22 amt.**	____ %	$
24	**Subtotal: amount shown on line 22 less applicable settlement reduction (line 23)**		$
	Penalty enhancement amounts for threatened or actual pollution or safety hazard from Table 2		
25	Bay or estuary or marine habitat	$5,000 to $25,000	$
26	Pollution resulting from the violation	$5,000 to $25,000	$
27	Death or personal injury	$5,000 to $25,000	$
28	Impact to a residential or public area	$5,000 to $25,000	$
29	Reportable incident or accident	$5,000 to $25,000	$
30	Any hazard to the health or safety of the public	$5,000 to $25,000	$
	Penalty enhancements for severity of violation from Table 2		
31	The seriousness of the violation	$5,000 to $25,000	$
32	**Subtotal: amount on line 24 plus all amounts on lines 25 through 31, inclusive**		$
	Penalty enhancements for culpability of person charged from Table 2		
33	Reckless conduct of person charged	double line 32 amt.	$
34	Intentional conduct of person charged	triple line 32 amt.	$
	Penalty enhancements for number of prior violations or warnings within past seven years from Table 3		
35	One	double line 32 amt.	$
36	More than two but fewer than five	triple line 32 amt.	$
37	More than five but fewer than ten	four times line 32 amt.	$

	Violations from Table 1	Typical penalty amounts from Table 1	
38	Ten or more	five times line 32 amt.	$
	Penalty enhancements for amount of penalties within past seven years from Table 4		
39	Less than $10,000	$1,000	$
40	Between $10,001 and $25,000	$2,500	$
41	Between $25,001 and $50,000	$5,000	$
42	Between $50,001 and $100,000	$10,000	$
43	Over $100,000	10% of total amt.	$
44	**Subtotal: line 32 plus the amount(s) on line 33 and/or 34 plus the amount shown on any one line from 35 through line 43, inclusive**		$
45	**Reduction for demonstrated good faith of person charged**		$
46	**TOTAL PENALTY AMOUNT: amount on line 44 less any amount shown on line 45**		$

Figure: 16 TAC §83.120(a)

PRIVATE AND PUBLIC POST-SECONDARY COSMETOLOGY SCHOOLS (1500 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Haircutting, styling and related theory	500 hours
(B)	Hair coloring and related theory	200 hours
(C)	Cold waving and related theory	200 hours
(D)	Orientation, rules and laws	100 hours
(E)	Manicuring and related theory	100 hours
(F)	Shampoo and related theory	100 hours
(G)	Chemistry	75 hours
(H)	Salon management and practices	75 hours
(I)	Hair and scalp treatment and related theory	50 hours
(J)	Chemical hair relaxing and related theory	50 hours
(K)	Facials and related theory	50 hours
PUBLIC SECONDARY PROGRAMS FOR HIGH SCHOOL STUDENTS (1000 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Haircutting, styling, and related theory	400 hours
(B)	Hair coloring and related theory	150 hours
(C)	Cold waving and related theory	100 hours
(D)	Manicuring and related theory	100 hours
(E)	Orientation, rules and laws	75 hours
(F)	Shampoo and related theory	75 hours
(G)	Chemical hair relaxing and related theory	50 hours
(H)	Facials and related theory	25 hours
(I)	Hair and scalp treatment and related theory	25 hours
CLASS A BARBER TO COSMETOLOGY OPERATOR (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Haircutting, styling and related theory	30 hours
(B)	Hair coloring and related theory	50 hours
(C)	Permanent waving including chemical hair relaxing and related theory	30 hours
(D)	Orientation, rules and laws	20 hours
(E)	Manicuring and related theory	50 hours
(F)	Shampoo and related theory	10 hours
(G)	Chemistry	20 hours
(H)	Salon management and practices	10 hours
(I)	Hair and scalp treatment and related theory	5 hours
(J)	Facials and related theory	75 hours

Figure: 16 TAC §83.120(b)

ESTHETICIAN CURRICULUM (750 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Facial treatment, cleansing, masking, therapy	225 hours
(B)	Anatomy and physiology	90 hours
(C)	Electricity, machines, and related equipment	75 hours
(D)	Makeup	75 hours
(E)	Orientation, rules and laws	50 hours
(F)	Chemistry	50 hours
(G)	Care of client	50 hours
(H)	Sanitation, safety, and first aid	40 hours
(I)	Management	35 hours
(J)	Superfluous hair removal	25 hours
(K)	Aroma therapy	15 hours
(L)	Nutrition	10 hours
(M)	Color psychology	10 hours
MANICURE CURRICULUM (600 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Procedures: basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products	320 hours
(B)	Bacteriology, sanitation and safety: definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons	100 hours
(C)	Professional practices: manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations	80 hours
(D)	Arms and hands: major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases	70 hours
(E)	Orientation, rules, laws and preparation	15 hours
(F)	Equipment, implements and supplies	15 hours
ESTHETICIAN/MANICURE CURRICULUM (1200 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Orientation, rules, laws and preparation (F and M)	30 hours
(B)	Electricity, machines, related equipment, implements and supplies (F and M)	90 hours
(C)	Facial treatment, cleansing, masking, therapy (F)	215 hours

(D)	Procedures: basic manicure and pedicure, oil manicure, removal of stains, repair work, hand and arm massage, buffing, application of polish, application of artificial nails, application of cosmetic fingernails, preparation to build new nail, and application of nail extensions, sculptured nails, tips, wraps, fiberglass/gels and odorless products (M)	310 hours
(E)	Anatomy and physiology (F)	50 hours
(F)	Arms and hands: major bones and functions, major muscles and functions, major nerves and functions, skin structure, functions, appendages, conditions and lesions, nails structure, composition, growth, regeneration, irregularities and diseases (M)	50 hours
(G)	Makeup (F)	75 hours
(H)	Chemistry (F)	30 hours
(I)	Sanitation, safety, and first aid (F)	40 hours
(J)	Care of client (F)	50 hours
(K)	Management (F)	20 hours
(L)	Superfluous hair removal (F)	25 hours
(M)	Aroma therapy (F)	15 hours
(N)	Nutrition (F)	10 hours
(O)	Color psychology (F)	10 hours
(P)	Bacteriology, sanitation and safety: definitions, importance, rules, laws, methods, safety measures, hazardous chemicals and ventilation odor in salons (M)	100 hours
(Q)	Professional practices: manicuring as a profession, vocabulary, ethics, salon procedures, hygiene and grooming, professional attitudes, salesmanship and public relations (M)	80 hours
EYELASH EXTENSION CURRICULUM (320 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Orientation, rules and law	10 hours
(B)	First aid and adverse reactions	15 hours
(C)	Sanitation and contagious diseases	20 hours
(D)	Safety and client protection	10 hours
(E)	Eyelash growth cycles and selection	20 hours
(F)	Chemistry of products	5 hours
(G)	Supplies, materials and related equipment	10 hours
(H)	Eyelash extension application	190 hours
(I)	Eyelash extension isolation and separation	15 hours
(J)	Eye shapes	15 hours
(K)	Professional image/salon management	10 hours

HAIR BRAIDING CURRICULUM (35 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Hair Braiding - Technical Skills: (i) tools and equipment: types of combs, yarn, thread (ii) types and patterns of braids: twists, knots, multiple strands, corn rows, hair locking (iii) artificial hair and materials for extensions (iv) trimming of artificial hair only as applicable to the braiding process (v) braid removal and scalp care (vi) client education: maintenance	11 hours
(B)	Health and Safety/Law and Rules: (i) Texas health and safety law and rules (ii) bacteriology: sanitation, and disinfection (iii) viruses, diseases, disorders: transmission, control, recognition (iv) Texas license requirements - individuals and salons (v) Texas professional responsibility requirements - individuals and salons (vi) Texas Occupations Code, Chapters 1602 and 1603 (laws) (vii) 16 Texas Administrative Code Chapter 83 (rules)	16 hours
(C)	Hair Analysis and Scalp Care: (i) hair and scalp disorders and diseases: dandruff, alopecia, fungal infections, infestations, infections (ii) hair structure, composition, texture (iii) hair growth patterns, styles, textures (iv) effect of physical treatments on the hair	8 hours
HAIR WEAVING CURRICULUM (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Hair weaving: basic hair weaving, repair on hair weaving, removal of weft, sizing and finishing by hand of hair ends or by using mechanical equipment	150 hours
(B)	Shampooing client, weft and extensions: basic shampooing, basic conditioners, semi-permanent and weakly rinses, basic hair drying, draping	50 hours
(C)	Professional practices: hair weaving as a profession, vocabulary, ethics, salon procedures, hygiene, grooming, professional attitudes, salesmanship, public relations, hair weaving/braiding skills, including purpose, effect, equipment, implements, supplies, and preparation	40 hours
(D)	Anatomy and physiology-scalp: major bones and functions, major muscles and functions, major nerves and functions, skin structures, functions, appendages, conditions and lesions, hair or fiber used, structure, composition, hair regularities, hair and scalp diseases	30 hours
(E)	Chemistry in hair weaving: elements, compounds, and mixtures, composition and uses of cosmetics in hair weaving	10 hours
(F)	Sanitation and safety measures: definitions, importance, sanitary rules and laws, sterilization methods of unused hair and fiber droppings	10 hours
(G)	Safety measures: client protection	10 hours
WIG CURRICULUM (300 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Combing out	50 hours
(B)	Styling	50 hours

(C)	Coloring, tinting, bleaching	37 hours
(D)	Rolling	30 hours
(E)	Cutting and shaping, scissors and razor	20 hours
(F)	Hot iron	19 hours
(G)	Cleaning	10 hours
(H)	Alterations, installation of elastic	10 hours
(I)	Conditioning	10 hours
(J)	Brushing technique prior to styling	10 hours
(K)	Identification and recognition definition-wigs, wiggery, wigology-pertaining to any human, synthetic, or animal hairpiece	10 hours
(L)	Sanitation, disinfecting, required rules and laws	10 hours
(M)	Eye tabbing	10 hours
(N)	Sizing	5 hours
(O)	Drying	5 hours
(P)	Measuring head for proper size	5 hours
(Q)	Preparation of wig on block	5 hours
(R)	History, background, and salesmanship	3 hours
(S)	Knowledge of coloring: J L	1 hour
SHAMPOO AND CONDITIONING CURRICULUM (150 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Procedures: basic shampooing techniques on all types of shampoo, application and removal of all types of conditioners, removal of hair color stains; application of weekly rinses or semi-permanent rinses, removal of bleaches requiring shampoo, scalp and neck massage, removing hair tints requiring shampoo, cleansing and conditioning of all hair goods, hair and scalp analysis, and scalp and hair manipulations	100 hours
(B)	Scalp and neck, anatomy and physiology: major bones and functions; major muscles and functions, major nerves and functions, major blood vessels and functions, skin structure, functions, appendages, conditions and lesions	10 hours
(C)	Chemistry of shampoo and conditioner: elements, compounds, mixtures, acid and alkali (pH), chemistry of water, composition and uses of shampoo and conditioner	10 hours
(D)	Sanitation and safety: definitions, rules, laws, and methods	10 hours
(E)	Shampooing and conditioning skills: purposes and effects, preparation, equipment, implements and supplies	10 hours
(F)	Professional practices: shampooing as a profession, vocabulary and ethics	5 hours
(G)	Salon procedures: hygiene, grooming, professional attitudes, salesmanship and public relations	5 hours

Figure: 16 TAC §83.120(c)

COSMETOLOGY INSTRUCTOR (750 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Lesson plans	140 hours
(B)	Methods of teaching	180 hours
(C)	Classroom management	90 hours
(D)	Evaluation techniques	90 hours
(E)	State laws and forms	60 hours
(F)	Visual aids preparation and use	60 hours
(G)	Learning theory	100 hours
(H)	Orientation, rules, and laws	30 hours
COSMETOLOGY INSTRUCTOR WITH ONE YEAR EXPERIENCE (500 CLOCK HOURS OR EQUIVALENT CREDIT HOURS)		
(A)	Lesson plans	90 hours
(B)	Methods of teaching	120 hours
(C)	Classroom management	60 hours
(D)	Evaluation techniques	60 hours
(E)	State laws and forms	40 hours
(F)	Visual aids preparation and use	40 hours
(G)	Learning theory	70 hours
(H)	Orientation, rules, and laws	20 hours

Figure 1: 30 TAC Chapter 60--Preamble

Existing Formula for Site Ratings

$$\left[\frac{\text{(Violation Points)} + \text{(Chronic Excessive Emissions Events Points)} + \text{(Repeat Violator Points)} - \text{(Self-Audit Points)}}{\text{(Investigations + 1)}}\right] \times \text{(0.9 for Environmental Management System)}$$

Figure 2: 30 TAC Chapter 60--Preamble

Proposed Formula for Site Ratings

$$\frac{\text{(Violation Points) + (Chronic Excessive Emissions Events Points) + (Repeat Violator Points) - (Self-Audit Points)}}{\text{(No. of Investigations x 0.1) + (Complexity Points)}} \times \text{(Voluntary Program Points)}$$

Figure 3: 30 TAC Chapter 60--Preamble

$$\text{Site \#1 Compliance History Rating} \times \frac{\text{Complexity Points for Site \#1}}{\text{Sum of all complexity points for all sites associated to the person}}$$

Figure: 43 TAC §207.4(a)

Service Rendered	Charge
Standard-size paper copies (up to 8 1/2 inches x 14 inches)	$ .10 per page (Each side that has recorded information is considered a single page)
Paper copies produced on high-resolution color copier	$ .65 per page (Each side that has recorded information is considered a single page)
Charges for certified copies	Charges as applicable, plus $1.00 for sealed certification page
Nonstandard-size paper copy	$ .50 per page
Paper copy from microfilm or microfiche: standard size	$ .10 per page
Specialty paper/media (e.g.: Mylar blueline, blueprint, continuous or roll plot)	Actual cost
Duplicate forms: --microfilm roll, 16mm --microfilm roll, 35mm --microfiche --microfilm jackets	Actual cost (current Texas State Library charge; contact the department for cost and assistance).
Photographic prints	Actual cost
Diskettes	$1.00 each
Computer magnetic tape	Actual cost
Data cartridge	Actual cost
Tape cartridge	Actual cost
Rewritable CD (CD-RW)	$1.00 each
Non-rewritable CD (CD-R)	$1.00 each
Digital video disc	$3.00 each
JAZ drive	Actual cost
Other electronic media	Actual cost
VHS video cassette	$2.50 each
Audio cassette	$1.00 each
Other, including miscellaneous supplies, postage and shipping	Actual cost
Remote document retrieval charges	Actual cost
Computer resource charge (mainframe; prorated to actual time used; charges not assessed for printout time)	$10.00 per CPU minute
Computer resource charge (mid-size/mini; prorated to actual time used; charges not assessed for printout time)	$1.50 per CPU minute
Computer resource charge (client/server; prorated to actual time used; charges not assessed for printout time)	$2.20 per clock hour
Computer resource charge (PC or LAN prorated to actual time used; charges not assessed for printout time)	$1.00 per clock hour
Programming (time charge; to be prorated to actual time used)	$28.50 per clock hour
Outside/Contracted Services	Actual Cost

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.

Texas Department of Agriculture

2012 Handling and Marketing of Perishable Commodities Administrative Penalty and Sanction Matrix and Enforcement Guidelines

The Texas Legislature, under Chapters 101 and 103 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and regulate the handling and marketing of perishable commodities. The department's regulatory goals are to provide consumers and businesses with a fair and efficient trade environment, to encourage business development, and to inspire consumer confidence. To achieve these goals, the department enforces a variety of handling and marketing standards, specifications, prohibitions, or other requirements through routine and risk-based inspection programs, complaint investigations, and other regulatory activities involving those licensed or required to be licensed under the Handling and Marketing of Perishable Commodities.

In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties under Chapters 101 and 103 can be as high as $500 per violation. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapters 101 and 103 and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily imposed maximum of $5,000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each transaction may be considered a separate violation and, under certain circumstances, each document involved in a transaction also may be considered a separate violation. Given the wide variety of possible perishable commodities transactions, the department cannot describe all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Handling and Marketing of Perishable Commodities Guidelines, including the Handling and Marketing of Perishable Commodities Penalty and Sanction Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapters 101 and 103 of the Code and rules adopted under those chapters, as found in Chapter 14 of Title 4 of the Texas Administrative Code (4 TAC Chapter 14). These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapters 101 and 103 and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapters 101 and 103 and the rules adopted under the authority of those chapters are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 101 or 103 provision or applicable rule.

2. The prescribed penalties in the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 101 or 103 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for any violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

3. The penalties in the matrix, for all offenses, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future

noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or a different location. For many violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a particular entity has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation. A violation is a prior violation only if an alleged violation resulted in an order finding that a violation in fact occurred or if an entity has agreed, in a no-contest plea regarding a prior alleged violation, that the prior alleged violation would operate in the future as a prior violation for purposes of department penalty determinations.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Handling and Marketing of Perishable Commodities Administrative Penalty Matrix as published in the January 21, 2000, issue of the *Texas Register* (25 TexReg 425) for those violations committed on or after the date of its publication.

For purposes of these guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

Handling and Marketing of Perishable Commodities Administrative Penalty and Sanction Matrix

Source Law	Violation	First Offense - Penalty Description	Subsequent Offenses[4] - Penalty Description
§101.003(a, c)[1] §101.004[1] §14.2[3] §101.020(1)[1]	Purchasing perishable commodities without a license as owner, agent, or otherwise and not obtaining a license by the 30th day after date of first purchase of perishable commodities.	$1,000	$2,500
§101.005[1]	Failure to truthfully and accurately provide required information on application.	$500	$1,000
§101.010(d)[1]	Failure to carry or display an identification card at all times when transporting and/or buying perishable commodities for a license holder.	$500	$1,000
§101.012(b)(1-3)[1]	Failure to adhere to license or identification card suspension or revocation guidelines.	$2,500	$5,000
§101.013(a)[1] §101.013(c)[1]	Failure to remit payment of purchase price on demand or to pay full amount specified in a contract before the 31st day following day of delivery of a perishable commodity (unless contract specifies otherwise).	$1,000	$2,000
§101.014[1]	Failure to include in contract with producer the maximum amount that the licensee or person required to be licensed will charge for commission or service (if licensee guarantees producer a minimum price).	$500	$1,000
§101.016(b)[1] §101.016(a)(1 - 5)[1] §101.016(c)[1] §101.017(a)(1 - 4)[1] §101.017(c)[1]	Failure to maintain complete and accurate records for three years from date of sale.	$1,000	$2,000
§101.017(b)[1] §101.020(a)(4)[1]	Failure to provide records of sale demanded by the department, owner, seller, or agent of the owner or seller, before the 11th day following the date of demand.	$1,000	$2,000
§101.018(b - d)[1]	Refusal to provide records.	$1,000 for each day the person refuses to provide records.	$2,000 for each day the person refuses to provide records.
§103.009(c)[2] §14.4[3] §14.14[3]	Failure to reimburse the Produce Recovery Fund or producer as specified by the department or the Board.	$5,000 and license revocation.	$5,000

§103.013[2] §14.3(b)[3]	Failure to pay produce recovery fund fee.	200% of required fee plus $350 or Payment of the required fee and a two-year probation with a deferred penalty[4] of 100% of the required fee plus $350	200% of the required fee plus $1,000 multiplied by the number of previous violations within the continuous five-year period immediately preceding the date of the current violation, not to exceed $5,000.
Various	Failure to comply with any requirement (of Chapters 101 and 103, Texas Agriculture Code, or department rules adopted under the authority of those chapters) that is not expressly described in this matrix.	$100 - $1,000	$500 - $5,000

[1] Texas Agriculture Code, Chapter 101, Handling and Marketing of Perishable Commodities
[2] Texas Agriculture Code, Chapter 103, Handling and Marketing of Perishable Commodities
[3] Texas Administrative Code, Title 4, Chapter 14, Handling and Marketing of Perishable Commodities
[4] The department will evaluate whether a current violation is considered to be a "subsequent offense" by consulting the continuous five-year period immediately preceding the date on which the current violation occurred, or if that date is uncertain the first date on which the violation was discovered by the department, for an order finding that a similar violation was committed by the respondent. The penalty for a subsequent offense will be assessed if the department has issued an order within the aforementioned period of time that found the respondent had committed a similar violation or that approved a no-contest plea to the same or a similar violation. The current violation occurs on the date the respondent failed to comply with the law, including a department order, of if that date is uncertain the first date on which the violation was discovered by the department. A continuous current violation that occurs during a period of consecutive days occurs on any or all days during that period and the department may use the first day, the last day, or any other day, or all days of, within or during that period for purposes of determining when the current violation occurred and the number of individual penalties to assess.

TRD-201200456
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: January 30, 2012

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2012 Nursery/Floral Administrative Penalty and Sanction Matrix and Enforcement Guidelines

The Texas Legislature, under Chapter 71, Subchapter B of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to register, monitor and inspect all nursery/floral establishments in the State of Texas. The department's regulatory goal is to ensure that all nursery products and floral items sold in Texas are pest and disease free. To achieve these goals, the department enforces a variety of nursery/floral standards or other requirements through registration requirements, routine and risk-based inspection programs, complaint investigations, and other regulatory activities.

The department exercises its regulatory authority through administrative actions, including stop sale orders, inspections, and by direct enforcement with monetary administrative penalties or licensing sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative actions, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative or direct enforcement action by the department. Civil penalties under Chapter 71, Subchapter B can be as high as $1,000 per violation.

The department's authority to assess administrative penalties for enforcement of Chapter 71, Subchapter B and associated rules is found in §12.020 of the Code. Administrative penalties can range up to a statutorily imposed maximum of $5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment.

The department publishes these Nursery/Floral Enforcement Guidelines, including the Nursery/Floral Administrative Penalty Matrix, to inform the regulated public regarding the department's enforcement policies. These guidelines describe in general terms the most likely consequences of noncompliance with Chapter 71, Subchapter B of the Code and rules adopted under that chapter, as found in 4 TAC Chapter 22. These guidelines and penalty matrix have been developed to encourage consistent, uniform, and fair assessments of penalties by the department's enforcement staff for violations of the aforementioned statutes and rules.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as other factors, will vary little from case to case for the violations listed herein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by the factors and circumstances for a particular violator and violation that may warrant deviation from the prescribed penalty. In extraordinary circumstances, outside the general principles defining these basic guidelines, the penalties set forth in the matrix may be adjusted significantly upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely reply to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 71, Subchapter B and associated rules are as follows:

1. Standards, prohibitions, duties, or other requirements of Chapter 71, Subchapter B and rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying provisions or applicable rules.

2. Prescribed penalties in the first-offense column of the matrix are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 71 standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Unless the matrix provision expressly states a penalty is to be assessed only upon proof the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

3. Penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

4. Because the penalties in the matrix are for presumed noncompliant conduct, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates the misconduct was knowing, intentional, has caused or will cause significant harm to economic interests of Texas, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed

to have acted with intent when committing subsequent violations of the same or similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or different location. For some violations the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating the misconduct was knowing, intentional, has caused or will cause significant harm to economic interests of Texas, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began in the case of a continuing violation occurring over a number of consecutive days, or any date within the period of consecutive days constituting a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a particular entity has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation to determine whether an order was issued finding that the entity committed the same or similar violation or approving a no-contest plea by the entity regarding such a violation. If such an order is found, then a prior violation exists.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any such penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing or negotiate a settlement with the department's enforcement staff that addresses the respondent's objections.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an approved settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision shall prevent the department from adopting policies that provide for no penalty, waiver of a penalty, or reduction of a penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or after the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Nursery/Floral Administrative Penalty Matrix as previously published in the August 16, 1996, issue of the *Texas Register* (21 TexReg 7753) for those violations committed on or after the date this matrix is published.

For purposes of these guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

Nursery/Floral Administrative Penalty and Sanction Matrix

Statutory Citation	Violation	First Offense	Subsequent Offense[4]
§71.043[1] §22.2[2]	Failure to register a nursery/floral location with the department.[3]	$1,000	$2,500
§71.043[1] §22.2[2] §22.3[2]	Failure to register a nursery/floral location as the proper classification before the end of a 30-day penalty-free period beginning the day after a person is notified by the department that the location is not registered correctly.[3]	$1,000	$2,500
§71.043[1] §22.2[2]	Operating with a Nursery/Floral Certificate of Registration that is expired by a time period less than one year.[3]	$250	$500
§71.043[1] §22.2[2]	Operating with a Nursery/Floral Certificate of Registration that is expired by a time period of one year or more.[3]	$2,500	$5,000
§71.055[1] §22.5[2]	Falsification of a Nursery/Floral Certificate of Registration Application.	$2,500	$5,000
§71.042[1] §22.2[2]	Failure to display Nursery/Floral Certificate of Registration at place of operation.	$250	$500
§71.060[1] §22.4[2]	Failure to comply with a stop-sale or department order.	$2,500	$5,000
§71.044[1]	Failure or refusal to permit an inspection of a nursery/floral location by the department.	$1,000 for each day during which the person refuses an inspection. $250 for each day during which the person fails to permit an inspection.	$2,500 for each day during which the person refuses an inspection. $500 for each day during which the person fails to permit an inspection.

[1] Texas Agriculture Code, Chapter 71, General Control, Subchapter B.
[2] Texas Administrative Code, Title 4, Chapter 22.
[3] Penalty is in addition to any registration or late fees due.
[4] The department will evaluate whether a prior violation has occurred by consulting the continuous five-year period immediately preceding the date on which the current violation occurred or if that date is uncertain the first date on which the violation was discovered by the department. The penalty for a subsequent occurrence will be assessed if the respondent has had one or more prior violations, as determined by a department final order, which occurred within the aforementioned period of time. A violation occurs on the date the respondent failed to comply with the law or a department order or, if that date is uncertain, the first date on which the violation was discovered by the department. A continuous violation occurring over numerous consecutive days occurs on any or all days during that period. The department may use the first day, the last day, any other day, or all days of, within, or during that period of time for the purpose of determining when the violation occurred and the number of individual penalties to assess.

TRD-201200457
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: January 30, 2012

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2012 Quarantine Administrative Penalty Matrix and Enforcement Guidelines

The Texas Legislature, under Chapters 71 and 73 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and inspect for quarantined articles in this state. The department's regulatory goal is to prevent the introduction or spread of economically dangerous plant pests and diseases into or within the State of Texas by controlling and preventing the movement of such pests and diseases, or articles known to be infested or infected with such pests and diseases, from quarantined in-state and out-of-state areas to pest-free areas of the state. To achieve these goals, the department enforces a variety of quarantine and phytosanitary standards, prohibitions, or other requirements through routine and risk-based inspection programs, complaint investigations, and other regulatory activities.

The department exercises its regulatory authority through administrative actions, including seizures of quarantined articles, and by direct enforcement with monetary administrative penalties or licensing sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative actions, the matter may be referred to the Office of the Attorney General for assessment of civil penalties or to a local district or county attorney for assessment of civil penalties, criminal prosecution, or both. Civil penalties or criminal prosecution may be pursued instead of or in addition to any administrative or direct enforcement action by the department. Civil penalties under Chapters 71 and 73 of the Code can be as high as $10,000 per violation.

The department's authority to assess administrative penalties for enforcement of Chapters 71 and 73 of the Code and associated rules is found in §12.020 of the Code. Administrative penalties can range up to a statutorily imposed maximum of $5,000 for each violation. Each day a violation continues or occurs may be considered a separate violation for purposes of penalty assessment. The department publishes these Quarantine Enforcement Guidelines, including the Quarantine Administrative Penalty Matrix, to inform the regulated public regarding the department's enforcement policies. These guidelines describe in general terms the most likely consequences of noncompliance with Chapter 71 and 73 of the Code and rules adopted under that chapter, as found in 4 TAC Chapter 19 and Chapter 21, Subchapter A. These guidelines and penalty matrix have been developed to encourage consistent, uniform, and fair assessments of penalties by the department's enforcement staff for violations of the aforementioned statutes and rules.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as wells as other factors, will vary little from case to case for the violations listed herein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by the factors and circumstances for a particular violator and violation that may warrant deviation from the prescribed penalty. In extraordinary circumstances, outside the general principles defining these basic guidelines, the penalties set forth in the matrix may be adjusted significantly upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or, which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapters 71 and 73 of the Code and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapters 71 and 73 of the Code and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying provisions or applicable rules.

2. The prescribed penalties in the first-offense column of the matrix are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 71 or Chapter 73 of the Code standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Unless the matrix provision expressly states a penalty is to be assessed only upon proof the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant harm to economic interests of Texas, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity at the same or a different location. For some violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant harm to economic interests of Texas, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began in the case of a continuing violation occurring over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances.

If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a particular entity has a prior violation, the department will review the five-year time period immediately preced-

ing the date of the current violation to determine whether an order was issued finding that the entity committed the same or a similar violation or approving a no-contest plea by the entity regarding such a violation. If such an order is found, then a prior violation exists.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any such penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing or negotiate a settlement with the department's enforcement staff that addresses the respondent's objections.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an approved settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

10. The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty, waiver of a penalty, or reduction of a penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or after the end of a specific time period following publication.

This matrix is effective immediately upon publication in the *Texas Register* and supersedes the Quarantine Administrative Penalty Matrix as previously published in the April 3, 1998, issue of the *Texas Register* (23 TexReg 3593) for those violations committed on or after the date this matrix is published.

For purposes of these guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

Quarantine Administrative Penalty Matrix

Statutory Citation[1,2]		Violation[3]	First Offense	Subsequent Offense[4]
§71.005 §71.050 §71.051 §71.053 §71.152 §71.009 §71.0091 §71.0092 §73.005 §73.006	4 TAC Ch. 19 4 TAC §21.5 4 TAC §21.6 4 TAC §21.8 4 TAC §21.9	Illegal possession or movement of Quarantined articles.	Base penalty of $250 plus $250 per increment of 100 articles.	Base penalty of $2,000 plus $1,000 per increment of 100 articles.
§71.009 §71.0091 §71.0092 §71.152 §71.110 §73.005 §73.006	4 TAC Ch. 19	Presence of a quarantined pest or disease associated with the illegal movement of articles.	$1,000	$5,000
§71.009 §71.0091 §71.0092 §71.110		Failure to comply with a seizure or department order.	$2,500	$5,000
§71.005 §71.113	4 TAC §19.2 4 TAC §19.7	Failure to perform according to the terms of a compliance agreement.	$2,500[5]	$5,000[5]
§71.044 §71.050 §71.051 §73.006	4 TAC §19.2 4 TAC §19.7 4 TAC §21.9	Falsification of a document or using an invalid certificate.	$2,500	$5,000
§71.115 §73.006	4 TAC §19.6 4 TAC §21.8	Failure to comply with labeling requirements.	Base penalty of $250 plus $250 per increment of 100 articles.	Base penalty of $2,000 plus $1,000 per increment of 100 articles.
	4 TAC §21.9	Failure to maintain required documentation.	$500	$2,000
§71.044 §73.006	4 TAC §21.9	Failure to provide documentation.	$2,500	$5,000
§71.044 §71.053	4 TAC §19.2	Refusal of an inspection.	$2,500	$5,000

[1]Texas Agriculture Code, Chapter 71, General Control and Chapter 73, Citrus Diseases and Pests.
[2]Texas Administrative Code, Title 4, Chapter 19 and Chapter 21, Subchapter A.
[3]All quarantined articles in question are subject to seizure. Articles under a seizure order may then be detained, treated, destroyed or returned to point of origin.
[4]The department will evaluate whether a prior violation has occurred by consulting the continuous five-year period immediately preceding the date on which the current violation occurred or if that date is uncertain the first date on which the violation was discovered by the department. The penalty for a subsequent occurrence will be assessed if the respondent has had one or more prior violations, as determined by a department final order, which occurred within the aforementioned period of time. A violation occurs on the date the respondent failed to comply with the law or a department order or, if that date is uncertain, the first date on which the violation was discovered by the department. A continuous violation occurring over numerous consecutive days occurs on any or all days during that period. The department may use the first day, the last day, any other day, or all days of, within, or during that period of time for the purpose of determining when the violation occurred and the number of individual penalties to assess.
[5]Compliance agreements are additionally subject to revocation when failing to perform according to the terms of said agreements.

TRD-201200473
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: January 31, 2012

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2012 Seed Administrative Penalty Matrix and Seed Labeling Enforcement Guidelines

The Texas Legislature, under Chapter 61 of the Texas Agriculture Code (Code), has given the Texas Department of Agriculture (the department) the authority and responsibility to monitor and regulate the inspection, labeling, and sale of agricultural and vegetable seed in this state. The department's regulatory goals are to provide con-

sumers and businesses with a fair and efficient trade environment, to encourage business development, and to inspire consumer confidence. To achieve these goals, the department enforces seed labeling requirements through routine and risk-based inspection programs, complaint investigations, seed analysis, and other regulatory activities involving sellers, labelers, producers, and purchasers of agricultural and vegetable seed.

Department enforcement occurs through administrative actions, including stop-sales, and by direct enforcement with monetary administrative penalties or license sanctions. In instances of serious fraud, widespread deliberate violation of the law, or repeat offenders who have failed to be deterred through administrative action, the matter may be referred to a local district or county attorney for criminal prosecution. Criminal prosecution may be pursued instead of or in addition to any administrative action.

The department's authority to assess administrative penalties for the enforcement of Chapter 61 of the Code and associated rules is found in §12.020 of the Code. Such penalties can range up to a statutorily imposed maximum of $5000 for each violation. Each day that a violation continues or occurs may be considered a separate violation. Each sale may be considered a separate violation and each label component will be considered a separate violation. Given the wide variety of possible seed labeling issues, the department cannot describe all possible circumstances that would constitute a separate violation for which the maximum penalty may be assessed.

The department publishes these Seed Labeling Enforcement Guidelines, including the Seed Administrative Penalty Matrix, to inform the regulated public about the department's enforcement policies. These guidelines describe in general the most likely consequences of noncompliance with Chapter 61 of the Code and rules adopted under that chapter, as found in 4 TAC Chapter 9. These guidelines and the matrix have been developed to encourage consistent, uniform, and fair assessment of penalties by the department's enforcement staff for violations of the aforementioned statutory and rule provisions.

These guidelines do not constitute a policy or rule of general applicability. Under §12.020(d) of the Code, all penalties assessed by the department ultimately must be individualized to the specific nature, circumstances, extent, and gravity (NCEG) and the hazard or potential hazard (HPH) of the violation, and must take into account other factors related to the violation or violator listed in the aforementioned subsection when appropriate. Although the department has determined that in general the NCEG and HPH of the violations described in the matrix, as well as any other factors, will vary little from case to case for the violations listed therein, thus establishing a prescribed penalty for each such violation type, the actual penalty amount to be assessed in a particular case remains within the department's prosecutorial discretion. That discretion will be informed by those factors and circumstances for a particular violator and violation that might warrant deviation from the prescribed penalty. Thus, in extraordinary circumstances outside the general principles that inform these basic guidelines, the penalties set forth in the matrix may be adjusted upwards or downwards as justice may require.

The department's enforcement staff is authorized to settle disputed claims or address unusual or extraordinary circumstances informally through penalty reductions, probationary periods, deferred penalties, remedial actions in lieu of penalties, or by other appropriate lawful means, at their discretion and subject to approval of the Commissioner or Deputy Commissioner of Agriculture. **The department encourages all respondents to timely respond to notices of violation or other enforcement actions and to submit any information believed to mitigate or negate the alleged violation or which would, as justice requires, warrant reduction or waiver of the penalty. The department's enforcement staff will consider all relevant and responsive information, claims, or contentions submitted in response to an enforcement action before further legal action is taken to enforce the assessed penalty.**

The general principles incorporated into these guidelines, including the matrix, and the department's enforcement responses to violations of Chapter 61 of the Code and associated rules are as follows:

1. The standards, prohibitions, duties, or other requirements of Chapter 61 of the Code and the rules adopted under the authority of that chapter are considered strict liability laws, unless intent or knowledge is expressly required by the underlying Chapter 61 of the Code provision or applicable rule.

2. The prescribed penalties in the first-occurrence column of the matrix, therefore, are generally the minimum penalties to be assessed for unintentional or unknowing noncompliance with a Chapter 61 of the Code standard, prohibition, duty, or other requirement. In other words, the department has presumed in determining the amount of the penalty for a first violation, unless otherwise expressly noted, that the noncompliant person acted without intent or knowledge in violating the law. Thus, unless the matrix provision expressly states that a penalty is to be assessed only upon proof that the violation was intentional or knowing, a claim that the noncompliant actor did not intend to commit or did not know they were committing a violation is not a defense and does not constitute a circumstance for which a penalty in this matrix may be reduced or waived.

3. The penalties in the matrix, for all offense levels, also assume no significant, specific, identifiable harm has occurred as the result of the noncompliant conduct. A primary goal of regulation is to deter conduct that may cause harm before harm actually occurs. Thus, conduct that may cause harm will be punished, even when no harm has in fact occurred or cannot be shown to have occurred, in order to deter future noncompliance that may or would result in harm. Regulatory systems are intended to be proactive, not reactive.

4. Because the penalties in the matrix are for noncompliant conduct that is presumed, in the absence of evidence to the contrary, not intentional or knowing and for which no significant, specific, identifiable harm has occurred, the department may, as justice requires, assess penalties greater than specified in the matrix, bound only by the statutory limit, when the evidence demonstrates that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law. The amount of any increase in the penalty will be determined by considering the nature of the intent or knowledge, the amount and nature of the harm, the need for deterrence, and any other relevant factor.

5. A person who has previously been assessed a penalty or license sanction for violating the same or a similar provision of the law or who has received an inspection finding, warning, or other department notice regarding the same or similar noncompliant conduct **may** be presumed to have acted with intent when committing subsequent violations of the same or a similar provision of the law. The consequence of an intentional or knowing violation may be an increase in the penalty above what is prescribed in the matrix. The department, however, will not readily presume intent and a single violation will not automatically result in an allegation of intent absent exceptional circumstances and clear evidence of such intent.

6. The department evaluates prior violations at the client or owner level, not the managerial level. In other words, for a single legal entity operating multiple separate locations, whether concurrently or sequentially, a violation at any one location will be considered a prior violation with respect to any future violation(s) committed by that same entity

at the same or a different location. For many violations, however, the penalty remains a flat amount across multiple subsequent violations and the penalty amount for such violations will not automatically increase as the result of a prior violation absent clear evidence demonstrating that the misconduct was knowing, intentional, has caused or will cause significant economic harm to one or more Texas consumers, or is the result of deliberate indifference to or habitual negligence in complying with the law.

7. The date of a violation is the actual date the violation occurred, the date the violation first began occurring in the case of a continuing violation that occurs over a number of consecutive days, or any date within the period of consecutive days that constitutes a continuing violation, as appropriate to the violation and circumstances. If the date of first occurrence cannot be determined, the date of the violation is the date the department first discovers the violation (or the date of the first provable violation) and any consecutive day thereafter on which the violation continues (or continued).

8. In determining whether a particular entity has a prior violation, the department will review the five-year time period immediately preceding the date of the current violation. A violation is a prior violation only if an alleged violation resulted in an order finding that a violation in fact occurred or if an entity has agreed, in a no-contest plea regarding a prior alleged violation, that the prior alleged violation would operate in the future as a prior violation for purposes of department penalty determinations.

9. Payment of the full amount of an assessed penalty in any form, outside of an authorized settlement agreement, constitutes a waiver of all objections to the department's allegations. All objections, assertions, comments, or qualifications of any kind accompanying any penalty payment shall be considered void and of no effect. No such objection, assertion, or comment shall be acknowledged by or incorporated into the findings of fact or conclusions of law set forth in the order approving payment of the penalty. If a respondent wishes to object to or otherwise contest any portion of the department's notice of violation, the respondent must request a hearing.

Each no-contest disposition regardless of form shall operate as a prior violation (occurrence) for purposes of future department penalty determinations. Payment of a penalty in full or payment of a penalty in full with one or more objections, assertions, comments, or qualifications by the respondent shall constitute a no-contest disposition, in the absence of a stipulation or hearing determination. Absent withdrawal or rescission of the alleged violation by the department, or an approved settlement, a respondent must request a hearing and obtain a favorable ruling through the hearing process, or by district court or appellate court judgment on appeal, that the violation did not occur to avoid use of the alleged violation as a prior violation (occurrence) or to obtain findings of fact or conclusions of law that incorporate or take into account any objections, assertions, comments, or qualifications proffered by the respondent.

Partial payments of an assessed penalty, absent an authorized settlement, shall be returned and the department shall consider any such failure to pay the full penalty amount to be a request for a hearing.

The department does not consider the immediate correction or cessation of noncompliant conduct or correction or removal of noncompliant equipment or products to be a defense or excuse to assessment of a penalty or license sanction. Nothing in this provision, however, shall prevent the department from adopting policies that provide for no penalty or a waiver of penalty upon correction, cessation, or removal of noncompliance in particular circumstances.

These guidelines, including the matrix, are based on current circumstances, including extant information, laws, and department policies. As the enforcement of these types of violations continues and additional data are gathered, these guidelines will be reviewed and may be adjusted from time to time to reflect any changes in the circumstances on which it is based. Such modifications may be implemented retroactively, to the extent permitted by law, or become effective, at the department's discretion, prior to, concurrent with, or at after the end of a specific time period following publication.

For each type of offense there is a fixed or penalty range for initial violations. The fixed penalty or range may increase for subsequent violations. The penalties were established by considering the criteria set forth in the Code, §12.020(d): (1) the seriousness of the violation, including but not limited to the nature, circumstances, extent, and gravity of the prohibited acts, and the hazard or potential hazard created to the health or safety of the public; (2) the damage to property or the environment caused by the violation; (3) the history of previous violations; (4) the amount necessary to deter future violations; (5) efforts to correct the violation; and (6) any other matter that justice may require.

Due to the nature of the seed industry, the potential for hazard to the health or safety of the public is unlikely. However, the hazard or potential hazard to the horticultural or agricultural community will be applied to the violations. This factor will be considered on a case-by-case basis.

The low end of each range is the presumptive base penalty for each violation, and represents an appropriate penalty for violations which are considered "minor" with respect to the criteria set forth in the Code, §12.020(d). Penalties may be increased to the maximum within each range as the department considers the circumstances and facts of each violation in light of the criteria in the Code, §12.020(d). Additional adjustments in the penalty may be allowed for extenuating circumstances as justice requires. The penalty matrix takes into consideration prior violations of the same type which will result in an increased administrative penalty. This is expressed by the use of levels:

1st Level No previous violation(s) of the same type within the preceding 5 calendar years.

2nd Level Violation(s) of the same type in one year of the preceding 5 calendar years.

3rd Level Violation(s) of the same type in two calendar years of the preceding 5 calendar years.

4th Level Violation(s) of the same type in each of the preceding 5 calendar years.

This matrix is effective immediately upon filing in the *Texas Register* and supersedes the Seed Administrative Penalty Matrix as published in the January 7, 1997, issue of the *Texas Register* (22 TexReg 125) for those violations committed on or after the date of its filing.

For purposes of these guidelines, "Respondent" means a person who is alleged to have or has committed a violation.

Seed Administrative Penalty Matrix

TABLE I: GERMINATION, HARD, DORMANT, AND/OR PURE LIVE SEED VIOLATIONS

VIOLATIONS: False labeling regarding germination or pure live seed (Texas Agriculture Code §61.018).

- Germination below tolerance.
- Pure Live Seed below tolerance.
- Hard/Dormant Seed below tolerance.

Violations in which germination and/or pure live seed exceed two times the tolerance will receive a Stop Sale Order in addition to an Administrative Penalty regardless of prior violations.

Percent In Excess of Tolerance	**First Level**	
1 - 5%	$100	2nd Level: $20 additional, not to exceed $1500
6 - 10%	$175	
11 - 15%	$250	3rd Level: $60 additional
16% and over	$270 plus $20 for every increment in excess of tolerance, not to exceed $1000	3rd Level and over tolerance 6% or more: $60 additional + SS 4th Level: $100 additional 4th Level and over tolerance 6% or more: $100 additional + SS

SS = Stop Sale

TABLE II: PURITY COMPONENT VIOLATION: PURE SEED, INERT MATTER, OTHER CROPS, WEED SEED

VIOLATIONS:

- False labeling as to pure seed, inert matter, other crop seed or weed seed (Texas Agriculture Code §61.018).
- Failure to label all components in excess of five percent with respective pure seed and germination percentage as required by Texas Agriculture Code §61.004 of Texas Agriculture Code §61.005.

Violations in which pure seed and/or weed seed exceeds three times the tolerance will receive a Stop Sale Order in addition to an Administrative Penalty regardless of prior violations.

Percent in Excess of Tolerance	**First Level**	
0.01% - 0.50%	$75	2nd Level: $ 50 additional, not to exceed $1000
0.51% - 1.00%	$100	
1.01% - 1.50%	$125	3rd Level: $100 additional
1.51% - 2.00%	$150	3rd Level and over tolerance 6% or more:
2.01% - 2.50%	$175	$100 additional + SS
2.51% - 3.00%	$200	
3.01% - 3.50%	$225	4th Level: $150 additional
3.51% - 4.00%	$250	4th Level and over tolerance 6% or more:
4.01% - 4.50%	$275	$150 additional + SS
4.51% - 5.00%	$300	
5.01% - 6.00%	$325	
Over 6%	$350 plus $50 per each additional 1% variance*, not to exceed $600	

SS = Stop Sale

*Fractions of percentage point will be rounded to nearest whole number.

TABLE III: NOXIOUS WEED SEED LABELING VIOLATIONS

VIOLATION:

- False labeling regarding amount of noxious weed seed (Texas Agriculture Code §61.018).

Violations in which the restricted noxious weed seed exceeds the tolerance and twenty percent of the limitation per pound (excluding restricted noxious weed seed with name and number) will receive a Stop Sale Order in addition to an Administrative Penalty regardless of prior violations.

Number in Excess of Tolerance	Restricted Category A	Restricted Category B	Restricted Category C	Restricted Category D	Prohibited Category E	
1 to 10	$60	$80	$105	$150	SS & $250	2nd Level: $100 additional
11 to 20	$80	$100	$125	$200	SS & $350	
21 to 30	$100	$120	$145	$250	SS & $450	3rd Level: $200 additional
31 to 40	$120	$140	$165	$300	SS & $550	
41 to 50	$150	$160	$185	$350	SS & $650	
51 to 60	$170	$180	$215	$400	SS & $750	4th Level: $300 additional
61 to 70	$190	$200	$245	$450	SS & $1000	
71 to 80	$210	$220	$275	$500	SS & $1500	
81 to 90	$230	$250	$305	$550	SS & $2000	
91 to 100	$250	$270	$335	$600	SS & $2500	
101 to 200	$300	$370	$435	$700	SS & $3000	
201 to 300	$350	$470	$535	$800	SS & $3500	
301 to 400	$400	$570	$635	$900	SS & $4000	
400 to 500	$450	$670	$735	$1000	SS & $4500	
500 and over	$500	$770	$835	$1100	SS & $5000	

SS = Stop Sale

TABLE IV: NOXIOUS WEED SEED IN EXCESS OF LIMITATION PER POUND

VIOLATION:

- Offering for sale seed labeled to contain noxious weed seed in excess of allowed limitation per pound (Texas Agriculture Code §61.018).

Limitation per Pound 300	Limitation per Pound 100	Limitation per Pound 20	Limitation per Pound 1	Limitation per Pound "Prohibited"
$100 and Stop Sale	$200 and Stop Sale	$300 and Stop Sale	$400 and Stop Sale	$500 and Stop Sale

TABLE V: RESTRICTED NOXIOUS WEED SEED IN ANY COMBINATION IN EXCESS OF 500 PER POUND (Texas Agriculture Code §61.018)

Restricted Category B	Restricted Category C	Restricted Category D
$200 and Stop Sale	$300 and Stop Sale	$400 and Stop Sale

NOXIOUS WEED SEED CATEGORIES:

RESTRICTED - CATEGORY A

Common Name	Scientific Name	Limitation per Pound
annual bluegrass	*Poa annua*	name and number
bermudagrass	*Cynodon dactylon*	name and number
Johnsongrass	*Sorghum halepense*	name and number
morningglory	*Ipomoea spp.*	name and number
passion flower or maypop	*Passiflora incarnata*	name and number

RESTRICTED - CATEGORY B

Common Name	Scientific Name	Limitation per Pound
bracted plantain and buckhorn plantain	*Plantago aristata* *Plantago lanceolata*	300
cheat or chess	*Bromus secalinus and* *Bromus commutatus*	300
common giant mustard	*Rapistrum rugosum*	300
corncockle	*Agrostemma githago*	300
darnel and/or Persian ryegrass	*Lolium temulentum* *Lolium persicum*	300
dock and sorrel	*Rumex spp.*	300
horsenettle and purple nightshade	*Solanum carolinense* *Solanum elaeagnifolium*	300
puncturevine	*Tribulus terrestris*	300
wild carrot	*Daucus carota*	300
wild mustards and wild turnips	*Brassica and* *Sinapis spp.*	300
wild oat and/or feral oat	*Avena fatua* (L.) *Avena spp. (feral oat)*	300

RESTRICTED - CATEGORY C

Common Name	Scientific Name	Limitation per Pound
blessed thistle	*Cnicus benedictus*	100
blueweed	*Helianthus ciliaris*	100
Canada thistle	*Cirsium arvense*	100
dodder	*Cuscuta spp.*	100
giant foxtail	*Setaria faberi*	100
quackgrass	*Elytrigia repens*	100
Russian knapweed	*Centaurea repens*	100
wild onion and/or wild garlic	*Allium spp.*	100
wild radish	*Raphanus raphanistrum*	100

RESTRICTED - CATEGORY D

Common Name	Scientific Name	Limitation per Pound
blessed milk thistle	*Silybum marianum* (L.)	20
goatgrass	*Aegilops spp.*	20
red rice	*Oryza sativa var*	1

PROHIBITED CATEGORY E

Common Name	Scientific Name	Limitation per Pound
balloonvine	*Cardiospermum halicacabum* (L.)	prohibited
castor	*Ricinus communis*	prohibited
cocklebur	*Xanthium spp.*	prohibited
field bindweed	*Convolvulus arvensis*	prohibited
hedge bindweed	*Calystegia sepium*	prohibited
itchgrass	*Rottboellia cochinchinensis*	prohibited
nutsedge	*Cyperus rotundus and Cyperus esculentus*	prohibited
nutsedge tubers	*Cyperus spp.*	prohibited
serrated tussock	*Nassella trichotoma*	prohibited
tropical soda apple	*Solanum viarum* (Dunal)	prohibited

TABLE VI: GROWOUT VIOLATIONS (Texas Agriculture Code §61.018)

GROWOUT CATEGORY A: Minor mislabeling

- Pure seed, including variety, found to be mislabeled less than two times the tolerance.

GROWOUT CATEGORY B: Serious mislabeling

- Pure seed, including variety, found to be mislabeled by two times or more than the tolerance.

Growout Categories	First Level	Second Level	Third Level	Fourth Level
A	$100	$200	$300	$400 - 600
B	$250	$450	$500	$550 - 750

TABLE VII: TECHNICAL VIOLATIONS

TECHNICAL CATEGORY A

- Minor false or misleading labeling as to kind, variety, brand, type, hybrid seed, seed treatment, Texas Permit Number, Texas Seed Fee Label, and/or analysis does not total 100% (Texas Agriculture Code §61.018).
- Complete labeling not given (lot number, origin, inert matter, crop seed, weed seed, and/or component in excess of 5%) as required by Texas Agriculture Code §61.018.
- Vegetable seed offered for sale in Texas with germination below the minimum standard must show the percentage of germination exclusive of hard seed, and the statement "Below Standard" on each packet as required by Texas Agriculture Code §61.005.
- Labels cannot be altered/changed as stated in Texas Agriculture Code §61.018.
- No acceptable variety name or the words "variety not stated" must be shown as required by Texas Agriculture Code §61.004.

TECHNICAL CATEGORY B

- False or misleading labeling not covered under Technical Category A as to kind, variety, net weight, pure live seed, seed treatment, name and address, test date, plant variety protected, and/or Texas Permit Number (Texas Agriculture Code §61.018).
- Complete labeling not given (pure seed, germination, test date, kind, net weight, noxious weed seed per pound, and/or name and address of labeler) as required by Texas Agriculture Code §61.018
- Information on label not plainly written or printed in English (Texas Agriculture Code §61.004/Texas Agriculture Code §61.005).
- No Texas Tested Seed Fee Label attached or Texas Permit Number as required by Texas Agriculture Code §61.011.
- No valid vegetable seed license as required by Texas Agriculture Code §61.013.
- Selling seed labeled as containing prohibited noxious weed seed is prohibited from sale as required by Texas Agriculture Code §61.018.

- Failure to test seed for germination within the prescribed period prior to offering for sale as required by Texas Agriculture Code §61.009.
- No labeling of seed treatment substance or process as required by Texas Agriculture Code §61.006

TECHNICAL CATEGORY C

- Seed not tested for germination as required by Texas Agriculture Code §61.018.
- Seed is not labeled as required by Texas Agriculture Code §61.018.
- Representing seed as being certified seed without an official label issued by a seed-certifying agency as required by Texas Agriculture Code §61.007.
- Texas Certified, Registered, Foundation, or Texas Tested Seed Labels must not be altered or reused in any way (Texas Agriculture Code §61.018).

TECHNICAL CATEGORY D

- Failure to comply with a Stop Sale order (Texas Agriculture Code §61.018).
- Seed not being sold as a class of certified seed as required by federal law as required by Texas Agriculture Code §61.007.
- Failure to label variety name when seed being represented as certified seed as required by Texas Agriculture Code §61.007.
- Seed represented as being certified seed, but no official certified labels are attached to containers as required by Texas Agriculture Code §61.007.

TECHNICAL VIOLATION PENALTIES

Technical Categories	First Level	Second Level	Third Level	Fourth Level
A	NNC	$100	$150	$200
B	SS & $150	SS & $250	SS & $300	SS & $500
C	SS & $200	SS & $300	SS & $400	SS & $600
D	SS & $2000	SS & $3000	SS & $4000	SS & $5000

SS = Stop Sale

NNC = Notice of Non-Compliance

TRD-201200478
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: January 31, 2012

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Coastal Coordination Council

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 Federal Register pp. 1439-1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal

consistency review were deemed administratively complete for the following project(s) during the period of January 18, 2012, through January 25, 2012. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on February 1, 2012. The public comment period for this project will close at 5:00 p.m. on March 2, 2012.

FEDERAL AGENCY ACTIONS:

Applicant: S. Paul Vonis; Location: The project site is located in wetlands adjacent to West Galveston Bay, at 11326 Sportsman Road, in Galveston, Galveston County, Texas. The project can be located on the U.S.G.S. quadrangle map entitled: Virginia Point, Texas. NAD 83, Latitude: 29.26169 North; Longitude: -94.90608 West. Project Description: The applicant proposes to construct a bulkhead and boat ramp within intertidal, estuarine wetlands along the West Galveston Bay. The boat ramp is 15-foot-wide by 20-foot-long, of which, 10 feet will extend into the bay bottom. The boat ramp will impact 150-square-foot of wetland and 150-square-foot of unconsolidated bay bottom with approximately 2.8 cubic yards of fill material. The applicant also proposes to discharge approximately 60.7 cubic yards of fill material into an 826-square-foot area of wetland to create the proposed 82-foot bulkhead and backfill behind the bulkhead. The applicant has not proposed to mitigate for the proposed impacts. CMP Project No.: 12-0609-F1 Type of Application: U.S.A.C.E. permit application #SWG-2011-00909 is being evaluated under §10 of the Rivers and Harbors Act of 1899 (33 U.S.C.A. §403) and §404 of the Clean Water Act (33 U.S.C.A. §1344).

Applicant: EPA; Project Description: EPA has proposed a Vessel General Permit (VGP) and a Small Vessel General Permit (sVGP). EPA is conducting a national consistency review for the proposal of two general NPDES permits for discharges incidental to the normal operation of vessels. The VGP will regulate discharges incidental to the normal operation of commercial vessels and non-recreational vessels greater than or equal to 79 feet in length. The sVGP will cover discharges incidental to the normal operation of vessels less than 79 feet in length. CMP Project No.: 12-0613-F2 Type of Application: These General Permits will be reviewed under §307(c)(1) of the CZMA and under §401 of the CWA.

Applicant: US Coast Guard; Location: Coast Guard Station Port Aransas, 800 North Station St., Port Aransas, Texas. Project Description: Dredge the boat basin at the Coast Guard Station Port Aransas Small Boat Facility. The amount of dredge material is estimated to be 1000 cubic yards of material. The material will be placed in USACE upland placement area No. 2. No wetlands will be filled. CMP Project No.: 12-0622-F2 Type of Application: These General Permits will be reviewed under §307(c)(1) of the CZMA.

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451-1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Kate Zultner, Consistency Review Specialist, P.O. Box 12873, Austin, Texas 78711-2873, or via email at kate.zultner@glo.texas.gov. Comments should be sent to Ms. Zultner at the above address or by email.

TRD-201200510
Larry L. Laine
Chief Clerk/Deputy Land Commissioner, General Land Office
Coastal Coordination Council
Filed: February 1, 2012

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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, 303.005, and 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 02/06/12 - 02/12/12 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 02/06/12 - 02/12/12 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-201200476
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: January 31, 2012

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Texas Commission on Environmental Quality

Agreed Orders

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 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 March 12, 2012. 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 March 12, 2012. 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: Al's Investments, Incorporated DBA Al's North Texas Property Management, Incorporated; DOCKET NUMBER: 2011-1993-PWS-E; IDENTIFIER: RN104709803; LOCATION: Alvord, Wise County; TYPE OF FACILITY: retail convenience store with a public water supply; RULE VIOLATED: 30 TAC §290.42(j), by failing to use a treatment chemical that conforms to the American National Standards Institute/National Sanitation Foundation Standard 60 for direct additives; 30 TAC §290.46(d)(2)(A) and §290.110(b)(4), by failing to maintain a disinfectant residual concentration of at least 0.2 milligrams per liter free chlorine in the water within the distribution system; and 30 TAC §290.41(c)(1)(A) and TCEQ AO Docket Number 2009-1658-PWS-E, Ordering Provision Number 2.a., by failing to locate the facility's well at least 150 feet away from underground petroleum storage tanks; PENALTY: $6,220; ENFORCEMENT COORDINATOR: Katy Schumann, (512) 239-2602; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Ata Ur Rahman Khawaja dba R and R Food Mart; DOCKET NUMBER: 2011-1979-PST-E; IDENTIFIER: RN101754539; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(2) and Texas Health and Safety Code, §382.085(b), by failing to verify proper operation of the Stage II equipment at least once every 12 months; PENALTY: $4,673; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(3) COMPANY: BASF FINA Petrochemicals Limited Partnership; DOCKET NUMBER: 2011-1403-AIR-E; IDENTIFIER: RN100216977; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(b)(2)(F) and (c), and 122.143(4); New Source Review Permit (NSRP) Numbers 36644, PSDTX903M3, and N007M1, Special Conditions (SC) Number 1; Federal Operating Permit (FOP) Number O-02551, Special Terms and Conditions (STC) Number 20, and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain compliance with the nitrogen oxides hourly maximum allowable emission rate for Heater H-0900; and 30 TAC §§101.20(3), 116.115(c), and 122.143(4); NSRP Numbers 36644, PSDTX903M3, and N007M1, SC Number 30.C.; FOP Number O-02551, STC Number 20; and THSC, §382.085(b), by failing to use the correct reference temperature to determine the stack flow concentration based on the measured firing rate and British thermal unit content of the fuel for the following units (and Emission Point Numbers): Ethylene Cracking Furnaces (N-1 through N-9), Supplemental Boiler (N-14), the Cogeneration Trains (N-20A and N-20B), Boilers B-7280 (N-24) and B-7290 (N-24B), and the Thermal Oxidizer (N-19); PENALTY: $20,130; Supplemental Environmental Project offset amount of $8,052 applied to Southeast Texas Regional Planning Commission - West Port Arthur Home Energy Efficiency Program; ENFORCEMENT COORDINATOR: Miriam Hall, (512) 239-1044; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Baytown Energy Center, LLC; DOCKET NUMBER: 2011-1747-AIR-E; IDENTIFIER: RN100226067; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: natural-gas fired cogeneration plant; RULE VIOLATED: 30 TAC §§101.20(3), 116.115(c), 117.310(c)(2)(A) and 122.143(4), Federal Operating Permit Number O2133, Special Terms and Conditions Number 6, Air Permit Numbers 41996, PSD-TX-953 and N-020, Special Conditions Numbers 5 and 8, and Texas Health and Safety Code, §382.08b(b), by failing to operate within the permitted concentration limits for nitrogen oxides and ammonia from the combined-cycle turbine unit exhaust stacks, Emission Point Numbers CTG1, CTG2 and CTG3; PENALTY: $36,025; Supplemental Environmental Project offset amount of $14,410 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Bobby Kenimer dba Moosehead Powder Coating; DOCKET NUMBER: 2011-1830-AIR-E; IDENTIFIER: RN105368054; LOCATION: Borger, Hutchinson County; TYPE OF FACILITY: powder coating and sandblasting; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code, §382.0518(a) and §382.085(b), by failing to obtain authorization for outdoor sandblasting operations; PENALTY: $1,000; ENFORCEMENT COORDINATOR: Trina Grieco, (210) 403-4006; REGIONAL OFFICE: 3918 Canyon Drive, Amarillo, Texas 79109-4933, (806) 353-9251.

(6) COMPANY: Cabot Corporation; DOCKET NUMBER: 2011-1762-AIR-E; IDENTIFIER: RN100221761; LOCATION: Pampa, Gray County; TYPE OF FACILITY: carbon black manufacturer; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and Permit Numbers 40088 and PSDTX934, Special Conditions Number 4.A., by failing to comply with permitted emission rates during a stack test conducted on May 18, 2011 on the Unit 5 Main Unit Filter (Emission Point Number 95); PENALTY: $6,100; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(7) COMPANY: City of Garland; DOCKET NUMBER: 2011-1601-PST-E; IDENTIFIER: RN100796499 (Facility 1) and RN102092335 (Facility 2); LOCATION: Garland, Dallas County; TYPE OF FACILITY: fleet refueling; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date at Facility 1; 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs at Facility 1; and 30 TAC §334.51(b)(2) and TWC, §26.3475(c)(2), by failing to equip the USTs with spill containment equipment at Facility 2; PENALTY: $4,875; Supplemental Environmental Project (SEP) offset amount of $3,900 applied to University of Texas Arlington - Texas Air Monitoring Network SEP; ENFORCEMENT COORDINATOR: Philip Aldridge, (512) 239-0855; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(8) COMPANY: City of Nederland; DOCKET NUMBER: 2011-1560-MLM-E; IDENTIFIER: RN100631803; LOCATION: Nederland, Jefferson County; TYPE OF FACILITY: property with a closed landfill; RULE VIOLATED: 30 TAC §330.15(c), by failing to comply with the general prohibitions regarding disposal of municipal solid waste (MSW); 30 TAC §330.955(e) and §330.960, by failing to obtain authorization from the TCEQ before disturbing the final cover of a closed MSW landfill; 30 TAC §330.19(a) and (c), by failing to provide a final recording of a closed MSW landfill unit to the TCEQ and deed record all required information including a metes and bounds description of the disposal areas and restrictions to future use of the land; 30 TAC §330.453(a) and (b), by failing to maintain sufficient cover on a closed MSW landfill; and 30 TAC §334.129, by failing to prevent the unauthorized discharge of diesel; PENALTY: $4,650; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL

OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(9) COMPANY: City of Newton; DOCKET NUMBER: 2011-1548-MWD-E; IDENTIFIER: RN101607570; LOCATION: Newton, Newton County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization for the discharge of wastewater; PENALTY: $7,300; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(10) COMPANY: City of Petrolia; DOCKET NUMBER: 2011-1440-MWD-E; IDENTIFIER: RN102096625; LOCATION: Petrolia, Clay County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.125(1), and TCEQ Permit Number WQ0010247001, Effluent Limitations and Monitoring Requirements A, by failing to comply with permitted effluent limits; 30 TAC §305.125(11)(C) and §319.7(a) and TCEQ Permit Number WQ0010247001, Monitoring and Reporting Requirements Number 3.c, by failing to properly maintain records of monitoring activities; 30 TAC §305.125(1) and (11)(B), and §319.7(c) and TCEQ Permit Number WQ0010247001, Monitoring and Reporting Requirements Number 3.b and Operational Requirements Number 1, by failing to make records readily available for review by TCEQ staff; 30 TAC §305.125(1) and (17) and TCEQ Permit Number WQ0010247001, Sludge Provisions, by failing to submit the annual sludge report for the monitoring period ending July 31, 2010 by September 30, 2010; 30 TAC §305.125(5) and TCEQ Permit Number WQ0010247001, Special Provisions Number 5, by failing to provide adequate equipment to determine the application rate and volume of effluent used for irrigation; 30 TAC §305.125(1) and (5) and TCEQ Permit Number WQ0010247001, Special Provisions Number 14.a, b, and c, by failing to provide certification by a Texas Licensed Professional Engineer that the pond lining meets the appropriate criteria, specified in Texas Pollutant Discharge Elimination System Permit Number WQ0010247001, Special Provisions Number 14.a, b, and c; 30 TAC §305.125(1) and (5), and TCEQ Permit Number WQ0010247001, Special Provisions Number 3, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; and 30 TAC §305.125(1) and §317.7(e), and TCEQ Permit Number WQ0010247001, Operational Requirements Number 1, by failing to properly operate and maintain the facility and all of its systems of collection, treatment, and disposal; PENALTY: $5,564; ENFORCEMENT COORDINATOR: Heather Brister, (254) 761-3034; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(11) COMPANY: Colo4, LLC; DOCKET NUMBER: 2011-1771-PST-E; IDENTIFIER: RN105858211; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: data center with power generators; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide proper release detection for the pressurized piping associated with the USTs.; PENALTY: $2,377; ENFORCEMENT COORDINATOR: Wallace Myers, (512) 239-6580; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Creedmoor-Maha Water Supply Corporation; DOCKET NUMBER: 2011-2148-PWS-E; IDENTIFIER: RN101177152; LOCATION: Travis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification within 24 hours using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: $387; ENFORCEMENT COORDINATOR: Stephen Thompson, (512) 239-2558; REGIONAL OFFICE: 2800 South IH 35, Suite 100, Austin, Texas 78704-5712, (512) 339-2929.

(13) COMPANY: E. I. du Pont de Nemours and Company; DOCKET NUMBER: 2011-1732-AIR-E; IDENTIFIER: RN100542711; LOCATION: Orange, Orange County; TYPE OF FACILITY: petrochemical plant; RULE VIOLATED: 30 TAC §101.211(b) and Texas Health and Safety Code (THSC), §382.085(b), by failing to timely submit the final record for a maintenance activity (Incident Number 155487); and 30 TAC §116.115(c) and §122.143(4), New Source Review Permit Number 20204, Special Conditions Number 1, and Federal Operating Permit Number O-2055, Special Terms and Conditions Number 1.A., and THSC, §382.085(b), by failing to prevent unauthorized emissions during a maintenance activity (Incident Number 155487); PENALTY: $10,535; Supplemental Environmental Project offset amount of $4,214 applied to the City of Orange Municipal Building Energy Efficiency Project; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(14) COMPANY: Enterprise Products Operating LLC; DOCKET NUMBER: 2011-1731-AIR-E; IDENTIFIER: RN105009310; LOCATION: Baytown, Chambers County; TYPE OF FACILITY: rail car unloading terminal; RULE VIOLATED: 30 TAC §106.261(a)(2) and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized emissions during an emissions event; PENALTY: $5,000; Supplemental Environmental Project offset amount of $2,500 applied to Barbers Hill Independent School District - Alternative Fueled Vehicle and Equipment Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(15) COMPANY: Harris County; DOCKET NUMBER: 2011-1803-PST-E; IDENTIFIER: RN102242138; LOCATION: Houston, Harris County; TYPE OF FACILITY: recreational park; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor underground storage tanks (USTs) for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain all UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $3,400; Supplemental Environmental Project offset amount of $2,720 applied to Bayou Land Conservancy fka Legacy Land Trust; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Kashmir Road Lines LLC dba Texaco Foodmart 147; DOCKET NUMBER: 2011-1686-PST-E; IDENTIFIER: RN102030913; LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE 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 (not to exceed 35 days between each monitoring); PENALTY: $5,200; ENFORCEMENT COORDINATOR: Keith Frank, (512) 239-1203; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: KOLKHORST PETROLEUM COMPANY dba Rattlers Country Store 7; DOCKET NUMBER: 2011-1810-PST-E; IDENTIFIER: RN104533633; LOCATION: College Station, Brazos County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the pressurized piping associated with the underground storage tanks; PENALTY: $4,500; ENFORCEMENT COORDINATOR: David

Carney, (512) 239-2583; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(18) COMPANY: Kuraray America, Incorporated; DOCKET NUMBER: 2011-1701-AIR-E; IDENTIFIER: RN100212216; LOCATION: Pasadena, Harris County; TYPE OF FACILITY: chemical plant; RULE VIOLATED: 30 TAC §122.143(4), Federal Operating Permit (FOP) Number O-1561 Special Terms and Conditions (STC) 3(A)(iv)(3), and Texas Health and Safety Code (THSC), §382.085(b), by failing to maintain records of daily visible emission observations for all filter vents, quarterly visible emission observations for all stationary vents, and audio, olfactory and visual checks for anhydrous ammonia leaks during each shift during plant operations; 30 TAC §122.142(b)(2)(B)(i) and §122.143(4), FOP O-1561, General Terms and Conditions (GTC), and THSC, §382.085(b), by failing to correctly list the proper applicable requirements for the main process vents (Emission Point Number MAINPROC) in FOP O-1561; 30 TAC §122.143(4) and §113.880, 40 Code of Federal Regulations (CFR) §63.2382(b)(1) and §63.2386(b), FOP O-1561 STC 1.H., and THSC, §382.085(b), by failing to submit the initial notification and semi-annual compliance reports for Units V5101, V5102, V5103, V5104, V5105, V5106, V5107, V5108, V5109, V5110, V5111, V5112, V5113, V5114, V5115, V5116, V5117, V5118, V5119, V5120, V5122AATK, V5123WATK, V5129, V5301, V5302, V5304, V5307, V5310, V5318, V5319, V5401, V5402, V5412, V8104VACTK, V8105METK, V8107BRTK, V8301MEOAC, V8305 and V8307BRTK; 30 TAC §122.143(4) and §113.890, 40 CFR §63.2515(b) and §63.2520(b), FOP O-1561, STC 1.I., and THSC, §382.085(b), by failing to submit the initial notification and semi-annual compliance reports for Units PRO1100LINE, PRO1200LINE, PRO1300LINE, PRO1400LINE, MEOHPRCVT1, MEOHPRCVT2, 407, AREA 1, AREA 2, AREA 3, AREA 4, AREA 5, PLANT, COOLTOW-A, COOLTOW-B, LOADUNLOAD, V5107, V5108, V5109, V5110, V511, V5112, V5113, V5114, V5115, V5117, V5118, V5120, V5123WATK, V5129, V5307, V5310, V5318, V8105METK, V8107BRTK, V8301MEOAC, V8305 and V8307BRTK; and 30 TAC §122.143(4) and §122.145(2)(A), FOP O-1561, GTC and THSC, §382.085(b), by failing to report all instances of deviation; PENALTY: $95,193; Supplemental Environmental Project offset amount of $38,077 applied to the Sheltering Arms Weatherization Assistance Program; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(19) COMPANY: MARTY MECHANICAL, INCORPORATED dba One Stop 43; DOCKET NUMBER: 2011-1800-PST-E; IDENTIFIER: RN102236296; LOCATION: Grand Prairie, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,750; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(20) COMPANY: Monarch Utilities I L.P. dba Ivanhoe Subdivision Water System; DOCKET NUMBER: 2011-1846-PWS-E; IDENTIFIER: RN102316700; LOCATION: Woodville, Tyler County; TYPE OF FACILITY: public water system; RULE VIOLATED: 30 TAC §290.46(q)(1), by failing to issue a boil water notification to the customers of the facility within 24 hours of a water outage using the prescribed notification format as specified in 30 TAC §290.47(e); PENALTY: $886; ENFORCEMENT COORDINATOR: Bridgett Lee, (512) 239-2565; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(21) COMPANY: Monica Heng dba Western Hills Mini Mart; DOCKET NUMBER: 2011-2058-PST-E; IDENTIFIER: RN101779353; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(2) and TWC, §26.3475(a), by failing to provide proper release detection for the piping associated with the underground storage tank system; PENALTY: $2,379; ENFORCEMENT COORDINATOR: John Muennink, (713) 422-8970; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(22) COMPANY: Morgan Mill Water Supply Corporation; DOCKET NUMBER: 2011-2040-PWS-E; IDENTIFIER: RN101254795; LOCATION: Morgan Mill, Erath County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(f)(3)(A)(i)(III), (ii)(III), (iii), (iv), (v), (vi), and (E)(iv), by failing to provide facility records to commission personnel at the time of the record review; 30 TAC §290.46(e)(4)(A) and Texas Health and Safety Code (THSC), §341.033(a), by failing to operate the facility under the direct supervision of a water works operator who holds a minimum of a Class D or higher license; and 30 TAC §290.46(d)(1) and (2)(A) and THSC, §341.0315(c), by failing to operate the disinfection equipment to maintain a disinfectant residual of at least 0.2 milligrams per liter of free chlorine throughout the distribution system at all times; PENALTY: $440; ENFORCEMENT COORDINATOR: Epifanio Villarreal, (361) 825-3425; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(23) COMPANY: ONEOK Hydrocarbon Southwest, LLC; DOCKET NUMBER: 2011-1714-AIR-E; IDENTIFIER: RN100209949; LOCATION: Mont Belvieu, Chambers County; TYPE OF FACILITY: natural gas liquids fractionating facility; RULE VIOLATED: 30 TAC §116.115(c), Texas Health and Safety Code, §382.085(b), and New Source Review Permit Number 3956B, Special Conditions 16.B., by failing to prevent unauthorized emissions during an emissions event (Incident Number 155609) which occurred on June 12, 2011 and lasted approximately one hour and 58 minutes; PENALTY: $9,650; ENFORCEMENT COORDINATOR: Allison Fischer, (512) 239-2574; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: Phat Truong dba L & P Food Market; DOCKET NUMBER: 2011-1703-PST-E; IDENTIFIER: RN102264686; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: a convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §115.245(6) and Texas Health and Safety Code, §382.085(b), by failing to submit the Stage II vapor recovery system test results to the appropriate regional office or the local air pollution control program with jurisdiction within 10 working days of the completion of the tests; PENALTY: $970; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Sam Zamer and WBZ LLC dba Meyerland Shell; DOCKET NUMBER: 2011-1623-PST-E; IDENTIFIER: RN102437753 (Meyerland Shell Facility) and RN102783420 (Westheimer Mobil Facility); LOCATION: Houston, Harris County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of the petroleum underground storage tanks (USTs) at the Meyerland Shell Facility; 30 TAC §334.10(b), by failing to maintain the required UST records at the Meyerland Shell Facility and make them immediately available for inspection at the request of agency personnel; 30 TAC §334.51(b)(2)(C)

and TWC, §26.3475(c)(2), by failing to equip the UST system at the Meyerland Shell Facility with overfill prevention equipment; 30 TAC §334.10(b), by failing to maintain the required UST records at the Westheimer Mobil Facility and make them immediately available for inspection at the request of agency personnel; and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs at the Westheimer Mobil Facility for releases at a frequency of at least once per month (not to exceed 35 days between each monitoring); PENALTY: $12,527; ENFORCEMENT COORDINATOR: Michaelle Sherlock, (210) 403-4076; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(26) COMPANY: Sunshine Food Mart, Incorporated; DOCKET NUMBER: 2011-1896-PST-E; IDENTIFIER: RN101877348; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (USTs) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring) and by failing to provide release detection for the piping associated with the USTs; PENALTY: $2,629; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(27) COMPANY: SUSANNE's CORPORATION dba Alligator Jack Beer and Wine; DOCKET NUMBER: 2011-2052-PST-E; IDENTIFIER: RN102065026; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form within 30 days of the ownership change; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the USTs; PENALTY: $975; ENFORCEMENT COORDINATOR: Charlie Lockwood, (512) 239-1653; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: Tawakul Investments Incorporated dba Spring Time; DOCKET NUMBER: 2011-1815-PST-E; IDENTIFIER: RN101447167; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §37.815(a) and (b), by failing to demonstrate acceptable financial assurance for taking corrective action and for compensating third parties for bodily injury and property damage caused by accidental releases arising from the operation of petroleum underground storage tanks (USTs); and 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the USTs for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $8,679; ENFORCEMENT COORDINATOR: James Nolan, (512) 239-6634; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(29) COMPANY: Travis R. Curb; DOCKET NUMBER: 2011-1635-LII-E; IDENTIFIER: RN104670351; LOCATION: Killeen, Bell County; TYPE OF FACILITY: landscaping business; RULE VIOLATED: 30 TAC §344.35(d)(2), by failing to comply with local regulations by failing to obtain a permit required to install an irrigation system; 30 TAC §344.63(3), by failing to affix a permanent sticker to a controller for the irrigation system installed at 6703 Desoram Loop, Killeen, Texas on May 19, 2011; and 30 TAC §344.62(b)(2), by failing to install spray emissions devices in a manner that does not exceed the manufacturer's published recommendation for head spacing; PENALTY: $1,125; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: U.S. EMPIRE ENTERPRISES, INCORPORATED dba Kwikway Food Store; DOCKET NUMBER: 2011-1822-PST-E; IDENTIFIER: RN101553881; LOCATION: Dallas, Dallas County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $2,550; ENFORCEMENT COORDINATOR: Andrea Park, (512) 239-4575; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

TRD-201200461
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 31, 2012

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January 2012 Draft Water Quality Management Plan Update

The Texas Commission on Environmental Quality (TCEQ or commission) announces the availability of the draft January 2012 Update to the Water Quality Management Plan for the State of Texas (draft WQMP update)

The Water Quality Management Plan (WQMP) is developed and promulgated in accordance with the requirements of federal Clean Water Act, §208. The draft WQMP update includes projected effluent limits of indicated domestic dischargers useful for water quality management planning in future permit actions. Once the commission certifies a WQMP update, the update is submitted to the United States Environmental Protection Agency (EPA) for approval. For some Texas Pollutant Discharge Elimination System (TPDES) permits, the EPA's approval of a corresponding WQMP update is a necessary precondition to TPDES permit issuance by the commission. The draft WQMP update may contain service area populations for listed wastewater treatment facilities, designated management agency information, and total maximum daily load (TMDL) updates.

A copy of the draft January 2012 WQMP may be found on the commission's Web site located at *http://www.tceq.texas.gov/waterquality/assessment/WQmanagement_updates.html.* A copy of the draft may also be viewed at the TCEQ Library, Building A, 12100 Park 35 Circle, Austin, Texas.

Written comments on the draft WQMP update may be submitted to Nancy Vignali, Texas Commission on Environmental Quality, Water Quality Division, MC 150, P.O. Box 13087, Austin, Texas 78711-3087. Comments may also be faxed to (512) 239-4420, but must be followed up with the submission and receipt of the written comments within three working days of when they were faxed. Written comments must be submitted no later than 5:00 p.m. on March 12, 2012. For further information, or questions, please contact Ms. Vignali at (512) 239-1303 or by email at *Nancy.Vignali@tceq.texas.gov.*

TRD-201200458
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2012

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Notice of Information Request to Compile a Preapproved List of Natural Gas Engines and Vehicles for Grant Eligibility Under the Texas Natural Gas Vehicle Grant Program

Senate Bill (SB) 385, 82nd Texas Legislature, 2011, established the Texas Natural Gas Vehicle Grant Program (TNGVGP) to provide grants for eligible heavy-duty and medium-duty vehicles to offset the incremental cost for an entity to repower or replace an existing diesel or gasoline vehicle with a vehicle and/or engine powered by natural gas. In order to implement the program, the Texas Commission on Environmental Quality (TCEQ) is required to compile a list of preapproved natural gas vehicles and/or engines eligible for grant funding.

The TCEQ has released an information request to compile the required preapproved list of natural gas engines and vehicles. Engines eligible to be included on the list must be certified by the United States Environmental Protection Agency (EPA) to the heavy-duty engine emissions standard of 0.2 grams of nitrogen oxides (NO_x) per brake horsepower-hour or lower. Vehicles eligible to be included on the list are those classified under EPA requirements as Medium Duty Passenger Vehicles, between 8,501 and 10,000 pounds Gross Vehicle Weight Rating (GVWR), and certified by the EPA to the light-duty vehicle NO_x emission standards at Bin 5 or lower. Chassis-certified heavy-duty vehicles, between 8,501 and 14,000 pounds GVWR, and certain vehicle conversion systems may also be eligible to be included on the list.

The TCEQ is requesting information from those entities listed as the manufacturer on the EPA Certificate of Conformity for the natural gas engine or vehicle. Entities not listed as the manufacturer on the EPA certificate should not respond to this request. However, as explained in the instructions, the respondent completing the forms should work with other applicable entities, as needed, to obtain the information requested on the forms.

In addition to compiling the list of preapproved natural gas engines and vehicles, the TCEQ is required to develop predetermined grant amounts for eligible grant projects. The grant amounts are based, in part, on a percentage of the incremental cost of purchasing a natural gas vehicle or repowering a vehicle with a natural gas engine, when compared with an equivalent new gasoline or diesel vehicle or engine. The information request asks for average incremental cost information associated with the engines and vehicles.

To respond to this request, the appropriate entities should visit TCEQ's Texas Emission Reduction Plan Web site at *www.terpgrants.org* for further instructions and forms. The TCEQ will accept responses over the year, as vehicles, engines, or conversion systems are certified by the EPA. However, submissions for the initial eligibility list will need to be received by March 30, 2012, in order to ensure that those vehicles, engines, and conversion systems can be included on the list prior to the opening of the first TNGVGP grant round, currently anticipated for June 2012.

For additional information regarding this information request, please contact Colin Donovan, Implementation Grants Section, at (512) 239-1984, or toll free at (800) 919-TERP (8377).

TRD-201200462
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 31, 2012

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Notice of Public Hearing on Proposed Revisions to 30 TAC Chapter 60

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding the proposed amendments to 30 TAC Chapter 60, Compliance History, §§60.1 - 60.3, under the requirements of Texas Government Code, Chapter 2001, Subchapter B.

The proposed rulemaking would implement House Bill 2694, Articles 4.01 - 4.05 and 4.07, 82nd Legislature, 2011, which amends Texas Water Code (TWC), §§5.751 - 5.754 and 5.756. The amendments to TWC require the commission to make changes to the compliance history rule. This proposed rulemaking would revise Chapter 60. The purpose of this proposed rulemaking is to allow the commission to use new standards instead of the existing uniform standard for evaluating and using compliance history. In addition, the proposed rulemaking modifies the components and formula of compliance history in order to provide a more accurate measure of regulated entities' performance and make compliance history a more effective regulatory tool.

The commission will hold a public hearing on this proposal in Austin on March 6, 2012 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. The commission is interested in all comments related to this proposed rulemaking and specifically requests comments on proposed 30 TAC §60.2(e)(2) with regard to how the agency can account for various sized regulated entities within program areas or media other than those program areas or media currently contemplated by the proposed rule language.

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. Requests should be made as far in advance as possible.

Written comments may be submitted to Michael Parrish, 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://www5.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 2011-032-060-CE. The comment period closes March 12, 2012. Copies of the proposed rulemaking can be obtained from the commission's Web site at *http://www.tceq.texas.gov/nav/rules/propose_adopt.html*. For further information, please contact David Van Soest, Office of Compliance and Enforcement at (512) 239-0468.

TRD-201200401
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: January 27, 2012

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Notice of the Availability of the Draft 2012 Update to the Texas Nonpoint Source Management Program

The Texas Nonpoint Source Management Program (The Management Program) is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by nonpoint sources of water pollution. The Management Program is required under federal Clean Water Act (CWA), §319(b). The Management Program is jointly

administered by the Texas Commission on Environmental Quality (TCEQ) and the Texas State Soil and Water Conservation Board (TSSWCB). The State must have a federally-approved Management Program in order to continue receiving CWA, §319(h) grant monies from the United States Environmental Protection Agency (EPA).

The Management Program was last updated in December 2005 and must now be updated and revised. The TCEQ and the TSSWCB request your review and comments on the draft 2012 update to the Management Program.

This draft document has been jointly developed by staff of the TCEQ and TSSWCB consistent with regulatory guidance to satisfy requirements of the federal CWA. This document incorporates EPA's nine components of an effective program; establishes long- and short-term goals for the program; provides for the coordination of nonpoint source related programs and activities conducted by federal, state, regional, and local entities; and prioritizes assessment, planning, and implementation activities in priority watersheds and aquifers.

The TCEQ and TSSWCB are requesting that, to the extent possible, comments reference the associated page, chapter, section, and paragraph from the document.

The draft document is available online at the Web site of either of the agencies *(http://www.tceq.texas.gov/waterquality/nonpoint-source/mgmt-plan/index.html#draft-2012-texas-nonpoint* and *http://www.tsswcb.texas.gov/managementprogram#revision)* or by contacting either agency directly. The draft document will be discussed at a public meeting scheduled for February 23, 2012 between 9:00 a.m. and 12:00 p.m. in Room 2210 of Building F of the TCEQ offices located at 12100 Park 35 Circle, Austin, Texas.

The TCEQ and TSSWCB will be accepting comments until March 12, 2012. Comments may be submitted by email to Arthur Talley at *Arthur.Talley@tceq.texas.gov.* After the public meeting and comment period, the TCEQ and TSSWCB will address comments received and incorporate them into a final Management Program document that will be submitted to TSSWCB board members and TCEQ commissioners for approval. Once the document is approved by both agencies it will be submitted to the Texas Governor and EPA for their approval.

TRD-201200437
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: January 29, 2012

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Notice of Water Quality Applications

The following notices were issued on January 20, 2012 through January 27, 2012.

The following require the applicants to publish notice in a newspaper. Public comments, requests for public meetings, or requests for a contested case hearing may be submitted to the Office of the Chief Clerk, Mail Code 105, P.O. Box 13087, Austin, Texas 78711-3087, WITHIN 30 DAYS OF THE DATE OF NEWSPAPER PUBLICATION OF THE NOTICE.

INFORMATION SECTION

LUMINANT GENERATION COMPANY LLC which operates the Eagle Mountain Steam Electric Station, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0000550000, which authorizes the discharge of once through cooling water and previously monitored effluent (low volume wastewater, metal cleaning waste, and storm water runoff via internal Outfall 101) at a daily average flow not to exceed 432,000,0000 gallons per day. The facility is located at 10029 Morris-Dido Newark Road, adjacent to Eagle Mountain Reservoir and approximately ten (10) miles (via Farm-to-Market Road 1220) northwest of the City of Fort Worth, Tarrant County, Texas 76179.

SOUTHERN WATER CORP has applied for a renewal of TPDES Permit No. WQ0010610001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 475,000 gallons per day. The facility is located 9517 Sunnywood Drive, on the south bank of Halls Bayou, approximately 1,100 feet west of Interstate Highway 45 in Harris County, Texas 77038.

SOUTHERN FOREST PRODUCTS LLC which operates Southern Forest Products, has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TPDES Permit No. WQ0004241000, which authorizes the discharge of wet decking wastewater, utility wastewater (boiler blowdown), and storm water on an intermittent and flow variable basis via Outfall 001. The facility is located adjacent to and east of Farm-to-Market Road 2626, approximately 2.3 miles northeast of the intersection of U.S. Highway 190 and Farm-to-Market Road 2626, Newton County, Texas.

WHITEWATER LAND PARTNERS LLC has applied to the Texas Commission on Environmental Quality (TCEQ) for a renewal of TCEQ Permit No. WQ0014806001, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 200,000 gallons per day via public access subsurface drip irrigation system with a minimum area of 46 acres. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site will be located 0.9 miles east-northeast of the intersection of Farm-to-Market Roads 306 and 2673 in Comal County, Texas 78132.

C AND R WATER SUPPLY INC has applied for a renewal of TPDES Permit No. WQ0013575001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 80,000 gallons per day. The facility is located at 11972 Upland Street on Lake Conroe's western shore, north of and with access to Farm-t0-Market Road 1097, approximately 7.6 miles west of Willis in Montgomery County, Texas 77378.

The Texas Parks and Wildlife Department has applied for a renewal of TPDES Permit No. WQ0011722001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 30,000 gallons per day. The facility is located 4,000 feet northwest of the intersection of Farm-to-Market Road 3126 and State Park Road 65, and 500 feet west of Farm-to-Market Road 3126 in Polk County, Texas 77351.

MISCHER INVESTMENTS LP has applied for a renewal of TPDES Permit No. WQ0014954001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 300,000 gallons per day. TCEQ received this application on October 25, 2011. The facility will be located approximately 2.3 miles south and 2.4 miles west of the intersection of U.S. Highway 290 and Barker-Cypress Road in Harris County, Texas 77095.

CITY OF LEAGUE CITY has applied for a new permit, proposed TPDES Permit No. WQ0010568008, to authorize the discharge of treated domestic wastewater at an annual average flow not to exceed 12,000,000 gallons per day. The facility will be located at 1220 South Maple Leaf Drive, approximately 1.4 miles north of Farm-to-Market Road 517 and 0.35 mile east of Maple Leaf Drive, in League City in Galveston County, Texas 77573.

GSE LINING TECHNOLOGY LLC which operates GSE Lining Technology Facility, a polyethylene plastic forming facility, has applied for

the renewal of TPDES Permit No. WQ0003402000, which authorizes the discharge of treated domestic wastewater, reverse osmosis wastewater, and process wastewater at a daily average flow not to exceed 16,000 gallons per day via Outfall 001. The facility is located at 19103 Gundle Road, in the City of Houston, Harris County, Texas 77073.

TEXAS DEPARTMENT OF TRANSPORTATION DALLAS DISTRICT which operates the Municipal Separate Storm Sewer System (MS4) has applied for a renewal of TPDES Permit No. WQ0004521000 to authorize storm water point source discharges to surface water in the state from the MS4. The MS4 is located within the corporate boundaries of the following phase I cities: Dallas, Fort Worth, Irving, Mesquite, Garland, Plano and within the urbanized portions of the following permitted phase II MS4 cities as applicable: Addison, Allen, Anna, Argyle, Aubrey, Aurora, Balch Springs, Barry, Bartonville, Blooming Grove, Blue Ridge, Buckingham, Carrolton, Cedar Hill, Celina, Chatfield, Cockrell Hill, Combine, Copeville, Coppell, Corinth, Corral City, Corsicana, Crandall, Crossroads, Dawson, Denton, Desoto, Double Oak, Duncanville, Elmo, Fairview, Farmersville, Farmers Branch, Ferris, Flower Mound, Fourney, Frisco, Frost, Glenn Heights, Grand Prairie, Grapevine, Haslet, Heath, Highland Park, Highland Village, Hutchins, Lakewood Village, Lancaster, Lantana, Lavon, Leonard, Lewisville, Little Elm, Mansfield, McKinney, Melissa, Midlothian, Murphy, Nevada, Oak Leak, Oak Point, Ovilla, Palmer, Pilot Point, Ponder, Powell, Prestonwood, Princeton, Prosper, Purdon, Red Oak, Richardson, Roanoke, Rockwall, Rosser, Rowlett, Royse City, Sachse, Saint Paul, Scurry, Seagoville, Shady Shores, Sunnyvale, Terrell, The Colony, University Park, Village, Venus, Westlake, Westminster, West Tawakoni, Weston, and Wylie located in Dallas, Rockwall, Collin, Kaufman, Denton, Navarro and Ellis Counties, Texas 75001, 75002, 75006, 75007, 75008, 75009, 75010, 75011, 75013, 75014, 75015, 75016, 75017, 75019, 75022, 75023, 75024, 75025, 75026, 75027, 75028, 75029, 75030, 75032, 75034, 75035, 75037, 75038, 75039, 75040, 75041, 75042, 75043, 75044, 75045, 75046, 75047, 75048, 75049, 75050, 75051, 75052, 75053, 75054, 75056, 75057, 75060, 75061, 75062, 75063, 75065, 75067, 75068, 75069, 75070, 75071, 75074, 75075, 75077, 75078, 75080, 75081, 75082, 75083, 75085, 75086, 75087, 75088, 75089, 75092, 75093, 75094, 75097, 75098, 75099, 75102, 75104, 75105, 75106, 75109, 75114, 75115, 75116, 75118, 75121, 75123, 75125, 75126, 75134, 75137, 75138, 75141, 75142, 75144, 75146, 75149, 75150, 75151, 75152, 75153, 75154, 75157, 75158, 75159, 75161, 75164, 75166, 75172, 75173, 75180, 75181, 75182, 75185, 75187, 75189, 75201, 75202, 75203, 75204, 75205, 75206, 75207, 75208, 75209, 75210, 75211, 75212, 75214, 75215, 75216, 75217, 75218, 75219, 75220, 75221, 75222, 75223, 75224, 75225, 75226, 75227, 75228, 75229, 75230, 75231, 75232, 75233, 75234, 75235, 75236, 75237, 75238, 75239, 75240, 75241, 75242, 75243, 75244, 75245, 75246, 75247, 75248, 75249, 75250, 75251, 75252, 75253, 75254, 75258, 75260, 75261, 75262, 75263, 75264, 75265, 75266, 75267, 75270, 75275, 75277, 75283, 75284, 75285, 75286, 75287, 75295, 75301, 75303, 75310, 75312, 75313, 75315, 75320, 75323, 75326, 75336, 75339, 75342, 75346, 75353, 75354, 75355, 75356, 75357, 75358, 75359, 75360, 75363, 75364, 75367, 75368, 75369, 75370, 75371, 75372, 75373, 75374, 75376, 75378, 75379, 75380, 75381, 75382, 75386, 75387, 75388, 75389, 75390, 75391, 75392, 75393, 75394, 75395, 75396, 75397, 75398, 75407, 75409, 75424, 75442, 75452, 75454, 75474, 75485, 76051, 76052, 76063, 76065, 76078, 76084, 76092, 79177, 76201, 76202, 76203, 76204, 76205, 76206, 76207, 76208, 76209, 76210, 76226, 76227, 76247, 76249, 76258, 76259, 76262, 76299, 76626, 76639, 76641, and 76679.

If you need more information about these permit applications or the permitting process, please call the TCEQ Public Education Program, Toll Free, at 1-800-687-4040. General information about the TCEQ can be found at our web site at www.TCEQ.state.tx.us. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201200481
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: February 1, 2012

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports, or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5780.

Deadline: Lobby Activities Report due October 11, 2011

Katharine Viola, 105 Auditorium Cir., Ste. 107, San Antonio, Texas 78205

TRD-201200479
David A. Reisman
Executive Director
Texas Ethics Commission
Filed: February 1, 2012

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Texas Facilities Commission

Request for Proposal #303-3-20323

The Texas Facilities Commission (TFC), on behalf of the Department of Family and Protective Services (DFPS), announces the issuance of Request for Proposals (RFP) #303-3-20323. TFC seeks a five (5) or ten (10) year lease of approximately 27,142 square feet of office space in El Paso, El Paso County, Texas.

The deadline for questions is February 17, 2012 and the deadline for proposals is February 29, 2012 at 3:00 p.m. The award date is April 1, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant.

Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Evelyn Esquivel at (512) 463-6494. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=98659.*

TRD-201200509
Kay Molina
General Counsel
Texas Facilities Commission
Filed: February 1, 2012

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Request for Proposal #303-3-20325

The Texas Facilities Commission (TFC), on behalf of the Texas Department of Criminal Justice, announces the issuance of Request for Proposals (RFP) #303-3-20325. TFC seeks a five or ten year lease of approximately 1,400 square feet of office space in the City of Big Spring, Howard County, Texas.

The deadline for questions is February 24, 2012 and the deadline for proposals is March 2, 2012 at 3:00 p.m. The award date is March 30, 2012. TFC reserves the right to accept or reject any or all proposals submitted. TFC is under no legal or other obligation to execute a lease on the basis of this notice or the distribution of an RFP. Neither this notice nor the RFP commits TFC to pay for any costs incurred prior to the award of a grant. Parties interested in submitting a proposal may obtain information by contacting the Regional Leasing Assistant, Jana D. Walp, at (512) 463-3160. A copy of the RFP may be downloaded from the Electronic State Business Daily at *http://esbd.cpa.state.tx.us/bid_show.cfm?bidid=98605.*

TRD-201200423
Kay Molina
General Counsel
Texas Facilities Commission
Filed: January 27, 2012

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Office of the Governor

Notice of Application and Priorities for the Justice Assistance Grant Program Federal Application

The Governor's Criminal Justice Division (CJD) is preparing its application for the 2012 federal Edward Byrne Justice Assistance Grant Program (JAG). The Federal Fiscal Year (FFY) 2012 allocation to the state of Texas is expected to be $13.1 million.

CJD proposes to use the FFY 2012 award to fund initiatives that target violent crimes, organized criminal activity, enhance border security and adult substance abuse diversion programs.

Comments on the application or the priorities may be submitted in writing to Judy Switzer by email at jswitzer@governor.state.tx.us or mailed to the Criminal Justice Division, Office of the Governor, P.O. Box 12428, Austin, Texas 78711. Comments must be received or postmarked no later than 30 days from the date of publication of this announcement in the *Texas Register.*

TRD-201200477
David Zimmerman
Assistant General Counsel
Office of the Governor
Filed: January 31, 2012

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Texas Health and Human Services Commission

Notice of Public Hearing on Proposed Medicaid Payment Rates

Hearing. The Texas Health and Human Services Commission will conduct a public hearing on Tuesday, February 28, 2012, at 1:00 p.m. to receive public comment on proposed rates for Community Living Supports - Bachelor's Level, Community Living Supports - Master's Level, and Family Supports Services in the Youth Empowerment Services (YES) Waiver. The hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code §355.105(g), which require public notice and hearings on proposed Medicaid reimbursements.

The public hearing will be held in the Lone Star Conference Room of the Texas Health and Human Services Commission, Braker Center, Building H, located at 11209 Metric Boulevard, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Metric Boulevard. Persons requiring Americans with Disability Act accommodation or auxiliary aids or services should contact Esther Brown by calling (512) 491-1445, at least 72 hours prior to the hearing so appropriate arrangements can be made.

Briefing Package. A briefing package describing the proposed payment rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on February 10, 2012. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Esther Brown by telephone at (512) 491-1445; by fax at (512) 491-1998; or by e-mail at Esther.Brown@hhsc.state.tx.us. The briefing package also will be available at the public hearing.

Written Comments. Written comments regarding the proposed payment rates may be submitted in lieu of, or in addition to, oral testimony until 5:00 p.m. the day of the hearing. Written comments may be sent by U.S. mail to the attention of Esther Brown, Texas Health and Human Services Commission, Rate Analysis, Mail Code H-400, P.O. Box 85200, Austin, Texas 78708-5200; by fax to Esther Brown at (512) 491-1998; or by e-mail to Esther.Brown@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Esther Brown, Texas Health and Human Services Commission, Rate Analysis, Mail Code H-400, Braker Center, Building H, 11209 Metric Boulevard, Austin, Texas 78758-4021.

TRD-201200468
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 31, 2012

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit an amendment to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act. The proposed amendment is effective February 15, 2012.

The amendment updates and clarifies the methodology HHSC uses to qualify hospitals, compute hospital specific limits and calculate payments for hospitals that participate in the Disproportionate Share Hospital (DSH) Program. The amendment also addresses changes that are associated with federal audit requirements contained in the December 19, 2008, Federal Medicaid Disproportionate Share Hospital (DSH) final rule (73 FR 77904).

The proposed amendment is estimated to result in no change in the amount of federal funds received by the state. The source of non-federal funding for the DSH program is public funds from local and state governmental entities.

Interested parties may obtain copies of the proposed amendment by contacting Diana Miller, Hospital Reimbursement, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1436; by facsimile at (512) 491-1998; or by e-mail at diana.miller@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-201200352
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 26, 2012

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective March 1, 2012.

The purpose of this amendment is to update the current state plan with information about recent updates to the fee schedules including fees for new services and modified fees for existing services. These rate actions are being taken to comply with 1 Texas Administrative Code §355.8085, Texas Medicaid Reimbursement Methodology for Physicians and Certain Other Practitioners, which requires fees for individual services to be reviewed at a minimum of once every two years. The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Durable Medical Equipment, Prosthetics, Orthotics, and Supplies;

Early Periodic Screening, Diagnosis and Treatment (EPSDT); and

Physicians and Other Practitioners.

The proposed amendment is estimated to result in an additional annual cost savings of $3,571,761 for the remainder of federal fiscal year (FFY) 2012, consisting of $2,079,479 cost savings in federal funds and $1,492,282 cost savings in state general revenue. For FFY 2013, the estimated cost savings is $5,261,382, consisting of $3,120,000 cost savings in federal funds and $2,141,382 cost savings in state general revenue.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@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-201200422
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 27, 2012

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 12-004 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The amendment clarifies language regarding requirements for providers of Early Periodic Screening, Diagnosis and Treatment audiology and case management services. The effective date of the amendment is January 1, 2012. There is no anticipated fiscal impact with the implementation of this amendment.

To obtain copies of the proposed amendment, interested parties may contact Brian Dees by mail at the Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 491-1165; by facsimile at (512) 491-1382; or by e-mail at brian.dees@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-201200459
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 31, 2012

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Public Notice

The Texas Health and Human Services Commission (HHSC) announces its intent to submit transmittal number 12-002 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The proposed amendment allows, when determining financial eligibility for Medicaid, the exclusion of funds held in, certain payments made from, or interest earned on Texas Save and Match programs and on any qualified tuition program that meets the requirements of the Internal Revenue Service Code of 1986, §529, for a fund, plan, or tuition program established before the 21st birthday of the beneficiary of the fund, plan, or program. The proposed amendment is effective January 1, 2012. There is a potential fiscal impact for this SPA; however, HHSC is unable to estimate the impact because the data to provide a reliable estimate of the number of clients and related cost is not available. Based on experience with similar programs, HHSC expects that only a small number of clients would use the program, resulting in a small fiscal impact, if any.

To obtain copies of the proposed amendment, interested parties may contact Barbara Fee by mail at 909 W. 45th. Street, Building 2, Austin, Texas 78751; by telephone at (512) 206-5323; by facsimile at (512) 206-5211; or by e-mail at barbara.fee@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-201200460
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: January 31, 2012

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Public Notice

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective March 1, 2012.

The purpose of this amendment is to update the current state plan with information about recent updates to the services listed below. The amendments will modify the reimbursement methodologies in the Texas Medicaid State Plan as a result of Medicaid fee adjustments for:

Ambulance Services; and Dental Services

The proposed amendment is estimated to result in no additional annual expenditures for the remainder of federal fiscal year (FFY) 2012 and no additional annual expenditures for FFY 2013.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Dan Huggins, Director of Rate Analysis for Acute Care Services, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 85200, H-400, Austin, Texas 78708-5200; by telephone at (512) 491-1432; by facsimile at (512) 491-1998; or by e-mail at dan.huggins@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-201200512
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: February 1, 2012

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Texas Department of Insurance

Company Licensing

Application to change the name of CAMPMED CASUALTY & INDEMNITY COMPANY, INC. OF MARYLAND to CAMPMED CASUALTY & INDEMNITY COMPANY, INC., a foreign fire and/or casualty company. The home office is in Bedford, New Hampshire.

Application for admission to the State of Texas by HUMANA BENEFIT PLAN OF ILLINOIS, INC., a foreign life, accident and/or health company. The home office is in Peoria, Illinois.

Application for incorporation in the State of Texas by KELSEYCARE INSURANCE COMPANY, a domestic life, accident and/or health company. The home office is in Houston, Texas.

Application for admission to the State of Texas by MOUNT VERNON SPECIALTY INSURANCE COMPANY, a foreign fire and/or casualty company. The home office is in Wayne, Pennsylvania.

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 Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201200504
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: February 1, 2012

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Texas Department of Licensing and Regulation

Public Notice - Deadline Extended for Public Comments

In the December 2, 2011, issue of the *Texas Register* (36 TexReg 8125), the Texas Department of Licensing and Regulation filed proposed amendments to existing rules at 16 Texas Administrative Code (TAC) Chapter 80, §80.20 and §80.80 regarding the Licensed Court Interpreters program.

The deadline for receipt of public comments in response to the rule proposal was originally set for January 2, 2012. This notice is to extend the public comment period to 5:00 p.m. on February 27, 2012.

Any questions or written comments pertaining to the proposed rules may be submitted by mail to Melissa Rinard, Legal Assistant, General Counsel's Office, Texas Department of Licensing and Regulation, P.O. Box 12157, Austin, Texas 78711, or by facsimile to (512) 475-3032, or electronically to erule.comments@license.state.tx.us.

TRD-201200353
Brian Francis
Deputy Executive Director
Texas Department of Licensing and Regulation
Filed: January 26, 2012

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Texas Lottery Commission

Correction of Error

The Texas Lottery Commission filed for publication a non-rulemaking document entitled "Instant Game Number 1396, 'Emerald 7's'". The document was published in the January 27, 2012, issue of the *Texas Register* (37 TexReg 415). Section 2.2.R is revised as follows.

"R. Non-winning play symbols will never appear more than two (2) times (with the exception of the "BLACK 7" and "GREEN 7" play symbols)."

No other sections of the document are affected by this revision.

TRD-201200506

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Instant Game Number 1405 "Texas Tea"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1405 is "TEXAS TEA". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1405 shall be $1.00 per ticket.

1.2 Definitions in Instant Game No. 1405.

A. Display Printing - That area of the instant game 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 ticket.

C. Play Symbol - The printed data under the latex on the front of the 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: 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, STAR SYMBOL, $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100, $500 and $1,000.

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. 1405 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
STAR SYMBOL	WINALL
$1.00	ONE$
$2.00	TWO$
$4.00	FOUR$
$5.00	FIVE$
$10.00	TEN$
$20.00	TWENTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the ticket. There is a boxed four (4) digit Security Number placed randomly within the Serial Number. The remaining ten (10) digits of the Serial Number are the Validation Number. The Serial Number is for validation purposes and cannot be used to play the game. The format will be: 00000000000000.

F. Low-Tier Prize - A prize of $1.00, $2.00, $4.00, $5.00, $10.00 or $20.00.

G. Mid-Tier Prize - A prize of $50.00, $100 or $500.

H. High-Tier Prize - A prize of $1,000.

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 ticket number and the ten (10) digit Validation Number. The bar code appears on the back of the ticket.

J. Pack-Ticket Number - A 14 (fourteen) digit number consisting of the four (4) digit game number (1405), a seven (7) digit pack number, and a three (3) digit ticket number. Ticket numbers start with 001 and end with 150 within each pack. The format will be: 1405-0000001-001.

K. Pack - A pack of "TEXAS TEA" Instant Game tickets contains 150 tickets, packed in plastic shrink-wrapping and fanfolded in pages of five (5). Tickets 001 to 005 will be on the top page; tickets 006 to 010 on the next page; etc.; and tickets 146 to 150 will be on the last page

with backs exposed. Ticket 001 will be folded over so the front of ticket 001 and 010 will be exposed.

L. Non-Winning Ticket - A ticket which is not programmed to be a winning ticket or a 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. Ticket or Instant Game Ticket, or Instant Ticket - A Texas Lottery "TEXAS TEA" Instant Game No. 1405 ticket.

2.0 Determination of Prize Winners. The determination of prize winners is subject to the general 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 instant ticket. A prize winner in the "TEXAS TEA" Instant Game is determined once the latex on the ticket is scratched off to expose 11 (eleven) play symbols. If a player matches any of the YOUR NUMBERS play symbols to the WINNING NUMBER play symbol, the player wins the PRIZE for that number. If a player reveals a "star" play symbol, the player WINS ALL 5 PRIZES instantly! No portion of the display printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game ticket, all of the following requirements must be met:

1. Exactly 11 (eleven) Play Symbols must appear under the latex overprint on the front portion of the 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 ticket shall be intact;

6. The Serial Number, Retailer Validation Code and Pack-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 ticket;

8. The ticket must not have a hole punched through it, be mutilated, altered, unreadable, reconstituted or tampered with in any manner;

9. The ticket must not be counterfeit in whole or in part;

10. The ticket must have been issued by the Texas Lottery in an authorized manner;

11. The ticket must not have been stolen, nor appear on any list of omitted tickets or non-activated tickets on file at the Texas Lottery;

12. The Play Symbols, Serial Number, Retailer Validation Code and Pack-Ticket Number must be right side up and not reversed in any manner;

13. The ticket must be complete and not miscut, and have exactly 11 (eleven) Play Symbols under the latex overprint on the front portion of the ticket, exactly one Serial Number, exactly one Retailer Validation Code, and exactly one Pack-Ticket Number on the ticket;

14. The Serial Number of an apparent winning ticket shall correspond with the Texas Lottery's Serial Numbers for winning tickets, and a ticket with that Serial Number shall not have been paid previously;

15. The ticket must not be blank or partially blank, misregistered, defective or printed or produced in error;

16. Each of the 11 (eleven) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 11 (eleven) Play Symbols on the ticket must be printed in the Symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the 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-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The display printing on the ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The ticket must have been received by the Texas Lottery by applicable deadlines.

B. The 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 Instant Game 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 ticket. In the event a defective ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective ticket with another unplayed ticket in that Instant Game (or a ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive non-winning tickets will not have identical play data, spot for spot.

B. No identical non-winning prize symbols on a ticket.

C. No identical non-winning YOUR NUMBERS play symbols on a ticket.

D. Non-winning prize symbols will never be the same as the winning prize symbol(s).

E. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS play symbol (i.e., 1 and $1).

F. The "STAR" (win all) play symbol will only appear on intended winning tickets as dictated by the prize structure.

G. The top prize will appear on every ticket unless otherwise restricted by the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "TEXAS TEA" Instant Game prize of $1.00, $2.00, $4.00, $5.00, $10.00, $20.00, $50.00, $100 or $500, a claimant shall sign the back of the ticket in the space designated on the ticket and present the winning 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 ticket; provided that the Texas Lottery Retailer may, but is not required, to pay a $50.00, $100 or $500 ticket. 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 2.3.C of these Game Procedures.

B. To claim a "TEXAS TEA" Instant Game prize of $1,000 the claimant must sign the winning 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 ticket for that prize upon presentation of proper identification. When paying a prize of $600 or more, the Texas Lottery shall file the appropriate income reporting form with the Internal Revenue Service (IRS) and shall withhold federal income tax at a rate set by the IRS if required. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

C. As an alternative method of claiming a "TEXAS TEA" Instant Game prize, the claimant must sign the winning ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for 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 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 of less than $600 from the "TEXAS TEA" Instant Game, the Texas Lottery shall deliver to an adult member of the minor's family or the minor's guardian a check or warrant in the amount of the prize payable to the order of the minor.

2.6 If a person under the age of 18 years is entitled to a cash prize of $600 or more from the "TEXAS TEA" Instant 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 Instant Ticket Claim Period. All Instant Game prizes must be claimed within 180 days following the end of the Instant 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 ticket, shall be forfeited.

2.8 Disclaimer. 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. An Instant Game ticket may continue to be sold even when all the top prizes have been claimed.

3.0 Instant Ticket Ownership.

A. Until such time as a signature is placed upon the back portion of an Instant Game ticket in the space designated, a ticket shall be owned by the physical possessor of said ticket. When a signature is placed on the back of the ticket in the space designated, the player whose signature appears in that area shall be the owner of the 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 ticket in the space designated. If more than one name appears on the back of the 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 Instant Game tickets and shall not be required to pay on a lost or stolen Instant Game ticket.

4.0 Number and Value of Instant Prizes. There will be approximately 10,080,000 tickets in the Instant Game No. 1405. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1405 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$1	1,209,600	8.33
$2	705,600	14.29
$4	252,000	40.00
$5	67,200	150.00
$10	84,000	120.00
$20	21,210	475.25
$50	3,780	2,666.67
$100	1,470	6,857.14
$500	714	14,117.65
$1,000	126	80,000.00

*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 4.30. 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 tickets in the game may be increased or decreased at the sole discretion of the Texas Lottery.

5.0 End of the Instant Game. The Executive Director may, at any time, announce a closing date (end date) for the Instant Game No. 1405 without advance notice, at which point no further tickets in that game may be sold. The determination of the closing date and reasons for closing will be made in accordance with the instant ticket game closing procedures and the Instant Game Rules. See 16 TAC §401.302(j).

6.0 Governing Law. In purchasing an Instant Game ticket, the player agrees to comply with, and abide by, these Game Procedures for Instant Game No. 1405, 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-201200505
Kimberly L. Kiplin
General Counsel
Texas Lottery Commission
Filed: February 1, 2012

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Public Utility Commission of Texas

Notice of Application for Amendment to Service Provider Certificate of Operating Authority

On January 26, 2012, Cincinnati Bell Any Distance Inc. filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority Certificate Number 60847. Applicant seeks to reflect a change in provider type to include data and facilities-based telecommunications services.

The Application: Application of Cincinnati Bell Any Distance Inc. for an Amendment to its Service Provider Certificate of Operating Authority, Docket Number 40132.

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 February 17, 2012. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40132.

TRD-201200469
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2012

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Notice of Application for Waiver of Denial of Numbering Resources

Notice is given to the public of the filing with the Public Utility Commission of Texas an application on January 27, 2012, for waiver of denial by the Pooling Administrator (PA) of Time Warner Cable Information Services (Texas), LLC d/b/a Time Warner Cable's request for assignment of three thousand-blocks of numbers in the Waco rate center.

Docket Title and Number: Petition of Time Warner Cable Information Services (Texas), LLC d/b/a Time Warner Cable for Waiver of Denial of Numbering Resources in the Waco Rate Center, Docket Number 40137.

The Application: Time Warner Cable Information Services (Texas), LLC d/b/a Time Warner Cable requested three thousand-blocks of

numbers on behalf of its customer, Heart of Texas Community Health Center in the Waco rate center. Time Warner Cable submitted an application to the PA for the requested blocks in accordance with the current guidelines. The PA denied the request because Time Warner Cable did not meet the months-to-exhaust and utilization criteria established by the Federal Communications Commission.

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 February 22, 2012. Hearing and speech impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136 or toll free at (800) 735-2989. All comments should reference Docket Number 40137.

TRD-201200470
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2012

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Public Notice of Workshop on Proposed Changes to P.U.C. Substantive Rule §25.505, Resource Adequacy in the ERCOT Power Region and P.U.C. Substantive Rule §25.504, Wholesale Market Power in the ERCOT Power Region

The Public Utility Commission of Texas (commission) will hold a workshop to discuss proposed changes to P.U.C. Substantive Rule §25.505 and P.U.C. Substantive Rule §25.504, on Thursday, February 23, 2012, at 1:30 p.m. in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. Rulemaking Project Number 37897 has been established for this proceeding. Prior to the workshop, the commission requests interested persons file comments to the following questions:

1. How have the recent changes to the protocols that affect reliability deployments of ancillary services affected your views on your proposed changes to these rules?

2. Should the commission consider an increase in the System Wide Offer Cap (SWOC)? If so, on what schedule should any increase be implemented? What would be the likely impact on contracting decisions by existing and prospective generation owners, retail electric providers, electric cooperatives, municipally owned utilities and retail customers? What would be the impacts on forward price signals and would those impacts be conducive to the development of new generation capacity in the ERCOT market?

3. Should the commission raise or eliminate the Low System Offer Cap (LCAP) and its triggering mechanism? If so, on what schedule should the change be implemented? What would be the likely impact on contracting decisions by existing and prospective generation owners, retail electric providers, electric cooperatives, municipally owned utilities and retail customers? What would be the impacts on forward price signals and would those impacts be conducive to the development of new generation capacity in the ERCOT market?

4. Does the Scarcity Pricing Mechanism that uses the Peaker Net Margin to monitor the adequacy of price signals to bring new generation to the ERCOT market still have value? Are other changes needed in P.U.C. Substantive Rule §25.505(g)(6)(E) to give better data about whether the market design allows for adequate revenues to cover the cost for new entry?

5. Should the commission consider an increase in the amount of generation owned by a single generation entity in order for the entity to qualify for the exemption listed in P.U.C. Substantive Rule §25.504(c)? Should the commission consider excluding new generation installed by an entity after January 1, 2012 in the calculation prescribed by that subsection?

6. Would the creation of a "safe harbor" with respect to a level of pricing that would not constitute an offer "substantially above... marginal cost" according to P.U.C. Substantive Rule §25.504(d) provide benefits to the marketplace? If so, what should be the form and level of that "safe harbor"?

7. Are there other changes to P.U.C. Substantive Rule §25.504 that would be conducive to ensuring that the market effectively signals and is conducive to the development of new generation capacity in the ERCOT market?

Responses may be filed by submitting 16 copies to the Commission's Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326 by Friday, February 10, 2012. Reply comments may be filed by Friday, February 17, 2012. All responses should reference Project Number 37897. This notice is not a formal notice of proposed rulemaking, however, the parties' responses to the questions and comments at the workshop will assist the commission in developing commission policy or determining the necessity for a related rulemaking.

Five days prior to the workshop the commission shall make available in Central Records under Project Number 37897 an agenda for the format of the workshop.

Questions concerning Project Number 37897 or this notice should be referred to Doug Whitworth, Competitive Markets Division, (512) 936-7368, or Jason Haas, Legal Division, (512) 937-7295. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission at (512) 936-7136.

TRD-201200471
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2012

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Request for Proposals for Conservation Education Outreach/Website Services

Request for Proposals (RFP) Number 473-12-00150

The Public Utility Commission of Texas (PUCT) is issuing a proposal to assist the PUCT in developing and executing strategies for the development and operation of an education program that emphasizes the benefits to Texas and retail consumers of energy conservation particularly during peak usage periods, an energy conservation website to be hosted by the PUCT, and a summer peak energy savings challenge.

Scope of Work:

The contractor shall develop an appropriate creative strategy and messaging for:

- the need for energy conservation particularly during peak usage periods;

- the development of a website (www.powertoconserve.com) that will serve as a central location for information on energy efficiency and conservation programs;

- the development of a summer peak energy savings challenge;

- coordination with Smart Meter Texas education on utilizing smart meter data to manage energy usage/lower costs;

- develop resources for educators and Texas students related to energy usage.

RFP documentation may be obtained by contacting:

Purchaser

Public Utility Commission of Texas

P.O. Box 13326

Austin, Texas 78711-3326

(512) 936-7069

purchasing@puc.state.tx.us

RFP documentation is also located on the PUCT website at:

http://www.puc.state.tx.us/agency/about/procurement/Default.aspx.

Deadline for proposal submission is 3:00 p.m. CDT on Monday, March 12, 2012.

TRD-201200472
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: January 31, 2012

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Texas State Soil and Water Conservation Board

Availability of Draft 2012 Update to the Texas Nonpoint Source Management Program

The Texas State Soil and Water Conservation Board (TSSWCB) announces the availability of the draft 2012 update to the Texas Nonpoint Source Management Program (Management Program).

The Management Program is the State's comprehensive strategy to protect and restore water quality in waterbodies impacted by nonpoint sources of water pollution. The Management Program is required under federal Clean Water Act (CWA) §319(b). The Management Program is jointly administered by the TSSWCB and the Texas Commission on Environmental Quality (TCEQ). The State must have a federally-approved Management Program in order to continue receiving CWA §319(h) grant monies from the U.S. Environmental Protection Agency (EPA).

The Management Program was last updated in December 2005 and must now be updated and revised. The TSSWCB and the TCEQ request that affected stakeholders review and provide comments on the draft 2012 update to the Management Program.

This draft document has been jointly developed by staff of the TSSWCB and the TCEQ consistent with regulatory guidance to satisfy requirements of the federal CWA. This document incorporates EPA's nine components of an effective program; establishes long- and short-term goals for the program; provides for the coordination of nonpoint source related programs and activities conducted by federal, state, regional, and local entities; and prioritizes assessment, planning, and implementation activities in priority watersheds and aquifers.

The TSSWCB and the TCEQ are requesting that, to the extent possible, comments reference the associated page, chapter, section, and paragraph from the document.

The draft document is available online at the website of either of the agencies *(http://www.tsswcb.texas.gov/managementprogram#revision* or *http://www.tceq.texas.gov/waterquality/nonpoint-source/mgmt-plan/index.html#draft-2012-texas-nonpoint)* or by contacting either agency directly. The draft document will be discussed at a public meeting scheduled for February 23, 2012 between 9:00 a.m. and 12:00 p.m. in Room 2210 of Building F of the TCEQ offices located at 12100 Park 35 Circle, Austin, Texas.

The TSSWCB and the TCEQ will be accepting comments until March 12, 2012. Comments may be submitted by email to Arthur Talley at *arthur.talley@tceq.texas.gov* on behalf of both agencies. After the public meeting and comment period, the TSSWCB and the TCEQ will address comments received and incorporate them into a final Management Program document that will be submitted to TSSWCB board members and TCEQ commissioners for approval. Once the document is approved by both agencies, it will be submitted to the Governor and then to EPA for approval.

TRD-201200347
Mel Davis
Special Projects Coordinator
Texas State Soil and Water Conservation Board
Filed: January 25, 2012

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Texas Department of Transportation

Aviation Division - Request for Proposal for Professional Engineering Services

The City of Denton, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive proposals for professional services as described below:

Airport Sponsor: City of Denton, Denton Municipal Airport. TxDOT CSJ No. 12MPDNTON. Scope: Prepare an Airport Master Plan which includes analysis of existing conditions/inventory, aviation demand forecasts, facility requirements, development alternatives, management structure and options, environmental overview, airport plans, financial program and documentation. The Airport Master Plan should be tailored to the individual needs of the airport.

There is no DBE requirement for this project. TxDOT Project Manager is Michelle Hannah.

Interested firms shall utilize the Form AVN-551, titled "Aviation Planning Services Proposal." The form may be requested from TxDOT Aviation Division, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at http://www.txdot.gov/business/projects/aviation.htm. The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Proposals may not exceed the number of pages in the proposal format. The proposal format consists of seven pages of data plus two optional pages consisting of an illustration page and a proposal summary page. A prime provider may only submit one proposal. If a prime provider submits more than one proposal, that provider will be disqualified. Proposals shall be stapled but not bound in any other fashion. PROPOSALS WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed, unfolded copies of Form AVN-551 **must be received** by TxDOT Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than **March 6, 2012, 4:00 p.m.** Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Edie Stimach.

The consultant selection committee will be composed of local government members. The final selection by the committee will generally be made following the completion of review of proposals. The committee will review all proposals and rate and rank each. The evaluation criteria for airport planning projects can be found at http://www.txdot.gov/business/projects/aviation.htm. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Edie Stimach, Grant Manager, or Michelle Hannah, Project Manager for technical questions at 1-800-68-PILOT (74568).

TRD-201200449
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 30, 2012

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Notice of Opportunity to Comment - Transportation Planning, Programming, Funding, and Reporting Rules

The Texas Department of Transportation (department) is soliciting comments for potential revisions to department rules in 43 Texas Administrative Code Chapter 16 involving transportation planning, programming, funding, and reporting.

The current transportation planning, programming, funding, and reporting rules in Chapter 16 became effective on January 1, 2011. The rules were adopted by the Texas Transportation Commission (commission) to establish a transparent, well-defined, and understandable process for project planning and programming. Provisions in the rules were based on recommendations made in 2009 by the Texas Legislature's Sunset Advisory Commission and a Transportation Planning and Project Development Rulemaking Advisory Committee comprised of eleven members, including representatives from large urban metropolitan planning organizations, small urban metropolitan planning organizations, counties, transit organizations, tolling authorities, small cities, councils of governments, and the Federal Highway Administration.

The 82nd Legislature in 2011 adopted Senate Bill 1420 as the department's sunset bill. Although most of the bill's provisions dealing with planning, programming, funding, and project/expenditure reporting are consistent with the department's current rules in Chapter 16, there are some differences. Based on the requirements of Senate Bill 1420 and the need to provide more clarity and flexibility, the department drafted proposed amendments to the rules. Those amendments, if adopted in a format similar to the latest draft, will make changes in all five subchapters of Chapter 16.

1. Subchapter A "General Provisions" - Changes include new definitions in §16.2 and a new flow chart in §16.4.

2. Subchapter B "Transportation Planning" - Changes include new requirements for both the long-range 20+ year metropolitan transportation plan for metropolitan planning organizations in §16.53 and the statewide long-range transportation plan for the department in §16.54. The changes seek to maximize the integration of all plans and programs for consistency and accountability.

3. Subchapter C "Transportation Programs" - Changes include: (a) revisions to public involvement procedures in §§16.102, 16.103, and 16.105 to reduce duplication of efforts and improve efficiency and flexibility; (b) new requirements in §16.105 for developing the ten year unified transportation program including priority ranking of projects, additional project selection criteria, and expansion of the administrative revision concept for minor changes to the unified transportation program; and (c) new requirements in §16.106 for defining, listing, and establishing benchmarks for major transportation projects.

4. Subchapter D "Transportation Funding" - Changes include additions to the description of program funding categories in §16.154 to clarify the distinction of those funding categories based on allocation programs that allocate both funding and the responsibility for selection of projects, and those funding categories based on the allocation of funding for specific projects.

5. Subchapter E "Project and Performance Reporting" - Changes include: (a) revisions to annual reporting requirements to consolidate those requirements in §§16.201, 16.202, and 16.203; and (b) new project and expenditure reporting requirements in §§16.202, 16.203, and 16.204.

The department is seeking both general ideas and specific language suggestions. Comments on specific text changes should include appropriate citations to sections, subsections, paragraphs, etc. of the draft rules for proper reference. The latest version of the draft planning and programming rules is available online at:

http://txdot.gov/public_involvement/chapter16_revisions.htm

The department will accept only written comments and they should be addressed to Bob Jackson, General Counsel, 150 East Riverside Drive, Austin, Texas 78704, or via email to robin.carter@txdot.gov. The deadline for receipt of comments is 5:00 p.m. on March 20, 2012.

The department will not respond individually to comments received pursuant to this notice. Comments will be reviewed and considered by the department prior to presenting a final draft of the rules and a recommendation to the Texas Transportation Commission. If planning and programming rules are formally proposed for adoption by the commission, those proposed rules will be published in the *Texas Register* and provide for a comment period prior to final adoption.

TRD-201200475
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 31, 2012

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Public Hearing Notice - Statewide Transportation Improvement Program

The Texas Department of Transportation (department) will hold a public hearing on Wednesday, February 29, 2012 at 10:00 a.m. at 150 East Riverside Drive, Room 1B-1, in Austin, Texas to receive public comments on the February 2012 Quarterly Revisions to the Statewide Transportation Improvement Program (STIP) for FY 2011 - 2014.

The STIP reflects the federally funded transportation projects in the FY 2011 - 2014 Transportation Improvement Programs (TIPs) for each Metropolitan Planning Organization (MPO) in the state. The STIP includes both state and federally funded projects for the nonattainment areas of Beaumont, Dallas-Fort Worth, El Paso, and Houston. The STIP also contains information on federally funded projects in rural areas

that are not included in any MPO area, and other statewide programs as listed.

Title 23, United States Code, §134 and §135 require each designated MPO and the state, respectively, to develop a TIP and STIP as a condition to securing federal funds for transportation projects under Title 23 or the Federal Transit Act (49 USC §5301, et seq.). Section 134(j) requires an MPO to develop its TIP in cooperation with the state and affected public transit operators and to provide an opportunity for interested parties to participate in the development of the program. Section 135(g) requires the state to develop a STIP for all areas of the state in cooperation with the designated MPOs and, with respect to non-metropolitan areas, in consultation with affected local officials, and further requires an opportunity for participation by interested parties as well as approval by the Governor or the Governor's designee.

A copy of the proposed February 2012 Quarterly Revisions to the FY 2011 - 2014 STIP will be available for review, at the time the notice of hearing is published, 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) 486-5033, and on the department's website at: www.txdot.gov.

Persons wishing to speak at the hearing may register in advance by notifying Lori Morel, Transportation Planning and Programming Division, at (512) 486-5033 not later than Tuesday, February 28, 2012, 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 Government and Public Affairs Division, at 125 East 11th Street, Austin, Texas 78701-2483, (512) 463-9957. 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 proposed February 2012 Quarterly Revisions to the FY 2011 - 2014 STIP to James L. Randall, P.E., Director, Transportation Planning and Programming Division, 118 East Riverside Drive, Austin, Texas 78704. In order to be considered, all written comments must be received at the Transportation Planning and Programming office by 4:00 p.m. on Monday, March 12, 2012.

TRD-201200474
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: January 31, 2012

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Public Notice - Advertising in TxDOT Travel Literature and *Texas Highways* Magazine

The Texas Department of Transportation (department) is authorized by Transportation Code, Chapter 204 to publish literature for the purpose of advertising the highways of this state and attracting traffic thereto, and to include paid advertising in such literature. Texas Administrative Code, Title 43, §23.10 and §23.29 describe the policies governing advertising in department travel literature and *Texas Highways* magazine, list acceptable and unacceptable subjects for advertising in department travel literature and the magazine, and describe the procedures by which the department will solicit advertising.

As required by 43 TAC §23.10(e)(4)(A) and 43 TAC §23.29(d)(1) the department invites any entity or individual interested in advertising in department travel literature and *Texas Highways* magazine to request to be added to the department's mailing list. Written requests may be mailed to the Texas Department of Transportation, Travel Information Division, Travel Publications Section, P.O. Box 141009, Austin, Texas 78714-1009. Requests may also be made by telephone to (512) 486-5880 or sent by fax to (512) 486-5879.

The department is now accepting advertising for the back panel of the 2012 second edition of the *Texas Official Travel Map,* scheduled to be printed and available by June, 2012. The *Texas Official Travel Map* is designed for the general motoring public depicting major Texas highways, cities, towns, mileage between such points, locations of Texas state parks, national forests, national parks and wildlife refuges, safety rest areas, Travel Information Centers, major lakes and rivers, and certain other geographic details. The State of Texas distributes this map to travelers in Texas and to those who request information while planning to travel in Texas.

The publication will begin accepting advertising for the back panel of the *Texas Official Travel Map* after March 12, 2012. The deadline for advertising space will be April 12, 2012.

The rate card information for potential advertisers in the *Texas Official Travel Map* is included in this notice.

TEXAS OFFICIAL TRAVEL MAP
Year 2012 Second Edition Rate Base: 700,000
Space Closing: April 12, 2012
Materials Due: April 17, 2012
First Distribution: June 2012

Advertising Rates

ROP:	Gross	Net*
Full Panel	$24,950	$21,208
Half (1/2) Panel	$14,088	$11,975

*Commission: 15% to recognized agencies providing prepress-ready materials.

Note: All rates are 4-color (no black and white).

Payment: Cash with order or net 30 from invoice date. All orders must be paid in full by May 11, 2012.

TRD-201200508
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: February 1, 2012

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Texas Water Development Board

Applications for February 2012

Pursuant to Texas Water Code §6.195, the Texas Water Development Board provides notice of the following applications:

Project ID #21713, a request from the Bluebonnet Water Supply Corporation, 6100 Water Supply Road, Temple, Texas 76502-6950, received October 3, 2011, for a loan in the amount of $3,600,000 from the Rural Water Assistance Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21712, a request from the Harris County Municipal Utility District No. 46, 5075 Westheimer; Suite 1175, Houston, Texas 77056, received September 16, 2011, for a loan in the amount of $1,560,000 from the Texas Water Development Fund to finance water system improvements, utilizing the pre-design funding option.

Project ID #21711, a request from the Matagorda County Water Control and Improvement District No. 2, 1980 Post Oak Boulevard, Suite 1380, Houston, Texas 77056, received August 15, 2011, for a loan in the amount of $500,000 from the Texas Water Development Fund to provide financing for water system improvements, utilizing the pre-design funding option.

Project ID #21639, a request from the San Jacinto River Authority, 1300 Post Oak Boulevard, Suite 1400, Houston, Texas 77056, received December 14, 2011, for a loan in the amount of $175,000,000 from the Water Development Fund to finance development costs for the water supply project, utilizing the pre-design funding option.

Project ID #21709, a request from the City of Shallowater, 2200 Ross Avenue, Suite 2800, Dallas, Texas 75201, received July 11, 2011, for a loan in the amount of $4,100,000 from the Texas Water Development Fund to provide financing to finance water system improvements, utilizing the pre-design funding option.

Project ID #21715, a request from Sandy Land Underground Water District, P.O. Box 130, Plains, Texas 79355-0130, received November 3, 2011, for a loan in the amount of $2,000,000 from the Agricultural Water Conservation Loan Program to make conservation loans to eligible borrowers for water conservation equipment, including materials, labor, and preparation and installation costs.

Project ID #62513, a request from the City of Willis, 200 North Bell, Willis, Texas 77378, received August 16, 2011, for a loan in the amount of $3,150,000 from the Drinking Water State Revolving Fund to finance water system improvements, utilizing the pre-design commitment option.

Project ID #73625, a request from the City of Eldorado, P.O. Box 713, Eldorado, Texas 76936, received June 8, 2011, for a loan in the amount of $1,200,000 from the Clean Water State Revolving Fund to finance wastewater system improvements, utilizing the pre-design funding option.

TRD-201200351
Kenneth Petersen
General Counsel
Texas Water Development Board
Filed: January 26, 2012

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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.

Secretary of State - opinions based on the election laws.

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.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

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 36 (2011) is cited as follows: 36 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 "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 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, Room 245, 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 ***Register*** is available in an .html version as well as a .pdf (portable document format) 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 following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

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
40 TAC §3.704.....950 *(P)*