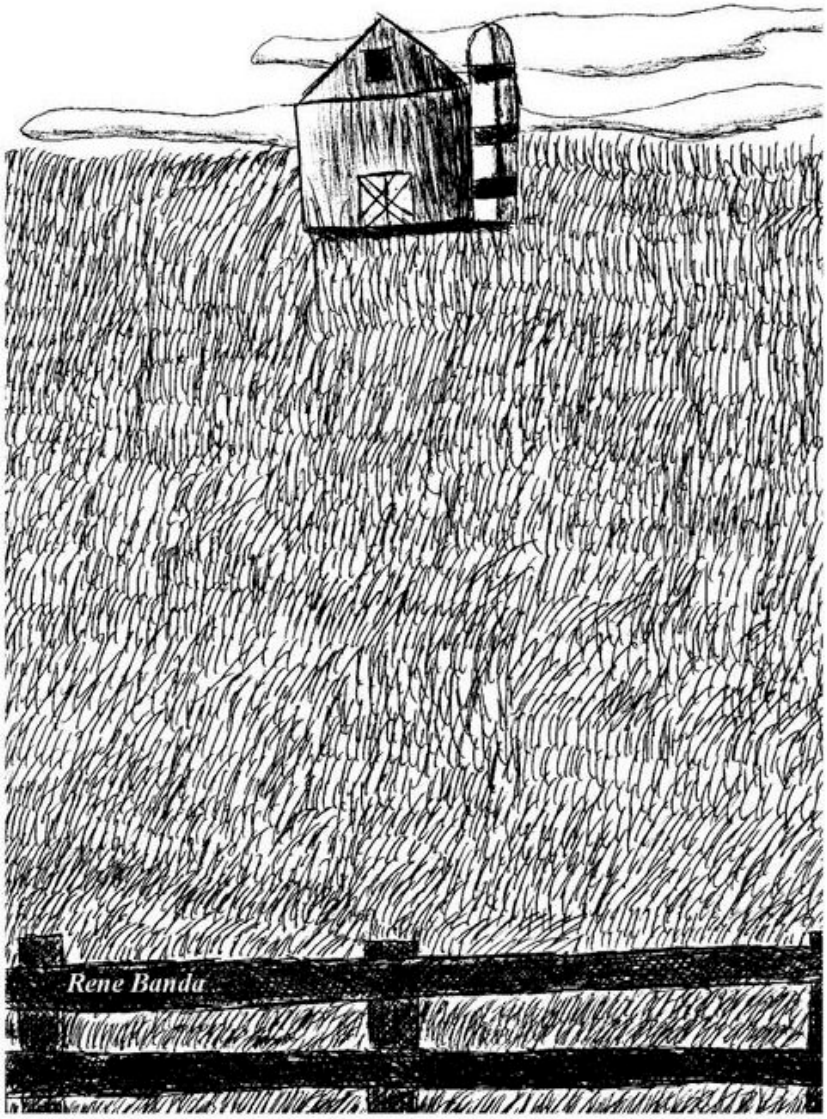
TEXAS REGISTER

Volume 38 Number 46 *November 15, 2013* *Pages 8023 – 8*



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*.

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IN ADDITION

THE GOVERNOR

As required by Government Code, §2002.011(4), the *Texas Register* publishes executive orders issued by the Governor of Texas. Appointments and proclamations are also published. Appointments are published in chronological order. Additional information on documents submitted for publication by the Governor's Office can be obtained by calling (512) 463-1828.

Appointments

Appointments for October 15, 2013

Appointed to the Texas State Board of Public Accountancy for a term to expire January 31, 2017, Phillip Worley of Hebbronville (replacing Catherine Rodewald of Dallas who resigned).

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2019, Durga Agrawal of Houston (replacing Nelda Luce Blair of The Woodlands whose term expired).

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2019, Paula M. Mendoza of Houston (replacing Mica Mosbacher of Austin whose term expired).

Appointed to the University of Houston System Board of Regents for a term to expire August 31, 2019, Peter K. Taaffe of Austin (replacing Jacob Monty of Houston whose term expired).

Appointed as Justice of the Eleventh Appellate District, Place 3, effective October 31, 2013, for a term until the next General Election and until his successor shall be duly elected and qualified, John Melvin Bailey of Cisco. Mr. Bailey is replacing Justice Terry McCall of Comanche who retired.

Appointed to the Low-Level Radioactive Waste Disposal Compact Commission for a term to expire September 1, 2019, Brandon Troy Hurley of Grapevine (replacing Milton B. Lee, II of San Antonio who resigned).

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2019, Ivan A. Andarza of Austin (replacing Eugene Seaman of Corpus Christi whose term expired).

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2019, Keith Honey of Longview (replacing Michael Northcutt, Sr. of Longview whose term expired).

Appointed to the Texas State Technical College System Board of Regents for a term to expire August 31, 2019, Ellis Skinner, II of Dallas (Mr. Skinner is being reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Frederick J. Buckwold of Houston (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, David C. Fleeger of Austin (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Matthew J. Hamlin of Argyle (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, James L. Martin of Austin (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Edward W. Marx of Colleyville (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Kathleen K. Mechler of Fredericksburg (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, William A. Phillips, Jr. of San Antonio (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Judith D. Powell of The Woodlands (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Jennifer L. Rangel of Austin (reappointed).

Appointed to the Texas Health Services Authority Corporation for a term to expire June 15, 2015, Stephen Yurco of Austin (reappointed).

Appointments for October 31, 2013

Promoted to the rank of Brigadier General in Headquarters, Texas State Guard, Austin, Texas with all rights, privileges and emoluments appertaining to this office, effective November 1, 2013, David Cohen of Austin.

Appointed to the Texas Emissions Reduction Plan Advisory Board for a term to expire February 1, 2015, David T. Allen of Austin (replacing Ken Pelt of Kountze who no longer qualifies).

Appointed to the Texas State Board of Examiners of Psychologists, effective November 1, 2013, for a term to expire October 31, 2019, Timothy F. Branaman of Dallas (reappointed).

Appointed to the Texas State Board of Examiners of Psychologists, effective November 1, 2013, Angela Downes of Irving (reappointed).

Appointed to the Texas State Board of Examiners of Psychologists, effective November 1, 2013, Lou Ann Mock of Bellaire (reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2019, William F. Edmiston, Jr. of Eldorado (Dr. Edmiston is being reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2019, Kenneth G. Jordan of San Saba (Mr. Jordan is being reappointed).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2019, Joe L. Leathers of Guthrie (Mr. Leathers is replacing Mark Wheelis of Houston whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2019, Thomas E. Oates of Huntsville (Mr. Oates is replacing Richard Winters of Brady whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2019, Eric D. White of Mason (Mr. White is replacing Randy Brown of Lubbock whose term expired).

Appointed to the Texas Animal Health Commission for a term to expire September 6, 2019, Jay R. Winter of Lubbock (Mr. Winter is replacing Chuck Real of Marion whose term expired).

Appointments for November 5, 2013

Appointed to the Judicial Compensation Commission for a term to expire February 1, 2019, Robert E. Lindsey, III of Goldthwaite (Mr. Lindsey is replacing Tommy Harwell of El Paso whose term expired).

Appointed to the Texas Judicial Council for a term to expire June 30, 2019, Richard S. Figueroa of Brenham (reappointed).

Appointed to the Texas Judicial Council for a term to expire June 30, 2019, Allyson N. Ho of Dallas (reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2017, Mervin "Paul" Jones of Austin (Mr. Jones is replacing James Brookes of Amarillo who resigned).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2019, Mark A. Dunn of Lufkin (Mr. Dunn is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2019, Wesley L. Jurey of Arlington (Mr. Jurey is being reappointed).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2019, Richard M. Rhodes of Austin (Dr. Rhodes is replacing Blas Castaneda of Laredo whose term expired).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2019, Thomas C. Halbouty of Southlake (Mr. Halbouty is replacing Paul Mayer of Garland whose term expired).

Appointed to the Texas Workforce Investment Council for a term to expire September 1, 2019, Mark Barberena of Fort Worth (Mr. Barberena is replacing Danny Prosperie of Bridge City whose term expired).

Rick Perry, Governor

TRD-201305112

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Proclamation 41-3362

TO ALL TO WHOM THESE PRESENTS SHALL COME:

I, RICK PERRY, Governor of the State of Texas, issued an Emergency Disaster Proclamation on July 5, 2011, certifying that exceptional drought conditions posed a threat of imminent disaster in specified counties in Texas.

WHEREAS, record high temperatures, preceded by significantly low rainfall, have resulted in declining reservoir and aquifer levels, threatening water supplies and delivery systems in many parts of the state; and

WHEREAS, prolonged dry conditions continue to increase the threat of wildfire across many portions of the state; and

WHEREAS, these drought conditions have reached historic levels and continue to pose an imminent threat to public health, property and the economy; and

WHEREAS, this state of disaster includes the counties of Anderson, Andrews, Aransas, Archer, Armstrong, Atascosa, Austin, Bailey, Bandera, Bastrop, Baylor, Bee, Bell, Bexar, Blanco, Borden, Bosque, Bowie, Brazoria, Brazos, Briscoe, Brooks, Brown, Burleson, Burnet, Caldwell, Calhoun, Callahan, Cameron, Camp, Carson, Cass, Castro, Cherokee, Childress, Clay, Cochran, Coke, Coleman, Collin, Collingsworth, Colorado, Comal, Comanche, Concho, Cooke, Coryell, Cottle, Crane, Crockett, Crosby, Culberson, Dallam, Dallas, Dawson, Deaf Smith, Delta, Denton, DeWitt, Dickens, Dimmit, Donley, Duval, Eastland, Ector, Edwards, Ellis, El Paso, Erath, Falls, Fannin, Fayette, Fisher, Floyd, Foard, Fort Bend, Franklin, Freestone, Frio, Gaines, Galveston, Garza, Gillespie, Glasscock, Goliad, Gonzales, Gray, Grayson, Gregg, Grimes, Guadalupe, Hale, Hall, Hamilton, Hansford, Hardeman, Harris, Harrison, Hartley, Haskell, Hays, Hemphill, Henderson, Hidalgo, Hill, Hockley, Hood, Hopkins, Houston, Howard, Hudspeth, Hunt, Hutchinson, Irion, Jack, Jackson, Jeff Davis, Jim Hogg, Jim Wells, Johnson, Jones, Karnes, Kaufman, Kendall, Kenedy, Kent, Kerr, Kimble, King, Kinney, Kleberg, Knox, La Salle, Lamar, Lamb, Lampasas, Lavaca, Lee, Leon, Liberty, Limestone, Lipscomb, Live Oak, Llano, Lubbock, Lynn, Madison, Marion, Martin, Mason, Matagorda, Maverick, McCulloch, McLennan, McMullen, Medina, Menard, Midland, Milam, Mills, Mitchell, Montague, Montgomery, Moore, Morris, Motley, Navarro, Nolan, Nueces, Ochiltree, Oldham, Palo Pinto, Panola, Parker, Parmer, Pecos, Polk, Potter, Presidio, Rains, Randall, Reagan, Real, Red River, Reeves, Refugio, Roberts, Robertson, Rockwall, Runnels, Rusk, San Jacinto, San Patricio, San Saba, Schleicher, Scurry, Shackelford, Sherman, Smith, Somervell, Starr, Stephens, Sterling, Stonewall, Sutton, Swisher, Tarrant, Taylor, Terrell, Terry, Throckmorton, Titus, Tom Green, Travis, Trinity, Upshur, Upton, Uvalde, Val Verde, Van Zandt, Victoria, Walker, Waller, Ward, Washington, Webb, Wharton, Wheeler, Wichita, Wilbarger, Willacy, Williamson, Wilson, Winkler, Wise, Wood, Yoakum, Young, Zapata and Zavala.

THEREFORE, in accordance with the authority vested in me by Section 418.014 of the Texas Government Code, I do hereby renew the disaster proclamation and direct that all necessary measures, both public and private as authorized under Section 418.017 of the code, be implemented to meet that threat.

As provided in Section 418.016 of the code, all rules and regulations that may inhibit or prevent prompt response to this threat are suspended for the duration of the state of disaster.

In accordance with the statutory requirements, copies of this proclamation shall be filed with the applicable authorities.

IN TESTIMONY WHEREOF, I have hereunto signed my name and have officially caused the Seal of State to be affixed at my office in the City of Austin, Texas, this the 1st day of November, 2013.

Rick Perry, Governor

TRD-201305113

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THE ATTORNEY GENERAL

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

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

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

Requests for Opinions

RQ-1161-GA

Requestor:

The Honorable Linda Harper-Brown

Chair, Committee on Government Efficiency and Reform

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Whether state statutes that prohibit or void certain restrictive covenants affect covenants existing at the time the statutes are enacted (RQ-1161-GA)

Briefs requested by November 20, 2013

For further information, please access the website at www.oag.state.tx.us or call the Opinion Committee at (512) 463-2110.

TRD-201305100
Katherine Cary
General Counsel
Office of the Attorney General
Filed: November 6, 2013

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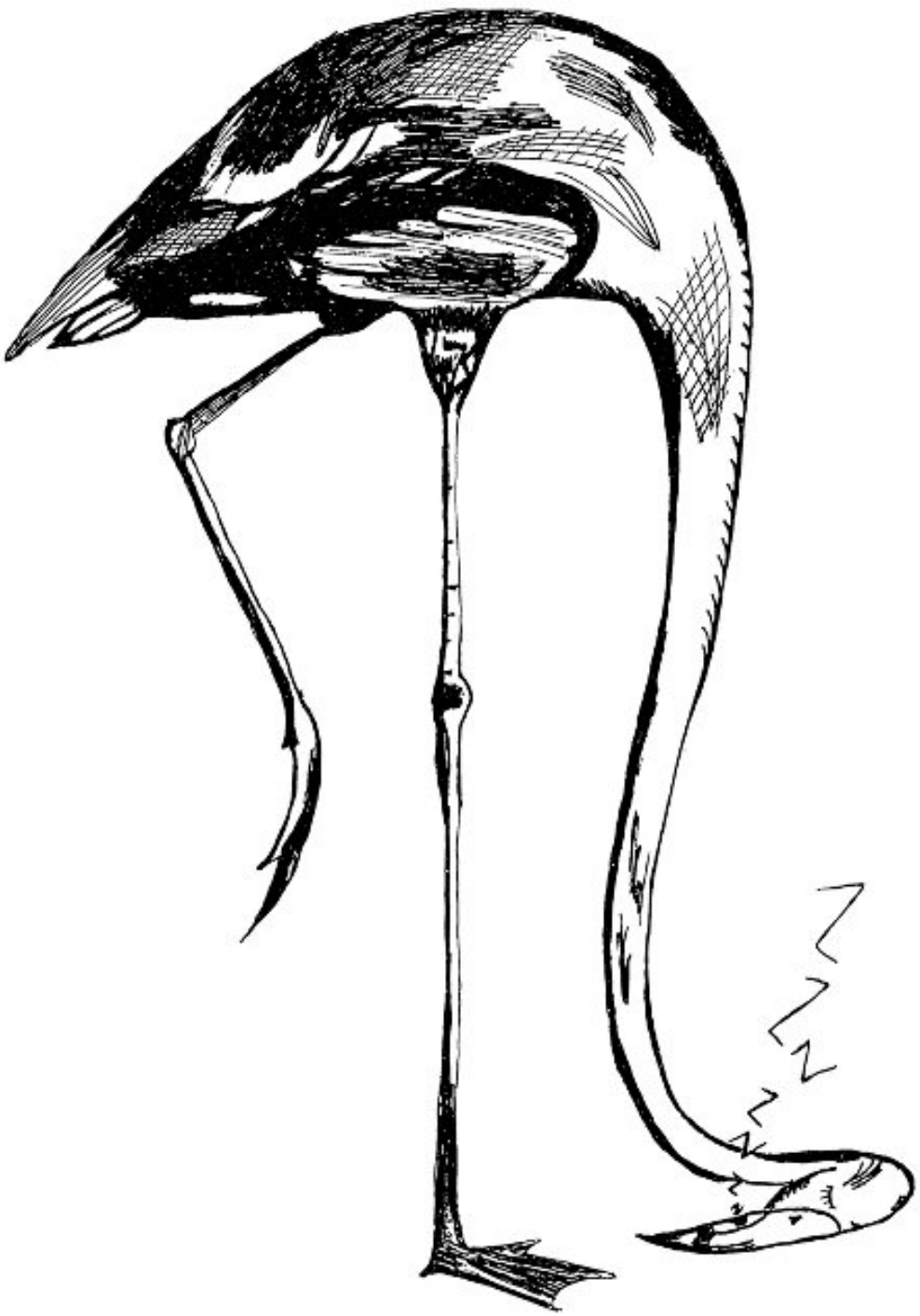

TEXAS ETHICS COMMISSION

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

Advisory Opinion

EAO-514. The Texas Ethics Commission has been asked to consider applicable reporting requirements in a situation in which a candidate incurs a processing fee when accepting a political contributions by credit card. (AOR-580)

SUMMARY

A candidate who accepts a political contribution by credit card must report as a political contribution the full amount that the donor intends to contribute. If, based on a prior agreement with the credit card processing company, the candidate incurs a processing fee that is deducted from the contribution, the candidate must report the processing fee as a political expenditure.

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

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

TRD-201305031
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Filed: November 1, 2013

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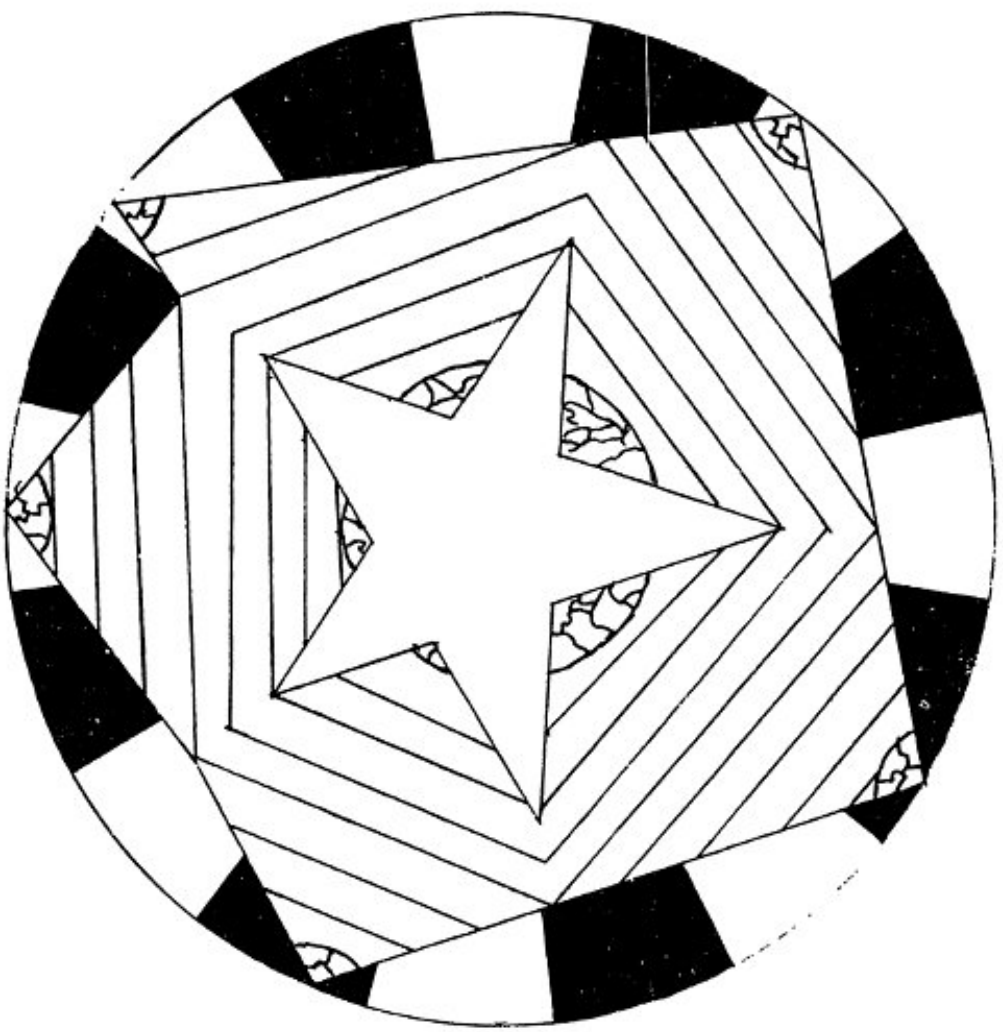

Emergency Rules include new rules, amendments to existing rules, and the repeals of existing rules. A state agency may adopt an emergency rule without prior notice or hearing if the agency finds that an imminent peril to the public health, safety, or welfare, or a requirement of state or federal law, 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 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 745. LICENSING

SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS

DIVISION 3. CONFIDENTIALITY

40 TAC §745.8495

The Health and Human Services Commission adopts, on an emergency basis, on behalf of the Department of Family and Protective Services (DFPS), new §745.8495, concerning who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records, in Chapter 745, concerning Licensing. The new section is adopted on an emergency basis pursuant to the Government Code §2001.034, which allows use of the emergency rulemaking process in order to comply with state law.

The new section implements House Bill (HB) 1648, which was enacted by the 83rd Legislature, Regular Session. HB 1648 amended the Human Resources Code (HRC) by adding §42.004, which makes photographs, audio or video recordings, depictions, or documentations of a child made by Child Care Licensing in the course of an inspection or investigation confidential, and allows DFPS to release these items only as provided in state or federal law, or rules adopted by the Health and Human Services executive commissioner. HRC §42.004 became effective on September 1, 2013. This emergency rule specifies which persons or entities may review or have copies of confidential audio or video depictions of children in Licensing records.

Prior to the enactment of HB 1648, DFPS routinely shared the types of records covered by HB 1648 with certain persons and entities (including law enforcement, child-care operations, and parents) as needed to ensure the protection of children or to afford due process to an operation found to have committed abuse or neglect or to have violated minimum standards. In order to continue this practice while meeting the requirements of HB 1648, DFPS must adopt an emergency rule authorizing the sharing of these records for specified purposes.

Also in this issue of the *Texas Register,* DFPS is simultaneously proposing a new permanent rule that will be effective in March 2014, that has the same content as the emergency rule, except that the non-emergency rule proposal will not include the transitional language contained in subsection (c) of this emergency rule. Subsection (c) in this adopted emergency rule is necessary to address a conflict in law that will exist between the adopted emergency rule, and existing §745.8493 of this title (relating to Are there any portions of a child abuse or neglect investigation file that Licensing may not release to anyone?), which governs the release of audiotapes, videotapes, and other audio or visual depictions of a child gathered as part of an investigation of alleged abuse or neglect. Amendments to §745.8493 of this title are also being proposed in this issue of the *Texas Register* in a separate rule packet to remove the conflict between that rule and the content of both the emergency rule and the proposed non-emergency rule at §745.8495.

The new section is adopted on an emergency basis 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. Adoption of this rule as an emergency rule is authorized under Government Code §2001.034, which allows use of the emergency rulemaking process in order to comply with state law.

The new section implements the Human Resources Code §42.042(a) and 42.004.

§745.8495. Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?

(a) We may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records to any of the following:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect, false or malicious reporting of alleged child abuse or neglect, or failure to report abuse or neglect;

(3) An administrative law judge or a judge of a court of competent jurisdiction in a criminal or civil case to which the inspection or investigation is relevant;

(4) The parent of the child; and

(5) Any other person authorized by state or federal law to have a copy.

(b) The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:

(1) An attorney ad litem, guardian ad litem, or court appointed special advocate of the child;

(2) The operation;

(3) With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation; and

(4) According to the Texas Family Code §162.006, a prospective adoptive parent of the child.

(c) To the extent of any conflict with §745.8493(a)(1) of this title (relating to Are there any portions of a child abuse or neglect investigation file that Licensing may not release to anyone?), this rule controls.

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

Filed with the Office of the Secretary of State on October 30, 2013.

TRD-201304934
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Effective date: October 30, 2013
Expiration date: February 26, 2014
For further information, please call: (512) 438-3437

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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 95. UNIFORM COMMERCIAL CODE

The Office of the Secretary of State proposes amendments to §§95.100 - 95.102, 95.104, 95.106, 95.107, 95.201, 95.203 - 95.205, 95.300 - 95.307, 95.309, 95.310, 95.313, 95.401 - 95.403, 95.406, 95.408, 95.500 - 95.503, 95.505, 95.604 and 95.605.

The purpose of the amendments of the Uniform Commercial Code rules is to reflect current filing policies and procedures due to statutory requirements and to conform to national model administrative rules promulgated by the International Association of Commercial Administrators (IACA).

Randy Moes, Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications to the state or local governments as a result of adopting these sections.

Mr. Moes also has determined that for each year of the first five years the amended sections are in effect, the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the proposals may be submitted to Randy Moes, Director, Uniform Commercial Code Section, P.O. Box 13193, Austin, Texas 78711-3193. In order to be considered, all comments must be received by 5:00 p.m. on December 13, 2013.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§95.100 - 95.102, 95.104, 95.106, 95.107

Statutory authority: The amendments are proposed in accordance with §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5; Texas Agriculture Code, Subtitle E of Title 6; Texas Agriculture Code, Subchapter D of Chapter 70; Property Code, Subchapter E of Chapter 70, Property Code; and Subchapter J of Chapter 51, Texas Government Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§95.100. Definitions.

Terms used in these filing-office rules but not defined in this section that are defined in the UCC shall have the respective meanings accorded such terms in the UCC.

(1) Active Record [~~record~~]. "Active Record [~~record~~]" means a UCC record that has been stored in the UCC information management system and indexed in, but not yet removed from, the Searchable Indexes [~~searchable~~ ~~indexes~~].

(2) (No change.)

(3) Amendment statement. "Amendment" means a UCC record that amends the information contained in a financing statement. Amendments include assignments, continuations and terminations.

(4) Assignment statement. "Assignment" is an amendment that assigns all or a part of a secured party's power to authorize an amendment to a financing statement.

(5) Information [~~Correction~~] statement. "Information [~~Correction~~] statement" means a UCC record that indicates that a financing statement is inaccurate or wrongfully filed.

(6) (No change.)

(7) Filing officer statement. "Filing officer statement" means a statement entered into the filing office's UCC information management system to correct an error made by the filing office.

(8) - (10) (No change.)

(11) Secured party of record. "Secured party of record" includes a secured party of record as defined in the UCC as well as a person who has been a secured party of record with respect to whom an amendment has been filed purporting to delete them as a secured party of record. The term includes the assignor listed on an amendment that purports to be an assignment.

(12) (No change.)

(13) UCC information management system. "UCC information management system" means the information management system used by the filing office to store, index, and retrieve information relating to financing statements as described under Subchapter C of this chapter (relating to UCC Information Management System) [~~in paragraph (3) of this section~~].

(14) UCC record. "UCC record" means an Initial [~~initial~~] financing statement, an amendment, an assignment, a continuation statement, a termination statement, a filing officer statement or an information [~~a correction~~] statement, and includes a record thereof

maintained by the filing office. The term shall not be deemed to refer exclusively to paper or paper-based writings.

(15) (No change.)

§95.101. Means to Deliver UCC Records, Time of Filing.

UCC records may be tendered for filing at the filing office as follows.

(1) Personal delivery by Remitter [~~remitter~~], at the filing office's street address. The file time for a UCC record delivered by this method is when delivery of the UCC record is taken by the filing office (even though the UCC record may not yet have been accepted for filing and subsequently may be rejected). This section applies only to a Remitter [~~remitter~~] who tenders a UCC record to the filing office and awaits an immediate determination of whether or not the UCC record will be taken or not.

(2) Courier delivery by a person other than a Remitter [~~remitter~~], at the filing office's street address. The file time for a UCC record delivered by this method is, notwithstanding the time of delivery, the next close of business following the time of delivery (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.

(3) (No change.)

(4) Telefacsimile delivery, to the filing office's fax filing telephone number. The file time for a UCC record delivered by this method, during regular business hours, after regular business hours, or on a day the filing office is not open for business, is the time the UCC record is first examined by a filing officer for processing (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected). [~~notwithstanding the time of delivery, at the earlier of the time the UCC record is first examined by a filing officer for processing (even though the UCC record may not yet have been accepted for filing and may be subsequently rejected) or the next close of business following the time of delivery. A UCC record delivered after regular business hours or on a day the filing office is not open for business will have a filing time of the close of business on the next day the filing office is open for business.~~]

(5) Electronic filing. UCC records, excluding information [~~correction~~] statements and filing officer statements, may be transmitted electronically using the XML Format [~~format~~] approved by the filing office. At the request of an authorized XML Remitter [~~remitter~~], the filing officer shall identify which versions and releases of the XML Format [~~format~~] are acceptable to the filing office. The filing office publishes an implementation guide that prescribes the use of the XML Format [~~format~~]. The implementation guide shall be available to the public upon request. The file time for a UCC record delivered by this method is the time that the filing office's UCC information management system analyzes the relevant transmission and determines that all the required elements of the transmission have been received in a required format and are machine-readable.

(6) (No change.)

(7) Means of communication. Regardless of the method of delivery, information submitted to the UCC filing office must be communicated only in the form of characters that are defined in an acceptable character set. A financing statement or amendment form that does not designate separate fields for organization and individual names, and separate fields for the surname, first personal name, additional name(s)/initial(s), [~~first, middle and last names~~] and suffixes for individual names is not an acceptable means of communication to the filing office.

(8) Transmitting utility, manufactured-home and public-financing transactions. The only means to indicate to the filing office that an Initial [~~initial~~] financing statement is being filed in connection with a manufactured-home or public-finance transaction, or that a financing statement is being or has been filed against a debtor that is a transmitting utility, in order to affect the filing office's determination of the lapse date under §95.306(3) of this title (relating to Initial Financing Statement) or §95.307 of this title (relating to Amendments Generally), is to so indicate by checking the appropriate box on a UCC Financing Statement (Form UCC1) [~~UCC1 Addendum filed with respect to the financing statement~~] or by transmitting the requisite information in the proper field in an electronic filing that is such Initial [~~initial~~] financing statement or is part of such financing statement.

§95.102. Search Request Delivery.

UCC search requests may be delivered to the filing office by any of the means by which UCC records may be delivered to the filing office. A search request may not be delivered by checking a box or otherwise including a search request in or on an Initial financing statement, but may be delivered in or on a separate search request after the Initial financing statement is filed. [~~A search request for a debtor named on an initial financing statement may be made on the initial financing statement form if the form is accepted and the relevant search fee is also tendered.~~]

§95.104. Fees.

(a) Filing fee. The fee for filing and indexing a UCC record of one or two pages communicated on paper or in a paper-based format (including faxes) is pursuant to §9.525(a)(1), Texas Business and Commerce Code. If there are additional pages, the fee is pursuant to §9.525(a)(2), Texas Business and Commerce Code. The fee for filing and indexing a UCC record communicated by a medium authorized by these sections which is other than on paper or in a paper-based format is pursuant to §9.525(a)(3), Texas Business and Commerce Code. The fee for filing and indexing a master amendment [~~filing~~] delivered in a format pursuant to §9.512(f) and §9.514(d), Texas Business and Commerce Code, is pursuant to §9.525(f), Texas Business and Commerce Code. The fee for filing and indexing a judicial finding of fact is pursuant to §51.905, Texas Government Code.

(b) Additional fees. In addition to fees set forth in subsection (a) of this section, a fee pursuant to §9.525(b)(1), Texas Business and Commerce Code, shall be paid for an Initial [~~initial~~] financing statement that indicates that it is filed in connection with a public-finance transaction, a fee pursuant to §9.525(b)(2), Texas Business and Commerce Code, shall be paid for an Initial [~~initial~~] financing statement that indicates that it is filed in connection with a manufactured-home transaction, and a fee pursuant to §9.525(b)(3), Texas Business and Commerce Code, shall be paid for an Initial [~~initial~~] financing statement that indicates that the debtor is a transmitting utility.

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

§95.106. Methods of Payment.

Filing fees and fees for public records services may be paid by the following methods.

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

(3) Electronic funds transfer. The filing office may accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from Remitters [~~remitters~~] who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.

(4) Prepaid account. A Remitter [~~remitter~~] may open an account for prepayment of fees. The filing officer shall issue an account

number to be used by a Remitter [remitter] who chooses to pay filing fees by this method. The filing officer shall deduct filing fees from the Remitter's [remitter's] prepaid account when authorized to do so by the Remitter [remitter]. The Remitter [remitter] may authorize transactions against the prepaid account by use of the Remitter's [remitter's] SOS-Direct account, by written authorization, facsimile, and by telephone authorization.

(5) (No change.)

(6) LegalEase. The filing office accepts payment via LegalEase from Remitters [remitters] who have entered into appropriate LegalEase arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements.

§95.107. Overpayment and Underpayment Policies.

(a) Overpayment. The filing officer shall refund the amount of an overpayment exceeding $5 to the Remitter [remitter]. The filing officer shall accrue the amount of the overpayment to the prepaid account if the overpayment is less than $5. This amount may be refunded only upon the written request of the Remitter [remitter].

(b) Underpayment. Upon receipt of a UCC record with an insufficient fee, the filing officer shall do the following: The UCC record and fee shall be returned to the Remitter [remitter] as provided in §95.203 of this title (relating to Procedure Upon Refusal).

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

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SUBCHAPTER B. ACCEPTANCE AND REFUSAL OF DOCUMENTS

1 TAC §§95.201, 95.203 - 95.205

Statutory authority: The amendments are proposed in accordance with §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5; Texas Agriculture Code, Subtitle E of Title 6; Texas Agriculture Code, Subchapter D of Chapter 70; Property Code, Subchapter E of Chapter 70, Property Code; and Subchapter J of Chapter 51, Texas Government Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§95.201. Time for Filing a Continuation Statement.

(a) First day permitted. The first day on which a continuation statement may be filed is the date corresponding to the date upon which the related financing statement would lapse, six months preceding the month in which such financing statement would lapse. If there is no such corresponding date, the first day on which a continuation may be filed is the last day of the sixth month preceding the month in which the financing statement would lapse. This subsection [The foregoing provision] is subject to the ability of the filing office to take delivery of the continuation statement as tendered and to §95.101 of this title (relating to Means to Deliver UCC Records; Time of Filing).

(b) Last day permitted. The last day on which a continuation statement may be filed is the date upon which the related financing statement lapses. This subsection [The foregoing provision] is subject to the ability of the filing office to take delivery of the continuation statement as tendered and to §95.101 of this title. Accordingly, the time of filing of the continuation statement under §95.101 of this title must be on or prior to such last day and delivery by certain means of communication may not be available on such last day if the filing office is not open for business on such day.

§95.203. Procedure Upon Refusal.

Except as provided in §95.107 of this title (relating to Overpayment and Underpayment Policies), if the filing officer finds grounds to refuse a UCC record, the filing officer shall return the document, if written, to the Remitter [remitter] and may return or refund the filing fee. Communication of the refusal, the reason(s) for the refusal and other related information will be made to the Remitter [remitter] as soon as practicable and in any event within two business days after the refused UCC record was received by the filing office, by the same means as the means by which such UCC record was delivered to the filing office, or by mail or such more expeditious means as the filing office shall determine. Records of refusal, including a copy of the refused UCC record and the ground(s) for refusal, shall be maintained until the first anniversary of the lapse date that applies or would have applied to the related financing statement, assuming that the refused record had been accepted and filed.

§95.204. Refusal Errors.

If a secured party or a Remitter [remitter] demonstrates to the satisfaction of the filing officer that a UCC record that was refused for filing should not have been refused under §95.202 of this title (relating to Grounds for Refusal), the filing officer will file the UCC record with the filing date and time the UCC record was originally tendered for filing. A filing officer statement record relating to the relevant Initial [initial] financing statement will be placed in the UCC information management system on the date that the corrective action was taken. The filing officer statement must provide the date of the correction and explain the nature of the corrective action taken. The record shall be preserved for so long as the record of the Initial [initial] financing statement is preserved in the UCC information management system.

§95.205. Notification of Defects.

Nothing in these sections prevents a filing officer from communicating to a filer or a Remitter [remitter] that the filing officer noticed apparent potential defects in a UCC record, whether or not it was filed or refused for filing. However, the filing office is under no obligation to do so and may not, in fact, have the resources to do so or to identify such defects. The responsibility for the legal effectiveness of filing rests with filers and Remitters [remitters] and the filing office bears no responsibility for such effectiveness.

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SUBCHAPTER C. UCC INFORMATION MANAGEMENT SYSTEM

1 TAC §§95.300 - 95.307, 95.309, 95.310, 95.313

Statutory authority: The amendments are proposed in accordance with §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5; Texas Agriculture Code, Subtitle E of Title 6; Texas Agriculture Code, Subchapter D of Chapter 70; Property Code, Subchapter E of Chapter 70, Property Code; and Subchapter J of Chapter 51, Texas Government Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§95.300. General.

The filing officer uses a UCC [~~an~~] information management system to store, index, and retrieve information relating to financing statements. The UCC information management system includes an index of the names of debtors included on financing statements that are Active Records [~~active records~~]. No distinction will be made between upper and lower case letters for indexing purposes. The sections in this subchapter describe the UCC information management system.

§95.301. Primary Data Elements.

The primary data elements used in the UCC information management system are the following.

(1) Identification numbers.

(A) Each Initial [~~initial~~] financing statement is identified by its file number. Identification of the Initial [~~initial~~] financing statement is stamped on written UCC records or otherwise permanently associated with the record maintained for UCC records in the UCC information management system. A record is created in the UCC information management system for each Initial [~~initial~~] financing statement and all information comprising such record is maintained in the system. The record is identified by the same information assigned to the Initial [~~initial~~] financing statement.

(B) A UCC record other than an Initial [~~initial~~] financing statement is identified by a unique file number assigned by the filing officer. In the UCC information management system, records of all UCC records other than Initial [~~initial~~] financing statements are linked to the record of their related Initial [~~initial~~] financing statement.

(2) Type of record. The type of UCC record from which data is transferred is identified in the UCC information management system from information supplied by the Remitter [~~remitter~~].

(3) Filing date and filing time. The filing date and filing time of UCC records are stored in the UCC information management system. Calculation of the lapse date of an Initial [~~initial~~] financing statement is based upon the filing date.

(4) - (5) (No change.)

(6) Lapse indicator. An indicator is maintained by which the UCC information management system identifies whether or not a financing statement will lapse and, if it does, when it will lapse. The lapse date is determined as provided in §§95.306(3), 95.307, 95.308(a), and 95.408 of this title (relating to Initial Financing Statement; Amendments Generally; Continuation Statement; and Lapse Date and Time).

(7) (No change.)

§95.302. Individual Debtor Names.

For purposes of these sections, an "individual debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an individual, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) ["]Individual name fields["]. Individual debtor names are stored in files that include only the individual debtor names, and not organization debtor names. Separate data entry fields are established for surnames (last or family names), first personal names (given), and additional name(s)/initial(s) [~~first (given), middle (given), and last names (surnames or family names)~~] of individuals. The name of a debtor with a single name (e.g., "Cher") is treated as a surname [~~last name~~] and shall be entered in the individual surname [~~last name~~] field. The filing officer assumes no responsibility for the accurate designation of the components of a name but shall accurately enter the data in accordance with the filer's designations.

(2) Titles, prefixes and suffixes. Titles, prefixes (e.g. "Ms.") and suffixes or indications of status (e.g. "M.D.") are not typically part of a debtor's name. Suffixes used to distinguish between family members with identical names (e.g., "JR.") should be provided in the suffix field. However, when entering a "name" into the UCC information management system, the data will be entered exactly as they appear.

(3) Extended debtor name field. The financing statement form has limited space for individual debtor names. If any portion of the individual debtor name is too long for the corresponding field, the filer is instructed to check the box that indicates the name was too long and enter the name in item 10 of the addendum Form UCC1Ad. A filing officer shall not refuse to accept a financing statement that lacks debtor information in item 1 and/or item 2 if the record includes an addendum that provides a debtor name in item 10.

(4) [~~(3)~~] Truncation - individual names. Personal name fields in the UCC information management system are fixed in length. Although filers should continue to provide full names on their UCC records, a name that exceeds the fixed length is entered as presented to the filing officer, up to the maximum length of the data entry field. The lengths of data entry name fields are as follows.

(A) Surname [~~First name~~]: 50 characters.

(B) First personal name [~~Middle name~~]: 50 characters.

(C) Additional name(s)/initial(s) [~~Last name~~]: 50 characters.

(D) Suffix: 6 characters.

§95.303. Organization Debtor Names.

For purposes of these sections, an "organization debtor name" is any name provided as a debtor name in a UCC record in a format that identifies the name as that of a debtor who is an organization, without regard to the nature or character of the name or to the nature or character of the actual debtor.

(1) Single field. Organization debtor names are stored in files that include only [~~the~~] organization debtor names and not individual debtor names. A single field is used to store an organization debtor name.

(2) (No change.)

§95.304. Collateral Being Administered by a Decedent's Personal Representative [~~Estates~~].

The debtor name to be provided on a financing statement when the collateral is being administered by a decedent's personal representative [~~for a debtor that is an estate~~] is the name of the relevant decedent. In order for the UCC information management system to function in [~~is~~] accordance with the usual expectations of filers and searchers, the filer should provide the debtor name as an individual debtor name. However, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

§95.305. Collateral Held in a Trust [~~Trusts~~].

The debtor name to be provided when the collateral is held in a trust that is not a registered organization [~~for a debtor that is a trust or a trustee acting in respect of trust property~~] is the name of the trust as set forth in its organic record(s), if the trust has such a name or, if the trust is not so named, the name of the trust's settlor. In order for the UCC information management system to function in accordance with the usual expectations of filers and searchers, the name of a trust or of a settlor that is an organization should be provided as an organization debtor name, and the name of a settlor who is an individual should be provided as an individual debtor name, in each case without regard to the nature or character of the debtor. Notwithstanding the foregoing, the filing office will enter data submitted by a filer in the fields designated by the filer exactly as it appears in such fields.

§95.306. Initial Financing Statement.

Upon the filing of an Initial [~~initial~~] financing statement the status of the parties and the status of the financing statement shall be as follows.

(1) Status of secured party. Each secured party named on an Initial [~~initial~~] financing statement shall be a secured party of record, except that if the UCC record names an assignee, the secured party/assignor shall not be a secured party of record and the secured party/assignee shall be a secured party of record.

(2) Status of debtor. Each debtor name provided by the Initial [~~initial~~] financing statement shall be indexed in the UCC information management system so long as the financing statement is an Active Record [~~active record~~].

(3) Status of financing statement. The financing statement shall be an Active Record [~~active record~~]. A lapse date shall be calculated, five years from the file date, unless:

(A) the Initial [~~initial~~] financing statement indicates as provided in §95.101(8) of this title (relating to Means to Deliver UCC Records; Time of Filing) that it is filed with respect to a public-finance transaction or a manufactured-home transaction, in which case the lapse date shall be thirty years from the file date; or

(B) the Initial [~~initial~~] financing statement indicates as provided in §95.101(8) of this title that it is filed against a transmitting utility, in which case there shall be no lapse date.

§95.307. Amendments Generally.

Upon the filing of an amendment the status of the parties shall be unchanged, except that in the case of an amendment that adds a debtor or secured party, the new debtor or secured party shall be added to the appropriate index and associated with the record of the financing statement in the UCC information management system, and an amendment that designates an assignee shall cause the assignee to be added as a secured party of record with respect to the affected financing statement in the UCC information management system. Notwithstanding the filing of an amendment that deletes a debtor or a secured party from a financing statement, no debtor or secured party of record is deleted from the UCC information management system. A deleted secured party will still be treated by the filing office as a secured party of record as the filing office cannot verify the effectiveness of an amendment. In general, the filing of an amendment does not affect the status of the financing statement[~~, but an amendment that indicates that the debtor is a transmitting utility will cause the filing office to reflect in the information management system that the amended financing statement has no lapse date~~].

§95.309. Termination.

The filing of a termination statement shall have no effect upon the status of any party to the financing statement or upon the status of the financing statement.

§95.310. Information [~~Correction~~] Statement.

The filing of an information [~~a correction~~] statement shall have no effect upon the status of any party to the financing statement, the status of the financing statement or to the information maintained in the UCC information management system.

§95.313. Removal of Record.

A financing statement must remain as an Active Record [~~active record~~] until at least one year after it lapses, or if it is indicated to be filed against a transmitting utility, until at least one year after it is terminated with respect to all secured parties of record. On or after the first anniversary of such lapse or termination date, the filing office or the UCC information management system may remove the financing statement and all related UCC records from the Searchable Indexes [~~searchable indexes~~] or from the UCC information management system and upon such removal, the removed UCC Records [~~records~~] shall cease to be Active Records [~~active records~~]. UCC Records [~~records~~] removed from the UCC information management system shall be maintained as provided in §95.407 of this title (relating to Archives - General).

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SUBCHAPTER D. FILING AND DATA ENTRY PROCEDURES

1 TAC §§95.401 - 95.403, 95.406, 95.408

Statutory authority: The amendments are proposed in accordance with §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5; Texas Agriculture Code, Subtitle E of Title 6; Texas Agriculture Code, Subchapter D of Chapter 70; Property Code, Subchapter E of Chapter 70, Property Code; and Subchapter J of Chapter 51, Texas Government Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§95.401. Data Entry.

(a) Characters of print acceptable in names.

(1) (No change.)

(2) No distinction will be made between upper and lower case [~~lowercase~~] letters for indexing purposes. No distinction as to typeface or font in the presentation of any name will be recognized. Subscript or superscript characters cannot be entered into the computer records of the secretary of state; consequently, such characters will not appear above or below the other characters in the name. Example: H_2O will appear as H2O.

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

(b) Data entry. Data that meets the guidelines in subsection (a) of this section are entered into the UCC information management system exactly as provided in the UCC record, without regard to apparent errors. Data provided in electronic form that meets the guidelines of subsection (a) of this section is transferred to the UCC information management system exactly as submitted by the Remitter [~~remitter~~].

§95.402. Verification of Data Entry.

The filing office will verify accuracy of the data from UCC records entered in accordance with §95.401 of this title (relating to Data Entry) into the UCC information management system, except that debtor name data are verified by double-blind keying. Data entry performed by Remitters [~~remitters~~] with respect to electronically filed UCC records is the responsibility of the Remitter [~~remitter~~] and is not verified by the filing office.

§95.403. Master Amendments [~~Filings~~].

(a) (No change.)

(b) A master amendment [~~filing~~] shall consist of a written document describing the requested amendment or assignment on a form approved by the filing office, and a machine readable file furnished by the Remitter [~~remitter~~] and created to the filing officer's specifications containing appropriate indexing information. A copy of the master amendment [~~filing~~] specifications is available from the filing officer upon request. Acceptance of a master amendment [~~filing~~] is conditioned upon the determination of the filing officer in the filing officer's sole discretion.

§95.406. Judicial Finding of Fact.

A record is created for the certified copy of the judicial finding of fact that bears the file number for the judicial finding of fact and the date and time of filing. The record of the judicial finding of fact is associated with the record of the related Initial [~~initial~~] financing statement in a manner that causes the judicial finding of fact to be retrievable each time a record of the financing statement is retrieved.

§95.408. Lapse Date and Time.

A lapse date is calculated for each Initial [~~initial~~] financing statement (unless the debtor is indicated to be a transmitting utility). The lapse date is the same date of the same month as the filing date in the fifth year after the filing date or relevant subsequent fifth anniversary thereof if a timely continuation statement is filed, but if the Initial [~~initial~~] financing statement indicates that it is filed with respect to a public-finance transaction or a manufactured-home transaction, the lapse date is the same date of the same month as the filing date in the thirtieth year after the filing date. The lapse takes effect at midnight at the end of the lapse date. The relevant anniversary for a February 29 filing date shall be [~~the~~] March 1 in the fifth year following the year of the filing date. If the last day of any period is a Saturday, Sunday, or legal holiday, the period is extended to include the next day that is not a Saturday, Sunday, or legal holiday in accordance with §311.014(b), Texas Government Code.

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SUBCHAPTER E. SEARCH REQUESTS AND REPORTS

1 TAC §§95.500 - 95.503, 95.505

Statutory authority: The amendments are proposed in accordance with §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5; Texas Agriculture Code, Subtitle E of Title 6; Texas Agriculture Code, Subchapter D of Chapter 70; Property Code, Subchapter E of Chapter 70, Property Code; and Subchapter J of Chapter 51, Texas Government Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§95.500. General Requirements.

The filing officer maintains for public inspection a searchable index for all Active Records [~~active records~~] in the UCC information management system. Active Records [~~records~~] will be retrievable by the name of the debtor, with no distinction made between upper and lower case

letters, or by the file number of the related Initial financing statement, and each Active Record [~~active record~~] related to an Initial [~~initial~~] financing statement is retrieved with the Initial [~~initial~~] financing statement using either retrieval method.

§95.501. Search Requests - Required Information.

Search requests shall include the following:

(1) Name searched. A search request must set forth the name of the [~~a~~] debtor to be searched using designated fields for organization or individual surname, first personal name and additional name(s)/initial(s) [~~first, middle and last names~~]. A search request will be processed using the data and designated fields exactly as submitted, including the submission of no data in a given field, without regard to the nature or character of the debtor that is subject of the search.

(2) - (4) (No change.)

§95.502. Search Requests - Optional Information.

Search requests may include the following:

(1) (No change.)

(2) Scope of search. A search request may ask for a search that reports all Active Records [~~active records~~] retrieved by the search.

(3) (No change.)

(4) Search request with filing. If a filer requests a search at the time an Initial [~~initial~~] financing statement is filed by submitting a search request with the Initial [~~checking the appropriate box or populating the appropriate field in or on the initial~~] financing statement at the time it is tendered for filing, the search request shall be deemed to request a search to be conducted as soon as practicable such that it would include all UCC records filed, against the debtor name(s) provided on the Initial [~~initial~~] financing statement, on or prior to the date the Initial [~~initial~~] financing statement is filed. The search to reflect should be held until the filing office through date meets or exceeds the date the Initial financing statement was filed.

§95.503. Search Methodology.

Search results are produced by the application of search logic to the name presented to the filing officer. Human judgment does not play a role in determining the results of the search.

(1) Standard search logic. Subparagraphs (A) - (J) of this paragraph describe the filing office's standard search logic and apply to all searches except for those where the search request specifies that a non-standard search logic be used:

(A) (No change.)

(B) No distinction is made between upper and lower case [~~lowercase~~] letters.

(C) (No change.)

(D) Punctuation marks and accents are disregarded. For the purposes of this section [~~paragraph~~], punctuation and accents include all characters other than the numerals 0 through 9 and letters A through Z (in any case) of the English alphabet.

(E) - (G) (No change.)

(H) For first personal name and additional name(s)/initial(s) [~~middle names~~] of individual debtor names, initials are treated as the logical equivalent of all names that begin with such initials or no name or initial, and first personal name and no additional name(s)/initial(s) [~~middle name or initial~~] is equated with all additional name(s)/initial(s) [~~middle names and initials~~]. For example, a search request for "John A. Smith" would cause the search to retrieve all filings against all individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname [~~last name~~], and with the initial "A" or any name beginning with "A" or no name or initial in the additional name(s)/initial(s) [~~middle name~~] field. If the search request were for "John Smith" (first personal name and surname [~~last names~~] with no designation in the additional name(s)/initial(s) [~~middle name~~] field), the search would retrieve all filings against individual debtors with "John" or the initial "J" as the first personal name, "Smith" as the surname [~~last name~~] and with any name or initial or no name or initial in the additional name(s)/initial(s) [~~middle name~~] field. In addition, Texas will also retrieve filings with first personal name equivalents. If the search request were for "John Smith" the search would also retrieve records with the first personal name "Jack", "Johnnie", "Johnny", and "Jonathan". The following is a list of all first personal name equivalents that are considered.

Figure: 1 TAC §95.503(1)(H) (No change.)

(I) If the name being searched is the surname [~~last name~~] of an individual debtor name without any first personal name or additional name(s)/initial(s) [~~middle name~~] provided, the search will retrieve from the UCC information management system all financing statements with individual debtor names with the surname [~~last name~~] being searched.

(J) After using subparagraphs (A) - (I) of this paragraph to modify the name being searched, the search will retrieve from the UCC information management system all Active Records [~~active records~~] that pertain to financing statements with debtor names that, after being modified as provided in this section, exactly match the modified name being searched.

(2) Non-standard search logic. The following non-standard search logic option is available for customers that have access to our online search site: wildcard debtor name search. This search option allows customers to search a character string at the beginning or anywhere within the organization, surname [~~last~~] and/or first personal name fields. The displayed results consist only of the filing number and the debtor name.

§95.505. Search Responses.

Responses to a search request shall include the following.

(1) (No change.)

(2) Introductory information. A filing officer shall include the following information with a UCC search response:

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

(F) Scope of search. Search results shall consist of all Active Records [~~active records~~].

(G) - (J) (No change.)

(K) Copies. Certified, Plain, Copies [~~plain, copies~~], not Requested [~~requested~~], Partial Copies [~~partial copies~~], and Specified Copies [~~specified copies~~].

(3) Report. The search report shall contain the following.

(A) (No change.)

(B) Search report identification number. Unique number assigned under paragraph (2)(B) of this section.

(C) Identification of financing statement. Identification of each Initial [~~initial~~] financing statement, including a listing of all related amendments, information [~~correction~~] statements, or filing officer notices, filed on or prior to the through date corresponding to the search criteria. Financing statement information shall include, but is not limited to the following:

(i) Initial financing statement file number. The Initial [~~initial~~] financing statement file number.

(ii) - (x) (No change.)

(xi) Information [~~Correction~~] statement filing date and time. The date and time an information [~~a correction~~] statement, if any, was filed.

(xii) - (xiii) (No change.)

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305025
Carmen Flores
Deputy Director, Business and Public Filings
Office of the Secretary of State
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-5591

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SUBCHAPTER F. OTHER NOTICES OF LIENS

1 TAC §95.604, §95.605

Statutory authority: The amendments are proposed in accordance with §§9.501 - 9.527, Texas Business and Commerce Code; §§261.001 - 261.012, Texas Business and Commerce Code; §§14.001 - 14.007, Texas Property Code; Chapter 128, Texas Agriculture Code; Chapter 188, Texas Agriculture Code; §42.22, Texas Code of Criminal Procedure; §§70.3031 - 70.307, Texas Property Code; §§70.401 - 70.410, Texas Property Code; and §§51.901 - 51.905, Texas Government Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code; Chapter 261, Texas Business and Commerce Code; Chapter 14, Uniform Federal Lien Registration Act, Subtitle H of Title 5; Texas Agriculture Code, Subtitle E of Title 6; Texas Agriculture Code, Subchapter D of Chapter 70; Property Code, Subchapter E of Chapter 70, Property Code; and Subchapter J of Chapter 51, Texas Government Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§95.604. Notice of Agricultural Chemical and Seed Liens.

(a) Filing. Agricultural chemical and seed liens will be accepted for filing as defined in Chapter 128, Texas Agriculture [~~Agricultural~~] Code. Agricultural chemical and seed liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each agricultural chemical and seed lien.

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

(b) - (d) (No change.)

§95.605. Notice of Liens for Animal Feed.

(a) Filing. Animal feed liens will be accepted for filing as defined in Chapter 188, Texas Agriculture [~~Agricultural~~] Code. Animal feed liens are filed and indexed within the UCC information management system. A separate notice of claim of lien is submitted for each animal feed lien.

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

(b) - (d) (No change.)

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

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For further information, please call: (512) 463-5591

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CHAPTER 96. ELECTRIC UTILITY TRANSITION PROPERTY NOTICE FILINGS

The Office of the Secretary of State proposes amendments to §§96.1 - 96.7, concerning General Provisions; §96.20 and §96.21, concerning Duties of the Filing Officer; and §§96.40, 96.41 and 96.44, concerning Standards of Review and Indexing.

The purpose of the amendments to the Uniform Commercial Code rules is to reflect current filing policies and procedures due to statutory requirements and to conform to national model administrative rules promulgated by the International Association of Commercial Administrators (IACA).

Randy Moes, Director, has determined that for the first five-year period the amendments will be in effect there will be no fiscal implications to the state or local governments as a result of adopting these sections.

Mr. Moes also has determined that for each year of the first five years the sections are in effect, the public benefit anticipated will be clarification in matters related to filing of Uniform Commercial Code documents with the Secretary of State and the submission of information requests. There will be no effect on large businesses, small businesses or micro-businesses. There will be no anticipated economic cost to individuals.

Comments on the proposals may be submitted to Randy Moes, Director, Uniform Commercial Code Section, P.O. Box 13193, Austin, Texas 78711-3193. In order to be considered all comments must be received by 5:00 p.m. on December 13, 2013.

SUBCHAPTER A. GENERAL PROVISIONS

1 TAC §§96.1 - 96.7

Statutory authority: The amendments are proposed under §§9.501 - 9.527, Texas Business and Commerce Code, and §39.309, Texas Utilities Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code, and Subchapter G of Chapter 39, Texas Utilities Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§96.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, except as the context otherwise clearly requires:

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

(5) "File Number" means the unique identifying information assigned to an initial transition property notice filing by the filing officer for the purpose of identifying the transition property notice and all documents relating to that transition property notice in the filing officer's UCC information management system. For an initial transition property notice filed prior to July 1, 2001, the file number includes the year of filing expressed as a two-digit number followed by a unique eight-digit number assigned to the transition property notice by the filing officer. For a transition property notice with an initial transition property notice filed on or after July 1, 2001, the file number includes three segments; the year of filing expressed as a two-digit number, followed by a unique eight-digit number assigned to the transition property notice by the filing office and ending with a two-digit verification number assigned by the filing office but mathematically derived from the numbers in the first two segments. The filing number bears no relation to the time of filing and is not an indicator of priority.

(6) - (22) (No change.)

§96.2. Place of Filing and Filing Office Information.

(a) A transition property notice and each document filed pursuant to this chapter shall be filed with the filing officer at the filing office by the filing party and be accompanied by the payment of any required fees. Acceptable methods of payment are the same as those identified in §96.6 [~~§95.113~~] of this title.

(b) Information on the procedures and forms for filing pursuant to this chapter, submittals, requests, and other information or instructions can be obtained upon request directed to the Office of the Secretary of State, Business and Public [~~Statutory~~] Filings Division, Uniform Commercial Code Section. The filing office will disseminate information of its location, mailing address, telephone and fax numbers, and its website and other electronic "addresses" through usual and customary means.

(c) (No change.)

§96.3. Document Delivery.

A transition property notice filing may be presented for filing at the filing office as follows:

(1) (No change.)

(2) A filing may be delivered by delivery service at the street address of the filing office. The file [~~filing~~] time for a transition property notice delivered by delivery service is 5:00 PM CT on a day the filing office is open to the public (even though the transition property notice document may not yet have been accepted for filing and may be subsequently rejected).

(3) A filing may be delivered by postal service delivery to the filing office's street or mailing address. The file time for a transition property notice [~~UCC~~] document delivered by this method is [~~the~~] 5:00 PM CT on a day the filing office is open to the public (even though the transition property notice document may not yet have been accepted for filing and may be subsequently rejected).

(4) A filing may be delivered by facsimile transmission to the filing office's fax filing telephone number. The file time for a transition property notice document delivered by this method is when delivery of the transition property notice [~~document~~] is accepted by the filing office (even though the transition property notice document may not yet have been accepted for filing and[~~,~~] may be subsequently rejected, and may indicate that the transition property notice document was received at an earlier time). Filings delivered by facsimile transmission must be accompanied by payment of the filing fees by credit card.

§96.4. Approved Forms.

(a) Forms for transition property notices [~~notice documents~~] that conform to the requirements of this rule will be acceptable by the filing office.

(b) (No change.)

§96.5. Fees.

(a) (No change.)

(b) The fee for processing [~~responding to~~] an information request which was communicated on paper or in a paper-based format is pursuant to §9.525(d)(1), Texas Business and Commerce Code. The fee for processing [~~responding to~~] an information request which was communicated by XML is $3 and by SOSDirect is $15. The fee for responding to a web inquiry which was communicated by SOSDirect is $1. [~~a medium as described in §95.350 et seq. of this title is $3 and by a medium as described in §95.370 et seq. of this title is $15. The fee for responding to a web inquiry which was communicated by a medium described in §95.370 et seq. of this title is $1.~~]

(c) The fee for certified copies of transition property notice filings made in connection with an information request is pursuant to §405.031 [~~§552.261~~], Texas Government Code[~~, and §71.8 of this title~~].

(d) The fee for uncertified copies of records is pursuant to §552.261, Texas Government Code, and §71.8 of this title (relating to Fees for Copies of Public Information).

§96.6. Methods of Payment.

Filing fees and fees for public records services may be paid by the [~~following~~] methods as described in §95.106 of this title.

[~~(1) Cash. The filing officer discourages cash payment unless made in person to the cashier at the filing office.~~]

[~~(2) Checks. Checks made payable or endorsed to the filing office, including checks in an amount to be filled in by a filing officer but not to exceed a particular amount, will be accepted for payment if they are cashier's checks or certified checks drawn on a bank acceptable to the filing office or if the drawer is acceptable to the filing office. All checks must be drawn on an U.S. bank.~~]

[~~(3) Electronic funds transfer. The filing office will accept payment via electronic funds transfer under National Automated Clearing House Association ("NACHA") rules from remitters who have entered into appropriate NACHA-approved arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements and rules.~~]

[~~(4) Client account. A remitter may open an account for prepayment of filing fees by submitting an application furnished by the filing officer. The filing officer shall issue an account number to be used by a remitter who chooses to pay filing fees in advance. The filing officer shall deduct filing fees from the remitter's client account when authorized to do so by the remitter. The remitter may authorize transactions against the client account by use of the remitter's SOSDirect account, by written authorization, facsimile, and by telephone authorization.~~]

[~~(5) Credit card. The filing office accepts payments using credit cards issued by approved credit card issuers. Approved credit card issuers are: American Express, Discover, MasterCard, or VISA or other valid and current credit/debit card designated by the contract(s) then existing between the Office of the Secretary of State, the Comptroller of Public Accounts, and the relevant financial institution. Remitters shall provide the filing officer with the card number, the expiration date of the card, the name of the approved card issuer, the name of the~~

person or entity to whom the card was issued, and the billing address for the card. Payment will not be deemed tendered until the issuer or its agent has confirmed to the filing office that payment will be forthcoming. Fees paid by credit card are subject to a statutorily authorized convenience fee of the total fees incurred, when applicable. The convenience fee is assessed per credit card transaction.]

[(6) LegalEase. The filing office accepts payment via LegalEase from remitters who have entered into appropriate LegalEase arrangements for such transfers and who authorize the relevant transfer pursuant to such arrangements.]

§96.7. Overpayment and Underpayment Policies.

(a) Overpayment. The filing officer shall refund the amount of an overpayment exceeding $5 to the Remitter. The filing officer shall accrue the amount of the overpayment to the prepaid [client] account if the overpayment is less than $5. This amount may be refunded only upon the written request of the Remitter. [remitter. If the overpayment amount is $5 or more, it will be refunded to the remitter.]

(b) Underpayment. Upon receipt of a document with an insufficient fee, the filing officer shall do the following: The document and fee shall be returned to the Remitter [remitter] as provided in §96.41 of this title.

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

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Carmen Flores
Deputy Director, Business and Public Filings
Office of the Secretary of State
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For further information, please call: (512) 463-5591

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SUBCHAPTER B. DUTIES OF THE FILING OFFICER

1 TAC §96.20, §96.21

Statutory authority: The amendments are proposed under §§9.501 - 9.527, Texas Business and Commerce Code, and §39.309, Texas Utilities Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code, and Subchapter G of Chapter 39, Texas Utilities Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§96.20. Role of Filing Officer [Policy].

The duties and responsibilities of the filing officer with respect to the administration of the filing officer's UCC information management [a filing] system under §39.309 of the Texas Utilities Code are ministerial. In accepting for filing or refusing to file a transition property notice pursuant to these rules, the filing officer does not determine the legal sufficiency or insufficiency of a document, determine that a security interest in the transition property exists or does not exist, determine that information in the document is correct or incorrect, in whole or in part, or create a presumption that information in the document is correct or incorrect, in whole or in part. [none of the following.]

[(1) Determine the legal sufficiency or insufficiency of a document.]

[(2) Determine that a security interest in transition property exists or does not exist.]

[(3) Determine that information in the document is correct or incorrect, in whole or in part.

[(4) Create a presumption that information in the document is correct or incorrect, in whole or in part.]

§96.21. Duties of the Filing Officer.

(a) Provided that there is no ground to refuse acceptance of a transition property notice under §96.40 of this title, a transition property notice is filed upon receipt by the filing officer with the filing fee and the filing officer shall assign a file number to the transition property notice document and index it in the UCC information management system.

(b) (No change.)

(c) The filing officer will mark each transition property notice with a file number as described in §96.1 of this title. Identification of the transition property notice is stamped on written transition property notice documents or otherwise permanently associated with the record maintained for transition property notice documents in the UCC information management system. A record is created in the UCC information management system for each transition property notice and all information comprising such record is maintained in such system. Such record is identified by the same information assigned to the transition property notice. A document other than an initial transition property notice is identified by a unique file number assigned by the filing officer. In the UCC information management system, records of all transition property notices other than initial transition property notices are linked to the record of their related initial transition property notice.

(d) - (e) (No change.)

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

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Carmen Flores
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SUBCHAPTER C. STANDARDS OF REVIEW AND INDEXING

1 TAC §§96.40, 96.41, 96.44

Statutory authority: The amendments are proposed under §§9.501 - 9.527, Texas Business and Commerce Code, and §39.309, Texas Utilities Code, which provide the Secretary of State with the authority to adopt rules necessary to administer Subchapter E of Chapter 9, Texas Business and Commerce Code, and Subchapter G of Chapter 39, Texas Utilities Code.

Cross-reference to statute: No other statutes, articles or codes are affected by this proposal.

§96.40. Grounds for Refusal of a Transition Property Notice.

The following grounds are the sole grounds for the filing officer's refusal to accept a transition property notice for filing. As used herein, the term "legible" is not limited to refer only to written expressions on paper: it requires a machine-readable transmission for electronic transmissions and an otherwise readily decipherable transmission in other cases.

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

(3) Lack of Identification of Initial Transition Property Notice Filing. A transition property notice other than an initial transition property notice shall be refused if the document does not provide a file number of a transition property notice in the UCC information management system that has not lapsed.

(4) (No change.)

(5) Fee. A document shall be refused if the document is accompanied by less than the full filing fee tendered by a method described in §96.6 [~~§95.113~~] of this title.

§96.41. Procedure upon Refusal.

(a) If the filing officer finds grounds under §96.40 of this title to refuse acceptance of a transition property notice, the filing officer shall return the document, if written, to the Remitter [~~submitter~~] and may return or refund the filing fee. A refund may be delivered with the returned document or under separate cover.

(b) The document shall be accompanied by a notice that contains the date and time the document would have been filed had it been accepted for filing (unless such date and time are stamped on the document); and a brief description of the reason for refusal to accept the document for purposes of filing and that cites the provision of §96.40 of this title that establishes the ground for refusal. The notice shall be sent to the Remitter [~~submitter~~], whether or not the document or another writing contains a request that an acknowledgment copy be sent to a financing party or another person. The notice shall be sent no later than the second business day after the filing office receives the document.

§96.44. Identification and Indexing of Parties.

(a) The name and address of a grantor or assignor of record of a transition property notice is identified, indexed, stored and retrieved by use of the term "debtor" in the UCC information management system maintained by the filing officer.

(b) The name and address of each financing party or assignee of record of a transition property notice is identified, indexed, stored, and retrieved by use of the term "secured party" in the UCC information management system maintained by the filing officer.

(c) (No change.)

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

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Carmen Flores
Deputy Director, Business and Public Filings
Office of the Secretary of State
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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL SUBCHAPTER B. QUARANTINE REQUIREMENTS

4 TAC §20.16

The Texas Department of Agriculture (the department) proposes amendments to Chapter 20, Cotton Pest Control, Subchapter B, §20.16, concerning restrictions on movement of regulated articles. The amendments are proposed to implement amendments made to Texas Agriculture Code, §74.122, by Senate Bill 818 (SB 818), passed by the 83rd Regular Session of the Texas Legislature (2013).

The proposed amendments to §20.16 change criteria for allowing movement of regulated articles. The proposed amendments prohibit movement of regulated articles from an area infested with the boll weevil, if the area is not participating in the boll weevil eradication program. In addition, exemptions in §20.16(b) to the quarantine requirements of Subchapter B of this chapter and exceptions in §20.16(c) to the prohibitions in §20.16(b) to the movement of regulated articles are applicable under the proposed amendments only if the regulated article is originating from an area participating in the boll weevil eradication program.

The proposed amendments to §20.16 are designed to prevent artificial movement of boll weevils from an area that is not participating in the boll weevil eradication program into an area that is participating in the program.

Dr. Awinash Bhatkar, Coordinator for Biosecurity and Agriculture Resource Management, has determined that for the first five-year period the proposed revised section is in effect, there will be no implication for state or local government as a result of enforcing or administering the section, as amended.

Dr. Bhatkar also has determined that for each year of the first five years the amended section is in effect, the public benefits anticipated as a result of enforcing the amended section will be to protect the state's and cotton producers' investment in boll weevil eradication and to accelerate eradication of the boll weevil in Texas. There may be a fiscal impact on small or microbusinesses and individual cotton producers required to comply with §20.16, as amended. The actual financial impact of compliance to businesses or individual cotton growers will fall on producers and equipment operators in areas that are infested with boll weevils but that are not participating in the boll weevil eradication program. Currently there are no areas in Texas that fit that description and many variables such as the availability of alternatives for the affected parties cannot be known; therefore, the fiscal impact on small or microbusinesses and individual cotton producers required to comply with §20.16, as amended, cannot be calculated.

Comments on the proposed amendments may be submitted to Dr. Awinash Bhatkar, Coordinator for Biosecurity and Agriculture Resource Management, Texas Department of Agriculture, P.O. Box 12847, Austin, Texas 78711. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

The amendments to §20.16 are proposed in accordance with the Texas Agriculture Code, §74.006, which provides the department with the authority to adopt rules as necessary for the effective enforcement and administration of Chapter 74, and §74.122, which provides the department with the authority to adopt rules relating to quarantining areas of Texas that are infested with the boll weevil, including rules addressing the storage and prohibiting the movement of cotton and regulated articles from an area infested with the boll weevil if the area is not participating in the boll weevil eradication program.

Texas Agriculture Code, Chapter 74, is affected by the proposal.

§20.16. Restrictions.

(a) General. Movement of regulated articles is prohibited in the following cases:

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

(3) from or through a functionally eradicated area to an eradicated area; [~~or~~]

(4) when the department determines that the movement may cause an increase in infestation of boll weevil; or[~~.~~]

(5) from an area infested with the boll weevil if the area is not participating in the boll weevil eradication program.

(b) Exemptions. The following are exempt from the requirements of this subchapter if the regulated article is originating from an area participating in the boll weevil eradication program:

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

(c) Exceptions. The following are exceptions to the restrictions in subsection (a) of this section if the regulated article is originating from an area participating in the boll weevil eradication program:

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

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305046
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-4075

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TITLE 13. CULTURAL RESOURCES

PART 8. TEXAS FILM COMMISSION

CHAPTER 121. TEXAS MOVING IMAGE INDUSTRY INCENTIVE PROGRAM

13 TAC §121.9

The Office of the Governor, Texas Film Commission (Commission) proposes an amendment to §121.9, concerning the Texas Moving Image Industry Incentive Program.

The proposed amendment clarifies which documents will be accepted when verifying the residency of crew and cast members, including military personnel stationed in Texas.

Heather Page, Director of the Commission, has determined that for the first five-year period that the proposed amendment is in effect there will be no fiscal implications to the state or to local governments as a result of enforcing or administering the proposed amendment. No cost to either government or the public will result from the proposed amendment. There will be no impact on small businesses or micro-businesses.

Ms. Page has also determined that for the first five-year period that the proposed amendment is in effect the public benefit anticipated as a result of the proposed amendment is a clearer understanding of the program's scope and participation in the program. No economic costs are anticipated to persons who are required to comply with the proposed amendment.

Written comments on the proposed amendment may be hand-delivered to Office of the Governor, General Counsel Division, 1100 San Jacinto, Austin, Texas 78701; mailed to P.O. Box 12428, Austin, Texas 78711-2428; or faxed to (512) 463-1932 and should be addressed to the attention of David Zimmerman, Assistant General Counsel. Comments must be received within 30 days of publication of the proposal in the *Texas Register.*

The amendment is proposed pursuant to the Texas Government Code, §485.022, which directs the Commission to develop a procedure for the submission of grant applications and the awarding of grants, and Texas Government Code, Chapter 2001, Subchapter B, which prescribes the standards for rulemaking by state agencies.

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

§121.9. Processing and Review of Applications.

(a) All applications will be reviewed in the order they are received.

(b) Initial Review.

(1) Each application will go through an initial review process when the Qualifying Application has been received.

(A) If a project submits a Qualifying Application with required materials, the Applicant will receive an e-mail notifying them that the Texas Film Commission (Commission) has received their complete application and the preliminary eligibility determination process will begin.

(B) If a project submits a Qualifying Application without the required materials, the Applicant will receive an e-mail notifying them that their application requires additional materials or documentation, and that not receiving them by the fifth Business Day prior to the project's Principle Start Date may result in an application being disqualified.

(2) Applicants will have the ability to amend information on their application. The Commission may determine whether an Applicant's amendment(s) will require them to reapply or not.

(c) Preliminary Eligibility Determination.

(1) During the preliminary eligibility determination process, the Commission will review the project's Qualifying Application and budget to identify eligible expenditures and to determine if the Applicant meets the minimum program requirements for in-state spending, Texas Filming Days and Texas Residency.

(2) The Commission will also review the Content Document, as defined in §121.8(a)(1)(C) of this chapter, to determine if it is appropriate.

(3) Finally, the Commission will examine the Qualifying Application in light of the following criteria to assess, in the aggregate, the potential magnitude of the economic impact of the project in the State of Texas:

(A) The financial viability of the Applicant and the likelihood of successful project execution and planned spending in the State of Texas;

(B) Proposed spending on existing state production infrastructure (such as soundstages and industry vendors);

(C) The number of Texas jobs estimated to be created by the project;

(D) The ability to promote Texas as a tourist destination through the conduct of the project and planned expenditure of funds;

(E) The magnitude of estimated expenditures in Texas; and

(F) Whether the project will be directed or produced by an individual who is a Texas Resident (where the term "produced by" is intended to encompass a non-honorary producer with direct involvement in the day to day production of the project, but above the level of line producer).

(4) The Applicant will receive an e-mail notifying them that the Qualifying Application has been approved if:

(A) The Qualifying Application meets all minimum program requirements for in-state spending, Texas Filming Days and Texas Residency, as determined by the Commission;

(B) The Commission determines to grant an award based on the criteria specified in paragraph (3) of this subsection;

(C) The Content Document is appropriate; and

(D) Appropriated funds are then available at such time of determination.

(5) If the Commission denies a Qualifying Application, the Applicant will receive an e-mail notifying them that the Qualifying Application has been denied. The notice will inform the Applicant whether the denial is based on failure to meet the minimum program requirements, insufficient economic impact or inappropriate content. Qualifying Applications will be assessed at the point in time at which they are received, and will not enter any queue in the event they are denied.

(6) All funding decisions made by the Commission are final and are not subject to appeal. Neither the approval of the Qualifying Application nor any award of funds shall obligate the Commission in any way to make any additional award of funds.

(d) Grant Agreement.

(1) Upon Commission approval of the Qualifying Application, a grant agreement will be executed between the Commission and the Applicant. The estimated grant amount will be based upon the Applicant's estimated in-state spending.

(2) The grant agreement must be returned to the Commission with original signatures; failure to return could cause the Commission to disqualify the project.

(e) Periodic Tracking and Review. Once the grant agreement has been executed by both parties, the Commission may periodically review production activity including, but not limited to, in-state spending, production locations and number of Texas Residents hired, and may require documentation for all of the above.

(f) Encumbrance of Funds.

(1) Upon Commission approval of a Qualifying Application and receipt of a signed Grant Agreement, the Office of the Governor will encumber funds for the project.

(2) The amount encumbered for a project will be equal to the estimated grant amount on the Grant Agreement.

(3) To encumber funds, an Applicant must have a Texas Payee Identification Number. Applicants without an existing Texas Payee Identification Number must submit a completed W-9 Form and a Texas Application for Payee Identification Number Form.

(4) Provided sufficient funds are then available, the amount encumbered may be adjusted by the Commission, at its sole election having no obligation to do so, but only if an Applicant amends the estimated Texas spending amount on their Qualifying Application in writing, prior to submitting their Expended Budget as described in §121.11 of this chapter.

(g) Verifying Texas Residency.

(1) In order to verify Texas Residency, the Applicant shall provide the Commission with completed Declaration of Texas Residency Forms for each Texas Resident Crew and Cast member.

(2) To be considered a Texas Resident, a Crew or Cast member must complete Sections I, II and III of the Declaration of Texas Residency Form. Section III must be completed with a valid Texas driver license, a valid Texas identification card or a current Texas voter registration. A full-time student of a Texas Institution of Higher Education, as defined by Texas Education Code, §61.003, who does not have a Texas driver license, Texas identification card or Texas voter registration may complete Section III of the form with a current student identification card issued by a Texas Institution of Higher Education.

(3) A minor who does not have a Texas driver license, Texas identification card or Texas voter registration may have a Texas Resident parent or legal guardian complete Section III of the form, so long as such parent or legal guardian also signs Section III of the form, indicating such relationship to the minor.

(4) A representative of the Applicant must complete Section IV of the Declaration of Texas Residency Form.

(5) In the event that a Crew or Cast member possesses one [~~does not possess any~~] of the three documents specified in Section III of the Declaration of Texas Residency Form, but not for the required 120 days, [~~and the project consists of at least 30 Filming Days,~~] Texas Residency may also be verified if:

(A) the project consists of at least 30 Filming Days; and

(B) the applicant presents [~~by presenting~~] one of the following documents naming said Crew or Cast member and dated at least 120 days and no more than 13 months prior to the project's Principal Start Date:

[~~(A) an executed agreement for the lease of residential real property located in Texas;~~]

(i) [~~(B)~~] an executed HUD-1 settlement statement showing the purchase of residential real property located in Texas; or

(ii) [~~(C)~~] a notice of appraised value or bill assessing property tax on residential real property located in Texas.

(6) If a Crew of Cast member does not possess any of the three documents specified in Section III of the Declaration of Texas Residency Form, Texas Residency may also be verified by attaching to the Declaration a copy of their military ID card and their military orders that:

(A) name said Crew or Cast member, or their spouse, parent, or legal guardian, as applicable;

(B) show a permanent change of station to a military station in Texas; and

(C) are dated at least 120 days prior to the project's Principal Start Date.

(h) Texas Film Commission Logo. Having no obligation to do so, the Commission may require the Applicant to include the Texas Film Commission logo in the closing credits of a Feature Film, Reality Series or Television Production, or in the credits of a Digital Interactive Media Production.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305051
David Zimmerman
Assistant General Counsel
Texas Film Commission
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 936-0181

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.149

The Texas Board of Architectural Examiners proposes the amendment of §1.149, concerning Criminal Convictions.

The amendment requires each applicant for registration as an architect and each registered architect to submit a set of fingerprints to the Department of Public Safety (Department) or a vendor under contract with the Department. As amended the rule would make the submission of fingerprints a prerequisite for an applicant's initial architectural registration and for the next renewal of registration by a registered architect. However, the proposed amendment would not apply to the renewal of an emeritus or inactive certificate of registration. An emeritus or inactive architect would submit a set of fingerprints only in order to restore his or her certificate of registration to active status. The amendment removes requirements by which applicants and registrants are to affirmatively disclose criminal history information to the board and notify the executive director regarding a conviction within 30 days after it is entered. Under the rule as amended, the Department and the Federal Bureau of Investigation will locate criminal history records associated with the submitted fingerprints and relay them to the board's executive director. The executive director may contact the applicant or architect regarding any conviction other than minor traffic offenses and request further information. The information must be sufficient to determine whether the conduct at issue relates to the practice of architecture. The amendment would implement HB 1717 passed by the 83rd Legislature after Sunset review of the agency and would be effective January 1, 2014, as specified in the bill.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the agency would obtain more comprehensive data about criminal activities of board registrants and applicants for registration which will assist the board in safeguarding the public against unlawful conduct by the board's registrants. The agency's current process in obtaining criminal history information covers only information regarding criminal conduct committed in Texas and requires an annual check on each registrant to ascertain if he or she has been convicted for criminal conduct since the registrant's last renewal. The rules also currently require applicants and registrants to self-report convictions within 30 days after conviction. Considering the consequence of conviction for more serious crimes is revocation, there is little incentive to fulfill this requirement. The amended rule would be more comprehensive in covering state and federal criminal histories in all states and more efficient and less costly (to the agency) in that the agency will no longer run annual criminal history checks. Under the new process, the agency would also receive criminal history more immediately instead of the current process of discovering it upon renewal. There would be no information conveyed to the agency about any person who is not arrested or convicted.

The proposed amendment would require each applicant and registrant to pay the cost of fingerprinting which is currently $42 and paid to the Department of Public Safety or a vendor of the Department. Pursuant to contract between the Department and the vendor, payment is made to the vendor. The new rule will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, RID/ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §§1051.202, 1051.3041, and 1051.3531, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which prohibits the board from issuing or renewing a certificate of registration to a person who has not submitted fingerprints for the purpose of undergoing a criminal background check.

The proposed amendment does not affect any other statutes.

§1.149. Criminal Convictions.

(a) (No change.)

(b) The following procedures will apply in the consideration of an application for registration as an Architect or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each [~~Each~~] Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration. [~~will be required to provide information regarding the Applicant's criminal history as part of the application process. Each Registrant will be required to report any criminal conviction to the Board within thirty (30) days of the date the conviction is entered by the court and to verify the status of the Registrant's criminal history on each registration renewal form. An Applicant or Registrant shall not be required to report a conviction for a minor traffic offense.~~]

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) [~~(2)~~] The executive director may contact an Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. The executive director shall allow the [~~An~~] Applicant or Registrant no less than 30 days to provide a written response [~~who has been convicted for committing any offense will be required to provide a summary of each conviction~~] in sufficient detail to allow the executive director to determine whether the conduct at issue [~~it~~] appears to directly relate to the duties and responsibilities of an Architect.

(4) [~~(3)~~] If the executive director determines the conviction might be directly related to the duties and responsibilities of an Architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305038

Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.149

The Texas Board of Architectural Examiners proposes the amendment of §3.149, concerning Criminal Convictions.

The amendment requires each applicant for registration as a landscape architect and each registered landscape architect to submit a set of fingerprints to the Department of Public Safety (Department) or a vendor under contract with the Department. As amended the rule would make the submission of fingerprints a prerequisite for an applicant's initial registration and for the next renewal of registration by a registered landscape architect. However, the proposed amendment would not apply to the renewal of registrations which are emeritus or which are on inactive status. An emeritus or inactive landscape architect would submit a set of fingerprints only in order to restore an emeritus or inactive certificate of registration to active status. The amendment removes requirements by which applicants and registrants are to affirmatively submit criminal history information to the board and notice to the executive director regarding a conviction within 30 days after the conviction is entered. Under the rule as amended, the Department and the Federal Bureau of Investigation will locate criminal history records associated with the submitted fingerprints and relay them to the board's executive director. The executive director may contact the applicant or landscape architect regarding any conviction other than minor traffic offenses and request further information. The information must be in sufficient detail to determine whether the conduct at issue relates to the practice of landscape architecture. The amendment would implement HB 1717 passed by the 83rd Legislature after Sunset review of the agency and would be effective January 1, 2014, as specified in the bill.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the agency would obtain more comprehensive data about criminal activities of board registrants and applicants for registration which will assist the board in safeguarding the public against unlawful conduct by the board's registrants. The agency's current process of obtaining criminal history information covers only information regarding criminal conduct committed in Texas and requires an annual check on each registrant to ascertain if he or she has been convicted for criminal conduct since the registrant's last renewal. The rules also currently require applicants and registrants to self-report convictions within 30 days after conviction. Considering the consequence of conviction for more serious crimes is revocation, there is little incentive to fulfill this requirement. The amended rule would be more comprehensive

in covering state and federal criminal histories in all states and more efficient and less costly (to the agency) in that the agency will no longer run annual criminal history checks. Under the new process, the agency would also receive criminal history more immediately instead of the current process of discovering it upon renewal. There would be no information conveyed to the agency about any person who is not arrested or convicted.

The proposed amendment would require each applicant and registrant to pay the cost of fingerprinting which is currently $42 and paid to the Department of Public Safety or a vendor of the Department. Pursuant to contract between the Department and the vendor, payment is made to the vendor. The new rule will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, RID/ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §§1051.202, 1051.3041, and 1051.3531, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which prohibits the board from issuing or renewing a certificate of registration to a person who has not submitted fingerprints for the purpose of undergoing a criminal background check.

The proposed amendment does not affect any other statutes.

§3.149. Criminal Convictions.

(a) (No change.)

(b) The following procedures will apply in the consideration of an application for registration as a Landscape Architect or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each [~~Each~~] Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration. [~~will be required to provide information regarding the Applicant's criminal history as part of the application process. Each Registrant will be required to report any criminal conviction to the Board within thirty (30) days of the date the conviction is entered by the court and to verify the status of the Registrant's criminal history on each registration renewal form. An Applicant or Registrant shall not be required to report a conviction for a minor traffic offense.~~]

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) [~~(2)~~] The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. The executive director shall allow the [~~An~~] Applicant or Registrant no less than 30 days to provide a written response [~~who has been convicted for committing any offense will be required to provide a summary of each conviction~~] in sufficient detail to allow the executive director to determine whether the conduct at issue [~~it~~] appears to directly relate to the duties and responsibilities of a Landscape Architect.

(4) [~~(3)~~] If the executive director determines the conviction might be directly related to the duties and responsibilities of a Landscape Architect, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305039
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.158

The Texas Board of Architectural Examiners proposes the amendment of §5.158, concerning Criminal Convictions.

The amendment requires each applicant for registration as a registered interior designer and each registered interior designer to submit a set of fingerprints to the Department of Public Safety (Department) or a vendor under contract with the Department. As amended the rule would make the submission of fingerprints a prerequisite for an applicant's initial registration and for the next renewal of registration by a registered interior designer. However, the proposed amendment would not apply to the renewal of emeritus or inactive certificates of registration. An emeritus or inactive registered interior designer would submit a set of fingerprints only in order to restore an emeritus or inactive certificate to active status. The amendment removes requirements by which applicants and registrants are to affirmatively disclose criminal history information to the board and notify the executive director regarding a conviction within 30 days after the conviction is entered. Under the rule as amended, the Department and the Federal Bureau of Investigation will locate criminal history records associated with the submitted fingerprints and relay them to the

board's executive director. The executive director may contact the applicant or registered interior designer regarding any conviction other than minor traffic offenses and request further information. The information must be in sufficient detail to determine whether the conduct at issue relates to the practice of interior design. The amendment would implement HB 1717 passed by the 83rd Legislature after Sunset review of the agency and would be effective January 1, 2014, as specified in the bill.

Cathy L. Hendricks, Executive Director, Texas Board of Architectural Examiners, has determined that for the first five-year period the amended rule is in effect, the amendment will have no significant fiscal impact upon state government and no fiscal impact on local government.

Ms. Hendricks also has determined that for the first five-year period the amended rule is in effect the public benefits expected as a result of the amended rule are as follows: the agency would obtain more comprehensive data about criminal activities of board registrants and applicants for registration which will assist the board in safeguarding the public against unlawful by the Board's registrants. The agency's current process for obtaining criminal history information covers only information regarding convictions entered in Texas and requires an annual check on each registrant to ascertain if he or she has been convicted for criminal conduct since the registrant's last renewal. The rules also currently require applicants and registrants to self-report convictions within 30 days after conviction. Considering the consequence of conviction for more serious crimes is revocation, there is little incentive to fulfill this requirement. The amended rule would be more comprehensive in covering state and federal criminal histories in all states and more efficient and less costly (to the agency) in that the agency will no longer run annual criminal history checks. Under the new process, the agency would also receive criminal history more immediately instead of the current process of discovering it upon renewal. There would be no information conveyed to the agency about any person who is not arrested or convicted.

The proposed amendment would require each applicant and registrant to pay the cost of fingerprinting which is currently $42 and paid to the Department of Public Safety or a vendor of the Department. Pursuant to contract between the Department and the vendor, payment is made to the vendor. The new rule will have no fiscal impact on small or micro-business. Therefore no Economic Impact Statement and Regulatory Flexibility Analysis are required.

Comments may be submitted to Cathy L. Hendricks, RID/ASID/IIDA, Executive Director, Texas Board of Architectural Examiners, P.O. Box 12337, Austin, Texas 78711-2337.

The amendment is proposed pursuant to §§1051.202, 1051.3041, and 1051.3531, Texas Occupations Code, which provides the Texas Board of Architectural Examiners with authority to promulgate rules to implement Chapter 1051, Texas Occupations Code, and which prohibits the board from issuing or renewing a certificate of registration to a person who has not submitted fingerprints for the purpose of undergoing a criminal background check.

The proposed amendment does not affect any other statutes.

§5.158. Criminal Convictions.

(a) (No change.)

(b) The following procedures will apply in the consideration of an application for registration as a Registered Interior Designer or in the consideration of a Registrant's criminal history:

(1) Effective January 1, 2014, each [~~Each~~] Applicant shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Applicant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. An Applicant who does not submit fingerprints in accordance with this subsection is ineligible for registration. [~~will be required to provide information regarding the Applicant's criminal history as part of the application process. Each Registrant will be required to report any criminal conviction to the Board within thirty (30) days of the date the conviction is entered by the court and to verify the status of the Registrant's criminal history on each registration renewal form. An Applicant or Registrant is not required to report a conviction for a minor traffic offense.~~]

(2) Effective January 1, 2014, each Registrant on active status or returning to active status who has not submitted a set of fingerprints pursuant to paragraph (1) of this subsection shall submit a complete and legible set of fingerprints to the Department of Public Safety or a vendor under contract with the Department for the purpose of obtaining criminal history record information from the Department and the Federal Bureau of Investigation. The Registrant shall pay the cost of conducting the criminal history background check to the Department or the vendor on behalf of the Department. A Registrant who does not submit fingerprints in accordance with this subsection is ineligible for renewal of, or returning to, active registration. A Registrant is not required to submit fingerprints under this paragraph for the renewal of, or returning to, active registration if the Registrant previously submitted fingerprints under paragraph (1) of this subsection for initial registration or under this paragraph for a previous renewal of, or return to, active registration.

(3) [~~(2)~~] The executive director may contact the Applicant or Registrant regarding any information about a criminal conviction, other than a minor traffic offense, disclosed in the Applicant's or Registrant's criminal history record. The executive director shall allow the [~~An~~] Applicant or Registrant no less than 30 days to provide a written response [~~who has been convicted for committing any offense shall provide a summary of each conviction~~] in sufficient detail to allow the executive director to determine whether the conduct at issue [~~it~~] appears to directly relate to the duties and responsibilities of a Registered Interior Designer.

(4) [~~(3)~~] If the executive director determines the conviction might be directly related to the duties and responsibilities of a Registered Interior Designer, the Board's staff will obtain sufficient details regarding the conviction to allow the Board to determine the effect of the conviction on the Applicant's eligibility for registration or on the Registrant's fitness for continued registration.

(c) - (i) (No change.)

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305040

Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-9040

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PART 9. TEXAS MEDICAL BOARD

CHAPTER 183. ACUPUNCTURE

22 TAC §183.11

The Texas Medical Board (Board) proposes amendments to §183.11, concerning Complaint Procedure Notification.

The amendments to §183.11 change an incorrect citation to Chapter 187 in the rule text to the correct citation, which is Chapter 178 of this title (relating to Complaints). The amendments are made so that the citation in the section is accurate and correct and consistent with Texas statutes.

Scott Freshour, General Counsel for the Board, has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing this section will be to will be to have rules that are consistent with Texas statutes.

Mr. Freshour has also determined that for the first five-year period the section is in effect there will be no fiscal implication to state or local government as a result of enforcing the section as proposed. There will be no effect to individuals required to comply with the rule as proposed. There will be no effect on small or microbusinesses.

Comments on the proposal may be submitted to Sarah Tuthill, P.O. Box 2018, Austin, Texas 78768-2018 or e-mail comments to: rules.development@tmb.state.tx.us. A public hearing will be held at a later date.

The amendment is proposed under the authority of the Texas Occupations Code Annotated §153.001, which provides authority for the Board to adopt rules and bylaws as necessary to: govern its own proceedings; perform its duties; regulate the practice of medicine in this state; enforce this subtitle; and establish rules related to licensure. The amendment is also authorized by Texas Occupations Code Annotated §205.101.

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

§183.11. Complaint Procedure Notification.

Pursuant to §205.152 of the Act, Chapter 178 [~~188~~] of this title (relating to Complaints [~~Complaint Procedure Notification~~]) shall govern acupuncturists with regard to methods of notification for filing complaints with the agency. If the provisions of Chapter 178 of this title [~~188~~] conflict with the Act or rules under this chapter, the Act and provisions of this chapter shall control.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305041

Mari Robinson, J.D.
Executive Director
Texas Medical Board
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-7016

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER E. REQUIREMENTS FOR LICENSURE

22 TAC §535.51

The Texas Real Estate Commission proposes an amendment to §535.51, General Requirements for a License. The proposed amendment corrects §535.51(d)(4) to increase the timeframe for an applicant to submit fingerprints from six months to twelve months to be consistent with the timeframe an applicant has to take an examination under §1101.401 of the Real Estate License Act and to meet the other requirements of an application under §535.51(d)(1).

Kerri Lewis, General Counsel, has determined that for the first five-year period the proposed amendment is in effect there will be no fiscal implications for the state or for units of local government as a result of enforcing or administering the section. There is no anticipated significant impact on small businesses, micro-businesses or local or state employment as a result of implementing the section. There is no significant anticipated economic cost to persons who are required to comply with the proposed amendment.

Ms. Lewis also has determined that for each year of the first five years the section as proposed is in effect the public benefit anticipated as a result of enforcing the section will be consistency with statutory and rule provisions.

Comments on the proposal may be submitted to Kerri Lewis, General Counsel, Texas Real Estate Commission, P.O. Box 12188, Austin, Texas 78711-2188 or via email to general.counsel@trec.texas.gov. The deadline for comments is 30 days after publication in the *Texas Register.*

The amendment is proposed under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statute affected by this proposal is Texas Occupations Code, Chapter 1101. No other statute, code or article is affected by the proposed amendment.

§535.51. General Requirements for a License.

(a) - (c) (No change.)

(d) An application is considered void and is subject to no further evaluation or processing when one of the following events occurs:

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

(4) the applicant fails to provide fingerprints to the Department of Public Safety within twelve [~~six~~] months from the date the application is filed.

(e) (No change.)

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304993
Kerri Lewis
General Counsel
Texas Real Estate Commission
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 936-3092

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TITLE 25. HEALTH SERVICES

PART 11. CANCER PREVENTION AND RESEARCH INSTITUTE OF TEXAS

CHAPTER 701. POLICIES AND PROCEDURES

25 TAC §§701.1, 701.3, 701.5, 701.7, 701.9, 701.11, 701.13, 701.15, 701.17, 701.19, 701.21, 701.23, 701.25, 701.27, 701.29, 701.31, 701.33

The Cancer Prevention and Research Institute of Texas (Institute) proposes a new Chapter 701, §§701.1, 701.3, 701.5, 701.7, 701.9, 701.11, 701.13, 701.15, 701.17, 701.19, 701.21, 701.23, 701.25, 701.27, 701.29, 701.31, and 701.33, addressing administrative policies and procedures of the Institute.

The purpose of these new rules is to set forth policies and procedures referenced by the statute, Chapter 102 of the Texas Health and Safety Code, and for consistency with other chapters. The new rules are proposed pursuant to and in satisfaction of the provisions of Texas Health and Safety Code, Chapter 102, and other relevant statutes.

Section 701.1 is proposed to set forth the intent of the Institute.

Section 701.3 is proposed to define various terms used throughout the chapter.

Section 701.5 is proposed to compel the adoption of Bylaws by the Oversight Committee to govern its operation and management of the Institute and to set forth required Bylaw provisions.

Section 701.7 is proposed to describe the Institute's compliance program, including required compliance program training for Institute employees and Oversight Committee members. This rule also describes the compliance officer's role and responsibilities, including reporting on compliance activities of the Institute to the Oversight Committee.

Section 701.9 is proposed to create a system and procedures for the reporting and investigation of complaints related to alleged compliance violations and to describe compliance violation information that is confidential and not subject to disclosure under Chapter 552, Texas Government Code.

Section 701.11 is proposed to set forth the framework for the development, implementation, continual monitoring, and revisions to the Texas Cancer Plan.

Section 701.13 is proposed to describe the appointment of and reporting requirements for the Institute's Advisory Committees that advise the Oversight Committee on issues related to cancer and to inform Institute policies and procedures.

Section 701.15 is proposed to detail the requirements related to the Institute's honoraria policy for Scientific Research and Prevention Programs Committee members, including necessary policy provisions.

Section 701.17 is proposed to set forth the Institute's residency policy for Scientific Research and Prevention Programs Committee members.

Section 701.19 is proposed to provide guidelines regarding the advance payment of grant award funds by the Institute, including the limitation of funds eligible for advance payment and other requirements as defined in the grant contract.

Section 701.21 is proposed to set forth the Institute's policy to encourage grant recipient's purchase of products and materials required for the grant award to be produced in the state of Texas when possible. The rule also specifies penalty provisions for non-compliance with this policy.

Section 701.23 is proposed to provide guidelines regarding the use of historically underutilized businesses by grant recipients.

Section 701.25 is proposed to describe the Institute's policy on electronic signatures for creating, executing, submitting, approving, and verifying legally binding grant contract documents and grant award reports.

Section 702.27 is proposed to designate the publicly available Institute reports and records that the Institute commits to be made available through posting on the Institute's Internet website or upon request.

Section 701.29 is proposed to set forth the Institute's policies related to Open Records, including the policy for implementing the statutory protection for sensitive third-party information submitted by a grant applicant or a grant recipient. This rule specifies third-party information held by the Institute that is public information and shall be disclosed under Chapter 552, Texas Government Code, including the records of any non-profit organization established to provide support to the Institute.

Section 701.31 is proposed to delineate the charges for copies of public records.

Section 701.33 is proposed to set forth the procedures for the negotiation and mediation of certain contract claims asserted by contractors against the Institute. This rule does not apply to grant contracts, unless specifically provided for by the grant contract.

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle 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 clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Doyle has determined that the rules shall not have an effect on small businesses or on micro businesses.

Written comments on the proposed rules may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than December 16, 2013. Parties filing comments are asked to indicate whether or not they support the new rules proposed by the Institute and, if changes are requested to one or more rules, to provide specific text proposed to be included in the rule(s). Comments may be submitted electronically to kdoyle@cprit.state.tx.us. Comments may be submitted by facsimile transmission to (512) 475-2563.

The new rules are proposed under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with the authority to adopt rules to administer the chapter.

There is no other statute, article or code that is affected by this proposal.

§701.1. Intent.

The Institute shall:

(1) Create and expedite innovation in the area of cancer research and enhance the potential for medical or scientific breakthrough in the prevention of cancer and cures for cancer;

(2) Attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in Texas; and

(3) Develop and implement the Texas Cancer Plan.

§701.3. Definitions.

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

(1) Advisory Committee--a committee of experts, including practitioners and patient advocates, created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.

(2) Allowable Cost--a cost that is reasonable, necessary for the proper and efficient performance and administration of the project, and allocable to the project.

(3) Annual Public Report--the report issued by the Institute pursuant to Texas Health and Safety Code §102.052 outlining Institute activities, including Grant Awards, research accomplishments, future Program directions, compliance, and Conflicts of Interest actions.

(4) Authorized Expense--cost items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses.

(5) Approved Budget--the financial expenditure plan for the Grant Award, including revisions approved by the Institute and permissible revisions made by the Grant Recipient. The Approved Budget may be shown by Project Year and detailed budget categories.

(6) Authorized Signing Official (ASO)--the individual, named by the Grant Applicant, who is authorized to act for the Grant Applicant or Grant Recipient in submitting the Grant Application and executing the Grant Contract and associated documents or requests.

(7) Bylaws--the rules established by the Oversight Committee to provide a framework for its operation, management, and governance.

(8) Cancer Prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.

(9) Cancer Prevention and Control Program--effective strategies and interventions for preventing and controlling cancer designed to reduce the incidence and mortality of cancer and to enhance the quality of life of those affected by cancer.

(10) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of legislative appropriations, gifts, grants, other donations, and earned interest.

(11) Cancer Research--research into the prevention, causes, detection, treatments, and cures for all types of cancer in humans, including basic mechanistic studies, pre-clinical studies, animal model studies, translational research, and clinical research to develop preventative measures, therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer and its effects in humans.

(12) Chief Compliance Officer--the individual employed by the Institute to monitor and report to the Oversight Committee regarding compliance with the Institute's statute and administrative rules. The term may also apply to an individual designated by the Chief Compliance Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(13) Chief Executive Officer--the individual hired by the Oversight Committee to perform duties required by the Institute's Statute or designated by the Oversight Committee. The term may apply to an individual designated by the Chief Executive Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(14) Chief Prevention Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Prevention program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may also apply to an individual designated by the Chief Prevention Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(15) Chief Product Development Officer--the individual hired by Chief Executive Officer to oversee the Institute's Product Development program for drugs, biologicals, diagnostics, or devices arising from Cancer Research, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Product Development Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(16) Chief Scientific Officer--the individual hired by the Chief Executive Officer to oversee the Institute's Cancer Research program, including the Grant Review Process, and to assist the Chief Executive Officer in collaborative outreach to further Cancer Research and Cancer Prevention. The term may apply to an individual designated by the Chief Scientific Officer to fulfill the duty or duties described herein, unless the context clearly indicates otherwise.

(17) Code of Conduct and Ethics--the code adopted by the Oversight Committee pursuant to Texas Health and Safety Code §102.109 to provide guidance related to the ethical conduct expected of Oversight Committee Members, Program Integration Committee Members, and Institute Employees.

(18) Compliance Program--a process to assess and ensure compliance by the Oversight Committee Members and Institute Em-

ployees with applicable laws, rules, and policies, including matters of ethics and standards of conduct, financial reporting, internal accounting controls, and auditing.

(19) Conflict(s) of Interest--a financial, professional, or personal interest held by the individual or the individual's Relative that is contrary to the individual's obligation and duty to act for the benefit of the Institute.

(20) Encumbered Funds--funds that are designated by a Grant Recipient for a specific purpose.

(21) Financial Status Report--form used to report all Grant Award related financial expenditures incurred in implementation of the Grant Award. This form may also be referred to as "FSR" or "Form 269-A."

(22) Grant Applicant--the public or private institution of higher education, as defined by §61.003, Texas Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits a Grant Application to the Institute. Unless otherwise indicated, this term includes the Principal Investigator or Program Director.

(23) Grant Application--the written proposal submitted by a Grant Applicant to the Institute in the form required by the Institute that, if successful, will result in a Grant Award.

(24) Grant Award--funding, including a direct company investment, awarded by the Institute pursuant to a Grant Contract providing money to the Grant Recipient to carry out the Cancer Research or Cancer Prevention project in accordance with rules, regulations, and guidance provided by the Institute.

(25) Grant Contract--the legal agreement executed by the Grant Recipient and the Institute setting forth the terms and conditions for the Cancer Research or Cancer Prevention Grant Award approved by the Oversight Committee.

(26) Grant Management System--the electronic interactive system used by the Institute to exchange, record, and store Grant Application and Grant Award information.

(27) Grant Mechanism--the specific Grant Award type.

(28) Grant Program--the functional area in which the Institute makes Grant Awards, including research, prevention and product development.

(29) Grant Progress Report--the required report submitted by the Grant Recipient at least annually and at the close of the grant award describing the activities undertaken to achieve the goals and objectives of the funded project and including information, data and program metrics. Unless the context clearly indicates otherwise, the Grant Progress Report also includes other required reports such as a Historically Underutilized Business and Texas Supplier form, a single audit determination form, an inventory report, a single audit determination form, a revenue sharing form, and any other reports or forms designated by the Institute.

(30) Grant Recipient--the entire legal entity responsible for the performance or administration of the Grant Award pursuant to the Grant Contract. Unless otherwise indicated, this term includes the Principal Investigator, Program Director, or Company Representative.

(31) Grant Review Cycle--the period that begins on the day that the Request for Applications is released for a particular Grant Mechanism and ends on the day that the Oversight Committee takes action on the Grant Award recommendations.

(32) Grant Review Process--the Institute's processes for Peer Review, Program Review and Oversight Committee approval of Grant Applications.

(33) Indirect Costs--the expenses of doing business that are not readily identified with a particular Grant Award, Grant Contract, project, function, or activity, but are necessary for the general operation of the Grant Recipient or the performance of the Grant Recipient's activities.

(34) Institute--the Cancer Prevention and Research Institute of Texas or CPRIT.

(35) Institute Employee--any individual employed by the Institute, including any individual performing duties for the Institute pursuant to a contract of employment. Unless otherwise indicated, the term does not include an individual providing services to the Institute pursuant to a services contract.

(36) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the Grant Award:

(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in Inventions and discoveries;

(B) All trade secrets and rights in know-how and proprietary information;

(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and

(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.

(37) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the Grant Recipient in the performance of work funded by the Grant Award.

(38) License Agreement--an understanding by which an owner of Technology and associated Intellectual Property Rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the Technology or Intellectual Property Rights in exchange for consideration.

(39) Matching Funds--the Grant Recipient's Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. For public and private institutions of higher education, this includes the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by §102.2003(c), Texas Health and Safety Code.

(40) Numerical Ranking Score--the score given to a Grant Application by the Review Council that is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also signifies the Review Council's view related to how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(41) Overall Evaluation Score--the score given to a Grant Application during the Peer Review Panel review that signifies the reviewers' overall impression of the Grant Application. Typically it is the average of the scores assigned by two or more Peer Review Panel members.

(42) Oversight Committee--the Institute's governing body, composed of the nine individuals appointed by the Governor, Lieutenant Governor, and the Speaker of the House of Representatives.

(43) Oversight Committee Member--any person appointed to and serving on the Oversight Committee.

(44) Patient Advocate--a trained individual who meets the qualifications set by the Institute and is appointed to a Scientific Research and Prevention Programs Committee to specifically represent the interests of cancer patients as part of the Peer Review of Grant Applications assigned to the individual's committee.

(45) Peer Review--the review process performed by Scientific Research and Prevention Programs Committee members and used by the Institute to provide guidance and recommendations to the Program Integration Committee and the Oversight Committee in making decisions for Grant Awards. The process involves the consistent application of standards and procedures to produce a fair, equitable, and objective evaluation of scientific and technical merit, as well as other relevant aspects of the Grant Application. When used herein, the term applies individually or collectively, as the context may indicate, to the following review process(es): Preliminary Evaluation, Individual Evaluation by Primary Reviewers, Peer Review Panel discussion and Review Council prioritization.

(46) Peer Review Panel--a group of Scientific Research and Prevention Programs Committee members conducting Peer Review of assigned Grant Applications.

(47) Prevention Review Council--the group of Scientific Research and Prevention Programs Committee members designated as the chairpersons of the Peer Review Panels that review Cancer Prevention program Grant Applications. This group includes the Review Council chairperson.

(48) Primary Reviewer--a Scientific Research and Prevention Programs Committee member responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the general impression of the Grant Application's merit.

(49) Principal Investigator, Program Director, or Company Representative--the single individual designated by the Grant Applicant or Grant Recipient to have the appropriate level of authority and responsibility to direct the project to be supported by the Grant Award.

(50) Product Development Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Grant Applications for the development of drugs, drugs, biologicals, diagnostics, or devices arising from earlier-stage Cancer Research. This group includes the Review Council chairperson.

(51) Product Development Prospects--the potential for development of products, services, or infrastructure to support Cancer Research efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.

(52) Program Income--income from fees for services performed, from the use or rental of real or personal property acquired with Grant Award funds, and from the sale of commodities or items fabricated under the Grant Contract. Except as otherwise provided, Program Income does not include rebates, credits, discounts, refunds, etc. or the interest earned on any of these items. Interest otherwise earned in excess of $250 on Grant Award funds is considered Program Income.

(53) Program Integration Committee--the group composed of the Chief Executive Officer, the Chief Scientific Officer, the Chief Product Development Officer, the Commissioner of State Health Services, and the Chief Prevention Officer that is responsible for submitting to the Oversight Committee the list of Grant Applications the Program Integration Committee recommends for Grant Awards.

(54) Project Results--all outcomes of a Grant Award, including publications, knowledge gained, additional funding generated, and any and all Technology and associated Intellectual Property Rights.

(55) Project Year--the intervals of time (usually 12 months each) into which a Grant Award is divided for budgetary, funding, and reporting purposes. The effective date of the Grant Contract is the first day of the first Project Year.

(56) Real Property--land, including land improvements, structures and appurtenances thereto, excluding movable machinery and equipment.

(57) Relative--a person related within the second degree by consanguinity or affinity determined in accordance with §§573.021 - 573.025, Texas Government Code. For purposes of this definition:

(A) examples of an individual within the second degree by consanguinity are a child, grandchild, parent, grandparent, brother, sister, uncle, aunt, niece, or nephew;

(B) examples of an individual within the second degree by affinity are a spouse, a person related to a spouse within the second degree by consanguinity, or a spouse of such a person;

(C) an individual adopted into a family is considered a Relative on the same basis as a natural born family member; and

(D) an individual is considered a spouse even if the marriage has been dissolved by death or divorce if there are surviving children of that marriage.

(58) Request for Applications--the invitation released by the Institute seeking the submission of Grant Applications for a particular Grant Mechanism. It provides information relevant to the Grant Award to be funded, including funding amount, Grant Review Process information, evaluation criteria, and required Grant Application components.

(59) Review Council--the term used to generally refer to one or more of the Prevention Review Council, the Product Development Review Council, or Scientific Review Council.

(60) Scientific Research and Prevention Programs Committee--a group of experts in the field of Cancer Research, Cancer Prevention or Product Development, including trained Patient Advocates, appointed by the Chief Executive Officer and approved by the Oversight Committee for the purpose of conducting Peer Review of Grants Applications and recommending Grant Awards. A Peer Review Panel is a Scientific Research and Prevention Programs Committee, as is a Review Council.

(61) Scientific Research and Prevention Programs Committee Member--an individual appointed by the Chief Executive Officer and approved by the Oversight Committee to serve on a Scientific Research and Prevention Programs Committee. Peer Review Panel Members are Scientific Research and Prevention Programs Committee Members, as are Review Council Members.

(62) Scientific Review Council--the group of Scientific Research and Prevention Programs Committee Members designated as the chairpersons of the Peer Review Panels that review Cancer Research Grant Applications. This group includes the Review Council chairperson.

(63) Scope of Work--the goals and objectives of the Cancer Research or Cancer Prevention project, including the timeline and milestones to be achieved.

(64) Senior Member or Key Personnel--the Principal Investigator, Project Director or Company Representative and other individuals who contribute to the scientific development or execution of a project in a substantive, measurable way, whether or not the individuals receive salary or compensation under the Grant Award.

(65) Technology--any and all of the following resulting or arising from work funded by the Grant Award:

(A) Inventions;

(B) Third-Party Information, including but not limited to data, trade secrets and know-how;

(C) databases, compilations and collections of data;

(D) tools, methods and processes; and

(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.

(66) Texas Cancer Plan--a coordinated, prioritized, and actionable framework that helps to guide statewide efforts to fight the human and economic burden of cancer in Texas.

(67) Third-Party Information--generally, all trade secrets, proprietary information, know-how and non-public business information disclosed to the Institute by Grant Applicant, Grant Recipient, or other individual external to the Institute.

(68) Tobacco--all forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.

§701.5. Oversight Committee Bylaws.

The Oversight Committee shall adopt Bylaws to govern the conduct of its meetings and its management of the Institute, consistent with applicable law.

(1) The Bylaws shall include:

(A) A process to elect a presiding officer, assistant presiding officer, and any other officer positions that may be created by the Oversight Committee and to set terms of service for such positions;

(B) A meeting schedule that permits a public meeting to be held no less than once each calendar quarter, with appropriate notice and opportunity for a formal public comment period;

(C) Duties and responsibilities for the presiding officer and assistant presiding officer, as well as other additional officer positions that may be created by the Oversight Committee;

(D) Responsibilities of the Oversight Committee and the Committee's officers that are distinguished from responsibilities of the Chief Executive Officer and Institute employees;

(E) A process for the Oversight Committee to review the financial practices of the Institute, including a review of the annual financial audit of the Institute's activities and the Comptroller of Public Accounts' report and evaluation of the Institute's annual financial audit;

(F) A prohibition against an interlocking directorate between the Oversight Committee and any foundation established to benefit the Institute;

(G) A process for hiring a Chief Executive Officer and evaluating the Chief Executive Officer's job performance; and

(H) A designation of grounds for removal from the Oversight Committee based on illness, absence, or ineligibility and provide process for removal.

(2) The Bylaws must be posted on the Institute's Internet website.

§701.7. Compliance Program.

(a) Oversight Committee Members, Institute Employees, Scientific Research and Prevention Program Committee Members, Program Integration Committee Members, Grant Applicants, Grant Recipients, and contract service providers are expected to comply with applicable laws, rules, regulations, and policies in conduct of their official duties and responsibilities as well as professional standards of business and personal ethics.

(b) The Institute's Compliance Program shall ensure that agency operations conform to federal and state regulations, and that such operations are undertaken consistent with the Institute's administrative rules, policies, and procedures.

(1) The Compliance Program shall specifically address at least the following agency operations: Grant Review Process, Grant Award financial reporting and performance monitoring, Institute financial reporting, internal accounting controls, and auditing.

(2) The Compliance Program shall implement and oversee systems and activities to detect and report instances of conduct that do not conform to applicable law or policy, as well as the timely response to non-conforming conduct and to prevent future similar conduct.

(3) The Compliance Program shall implement and enforce the Code of Conduct and Ethics as well as the consistent enforcement of other compliance standards and procedures adopted by the Oversight Committee.

(c) The Compliance Program shall operate under the direction of the Chief Compliance Officer.

(1) In performing the duties under this program, the Chief Compliance Officer shall have direct access to the Oversight Committee.

(2) The Chief Compliance Officer is responsible and will be held accountable for apprising the Oversight Committee and the Chief Executive Officer of the institutional compliance functions and activities.

(A) The Chief Compliance Officer shall report at least quarterly to the Oversight Committee on the Institute's compliance with the applicable laws, rules and Institute policies. The Chief Compliance Officer may report more frequently to the Audit Subcommittee of the Oversight Committee.

(B) The Chief Compliance Officer shall report at least annually on the Institute's compliance program activities, including any proposed legislation or other recommendations identified through the activities. The compliance report shall be included in the Institute's Annual Public Report.

(C) The Chief Compliance Officer shall report at least annually to the Oversight Committee on the Grant Recipients' compliance with the terms and conditions of the Grant Contracts. This report shall be made at the first Oversight Committee meeting following the submission of the Institute's Annual Public Report.

(D) The Chief Compliance Officer shall inquire into and monitor the timely submission status of required Grant Recipient reports and notify the Oversight Committee and General Counsel of a Grant Recipient's failure to meaningfully comply with reporting deadlines.

(d) Oversight Committee Members and Institute Employees shall participate in periodic Compliance Program training.

§701.9. Report and Investigation of Compliance Violations.

(a) The Chief Compliance Officer oversees the Institute's activities related to the report and investigation of suspected compliance violations.

(b) To encourage good faith reporting of suspected noncompliance, the Institute shall establish a system to receive confidential reports of suspected instances or events that failed to comply with the Institute's applicable laws, rules and policies. The Institute may use a telephonic and/or electronic mailbox system, such as an "ethics hotline" to preserve confidentiality of communications regarding suspected compliance violations and the anonymity of a person making a compliance report or participating in a compliance investigation.

(1) Information describing how to report a suspected compliance violation, including a designated telephone number and electronic mail address for confidentially reporting suspected compliance violations, shall be displayed on the Institute's Internet website and included in all Institute contracts and agreements.

(2) Information describing how to report a suspected compliance violation shall be included in the Institute's employee policies manual, and discussed internally with Institute Employees and included in ethics training sessions.

(3) Only good faith reports made to the designated telephone number or electronic mailbox shall be investigated.

(c) The Institute shall implement procedures to investigate a good faith report of a suspected violation, including:

(1) The prompt initiation of an investigation by the Chief Compliance Officer;

(2) Assignment to an appropriate individual or individuals to conduct the investigation, including the Audit Subcommittee, the Compliance Office, General Counsel, the Internal Auditor, or outside experts or advisors; and

(3) A recommendation for appropriate corrective actions, if any are warranted by the investigation, made to the Oversight Committee.

(d) To the extent allowed by law, the Institute will preserve the confidential nature of the good faith report of a suspected violation, including the identity of the individual submitting the report.

(e) The Chief Compliance Officer shall maintain a log that tracks the receipt, investigation, and resolution of reports made regarding compliance violations.

(f) In performing duties under this rule, the Chief Compliance Officer has direct access to the Oversight Committee. The Chief Compliance Officer shall report to the Oversight Committee at least quarterly on compliance activity.

(g) The following information is confidential and not subject to disclosure under Chapter 552, Texas Government Code, unless the information relates to an individual who consents to the disclosure:

(1) information that directly or indirectly reveals the identity of an individual who made a report to the Institute's Compliance Program office, sought guidance from the office, or participated in an investigation conducted under the Compliance Program;

(2) information that directly or indirectly reveals the identity of an individual who is alleged to have or may have planned, initiated, or participated in activities that are the subject of a report made to the Compliance Program if, after completing an investigation, the Compliance Program determines the report to be unsubstantiated or without merit; and

(3) other information that is collected or produced in a Compliance Program investigation if releasing the information would interfere with an ongoing compliance investigation.

(h) The Oversight Committee may meet in a closed session under Chapter 551, Texas Government Code, to discuss an on-going compliance investigation into issues related to fraud, waste or abuse of state resources.

§701.11. Texas Cancer Plan.

The Institute shall develop, implement, continually monitor, and revise the Texas Cancer Plan as necessary.

(1) The intent of the Texas Cancer Plan is to reduce the cancer burden across the state and improve the lives of Texans by providing a coordinated, prioritized, and actionable framework that will help guide statewide efforts to fight the human and economic burden of cancer in Texas.

(2) Activities undertaken by the Institute to monitor the Texas Cancer Plan will be described in the Annual Public Report required by Texas Health and Safety Code §102.052.

(3) The Institute will periodically update the Texas Cancer Plan by issuing a revised version of the Texas Cancer Plan every seven (7) years, unless a different timeline for a revised version of the Texas Cancer Plan is approved by a simple majority of the Oversight Committee.

(4) The Institute may solicit input from public or private institutions, government organizations, non-profit organizations, other public entities, private companies, and individuals affected by cancer to assist the Institute in monitoring, implementing, and revising the Texas Cancer Plan.

(5) The most recent version of the Texas Cancer Plan shall be posted on the Institute's Internet website. A hard copy of the Texas Cancer Plan may be requested by contacting the Institute directly.

§701.13. Advisory Committees.

The Oversight Committee may rely upon Advisory Committees of experts to advise the Oversight Committee on issues related to cancer and to inform Institute policies and procedures.

(1) The University Advisory Committee shall advise the Oversight Committee and Review Councils regarding the role of higher education in Cancer Research. The committee's membership is composed of the members specified by §102.154, Texas Health and Safety Code.

(2) The Oversight Committee shall create an ad hoc Advisory Committee to address childhood cancers.

(3) The Oversight Committee may create additional ad hoc Advisory Committees to advise the Oversight Committee on issues related to cancer.

(4) The presiding officer of the Oversight Committee appoints experts, including practitioners and patient advocates, to serve as ad hoc Advisory Committee members, subject to approval by the Oversight Committee, for terms of service determined by the Oversight Committee.

(A) When used in this section, the term "patient advocates" is not intended to and does not have the meaning ascribed to the same term defined by §701.3 of this chapter (relating to Definitions). The term, when used herein, applies more generally to the broad category of individuals that advocate, either personally or professionally, on behalf of a group of individuals affected by cancer. A patient advocate serving on an ad hoc Advisory Committee does not undergo the selection process or receive science-based training required by Patient Advocates under Chapter 703, §703.5 of this title (relating to Scientific Research and Prevention Programs Committees).

(B) An Institute Employee, Oversight Committee Member, or Scientific Research and Prevention Programs Committee Member may not be a member of any Advisory Committee of the Institute.

(C) Grant Applicants and Grant Recipients may be Advisory Committee members.

(5) The Institute may reimburse Advisory Committee members for reasonable and necessary expenses incurred to attend meetings or perform other official duties authorized by the presiding officer of the Oversight Committee.

(6) Each Advisory Committee shall create a committee charter for approval by the Oversight Committee that delineates the role of the Advisory Committee and expected activities.

(7) The Oversight Committee shall establish a process for each Advisory Committee to report no less than annually to the Oversight Committee regarding the activities of the Advisory Committee.

(8) A list of the Institute's Advisory Committees and the reports presented to the Oversight Committee by each Advisory Committee shall be maintained on the Institute's Internet website.

§701.15. Scientific Research and Prevention Programs Committee Honoraria Policy.

The Institute recruits high level, highly respected, well established members of the Cancer Research, Product Development, or Cancer Prevention communities for appointments to Scientific Research and Prevention Programs Committees to conduct Peer Review of Grant Applications. The Institute may pay an honorarium to a Scientific Research and Prevention Programs Committee Member, pursuant to the Institute's honoraria policy.

(1) The honoraria policy shall be set by the Chief Executive Officer in consultation with the Oversight Committee and updated from time to time as necessary upon written notification to the Oversight Committee. Changes made to the honoraria policy must be supported by written justification.

(2) Honoraria rates paid by the Institute must be based upon the responsibilities, hours committed, and hourly rate commensurate with the expertise and professional background of the Scientific Research and Prevention Programs Committee Members.

(3) The honoraria policy may provide a comparison to honoraria and related compensation paid by other similar grant-making organizations to ensure that honoraria payment rates are reasonable and competitive for the value the Institute receives.

(4) Minimum documentation requirements for honoraria payments shall be set forth in the honoraria policy.

(5) The Institute's honoraria policy shall be publicly available.

§701.17. Scientific Research and Prevention Programs Committee Member Residency Policy.

(a) To minimize the potential for Conflicts of Interest in the Peer Review of Grant Applications, the Institute recruits individuals who live and work outside of the State to serve as Scientific Research and Prevention Programs Committee Members, including Patient Advocates, unless a special need justifies using one or more individuals living or working in Texas.

(b) If an individual who lives or works in Texas is appointed to serve as a Scientific Research and Prevention Programs Committee Member, an explanation of the special need must be provided at the time the Chief Executive Officer's appointment is approved by the Oversight Committee and recorded in the minutes of the Oversight Committee meeting.

§701.19. Advance Payment of Grant Award Funds.

It is the Institute's policy to disburse Grant Award funds on a reimbursement basis; however, the nature and circumstances of the Grant Mechanism or a particular Grant Award may justify advance payment of funds by the Institute pursuant to the Grant Contract.

(1) The Chief Executive Officer shall seek approval from the Oversight Committee to disburse Grant Award funds by advance payment. The Chief Executive Officer's advance payment recommendation for the Grant Award must be approved by a simple majority of Oversight Committee Members present and voting. Unless specifically stated, the Oversight Committee's approval to disburse Grant Award funds by advance payment is effective for the term of the project.

(2) The Grant Contract must specify the amount, schedule, and requirements for advance payment of Grant Award funds.

(3) The Grant Recipient receiving advance payment of Grant Award funds must maintain or demonstrate the willingness and ability to maintain procedures to minimize the time elapsing between the transfer of the Grant Award funds and disbursement by the Grant Recipient.

(4) Grant Recipient must comply with all financial reporting requirements regarding use of Grant Award funds.

(5) Nothing herein creates an entitlement to advance payment of Grant Award funds; the Institute may determine in its sole discretion that circumstances justify limiting the amount of Grant Award funds eligible for advance payment, may restrict the period that advance payment of Grant Award funds will be made, or may revert to payment on a reimbursement-basis.

§701.21. Preference for Texas Suppliers for Purchases Made by Grant Recipients.

It is the policy of the Institute to encourage the purchase of goods and services required for the Grant Award from suppliers in the State to the extent reasonably possible. A Grant Recipient shall undertake good faith efforts to purchase from suppliers in the State at least fifty percent (50%) of the goods and services purchased with Grant Award funds.

(1) A Grant Recipient must purchase products and materials produced in the State of Texas when available at a price and time comparable to products and materials purchased outside of the State.

(2) A Grant Recipient that expends more than forty percent (40%) of the Grant Award funds budgeted for a Project Year on goods and services purchased outside of the State must notify the Institute in writing and provide an explanation of the good faith efforts undertaken to purchase the goods or services from suppliers in the State, including a statement that products and materials were not available in the State at a comparable price and time. Such notification and explanation may be accomplished by completing the Historically Underutilized Business and Texas Supplier form submitted as part of the annual Grant Progress Report.

(3) The Institute may deny reimbursement or require repayment of Grant Award funds already expended if the Grant Recipient fails to provide a statement as required by paragraph (2) of this section with a reasonable explanation of the good faith efforts undertaken to purchase the goods or services from suppliers in the State of Texas.

§701.23. Historically Underutilized Businesses Policy for Grant Recipients.

It is the policy of the Institute to encourage the use of historically underutilized businesses (HUBs) by Grant Recipients to promote full and equal business opportunities for all businesses.

(1) A Grant Recipient is expected to undertake good faith efforts to utilize HUBs in subcontracts for construction, commodities purchases, and other services, including professional and consulting services, paid for with Grant Award funds.

(2) A Grant Recipient must report to the Institute at least annually regarding efforts undertaken by the Grant Recipient to utilize HUBs in the performance of the Grant Contract by completing the Historically Underutilized Business and Texas Supplier form submitted as part of the annual Grant Progress Report.

§701.25. Electronic Signature Policy.

A Grant Recipient's use of the Institute's electronic Grant Management System to create, exchange, execute, submit, and verify legally binding Grant Contract documents and Grant Award reports shall be pursuant to an agreement between the Institute and the Grant Recipient regarding the use of binding electronic signatures. Such agreement shall include at least the following minimum standards:

(1) The Grant Recipient agrees that by entering the Authorized Signing Official's password in the electronic Grant Management System at certain specified points, the Grant Recipient electronically signs the Grant Contract document or related form. The Grant Recipient further agrees that the electronic signature is the legal equivalent of the Authorized Signing Official's manual signature.

(2) The Institute may rely upon the electronic signature rendered by entering the Authorized Signing Official's password as evidence that the Grant Recipient consents to be legally bound by the terms and conditions of the Grant Contract or related form as if the document was manually signed.

(3) The Grant Recipient shall provide prompt written notification to the Institute of any changes regarding the status or authority of the individual(s) designated by the Grant Recipient to be the Grant Recipient's Authorized Signing Official. The notice must be provided to an individual designated by the Institute.

§701.27. Publicly Available Institute Reports and Records.

To promote transparency in its activities, the Institute maintains the information described in this section and makes such information publicly available through the Institute's Internet website or upon request.

(1) The Texas Cancer Plan;

(2) The Institute's Annual Public Report;

(3) The Conflict of Interest information described in this paragraph for the previous 12 months:

(A) A list of disclosed Conflicts of Interest requiring recusal.

(B) Any unreported Conflicts of Interest confirmed by an Institute investigation and actions taken by the Institute regarding same.

(C) Any Conflict of Interest waivers granted.

(4) An annual report of political contributions exceeding $1,000 made to candidates for state or federal office by Oversight Committee Members for the five years preceding the Member's appointment and each year after the Member's appointment until the Member's term expires;

(5) The annual Grant Program priorities set by the Oversight Committee;

(6) Oversight Committee Bylaws;

(7) Code of Conduct and Ethics;

(8) A list, separated by Grant Program and Peer Review Panel, of the Scientific Research and Prevention Programs Committee Members provisionally appointed or approved by the Oversight Committee;

(9) The Institute's honoraria policy for Scientific Research and Prevention Programs Committee Members;

(10) The supporting documentation regarding the Institute's implementation of its Conflict of Interest policy and actions taken to exclude a conflicted Oversight Committee Member, Program Integration Committee Member, Scientific Research and Prevention Programs Committee Member or Institute Employee from participating in the review, discussion, deliberation and vote on the Grant Application;

(11) The Chief Executive Officer's annual report to the Oversight Committee on the progress and continued merit of each research Program funded by the Institute;

(12) Grant Applicant information:

(A) Name and address;

(B) Amount of funding applied for;

(C) Type of cancer addressed by the Grant Application; and

(D) A high-level summary of work proposed to be funded by the Grant Award;

(13) Information related to Grant Awards, including the name of the Grant Recipient, the amount of the Grant Award approved by the Oversight Committee, the type of cancer addressed, and a high-level summary of the work funded by the Grant Award;

(14) Records of a nonprofit organization established to provide support to the Institute;

(15) Information related to any gift, grant, or other consideration provided to the Institute, Institute Employee, or a member of an Institute committee. Such information shall state:

(A) Donor's name;

(B) Amount of donation; and

(C) Date of donation;

(16) A list of the Institute's Advisory Committees and the reports presented to the Oversight Committee by each Advisory Committee;

(17) The Institute's approved internal audit annual report and the internal audit plan posted no later than thirty (30) days after approval by the Oversight Committee, or the Chief Executive Officer if the Oversight Committee is unable to meet;

(18) A detailed summary of the weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit plan or annual report and a summary of the action taken by the Institute to the address concerns, if any, that are raised by the audit plan or annual report;

(19) Information regarding staff compensation in compliance with §659.026, Texas Government Code.

§701.29. Third-Party Information Held by the Institute.

(a) In order to protect the actual or potential value of information submitted to the Institute by a Grant Applicant or a Grant Recipient, the Institute shall undertake reasonable efforts to protect Third-Party Information as described herein from unauthorized public disclosure, consistent with the requirements of Chapter 552, Texas Government Code.

(b) With the exception of information set forth in subsection (g) of this section, the Institute shall consider the following material confidential:

(1) Information that relates to a Grant Applicant's or Grant Recipient's product, device, or process that has the potential for being sold, traded, or licensed for a fee, including the application or use of such product, device, or process;

(2) All technological or scientific information developed in whole or in part by the Grant Applicant or Grant Recipient that has the potential for being sold, traded, or licensed for a fee;

(3) All information that relates to the plans, specifications, blueprints, and designs, including related proprietary information, of a scientific research and development facility;

(4) Written comments made by one or more Scientific Research and Prevention Programs Committee Members that reveals, directly or indirectly, information relating to the Grant Applicant's or Grant Recipient's product, device, or process that has the potential for being sold, traded, or licensed for a fee, including the application or use of such product, device, or process; and

(5) Information included in the business operations and management due diligence and intellectual property reviews conducted for the Grant Review Process that reveals, directly or indirectly, information relating to the Grant Applicant's or Grant Recipient's product, device, or process that has the potential for being sold, traded, or licensed for a fee.

(c) The Institute shall consider that a product, device, or process and the technological or scientific information described in the Grant Application submitted to the Institute has the potential for being sold, traded, or licensed for a fee unless the Grant Applicant informs the Institute that no economic potential exists.

(d) The confidential nature of the information submitted by the Grant Applicant or Grant Recipient is not dependent upon whether the information is patentable or capable of being registered under copyright or trademark laws.

(e) Oversight Committee Members, Institute Employees, Program Integration Committee Members, and Scientific Research and Prevention Programs Committee Members may access Third-Party Information solely for Institute purposes. All Third-Party Information in the individual's possession must be returned to the Institute or destroyed immediately upon the Institute's request or upon the termination of individual's employment with or service to the Institute, whichever comes first. An individual given access to Third-Party Information described herein shall not:

(1) Publicly disclose Third-Party Information for any reason unless the Institute's General Counsel determines that the disclosure is either permitted or required by law;

(2) Use non-public Third-Party Information for the individual's own personal gain or for the gain of other parties; or

(3) Copy Third-Party Information, for any reason, except as required to fulfill their duties for the Institute.

(f) The Institute may establish procedures to protect non-public Third-Party Information from unauthorized disclosure such as the use of non-disclosure agreements.

(g) Notwithstanding the foregoing, the following Third-Party Information is public information and shall be disclosed under Chapter 552, Texas Government Code:

(1) The Grant Applicant's name and address;

(2) The amount of Grant Award funding applied for;

(3) The type of cancer to be addressed under the Grant Application;

(4) The high-level summary of the Grant Application specifically created to be publicly disclosed;

(5) Any other Third-Party Information submitted to the Institute by a Grant Applicant or Grant Recipient if the third-party consents to the disclosure of the information; and

(6) The records of a nonprofit organization established to provide support to the Institute.

§701.31. Charges for Copies of Public Records.

(a) The charge to any person requesting copies of any public record of the Institute will be:

(1) Standard paper copy--$.10 per page.

(2) Nonstandard-size copy:

(A) Diskette: $1.00;

(B) Magnetic tape: actual cost;

(C) Data cartridge: actual cost;

(D) Tape cartridge: actual cost;

(E) Rewritable CD (CD-RW)--$1.00;

(F) Non-rewritable CD (CD-R)--$1.00;

(G) Digital video disc (DVD)--$3.00;

(H) JAZ drive--actual cost;

(I) Other electronic media--actual cost;

(J) VHS video cassette--$2.50;

(K) Audio cassette--$1.00;

(L) Oversize paper copy (e.g.: 11 inches by 17 inches, greenbar, bluebar, not including maps and photographs using specialty paper)--$.50 per page;

(M) Specialty paper (e.g.: Mylar, blueprint, blueline, map, photographic)--actual cost.

(3) Labor charge:

(A) For programming--$28.50 per hour;

(B) For locating, compiling, and reproducing--$15 per hour.

(4) Overhead charge--20% of labor charge.

(5) Microfiche or microfilm charge:

(A) Paper copy--$.10 per page;

(B) Fiche or film copy--Actual cost.

(6) Remote document retrieval charge--Actual cost.

(7) Computer resource charge:

(A) Mainframe--$10 per CPU minute;

(B) Midsize--$1.50 per CPU minute;

(C) Client/Server system--$2.20 per clock hour;

(D) PC or LAN--$1.00 per clock hour.

(8) Miscellaneous supplies--Actual cost.

(9) Postage and shipping charge--Actual cost.

(10) Photographs--Actual cost.

(11) Maps--Actual cost.

(12) Other costs--Actual cost.

(13) Outsourced/Contracted Services--Actual cost for the copy.

(b) The Institute may reduce or waive these charges at the discretion of the Chief Executive Officer if there is a public benefit.

(c) No Sales Tax shall be applied to copies of public information.

§701.33. Negotiation and Mediation of Certain Breach of Contract Claims.

(a) In accordance with Texas Government Code §2260.052(c), the Institute adopts herein by reference the model rules provided by the Office of the Attorney General relating to procedures for the negotiation and mediation of certain contract claims asserted by contractors against the Institute.

(b) The procedures, as adopted, are exclusive and required prerequisites to suit against the Institute under the Texas Civil Practice and Remedies Code, Chapter 107, and the Texas Government Code, Chapter 2260.

(c) Nothing herein waives the Institute's sovereign immunity to suit or liability.

(d) Unless specifically provided for by the Grant Contract, this rule does not apply to Grant Contracts. The Grant Contract shall specify the process and procedures for terminating a Grant Award, as well as any associated remedy.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305054
Wayne Roberts
Interim Executive Director
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-8422

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25 TAC §§701.2, 701.8, 701.21

(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 Cancer Prevention and Research Institute of Texas or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Cancer Prevention and Research Institute of Texas (Institute) proposes the repeal of Chapter 701, §§701.2, 701.8, and 701.21, addressing administrative policies and procedures of the Institute.

The rules currently in Chapter 701 are not adequate to address the policies and procedures of the Institute. The matters addressed by the repealed provisions will be incorporated into a new Chapter 701. The sections of new Chapter 701 are proposed in this issue of the *Texas Register.*

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the repeal is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the repeal.

Ms. Doyle also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Ms. Doyle has determined that the repeal shall not have an effect on small businesses or on micro businesses.

Written comments on the repeal may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than December 16, 2013. Comments may be submitted electronically to kdoyle@cprit.state.tx.us. Comments may be submitted by facsimile transmission to (512) 475-2563.

The repeal is proposed under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with the authority to adopt rules to administer the chapter.

There is no other statute, article or code that is affected by this proposal.

§701.2. Texas Cancer Plan.

§701.8. Charges for Copies of Public Records.

§701.21. Historically Underutilized Business Program.

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

Filed with the Office of the Secretary of State on November 4, 2013.

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For further information, please call: (512) 305-8422

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CHAPTER 702. INSTITUTE STANDARDS ON ETHICS AND CONFLICTS, INCLUDING THE ACCEPTANCE OF GIFTS AND DONATIONS TO THE INSTITUTE

25 TAC §§702.3, 702.5, 702.7, 702.9, 702.11, 702.13, 702.15, 702.17, 702.19

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§702.3, 702.5, 702.7, 702.9, 702.11, 702.13, 702.15, 702.17 and 702.19, regarding institute standards on ethics and conflicts, including relationships between the institute and private organizations and donors.

The purpose of these proposed amendments is to clarify existing requirements, to reflect changes to the statute, for consistency with other chapters, and to provide additional guidance regarding applicable conflict of interest standards, procedures for recusal, and restrictions on communication that provide certain applicants unfair advantages. In addition, proposed amendments promulgate more comprehensive rules regarding the acceptance of gifts and donations to the Institute. The Texas Health and Safety Code, §102.106 directs the CPRIT Oversight Committee to adopt conflict of interest rules to apply to the Oversight Committee, the Program Integration Committee, and Institute Employees. In addition, these amendments are proposed pursuant to and in satisfaction of the provisions of Texas Government Code, Chapters 572 and 2255, Texas Health and Safety Code, Chapter 102, and other relevant statutes.

Section 702.3 is amended to delete the definitions in this chapter. The Institute proposes the deletion of the definitions from this chapter because the definitions of the words and terms used in this chapter will now have the meanings provided in 25 TAC Chapter 701, §701.3 (relating to Definitions), thus maintaining consistency of terms used throughout Chapters 701 - 703.

Section 702.5 is amended to clarify the intent of the Institute that the grant review and award process be fair, unbiased and free from conflicts of interest, impropriety and self-dealing by defining the individuals subject to the conflict rules.

Section 702.7 is amended to provide additional guidance regarding the process and procedures for acceptance of gifts and donations made to the Institute, an Oversight Committee member, an Institute Employee, or a member of one of the Institute's committees. The proposed changes also specify that no CPRIT employee's salary will be supplemented with gifts or donations.

Section 702.9 is amended to include additional standards of conduct for employees of the Institute, members of the Program Integration Committee and members of the Oversight Committee as set forth by Texas Health and Safety Code Chapter 102.

Section 702.11 is amended to provide clarity regarding prohibited conflicts of interest applicable to Oversight Committee members, Institute Employees, Scientific Research and Prevention Programs committee members, and Program Integration Committee members regarding the review, discussion, deliberation, or vote on an application for funds from the Institute. The proposed changes also apply to independent contractors that perform services associated with the grant review process.

Section 702.13 is amended to provide additional guidance regarding the process and procedures for identifying, disclosing, recusing, and monitoring conflicts of interest held by persons subject to the conflict rules in the awarding of Institute funds.

Section 702.15 is amended to provide further guidance on the process and procedures regarding the investigation of unreported conflicts of interest affecting the grant review process.

Section 702.17 is amended to provide additional guidance on the necessary process and procedures for the Oversight Committee to waive the conflict of interest provisions prohibiting participation of an individual subject to the conflict rules upon a showing that exceptional circumstances outweigh potential bias posed by the conflict of interest.

Section 702.19 is amended to include Program Integration Committee members as individuals that are restricted from communication with grant applicants regarding pending grant applications. The proposed changes include a restriction on communication between individual Oversight Committee members and Program Integration Committee members while grant award decisions are being made.

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle 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 clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Doyle has determined that the rules shall not have an effect on small businesses or on micro businesses.

Written comments on the rules may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than December 16, 2013. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if changes are requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.state.tx.us. Comments may be submitted by facsimile transmission to (512) 475-2563.

The amendments are proposed under the authority of the Texas Health and Safety Code Annotated, §§102.101(e), 102.106, 102.1061, 102.1062, 102.1063, 102.1064, 102.108, and 102.109 which provide the Institute with the authority to govern members of the Oversight Committee, Institute Employees, PIC members, and Institute activities, and which direct the Oversight Committee to adopt rules relating to conflict of interest, code of conduct, and to administer the chapter.

There is no other statute, article or code that is affected by this proposal.

§702.3. Definitions.

The [following] words and terms[, when] used in this chapter[,] shall have the [following] meanings provided in Chapter 701, §701.3 of this title (relating to Definitions), unless the context clearly indicates otherwise.

[(1) Ad hoc committee means a committee of experts created by the Oversight Committee to advise the Oversight Committee on issues related to cancer.]

[(2) Applicant means the public or private institution of higher education, as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits an application to the Institute for a grant funded by the Cancer Prevention and Research Fund. Unless otherwise indicated, this term includes the principal investigator.]

[(3) Application means the written proposal submitted to the Institute by an applicant that, if successful, will result in an award of money from the Cancer Prevention and Research Fund. An application may be submitted in response to a published Request for Applications or unsolicited by the Institute.]

[(4) Cancer Prevention and Research Fund means the dedicated account in the general revenue fund consisting of patent, royalty, and license fees and other income received under a contract with a CPRIT funding award recipient, legislative appropriations, gifts, grants, and other donations, and earned interest.]

[(5) Close relative means a parent, spouse, domestic partner, or son or daughter.]

[(6) Entity means any organization recognized by law, including a sole proprietorship, partnership, firm, corporation, holding company, joint stock company, receivership, or trust, as well as any program, enterprise, non-profit corporation public or private research or academic institution.]

[(7) Executive Director means the Executive Director of the CPRIT and any other official or employee of the CPRIT to whom the authority involved has been delegated.]

[(8) Funding Award means any award of money from the Cancer Prevention and Research Fund made by the Institute to an applicant in response to a solicited or unsolicited application. A funding award must be in the form of an executed contract between the Institute and the Recipient.]

[(9) Institute means the Cancer Prevention and Research Institute of Texas or CPRIT.]

[(10) Institute employee means any individual within the employ of the Institute, including any individuals performing duties for the Institute pursuant to a contract of employment.]

[(11) Oversight Committee member means any person appointed to and serving on the Oversight Committee of the Institute, or any person who sits on that board by operation of statute or by designation.]

[(12) Principal investigator means a single individual designated by the grantee in the grant application and approved by the Institute, who is responsible for the scientific and technical direction of the project.]

[(13) Professional associate of the reviewer means any colleague, scientific mentor, or student with whom the peer reviewer is currently conducting research or other significant professional activities or with whom the member has conducted such activities within three years before the date of the review.]

[(14) Recipient means the public or private institution of higher education, as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, who is awarded money from the Cancer Prevention and Research Fund. Unless otherwise indicated, this term includes the principal investigator.]

[(15) Scientific Research and Prevention Program committee means one or more groups of experts in the field of cancer research, prevention or commercialization appointed by the Executive Director and approved by the Oversight Committee for the purpose of reviewing grants applications and making recommendations to the Executive Director regarding the award of cancer research and prevention grants.]

[(16) University Advisory Committee means the committee created by the Texas Health and Safety Code, §102.154 to advise the Oversight Committee regarding the role of institutions of higher education in cancer research.]

§702.5. Intent.

It is the intent of the Institute that the Institute's Grant Review [grant review and funding award] process provide Grant Applicants a [be] fair and[,] unbiased merit-based assessment [and] free from conflicts of interest, impropriety and self-dealing. To implement this policy, this chapter provides standards of conduct and conflict of interest disclosure requirements to be observed by those individuals that are a part of the Grant Review Process and the execution of Grant Contracts. Individuals subject to this chapter include Oversight Committee Members, Program Integration Committee Members, Scientific Research and Prevention Programs Committee Members, and Institute Employees. Independent contractors, such as outside legal counsel, grant management system contractors, and subject matter experts, shall be subject to applicable provisions of this chapter to the extent that the individuals are performing duties associated with Grant Applications under consideration for Grant Awards.

§702.7. Acceptance of Gifts and Donations by the Institute.

(a) As authorized by Texas Health and Safety Code §102.054, the Institute may solicit and accept gifts from any source to support the operations of the Institute and to further its purposes; except that the Institute may not supplement the salary of any Institute Employee with a gift or grant received by the Institute. [All funds received from donations to the Institute will be deposited to the state treasury and used for the purpose specified by the donor or for general Institute programs when no purpose is specified.]

(b) An Oversight Committee Member [A member] or an [employee of the] Institute Employee shall not authorize a donor to use the property of the Institute unless the property is used in accordance with a contract between the Institute and the donor, the contract is found by the Institute to serve a public purpose, the contract contains provisions to ensure the public purpose continues, and the Institute is reasonably compensated for the use of the property.

(c) Procedure for acceptance of gifts.

(1) Gifts to the Institute may be designated for one of the following categories:

(A) Unrestricted General Support;

(B) Restricted Programmatic Support;

(C) Endowed and Restricted Funds; or

(D) Other (includes gifts of real or personal property).

(2) Gifts of ten thousand dollars ($10,000) or less may be accepted on behalf of the Institute by the Chief Executive Officer [~~Director~~].

(3) The Executive Committee of the Oversight Committee may accept gifts of cash, stock, bonds, or personal property with a value in excess of ten thousand dollars ($10,000) but less than one million dollars ($1,000,000) on behalf of the Institute. If one or more Executive Committee members do not agree with the decision to accept the gift on behalf of the Institute, the decision to accept the gift will be made by a majority vote of the Oversight Committee.

(4) Acceptance of gifts made to the Institute of cash, stock, bonds, or personal property with a value in excess of one million dollars, gifts of real property regardless of value, and all other gifts not herein described shall be approved by a majority vote of the Oversight Committee. To assist in its decision, a report shall be created by the Chief Executive Officer [~~Director~~] that includes the following information:

(A) Name and biographical data regarding the individual or organization making the gift;[~~.~~]

(B) A description of the gift;[~~.~~]

(C) A list of conditions or requirements to be imposed on the Institute as a result of accepting the gift;[~~.~~]

(D) If one of the conditions is naming, then include a description of the object to be named and whether there is a time limit on continuing the name;[~~.~~]

(E) If the gift is real property, an evaluation of the gift by the General Land Office;[~~.~~]

(F) If the gift is stock or other investments, a description of how they will be sold and the expected net proceeds; and[~~.~~]

(G) A description of how the gift will be used.

(5) All funds received from donations to the Institute will be deposited to the state treasury and used for the purpose specified by the donor or for general Institute programs when no purpose is specified.

(d) The Institute encourages the offer of gifts of additional revenue and real and personal property through naming.

(1) Naming can be given to both real objects and inanimate objects, such as Grant Awards [~~grant programs~~].

(2) The Oversight Committee will consider a request for naming in connection with a gift of real or personal property of substantial value to the Institute and its programs. In determining whether a gift has substantial value, the Oversight Committee will evaluate the following factors:

(A) The size of the real or personal property in relation to other fund sources--including bonds--available at the same time and consideration of whether the donation will make a material contribution to the Institute's goals and programs that otherwise would not be made;[~~.~~]

(B) Availability of the real or personal property; and[~~.~~]

(C) The degree of flexibility and discretion [~~Flexibility~~] ([~~will~~] the Institute will have [~~discretion~~] in the use of the real or personal property [~~or will it be limited to certain uses~~]).

(3) The Oversight Committee must approve the recommendation to name an object or program by a majority vote of its members.

(e) The Oversight Committee may refuse a gift to the Institute for any reason, including:

(1) The gift requires an initial and/or on-going expenditure that will likely equal or exceed the value of the gift.

(2) The gift is from an institution, entity, or organization, or a director, officer, or an executive of an institution, entity or organization [~~or individual~~] that has applied for funding from the Institute, or currently receives funding from the Institute, or the gift is from a Senior Member or Key Personnel of the research or prevention program team listed on a Grant Application or Grant Award [~~has received funding from the Institute at any time in the past two years. This limitation applies to donations in excess of $1,000 by a director, officer, or executive of an institution, entity, organization, or individual~~].

(3) The Institute may [~~shall~~] return a gift made by an institution, entity, organization, or individual that was otherwise eligible to make the donation at the time that the gift was accepted by the Institute in the event that the donor [~~contributor~~] subsequently submits a Grant Application [~~an application~~] for funding from the Institute within the fiscal year of the donation.

(4) For purposes of this section, the limitation on gifts does not apply to a donation made as the result of the final bequeathal. [~~the following institution, entity, organization, or individual:~~]

[~~(A) A not-for-profit 503(c)(3) corporation that is a separate legal entity from the associated institution, entity, organization, or individual.~~]

[~~(B) A donation that would be otherwise unacceptable pursuant to paragraph (2) of this subsection that is made as the result of the final bequeathal.~~]

(f) The Institute shall report information pertaining to gifts, grants, or other consideration provided to the Institute, an Institute Employee, or a member of an Institute committee, subject to the requirements in this subsection.

(1) The information shall be posted on the Institute's Internet website.

(2) The information to be posted shall include the donor's name, the date of the donor's donation, and the amount of the donor's donation.

(3) The reporting requirement applies to all gifts, grants, or other consideration provided to the Institute except that individual conference registration fees paid to CPRIT by conference attendees shall not be treated as consideration for purposes of the reporting requirement. The total amount received for conference registration fees may be reported.

(4) The reporting requirement applies to all gifts, grants, or other consideration given to a Oversight Committee Member, Institute Employee, or Program Integration Committee Member except that the following items are not considered gifts, grants or consideration subject to the reporting requirement:

(A) Books, pamphlets, articles, or other similar materials that contain information directly related to the job duties of an Oversight Committee Member, Institute Employee, or Program Integration Committee Member and that are accepted by the individual on behalf of Institute for use in performing the individual's job duties;

(B) Items or consideration of any value given to the Oversight Committee Member, Institute Employee, or Program Integration Committee Member by a Relative;

(C) Items or consideration of any value given to the Oversight Committee Member, Institute Employee, or Program Integration Committee Member by a personal friend so long as:

(i) The item or consideration is given based solely on an existing personal relationship;

(ii) The personal friend or a Relative of the personal friend is not an employee of an entity receiving or applying to receive money from the Institute; and

(iii) The individual subject to this provision has no reason to believe that the item or consideration is being offered through an intermediary in an attempt to evade reporting requirements.

(D) Items of nominal intrinsic value less than $50, such as modest items of food and refreshment on infrequent occasions, shared ground transportation in non-luxury vehicles, and unsolicited advertising or promotional material such as plaques, certificates, trophies, paperweights, calendars, note pads, and pencils, but excluding cash or negotiable instruments.

(5) The reporting requirement applies only to the gifts, grants, or other consideration given to a Scientific Research and Prevention Programs Committee Member by a Grant Applicant or Grant Recipient during the period that the Member is appointed except that the following items are not considered gifts, grants or consideration subject to the reporting requirement:

(A) Books, pamphlets, articles, or other similar materials that contain information directly related to the job duties of the Scientific Research and Prevention Programs Committee Member and that are accepted by the individual for use in performing the individual's job duties;

(B) Items of nominal intrinsic value less than $50, such as modest items of food and refreshment on infrequent occasions, shared ground transportation in non-luxury vehicles, and unsolicited advertising or promotional material such as plaques, certificates, trophies, paperweights, calendars, note pads, and pencils, but excluding cash or negotiable instruments.

(6) The reporting requirement applies to a member of an Advisory Committee of the Institute only to the extent that the individual participates in the Grant Review Process.

(A) If the individual participates in the Grant Review Process, then the individual must report gifts, grants, or other consideration given to the Advisory Committee member by a Grant Applicant or Grant Recipient during the period that the Advisory Committee member participates in the Grant Review Process except that the following items are not considered gifts, grants or consideration subject to the reporting requirement:

(i) Books, pamphlets, articles, or other similar materials that contain information directly related to the job duties of the Advisory Committee member and that are accepted by the individual for use in performing the individual's job duties;

(ii) Items of nominal intrinsic value less than $50, such as modest items of food and refreshment on infrequent occasions, shared ground transportation in non-luxury vehicles, and unsolicited advertising or promotional material such as plaques, certificates, trophies, paperweights, calendars, note pads, and pencils, but excluding cash or negotiable instruments.

(B) For purposes of this subsection, participation in the Grant Review Process by an Advisory Committee member does not include submitting a Grant Application or receiving a Grant Award.

[~~(f) At each meeting of the Oversight Committee, a list of all gifts that have been accepted by the Executive Director and by the Executive Committee since the last meeting will be presented as an information item on the public agenda. The list will include the identity of the contributor, unless the contributor has requested anonymity, the type of gift (unrestricted general support, restricted programmatic support, endowed/restricted funds, or other), and the amount of the gift. The Institute shall maintain a list of gifts received, including the identity of contributor, unless the contributor has requested anonymity, the type of gift, and the amount of the gift.~~]

§702.9. Code [~~General Standards~~] of Conduct and Ethics for Oversight Committee Members, [~~and~~] Institute Employees, and Program Integration Committee Members.

(a) All Oversight Committee Members, Program Integration Committee Members, and Institute Employees shall avoid acts which are improper or give the appearance of impropriety in the disposition of state funds. [~~Pursuant to the provisions of Texas Government Code Chapter 572 and Texas Health and Safety Code Chapter 102:~~]

(b) The Oversight Committee shall adopt a Code of Conduct and Ethics to provide guidance related to the ethical conduct required of Oversight Committee Members, Program Integration Committee Members, and Institute Employees. The Code of Conduct and Ethics shall be distributed to each new Oversight Committee Member, Program Integration Committee Member, and Institute Employee not later than the third business day after the date that the person begins employment with or service to the Institute.

(c) The Code of Conduct and Ethics shall include at least the following requirements and prohibitions. Nothing herein prevents the Oversight Committee from adopting stricter standards:

(1) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~employee of the Institute~~] shall not accept or solicit any gift, favor, or service that could [~~might~~] reasonably [~~tend to~~] influence him or her in the discharge of official duties or that he or she knows or should know is being offered with the intent to influence him or her or with the intent to influence the member or employee's [~~his or her~~] official conduct.

(2) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~employee of the Institute~~] shall not accept employment or engage in any business or professional activity that would [~~, which he or she might~~] reasonably [~~expect would~~] require or induce that person to disclose confidential information acquired by reason of the member or employee's [~~his or her~~] official position.

(3) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~employee of the Institute~~] shall not accept other employment or compensation that[~~, which~~] could reasonably [~~be expected to~~] impair his or her independent [~~independence of~~] judgment in the performance of the member or employee's [~~his or her~~] official duties.

(4) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~employee of the Institute~~] shall not make personal investments or have a financial interest that [~~which~~] could reasonably [~~be expected to~~] create a substantial conflict between his or her private interest and the member or employee's [~~individual's~~] official duties [~~as a member of the Oversight Committee or employee of the Institute~~].

(5) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~employee of the Institute~~] shall not intentionally or knowingly solicit, accept, or agree to accept any benefit for exercising [~~having exercised~~] his or her official powers or performing the member or employee's [~~performed his or her~~] official duties in favor of another.

(6) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~An Oversight Committee member or employee of the Institute~~] shall not lease, directly or indirectly, any property, capital equipment, employee or service to a Grant Recipient [~~any program, business, enterprise or institution that receives a grant from the Institute~~].

(7) A member of the Oversight Committee, Institute Employee, or Program Integration Committee Member, or the spouse of an individual governed by this provision [~~the member's spouse~~] shall not submit a Grant Application to [~~grant application for funding by~~] the Institute.

(8) A member of the Oversight Committee, [~~or~~] the member's spouse, or an Institute Employee shall not be employed by or participate in the management of a business entity or other organization receiving money from the Institute.

(9) A member of the Oversight Committee or the member's spouse shall not own or control, directly or indirectly, an [~~more than five percent~~] interest in a business or entity or other organization receiving money from the Institute.

(10) A member of the Oversight Committee or the member's spouse shall not use or receive a substantial amount of tangible goods, services, or money from the Institute other than reimbursement authorized for Oversight Committee Members [~~members,~~] attendance[~~,~~] or expenses.

(11) A member of the Oversight Committee, Institute Employee, Program Integration Committee Member, or the spouse of an individual governed by this provision shall not serve on the Grant Recipient's board of directors or similar committee that exercises governing powers over the Grant Recipient. This prohibition also applies to serving on the board of directors or similar committee of a non-profit foundation established to benefit the Grant Recipient.

(12) A member of the Oversight Committee, Institute Employee, Program Integration Committee Member, or the spouse of an individual governed by this provision shall not use non-public Third-Party Information, or knowledge of non-public decisions related to Grant Applicants, received by virtue of the individual's employment or official duties associated with the Institute to make an investment or take some other action to realize a personal financial benefit.

(13) A member of the Oversight Committee, Institute Employee, or a Program Integration Committee Member who is a member of a professional organization shall comply with any standards of conduct adopted by the organizations of which he or she is a member.

(14) A member of the Oversight Committee, Institute Employee, or a Program Integration Committee Member shall be honest in the exercise of all duties and may not take actions that will discredit the Institute.

(15) A member of the Oversight Committee or an Institute Employee shall not have an office in a facility owned by an entity receiving or applying to receive money from the Institute.

(16) An Oversight Committee Member, Institute Employee, or Program Integration Committee Member shall report to the Institute's Chief Executive Officer any gift, grant, or consideration received by the individual as soon as possible, but no later than thirty (30) days after receipt of the gift, grant or consideration. The individual shall provide the name of the donor, the date of receipt, and amount of the gift, grant, or consideration.

(17) An Oversight Committee Member or Institute Employee may not solicit, agree to accept, or accept an honorarium in consideration for services the Oversight Committee Member or Institute Employee would not have been asked to provide but for the person's official position.

(18) An Oversight Committee Member and the Chief Executive Officer shall not make any communication to or appearance before an Institute officer or employee before the second anniversary of the date the Oversight Committee Member or Chief Executive Officer ceased to be a Oversight Committee Member or Chief Executive Officer if the communication or appearance is made:

(A) with the intent to influence; and

(B) on behalf of any person in connection with any matter on which the person seeks official action.

(19) An Oversight Committee Member or Institute Employee who ceases service or employment with the Institute may not represent any person or receive compensation for services rendered on behalf of any person regarding a particular matter in which the former Oversight Committee Member or Institute Employee participated during the period of state service or employment, either through personal involvement or because the issue was a matter within the Oversight Committee Member's or Institute Employee's official responsibility.

(A) This paragraph applies to an Institute Employee who is compensated, as of the last date of state employment, at or above the amount prescribed by the General Appropriations Act for step 1, salary group 17, of the position classification salary schedule, including an employee who is exempt from the state's position classification plan.

(B) This paragraph does not apply to a rulemaking proceeding that was concluded before the Oversight Committee Member's or Institute Employee's service or employment ceased.

(C) For purposes of this paragraph, "participated" means to have taken action as an Oversight Committee member or Institute Employee through decision, approval, disapproval, recommendation, giving advice, investigation or similar matter.

(D) For purposes of this paragraph, "particular matter" means a specific investigation, application, request for ruling or determination, rulemaking proceeding, contract, claim, charge, accusation, or judicial or other proceeding.

(d) The Code of Conduct and Ethics shall include information about reporting an actual or potential violation of the standards adopted by the Oversight Committee.

(e) Any reports due under Texas Government Code §572.021 shall be simultaneously filed with the Institute.

§702.11. Conflicts of Interest Requiring Recusal.

(a) For purposes of this chapter, a Conflict of Interest [~~conflict of interest~~] exists when an individual subject to this rule has an interest in the outcome of a Grant Application submitted by an entity receiving or applying to receive money from the Institute [~~an application~~] such that the individual is in a position to gain financially, professionally, or personally from either a positive or negative evaluation of the Grant Application [~~grant proposal~~]. Individuals subject to this rule are:

(1) Oversight Committee Members [~~members~~];

(2) Institute employees;

(3) Scientific Research and Prevention Programs Committee Members;

(4) Program Integration Committee Members; and

(5) Independent Contractors that perform services associated with the Grant Review Process on behalf of the Institute, such as facilitating grant review activities, evaluating the intellectual property held by or licensed to a Grant Applicant, or performing a business management due diligence review.

[(2) University Advisory Committee members;]

[(3) Ad hoc committee(s) members;]

[(4) Institute employees; and]

[(5) Scientific Research and Prevention Program committee members.]

(b) Except under exceptional circumstances as provided in §702.17 of this chapter (relating to Exceptional Circumstances Requiring Participation), an individual who has a financial, professional, or personal [conflict of] interest [with respect to an application], as set forth herein, in an entity receiving or applying to receive money from the Institute shall recuse himself or herself and may not participate in the review, discussion, deliberation, or vote related to the entity [on the application].

(c) A financial Conflict of Interest [conflict of interest] exists if the individual subject to this rule or a Relative [close relative] of the individual subject to this rule:

(1) Owns or controls, directly or indirectly, an ownership interest [of five percent (5%) or more] in an [a business] entity [or other organization] receiving or applying to receive money from the Institute or in a foundation or similar organization affiliated with the entity.

(A) Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included.

(B) It is not a financial Conflict of Interest if the ownership interest is limited to shares owned via an investment in a publicly traded mutual fund or similar investment vehicle so long as the individual subject to this rule does not exercise any discretion or control regarding the investment of the assets of the fund or other investment vehicle.

(2) Could reasonably foresee that an action taken by the Scientific Research and Prevention Programs Committee [Program committee], the Program Integration Committee, the Institute, or its Oversight Committee related to an entity receiving or applying to receive money from the Institute could result in a financial benefit to the individual [of 100% or more].

(3) Has received a financial benefit from the Grant Applicant unrelated to the Grant Application of more than $5,000 within the past twelve months. This total includes fees, stock and other benefits. It also includes current stock holdings, equity interest, intellectual property or real property interest, but does not include diversified mutual funds or similar investment vehicle in which the person does not exercise any discretion or control regarding the investment of the assets of the fund or other investment vehicle.

(d) For purposes of this rule, a professional Conflict of Interest [conflict of interest] exists if the individual subject to this rule or a Relative of the individual subject to this rule [close relative]:

(1) Is a member of the board of directors, other governing board or any committee of an entity or of a foundation or similar [other] organization affiliated with an entity receiving or applying to receive money from the Institute during the same Grant Review Cycle [grant cycle];

(2) Serves as an elected or appointed officer of an entity [or other organization] receiving or applying to receive money from the Institute or of a foundation or similar organization affiliated with the entity;

(3) Is an employee of or is negotiating future employment with an entity [other organization] receiving or applying to receive money from the Institute or a foundation or similar organization affiliated with the entity;

(4) Represents in business or law an entity [or other organization] receiving or applying to receive money from the Institute or a foundation or similar organization affiliated with the entity [in business or law];

(5) Is a colleague, scientific mentor, or student [professional associate] of a Senior Member or Key Personnel [primary member] of the research or prevention [research/prevention] program [applicant's] team listed on the Grant Application, or is conducting or has conducted research or other significant professional activities with a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application within three years of the date of the review;

(6) Is a student, postdoctoral associate, or part of a laboratory research group for a Senior Member or Key Personnel [primary member] of the research or prevention [research/prevention] program [applicant's] team listed on the Grant Application or has been within the past six years;

(7) Is engaged or is actively planning to be engaged in collaboration with a Senior Member or Key Personnel [primary member] of the research or prevention [research/prevention] program [applicant's] team listed on the Grant Application; or

(8) Has long-standing scientific differences or disagreements with a Senior Member or Key Personnel [primary member] of the research or prevention [research/prevention] program [applicant's] team listed on the Grant Application that are known to the professional community and could be perceived as affecting objectivity.

(e) For purposes of this rule, a personal Conflict of Interest [conflict of interest] exists if a Senior Member or Key Personnel of the research or prevention program team listed on the Grant Application or an applicant [the applicant] is a Relative [family member] or close personal friend of an individual subject to this rule.

(f) Nothing herein shall prevent the Oversight Committee [members, Institute employees, or Scientific Research and Prevention Program committee members] from adopting more stringent standards with regard to prohibited conflicts of interest.

(g) The General Counsel and Chief Compliance Officer [Executive Director] may provide guidance to individuals subject to this section [the members of the Oversight Committee, Institute employees, and Scientific Research and Prevention Program committee members] on what interests would constitute a Conflict of Interest [conflict of interest] or an appearance of a Conflict of Interest [conflict of interest].

§702.13. Disclosure of Conflict of Interest and Recusal from Review.

(a) If an Oversight Committee Member or a Program Integration Committee Member [member] has a Conflict of Interest [conflict of interest] as described in this chapter with respect to an entity or Grant

Application [~~application~~] that comes before the individual for review or other action, the Member [~~member~~] shall:

(1) Provide written notice of the Conflict of Interest to [~~Notify~~] the Chief Executive Officer [~~Director~~] and the presiding officer of the Oversight Committee [~~of the conflict of interest~~] (or the next ranking member of the Oversight Committee if the presiding officer has the Conflict of Interest [~~conflict of interest~~]);

(2) Disclose the Conflict of Interest [~~conflict of interest~~] in an open meeting of the Oversight Committee; and

(3) Recuse himself or herself [~~himself/herself~~] from participation in the review, discussion, deliberation and vote on the entity or Grant Application [~~application~~], including access to information regarding the matter to be decided, unless a waiver has been granted pursuant to §702.15 of this chapter (relating to Investigation of Unreported Conflicts of Interest Affecting the Grant Review Process).

(b) If a Scientific Research and Prevention Programs Committee Member [~~Program committee member~~] has a Conflict of Interest [~~conflict of interest~~] as described in this chapter with respect to a Grant Application [~~an application~~] that comes before the individual for review or other action, the member shall:

(1) Provide written notice [~~Notify the Scientific Research and Prevention Program committee chair and the CPRIT Chief Scientific Officer, Chief Prevention Officer, or the Chief Commercialization Officer as may be applicable,~~] of the Conflict of Interest to the Chief Executive Officer [~~conflict of interest~~]; and

(2) Recuse himself or herself [~~himself/herself~~] from any participation in the review, discussion, scoring, deliberation and vote on the Grant Application [~~application~~], including access to information regarding the matter to be decided unless a waiver has been granted pursuant to §702.15 of this chapter.[~~; and~~]

[~~(3) Submit a signed certification post-review statement at the conclusion of the peer review process that he/she did not participate in the discussion or review of any application for which he/she had a conflict of interest.~~]

(c) Some Conflicts of Interest are such that the existence of a conflict with a Grant Applicant applying for a Grant Mechanism raises the presumption that the conflict may affect the individual's impartial review of other Grant Applications pursuant to the same Grant Mechanism in the Grant Review Cycle. The Institute has determined that the existence of one or more of the following Conflicts of Interest for an Oversight Committee Member, Scientific Research and Prevention Programs Committee Member, Program Integration Committee Member, Institute employee, Independent Contractor or a Relative of an individual subject to this rule shall require recusal of the individual from participating in the review, discussion, scoring, deliberation and vote on all Grant Applications competing for the same Grant Mechanism in the entire Grant Review Cycle, unless a waiver has been granted pursuant to §702.15 of this chapter:

(1) The individual subject to this provision is an employee of a Grant Applicant;

(2) The individual subject to this provision is actively seeking employment with a Grant Applicant. For the purposes of this paragraph, "actively seeking employment" includes activities such as submission of an employment application, resume, curriculum vitae, or similar document and/or interviewing with one or more representatives from the organization with no final action taken by the organization regarding consideration of such employment;

(3) The individual subject to this provision serves on the board of directors or as an elected or appointed officer of a Grant Applicant or a foundation or similar organization affiliated with the Grant Applicant; or

(4) The individual subject to this provision owns or controls, directly or indirectly, an ownership interest in a Grant Applicant or a foundation or similar organization affiliated with the Grant Applicant. Interests subject to this provision include sharing in profits, proceeds, or capital gains. Examples of ownership or control, include but are not limited to owning shares, stock, or otherwise, and are not dependent on whether voting rights are included.

[~~(c) If a University Advisory Committee member or a member of an ad hoc committee has a conflict of interest as described in this chapter with respect to an application that comes before the individual for review, or other action, the member shall:~~]

[~~(1) Notify the Executive Director of the conflict of interest; and~~]

[~~(2) Recuse himself/herself from participation in the review, discussion, scoring, deliberation, and vote on the application, including access to information regarding the matter to be decided.~~]

(d) If an Institute Employee or independent contractor involved in the Grant Review Process [~~employee other than the Executive Director~~] has a Conflict of Interest [~~conflict of interest~~] as described in this chapter with respect to a Grant Application [~~an application~~] that comes before the individual for review or other action, the Institute Employee or independent contractor [~~employee~~] shall:

(1) Provide written notice to [~~Notify~~] the Chief Executive Officer [~~Director~~] of the Conflict of Interest [~~conflict of interest~~]; and

(2) Recuse himself or herself [~~himself/herself~~] from participation in the review of the Grant Application [~~application~~] and be prevented from accessing information regarding the matter to be decided, unless a waiver has been granted pursuant to §702.15 of this chapter.

(e) The Institute shall retain supporting documentation regarding the implementation of its Conflict of Interest policy and actions taken to exclude a conflicted Oversight Committee Member, Program Integration Committee Member, Scientific Research and Prevention Programs Committee Member or Institute Employee from participating in the review, discussion, deliberation and vote on the Grant Application.

(1) The supporting documentation retained by the Institute may be stored by the Institute's electronic Grant Management System.

(2) For purposes of this rule, "supporting documentation" may include Conflict of Interest agreements, Conflict of Interest disclosure forms, action taken to address a previously unreported Conflict of Interest after its existence is determined, approved waivers, sign-out sheets, independent third party observation reports, post-review certifications and Oversight Committee meeting minutes.

(3) All supporting documentation shall be publicly available, except that information included in the supporting documentation that is otherwise protected by Chapter 552, Texas Government Code may be redacted.

[~~(e) If the Executive Director has a conflict of interest as described in this chapter with respect to an application that comes before the Executive Director for review or other action, the employee shall:~~]

[~~(1) Notify the presiding officer of the Oversight Committee of the conflict of interest; and~~]

[~~(2) Disclose the conflict of interest in an open meeting of the Oversight Committee; and~~]

[(3) Recuse himself/herself from participation in the review of the application and be prevented from accessing information regarding the matter to be decided.]

(f) Individuals subject to this chapter are encouraged to self-report. Any individual who self-reports a potential Conflict of Interest [conflict of interest] or any impropriety or self-dealing, and who fully complies with any recommendations of the General Counsel and recusal from any discussion, voting, deliberation or access to information regarding the matter, shall be considered by the Institute to be in compliance with this chapter. The individual is still subject to the operation of other laws, rules, requirements or prohibitions. Substantial compliance with the procedures provided herein constitutes compliance.

(g) Intentional violations of this rule may result in the removal of the individual from further participation in the Institute's Grant Review Process [grant review process].

§702.15. Investigation of Unreported Conflicts of Interest Affecting the Grant Review Process.

(a) An Oversight Committee Member, a Program Integration Committee Member, a Scientific Research and Prevention Programs Committee Member, or an Institute Employee who becomes aware of a potential Conflict of Interest described by §702.11 of this chapter (relating to Conflicts of Interest Requiring Recusal) that has not been reported [A person subject to this chapter] shall immediately notify the Chief Executive Officer [Director] of the potential Conflict of Interest [a conflict of interest]. If the potential Conflict of Interest is held by the Chief Executive Officer, then the report shall be made directly to the presiding officer of the Oversight Committee. Upon notification, the Chief [A grant applicant seeking an investigation regarding whether an individual subject to this chapter failed to report a prohibited conflict of interest shall file a written request with the Institute's Executive Director. The request for investigation shall provide all facts regarding the alleged conflict of interest known to the grant applicant requesting the investigation. The] Executive Officer must [Director will] notify the presiding officer of the Oversight Committee and the General Counsel [who shall immediately determine the nature and extent] of the unreported conflict[, if any].

(b) A Grant Applicant seeking an investigation regarding whether an individual subject to this chapter failed to report a Conflict of Interest described by §702.11 of this chapter shall file a written request with the Institute's Chief Executive Officer. The Grant Applicant shall:

(1) Provide all facts regarding the alleged Conflict of Interest known to the Grant Applicant requesting the investigation; and

(2) Submit the request for investigation not later than the 30th day after the Chief Executive Officer presents final funding recommendations for the affected Grant Review Cycle to the Oversight Committee. Nothing herein prohibits the Chief Executive Officer from initiating an investigation if the Grant Applicant fails to submit the request by the deadline set herein, so long as the Grant Applicant shows good cause for failing to meet the deadline.

[(b) The request for investigation shall be submitted no later than 30 days after the date that the Executive Director presents the final funding recommendations for the affected grant cycle to the Oversight Committee.]

(c) On notification of an alleged Conflict of Interest under subsection (a) or (b) of this section, the [The] General Counsel shall:

(1) Investigate [investigate] the matter; and [shall]

(2) Provide an opinion [provide] to the Chief Executive Officer [Director] and presiding officer of the Oversight Committee [an opinion regarding whether a conflict of interest exists and any appropriate course of action]. If the alleged conflict is held by the presiding officer, then the opinion shall be provided to the next ranking member of the Oversight Committee who has no conflict. The opinion shall include:

(A) A [a] statement of the facts giving rise to the alleged [potential] conflict [and shall provide an opinion];

(B) A determination of whether a Conflict of Interest [conflict of interest], another impropriety, or self-dealing exists; and

(C) If the opinion finds that a Conflict of Interest or another impropriety or self-dealing exists, then recommendations for any appropriate course of action. [If the conflict is held by the presiding officer, the General Counsel shall provide the opinion to the next ranking member of the Oversight Committee who has no conflict.]

(d) After receiving the General Counsel's opinion and consulting with the presiding officer (or, if appropriate, the next highest ranking Oversight Committee Member [member]), the Chief Executive Officer [Director] shall take immediate actions regarding the recusal of the individual from any discussion of or access to information regarding the matter at issue. If the alleged Conflict of Interest [conflict of interest] is held by the Chief Executive Officer [Director], the presiding officer of Oversight Committee shall take actions regarding recusal.

(e) A [final] determination regarding the existence of a Conflict of Interest [conflict of interest,] involving an individual subject to this chapter shall be made by the Chief Executive Officer [Director], or by the presiding officer of the Oversight Committee if the alleged Conflict of Interest [conflict of interest] is held by the Chief Executive Officer [Director], and reported to the Oversight Committee. The determination will be considered final unless three or more Oversight Committee Members request that the issue be added to the agenda of the Oversight Committee. The [Executive Director's] determination must [will] include actions to be taken, if any, to address the Conflict of Interest [conflict of interest], impropriety, or self-dealing, including:

(1) Reconsideration [reconsideration] of the Grant Application; or [application and]

(2) Referral [referral] of the Grant Application [application] to a different Scientific Research and Prevention Programs Committee [Program committee] for review. [The Executive Director's decision will be considered final unless three or more Oversight Committee members request that the issue be added to the agenda of the Oversight Committee.]

(f) The Chief Executive Officer or, if applicable, the presiding officer of the Oversight Committee must provide written [Written] notice of the final determination [decision will be provided] to the person requesting the [an] investigation, including a description of further actions to be taken, if any.

(g) Unless specifically stated in the final determination, [determined by the Executive Director or the Oversight Committee] the validity of an action taken with regard to a Grant Application [grant application] is not affected by the fact that an individual that failed to report a Conflict of Interest [conflict of interest] participated in the action.

§702.17. Exceptional Circumstances Requiring Participation.

[(a)] In exceptional cases, as determined by a vote of the simple majority of the Oversight Committee present and voting, [the CPRIT Executive Director] the [need for] participation of an [the] Oversight Committee Member [member], Institute Employee [employee], Program Integration Committee Member, independent

contractor, [ad hoc committee member, University Advisory Committee member] or Scientific Research and Prevention Programs Committee Member in the Grant Review Process, the Grant Contract process, or the monitoring of the Grant Award [Program committee member] outweighs the potential bias posed by a Conflict of Interest held by the individual [conflict of interest] and a waiver from recusal required by §702.13 of this chapter (relating to Disclosure of Conflict of Interest and Recusal from Review) may [will] be granted by the Oversight Committee, unless otherwise prohibited by state or federal law.

(1) [(b)] The Chief [To issue a waiver, the] Executive Officer or an Oversight Committee Member may propose granting a waiver on behalf of the Oversight Committee Member, the Institute Employee, the Program Integration Committee Member, independent contractor, or the Scientific Research and Prevention Programs Committee Member by submitting a written statement to the presiding officer of the Oversight Committee. The statement must include: [Director must find that it would be difficult or impractical to carry out the review or action otherwise, and]

(A) information about the Conflict of Interest, including the name and position of the person with the conflict to be waived;

(B) the exceptional circumstances justifying a waiver of one or more of the Institute's Conflict of Interest provisions;

(C) that the integrity of the Grant Review Process, the Grant Contract process, the monitoring of Grant Awards, [review process] or committee action would not be impaired by the individual's [member's] participation; and[. The waiver may include]

(D) any proposed limits on certain activities to be taken by the individual[, such as voting on the application].

(2) [(c)] The written proposal for a waiver must be [The interest in the application held by the Oversight Committee member, Institute employee, ad hoc committee member, University Advisory Committee member or Scientific Research and Prevention Program committee member and the reason for issuing the waiver shall be disclosed in writing by the Executive Director and] submitted to the [presiding officer of the] Oversight Committee and publicly reported at the Oversight Committee meeting. The waiver is granted if a majority of the Oversight Committee Members present and voting approve the waiver. The vote on a proposed waiver may take place prior to the Oversight Committee's decision regarding the Grant Application [slate of application] recommended for funding.

(3) If the Conflict of Interest is one that is reasonably expected to affect more than one Grant Review Cycle or grant monitoring activities in a fiscal year, the waiver proposal may request that the waiver apply for all activities associated with the Grant Review Process, Grant Contract process, or grant monitoring process during the fiscal year.

(4) The Institute shall report annually to the Governor, the Lieutenant Governor, and the Speaker of the House of Representatives, and the standing committee of each house of the legislature with primary jurisdiction over Institute matters on all waivers granted for the past twelve months. The reporting obligation is fulfilled by including the information in the Institute's Annual Public Report required by Texas Health and Safety Code §102.052.

§702.19. Restriction on Communication Regarding Pending Grant Application.

(a) Communication regarding the substance of a pending Grant Application [application] between the Grant Applicant [applicant] and an Oversight Committee Member [member], a Program Integration Committee Member [the Executive Director], or a Scientific Research and Prevention Programs Committee Member [Program committee member] is prohibited[, except for communication with an applicant for the purpose of resolving a question raised by the grant application].

(b) The prohibition on communication begins on the first day that Grant Applications [applications] for the Grant Mechanism [particular funding award] are accepted by the Institute and extends until the Grant Applicant [applicant] receives notice regarding a final decision on the Grant Application [application].

(1) The prohibition on communication does not apply to the time period when pre-applications or letters of interest are accepted.

(2) In special circumstances, an Oversight Committee Member or a Program Integration Committee Member may respond to a question or request for more information from a Grant Applicant so long as the response is made available to all Grant Applicants.

(c) Intentional, serious, or frequent violations of this rule may result in the disqualification of the Grant Applicant [applicant] from further consideration for a Grant Award [CPRIT funding award]. [An inadvertent violation of this rule will not affect the applicant's eligibility to receive a CPRIT funding award.]

(d) This rule is not intended to prohibit open dialogue between the public and the Chief Executive Officer, a Program Integration Committee Member [Director] or a member of the Oversight Committee regarding the general status or nature of pending Grant Applications [applications].

(e) The Chief Executive Officer [Director] may grant a waiver from the general prohibition on communication upon finding that the waiver is in the interest of promoting the objectives of the Institute and is not intended to give one or more Grant Applicants [applicants] an unfair advantage. The waiver shall be in writing and state the reasons for the granting the waiver. The waiver shall be publicly available.

(f) A Program Integration Committee Member shall not communicate individually with one or more Oversight Committee Members about a Grant Award recommendation for a Grant Application in a pending Grant Review Cycle until such time that the Program Integration Committee has submitted the list of Grant Award Recommendations to the Oversight Committee and the Chief Executive Officer has submitted the written affidavit required by Chapter 703, §703.7 of this title (relating to Program Integration Committee Funding Recommendation). Nothing herein shall prohibit the Chief Executive Officer or a Program Integration Committee Member from responding to an individual Oversight Committee Member's question or request for more information so long as the response is made available to all Oversight Committee Members.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305053
Wayne Roberts
Interim Executive Director
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-8422

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CHAPTER 703. GRANTS FOR CANCER PREVENTION AND RESEARCH

25 TAC §§703.1 - 703.21

The Cancer Prevention and Research Institute of Texas (Institute) proposes amendments to §§703.1 - 703.20; and new §703.21, concerning Grants for Cancer Prevention and Research.

The purpose of these proposed amendments and new rule is to clarify several existing rules, to reflect changes to the statute, for consistency with other chapters, and to provide additional guidance regarding the grant application review and award process and procedures, including the monitoring of grant award contracts. In addition, these amendments are proposed pursuant to and in satisfaction of the provisions Texas Health and Safety Code, Chapter 102, and other relevant statutes.

Section 703.1 is amended to further identify and clarify the types of grant awards funded by the Institute. It also adds the process for the Oversight Committee to set annual priorities for each of the Institute's grant programs.

Section 703.2 is amended to delete the definitions in the chapter. The Institute proposes the deletion of the definitions from this chapter because the definitions of the words and terms used in this chapter have the meanings provided in 25 TAC Chapter 701, §701.3 (relating to Definitions), thus maintaining consistency of terms used throughout Chapters 701 - 703.

Section 703.3 is amended to include additional guidance regarding the requests for applications as well as to clarify the areas of research and prevention that the Institute's requests for applications may address. The proposed changes also specify mandatory eligibility requirements for applicants, including certification that no donations to CPRIT or to any foundation established to benefit CPRIT have been or will be made. It adds the required disclosure of all sources of a grant applicant's funding for purposes of identifying conflicts of interest.

Section 703.4 is amended to establish the Institute's electronic grant management system as the repository to maintain complete grant records for the submission, review, award, contracting, and monitoring processes implemented by the Institute.

Section 703.5 is amended to provide additional guidance for Scientific Research and Prevention Programs Committee members related to refraining from business activities with grant applicants and recipients, including a prohibition on providing professional services to a grant recipient or serving on the grant recipient's board of directors. The section is amended to require the Institute to provide a list of all current reviewers by panel and notify grant applicants of the panel assignment, as well as the recruitment, training and appointment of patient advocates to the Scientific Research and Prevention Committee.

Section 703.6 is amended to further clarify and describe the grants review process and procedures, including processes that are unique to particular grant mechanisms or grant programs. The proposed changes include score assignment and record retention requirements for each application. Other changes include the incorporation of an independent third party observer of the scientific research and prevention programs committee meetings.

Section 703.7 is amended to implement §102.251(a)(2) of the Texas Health and Safety Code and clarify the Program Integration Committee that role to recommend meritorious projects for funding to the Oversight Committee. The amendment sets forth the process for the Program Integration Committee to approve a list of grant applications to the Oversight Committee. This section also defines the contents of the affidavits submitted by the Chief Executive Officer for every grant recommendation.

Section 703.8 is amended to provide for the Oversight Committee's process to approve grant award recommendations from the Program Integration Committee, including consideration of the Compliance Officer's reports.

Section 703.9 is amended to clarify the limitation on reconsidering grant application decisions unless an undisclosed conflict of interest is identified.

Section 703.10 is amended to delineate the required contract provisions for grant awards, including reporting requirements and penalty provisions if the grant recipient does not comply with the terms and conditions of grant contract.

Section 703.11 is amended to clarify the guidelines for the matching funds obligation for Research grant recipients, including appropriate sources of matching funds, reporting requirements, and penalty provisions, including contract termination.

Section 703.12 is amended to provide further guidance on limitations on the use of grant award funds, including a list of expenses that are not authorized to be paid from grant award funds.

Section 703.13 is amended to clarify audit requirements for grant recipients. The proposed changes include penalties for delinquent submission of required audits to the Institute.

Section 703.14 is amended to set forth the termination, extension and close out processes for grant contracts, including termination of the contract by the Institute for the grant recipient's failure to fulfill contractual obligations.

Section 703.15 is amended to clarify obligations specific to multi-year contracts, including limitations on carry forward of unexpended fund balances.

Section 703.16 is amended with non-substantive changes such as capitalization of defined terms.

Section 703.17 is amended to provide further guidance on the types of financial benefits associated with grant project results that may be shared with the Institute.

Section 703.18 and §703.19 are amended with non-substantive changes such as capitalization of defined terms.

Section 703.20 is amended to clarify the certification of the tobacco-free policy for grant recipients and its documentation.

New §703.21 is proposed to set forth the methods used by the Institute to monitor grant award performances and expenditures, including annual verification and certification by the grant recipient of compliance with grant contract provisions, and provides explicit penalty provisions for failure to comply. This section also specifies the documentation and reporting of such monitoring.

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the rules are in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the rules.

Ms. Doyle 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 clarification of the policies

and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the rules as proposed.

Ms. Doyle has determined that the rules shall not have an effect on small businesses or on micro businesses.

Written comments on the rules may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than December 16, 2013. Parties filing comments are asked to indicate whether or not they support the rule revisions proposed by the Institute and, if changes are requested, to provide specific text proposed to be included in the rule. Comments may be submitted electronically to kdoyle@cprit.state.tx.us. Comments may be submitted by facsimile transmission to (512) 475-2563.

The amendments and new rule are proposed under the authority of the Texas Health and Safety Code Annotated, §102.101(e) and §102.106, which provide the Institute with the authority to govern members of the Oversight Committee and its own activities, and which direct the Oversight Committee to adopt rules relating to conflict of interest.

There is no other statute, article or code that is affected by this proposal.

§703.1. Purpose and Application.

(a) Grant Awards [~~awards~~] from the Institute shall fund:

(1) Research into the causes of and cures for all types of cancer in humans;

(2) Facilities for use in research into the causes and cures for cancer;

(3) Research, including translational research, to develop therapies, protocols, medical pharmaceuticals, or procedures for the cure or substantial mitigation of all types of cancer in humans;

(4) Cancer Prevention and Control Programs in this state to mitigate the incidence of all types of cancer in humans;

(5) Support for institutions of learning and advanced medical research facilities and collaborations in this state in all stages in the process of finding the causes of all types of cancer in humans and developing cures, from laboratory research to clinical trials and including programs to address the problem of access to advanced cancer treatment; and

(6) Implementation of the Texas Cancer Plan.

~~[(1) Create and expedite innovation in the area of cancer research and enhance the potential for medical or scientific breakthrough in the prevention of cancer and cures for cancer;]~~

~~[(2) Attract, create, or expand research capabilities of public or private institutions of higher education and other public or private entities that will promote a substantial increase in cancer research and in the creation of high-quality new jobs in Texas; and]~~

~~[(3) Develop and implement the *Texas Cancer Plan*.]~~

(b) The Oversight Committee shall annually set priorities for each of the Institute's Grant Programs to be considered during the Institute's Grant Review Process.

(1) The presiding officer of the Oversight Committee is responsible for establishing a process to develop annual Grant Program priorities.

(2) The annual Grant Program priorities shall be approved by a simple majority of the Oversight Committee and posted on the Institute's Internet website.

~~[(b) This chapter applies to all grant proposals considered by the Institute for initial funding on or after September 1, 2009.]~~

§703.2. Definitions.

The [~~following~~] words and terms, when used in this chapter, shall have the [~~following~~] meanings provided in Chapter 701, §701.3 of this title (relating to Definitions), unless the context clearly indicates otherwise.

~~[(1) Applicant--the public or private institution of higher education as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, including any combination of the aforementioned, that submits an application to the Institute for a grant funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute. Unless otherwise indicated, this term includes the principal investigator.]~~

~~[(2) Authorized expenses--items including honoraria, salaries and benefits, consumable supplies, other operating expenses, contracted research and development, capital equipment, construction or renovation of state or private facilities, travel, and conference fees and expenses, except as otherwise provided by this chapter.]~~

~~[(3) Cancer prevention--a reduction in the risk of developing cancer, including early detection, control and/or mitigation of the incidence, disability, mortality, or post-diagnosis effects of cancer.]~~

~~[(4) Cancer prevention and control program--cancer prevention programs designed to mitigate the incidence of all types of cancer in humans.]~~

~~[(5) Cancer Prevention and Research Fund--the dedicated account in the general revenue fund consisting of patent, royalty, and license fees and other income received under a contract with a grant recipient, legislative appropriations, gifts, grants, and other donations, and earned interest.]~~

~~[(6) Cancer research--research into the causes, detection, treatments, and cures for all types of cancer in humans, including preclinical studies, animal studies, translational research, and clinical research to develop therapies, protocols, medical pharmaceuticals, medical devices or procedures for the detection, treatment, cure or substantial mitigation of all types of cancer in humans.]~~

~~[(7) Chief Commercialization Officer--the individual employed by the Institute to oversee the review and evaluation of commercial prospects of the grant applications for cancer research and prevention activities.]~~

~~[(8) Chief Prevention Officer--the individual employed by the Institute to oversee the scientific and program review and evaluation of the grant applications for cancer prevention activities.]~~

~~[(9) Chief Scientific Officer--the individual employed by the Institute to oversee the scientific review and evaluation of the grant applications for cancer research activities.]~~

~~[(10) Commercialization Review Council--the group of individuals designated to review the commercial prospects of cancer research and prevention program applications.]~~

~~[(11) Commercial prospects--the potential for development of commercial products or services or the development of infrastructure to support these efforts, including but not limited to pre-clinical, clinical, manufacturing, and scale up activities.]~~

[(12) Encumbered funds--funds that are designated by a recipient for a specific purpose.]

[(13) Grant--a funding mechanism, including a direct company investment, awarded by the Institute providing money to the recipient to carry out the research or prevention program objectives.]

[(14) Indirect costs--the expenses of doing business that are not readily identified with a particular grant, contract, project, function, or activity, but are necessary for the general operation of the organization or the performance of the organization's activities.]

[(15) Institute--the Cancer Prevention and Research Institute of Texas.]

[(16) Intellectual Property Rights--any and all of the following and all rights in, arising out of, or associated therewith, but only to the extent resulting from the grant awarded by the Institute:]

[(A) The United States and foreign patents and utility models and applications therefore and all reissues, divisions, re-examinations, renewals, extensions, provisionals, continuations and such claims of continuations-in-part as are entitled to claim priority to the aforesaid patents or patent applications, and equivalent or similar rights anywhere in the world in inventions and discoveries;]

[(B) All trade secrets and rights in know-how and proprietary information;]

[(C) All copyrights, whether registered or unregistered, and applications therefore, and all other rights corresponding thereto throughout the world excluding scholarly and academic works such as professional articles and presentations, lab notebooks, and original medical records; and]

[(D) All mask works, mask work registrations and applications therefore, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topography.]

[(17) Invention--any method, device, process or discovery that is conceived and/or reduced to practice, whether patentable or not, by the grant recipient in the performance of work funded by the grant.]

[(18) License agreement--an understanding by which an owner of technology and associated intellectual property rights grants any right to make, use, develop, sell, offer to sell, import, or otherwise exploit the technology or intellectual property rights in exchange for consideration.]

[(19) Prevention Review Council--the group of individuals designated as chairs of the prevention program committees created to review cancer prevention program applications.]

[(20) Project Results--any and all technology and associated intellectual property Rights.]

[(21) Recipient--the public or private institution of higher education as defined by §61.003, Education Code, research institution, government organization, non-governmental organization, non-profit organization, other public entity, private company, individual, or consortia, or any combination of the aforementioned that is awarded a grant funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute.]

[(22) Scientific research and prevention program committee--one or more groups of experts in the field of cancer research, prevention or commercialization appointed by the Executive Director and approved by the Oversight Committee for the purpose of reviewing grant applications and making recommendations to the Executive Director regarding the award of cancer research and prevention grants.]

[(23) Scientific Review Council--the group of individuals designated as chairs of the scientific research and prevention program committees created to review cancer research applications.]

[(24) Technology--any and all of the following resulting or arising from work funded by the grant:]

[(A) inventions;]

[(B) proprietary and confidential information, including but not limited to data, trade secrets and know-how;]

[(C) databases, compilations and collections of data;]

[(D) tools, methods and processes; and]

[(E) works of authorship, excluding all scholarly works, but including, without limitation, computer programs, source code and executable code, whether embodied in software, firmware or otherwise, documentation, files, records, data and mask works; and all instantiations of the foregoing in any form and embodied in any form, including but not limited to therapeutics, drugs, drug delivery systems, drug formulations, devices, diagnostics, biomarkers, reagents and research tools.]

§703.3. Grant Applications.

(a) The Institute shall [will] accept Grant Applications [grant applications] for Cancer Research and Cancer Prevention [cancer research and prevention] programs to be funded by the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute in response to standard format Requests for Applications [requests for applications that will be publicly] issued by the Institute [at least annually. The requests for applications will be announced in the *Texas Register* and available through the Institute's public website].

(b) Each Request for Applications shall be publicly announced in the *Texas Register* and available through the Institute's Internet website. The Institute reserves the right to modify the format and content requirements for the Requests for Applications [requests for applications] from time to time. Notice of modifications will be announced [in the *Texas Register*] and available through the Institute's Internet [public] website. The Request for Applications shall:

(1) Include guidelines for the proposed projects and may be accompanied by instructions provided by the Institute.

(2) State the criteria to be used during the Grant Review Process to evaluate the merit of the Grant Application, including guidance regarding the range of possible scores.

(A) The specific criteria and scoring guidance shall be developed by the Chief Program Officer in consultation with the Review Council.

(B) When the Institute will use a preliminary evaluation process as described in §703.6 of this chapter (relating to Grants Review Process) for the Grant Applications submitted pursuant to a particular Grant Mechanism, the Request for Applications shall state the criteria and Grant Application components to be included in the preliminary evaluation.

(c) Requests for Applications for Cancer Research and Cancer Prevention projects [cancer research grant applications] issued by the Institute may address, but are not limited to, the following areas:

(1) Basic research;

(2) Translational research, including proof of concept, preclinical, and Product Development activities;

(3) Clinical research;

(4) Population based research;

(5) Training;

(6) Recruitment to the state of researchers and clinicians with innovative Cancer Research approaches;

(7) Infrastructure, including centers, core facilities, and shared instrumentation;

(8) Implementation of the Texas Cancer Plan; and

(9) Evidence based Cancer Prevention education, outreach, and training, and clinical programs and services.

[(1) Short-term, high-impact programs;]

[(2) Individual investigator awards;]

[(3) Multiple investigator awards, including collaborative projects, centers, core facilities, shared instrumentation, and infrastructure;]

[(4) Recruitment to the state of new, emerging, and established investigators;]

[(5) Training;]

[(6) Translational research, including proof of concept, preclinical, and clinical trials;]

[(7) Commercialization investment grant awards, including cancer-related infrastructure and services to support development of commercializable products; and]

[(8) Implementation of the *Texas Cancer Plan*.]

(d) An applicant is eligible solely for the Grant Mechanism specified by the Request for Applications under which the Grant Application was submitted.

[(d) Requests for cancer prevention grant applications issued by the Institute may address, but are not limited to, the following areas:]

[(1) Innovation awards;]

[(2) Education, outreach and training;]

[(3) Evidence based prevention programs and services;]

[(4) Collaborative projects;]

[(5) Infrastructure/capacity building grants; and]

[(6) Implementation of the *Texas Cancer Plan*.]

(e) The request for Grant Applications for Cancer Research projects [applications] shall seek information from Grant Applicants [applicants] regarding whether the proposed project has Product Development [commercial] prospects, including, but not limited to anticipated regulatory filings, commercial abstracts or business plans.

(f) Failure to comply with the material and substantive requirements set forth in Requests for Applications [requests for applications] may serve as grounds for disqualification from further consideration of the Grant Application [application] by the Institute. A Grant Application determined by the Institute to be incomplete or otherwise noncompliant with the terms or instructions set forth by the Request for Applications shall not be eligible for consideration of a Grant Award.

(g) Only those Grant Applications submitted via the designated electronic portal designated by the Institute by the deadline, if any, stated in the Request for Applications shall be eligible for consideration of a Grant Award.

(1) Nothing herein shall prohibit the Institute from extending the submission deadline for one or more Grant Applications upon a showing of good cause.

(2) The Institute shall document any deadline extension granted, including the reason for extending the deadline and will cause the documentation to be maintained as part of the Grant Review Process records.

(h) The Grant Applicant shall certify that it has not made and will not make a donation to the Institute or any foundation created to benefit the Institute.

(1) Grant Applicants that make a donation to the Institute or any foundation created to benefit the Institute on or after June 14, 2013, are ineligible to be considered for a Grant Award.

(2) For purposes of the required certification, the Grant Applicant includes the following individuals or Relatives of the following individuals:

(A) the Principal Investigator, Program Director, or Company Representative;

(B) a Senior Member or Key Personnel listed on the Grant Application;

(C) an officer or director of the Grant Applicant.

(3) Notwithstanding the foregoing, one or more donations exceeding $500 by an employee or Relative of an employee of a Grant Applicant not described by paragraph (2) of this subsection shall be considered to be made on behalf of the Grant Applicant for purposes of the certification.

(4) The certification shall be made at the time the Grant Application is submitted.

(5) The Chief Compliance Officer shall compare the list of Grant Applicants to a current list of donors to the Institute and any foundation created to benefit the Institute.

(6) To the extent that the Chief Compliance Officer has reason to believe that a Grant Applicant has made a donation to the Institute or any foundation created to benefit the Institute, the Chief Compliance Officer shall seek information from the Grant Applicant to resolve any issue. The Grant Application may continue in the Grant Review Process during the time the additional information is sought and under review by the Institute.

(7) If the Chief Compliance Officer determines that the Grant Applicant has made a donation to the Institute or any foundation created to benefit the Institute, then the Institute shall take appropriate action. Appropriate action may entail:

(A) Withdrawal of the Grant Application from further consideration;

(B) Return of the donation, if the return of the donation is possible without impairing Institute operations.

(8) If the donation is returned to the Applicant, then the Grant Application is eligible to be considered for a Grant Award.

(i) Grant Applicants shall identify by name all sources of funding, including a capitalization table that reflects private investors, if any, contributing to the project proposed for a Grant Award. This information shall include those individuals or entities that have an investment, stock or rights in the project. The Institute shall make the information provided by the Grant Applicant available to Scientific Research and Prevention Programs Committee members, Institute employees, independent contractors participating in the Grant Review

Process, Program Integration Committee Members and Oversight Committee Members for purposes of identifying potential Conflicts of Interest prior to reviewing or taking action on the Grant Application. The information shall be maintained in the Institute's Grant Review Process records.

(j) A Grant Applicant shall indicate if the Grant Applicant is currently ineligible to receive Federal grant funds or if the Grant Applicant has had a grant terminated for cause within five years prior to the submission date of the Grant Application. For purposes of the provision, the term Grant Applicant includes the Senior Member and Key Personnel.

(k) The Institute may require each Grant Applicant for a Cancer Research Grant Award for Product Development to submit an application fee.

(1) The Chief Executive Officer shall adopt a policy regarding the application fee amount.

(2) The Institute shall use the application fee amounts to defray the Institute's costs associated with the Product Development review processes, including due diligence and intellectual property reviews, as specified in the Request for Application.

~~[(g) The Institute will undertake reasonable efforts to protect information submitted to the agency by third parties from unauthorized disclosure, consistent with the need for objective review of the application and the requirements of state law, including the establishment of procedures to be followed by Oversight Committee members, Institute employees, and scientific research and prevention program committee members.]~~

~~[(h) The following information is public information and may be disclosed under Chapter 552, Government Code:]~~

~~[(1) The applicant's name and address;]~~

~~[(2) The amount of funding applied for;]~~

~~[(3) The type of cancer to be addressed under the proposal; and]~~

~~[(4) Any other information designated by the Institute with the consent of the grant applicant.]~~

~~[(i) To assist the Institute in identifying and protecting the confidentiality of information submitted to the agency, the applicant shall identify all confidential and proprietary information on the application or other documents provided to the Institute. However, the applicant's failure to identify information as confidential and proprietary does not constitute a waiver of the designation for purposes of Chapter 552 of the Government Code, or other applicable federal or state law or regulation.]~~

§703.4. Grants Management System.

The Institute may engage third-party grants management services. Such services may include the deployment and maintenance of an electronic Grants Management System to facilitate the Institute's receipt and review of Grant Applications, execution of Grant Contracts, and the ongoing monitoring and management of Grant Awards, including required Grant Recipient reports and submissions. ~~[to assist in some or all aspects of the grant application process, as determined by an agreement with the Institute.]~~

(1) The Institute may use the electronic Grants Management System to:

(A) Facilitate the Institute's receipt and review of Grant Applications;

(B) Maintain complete Grant Review Process records for Grant Applications undergoing Peer Review, including the final Overall Evaluation Score and Numerical Ranking Score assigned to Grant Applications during the Peer Review Process;

(C) Maintain supporting documentation regarding the implementation of the Institute's Conflict of Interest process for each Grant Review Cycle, including a list of any Conflicts of Interest requiring recusal, any unreported Conflicts of Interest confirmed by an investigation and the actions taken, any waivers, the identity of the Primary Investigator, Program Director or Company Representative and the funding sources for the Grant Award project;

(D) Expedite execution of Grant Contracts and the electronic submission of Grant Contract change requests and required Grant Award reports;

(E) Maintain complete Grant Award records, including the Grant Contract and Matching Funds certification, required Grant Award financial reports and Grant Progress Reports, and the Institute's review of those reports;

(F) Support the Institute's Grant Award compliance monitoring by tracking the due dates and submission status for required Grant Award reports; and

(G) Monitor the status of past-due required Grant Award financial reports and Grant Progress Reports.

(2) The Institute may require, as a condition of receiving a Grant Award, that the Grant Recipient use the Institute's electronic Grant Management System to exchange, execute, and verify legally binding Grant Contract documents and Grant Award reports. Such use shall be in accordance with the Institute's electronic signature policy as set forth in Chapter 701, §701.25 of this title (relating to Electronic Signature Policy).

(3) The Institute shall require periodic audits of any electronic Grant Management System. Weaknesses identified by system audits must be timely addressed pursuant to a specified timeline.

§703.5. Scientific Research and Prevention Programs Committees ~~[Committee Members]~~.

(a) The Oversight Committee shall establish Scientific Research and Prevention Programs Committees for the purpose of conducting Peer Review of Grant Applications submitted to the Institute. The Chief Executive Officer [~~Director~~], with approval by [~~of~~ a] simple majority of the Oversight Committee, is responsible for appointing [~~will appoint~~] experts in the fields of Cancer Research [~~cancer research~~], Prevention life science Product Development, and patient advocacy [~~prevention or commercialization~~] to serve as Scientific Research and Prevention Programs Committee members [~~members of scientific research and prevention programs committee~~] for terms designated by the Chief Executive Officer [~~Director~~].

(b) The Chief Executive Officer may provisionally appoint an individual as a Scientific Research and Prevention Programs Committee Member until such time that the individual can be considered for approval by the Oversight Committee. The provisional appointee may participate in the Peer Review Process prior to a vote of the Oversight Committee on the appointment so long as the appointment is considered at the next regular Oversight Committee meeting.

~~[(b) An individual appointed to serve as a member of a scientific research and prevention programs committee may be a resident of another state.]~~

(c) A Scientific Research [~~research~~] and Prevention Programs Committee Member is [~~prevention programs committee members are~~] responsible for conducting Peer Review of [~~reviewing~~] the Grant

Applications [~~scientific research and prevention programs grant applications~~] assigned to the individual member's Peer Review Panel [~~committee~~].

(d) A Scientific Research [~~research~~] and Prevention Programs Committee Member [~~prevention programs committee members~~] may receive an honorarium in accordance with the policy described in Chapter 701, §701.15 of this title (relating to the Scientific Research and Prevention Programs Committee Honoraria Policy).

(e) A member of a Scientific Research and Prevention Programs Committee [~~scientific research and prevention programs committee~~] is prohibited from attempting to use the committee member's official position to influence a decision to approve or award a grant or contract to the committee member's employer.

(f) A member of a Scientific Research and Prevention Programs Committee [~~scientific research and prevention programs committee~~] must comply with the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(g) The Scientific Research and Prevention Programs Committee Member shall not provide professional services for compensation exceeding $5,000 to any Grant Recipient that was reviewed by the Scientific Research and Prevention Programs Committee Member's Peer Review Panel.

(1) The term of this restriction is for a period of one year from the effective date of the Grant Award, unless waived by a vote of the Oversight Committee.

(2) For purposes of this restriction, "professional services" do not include those services for which an honorarium is paid; however, honoraria exceeding $5,000 paid to a Scientific Research and Prevention Programs Committee Member by a Grant Recipient while the individual is serving as a Committee Member shall be reported within 30 days to the Institute's Chief Executive Officer.

(3) Even if a payment to a Scientific Research and Prevention Programs Committee Member is not otherwise prohibited, a Grant Recipient shall not pay a Scientific Research and Prevention Programs Committee Member with Grant Award funds.

(h) An individual that serves as a Scientific Research and Prevention Programs Committee Member may not concurrently serve on the Board of Directors or other governing board of a Grant Recipient or of a foundation or similar organization affiliated with the entity. This prohibition lasts so long as the Grant Recipient receives Grant Award funds or the Scientific Research and Prevention Programs Committee Member receives an honorarium from the Institute, whichever ends first.

(i) The Scientific Research and Prevention Programs Committee Member shall not use non-public Third-Party Information or knowledge of non-public decisions related to Grant Applicants, gained by virtue of the individual's participation in the Institute's Peer Review Process, to make an investment or take some other action resulting in a financial benefit to the individual or the individual's employer.

(j) A violation of any requirement of this section may result in the removal of the Scientific Research and Prevention Programs Committee Member from further participation in the Institute's Peer Review Process.

(k) The Institute shall provide on the Institute's Internet website a register of the individuals appointed as Scientific Research and Prevention Programs Committee Members, including provisional members. The register may list the Scientific Research and Prevention Programs Committee members by Peer Review Panel. For the purpose of identifying undisclosed Conflicts of Interest, a Grant Applicant may be notified of the Peer Review Panel to which the Grant Application has been assigned.

(l) The Chief Executive Officer shall ensure that at least one Patient Advocate is appointed to each Peer Review Panel. To be considered for a Patient Advocate appointment by the Chief Executive Officer as a Scientific Research and Prevention Programs Committee Member, an applicant must:

(1) Represent an organization or other community of people;

(2) Demonstrate prior community involvement or other work on behalf of cancer patients;

(3) Possess good communication and writing skills, including the ability to analyze information and make judgments with consideration of patient impact;

(4) Express interest in and fundamental knowledge of the medical research process, including basic and translational scientific research and prevention concepts;

(5) Reside outside of the state of Texas;

(6) Have science-based training. This training requirement shall be considered fulfilled if the Patient Advocate has:

(A) attended a science-based training program from the American Association for Cancer Research Survivor-Scientist Program, American Society of Clinical Oncology Research Review Sessions for Patient Advocates, Research Advocacy Network Advocate Institute or National Breast Cancer Coalition Project LEAD no more than three years prior to appointment to the Institute's Scientific Research and Prevention Programs Committee; or

(B) participated in at least one full cycle of grant review conducted by the Institute, National Institutes of Health, Department of Defense Congressionally Directed Medical Research Programs, Federal Drug Administration or Patient-Centered Outcomes Research Institute no more than three years prior to appointment to the Institute's Scientific Research and Prevention Programs Committee.

(m) An individual interested in a Patient Advocate appointment shall submit an application, in a format specified by the Institute that includes at least the following information:

(1) Dates of service on a peer review panel within the past three years, or dates of attendance at advocate training programs within the past three years as documentation of the fulfillment of the science-based training program requirement;

(2) Current resume or curriculum vitae;

(3) A letter of recommendation from a community-based organization and a personal statement on advocacy and education if the applicant has attended a training program but not yet served on a peer review panel.

§703.6. Grants Review Process.

(a) For all Grant Applications that are not administratively withdrawn by the Institute for noncompliance or otherwise withdrawn by the Grant Applicant, the Institute shall use a two-stage Peer Review process.

(1) The Peer Review process, as described herein, is used to identify and recommend meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control projects

for Grant Award consideration by the Program Integration Committee and the Oversight Committee.

(2) Peer Review will be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(b) The two stages of the Peer Review Process used by the Institute are:

(1) Evaluation of Grant Applications by Peer Review Panels; and

(2) Prioritization of Grant Applications by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council, as may be appropriate for the Grant Program.

(c) Except as described in subsection (e) of this section, the Peer Review Panel evaluation process encompasses the following actions, which will be consistently applied:

(1) The Institute distributes all Grant Applications submitted for a particular Grant Mechanism to one or more Peer Review Panels.

(2) The Peer Review Panel chairperson assigns each Grant Application to no less than two panel members that serve as the Primary Reviewers for the Grant Application. Assignments are made based upon the expertise and background of the Primary Reviewer in relation to the Grant Application.

(3) The Primary Reviewer is responsible for individually evaluating all components of the Grant Application, critiquing the merits according to explicit criteria published in the Request for Applications, and providing an individual Overall Evaluation Score that conveys the Primary Reviewer's general impression of the Grant Application's merit. The Primary Reviewers' individual Overall Evaluation Scores are averaged together to produce a single initial Overall Evaluation Score for the Grant Application.

(4) The Peer Review Panel meets to discuss the Grant Applications assigned to the Peer Review Panel. If there is insufficient time to discuss all Grant Applications, the Peer Review Panel chairperson determines the Grant Applications to be discussed by the panel. The chairperson's decision is based largely on the Grant Application's initial Overall Evaluation Score; however a Peer Review Panel member may request that a Grant Application be discussed by the Peer Review Panel.

(A) If a Grant Application is not discussed by the Peer Review Panel, then the initial Overall Evaluation Score serves as the final Overall Evaluation Score for the Grant Application. The Grant Application is not considered further during the Grant Review Cycle.

(B) If a Grant Application is discussed by the Peer Review Panel, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(i) The panel chairperson participates in the discussion but does not score Grant Applications.

(ii) A Primary Reviewer has the option to revise his or her score for the Grant Application after panel discussion or to keep the same score submitted during the initial review.

(C) If the Peer Review Panel recommends changes to the Grant Award funds amount requested by the Grant Applicant or to the goals and objectives or timeline for the proposed project, then the recommended changes and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(5) At the conclusion of the Peer Review Panel evaluation, the Peer Review Panel chairperson submits to the appropriate Review Council a list of Grant Applications discussed by the panel ranked in order by the final Overall Evaluation Score. Any changes to the Grant Award funding amount or to the project goals and objectives or timeline recommended by the Peer Review Panel shall be provided to the Review Council at that time.

(d) The Review Council's prioritization process for Grant Award recommendations encompasses the following actions, which will be consistently applied:

(1) The Review Council prioritizes the Grant Application recommendations across all the Peer Review Panels by assigning a Numerical Ranking Score to each Grant Application that was discussed by a Peer Review Panel. The Numerical Ranking Score is substantially based on the final Overall Evaluation Score submitted by the Peer Review Panel, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications.

(2) The Review Council's recommendations are submitted simultaneously to the presiding officers of the Program Integration Committee and Oversight Committee. The recommendations, listed in order by Numerical Ranking Score shall include:

(A) An explanation describing how the Grant Application meets the Review Council's standards for Grant Award funding;

(B) The final Overall Evaluation Score assigned to the Grant Application by the Peer Review Panel, including an explanation for ranking one or more Grant Applications ahead of another Grant Application with a more favorable final Overall Evaluation Score; and

(C) The specified amount of the Grant Award funding for each Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the goals and objectives or timeline.

(e) Circumstances relevant to a particular Grant Mechanism or to a Grant Review Cycle may justify changes to the dual-stage Peer Review process described in subsections (c) and (d) of this section. Peer Review process changes the Institute may implement are described below. The list is not intended to be exhaustive. Any material changes to the Peer Review process, including those listed below, shall be described in the Request for Applications or communicated to all Grant Applicants.

(1) The Institute may use a preliminary evaluation process if the volume of Grant Applications submitted pursuant to a specific Request for Applications is such that timely review may be impeded. The preliminary evaluation will be conducted after Grant Applications are assigned to Peer Review Panels but prior to the initial review described in subsection (c) of this section. The preliminary evaluation encompasses the following actions:

(A) The criteria and the specific Grant Application components used for the preliminary evaluation shall be stated in the Request for Applications;

(B) No less than two Peer Review Panel members are assigned to conduct the preliminary evaluation for a Grant Application

and provide a preliminary score that conveys the general impression of the Grant Application's merit pursuant to the specified criteria; and

(C) The Peer Panel Review chairperson is responsible for determining the Grant Applications that move forward to initial review as described in subsection (c) of this section. The decision will be based upon preliminary evaluation scores. A Grant Application that does not move forward to initial review will not be considered further and the average of the preliminary evaluation scores received becomes the final Overall Evaluation Score for the Grant Application.

(2) The Institute shall assign all Grant Applications submitted for recruitment of researchers and clinicians to the Scientific Review Council.

(A) The Scientific Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the proposed recruitment.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one recruitment Grant Application is reviewed by the Scientific Review Council during the Grant Review Cycle, then the Scientific Review Council shall assign a Numerical Ranking Score to each Grant Application to convey its prioritization ranking.

(D) If the Scientific Review Council recommends a change to the Grant Award funds requested by the Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Scientific Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(3) The Institute may assign continuation Grant Applications to the appropriate Review Council.

(A) The Review Council members review all components of the Grant Application, evaluate the merits according to explicit criteria published in the Request for Applications, and, after discussion by the Review Council members, provide an individual Overall Evaluation Score that conveys the Review Council member's recommendation related to the progress and continued funding.

(B) The individual Overall Evaluation Scores are averaged together for a final Overall Evaluation Score for the Application.

(C) If more than one continuation Grant Application is reviewed by the Review Council during the Grant Review Cycle, then the Review Council shall assign a Numerical Ranking Score to each continuation Grant Application to convey its prioritization ranking.

(D) If the Review Council recommends a change to the Grant Award funds or to the scope of work or timeline requested by the continuation Grant Application, then the recommended change and explanation shall be recorded at the time the final Overall Evaluation Score is set.

(E) The Review Council's recommendations shall be provided to the presiding officer of the Program Integration Committee and to the Oversight Committee pursuant to the process described in subsection (d) of this section.

(4) The Institute's Peer Review process described in subsections (c) and (d) of this section may include the following additional process steps for Product Development of Cancer Research Grant Applications:

(A) A Grant Applicant may be invited to deliver an in-person presentation to the Peer Review Panel. The Product Development Review Council chairperson is responsible for deciding which Grant Applicants will make in-person presentations. The decision is based upon the initial Overall Evaluation Scores of the primary reviewers following a discussion with Peer Review Panel members, as well as explicit criteria published in the Request for Applications.

(i) Peer Review Panel members may submit questions to be addressed by the Grant Applicant at the in-person presentation.

(ii) A Grant Application that is not presented in-person will not be considered further. The average of the primary reviewers' initial Overall Evaluation Scores will be the final Overall Evaluation Score for the Grant Application.

(iii) Following the in-person presentation, each Peer Review Panel member submits a score for the Grant Application based on the panel member's general impression of the Grant Application's merit and accounting for the explicit criteria published in the Request for Applications. The submitted scores are averaged together to produce the final Overall Evaluation Score for the Grant Application.

(B) A Grant Application may undergo business operations and management due diligence review and an intellectual property review conducted by third parties. The Peer Review Panel decides which Grant Applications will undergo business operations and management due diligence and intellectual property review. The decision is based upon the Grant Application's final Overall Evaluation Score, but also takes into consideration how well the Grant Application achieves program priorities set by the Oversight Committee, the overall Program portfolio balance, and any other criteria described in the Request for Applications. A Grant Application that is not recommended for due diligence and intellectual property review will not be considered further.

(C) After receipt of the business operations and management due diligence and intellectual property reviews for a Grant Application, the Product Development Review Council and the Primary Reviewers meet to determine whether to recommend the Grant Application for a Grant Award based upon the information set forth in the due diligence and intellectual property reviews. The Product Development Review Council may recommend changes to the Grant Award budget and goals and objectives or timeline.

(D) The Product Development Review Council assigns a Numerical Ranking Score to each Grant Application recommended for a Grant Award.

(f) Institute Employees may attend Peer Review Panel and Review Council meetings. If an Institute Employee attends a Peer Review Panel meeting or a Review Council meeting, the Institute Employee's attendance shall be recorded and the Institute Employee shall certify in writing that the Institute Employee complied with the Institute's Conflict of Interest rules. The Institute Employee's attendance at the Peer Review Panel meeting or Review Council meeting is subject to the following restrictions:

(1) Unless waived pursuant to the process described in Chapter 702, §702.17 of this title (relating to Exceptional Circumstances Requiring Participation), the Institute Employee shall not be present for any discussion, vote, or other action taken related to a

Grant Applicant if the Institute Employee has a Conflict of Interest with that Grant Applicant; and

(2) The Institute Employee shall not participate in a discussion of the merits, vote, or other action taken related to a Grant Application, except to answer technical or administrative questions unrelated to the merits of the Grant Application and to provide input on the Institute's Grant Review Process.

(g) The Institute shall engage an independent third party to observe meetings of the Peer Review Panel and Review Council where Grant Applications are discussed.

(1) The independent third party shall serve as a neutral observer to document that the Institute's Grant Review Process is consistently followed, including observance of the Institute's established Conflict of Interest rules and that participation by Institute employees, if any, is limited to providing input on the Institute's Grant Review Process and responding to committee questions unrelated to the merits of the Grant Application. Institute Program staff shall not participate in a discussion of the merits, vote, or any other action taken related to a Grant Application.

(2) The independent third party reviewer shall issue a report to the Chief Compliance Officer specifying issues, if any, that are inconsistent with the Institute's established Grant Review Process.

(h) Excepting a finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process), the Review Council's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Program Integration Committee and the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Review Council shall not be considered further during the Grant Review Cycle.

(i) At the time that the Peer Review Panel or the Review Council concludes its tasks for the Grant Review Cycle, each member shall certify in writing that the member complied with the Institute's Conflict of Interest rules.

(j) The Institute shall retain a review record for a Grant Application submitted to the Institute, even if the Grant Application did not receive a Grant Award. Such records will be retained by the Institute's electronic Grant Management System. The records retained by the Institute must include the following information:

(1) The final Overall Evaluation Score and Numerical Ranking Score, if applicable, assigned to the Grant Application;

(2) The specified amount of the Grant Award funding for the Grant Application, including an explanation for recommended changes to the Grant Award funding amount or to the goals and objectives or timeline;

(3) The Scientific Research and Prevention Programs Committee that reviewed the Grant Application;

(4) Conflicts of Interest, if any, with the Grant Application identified by a member of the Scientific Research and Prevention Programs Committee, the Review Council, the Program Integration Committee, or the Oversight Committee; and

(5) Documentation of steps taken to recuse any member or members from the Grant Review Process because of disclosed Conflicts of Interest.

~~[(a) The Institute will use the grants review process to identify the most creative, and innovative projects representing the best science and, if appropriate, commercial prospects. To the extent possible, priority for funding for cancer research and cancer prevention applications will be given to proposals that:]~~

~~[(1) Could lead to immediate or long-term medical and scientific breakthroughs in the area of cancer prevention or cures for cancer;]~~

~~[(2) Strengthen and enhance fundamental science in cancer research;]~~

~~[(3) Ensure a comprehensive coordinated approach to cancer research and prevention;]~~

~~[(4) Are interdisciplinary or interinstitutional;]~~

~~[(5) Address federal or other major research sponsors' priorities in emerging scientific or technology fields in the area of cancer prevention, or cures for cancer;]~~

~~[(6) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;]~~

~~[(7) Use money from the Cancer Prevention and Research Fund or the proceeds of general obligation bonds issued on behalf of the Institute to obtain additional cancer research and prevention funding from other sources;]~~

~~[(8) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;]~~

~~[(9) Have a demonstrable economic development benefit to this state;]~~

~~[(10) Enhance research superiority at institutions of higher education or in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources; and]~~

~~[(11) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or technology research capabilities.]~~

~~[(b) Based upon the number of applications received and the resources available for the scientific research and prevention program committees, the Institute reserves the option to conduct an initial evaluation of the grant applications by one or more scientific research and prevention program committees. An application determined to be incomplete or otherwise noncompetitive during the initial evaluation will not be considered for further review.]~~

~~[(c) Grant applications that are not eliminated in the initial peer review evaluation will undergo a rigorous peer review process supervised by the Institute in coordination with the Scientific Review Council, the Prevention Review Council and the Commercialization Review Council, as may be appropriate to the subject matter of the applications.]~~

~~[(d) Based upon the results of the peer review process and in consideration of the standards described in subsection (a) of this section, as applicable, each scientific research and prevention program committee shall submit to the Scientific Review Council, Prevention Review Council or the Commercialization Review Council the grant applications that the committee recommends should be considered for funding awards.]~~

~~[(e) Grant funding recommendations made by individual research and prevention program committees will be evaluated by the Scientific Review Council, the Prevention Review Council and the~~

~~Commercialization Review Council as may be appropriate to the subject area of the applications.]~~

~~[(f) Pursuant to a schedule developed by the Executive Director, the Scientific Review Council, the Prevention Review Council, and the Commercialization Review Council will submit a prioritized list of grant funding recommendations to the Executive Director. The list of grant funding recommendations will include a statement of how the grant applications recommended for funding meet one or more standards of subsection (a) of this section.]~~

~~[(g) The decision to recommend a grant application for funding is entirely within the purview of the scientific research and prevention programs committee(s) evaluating the grant application.]~~

~~[(h) A grant applicant shall not contact a scientific research and prevention programs committee member regarding the status or substance of any grant application.]~~

~~[(i) Prior to receiving access to confidential and proprietary information submitted by a grant applicant, all individuals, including scientific research and prevention programs committee members, CPRIT employees, Oversight Committee members, and grants management system employees shall certify that confidential and proprietary information will not be disclosed or used in any way other than for the purposes of evaluating and awarding grants. The certification may be accomplished by signing a non-disclosure agreement. The Institute will retain the signed certifications on file.]~~

§703.7. Program Integration Committee ~~[Executive Director's]~~ Funding Recommendation.

(a) The Institute uses a Program Review process undertaken by the Institute's Program Integration Committee to identify and recommend for funding a final list of meritorious Cancer Research projects, including those projects with Cancer Research Product Development prospects, and evidence-based Cancer Prevention and Control Program projects that are in the best overall interest of the State. ~~[The Executive Director shall submit to the Oversight Committee a prioritized list of applications to be awarded cancer research grants and cancer prevention program grants substantially based upon the lists submitted by the Scientific Review Council, the Prevention Review Council and the Commercialization Review Council]~~

(b) Program Review shall be conducted pursuant to the requirements set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute) and Chapter 102, Texas Health and Safety Code.

(c) The Program Integration Committee shall meet pursuant to a schedule established by the Chief Executive Officer, who serves as the Committee's presiding officer, to consider the prioritized list of Grant Applications submitted by the Prevention Review Council, the Product Development Review Council, or the Scientific Review Council.

(d) The Program Integration Committee shall approve by a majority vote a final list of Grant Applications recommended for Grant Awards to be provided to the Oversight Committee. In composing the final list of Grant Applications recommended for Grant Award funding, the Program Integration Committee shall:

(1) Substantially base the list upon the Grant Award recommendations submitted by the Review Council.

(2) To the extent possible, give priority for funding to Grant Applications that:

(A) Could lead to immediate or long-term medical and scientific breakthroughs in the area of Cancer Prevention or cures for cancer;

(B) Strengthen and enhance fundamental science in Cancer Research;

(C) Ensure a comprehensive coordinated approach to Cancer Research and Cancer Prevention;

(D) Are interdisciplinary or interinstitutional;

(E) Address federal or other major research sponsors' priorities in emerging scientific or Technology fields in the area of Cancer Prevention, or cures for cancer;

(F) Are matched with funds available by a private or nonprofit entity and institution or institutions of higher education;

(G) Are collaborative between any combination of private and nonprofit entities, public or private agencies or institutions in this state, and public or private institutions outside this state;

(H) Have a demonstrable economic development benefit to this state;

(I) Enhance research superiority at institutions of higher education in this state by creating new research superiority, attracting existing research superiority from institutions not located in this state and other research entities, or enhancing existing research superiority by attracting from outside this state additional researchers and resources;

(J) Expedite innovation and commercialization, attract, create, or expand private sector entities that will drive a substantial increase in high-quality jobs, and increase higher education applied science or Technology research capabilities; and

(K) Address the goals of the Texas Cancer Plan.

(3) Document the factors considered in making the Grant Award recommendations, including any factors not listed in paragraph (2) of this subsection;

(4) Explain in writing the reasons for not recommending a Grant Application that was recommended for a Grant Award by the Review Council;

(5) Specify the amount of Grant Award funding for each Grant Application.

(A) Unless otherwise specifically stated, the Program Integration Committee adopts the changes to the Grant Award amount recommended by the Review Council.

(B) If the Program Integration Committee approves a change in the Grant Award amount that was not recommended by the Review Council, then the Grant Award amount and a written explanation for the change shall be provided.

(6) Specify changes, if any, to the Grant Application's goals and objectives or timeline recommended for a Grant Award and provide an explanation for the changes made; and

(7) Address how the funding recommendations meet the annual priorities for Cancer Prevention, Cancer Research and Product Development programs and affect the Institute's overall Grant Award portfolio established by the Oversight Committee.

(e) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations is not unanimous, then the Program Integration Committee Member or Members not voting with the majority may submit a written explanation to the Oversight Committee for the vote against the final list of Grant Award recommendations. The explanation may include the Program Integration Committee Member or Members' recommended prioritized list of Grant Award recommendations.

(f) The Program Integration Committee's decision to not include a Grant Application on the prioritized list of Grant Applications submitted to the Oversight Committee is final. A Grant Application not included on the prioritized list created by the Program Integration Committee shall not be considered further during the Grant Review Cycle, except for the following:

(1) In the event that the Program Integration Committee's vote on the final list of Grant Award recommendations is not unanimous, then, upon a motion of an Oversight Committee Member, the Oversight Committee may also consider the Grant Award recommendations submitted by the non-majority Program Integration Committee Member or Members; or

(2) A finding of an undisclosed Conflict of Interest as set forth in §703.9 of this chapter (relating to Limitation on Review of Grant Process).

(g) The Chief Compliance Officer shall attend and observe Program Integration Committee meetings to document compliance with Chapter 102, Texas Health and Safety Code and the Institute's administrative rules.

(h) At the time that the Program Integration Committee's final Grant Award recommendations are formally submitted to the Oversight Committee, the Chief Executive Officer shall prepare a written affidavit for each Grant Application recommended by the Program Integration Committee containing relevant information related to the Grant Application recommendation.

(1) Information to be provided in the Chief Executive Officer's affidavit may include:

(A) The Peer Review process for the recommended Grant Application, including:

(i) The Request for Applications applicable to the Grant Application;

(ii) The number of Grant Applications submitted in response to the Request for Applications;

(iii) The name of the Peer Review Panel reviewing the Grant Application;

(iv) Whether a preliminary review process was used by the Peer Review Panel for the Grant Mechanism in the Grant Review Cycle;

(v) An overview of the Conflict of Interest process applicable to the Grant Review Cycle noting any waivers granted; and

(vi) A list of all final Overall Evaluation Scores for all Grant Applications submitted pursuant to the same Grant Mechanism, de-identified by Grant Applicant;

(B) The final Overall Evaluation Score and Numerical Ranking Score assigned for the Grant Applications recommended during the Peer Review process; and

(C) A high-level summary of the business operations and management due diligence and intellectual property reviews, if applicable, conducted for a Cancer Research Product Development Grant Application.

(2) In the event that the Program Integration Committee's final Grant Award recommendations are not unanimous and the Program Integration Committee Member or Members in the non-majority recommend Grant Applications not included on the final list of Grant Award recommendations, then the Chief Executive Officer shall also prepare a written affidavit for each Grant Application recommended by the non-majority Program Integration Committee Member or Members.

(i) To the extent that the information or documentation for one Grant Application is the same for all Grant Applications recommended for Grant Award funding pursuant to the same Grant Mechanism, it shall be sufficient for the Chief Executive Officer to provide the information or documentation once and incorporate by reference in each subsequent affidavit.

(j) At least three business days prior to the Oversight Committee meeting held to consider the Grant Applications for Grant Award funding, the Chief Executive Officer shall provide a list of Grant Applications, if any, recommended for an advance of Grant Award funds upon execution of the Grant Contract. The list shall include the reasons supporting the recommendation to advance funds.

§703.8. Oversight Committee Consideration of the Program Integration Committee's [~~Overriding the Executive Director's~~] Funding Recommendation.

[~~(a)~~] The Oversight Committee must vote to approve each Grant Award [~~shall consider the Executive Director's funding~~] recommendation submitted by the Program Integration Committee [~~as a comprehensive slate~~].

(1) Prior to the Oversight Committee's consideration and approval of the Program Integration Committee's Grant Award recommendations, the Chief Compliance Officer must review the process documentation for each Grant Application recommended for a Grant Award by the Program Integration Committee and report the findings to the Chief Executive Officer and to the Oversight Committee. The Chief Compliance Officer's report shall:

(A) Publicly certify that the Grant Review Process complied with the Institute's administrative rules and procedures, including those procedures stated in the Request for Applications.

(B) Indicate variances, if any, in the Grant Review Process. The Chief Compliance Officer may recommend corrective actions to address variances, if any, and the Oversight Committee may consider and approve corrective actions at that time that the Grant Award recommendations are approved.

(C) Compare the list of Grant Applicants recommended for a Grant Award to a list of donors from any nonprofit organization established to provide support to the Institute.

(2) Two-thirds of the Oversight Committee Members present and voting must approve each Grant Award recommendation. At the time that the Oversight Committee approves the Grant Award recommendation:

(A) The total amount of money approved to fund a multiyear project must be specified.

(B) The Chief Executive Officer's recommendation, if any, regarding an advance of Grant Award funds must be approved by a majority vote of the Oversight Committee.

(3) If the Oversight Committee does not approve a Grant Award recommendation made by the Program Integration Committee, the minutes of the meeting shall record the explanation for the failure to follow the Grant Award recommendation.

(4) The Oversight Committee may not award more than $300 million in Grant Awards in a fiscal year.

[~~(b) The Executive Director's slate of funding recommendations is approved unless two-thirds of the members of the Oversight Committee vote to disregard the slate of recommendations.~~]

[(c) If the Oversight Committee votes to disregard the slate of funding recommendations, the Executive Director may re-submit recommendations for consideration by the Oversight Committee pursuant to a process and time table established by the Oversight Committee. The Oversight Committee may request the appropriate review council to conduct further investigation into issues specified by the Oversight Committee.]

§703.9. Limitation on Review of Grant Process.

(a) The decision to recommend a Grant Application [application] for funding is based upon the sufficiency, [scientific] merit, and, if applicable, Product Development [commercial] prospects of the Grant Application [application], as determined by the Institute's Peer Review and Program Review processes as described in this chapter [through the application's peer review conducted by the scientific research and prevention program committee(s)].

(b) By submitting a Grant Application, the Grant Applicant understands and accepts that grounds [Grounds] for reconsideration of the Institute's final decision regarding a Grant Application [application] are limited to an undisclosed Conflict of Interest [conflict of interest concerns] as set forth in Chapter 702 of this title (relating to Institute Standards on Ethics and Conflicts, Including the Acceptance of Gifts and Donations to the Institute).

(c) The Grant Applicant [applicant] shall file a request with the Chief Executive Officer [Director] for a review of the Grant Review Process [grant process] based on the undisclosed Conflict of Interest [conflict of interest] pursuant to the process and timeline set forth in Chapter 702 of this title.

§703.10. Awarding Grants by Contract.

(a) The Oversight Committee shall negotiate on behalf of the state regarding the awarding of grant funds and enter into a written contract with the Grant Recipient [grant recipient].

(b) The Oversight Committee may delegate Grant Contract [contract] negotiation duties to the Chief Executive Officer [Director] and the General Counsel for the Institute. The Chief Executive Officer [Director] may enter into a written contract with the Grant Recipient [grant recipient] on behalf of the Oversight Committee.

(c) The Grant Contract shall [contract between the Institute and the grant recipient may] include the following provisions:

(1) If any portion of the Grant Contract [contract] has been approved by the Oversight Committee to be used to build a capital improvement, the Grant Contract [contract] shall specify that:

(A) The state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award [grant] amount used to pay for the capital improvement; and

(B) If the capital improvement is sold, then the Grant Recipient [grant recipient] agrees to repay to the state the Grant Award [grant money] used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale;

(2) Terms relating to Intellectual Property Rights [intellectual property rights] and the sharing with the Institute of revenues generated by the sale, license, or other conveyance of such Project Results consistent with the standards established by this chapter;

(3) Terms relating to publication of materials [material] created with Grant Award [grant] funds or related to the Cancer Research or Cancer Prevention project [research or prevention program] that is the subject of the Grant Award [grant funds], including an acknowledgement of Institute funding and copyright ownership, if applicable;

(4) Repayment terms, including interest rates, to be enforced if the Grant Recipient [grant recipient] has not used Grant Award funds [grant money] for the purposes for which the Grant Award [grant] was intended;

(5) A statement that the Institute does not assume responsibility for the conduct of the Cancer Research or Cancer Prevention project [research project or prevention program], and that the conduct of the project and activities of all investigators are under the scope and direction of the Grant Recipient [recipient];

(6) A statement that the Cancer Research or Cancer Prevention project [cancer research project or prevention program] is conducted with full consideration for the ethical and medical implications of the project [research] and that the project will comply with all federal and state laws regarding the conduct of the Cancer Research or Prevention project [research];

(7) Terms related to the Standards [standards] established by the Oversight Committee in Chapter 701 of this title (relating to Policies and Procedures) [pursuant to §102.258 and §102.259, Health and Safety Code,] to ensure that Grant Recipients [grant recipients], to the extent reasonably possible, demonstrate [in a] good faith effort to [achieve a goal of more than 50 percent of such purchases,] purchase goods and services for the Grant Award project [funded by the Institute] from suppliers in this state and [purchase goods and services] from historically underutilized businesses as defined by Chapter 2161, Texas Government Code, and any other state law;

(8) An agreement by the Grant Recipient [grant recipient] to submit to regular inspection reviews of the Grant Award [grant] project by Institute staff during normal business hours and upon reasonable notice to ensure compliance with the terms of the Grant Contract and continued merit of the project;

(9) An agreement by the Grant Recipient [grant recipient] to submit Grant Progress Reports [present progress reports] to the Institute [Executive Director] on a schedule specified by the Grant Contract [contract] that include information on a grant-by-grant basis quantifying the amount of additional research funding, if any, secured as a result of Institute [Cancer Prevention and Research] funding;

(10) An agreement that, to the extent possible, the Grant Recipient [grant recipient] will evaluate whether any new or expanded preclinical testing, clinical trials, Product Development [commercialization], or manufacturing of any real or intellectual property resulting from the award can be conducted in this state, including the establishment of facilities to meet this purpose;

(11) An agreement that the Grant Recipient [grant recipient] will abide by the Uniform Grant Management Standards (UGMS) adopted by the Governor's Office, if applicable unless one or more standards conflicts with a provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules. Such interpretation of the Institute rules and UGMS shall be made by the Institute;

(12) An agreement that the Grant Recipient [grant recipient] is under a continuing obligation to notify the Institute [Executive Director] of any adverse conditions that materially impact milestones and objectives included in the Grant Contract [contract];

(13) An agreement that the design, conduct, and reporting of the Cancer Research or Prevention project [research or prevention program] will not be biased by conflicting financial interest of the Grant Recipient [applicant] or any individuals associated with the

Grant Award [~~grant~~]. This duty is fulfilled by certifying that an appropriate written, enforced Conflict of Interest [~~conflict of interest~~] policy governs the Grant Recipient [~~grant recipient~~].

(14) An agreement regarding the amount, schedule, and requirements for payment of Grant Award funds, if such advance payments are approved by the Oversight Committee in accordance with this chapter. Notwithstanding the foregoing, the Institute may require that up to ten percent of the final tranche of funds approved for the Grant Award must be expended on a reimbursement basis. Such reimbursement payment shall not be made until close out documents described in this section and required by the Grant Contract have been submitted and approved by the Institute;

(15) An agreement to provide quarterly Financial Status Reports and supporting documentation for expenses submitted for reimbursement or, if appropriate, to demonstrate how advanced funds were expended;

(16) A statement certifying that, as of June 14, 2013, the Grant Recipient has not made and will not make a contribution, during the term of the Grant Contract, to the Institute or to any foundation established specifically to support the Institute;

(17) A statement specifying the agreed effective date of the Grant Contract and the period in which the Grant Award funds must be spent. If the effective date specified in the Grant Contract is different from the date the Grant Contract is signed by both parties, then the effective date shall control;

(18) A statement providing for reimbursement with Grant Award funds of expenses made prior to the effective date of the Grant Contract at the discretion of the Institute. Pre-contract reimbursement shall be made only in the event that:

(A) The expenses are allowable pursuant to the terms of the Grant Contract;

(B) The request is made in writing by the Grant Recipient and approved by the Chief Executive Officer; and

(C) The expenses to be reimbursed were incurred on or after the date the Grant Award recommendation was approved by the Oversight Committee.

(19) Requirements for closing out the Grant Contract at the termination date, including the submission of a Financial Status Report, a final Grant Progress Report, a equipment inventory, a HUB and Texas Business report, a revenue sharing form, a single audit determination report form and a list of contractual terms that extend beyond the termination date;

(20) A certification of dedicated Matching Funds equal to one-half of the amount of the Research Grant Award that includes the name of the Research Grant Award to which the matching funds are to be dedicated, as specified in Section §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants);

(21) The project deliverables as described by the Grant Application and stated in the Scope of Work for the Grant Contract reflecting modifications, if any, approved during the Peer Review process or during Grant Contract negotiation; and

(22) An agreement that the Grant Recipient shall notify the Institute and seek approval for a change in effort for any of the Senior Members or Key Personnel of the research or prevention team listed on the Grant Application.

(d) The Grant Recipient's failure to comply with the terms and conditions of the Grant Contract may result in termination of the Grant Contract pursuant to the process prescribed in the Grant Contract and trigger repayment of the Grant Award funds.

§703.11. Requirement to Demonstrate Available Funds for Cancer Research Grants.

(a) Prior to the disbursement of Grant Award funds, the Grant Recipient of a Cancer Research Grant Award shall demonstrate that the Grant Recipient has an amount of Encumbered Funds equal to one-half of the Grant Award available and not yet expended that are dedicated to the research that is the subject of the Grant Award. The Grant Recipient's written certification of Matching Funds, as described in this section, shall be included in the Grant Contract. A Grant Recipient of a multiyear Grant Award may certify Matching Funds on a year-by-year basis for the amount of Award Funds to be distributed for the Project Year based upon the Approved Budget. A Grant Recipient [~~At the time of award, a cancer research grant recipient must certify that encumbered funds equal to one-half of the amount of the total grant are available and not yet expended for research that is the subject of the grant. Recipients~~] receiving multiple Grant Awards [~~grant awards~~] may provide certification at the institutional level.

(b) For purposes of the certification required by subsection (a) of this section, a Grant Recipient that is a public or private institution of higher education, as defined by §61.003, Texas Education Code, may credit toward the Grant Recipient's Matching Funds obligation the dollar amount equivalent to the difference between the indirect cost rate authorized by the federal government for research grants awarded to the Grant Recipient and the five percent (5%) Indirect Cost limit imposed by the §102.2003(c), Texas Health and Safety Code, subject to the following requirements [~~grant recipient may use the following categories to classify encumbered funds that are dedicated to cancer research~~]:

(1) The Grant Recipient shall file certification with the Institute documenting the federal indirect cost rate authorized for research grants awarded to the Grant Recipient; and

(2) To the extent that the Grant Recipient's Matching Funds credit does not equal or exceed one-half of the Grant Award funds to be distributed for the Project Year, then the Grant Recipient's Matching Funds certification shall demonstrate that a combination of the dollar amount equivalent credit and the funds to be dedicated to the Grant Award project as described in subsection (c) of this section is available and sufficient to meet or exceed the Matching Fund requirement.

[~~(1) Cancer biology and genetics, including oncogenesis and collection and characterization of tumors (genomics, proteomics, and other "omics");~~]

[~~(2) Cancer immunology, including vaccines;~~]

[~~(3) Cancer imaging and diagnostics;~~]

[~~(4) Cancer epidemiology and outcomes research; and~~]

[~~(5) Cancer treatment, including drug discovery and development and clinical trials.~~]

(c) For purposes of the certification required by subsection (a) of this section, Encumbered Funds [~~encumbered funds~~] may include [~~but are not necessarily limited to~~]:

(1) Federal funds, (including, but not limited to American Recovery and Reinvestment Act of 2009 funds, and the fair market value of drug development support provided to the recipient by the National Cancer Institute [~~(NCI)~~] or other similar programs[~~)~~];

(2) State of Texas funds;

(3) [~~Other States'~~] funds of other states;

(4) Non-governmental funds, [(]including private funds, foundation grants, gifts and donations[)]; and

(5) Unrecovered Indirect Costs not to exceed ten [~~10~~] percent (10%) of the Grant Award [~~grant award~~] amount, subject to the following conditions:

(A) These costs are not otherwise charged against the Grant Award [~~grant~~] as the five percent (5%) indirect funds amount allowed under §703.12(c) of this chapter (relating to Limitation on Use of Funds);

(B) The Grant Recipient [~~Institution or recipient~~] must have a documented federal indirect cost rate or an indirect cost rate certified by an independent accounting firm; [~~and~~]

(C) The allowance for unrecovered Indirect Costs [~~indirect costs~~] must be specifically approved by the Chief Executive Officer; and [~~Director.~~]

(D) The Grant Recipient is not a public or private institution of higher education as defined by §61.003 of the Texas Education Code.

(d) For purposes of the certification required by subsection (a) of this section, the following items do not qualify as Encumbered Funds [~~encumbered funds~~]:

(1) In-kind costs;

(2) Volunteer services furnished to the Grant Recipient [~~grant recipient~~];

(3) Noncash contributions;

(4) Income earned by the Grant Recipient that is not available at the time of Grant Award [~~award~~];

(5) Pre-existing real estate of the Grant Recipient including building, facilities and land;

(6) Deferred giving such as a charitable remainder annuity trust, a charitable remainder unitrust, or a pooled income fund; or

(7) Other items as may be determined by the Oversight Committee.

(e) To the extent that a Grant Recipient of a multiyear Grant Award elects to certify Matching Funds on a yearly basis, the failure to provide certification of Encumbered Funds at the appropriate time for each Project Year shall serve as grounds for terminating the Grant Contract.

(f) In no event shall Grant Award funds for a Project Year be advanced or reimbursed, as may be appropriate for the Grant Award and specified in the Grant Contract, until the certification required by subsection (a) of this section is filed and approved by the Institute.

(g) No later than 60 days from the anniversary of the Effective Date of the Grant Contract, the Grant Recipient shall file a form with the Institute reporting the amount of Matching Funds spent for the preceding Project Year.

(h) If the Grant Recipient failed to expend Matching Funds equal to one-half of the actual amount of Grant Award funds distributed to the Grant Recipient for the same period, the Institute shall:

(1) Carry forward and add to the Matching Fund requirement for the next Project Year the dollar amount equal to the deficiency between the actual amount of Grant Award funds distributed and the actual Matching Funds expended, so long as the deficiency is equal to or less than twenty percent (20%) of the total Matching Funds required for the same period and the Grant Recipient has not previously had a Matching Funds deficiency for the project;

(2) Suspend distributing Grant Award funds for the project to the Grant Recipient if the deficiency between the actual amount of Grant Funds distributed and the Matching Funds expended is greater than twenty percent (20%) but less than fifty percent (50%) of the total Matching Funds required for the period.

(A) The Grant Recipient will have no less than eight months from the anniversary of the Grant Contract's effective date to demonstrate that it has expended Encumbered Funds sufficient to fulfill the Matching Funds deficiency for the project.

(B) If the Grant Recipient fails to fulfill the Matching Funds deficiency within the specified period, then the Grant Contract shall be considered in default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract;

(3) Declare the Grant Contract in default if the deficiency between the actual amount of Grant Award funds distributed and the Matching Funds expended is greater than fifty percent (50%) of the total Matching Funds required for the period. The Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract; or

(4) Take appropriate action, including withholding reimbursement, requiring repayment of the deficiency, or terminating the Grant Contract if a deficiency exists between the actual amount of Grant Award funds distributed and the Matching Funds expended and it is the last year of the Grant Contract;

(i) Nothing herein shall preclude the Institute from taking action other than described in subsection (h) of this section based upon the specific reasons for the deficiency. To the extent that other action not described herein is taken by the Institute, such action shall be documented in writing and included in Grant Contract records. The options described in subsection (h)(1) and (2) of this section may be used by the Grant Recipient only one time for the particular project. A second deficiency of any amount shall be considered an event of default and the Institute may proceed with terminating the Grant Award pursuant to the process established in the Grant Contract.

(j) The Grant Recipient shall maintain adequate documentation supporting the source and use of the Matching Funds reported in the certification required by subsection (a) of this section. The Institute shall conduct an annual review of the documentation supporting the source and use of Matching Funds reported in the required certification for a risk-identified sample of Grant Recipients. Based upon the results of the sample, the Institute may elect to expand the review of supporting documentation to other Grant Recipients. Nothing herein restricts the authority of the Institute to review supporting documentation for one or more Grant Recipients or to conduct a review of Matching Funds documentation more frequently.

[~~(e) For awards to investigators representing more than one institution or organization, the certification required by subsection (a) of this section may be made on a grant-award level by one or more of the participating institutions or organizations.~~]

[~~(f) The recipient of a multiyear grant award may demonstrate available funds on a year-by-year basis.~~]

§703.12. Limitation on Use of Funds.

(a) A Grant Recipient [~~grant recipient~~] may use Grant Award funds [~~the money~~] only for Cancer Research and Cancer Prevention projects [~~cancer research and prevention programs~~] consistent with the purpose of the Act, and in accordance with the Grant Contract [~~contract~~

between the recipient and the Institute]. Grant Award funds may not be used for purposes other than those purposes for which the grant was awarded. The Institute may require a Grant Recipient to repay Grant Award funds if the Grant Recipient fails to expend the Grant Award funds in accordance with the terms and conditions of the Grant Contract and the provisions of this chapter.

(b) Grant Award funds must be used for Authorized Expenses.

(1) Expenses that are not authorized and shall not be paid from Grant Award funds, include, but are not limited to:

(A) Bad debt, such as losses arising from uncollectible accounts and other claims and related costs.

(B) Contributions to a contingency reserve or any similar provision for unforeseen events.

(C) Contributions and donations made to any individual or organization.

(D) Costs of entertainment, amusements, social activities, and incidental costs relating thereto, including tickets to shows or sports events, meals, alcoholic beverages, lodging, rentals, transportation and gratuities.

(E) Costs relating to food and beverage items, unless the food item is related to the issue studied by the project that is the subject of the Grant Award.

(F) Fines, penalties, or other costs resulting from violations of or failure to comply with federal, state, local or Indian tribal laws and regulations.

(G) An honorary gift or a gratuitous payment.

(H) Interest and other financial costs related to borrowing and the cost of financing.

(I) Legislative expenses such as salaries and other expenses associated with lobbying the state or federal legislature or similar local governmental bodies, whether incurred for purposes of legislation or executive direction.

(J) Liability insurance coverage.

(K) Benefit replacement pay or legislatively-mandated pay increases for eligible general revenue-funded state employees at Grant Recipient state agencies or universities.

(L) Professional association fees or dues for the Grant Recipient or an individual.

(M) Promotional items and costs relating to items such as T-shirts, coffee mugs, buttons, pencils, and candy that advertise or promote the project or Grant Recipient.

(N) Patient support services costs relating to services such as personal care items and financial assistance for low-income clients.

(2) Additional guidance regarding Authorized Expenses for a specific program may be provided by the terms of the Grant Contract and by the Uniform Grant Management Standards (UGMS) adopted by the Comptroller's Office. If guidance from UGMS on a particular issue conflicts with a specific provision of the Grant Contract, Chapter 102, Texas Health and Safety Code, or the Institute's administrative rules, then the Grant Contract, statute, or Institute administrative rule shall prevail.

(3) The Institute is responsible for making the final determination regarding whether an expense shall be considered an Authorized Expense.

[(b) Money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute.]

(c) A Grant Recipient [recipient] of Grant Award funds for a Cancer Research project [cancer research] may not spend more than five percent (5%) of the Grant Award funds [money awarded] for Indirect Costs [indirect costs].

(d) The Institute may not award [Not] more than five percent (5%) of the total Grant Award funds for each fiscal year to [money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute may] be used for facility purchase, construction, remodel, or renovation purposes during any year. Any Grant Award funds [awarded] that are to be expended by a Grant Recipient for facility purchase, construction, remodel, or renovations are subject to the following conditions:

(1) The use of Grant Award funds must be specifically approved by the Chief Executive Officer [Director to be spent on facility purchase, construction, remodel, or renovation purposes] with notification to the Oversight Committee; [and]

(2) Grant Award funds [Money] spent on facility purchase, construction, remodel, or renovation projects must benefit Cancer Prevention and Research; [cancer prevention and research.]

(3) If Grant Award funds are used to build a capital improvement, then the state retains a lien or other interest in the capital improvement in proportion to the percentage of the Grant Award funds used to pay for the capital improvement. If the capital improvement is sold, then the Grant Recipient agrees to repay to the state the Grant Award funds used to pay for the capital improvement, with interest, and share with the state a proportionate amount of any profit realized from the sale.

(e) The Institute may not award [Not] more than ten [10] percent (10%) of the money awarded from the Cancer Prevention and Research Fund or from the proceeds of bonds issued on behalf of the Institute to [may] be used for Cancer Prevention and Control [cancer prevention and control] programs during any year. Grant Awards for Cancer Prevention research projects shall not be counted toward the Grant Award amount limit for Cancer Prevention and Control Programs. For purposes of this subsection, the Institute is presumed to award the full amount of funds available.

[(f) Grant funds may not be used for purposes other than those purposes for which the grant was awarded.]

§703.13. Audits and Investigations.

(a) Upon request and with reasonable notice, an entity receiving Grant Award funds directly under the Grant Contract or indirectly through a subcontract under the Grant Contract shall allow, or shall cause the entity that is maintaining such items to allow the Institute, or auditors or investigators working on behalf of the Institute, including the State Auditor and/or the Comptroller of Public Accounts for the State of Texas, to review, inspect, audit, copy or abstract its records pertaining to the specific Grant Contract during the term of the Grant Contract and for the four (4) year period following the termination of the Grant Contract. [The Institute shall have the right to request in writing and receive from the recipient in a reasonable timeframe any and all documents and other information related to the grant at any time during or for four years after the term of the grant expires. This right includes, but is not limited to, the right to review all financial books and records of the recipient related to the grant and to perform an audit or other accounting procedures of all expenses related directly or indirectly to the grant. To the extent that confidential information must be disclosed during the course of the audit, the Institute and its employees will execute a non-disclosure agreement with the grant recipient.]

(b) Notwithstanding the foregoing, a Grant Recipient expending $500,000 or more in state awards during its fiscal year shall obtain either an annual single independent audit or a program specific independent audit.

(1) A single audit is required if funds from more than one state program are spent by the Grant Recipient.

(2) The audited time period is the Grant Recipient's fiscal year.

(3) The audit must be submitted to the Institute no later than nine (9) months following the close of the Grant Recipient's fiscal year and shall include a corrective action plan that addresses any weaknesses, deficiencies, wrongdoings, or other concerns raised by the audit report and a summary of the action taken by the Grant Recipient to address the concerns, if any, raised by the audit report.

(A) The Grant Recipient may seek additional time to submit the required audit and corrective action plan by providing a written explanation for its failure to timely comply and providing an expected time for the submission.

(B) The Grant Recipient's request for additional time must be submitted on or before the due date of the required audit and corrective action plan.

(C) Approval of the Grant Recipient's request for additional time is at the discretion of the Institute. Such approval must be granted by the Chief Executive Officer.

(c) No reimbursements or advances of Grant Award funds shall be made to the Grant Recipient if the Grant Recipient is delinquent in filing the required audit and corrective action plan. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may receive reimbursements or advances of Grant Award funds during the pendency of the delinquency unless the Institute's approval declines to permit reimbursements or advances of Grant Award funds until the delinquency is addressed.

(d) A Grant Recipient that is delinquent in submitting to the Institute the audit and corrective action plan required by this section is not eligible to apply for a Grant Award until the required audit and corrective action plan is submitted. A Grant Recipient that has received approval from the Institute for additional time to file the required audit and corrective action plan may remain eligible to apply for a Grant Award unless the Institute's approval declines to continue eligibility during the pendency of the delinquency.

§703.14. Termination, Extension, and Close Out of Grant Contracts [~~of Grants~~].

(a) The termination date of a Grant Contract shall be the date stated in the Grant Contract, except: [~~The Executive Director may terminate a grant prior to the expiration of the contract between the Institute and the grant recipient on the grounds that:~~]

(1) The Chief Executive Officer may elect to terminate the Grant Contract earlier because the Grant Recipient has failed to fulfill contractual obligations, including timely submission of required reports or certifications;

[~~(1) The recipient has failed to meet contractual obligations; or~~]

(2) The Institute terminates the Grant Contract because funds [~~Funds~~] allocated to the Grant Award [~~grant~~] are reduced, depleted, or unavailable during the award period, and the Institute [~~CPRIT~~] is unable to obtain additional funds for such purposes; or[~~.~~]

(3) The Institute and the Grant Recipient mutually agree to terminate the Grant Contract earlier.

(b) If the Institute elects to terminate the Grant Contract pursuant to subsection (a)(1) or (2) of this section, then the Chief Executive Officer [~~The Executive Director~~] shall notify the Grant Recipient [~~grant recipient~~] in writing of the intent to terminate funding at least 30 days before the intended termination date. The notice shall state the reasons for termination, and the procedure and time period for seeking reconsideration of the decision to terminate. Nothing herein restricts the Institute's ability to terminate the Grant Contract immediately or to seek additional remedies if justified by the circumstances of the event leading to early termination.

(c) The Institute may approve the Grant Recipient's written request to extend the termination date of the Grant Contract to permit the Grant Recipient additional time to complete the work of the project.

(1) A no cost extension may be granted only if the Grant Recipient is in good fiscal and programmatic standing.

(2) The Grant Recipient may request a no cost extension no earlier than 180 days and no later than 30 days prior to the termination date of the Grant Contract.

(3) The Institute may approve one no cost extension, the duration of which may be no longer than six months from the termination date of the Grant Contract, unless the Institute finds that special circumstances justify authorizing additional time to complete the work of the project.

(4) If the Institute approves the request to extend the termination date of the Grant Contract, then the termination date shall be amended to reflect the change.

(d) Within ninety (90) days after the termination of the Grant Contract, the Grant Recipient must submit a final Financial Status Report and final Grant Progress Report as well as any other required reports as specified in the Grant Contract. The final reimbursement payment shall not be made until such close out documents have been submitted and approved by the Institute. Failure to submit close out documents within 180 days of the Grant Contract termination date may result in the Grant Recipient being ineligible for other Institute Grant Awards until such time that the close out documents are submitted.

(e) The Institute may make upward or downward adjustments to the Allowable Costs requested by the Grant Recipient within ninety (90) days following the receipt of the close out reports.

(f) Nothing herein shall affect the Institute's right to disallow costs and recover Grant Award funds on the basis of a later audit or other review or the Grant Recipient's obligation to return Grant Award funds owed as a result of a later refund, correction, or other transaction.

(g) Any Grant Award funds paid to the Grant Recipient in excess of the amount to which the Grant Recipient is finally determined to be entitled under the terms of the Grant Contract constitute a debt to the state. If not paid within a reasonable period after demand, the Institute may reduce the debt owed by:

(1) Making an administrative offset against other requests for reimbursements;

(2) Withholding advance payments otherwise due to the Grant Recipient; or

(3) Other action permitted by law.

[~~(c) The notice shall state the reasons for termination, the procedure, and the time period for seeking reconsideration of the decision to terminate.~~]

[(d) Nothing in this section prohibits termination of the grant by mutual agreement of the parties prior to expiration of the contract. Mutual agreement is not required for termination as provided by subsection (a) of this section.]

§703.15. Multiyear Projects.

(a) The Oversight Committee may approve Grant Award [grant] funds for a multiyear project [subject to the requirement that all funds for the multiyear project are awarded in the state fiscal year that the project is approved by the Oversight Committee]. The total amount of Grant Award funds for the project shall be specified at the time that the Grant Award recommendation is approved by the Oversight Committee.

(b) The Grant Contract shall include an Approved Budget that reflects the amount of the Grant Award funds to be spent for each Project Year.

(c) The Institute shall distribute Grant Award funds to reimburse Allowable costs as reflected in the Approved Budget and pursuant to the Grant Recipient's submission of the quarterly Financial Status Report or the request to advance Grant Award funds. Remaining Grant Award funds shall be distributed as needed in each subsequent Project Year of the Grant Contract.

[(b) Only those funds to be expended during the fiscal year will be distributed to the multiyear grant recipient.]

[(c) Funds approved by the Oversight Committee for multiyear projects not expended during the fiscal year shall be maintained in an escrow account until such time as the funds are distributed for subsequent years of the project.]

(d) A Grant Recipient [recipient] awarded a Grant Award [grant] for a multiyear project that fails to expend the total Project Year budget may carry forward the unexpended budget balance to the next Project Year. If the amount of the unexpended budget balance to carry forward exceeds ten percent (10%) of the total Grant Award amount, the Grant Recipient must provide specific justification for why the total Grant Award amount should not be reduced by the unexpended balance [may fulfill the certification requirements set forth in §703.11 of this chapter (relating to Requirement to Demonstrate Available Funds for Cancer Research Grants) on a year-by-year basis at the time of the annual progress review or upon a schedule established by the contract between the Institute and the recipient].

§703.16. Intellectual Property Agreement.

(a) To the extent that there is a conflict between this chapter and the Grant Contract [award] between the Institute and the Grant Recipient [grant recipient], the Grant Contract [contract] terms will control.

(b) The Grant Recipient [grant recipient] may retain, assign or transfer all or a portion of any of the Intellectual Property Rights [intellectual property rights] relating to the project results. Any such assignment or transfer to a third party is subject to the following requirements:

(1) The Grant Recipient [grant recipient] shall notify the Institute of the proposed transfer or assignment;

(2) The Grant Recipient [grant recipient] shall ensure that the assignment or transfer is subject to the licenses, interests and other rights provided to the Institute pursuant to the Grant Contract [contract] and any applicable law or regulation; and

(3) Unless the transfer is taking place pursuant to an exercise of the United States government's rights under 35 U.S.C. §203, the Institute may provide comments to the Grant Recipient [grant recipient] related to the proposed transfer or assignment of rights, which the Grant Recipient [grant recipient] shall consider in good faith and use reasonable efforts to account for and incorporate such comments into the actual transfer or assignment of such rights.

(c) Unless specifically authorized by the Institute, Grant Award [grant] proceeds shall not be used to pay the costs or expenses associated with the efforts to protect the Intellectual Property Rights [intellectual property rights] or to pay the costs or expenses associated with commercialization activities.

(d) As a condition of accepting Grant Award [grant] funding from the Institute, the Grant Recipient [grant recipient] agrees to the following required commitments as defined in the Grant Contract [contract] with regard to any project results:

(1) To use commercially reasonable efforts to protect, develop, commercialize, or otherwise bring Project Results to practical application to the fullest extent feasible as determined by the Grant Recipient. The Grant Recipient is relieved of its obligations pursuant to this section so long as the Grant Recipient complies with paragraph (3) of this subsection and §703.19 of this chapter (relating to Opt-Out and Default).

(2) To share with the Institute a portion of the benefit derived from the commercial development of the Project Results [project results], as set forth in the Grant Contract [contract].

(3) To notify the Institute in writing prior to declining to pursue, abandoning, waiving or disclaiming some or all Intellectual Property Rights [intellectual property rights] related to the Project Results [project results]. Such notification shall be made with sufficient time to provide the Institute an opportunity to license or pursue the appropriate applications and other protections for such Intellectual Property Rights [intellectual property rights] to the fullest extent permitted by law.

(4) To keep the Institute promptly and reasonably informed regarding the activities undertaken by the Grant Recipient [grant recipient] to protect and/or commercialize the Project Results [project results] and to consider in good faith Institute input, if any, regarding same. Such activities may include, but are not limited to, the following:

(A) Filing of an invention disclosure forms (including updates and revisions);

(B) Creation of commercial development plans;

(C) Application, issuance, prosecution and maintenance of patents; and

(D) Negotiation of final term sheets and License Agreements [license agreements].

(5) To allow access to the books and records of the Grant Recipient [grant recipient] for the purpose of conducting an audit during normal business hours with reasonable notice to verify amounts paid to the Institute pursuant to this chapter. Notwithstanding the time limitation provided in §703.13 of this chapter (relating to Audits and Investigations), the right to audit the books and records of the Grant Recipient [grant recipient] to verify amounts required to be paid to the Institute shall continue for so long as the payments shall be made.

(6) To report to the Institute at least annually describing commercialization activities for the Project Results [project results] in a manner and form to be prescribed by the Institute.

§703.17. Revenue Sharing Standards.

(a) The Institute shall share in the financial benefit received by the Grant Recipient [grant recipient] resulting from the patents, royalties, assignments, sales, conveyances, licenses and/or other benefits

associated with the Project Results, including interest or proceeds resulting from securities and equity ownership [~~project results~~]. Such payment may include royalties, income, milestone payments, or other financial interest in an existing company or other entity.

(b) The Institute's election as to form of payment and the calculation of such payment shall be specified in the Grant Contract [~~grant contract~~].

(c) Unless otherwise provided by the Grant Contract [~~contract~~] between the Institute and the Grant Recipient [~~grant recipient~~], payments to the Institute required by this section shall be made no less than annually pursuant to a schedule set forth in the Grant Contract [~~grant contract~~] and shall be accompanied by an appropriate financial statement supporting the calculation of the payment.

(d) Nothing herein shall affect or otherwise impair the application of federal laws for projects receiving some portion of funding from the U.S. Government.

§703.18. Licensing and Assignment of Intellectual Property Rights.

(a) The Grant Recipient [~~grant recipient~~] bears the responsibility for licensing activities including identification of potential licensees, negotiation of License Agreements [~~license agreements~~], documentation of the progress and development under a License Agreement [~~license agreement~~], monitoring the performance of the licensee, and taking commercially reasonable actions to enforce the terms of the License Agreements [~~license agreements~~].

(b) Each License Agreement [~~license agreement~~] for Project Results [~~project results~~] entered into by the Grant Recipient [~~grant recipient~~] shall include an acknowledgement by the licensee that such License Agreement [~~license agreement~~] is subject to the Institute's licenses, interests and other rights, if any.

(c) Nothing herein prohibits the Grant Recipient [~~grant recipient~~] from negotiating an exclusive License Agreement [~~license agreement~~] for Project Results [~~project results~~] if exclusivity is reasonably believed by the Grant Recipient [~~grant recipient~~] to provide an economic incentive necessary for achieving commercial development and availability of the Project Results [~~project results~~]. The Grant Recipient [~~grant recipient~~] shall take reasonable action to enforce the terms of the exclusive license and report any default notice to the Institute.

(d) A [~~All~~] not-for-profit Grant Recipient [~~grant recipient~~] negotiating exclusive or non-exclusive License Agreements [~~license agreements~~] shall seek to retain the right to exploit the use of its Project Results [~~project results~~] and utilize the same for its non-commercial purposes.

§703.19. Opt-Out and Default.

(a) The Institute shall have the option, but not the obligation, to pursue protection of the applicable Intellectual Property Rights [~~intellectual property rights~~] and/or to commercialize or otherwise bring to practical application the applicable Project Results [~~project results~~] either directly or through one or more licensees, in the event of the following:

(1) Upon receipt of Grant Recipient's [~~grant recipient's~~] notice of its election to abandon, waive or disclaim any Intellectual Property Rights [~~intellectual property rights~~] or to cease its efforts to commercialize or otherwise bring to practical application any particular Project Results [~~project results~~]; or

(2) Grant Recipient's [~~recipient's~~] failure to materially comply with its obligations to protect the Intellectual Property Rights [~~intellectual property rights~~] or to use diligent and commercially reasonable efforts to commercialize or otherwise bring to practical application the Project Results [~~project results~~] in accordance with the Grant Recipient's [~~grant recipient's~~] commercial development plan(s), and Grant Recipient [~~grant recipient~~] fails to cure such non-compliance within a reasonable period of time following written notice from the Institute specifically describing the events of non-compliance.

(b) If the Institute elects to exercise its options pursuant to this section, it shall notify the Grant Recipient [~~grant recipient~~] in writing of such election. Upon receipt of notification, the Grant Recipient [~~grant recipient~~] shall:

(1) Fully cooperate with the Institute's efforts to protect, commercialize or otherwise bring to practical application the applicable Project Results [~~project results~~] at the Institute's cost, including but not limited to the transfer to the Institute or the Institute's designee of the Grant Recipient's [~~grant recipient's~~] rights, title and interest in and to the applicable Project Results [~~project results~~], to the maximum extent allowed by law;

(2) Not take any action that would materially impede the Institute's ability to protect, commercialize or otherwise bring to practical application the applicable Project Results [~~project results~~].

(c) If the Institute exercises its option under this section, the Grant Recipient [~~grant recipient~~] shall have no further claim to or interest in [~~or~~] to the applicable Project Results [~~project results~~] and shall not be entitled to any share of the revenue or other compensation with respect to such Project Results [~~project results~~], except to the minimum extent required by law, if any.

(d) The Institute's exercise of rights pursuant to this section is subject to any applicable rights of the United States government.

§703.20. Certification of Tobacco-Free Policy for Grant Recipients [~~Entities Receiving CPRIT Funds~~].

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

[~~(1) CPRIT-funded entity--An institution, organization or company that receives grant funding from CPRIT equal to or more than $25,000 during the applicable fiscal year. All references to the CPRIT funded-entity include the entity's faculty, staff, employees, and students.~~]

[~~(2) Tobacco--All forms of tobacco products, including but not limited to cigarettes, cigars, pipes, water pipes (hookah), bidis, kreteks, electronic cigarettes, smokeless tobacco, snuff and chewing tobacco.~~]

[~~(b)~~] To be eligible to receive a Grant Award [~~CPRIT funding~~], a Grant Recipient [~~CPRIT-funded entity~~] shall certify that the entity has adopted and enforces a Tobacco-free workplace policy.

(1) [~~(c)~~] A Tobacco-free workplace policy will comply with the certification required by this section if the policy is adopted by the Grant Recipient's [~~CPRIT-funded entity's~~] board of directors, governing body, or similar[~~,~~] and, at a minimum, includes provisions:

(A) [~~(1)~~] Prohibiting the use of all Tobacco products by all employees and visitors to the property owned, operated, leased, occupied, or controlled by the Grant Recipient [~~CPRIT-funded entity~~]. For purposes of the Tobacco-free workplace policy, the Grant Recipient [~~CPRIT-funded entity~~] may designate the property to which the policy applies, so long as the workplace policy encompasses all buildings and structures where the Grant Award [~~CPRIT~~] project is taking place as well as the sidewalks, parking lots, walkways, and attached parking structures immediately adjacent, but only to the extent the Grant Recipient [~~CPRIT-funded entity~~] owns, leases or controls the building, sidewalks, parking lots and parking structures.

(B) [~~(2)~~] Providing for and/or referring to Tobacco use cessation services for employees.

(2) [~~(d)~~] [~~Exceptions--~~]Upon request by a Grant Recipient [~~CPRIT-funded entity~~], the Chief Executive Officer [~~CPRIT executive director~~] may authorize [~~grant~~] a waiver of compliance with this section. If approved [~~granted~~], the waiver is effective only for the State fiscal year during which it was approved [~~granted~~].

(3) The certification and waiver requests addressed herein shall be submitted by the Grant Recipient via the Institute's electronic Grant Management System.

[~~(e) Provisions in this section apply to all grant proposals submitted to the Institute in response to a request for proposals issued by the Institute on or after March 1, 2012. All other CPRIT-funded entities must certify compliance with this rule by August 31, 2012 or the first anniversary of the CPRIT-funded entity's grant award, whichever is later.~~]

§703.21. Monitoring Grant Award Performance and Expenditures.

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

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

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

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

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

(2) Timely submission of Financial Status Reports - The Grant Recipient waives the right to reimbursement of project costs incurred during the reporting period if the financial status report for that quarter is not submitted to the Institute within 30 days of the due date. The Chief Executive Officer may approve an extension of the submission deadline if, prior to the FSR due date, the grant recipient submits a written explanation for the grant recipient's inability to complete a timely submission of the FSR.

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

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

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

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

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

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

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

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

(vi) A Historically Underutilized Businesses report;

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

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

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

(x) A verification of the amounts of Matching Funds dedicated to the research that is the subject of the Grant Award for the period covered by the annual report;

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

(xii) A single audit determination form.

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

(D) The Grant Progress Report will be evaluated by a grant manager pursuant to criteria established by the Institute. The evaluation shall be conducted under the direction of the Chief Prevention Officer, the Chief Product Development Officer, or the Chief Scientific Officer, as may be appropriate. Required financial reports associated with the Grant Progress Report will be reviewed by the Institute's financial staff.

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

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

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

(F) If the Grant Recipient fails to submit required financial reports associated with the Grant Progress Report, then the Institute

financial staff shall notify the Chief Executive Officer and the General Counsel for further action.

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

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

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

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

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

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

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

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

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

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

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

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

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305055
Wayne Roberts
Interim Executive Director
Cancer Prevention and Research Institute of Texas
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 305-8422

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CHAPTER 704. TEXANS CONQUER CANCER PROGRAM

25 TAC §§704.1, 704.3, 704.5, 704.7, 704.9, 704.11, 704.13

(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 Cancer Prevention and Research Institute of Texas or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Cancer Prevention and Research Institute of Texas (Institute) proposes the repeal of Chapter 704, §§704.1, 704.3, 704.5, 704.7, 704.9, 704.11, and 704.13, addressing the Texans Conquer Cancer program that awards funds for cancer support services.

The rules currently in Chapter 704 are no longer applicable because the 2007 Texas Legislature abolished the Texans Conquer Cancer Advisory Committee and the current rules, based upon the existence of this Committee, are inadequate to address the Texans Conquer Cancer program. The matters addressed by the repealed provisions will be incorporated into a new Chapter 704.

Kristen Pauling Doyle, General Counsel for the Institute, has determined that for the first five-year period the repeal is in effect there will be no foreseeable implications relating to costs or revenues for state or local government as a result of enforcing or administering the repeal.

Ms. Doyle also has determined that for each year of the first five years the repeal is in effect the public benefit anticipated as a result of enforcing the repeal will be clarification of the policies and procedures the Institute will follow to implement its statutory duties. There are no anticipated economic costs to persons who are required to comply with the repeal as proposed.

Ms. Doyle has determined that the repeal shall not have an effect on small businesses or on micro businesses.

Written comments on the repeal may be submitted to Ms. Kristen Pauling Doyle, General Counsel, Cancer Prevention and Research Institute of Texas, P.O. Box 12097, Austin, Texas 78711 no later than December 16, 2013. Comments may be submitted electronically to kdoyle@cprit.state.tx.us. Comments may be submitted by facsimile transmission to (512) 475-2563.

The repeal is proposed under the authority of the Texas Health and Safety Code Annotated, §102.108, which provides the Institute with the authority to adopt rules to administer the chapter.

There is no other statute, article or code that is affected by this proposal.

§704.1. Texans Conquer Cancer Advisory Committee.

§704.3. Texans Conquer Cancer Account.

§704.5. Guidelines for Expenditures.

§704.7. Guidelines for Awarding Support Services Funds.

§704.9. Termination of Contract with Grantee.

§704.11. Confidentiality of Records.

§704.13. Grantee Performance.

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

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Interim Executive Director
Cancer Prevention and Research Institute of Texas
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TITLE 28. INSURANCE

PART 1. TEXAS DEPARTMENT OF INSURANCE

CHAPTER 1. GENERAL ADMINISTRATION
SUBCHAPTER C. ASSESSMENT OF MAINTENANCE TAXES AND FEES

28 TAC §1.414

The Texas Department of Insurance proposes amendments to 28 Texas Administrative Code §1.414, concerning the 2014 assessment of maintenance taxes and fees imposed by the Insurance Code. The proposed amendments are necessary to adjust the rates of assessment for maintenance taxes and fees for 2014 on the basis of gross premium receipts for calendar year 2013 and following the methodology described below.

Section 1.414 includes rates of assessment to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; health maintenance organizations (HMOs); third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment of maintenance taxes and fees is applicable. The department also proposes amendments in subsections (a) - (f), and (h) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsections (a)(1) - (9), (c)(1) - (3), (d), (e), and (f) to update rates to reflect the methodology the department developed for 2014. This methodology is explained following the description of proposed amendments.

Finally, the department proposes amendments in subsections (a)(1) - (9), (b), (c)(1) - (3), (d), (e), and (f), that are nonsubstantive in nature to conform with the department's writing style guides. In subsections (a)(1) - (9), (b), (c)(1) - (3), (d), (e), and (f), every appearance of the words "pursuant to the" is changed to "under."

The following paragraphs provide an explanation of the methodology used to determine proposed rates of assessment for maintenance taxes and fees for 2014:

In general, the department's 2014 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance examination assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2013.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Chapter 401, Subchapters D and F, as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2014 fiscal year until the next assessment collection period in 2015. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the remaining cost need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the self-directed budget account, the examination assessment, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated the percentage for each funding source by dividing the total directly allocated to each funding source by the total direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total direct costs and administrative support costs for each funding source.

The General Appropriations Act includes appropriations to state agencies other than the department that must be funded by Account No. 0036 and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees. The department adds these costs to the sum of the direct costs

and the administrative support costs for the appropriate funding source when possible. For instance, the department allocates an appropriation to the Texas Department of Transportation for the crash information records system to the motor vehicle maintenance tax. The department includes costs for other agencies that cannot be directly allocated to a funding source to the administrative support costs. For instance, the department includes an appropriation to the Texas Facilities Commission for building support costs in administrative support costs.

The department calculates the total revenue need after completing the allocation of costs to each funding source. To complete the calculation of revenue need, the department removes costs, revenues received, and fund balance related to the self-directed budget account. Based on remaining balances, the department reduces the total cost need by subtracting the estimated ending fund balance for fiscal year 2013 (August 31, 2013) and estimated fee revenue collections for fiscal year 2014. The resulting balance is the estimated revenue need that must be supported during the 2014 fiscal year by the following funding sources: the maintenance taxes or fees, exam overhead assessments, and premium finance exam assessments.

The department determines the revenue need for each maintenance tax or fee line by dividing the total cost need for each maintenance tax line by the total of the revenue needs for all maintenance taxes. The department multiplies the calculated percentage for each line by the total revenue need for maintenance taxes. The resulting amount is the revenue need for each maintenance tax line. The department adjusts the revenue need by subtracting the estimated amount of fee and reimbursement revenue collected for each maintenance tax or fee line from the total of the revenue need for each maintenance tax or fee line. The department further adjusts the resulting revenue need as described below.

The cost allocated to the life, accident, and health maintenance tax exceeds the amount of revenue that can be collected at the maximum rate set by statute. The department allocates the difference between the amount estimated to be collected at the maximum rate and the costs allocated to the life, accident, and health maintenance tax to the other maintenance tax or fee lines. The department allocates the life, accident, and health shortfall based on each of the remaining maintenance tax or fee lines' proportionate share of the total costs for maintenance taxes or fees. The department uses the adjusted revenue need as the basis for calculating the maintenance tax rates.

For each line of insurance, the department divides the adjusted revenue need by the estimated premium volume or assessment base to determine the rate of assessment for each maintenance tax or fee.

The following paragraphs provide an explanation of the methodology to develop the proposed rates for the Division of Workers' Compensation (DWC) and the Office of Injured Employee Counsel (OIEC).

To determine the revenue need, the department considered the following factors applicable to costs for DWC and OIEC: (i) the appropriations in the General Appropriations Act for fiscal year 2013 from Account No. 0036; (ii) estimated other costs statutorily required to be paid from Account No. 0036, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance Account No. 0036 costs from the end of the 2014 fiscal year until the next assessment collection period in 2015. The department adds these three factors to determine the total revenue need.

The department reduces the total revenue need by subtracting the estimated fund balance at August 31, 2013, and the DWC fee and reimbursement revenue estimate to be collected and deposited to Account No. 0036 in fiscal year 2014. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the combined estimated workers' compensation premium volume and the certified self-insurers' liabilities plus the amount of expense incurred for administration of self insurance.

The following paragraphs provide an explanation of the methodology the department used to develop the proposed rates for the workers' compensation research and evaluation group.

To determine the revenue need, the department considered the following factors that are applicable to the workers' compensation and research and evaluation group: (i) the appropriations in the General Appropriations Act for fiscal year 2014 from Account No. 0036 and from General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) estimated other costs statutorily required to be paid from this funding source, such as fringe benefits and statewide allocated costs; and (iii) an estimated cash amount to finance costs from this funding source from the end of the 2014 fiscal year until the next assessment collection period in 2015. The department adds these three factors to determine the total revenue need.

The department reduced the total revenue need by subtracting the estimated fund balance at August 31, 2013. The resulting balance is the estimated revenue need from maintenance taxes. The department calculated the maintenance tax rate by dividing the estimated revenue need by the estimated assessment base.

FISCAL NOTE. Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is estimated income of $143,589,287 to the state's general revenue fund. There will be no fiscal implications for local government as a result of enforcing or administering the proposed section, and there will be no effect on local employment or local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Meyer also has determined that for each year of the first five years the amended section is in effect, the public benefit expected as a result of enforcing the section will be facilitating the collection of maintenance tax and fee assessments.

The cost in 2014 to an insurer that received premiums in 2013 will be: for motor vehicle insurance, .061 of 1 percent of those gross premiums; for casualty insurance, fidelity, guaranty, and surety bonds, .112 of 1 percent of those gross premiums; for fire insurance and allied lines, including inland marine, .365 of 1 percent of those gross premiums; for workers' compensation insurance, .065 of 1 percent of those gross premiums; and for title insurance, .072 of 1 percent of those gross premiums.

An insurer that receives premiums for workers' compensation insurance in 2013 will also pay 1.543 percent of that premium for the operation of DWC and OIEC and .014 of 1 percent of that premium to fund the Workers' Compensation Research and Evaluation Group's activities. A workers' compensation self-insurance group will pay 1.543 percent of its 2013 gross premium for the group's retention under Labor Code §407A.301 and .065

of 1 percent of its 2013 gross premium for the group's retention under Labor Code §407A.302.

The cost in 2014 for an insurer that received premiums in 2013 for life, health, and accident insurance, will be .040 of 1 percent of those gross premiums. In 2014, an HMO will pay $.26 per enrollee if it is a single service HMO or a limited service HMO, and $.78 per enrollee if it is a multi-service HMO. In 2014, a third party administrator will pay .027 of 1 percent of its correctly reported gross amount of administrative or service fees received in 2013. In 2014, for a nonprofit legal services corporation issuing prepaid legal service contracts, the cost will be .020 of 1 percent of correctly reported gross revenues for 2013.

In 2014, to fund the Workers' Compensation Research and Evaluation Group's activities, a workers' compensation certified self-insurer will pay .014 of 1 percent of the tax base calculated under Labor Code §407.103(b), and a workers' compensation self-insurance group will pay .014 of 1 percent of the tax base calculated under Labor Code §407.103(b).

Finally, in 2014, a workers' compensation certified self-insurer will pay 1.543 percent of the tax base calculated under Labor Code §407.103(b).

Except for workers' compensation certified self-insurers, there are two components of costs for entities required to comply with the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the maintenance tax or fee. Based on the information obtained by the department, the actual cost of gathering the information required calculate the assessment, and complete the form will be identical for the same number of lines of insurance for micro, small, and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated between $24 - $40 an hour by small and large insurers. The actual time necessary to complete the form will vary depending on the number of lines of insurance written by the company. For a company that writes only one line of business subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take two hours to complete the form. If a company writes all the lines subject to the tax, regardless of whether the company is micro, small, or large, the department estimates it will take six hours to complete the form. In the case of a certified self-insurer, DWC will calculate the maintenance tax and bill the certified self-insurer. The requirement to pay the maintenance tax or fee is the result of the legislative enactment of the statutes that impose the maintenance tax or fee and is not a result of the adoption or enforcement of this proposal. Rates of assessment proposed by the department are the same for micro, small, or large businesses. The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small or micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined the proposal may have an adverse economic effect on approximately 56 to 188 insurance companies and HMOs and approximately 299 third party administrators that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from the costs of the maintenance taxes and fees. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit/cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses does not depend on the size of the business. For insurers in the following lines of insurance, the cost of compliance depends upon the amount of gross premiums in 2013: motor vehicle insurance; casualty insurance and fidelity, guaranty, and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; title insurance; and life, health, and accident insurance. For annuity and endowment contracts, the cost of compliance depends on the amount of gross considerations in 2013. For HMOs, the cost of compliance depends on the number of enrollees in 2013. For third party administrators, the cost of compliance depends on the amount of correctly reported gross administrative or service fees in 2013. For nonprofit legal service corporations issuing prepaid legal service contracts, the cost of compliance depends on the correctly reported gross revenues. For workers' compensation certified self-insurers and workers' compensation certified self-insurance groups, the cost of compliance depends on the tax base calculated under Labor Code §407.103(b).

In accord with Government Code §2006.002(c-1), the department considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to provide the rates of assessment for maintenance taxes and fees for 2014 to be applied to life, accident, and health insurance; motor vehicle insurance; casualty insurance and fidelity, guaranty and surety bonds; fire insurance and allied lines, including inland marine; workers' compensation insurance; workers' compensation self-insured groups; title insurance; HMOs; third party administrators; nonprofit legal services corporations issuing prepaid legal services contracts; and workers' compensation certified self-insurers.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different tax rates for small and micro businesses, and (iii) exempting small and micro businesses from the tax requirements.

Not adopting the proposed rule. Under Insurance Code §251.003, if the commissioner does not advise the comptroller of the applicable maintenance tax assessment rates, the comptroller must assess taxes based on the previous year's assessment. Use of the previous year's rates and the estimated assessment bases for 2013, the department estimates revenue collections would exceed amounts needed by approximately $6.5 million. If no rule is adopted the department would collect excess revenue to fund the department's costs. The department has rejected this option.

Adopting different taxes for small and micro businesses. The current methodology is already the most equitable methodology the department can develop. The department applies an assessment methodology that contemplates a smaller assessment for small or micro businesses because the assessment is determined based on number of enrollees, gross premiums, or gross amount of administrative or service fees. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has fewer enrollees, lower gross premiums, or a lower gross amount of ad-

ministrative or service fees. However, based on the proposed rule, such a small or micro business would pay a smaller assessment, thereby reducing its risk of economic harm. The department has rejected this option.

Exemption of small and micro businesses from the tax requirements. As noted above, the current methodology is already the most equitable methodology the department can develop. The tax methodology currently used contemplates a small business paying lower maintenance taxes because assessments are based on number of enrollees, gross premiums, or gross amount of administrative or service fees. A small or micro business that has fewer enrollees, has lower gross premiums, or receives fewer gross administrative or service fees would be assessed lower taxes. However, if the assessment were completely eliminated for small or micro businesses, TDI would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. The department has rejected this option.

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

REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on December 15, 2013 to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001; 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; 271.002 - 271.006; and 36.001; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §201.052(a) requires the department to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(d) provides that in setting maintenance taxes for each fiscal year, the commissioner shall ensure that the amount of taxes imposed is sufficient to fully reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller in administering taxes imposed under the Insurance Code or another insurance law of Texas. Section 201.052(e) provides that if the amount of maintenance taxes collected is not sufficient to reimburse the appropriate portion of the general revenue fund for the amount of expenses incurred by the comptroller, other money in the Texas Department of Insurance operating account shall be used to reimburse the appropriate portion of the general revenue fund.

Insurance Code §251.001 directs the commissioner to annually determine the rate of assessment of each maintenance tax imposed under Insurance Code Title 3 Subtitle C.

Insurance Code §252.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §252.003.

Insurance Code §252.001 also specifies that the tax required by Insurance Code Chapter 252 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 252.

Insurance Code §252.002 provides that the rate of assessment set by the commissioner may not exceed 1.25 percent of the gross premiums subject to taxation under Insurance Code §252.003. Section 252.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under: Insurance Code Chapters 1807, 2001-2006, 2171, 6001, 6002, and 6003; Chapter 5, Subchapter C; Chapter 544, Subchapter H; Chapter 1806, Subchapter D; and §403.002; Government Code §§417.007, 417.008, and 417.009; and Occupations Code Chapter 2154.

Insurance Code §252.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 252 on the correctly reported gross premiums from writing insurance in Texas against loss or damage by: bombardment; civil war or commotion; cyclone; earthquake; excess or deficiency of moisture; explosion as defined by Insurance Code §2002.006(b); fire; flood; frost and freeze; hail, including loss by hail on farm crops; insurrection; invasion; lightning; military or usurped power; an order of a civil authority made to prevent the spread of a conflagration, epidemic, or catastrophe; rain; riot; the rising of the waters of the ocean or its tributaries; smoke or smudge; strike or lockout; tornado; vandalism or malicious mischief; volcanic eruption; water or other fluid or substance resulting from the breakage or leakage of sprinklers, pumps, or other apparatus erected for extinguishing fires, water pipes, or other conduits or containers; weather or climatic conditions; windstorm; an event covered under a home warranty insurance policy; or an event covered under an inland marine insurance policy.

Insurance Code §253.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §253.003. Section 253.001 also provides that the tax required by Insurance Code Chapter 253 is in addition to

other taxes imposed that are not in conflict with Insurance Code Chapter 253.

Insurance Code §253.002 provides that the rate of assessment set by the commissioner may not exceed 0.4 percent of the gross premiums subject to taxation under Insurance Code §253.003. Section 253.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating all classes of insurance specified under Insurance Code §253.003.

Insurance Code §253.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 253 on the correctly reported gross premiums from writing a class of insurance specified under Insurance Code Chapters 2008, 2251, and 2252; Chapter 5 Subchapter B; Chapter 1806 Subchapter C; Chapter 2301 Subchapter A; and Title 10 Subtitle B.

Insurance Code §254.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under the Insurance Code §254.003. Section 254.001 also provides that the tax required by the Insurance Code Chapter 254 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 254.

Insurance Code §254.002 provides that the rate of assessment set by the commissioner may not exceed 0.2 percent of the gross premiums subject to taxation under the Insurance Code §254.003. Section 254.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating motor vehicle insurance. Section 254.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing motor vehicle insurance in Texas, including personal and commercial automobile insurance.

Insurance Code §255.001 imposes a maintenance tax on each authorized insurer with gross premiums subject to taxation under Insurance Code §255.003, including a stock insurance company, mutual insurance company, reciprocal or interinsurance exchange, and Lloyd's plan. Section 255.001 also provides that the tax required by Insurance Code Chapter 255 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 255.

Insurance Code §255.002 provides that the rate of assessment set by the commissioner may not exceed 0.6 percent of the gross premiums subject to taxation under Insurance Code §255.003. Section 255.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating workers' compensation insurance.

Insurance Code §255.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 254 on the correctly reported gross premiums from writing workers' compensation insurance in Texas, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Chapter 2053, Subchapter E. The section also provides that the rate of assessment shall be applied to the modified annual premium before application of a deductible premium credit.

Insurance Code §257.001(a) imposes a maintenance tax on each authorized insurer, including a group hospital service corporation, managed care organization, local mutual aid association, statewide mutual assessment company, stipulated premium company, and stock or mutual insurance company, that collects from residents of this state gross premiums or gross considerations subject to taxation under Insurance Code §257.003. Section 257.001(a) also provides that the tax required by Chapter 257 is in addition to other taxes imposed that are not in conflict with Insurance Code Chapter 257.

Insurance Code §257.002 provides that the rate of assessment set by the commissioner may not exceed 0.04 percent of the gross premiums subject to taxation under Insurance Code §257.003. Section 257.002(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating life, health, and accident insurers. Section 257.003 specifies that an insurer shall pay maintenance taxes under Insurance Code Chapter 257 on the correctly reported gross premiums collected from writing life, health, and accident insurance in Texas, as well as gross considerations collected from writing annuity or endowment contracts in Texas. The section also provides that gross premiums on which an assessment is based under Insurance Code Chapter 257 may not include premiums received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; or premiums paid on group health, accident, and life policies in which the group covered by the policy consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §258.002 imposes a per capita maintenance tax on each authorized HMO with gross revenues subject to taxation under Insurance Code 258.004. Section 258.002 also provides that the tax required by Insurance Code Chapter 258 is in addition to other taxes that are not in conflict with Insurance Code Chapter 258.

Insurance Code §258.003 provides that the rate of assessment set by the commissioner on HMOs may not exceed $2 per enrollee. Section 258.003 also provides that the commissioner shall annually adjust the rate of assessment of the per capita maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating HMOs. Section 258.003 also provides that rate of assessment may differ between basic health care plans, limited health care service plans, and single health care service plans and must equitably reflect any differences in regulatory resources attributable to each type of plan.

Insurance Code §258.004 provides that an HMO shall pay per capita maintenance taxes under Insurance Code Chapter 258

on the correctly reported gross revenues collected from issuing health maintenance certificates or contracts in Texas. Section 258.004 also provides that the amount of maintenance tax assessed may not be computed based on enrollees who, as individual certificate holders or their dependents, are covered by a master group policy paid for by revenues received from the United States for insurance contracted for by the United States in accord with or in furtherance of Title XVIII of the Social Security Act (42 U.S.C. §§1395c et seq.) and its subsequent amendments; revenues paid on group health, accident, and life certificates or contracts in which the group covered by the certificate or contract consists of a single nonprofit trust established to provide coverage primarily for employees of a municipality, county, or hospital district in this state; or a county or municipal hospital, without regard to whether the employees are employees of the county or municipality or of an entity operating the hospital on behalf of the county or municipality.

Insurance Code §259.002 imposes a maintenance tax on each authorized third party administrator with administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.002 also provides that the tax required by Insurance Code chapter 259 is in addition to other taxes imposed that are not in conflict with the chapter. Section 259.003 provides that the rate of assessment set by the commissioner may not exceed one percent of the administrative or service fees subject to taxation under Insurance Code §259.004. Section 259.003(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses of regulating third party administrators.

Insurance Code §260.001 imposes a maintenance tax on each nonprofit legal services corporation subject to Insurance Code Chapter 961 with gross revenues subject to taxation under Insurance Code §260.003. Section 260.001 also provides that the tax required by Insurance Code Chapter 260 is in addition to other taxes imposed that are not in conflict with the chapter. Section 260.002 provides that the rate of assessment set by the commissioner may not exceed one percent of the corporation's gross revenues subject to taxation under Insurance Code §260.003. Section 260.002 also provides that the commissioner shall annually adjust the rate of assessment of the maintenance tax so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating nonprofit legal services corporations. Section 260.003 provides that a nonprofit legal services corporation shall pay maintenance taxes under this chapter on the correctly reported gross revenues received from issuing prepaid legal services contracts in this state.

Insurance Code §271.002 imposes a maintenance fee on all premiums subject to assessment under Insurance Code §271.006. Section 271.002 also specifies that the maintenance fee is not a tax and shall be reported and paid separately from premium and retaliatory taxes. Section 271.003 specifies that the maintenance fee is included in the division of premiums and may not be separately charged to a title insurance agent. Section 271.004 provides that the commissioner shall annually determine the rate of assessment of the title insurance maintenance fee. Section 271.004(b) provides that in determining the rate of assessment, the commissioner shall consider the requirement to reimburse the appropriate portion of the general revenue fund under Insurance Code §201.052. Section 271.005 provides that rate of assessment set by the commissioner may not exceed one percent of the gross premiums subject to assessment under Insurance Code §271.006. Section 271.005(b) provides that the commissioner shall annually adjust the rate of assessment of the maintenance fee so that the fee imposed that year, together with any unexpended funds produced by the fee, produces the amount the commissioner determines is necessary to pay the expenses during the succeeding year of regulating title insurance. Section 271.006 requires an insurer to pay maintenance fees under this chapter on the correctly reported gross premiums from writing title insurance in Texas.

Labor Code §403.002 imposes an annual maintenance tax on each insurance carrier to pay the costs of administering the Texas Workers' Compensation Act and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §403.002 also provides that the assessment may not exceed an amount equal to two percent of the correctly reported gross workers' compensation insurance premiums, including the modified annual premium of a policyholder that purchases an optional deductible plan under Insurance Code Article 5.55C. Labor Code §403.002 also provides that the rate of assessment be applied to the modified annual premium before application of a deductible premium credit. Additionally, Labor Code §403.002 states that a workers' compensation insurance company is taxed at the rate established under Labor Code §403.003, and that the tax shall be collected in the manner provided for collection of other taxes on gross premiums from a workers' compensation insurance company as provided in Insurance Code Chapter 255. Finally, Labor Code §403.002 states that each certified self-insurer shall pay a fee and maintenance taxes as provided by Labor Code Chapter 407, Subchapter F.

Labor Code §403.003 requires the commissioner of insurance to set and certify to the comptroller the rate of maintenance tax assessment, taking into account: (i) any expenditure projected as necessary for DWC and OIEC to administer the Texas Workers' Compensation Act during the fiscal year for which the rate of assessment is set and reimburse the general revenue fund as provided by Insurance Code §201.052; (ii) projected employee benefits paid from general revenues; (iii) a surplus or deficit produced by the tax in the preceding year; (iv) revenue recovered from other sources, including reappropriated receipts, grants, payments, fees, and gifts recovered under the Texas Workers' Compensation Act; and (v) expenditures projected as necessary to support the prosecution of workers' compensation insurance fraud. Labor Code §403.003 also provides that in setting the rate of assessment, the commissioner of insurance may not consider revenue or expenditures related to the State Office of Risk Management, the workers' compensation research functions of the department under Labor Code Chapter 405, or any other revenue or expenditure excluded from consideration by law.

Labor Code §403.005 provides that the commissioner of insurance shall annually adjust the rate of assessment of the maintenance tax imposed under §403.003 so that the tax imposed that year, together with any unexpended funds produced by the tax, produces the amount the commissioner of insurance determines is necessary to pay the expenses of administering the Texas Workers' Compensation Act. Labor Code §405.003(a) - (c) establishes a maintenance tax on insurance carriers and self-insurance groups to fund the workers' compensation research and evaluation group, it provides for the department to set the rate of the maintenance tax based on the expenditures authorized and the receipts anticipated in legislative appropriations, and it

provides that the tax is in addition to all other taxes imposed on insurance carriers for workers' compensation purposes.

Labor Code §407.103 imposes a maintenance tax on each workers' compensation certified self-insurer for the administration of the DWC and OIEC and to support the prosecution of workers' compensation insurance fraud in Texas. Labor Code §407.103 also provides that not more than two percent of the total tax base of all certified self-insurers, as computed under subsection (b) of the section, may be assessed for the maintenance tax established under Labor Code §407.103. Labor Code §407.103 also provides that to determine the tax base of a certified self-insurer for purposes of Labor Code Chapter 407, the department shall multiply the amount of the certified self-insurer's liabilities for workers' compensation claims incurred in the previous year, including claims incurred but not reported, plus the amount of expense incurred by the certified self-insurer in the previous year for administration of self-insurance, including legal costs, by 1.02. Labor Code §407.103 also provides that the tax liability of a certified self-insurer under the section is the tax base computed under subsection (b) of the section multiplied by the rate assessed workers' compensation insurance companies under Labor Code §§403.002 and 403.003. Finally, Labor Code §407.103 provides that in setting the rate of maintenance tax assessment for insurance companies, the commissioner of insurance may not consider revenue or expenditures related to the operation of the self-insurer program under Labor Code Chapter 407.

Section 407.104(b) provides that the department shall compute the fee and taxes of a certified self-insurer and notify the certified self-insurer of the amounts due. Section 407.104(b) also provides that a certified self-insurer shall remit the taxes and fees to DWC.

The Labor Code §407A.301 imposes a self-insurance group maintenance tax on each workers' compensation self-insurance group based on gross premium for the group's retention. Labor Code §407A.301 provides that the self-insurance group maintenance tax is to pay for the administration of DWC, the prosecution of workers' compensation insurance fraud in Texas, the research functions of the department under Labor Code Chapter 405, and the administration of OIEC under Labor Code Chapter 404. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(1) and (2) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §§403.002 and 403.003. Labor Code §407A.301 also provides that the tax liability of a group under subsection (a)(3) of the section is based on gross premium for the group's retention multiplied by the rate assessed insurance carriers under Labor Code §405.003. Additionally, Labor Code §407A.301 provides that the tax under the section does not apply to premium collected by the group for excess insurance. Finally, Labor Code §407A.301(e) provides that the tax under the section shall be collected by the comptroller as provided by Insurance Code Chapter 255 and Insurance Code §201.051.

Labor Code §407A.302 requires each workers' compensation self-insurance group to pay the maintenance tax imposed under Insurance Code Chapter 255, for the administrative costs incurred by the department in implementing Labor Code Chapter 407A. Labor Code §407A.302 provides that the tax liability of a workers' compensation self-insurance group under the section is based on gross premium for the group's retention and does not include premium collected by the group for excess insurance. Labor Code §407A.302 also provides that the maintenance tax assessed under the section is subject to Insurance Code Chapter 255, and that it shall be collected by the comptroller in the manner provided by Insurance Code Chapter 255.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§201.001(a)(1), (b), and (c); 201.052(a), (d), and (e); 251.001, 252.001 - 252.003; 253.001 - 253.003; 254.001 - 254.003; 255.001 - 255.003; 257.001 - 257.003; 258.002 - 258.004; 259.002 - 259.004; 260.001 - 260.003; and 271.002 - 271.006; and Labor Code §§403.002, 403.003, 403.005, 405.003(a) - (c), 407.103, 407.104(b), 407A.301, and 407A.302.

§1.414. Assessment of Maintenance Taxes and Fees, 2014 [~~2013~~].

(a) The department assesses the following rates for maintenance taxes and fees on gross premiums of insurers for calendar year 2013 [~~2012~~] for the lines of insurance specified in paragraphs (1) - (9) of this subsection:

(1) for motor vehicle insurance, under [~~pursuant to the~~] Insurance Code §254.002, the rate is .061 [~~.072~~] of 1.0 percent;

(2) for casualty insurance, and fidelity, guaranty, and surety bonds, under [~~pursuant to the~~] Insurance Code §253.002, the rate is .112 [~~.151~~] of 1.0 percent;

(3) for fire insurance and allied lines, including inland marine, under [~~pursuant to the~~] Insurance Code §252.002, the rate is .365 [~~.305~~] of 1.0 percent;

(4) for workers' compensation insurance, under [~~pursuant to the~~] Insurance Code §255.002, the rate is .065 [~~.108~~] of 1.0 percent;

(5) for workers' compensation insurance, under [~~pursuant to the~~] Labor Code §403.003, the rate is 1.543 [~~1.669~~] percent;

(6) for workers' compensation insurance, under [~~pursuant to the~~] Labor Code §405.003, the rate is .014 [~~.017~~] of 1.0 percent;

(7) for workers' compensation insurance, under [~~pursuant to the~~] Labor Code §407A.301, the rate is 1.543 [~~1.669~~] percent;

(8) for workers' compensation insurance, under [~~pursuant to the~~] Labor Code §407A.302, the rate is .065 [~~.108~~] of 1.0 percent; and

(9) for title insurance, under [~~pursuant to the~~] Insurance Code §271.004, the rate is .072 [~~.151~~] of 1.0 percent.

(b) The rate for the maintenance tax to be assessed on gross premiums for calendar year 2013 [~~2012~~] for life, health, and accident insurance and the gross considerations for annuity and endowment contracts, under [~~pursuant to the~~] Insurance Code §257.002, is .040 of 1.0 percent.

(c) The department assesses rates for maintenance taxes for calendar year 2013 [~~2012~~] for the following entities as follows:

(1) under [~~pursuant to the~~] Insurance Code §258.003, the rate is $.26 [~~$.41~~] per enrollee for single service health maintenance organizations, $.78 [~~$1.23~~] per enrollee for multi-service health maintenance organizations, and $.26 [~~$.41~~] per enrollee for limited service health maintenance organizations;

(2) under [~~pursuant to the~~] Insurance Code §259.003, the rate is .027 [~~.035~~] of 1.0 percent of the correctly reported gross amount of administrative or service fees for third party administrators; and

(3) under [~~pursuant to the~~] Insurance Code §260.002, the rate is .020 [~~.029~~] of 1.0 percent of correctly reported gross revenues for nonprofit legal service corporations issuing prepaid legal service contracts.

(d) Under [~~Pursuant to the~~] Labor Code §405.003, each certified self-insurer must pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2014 [~~2013~~] at a rate of .014 [~~.017~~] of 1.0 percent of the tax base calculated under [~~pursuant to the~~] Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(e) Under [~~Pursuant to the~~] Labor Code §405.003 and §407A.301, each workers' compensation self-insurance group must pay a maintenance tax for the workers' compensation research and evaluation group in calendar year 2014 [~~2013~~] at a rate of .014 [~~.017~~] percent of 1.0 percent of the tax base calculated under [~~pursuant to the~~] Labor Code §407.103(b).

(f) Under [~~Pursuant to the~~] Labor Code §407.103 and §407.104, each certified self-insurer must pay a self-insurance maintenance tax in calendar year 2014 [~~2013~~] at a rate of 1.543 [~~1.669~~] percent of the tax base calculated under [~~pursuant to the~~] Labor Code §407.103(b) which must be billed to the certified self-insurer by the Division of Workers' Compensation.

(g) The enactment of Senate Bill 14, 78th Legislature, Regular Session, relating to certain insurance rates, forms, and practices, did not affect the calculation of the maintenance tax rates or the assessment of the taxes.

(h) The taxes assessed under subsections (a), (b), (c), and (e) of this section will be payable and due to the Comptroller of Public Accounts, P.O. Box 149356, Austin, TX 78714-9356 on March 1, 2014 [~~2013~~].

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

Filed with the Office of the Secretary of State on November 4, 2013.

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Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-6327

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CHAPTER 7. CORPORATE AND FINANCIAL REGULATION

SUBCHAPTER J. EXAMINATION EXPENSES AND ASSESSMENTS

28 TAC §7.1001

The Texas Department of Insurance (department) proposes amendments to 28 Texas Administrative Code §7.1001, concerning assessments to cover the expenses of examining domestic and foreign insurance companies and self-insurance groups providing workers' compensation insurance. Under Insurance Code §843.156, the term "insurance company" as used in this proposal includes a health maintenance organization (HMO) as defined in Insurance Code §843.002.

The proposed amendments are necessary to establish the examination expenses to be levied against and collected from each domestic and foreign insurance company and each self-insurance group providing workers' compensation insurance examined during the 2014 calendar year. The proposed amendments are also necessary to establish the rates of assessment to be levied against and collected from each domestic insurance company examined during the 2014 calendar year, based on admitted assets and gross premium receipts for the 2013 calendar year, and from each foreign insurance company examined during the 2014 calendar year, based on a percentage of the gross salary paid to an examiner for each month or part of a month during which the examination is made.

The department proposes an amendment to the section heading to reflect the year for which the proposed assessment will be applicable. The department also proposes amendments in subsections (b)(1), (c)(1), (c)(2)(A), (c)(2)(B), (c)(3), and (d) to reflect the appropriate year for accurate application of the section.

The department proposes amendments in subsection (c)(2)(A) and (B) to update assessments to reflect the methodology the department has developed for 2014, which is addressed following the description of proposed amendments.

Finally, the department proposes amendments in subsections that are nonsubstantive in nature to conform with the department's writing style guides. In section (c), the department changes the word "accordance" to "accord." In subsections (a), (b)(1), (b)(2), (c), and (d), the department changes the words "pursuant to the" to "under" in each place that it appears. In subsections (c)(1) and (c)(4), the department changes the word "shall" to "must" in each place that it appears. In subsection (c)(3), the department changes the number "366" to "365" to reflect the number of days during calendar year 2013. In subsection (e), the department updates the address to include the "Accounting Division" and proper mail code.

The following paragraphs provide an explanation of the methodology used to determine examination overhead assessments for 2014.

In general, the department's 2014 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; premium finance exam assessments; and funds in the self-directed budget account, as established under Insurance Code §401.252) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2013.

To determine total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner of insurance for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other

personnel expenses and administrative support costs; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2014 fiscal year until the next assessment collection period in 2015. This estimate includes an amount to contribute to funding the examination premium tax credits reimbursement that will occur in 2015. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

Each section within the department that provides services directly to the public or the insurance industry allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source. The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

To complete the calculation of the revenue need, the department combined the costs allocated to the examination overhead assessment source and the self-directed budget account source. The department then subtracted the fiscal year 2014 estimated amount of examination direct billing revenue from the amount of the combined costs of the examination overhead assessment source and the self-directed budget account source. The resulting balance is the amount of the examination revenue need for the purpose of calculating the examination overhead assessment rates.

To calculate the assessment rates, the department allocated 50 percent of the revenue need to admitted assets and 50 percent to gross premium receipts. The department divided the revenue need for gross premium receipts by the total estimated gross premium receipts for calendar year 2013 to determine the proposed rate of assessment for gross premium receipts. The department divided the revenue need for admitted assets by the total estimated admitted assets for calendar year 2013 to determine the proposed rate of assessment for admitted assets.

The department did not alter the methodology to include changes provided for in House Bill 2163, 83rd Legislature, Regular Session, 2013. The bill amends Insurance Code §401.152 allowing the department to impose an annual assessment on insurers not organized under the laws of this state in the same manner as domestic companies are assessed under Insurance Code §401.151(c). Because the bill was effective September 1, 2013, the department determined that assessing foreign companies in the same manner as domestic companies would cause a significant administrative burden for the companies and the department. Implementing the bill would require the companies to submit annual statement data directly to the department for the period of September 1, 2013, to December 31, 2013. The department intends to determine the process for implementing the amendment for the calendar 2015 assessment.

In the 2014 rule amendments, the department will implement the provisions of Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), Article I, Rider 16, Page 28. This rider directs the department to reimburse the General Revenue Fund from the Texas Department of Insurance Operating Fund Account for the costs of insurance premium tax credits for examination fees and overhead assessments. The amount is estimated to be $10 million. Senate Bill 1665, 83rd Legislature, Regular Session, 2013, allows the department to use dollars received from the examination overhead assessment (deposited to the self-directed budget account and subsequently transferred to the Texas Department of Insurance Operating Fund Account) to pay for the reimbursement of premium tax credits for examination costs. In this year's assessment, the department added an amount to contribute to funding the reimbursement in 2015. In calendar year 2015, the department will assess companies paying the examination overhead assessment to collect additional revenues to fund the reimbursement.

FISCAL NOTE. Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposed amendments will be in effect, the expected fiscal impact on state government is estimated income of $12,505,294 to the Texas Department of Insurance Examination Self-Directed Account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the section, and there will be no effect on local employment or the local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Meyer also has determined that for each year of the first five years the proposed amendments are in effect, the public benefit expected as a result of enforcing the section will be adequate and reasonable assessment rates to defray the state's expenses of domestic and foreign insurer examinations and administration of the laws related to these examinations during the 2014 calendar year. Mr. Meyer has determined that the direct economic cost to entities required to comply with the proposed amendments will vary.

The examination expense will consist of the actual salary of the examiner directly attributable to the examination and the actual expenses of the examiner directly attributable to the examination, including transportation, lodging, meals, subsistence expenses, and parking fees. The actual salary of an examiner is to be determined by dividing the annual salary of the examiner by the total number of working days in a year, and a company or group is to be assessed the part of the annual salary attributable to each working day the examiner examines the company or group.

The amount of the assessment in 2014 for domestic companies will be .00215 of 1.0 percent of the company's admitted assets as of December 31, 2013, excluding pension assets specified in subsection (c)(2)(A), and .00903 of 1.0 percent of the company's gross premium receipts for 2013, excluding pension related premiums specified in subsection (c)(2)(B), and premiums related to welfare benefits described in subsection (c)(6). The amount of the assessment in 2014 for foreign companies examined in 2014 will be 34 percent of the gross salary paid to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social

security, and the state paid portion of insurance premiums; and vacation and sick leave accruals.

There are two components of costs for entities required to comply with the assessment requirements in the proposal: the cost to gather the information, calculate the assessment, and complete the required forms; and the cost of the assessment. Based on information obtained by the department, the actual cost of gathering the information required to fill out the form, calculate the assessment, and complete the form will be the same for micro, small, and large businesses. Generally, a person familiar with the accounting records of the company and accounting practices in general will perform the activities necessary to comply with the section. Such persons are similarly compensated by small and large insurers. The compensation is generally between $24 and $40 an hour. The department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours. The requirement to pay the assessment necessary to cover the expenses of company examination is the result of legislative enactment and is not a result of the adoption or enforcement of this proposal. There is no difference in proposed rates of assessment for micro, small, and large businesses, except that for those domestic companies with an overhead assessment of less than $25 as computed under §7.1001(c)(2)(A) and (B), a minimum overhead assessment of $25 will be assessed.

The department, after considering the purpose of the authorizing statutes, does not believe it is legal or feasible to waive or modify the requirements of the proposal for small and micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 12 to 41 domestic insurance companies that are small or micro businesses required to comply with the proposed rules. It is not possible to anticipate the number or size of foreign insurance companies that may be required to comply with the proposed rule, because of the limited number of examinations the department conducts on foreign insurance companies. The department has determined that none of the workers' compensation self-insurance groups that must comply with the proposed rule would qualify as a small or micro business.

Adverse economic impact may result from costs associated with examination fees and the amount of the required assessment resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit or cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on: for foreign insurers and for workers' compensation self-insurance groups, the length of time it takes to conduct an examination, the annual salary of the examiner, and expenses associated with the examination; and for domestic insurers, the length of time it takes to conduct an examination, expenses associated with the examination, and the admitted assets and gross premium receipts of the company.

In accord with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to propose a rule addressing examination fees and assessments for domestic and foreign insurance companies and workers' compensation self-insurance groups.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting a different assessment requirement for small and micro businesses, and (iii) exempting small or micro businesses from the assessment requirements.

Not adopting the proposed rule. Without adopting the proposed rule the department would be unable to collect the necessary funds to cover the examination functions of the department. The purpose of conducting examinations is to monitor the activities and solvency of insurance companies. Failure of the department to perform its examination functions could result in public harm if a company does not comply with the Insurance Code or becomes insolvent and this is not detected because of the lack of regular examinations. Not adopting the rule would also result in the department being out of compliance with Insurance Code §401.151(c), which directs the department to impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the insurer examination laws of Texas. This option has been rejected.

Adopting a different assessment requirement for small and micro businesses. The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that results in a smaller assessment, down to a minimum assessment of $25, for domestic insurer small or micro businesses because the assessment is determined based on premium levels and admitted assets. The department anticipates that a domestic insurer that is a small or micro business that would be most susceptible to economic harm would be one that writes fewer premiums and has fewer admitted assets. However, based on the proposed assessment requirements of the rule, that small or micro business would pay a smaller assessment, reducing its risk of economic harm. This option has been rejected.

Exempting small or micro businesses from the assessment requirements. As previously noted, the current methodology used to develop the proposed rule is already the most equitable that the department can develop. The department applies a methodology that contemplates a domestic insurer that is a small or micro business paying less of an assessment if it writes fewer premiums or has less admitted assets. However, if the assessment were completely eliminated for small or micro businesses, TDI would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

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

REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on December 15, 2013 to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Depart-

ment of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendment is proposed under Insurance Code §§201.001(a)(1), (b), and (c); 401.151; 401.152; 401.155, 401.156; 843.156(h); and 36.001; and Labor Code §407A.252(b).

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner shall administer money in the Texas Department of Insurance operating account and may spend money from the account in accordance with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §401.151 provides that a domestic insurer examined by the department or under the department's authority shall pay the expenses of the examination in an amount the commissioner certifies as just and reasonable.

Insurance Code §401.151 also provides that the department shall collect an assessment at the time of the examination to cover all expenses attributable directly to that examination, including the salaries and expenses of department employees and expenses described by Insurance Code §803.007. Section 401.151 also requires that the department impose an annual assessment on domestic insurers in an amount sufficient to meet all other expenses and disbursements necessary to comply with the laws of Texas relating to the examination of insurers. Additionally, §401.151 states that in determining the amount of assessment, the department shall consider the insurer's annual premium receipts or admitted assets, or both, that are not attributable to 90 percent of pension plan contracts as defined by §818(a), Internal Revenue Code of 1986; or the total amount of the insurer's insurance in force.

Insurance Code §401.152 provides that an insurer not organized under the laws of Texas shall reimburse the department for the salary and expenses of each examiner participating in an examination of the insurer and for other department expenses that are properly allocable to the department's participation in the examination. Section 401.152 also requires an insurer to pay the expenses under the section directly to the department on presentation of an itemized written statement from the commissioner. Additionally, §401.152 provides that the commissioner shall determine the salary of an examiner participating in an examination of an insurer's books or records located in another state based on the salary rate recommended by the National Association of Insurance Commissioners or the examiner's regular salary rate.

Insurance Code §401.155 requires the department to impose additional assessments against insurers on a pro rata basis as necessary to cover all expenses and disbursements required by law and to comply with Insurance Code Chapter 401, Subchapter D, and §§401.103, 401.104, 401.105, and 401.106.

Insurance Code §401.156 requires the department to deposit any assessments or fees collected under Insurance Code Chapter 401, Subchapter D, relating to the examination of insurers and other regulated entities by the financial examinations division or actuarial division, as those terms are defined by Insurance Code §401.251, to the credit of an account with the Texas Treasury Safekeeping Trust Company to be used exclusively to pay examination and administrative support costs, as defined by Insurance Code §401.251. Additionally, §401.156 provides that revenue not related to the examination of insurers or other regulated entities by the financial examinations division or actuarial division be deposited to the credit of the Texas Department of Insurance operating account.

Insurance Code §843.156(h) provides that Insurance Code Chapter 401, Subchapter D, applies to an HMO, except to the extent that the commissioner determines that the nature of the examination of an HMO renders the applicability of those provisions clearly inappropriate.

Labor Code §407A.252(b) provides that the commissioner of insurance may recover the expenses of an examination of a workers' compensation self-insurance group under Insurance Code Article 1.16, which was recodified as Insurance Code §§401.151, 401.152, 401.155, and 401.156 by House Bill 2017, 79th Legislature, Regular Session (2005), to the extent the maintenance tax under Labor Code §407A.302 does not cover those expenses.

Insurance Code §36.001 provides that the commissioner may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of Texas.

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§201.001(a)(1),(b), and (c); 401.151; 401.152; 401.155; 401.156; and 843.156(h); and Labor Code §407A.252(b).

§7.1001. Examination Assessments for Domestic and Foreign Insurance Companies and Self-Insurance Groups Providing Workers' Compensation Insurance, 2014 [~~2013~~].

(a) Under [~~Pursuant to the~~] Insurance Code §843.156 and for purposes of this section, the term "insurance company" includes a health maintenance organization as defined in [~~the~~] Insurance Code §843.002.

(b) An insurer not organized under the laws of Texas (foreign insurance company) must pay the costs of an examination as specified in this subsection.

(1) Under [~~Pursuant to the~~] Insurance Code §401.152, a foreign insurance company must reimburse the department for the salary and examination expenses of each examiner participating in an examination of the insurance company allocable to an examination of the company. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the company the part of the annual salary attributable to each working day the examiner examines the company during 2014 [~~2013~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(2) Under [~~Pursuant to the~~] Insurance Code §401.155, a foreign insurance company must pay an additional assessment of 34 percent of the gross salary the department pays to each examiner for each month or partial month of the examination to cover the examiner's longevity pay; state contributions to retirement, social security, and the state paid portion of insurance premiums; and vacation and sick leave accruals.

(3) A foreign insurance company must pay the reimbursements and payments required by this subsection to the department as specified in each itemized bill the department provides to the foreign insurance company.

(c) Under [~~Pursuant to the~~] Insurance Code §401.151, §401.155, and Chapter 803, a domestic insurance company must pay examination expenses and rates of overhead assessment in accord [~~accordance~~] with this subsection.

(1) A domestic insurance company must pay the actual salaries and expenses of the examiners allocable to an examination of the company. The annual salary of each examiner is to be divided by the total number of working days in a year, and the company is to be assessed the part of the annual salary attributable to each working day the examiner examines the company during 2014 [~~2013~~]. The expenses assessed must [~~shall~~] be those actually incurred by the examiner to the extent permitted by law.

(2) Except as provided in paragraphs (3) and (4) of this subsection, the overhead assessment to cover administrative departmental expenses attributable to examination of companies is:

(A) .00215 [~~.00237~~] of 1.0 percent of the admitted assets of the company as of December 31, 2013 [~~2012~~], taking into consideration the annual admitted assets that are not attributable to 90 percent of pension plan contracts as defined in [~~Section~~] §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. [~~Section~~] §818(a)); and

(B) .00903 [~~.00839~~] of 1.0 percent of the gross premium receipts of the company for the year 2013 [~~2012~~], taking into consideration the annual premium receipts that are not attributable to 90 percent of pension plan contracts as defined in [~~Section~~] §818(a) of the Internal Revenue Code of 1986 (26 U.S.C. [~~Section~~] §818(a)).

(3) Except as provided in paragraph (4) of this subsection, if a company was a domestic insurance company for less than a full year during calendar year 2013 [~~2012~~], the overhead assessment for the company is the overhead assessment required under paragraph (2)(A) and (B) of this subsection divided by 365 [~~366~~] and multiplied by the number of days the company was a domestic insurance company during calendar year 2013 [~~2012~~].

(4) If the overhead assessment required under paragraph (2)(A) and (B) of this subsection or paragraph (3) of this subsection produces an overhead assessment of less than a $25 total, a domestic insurance company must [~~shall~~] pay a minimum overhead assessment of $25.

(5) The department will base the overhead assessments on the assets and premium receipts reported in the annual statements.

(6) For the purpose of applying paragraph (2)(B) of this subsection, the term "gross premium receipts" does not include insurance premiums for insurance contracted for by a state or federal government entity to provide welfare benefits to designated welfare recipients or contracted for in accord with or in furtherance of the Human Resources Code, Title 2, or the federal Social Security Act (42 U.S.C. [~~Section~~] §§301 et seq.).

(d) Under [~~Pursuant to the~~] Labor Code §407A.252, a workers' compensation self-insurance group must pay the actual salaries and expenses of the examiners allocable to an examination of the group. To determine the allocable salary for each examiner, the department divides the annual salary of each examiner by the total number of working days in a year. The department assesses the group the part of the annual salary attributable to each working day the examiner examines the company during 2014 [~~2013~~]. The expenses the department assesses are those actually incurred by the examiner to the extent permitted by law.

(e) A domestic insurance company must pay the overhead assessment required under subsection (c) of this section to the Texas Department of Insurance, Accounting Division, P.O. Box 149104, MC 9999 [~~999~~], Austin, Texas 78714-9104 not later than 30 days from the invoice date.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305043
Sara Waitt
General Counsel
Texas Department of Insurance
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-6327

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CHAPTER 21. TRADE PRACTICES
SUBCHAPTER T. SUBMISSION OF CLEAN CLAIMS

28 TAC §§21.2801 - 21.2809, 21.2811 - 21.2826

The Texas Department of Insurance (department) proposes amendments to 28 Texas Administrative Code (Administrative Code) Chapter 21, Subchapter T, §§21.2801 - 21.2809 and §§21.2811 - 21.2826, concerning the elements and the processing of a clean health care claim.

The National Uniform Claims Committee (NUCC), the National Uniform Billing Committee (NUBC), and the Centers for Medicare and Medicaid Services of the U.S. Department of Health and Human Services (CMS) have identified much of the information needed to process a health care claim. Texas Insurance Code (Insurance Code) §1204.102 requires a provider to use one of two forms, HCFA 1500 or UB-82/HCFA, or their successor forms, for submission of certain claims. These proposed amendments are needed to allow a provider to begin using CMS-1500 (02/12), the most current successor form to the HCFA 1500, to begin phasing out successor form CMS-1500 (08/05), and to eliminate forms CMS-1500 (12/90), and UB-92 CMS-1450, which are no longer used. The amendments also reflect changes to data elements captured in the revised information fields in the newest successor form.

On June 10, 2013, the White House Office of Management and Budget (OMB) approved the revised CMS-1500 (02/12) claim form. On June 27, 2013, CMS announced its tentative timeline for implementing the form for submission of Medicare claims. On August 6, 2013, NUCC announced it had approved a transition timeline for use of the form for submission of non-Medicare claims. The transition timeline permits use of the new form for

non-Medicare claims beginning January 6, 2014, with mandatory use by April 1, 2014. These rules are being proposed and will be adopted on an expedited basis so that all affected parties can phase in their use of the new form before its mandatory use date.

House Bill 1772, 82nd Legislature, Regular Session (2011) amended Insurance Code Chapter 1301, §1301.0041 to add exclusive provider benefit plans to the entities regulated by the chapter. Under 28 TAC §3.3701, a provision that applies to a preferred provider benefit plan in the Administrative Code also applies to an exclusive provider benefit plan. The proposed amendments clarify that these rules apply to an exclusive provider benefit plan carrier unless specifically excepted. For this reason, the term "managed care carrier" (MCC) is substituted for the phrase "HMO or preferred provider carrier" throughout this proposal and throughout the proposed rule to more easily identify the three types of entities regulated by Subchapter T.

House Bill 2292, 82nd Legislature, Regular Session (2011) amended Insurance Code Chapter 843, §843.339, and Chapter 1301, §1301.104 to provide that a pharmacy claim submitted electronically to a managed care carrier must be paid by electronic funds transfer not later than 18 days after its affirmative adjudication, and a pharmacy claim submitted nonelectronically must be paid not later than 21 days after its affirmative adjudication. The proposed amendments are needed to incorporate those timelines into these rules.

The proposed amendments do not establish clean claim data elements for pharmacy claims because Insurance Code §843.339 and §1301.104, which establish the payment deadlines for such claims, reference the date a claim is affirmatively adjudicated, rather than the receipt of a clean claim.

House Bill 2064, 81st Legislature, Regular Session (2009) amended Insurance Code Chapter 843, §843.342, and Chapter 1301, §1301.137 to provide that a portion of certain penalty payments and interest payments that are statutorily paid by managed care carriers for late payment and underpayment of clean claims would be paid to the Texas Health Insurance Risk Pool (Pool). The proposed amendments are needed to incorporate those payments into the rule.

Senate Bill 1367, 83rd Legislature, Regular Session (2013) abolishes the Pool and reallocates payments made to the Pool under the clean claims rules to the department upon the Pool's dissolution. The proposed amendments are needed to add that reallocation to the rule.

Throughout the proposed rule nonsubstantive amendments are made to conform the subchapter to the current codification and language of the Insurance and Administrative Codes, to update the rule's internal references, and to make minor language, punctuation, and grammatical changes to make the rules easier to read, understand, and use. These proposed nonsubstantive amendments will be noted in the explanatory text below, but will not be described in detail.

BRIEF EXPLANATION OF THE PROPOSED AMENDMENTS.

§21.2801. Purpose and Scope. The proposed amendment to §21.2801 reflects the recodification of repealed Insurance Code Article 3.70-3C as Chapter 1301. The amendment also adds exclusive provider carriers to the entities governed by the rules, but excludes from the rule's coverage an exclusive provider benefit plan regulated under Chapter 3, Subchapter KK (Exclusive Provider Benefit Plan) of this title, that provides services under the Texas Children's Health Insurance Program or with the Statewide Rural Healthcare Program.

§21.2802. Definitions. Throughout this section, the rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier" to more easily identify the three types of entities governed by this subchapter (HMO, preferred provider carrier, and exclusive provider carrier). There are also nonsubstantive amendments made throughout the section to conform its language to the current codification and language of the Insurance and Administrative Codes, to update the rule's internal references, and to make minor language, punctuation, and grammatical changes to make the rules easier to read, understand, and use. All other amendments are described below.

§21.2802(2), (4), (7), (9), (11), (13), (14), (15), (18), (21), (27), and (28) (Batch submission; CMS; Condition code; Corrected claim; Diagnosis code; HMO; HMO delivery network; Institutional provider; Patient control number; Physician; Provider; and Revenue code). These definitions are either unchanged or are amended only to update their paragraph number.

§21.2802(3), (5), (10), (16), (17), (19), (20), (22), (26), and (33) (Billed charges; Catastrophic event; Deficient claim; NPI number; Occurrence span code; Patient financial responsibility; Patient-status-at-discharge code; Place of service code; Procedure code; and Type of bill code). These definitions are amended only to make minor language, punctuation, and grammatical changes intended to make the rules easier to read, understand, and use.

§21.2802(1) Audit. This definition is amended to introduce the term "managed care carrier" (MCC) to replace the rule's existing language of "HMO or preferred provider carrier."

Existing §21.2802(8), (12), (26), and (32) (Contracted rate; Duplicate claim; Procedure code; and Subscriber). These definitions are amended to substitute "MCC" for "HMO or preferred provider carrier" because they now also apply to exclusive provider carriers.

Proposed §21.2802(13) Exclusive provider carrier. The amended rule adds a definition of "exclusive provider carrier" because Insurance Code Chapter 1301 and these rules now apply to exclusive provider plans as set forth in Insurance Code §§1301.0041 and 1301.0042.

Proposed §21.2802(17) MCC or managed care carrier. The amended rule creates the term "managed care carrier" (MCC) to more easily identify the three types of entities governed by Subchapter T (HMO, preferred provider carrier, and exclusive provider carrier). The term "MCC" is then substituted for the phrase "HMO or preferred provider carrier" throughout the balance of the rule.

Existing §21.2802(23) Preferred provider. The definition is amended to reflect that the term includes providers in both preferred provider plans and exclusive provider plans. Paragraph numbers are removed from two cites to Insurance Code §843.002 (Definitions) so that, should the statute's definitions change, the rule need not be amended to reflect a renumbering of those paragraphs.

Existing §21.2802(24) Preferred provider carrier. The definition is amended to reflect that the term does not include a carrier that issues exclusive provider benefit plans.

Existing §21.2802(25) Primary plan. The definition is amended to add language anticipating a successor rule to existing 28 TAC

Chapter 3, Subchapter V, §§3.3501 - 3.3511 (Group Coordination of Benefits), because such a successor rule is now being drafted.

Existing §21.2802(29) Secondary plan. The definition is amended to add language anticipating a successor rule to existing 28 TAC Chapter 3, Subchapter V, §§3.3501 - 3.3511 (Group Coordination of Benefits), because such a successor rule is now being drafted.

Existing §21.2802(30) Source of admission code. The definition has been renamed *Point of Origin for Admission or Visit* to conform with the language of the new CMS-1500 (02/12) form. The definition is also amended to conform the section to the current language of the Administrative Code, and to make the rules easier to read, understand, and use.

Existing §21.2802(31) Statutory claims payment period. The definition is amended to include the extended payment periods permitted under §21.2804 (Requests for Additional Information from Treating Preferred Provider) and §21.2819 (Catastrophic Event). It is also amended to add the payment periods that apply to electronically and nonelectronically submitted claims for prescription benefits.

§21.2803. Elements of a Clean Claim. Throughout this section, the rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier" to more easily identify the three types of entities governed by Subchapter T (HMO, preferred provider carrier, and exclusive provider carrier). The section also contains nonsubstantive amendments made to conform the section to the current codification and language of the Insurance and Administrative Codes, to update the rule's internal references, and to make minor language, punctuation, and grammatical changes to make the rules easier to read, understand, and use. All other amendments are described below.

§21.2803(a). Filing a Clean Claim. The proposed amendments to §21.2803(a) are meant to make it easier to locate the requirements for submission of nonelectronic dental claims, and electronic claims (including electronic dental claims submitted to an HMO).

§21.2803(b). Required data elements. In order to conform the rule's standards with those of CMS, the amendments to §21.2803(b) adopt a successor form for physicians or noninstitutional providers using the CMS-1500 claim form and delete the now-obsolete CMS-1500 (12/90). Also deleted is the UB-92, a now-obsolete version of the UB claim form used by institutional providers. There are also nonsubstantive amendments to the section.

§21.2803(b)(1). Successor form CMS-1500 (02/12) introduced. This paragraph introduces successor form CMS-1500 (02/12) and addresses its phase-in period.

Most of the data element requirements in proposed §21.2803(b)(1) are identical to those required on predecessor form CMS-1500 (08/05); all variances are described below. There are also nonsubstantive amendments throughout this paragraph, such as the redesignating of subparagraphs because the new form does not collect some of the information required by the existing form.

The data element requirements for form CMS-1500 (08/05), now found in existing §21.2803(b)(1), apply to any claims filed before the transition to form CMS-1500 (02/12). The data element requirements for form CMS-1500 (08/05) will be found in the proposed rule in §21.2803(b)(2). There are nonsubstantive amendments throughout paragraph (2) to conform the paragraph to the current codification and language of the Insurance and Administrative Codes, to update the rule's internal references, and to make minor language, punctuation, and grammatical changes to make the rules easier to read, understand, and use.

Existing §21.2803(b)(1)(J) and (K) (other insured's date of birth; other insured's plan name). Proposed paragraph (b)(1) does not include subparagraphs (J) and (K) of the existing rule because superseding form CMS-1500 (02/12) does not collect the information captured by form CMS-1500 (08/05) in those subparagraphs.

Existing §21.2803(b)(1)(N) (duplicate claim). The amended rule does not include existing subparagraph (N), addressing field 10d, because new form CMS-1500 (02/12) collects that information in field 30 in proposed subparagraph (HH).

Existing §21.2803(b)(1)(W) (NPI number of referring physician). Existing subparagraph (W) specifically addresses claims filed or refiled on or after May 23, 2008. That language is not included in corresponding proposed subparagraph (T) because it will no longer be necessary.

Existing §21.2803(b)(1)(X) (narrative description of procedure). The substance of existing subparagraph (X), CMS-1500 (08/05), field 19 will be captured in proposed subparagraph (Y), which will address CMS-1500 (02/12), field 24D. Form CMS-1500 (02/12) identifies field 19 as "Additional Claim Information." The information in existing subparagraph (CC), which addresses field 24D, is also captured in proposed subparagraph (Y).

Existing §21.2803(b)(1)(Y) (diagnosis codes). Existing subparagraph (Y), addressing CMS-1500 (08/05), field 21 requires that the primary diagnosis code be entered first, and allows up to four diagnosis codes. In proposed redesignated subparagraph (U), form CMS-1500 (02/12), field 21 will require the physician or provider to identify which version of the ICD codes (ICD-9-CM or ICD-10-CM) is used, and will allow up to twelve diagnosis codes.

Existing §21.2803(b)(1)(Z) (verification number). The data element now required in CMS-1500 (08/05), field 23 will be captured in proposed subparagraph (V) (CMS-1500 (02/12), field 23 *(prior authorization number).*Proposed subparagraph (V) will also reflect the recent amendment of the Utilization Review Rule (28 TAC §§19.1701-19.1719), effective February 20, 2013, which redesignated §19.1724 as §19.1719.

Existing §21.2803(b)(1)(CC) (procedure/modifier code). This data element will be captured in proposed subparagraph (Y). Proposed subparagraph (Y) will also capture the information now collected in existing subparagraph (X) *(narrative description of procedure).*

Existing §21.2803(b)(1)(GG) (NPI number of rendering physician or provider). The language in existing subparagraph (GG) on claims filed or refiled on or after May 23, 2008, CMS-1500 (08/05), field 24J is not included in proposed corresponding subparagraph (CC) (CMS-1500 (02/12), field 24J) because it is no longer necessary.

Proposed §21.2803(b)(1)(HH) (duplicate claim). Proposed subparagraph (HH) will collect in CMS-1500 (02/12), field 30 the information now collected in subparagraph (N) (CMS-1500 (08/05), field 10d).

Existing §21.2803(b)(1)(NN) and (PP) (NPI numbers). The dates shown in these subparagraphs will not be included in the corre-

lating proposed subparagraphs (KK) and (MM) because they are no longer relevant.

Existing §21.2803(b)(2). Redesignation of predecessor form CMS-1500 (08/05); elimination of obsolete form CMS-1500 (12/90). The rule is amended to delete the text of existing paragraph §21.2803(b)(2) in order to eliminate all references to obsolete form CMS-1500 (12/90).

The amendments also redesignate existing paragraph §21.2803(b)(1) as §21.2803(b)(2) to address the phase-out period for form CMS-1500 (08/05). New paragraph §21.2803(b)(2) specifies that physicians and noninstitutional providers filing or refiling nonelectronic claims before the later of April 1, 2014, or the earliest compliance date required by CMS must use predecessor form CMS-1500 (08/05). The amendments also allow a physician or noninstitutional provider to begin submitting claims using form CMS-1500 (02/12) when notified that an MCC is prepared to accept claims filed or refiled on the new form.

There are nonsubstantive amendments throughout §21.2803(b)(2) to conform the paragraph to the current codification and language of the Insurance and Administrative Codes, to update internal references, and to make minor language, punctuation, and grammatical changes to make the rules easier to read, understand, and use.

§21.2803(b)(3). Claim form UB-04. The proposed amendments to this paragraph eliminate timeframes that are no longer relevant because the UB-04 claim form is currently the only form institutional providers may use.

§21.2803(b)(4). Predecessor claim form UB-92. The proposed amended rules delete this paragraph because the UB-92 claim form is no longer in use.

§21.2803(c). Required data elements for dental claims. All amendments to this paragraph are nonsubstantive; they make minor language, punctuation, and grammatical changes to make the rule easier to read, understand, and use.

§21.2803(d). Coordination of benefits. Subsection (d) has been divided into three paragraphs to make it easier to read and understand. It is also amended to incorporate CMS-1500 (02/12) and to delete obsolete forms CMS-1500 (12/90) and UB-92. Language has been added to allow for coordination between this section and any successor rule to existing 28 TAC Chapter 3, Subchapter V, §§3.3501 - 3.3511 (Group Coordination of Benefits), because such a successor rule is now being drafted. The remaining amendments update internal references, and make minor language, punctuation, and grammatical changes to make the rule easier to read, understand, and use.

§21.2803(e). Submission of electronic clean claim. The amendments to this subsection make minor language changes to make the rule easier to read, understand, and use.

§21.2803(f). Coordination of benefits on electronic clean claims. Language has been added to allow for coordination between this section and any successor rule to existing 28 TAC Chapter 3, Subchapter V, §§3.3501 - 3.3511 (Group Coordination of Benefits), because such a successor rule is now being drafted. The remaining amendments conform the subchapter to the current language of the Insurance and Administrative Codes, make minor language, punctuation, and grammatical changes to make the rule easier to read, understand, and use.

§21.2803(g). Format of elements. Amendments to this subsection update internal references, and make minor language, punctuation, and grammatical changes to conform the subchapter to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2803(h). Additional data elements or information. The one amendment to this subsection makes a minor language change to conform the subchapter to the current language of the Insurance and Administrative Codes.

§21.2804. Requests for Additional Information from Treating Preferred Provider. The amendments to this section substitute the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and make nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2805. Requests for Additional Information from Other Sources. The amendments to this section substitute the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and make nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2806. Claims Filing Deadline. The rule amends the section's title to correct its grammar. It adds subsection headings to conform to the Administrative Code's current custom. The rule also substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use. All other amendments are described below.

§21.2806(c) Manner of claim submission. The rule corrects the subsection by including a method of claim submission listed in §21.2816 that had been omitted.

§21.2806(e) Duplicate claims. The proposed rule divides this subsection into three paragraphs to reflect that prescription benefit claims are subject to different statutory claims payment periods, and makes nonsubstantive changes to make the subsection easier to read, understand, and use.

§21.2807. Effect of Filing a Clean Claim. The rule amends this section to substitute the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use. All other amendments are described below.

§21.2807(c). The proposed rule will eliminate this subsection about claims for prescription benefits because, as noted in the Introduction, Insurance Code §843.339 and §1301.104, which establish the deadlines for action on prescription claims, reference the date such claims are affirmatively adjudicated, rather than their receipt as a clean claim.

§21.2808. Effect of Filing Deficient Claim. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes, including to the section's title, to conform the section to the current language

of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

The rule also reflects the new statutory time limits that apply to prescription benefit claims.

§21.2809. Audit Procedures. The rule adds subsection headings to conform to the Administrative Code's current custom. The rule also substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, to update the rule's internal references, and to make the rule easier to read, understand, and use. All other amendments are described below.

§21.2809(a). Notice and payment required. The amended rule corrects an error in the existing text of this subsection. The rule also breaks this subsection into two parts.

Proposed §21.2809(b). Failure to provide notice and payment. This added subsection corrects the rule's existing text: it completes a subsection's heading, corrects the number of days within which a provider must notify an MCC of underpayment, and corrects the citation to the source of that number.

§21.2811. Disclosure of Processing Procedures. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2812. Denial of Clean Claim Prohibited for Change of Address. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2813. Requirements Applicable to Other Contracting Entities. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2814. Electronic Adjudication of Prescription Benefits. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use. The section also deletes from its title and text references to electronic claims, because it is now applicable to all claims for prescription benefits.

§21.2815. Failure to Meet the Statutory Claims Payment Period. The rule amends this section to conform it with Insurance Code Chapter 843, Section 843.342 (Violation of Certain Claims Payment Provisions; Penalties), and Chapter 1301, Section 1301.137 (Violation of Claims Payment Requirements; Penalty). These Insurance Code sections were amended in 2009 to establish different penalties and interest for late payment and underpayment of clean claims to institutional and noninstitutional providers, for an MCC's late payment or underpayment of a clean claim.

Senate Bill 1367, passed in the most recent regular legislative session, reallocated payments made to the Pool under the clean claims rules to the department upon the Pool's dissolution. The proposed rule includes that reallocation.

The rule also substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2816. Date of Receipt. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2817. Terms of Contracts. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2818. Overpayment of Claims. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

The rule also corrects the title cited for §21.2809 from "Audits" to "Audit Procedures."

§21.2819. Catastrophic Event. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

The rule also corrects the address to which an MCC must send notice of a catastrophic event, and corrects the titles cited for several sections within the rule.

§21.2820. Identification Cards. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

The rule adds to this section the statutory requirements for exclusive provider plans, which are not identical to those for HMOs and preferred provider plans.

The rule deletes subsection (c), establishing effective dates for that section, as those dates are now obsolete.

§21.2821. Reporting Requirements. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the

section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

The rule deletes the text of subsection (c) because it is obsolete. The rule changes citations to reflect revisions to 28 TAC Chapter 19 (Agents' Licensing). The rule also captures the new statutory timeline for payment of electronic pharmacy claims.

The rule amends citations to reflect revisions to 28 TAC Chapter 19 (Agents' Licensing).

§21.2822. Administrative Penalties. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2823. Applicability to Certain Non-contracting Physicians and Providers. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes, including to the section's title, to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

The rule amends citations to reflect revisions to 28 TAC Chapter 19 (Agents' Licensing).

§21.2824. Applicability. The rule substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

§21.2825. Severability. The rule amends this section to clarify the scope of its severability, and to conform with current state law on severability.

§21.2826. Waiver. This section adds Insurance Code §1211.001 (Waiver of Certain Provisions for Certain Federal Health Plans) as statutory authority for waiving statutory and administrative provisions that do not apply to certain medical assistance plans when provided by an MCC.

The rule amends citations to reflect revisions to both the Insurance and Administrative Codes, deletes repealed provisions, and includes as waived the following provisions: Insurance Code Chapter 1301, §1301.069 (Services Provided by Certain Physicians and Health Care Providers), §1301.162 (Identification Card), Subchapter C (Prompt Payment of Claims) and C-1 (Other Provisions Relating to Payment of Claims), Chapter 1213 (Electronic Health Care Transactions), Chapter 843, §843.209 (Identification Card) and §843.319 (Certain Required Contracts), and Subchapter J (Payment of Claims to Physicians and Providers); and Administrative Code Chapter 21, Subchapter T (Submission of Clean Claims), Chapter 3, §3.3703(a)(20) (Contracting Requirements), and Chapter 11, §11.901(a)(11) (Required Provisions).

The rule also substitutes the term "managed care carrier" (MCC) for the phrase "HMO or preferred provider carrier," and makes nonsubstantive minor language, punctuation, and grammatical changes to conform the section to the current language of the Insurance and Administrative Codes, and to make the rule easier to read, understand, and use.

FISCAL NOTE. Katrina Daniel, associate commissioner for the Life, Accident, and Health Section, has determined that for each year of the first five years the proposed amendments will be in effect, there will be no fiscal impact to state and local governments as a result of the enforcement or administration of this proposal. There may be start-up costs for reprogramming billing systems to local governmental units that file health care claims, including electronic pharmacy claims, subject to statutory requirements in Insurance Code §§843.336, 843.339, 1204.102, 1301.104, and 1301.131, requiring that physicians and providers use specified uniform billing forms and successor forms. These costs are the result of these statutory requirements and not the result of the adoption, administration, or enforcement of the rule amendments. The amendments included in this proposal are necessary because the NUCC and CMS are implementing a new form and discontinuing the form required in Insurance Code §§843.336, 1204.102, and 1301.131 and in current 28 TAC §21.2803(b)(1). There will be no measurable effect on local employment or the local economy as a result of the proposal.

PUBLIC BENEFIT/COST NOTE. Associate Commissioner Daniel has also determined that for each year of the first five years the amendments are in effect, there will be a public benefit from increased consistency between standard and nonstandard health care transactions, and from continued streamlining and standardization of the nonelectronic claims filing and payment process. The resulting increase in efficiency will benefit managed care carriers, physicians, providers, insureds, and enrollees.

Proposed amendments to data elements for the successor form are nonsubstantive and so will not result in any new economic cost to physicians, providers, or managed care carriers.

The probable economic cost to persons required to comply with the amendments establishing data element requirements for the new form results from the statutory requirements of Insurance Code §§843.336, 1204.102, and 1301.131 that physicians and providers use specified uniform claim billing forms and successor forms, and not from the adoption, administration, or enforcement of the amendments. NUCC's and CMS's implementation of a new form and discontinuation of the previous form make these proposed amendments necessary.

The proposed amendments also increase clarity and consistency by updating the existing rules to reflect legislation on electronic pharmacy claim payment timelines, on exclusive provider benefit plans, on allocation of certain penalties for late and under payment of claims to the Pool, and the reallocation of those penalties to the department on the Pool's dissolution. Because the proposed amendments incorporate, but do not expand, the requirements of statutes already in effect, the amendments themselves should not create additional cost.

Although any increased costs are caused by the legislative requirements implemented by the proposed amendments, rather than by the amendments themselves, staff provides the following information relevant to implementation costs for affected parties. Estimated personnel costs for reprogramming billing systems and claims processing systems for compliance with the proposed amendments are based on data from the U.S. Department of Labor, Bureau of Labor Statistics, as reported in the survey, *Occupational Employment and Wages, May 2012,* which

indicates that the mean hourly wage for a computer programmer employed by an insurance carrier is $36.78, and the mean hourly wage for a computer programmer in general is $37.63. The amount of time necessary to reprogram a provider's billing system or a managed care carrier's claim processing system will vary based on the needs of the subject, but the resulting standardization should preclude any increased administrative costs that would otherwise result from billing and processing in the absence of a standardized data element set. The amount of time necessary to implement the systems changes will also vary based on the needs of the subject, but the department notes that the NUCC and CMS have undertaken educational efforts associated with implementation of the successor form over the last year, putting physicians, providers, and managed care carriers on notice of pending changes. The department anticipates that these educational efforts have resulted in early implementation planning by some carriers and providers, reducing the time required to implement necessary changes, reducing costs associated with implementation, and generally minimizing the burden to the affected parties. The department anticipates that physicians and providers, and managed care carriers will be able to implement the changes in compliance with the proposed timelines.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. Government Code §2006.002(c) requires that if a proposed rule may have an economic impact on small businesses, state agencies must prepare as part of the rulemaking process an economic impact statement that assesses the potential impact of the proposed rule on small businesses and a regulatory flexibility analysis that considers alternative methods of achieving the purpose of the rule. Government Code §2006.001(2) defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit, is independently owned and operated, and has fewer than 100 employees or less than $6 million in annual gross receipts. Government Code §2006.001(1) defines "micro business" similarly to "small business" but specifies that such a business may not have more than 20 employees. Government Code §2006.002(f) requires a state agency to adopt provisions concerning micro businesses that are uniform with those provisions outlined in Government Code §2006.002(b) - (d) for small businesses.

The effect on small and micro-businesses should be the same as that for the larger entities. As already stated, the costs associated with compliance with the proposed amendments will vary based on the individual needs of the subject, but the mean hourly rate for a computer programmer should be substantially the same regardless of whether the subject is a small, micro-, or large business. It is neither legal nor feasible to waive the requirements of the section for small or micro-businesses as contemplated by Government Code §2006.001. Insurance Code §1204.102 applies to all providers who seek payment or reimbursement under a health benefit plan and to all issuers of health benefit plans. The exemption of small or micro-businesses from the adoption of the proposed amendments or the adoption of separate compliance standards for small or micro-businesses would undermine the standardization of nonelectronic billing and claims payment processes achieved through the implementation of Insurance Code §§843.336, 1204.102, and 1301.131.

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

REQUEST FOR PUBLIC COMMENT. If you wish to comment on the proposal, you must do so in writing no later than 5:00 p.m. on Sunday, December 15, 2013. TDI requires two copies of your comments. Send one copy to Sara Waitt, general counsel, by email at: chiefclerk@tdi.texas.gov or by mail at Mail Code 113-2A, Texas Department of Insurance, Office of the Chief Clerk, P.O. Box 149104, Austin, Texas 78714-9104. Send the other copy to Patricia Brewer by email at: LHLcomments@tdi.texas.gov or by mail at: Mail Code 107-2A, Texas Department of Insurance, Regulatory Matters, P.O. Box 149104, Austin, Texas 78714-9104.

The commissioner will consider the adoption of the proposed amendments in a public hearing under Docket No. 2757 scheduled for December 12, 2013, at 9:00 a.m. in Room 100 of the William P. Hobby, Jr. State Office Building, 333 Guadalupe Street, Austin, Texas. The commissioner will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. TDI proposes the amended rule under Insurance Code §§843.336, 1301.131, 1204.102, and 36.001. Section 843.336(b) and §1301.131(a) provide that nonelectronic claims by physicians and noninstitutional providers are clean claims if the claims are submitted using form CMS-1500 or, if adopted by the commissioner by rule, a successor to that form developed by the NUCC or its successor. Section 843.336(c) and §1301.131(b) further provide that a nonelectronic claim by an institutional provider is a clean claim if the claim is submitted using form UB-92 CMS-1450 or, if adopted by the commissioner by rule, a successor to that form developed by the NUBC. Section 843.336(d) and §1301.131(c) authorize the commissioner to adopt rules that specify the information that must be entered into the appropriate fields on the applicable claim form for a claim to be a clean claim. Section 1204.102 requires a provider who seeks payment or reimbursement under a health benefit plan and the health benefit plan issuer that issued the plan to use uniform billing forms CMS-1500, UB-82 CMS-1450, or successor forms to those forms developed by the NUBC or its successor. Section 36.001 provides that the commissioner of insurance may adopt any rules necessary and appropriate to implement the powers and duties of the Texas Department of Insurance under the Insurance Code and other laws of this state.

CROSS REFERENCE TO STATUTE. All statutes cited below are in the Insurance Code unless otherwise noted. The following statutes are affected by this proposal: §§843.151, 843.336 - 843.340, 843.342 - 843.344, 843.347 - 843.351, 843.353, 843.3385, 1204.102, 1301.007, 1301.108, 1301.062, 1301.069, 1301.0041, 1301.0042, 1301.102 - 1301.105, 1301.107, 1301.109, 1301.132 - 1301.135, 1301.137, 1301.138, 1301.1021, 1301.1051, 1301.1052, 1301.1054, 1301.1581 and SB1367 (83rd Legislature, Regular Session).

§21.2801. Purpose and Scope.

The purpose of this subchapter is to specify the definitions and procedures necessary to implement Insurance Code Chapters 843 and 1301 [~~Article 3.70-3C (Preferred Provider Benefit Plans) and Chapter 843 of the Insurance Code~~] relating to clean claims and prompt payment of physician and provider claims. This subchapter applies to all nonelectronic [~~non-electronic~~] and electronic claims submitted by contracted physicians or providers for services or benefits provided to

insureds of preferred provider carriers, insureds of exclusive provider carriers, and enrollees of health maintenance organizations. The subchapter also has limited applicability to noncontracted physicians and providers. This subchapter does not apply to an exclusive provider benefit plan regulated under Chapter 3, Subchapter KK of this title (relating to Exclusive Provider Benefit Plan) written by an insurer under a contract with the Health and Human Services Commission to provide services under the Texas Children's Health Insurance Program or Medicaid.

§21.2802. Definitions.

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

(1) Audit--A procedure authorized by and described in §21.2809 of this title (relating to Audit Procedures) under which a managed care carrier (MCC)[~~an HMO or preferred provider carrier~~] may investigate a claim beyond the statutory claims payment period without incurring penalties under §21.2815 of this title (relating to Failure to Meet the Statutory Claims Payment Period).

(2) (No change.)

(3) Billed charges--The charges for medical care or health care services included on a claim submitted by a physician or a provider. For purposes of this subchapter, billed charges must comply with all other applicable requirements of law, including [~~Texas~~] Health and Safety Code §311.0025, [~~Texas~~] Occupations Code §105.002, and [~~Texas~~] Insurance Code Chapter 552.

(4) (No change.)

(5) Catastrophic event--An event, including an act [~~acts~~] of God, civil or military authority, or [~~acts of~~] public enemy;[~~,~~] war, accident, fire, explosion, [~~accidents, fires, explosions,~~] earthquake, windstorm, flood, or organized labor stoppage, [~~stoppages,~~] that cannot reasonably be controlled or avoided and that causes an interruption in the claims submission or processing activities of an entity for more than two consecutive business days.

(6) Clean claim--

(A) For nonelectronic [~~non-electronic~~] claims, a claim submitted by a physician or a provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy that includes:

(i) the required data elements set forth in §21.2803(b) or (c) of this title (relating to Elements of a Clean Claim); and

(ii) if applicable, the amount paid by the primary plan or other valid coverage under [~~pursuant to~~] §21.2803(d) of this title [~~(relating to Elements of a Clean Claim)~~];

(B) For electronic claims, a claim submitted by a physician or a provider for medical care or health care services rendered to an enrollee under a health care plan or to an insured under a health insurance policy using the ASC X12N 837 format and in compliance with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides, and trading partner agreements.

(7) (No change.)

(8) Contracted rate--Fee or reimbursement amount for a preferred provider's services, treatments, or supplies as established by agreement between the preferred provider and the MCC [~~HMO or preferred provider~~].

(9) (No change.)

(10) Deficient claim--A submitted claim that does not comply with the requirements of §21.2803(b), (c), or (e) of this title.

(11) (No change.)

(12) Duplicate claim--Any claim submitted by a physician or a provider for the same health care service provided to a particular individual on a particular date of service that was included in a previously submitted claim. The term does not include:

(A) corrected claims;[~~,~~] or

(B) claims submitted by a physician or a provider at the request of the MCC [~~HMO or preferred provider carrier~~].

(13) Exclusive provider carrier--An insurer that issues an exclusive provider benefit plan as provided by Insurance Code Chapter 1301.

(14) [~~(13)~~] HMO--A health maintenance organization as defined by Insurance Code §843.002(14).

(15) [~~(14)~~] HMO delivery network--As defined by Insurance Code §843.002(15).

(16) [~~(15)~~] Institutional provider--An institution providing health care services, including but not limited to hospitals, other licensed inpatient centers, ambulatory surgical centers, skilled nursing centers, and residential treatment centers.

(17) MCC or managed care carrier--An HMO, a preferred provider carrier, or an exclusive provider carrier, except as otherwise prohibited under federal law.

(18) [~~(16)~~] NPI number--The National Provider Identifier standard unique health identifier number for health care providers assigned under [~~pursuant to~~] 45 Code of Federal Regulations Part 162 Subpart D[~~,~~] or a successor rule.

(19) [~~(17)~~] Occurrence span code--The code used [~~utilized~~] by the Centers for Medicare and Medicaid Services (CMS) [~~CMS~~] to define a specific event relating to the billing period.

(20) [~~(18)~~] Patient control number--A unique alphanumeric identifier assigned by the institutional provider to facilitate retrieval of individual financial records and posting of payment.

(21) [~~(19)~~] Patient financial responsibility--Any portion of the contracted rate for which the patient is responsible under [~~pursuant to~~] the terms of the patient's health benefit plan.

(22) [~~(20)~~] Patient discharge status code [~~Patient-status-at-discharge code~~]--The code used [~~utilized~~] by CMS to indicate the patient's status at the time of discharge or billing.

(23) [~~(21)~~] Physician--Anyone licensed to practice medicine in this state.

(24) [~~(22)~~] Place of service code--The codes used [~~utilized~~] by CMS that identify the place at which the service was rendered.

(25) Point of Origin for Admission or Visit code--The code used by CMS to indicate the source of an inpatient admission.

(26) [~~(23)~~] Preferred provider--

(A) with regard to a preferred provider carrier or an exclusive provider carrier, a preferred provider as defined by Insurance Code §1301.001; and [~~(Definitions).~~]

(B) with regard to an HMO:[~~,~~]

(i) a physician, as defined by Insurance Code §843.002[(22)], who is a member of that HMO's delivery network; or

(ii) a provider, as defined by Insurance Code §843.002[(24)], who is a member of that HMO's delivery network.

(27) [(24)] Preferred provider carrier--An insurer that issues a preferred provider benefit plan as provided by Insurance Code Chapter 1301. The term does not include an insurer that issues an exclusive provider benefit plan as provided by Insurance Code Chapter 1301.

(28) [(25)] Primary plan--As defined in §3.3506 of this title (relating to Use of the Terms "Plan," "Primary Plan," "Secondary Plan," and "This Plan" in Policies, Certificates, and Contracts), or in a successor rule adopted by the commissioner.

(29) [(26)] Procedure code--Any alphanumeric code representing a service or treatment that is part of a medical code set that is adopted by CMS as required by federal statute and valid at the time of service. In the absence of an existing federal code, and for nonelectronic [non-electronic] claims only, this definition may also include local codes developed specifically by Medicaid, Medicare, or an MCC [an HMO or preferred provider carrier] to describe a specific service or procedure.

(30) [(27)] Provider--Any practitioner, institutional provider, or other person or organization that furnishes health care services and that is licensed or otherwise authorized to practice in this state, other than a physician.

(31) [(28)] Revenue code--The code assigned by CMS to each cost center for which a separate charge is billed.

(32) [(29)] Secondary plan--As defined in §3.3506 of this title, or in a successor rule adopted by the commissioner.

[(30) Source of admission code--The code utilized by CMS to indicate the source of an inpatient admission.]

(33) [(31)] Statutory claims payment period--

(A) the 45 calendar days during [45-calendar-day period in] which an MCC must pay or deny a claim [HMO or preferred provider carrier shall make claim payment or denial], in whole or in part, after receipt of a nonelectronic [non-electronic] clean claim under [pursuant to] Insurance Code Chapters 843 and 1301, and any extended period permitted under §21.2804 of this title (relating to Requests for Additional Information from Treating Provider) or §21.2819 of this title (relating to Catastrophic Event);

(B) the 30 calendar days during [30-calendar-day period in] which an MCC must pay or deny a claim [HMO or preferred provider carrier shall make claim payment or denial], in whole or in part, after receipt of an electronically submitted clean claim under [pursuant to] Insurance Code Chapters 843 and 1301, and any extended period permitted under §21.2804 or §21.2819 of this title; [or]

(C) the 21 calendar days during [21-calendar-day period in] which an MCC must pay a claim [HMO or preferred provider carrier shall make claim payment] after affirmative adjudication of a [an electronically submitted clean] claim for a prescription benefit that is not electronically submitted under [pursuant to] Insurance Code Chapters 843 and 1301[,] and §21.2814 of this title (relating to [Electronic] Adjudication of Prescription Benefits), and any extended period permitted under §21.2804 or §21.2819; or[.]

(D) the 18 calendar days during which an MCC must make a claim payment after affirmative adjudication of an electronically submitted claim for a prescription benefit under Insurance Code Chapters 843 and 1301 and §21.2814 of this title, and any extended period permitted under §21.2804 or §21.2819.

(34) [(32)] Subscriber--If individual coverage, the individual who is the contract holder and is responsible for payment of premiums to the MCC [HMO or preferred provider carrier]; or if group coverage, the individual who is the certificate holder and whose employment or other membership status, except for family dependency, is the basis for eligibility for enrollment in a group health benefit plan issued by the MCC [HMO or preferred provider carrier].

(35) [(33)] Type of bill code--The three-digit alphanumeric code used [utilized] by CMS to identify the type of facility, the type of care, and the sequence of the bill in a particular episode of care.

§21.2803. Elements of a Clean Claim.

(a) Filing a clean claim [Clean Claim]. A physician or a provider submits a clean claim by providing to an MCC [HMO, preferred provider carrier,] or any other entity designated for receipt of claims under [pursuant to] §21.2811 of this title (related to Disclosure of Processing Procedures):

(1) for nonelectronic [non-electronic] claims other than dental claims, the required data elements specified in subsection (b) of this section;[,]

(2) [or] for nonelectronic [non-electronic] dental claims filed with an HMO, the required data elements specified in subsection (c) of this section;

(3) [(2)] for electronic claims and for electronic dental claims filed with an HMO, the required data elements specified in subsections (e) and (f) of this section; and

(4) [(3)] if applicable, any coordination of benefits or nonduplication [non-duplication] of benefits information under [pursuant to] subsection (d) of this section.

(b) Required data elements. CMS has developed claim forms that [which] provide much of the information needed to process claims. Insurance Code Chapter 1204 identifies two of these forms, HCFA 1500 and UB-82/HCFA, and their successor forms, as required for the submission of certain claims. The terms in paragraphs (1) - (3) [(4)] of this subsection are based on [upon] the terms CMS used on successor forms CMS-1500 (02/12), CMS-1500 (08/05)[, CMS-1500 (12/90)], UB-04 CMS-1450, and (UB-04) [UB-92 CMS-1450]. The parenthetical information following each term and data element refers to the applicable CMS claim form and the field number to which that term corresponds on the CMS claim form. Mandatory form usage dates and optional form transition dates for nonelectronic claims filed or refiled [re-filed] by physicians or noninstitutional providers are set forth in paragraphs (1) and (2) of this subsection. Mandatory form usage dates and optional form transition dates for nonelectronic claims filed or refiled [re-filed] by institutional providers are set forth in paragraph (3) [paragraphs (3) and (4)] of this subsection.

(1) Required form and data elements for physicians or noninstitutional providers for claims filed or refiled on or after the later of April 1, 2014, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form for Medicare claims. The CMS-1500 (02/12) claim form and the data elements described in this paragraph are required for claims filed or refiled by physicians or noninstitutional providers on or after the later of these two dates: April 1, 2014, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form for Medicare claims. The CMS-1500 (02/12) claim form must be completed in compliance with the special instructions applicable to the data elements as described by this paragraph for clean claims filed by physicians and noninstitutional providers. Further, upon notification that an MCC is

prepared to accept claims filed or refiled on form CMS-1500 (02/12), a physician or noninstitutional provider may submit claims on form CMS-1500 (02/12) prior to the mandatory use date described in this paragraph, subject to the required data elements set forth in this paragraph.

(A) subscriber's or patient's plan ID number (CMS-1500 (02/12), field 1a) is required;

(B) patient's name (CMS-1500 (02/12), field 2) is required;

(C) patient's date of birth and sex (CMS-1500 (02/12), field 3) are required;

(D) subscriber's name (CMS-1500 (02/12), field 4) is required if shown on the patient's ID card;

(E) patient's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (02/12), field 5) is required;

(F) patient's relationship to subscriber (CMS-1500 (02/12), field 6) is required;

(G) subscriber's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (02/12), field 7) is required, but the physician or the provider may enter "same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;

(H) other insured's or enrollee's name (CMS-1500 (02/12), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (N) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(I) other insured's or enrollee's policy or group number (CMS-1500 (02/12), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (N) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(J) other insured's or enrollee's HMO or insurer name (CMS-1500 (02/12), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (N) of this paragraph, "disclosure of any other health benefit plans," is answered "Yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(K) whether the patient's condition is related to employment, auto accident, or other accident (CMS-1500 (02/12), field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists must enter "N" if the answer is "No" or if the information is not available;

(L) subscriber's policy number (CMS-1500 (02/12), field 11) is required;

(M) HMO or insurance company name (CMS-1500 (02/12), field 11c) is required;

(N) disclosure of any other health benefit plans (CMS-1500 (02/12), field 11d) is required;

(i) if answered "Yes," then:

(I) data elements specified in subparagraphs (H) - (J) of this paragraph are required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete the data elements in subparagraphs (H) - (J) of this paragraph;

(II) when submitting claims to secondary payor MCCs the data element specified in subparagraph (GG) of this paragraph is required;

(ii) if answered "No," the data elements specified in subparagraphs (H) - (J) of this paragraph are not required if the physician or the provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage; although the submission of the signed document is not a required data element, the physician or the provider must submit a copy of the signed document to the MCC upon request;

(O) patient's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (02/12), field 12) is required;

(P) subscriber's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (02/12), field 13) is required;

(Q) date of injury (CMS-1500 (02/12), field 14) is required if due to an accident;

(R) when applicable, the physician or the provider must enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (02/12), field 17); however, if there is no referral, the physician or the provider must enter "Self-referral" or "None";

(S) if there is a referring physician noted in CMS-1500 (02/12), field 17, the physician or the provider must enter the ID Number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (02/12), field 17a);

(T) if there is a referring physician noted in CMS-1500 (02/12), field 17, the physician or the provider must enter the NPI number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (02/12), field 17b) if the referring physician is eligible for an NPI number;

(U) for diagnosis codes or nature of illness or injury (CMS-1500 (02/12), field 21), the physician or the provider:

(i) must identify the ICD code version being used by entering either the number "9" to indicate the ICD-9-CM or the number "0" to indicate the ICD-10-CM between the vertical, dotted lines in the upper right-hand portion of the field;

(ii) must enter at least one diagnosis code, and

(iii) may enter up to 12 diagnosis codes, but the primary diagnosis must be entered first;

(V) verification number is required (CMS-1500 (02/12), field 23) if services have been verified as provided by §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans). If no verification

has been provided, a prior authorization number (CMS-1500 (02/12), field 23) is required when prior authorization is required and granted;

(W) date(s) of service (CMS-1500 (02/12), field 24A) is required;

(X) place of service code(s) (CMS-1500 (02/12), field 24B) is required;

(Y) procedure/modifier code(s) (CMS-1500 (02/12), field 24D) is required. If a physician or a provider uses an unlisted or not classified procedure code or a National Drug Code (NDC), the physician or provider must enter a narrative description of the procedure or the NDC in the shaded area above the corresponding completed service line;

(Z) diagnosis code by specific service (CMS-1500 (02/12), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;

(AA) charge for each listed service (CMS-1500 (02/12), field 24F) is required;

(BB) number of days or units (CMS-1500 (02/12), field 24G) is required;

(CC) the NPI number of the rendering physician or provider (CMS-1500 (02/12), field 24J, unshaded portion) is required if the rendering provider is not the billing provider listed in CMS-1500 (02/12), field 33, and if the rendering physician or provider is eligible for an NPI number;

(DD) physician's or provider's federal tax ID number (CMS-1500 (02/12), field 25) is required;

(EE) whether assignment was accepted (CMS-1500 (02/12), field 27) is required if assignment under Medicare has been accepted;

(FF) total charge (CMS-1500 (02/12), field 28) is required;

(GG) amount paid (CMS-1500 (02/12), field 29) is required if an amount has been paid to the physician or the provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan in compliance with subparagraph (N) of this paragraph and as required by subsection (d) of this section;

(HH) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (02/12), field 30);

(II) signature of physician or provider or a notation that the signature is on file with the MCC (CMS-1500 (02/12), field 31) is required;

(JJ) name and address of the facility where services were rendered, if other than home, (CMS-1500 (02/12), field 32) is required;

(KK) the NPI number of the facility where services were rendered, if other than home, (CMS-1500 (02/12), field 32a) is required if the facility is eligible for an NPI;

(LL) physician's or provider's billing name, address, and telephone number (CMS-1500 (02/12), field 33) is required;

(MM) the NPI number of the billing provider (CMS-1500 (02/12), field 33a) is required if the billing provider is eligible for an NPI number; and

(NN) provider number (CMS-1500 (02/12), field 33b) is required if the MCC required provider numbers and gave notice of the requirement to physicians and providers prior to June 17, 2003.

(2) [~~(1)~~] Required form and data elements for physicians or noninstitutional providers for claims filed or refiled before the later of April 1, 2014 [~~re-filed on or after the later of July 18, 2007~~], or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form [~~CMS-1500 (08/05)~~] for Medicare claims. The CMS-1500 (08/05) claim form [~~CMS-1500 (12/90)~~] and the data elements described in this paragraph are required for claims filed or refiled [~~re-filed~~] by physicians or noninstitutional providers before the later of these two dates: April 1, 2014 [~~(July 18, 2007)~~], or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (02/12) claim form [~~CMS-1500 (08/05)~~] for Medicare claims. The CMS-1500 (08/05) claim form [~~CMS-1500 (12/90)~~] must be completed in compliance [~~accordance~~] with the special instructions applicable to the data element as described in this paragraph for clean claims filed by physicians and noninstitutional providers. However, upon notification that an MCC [~~HMO or preferred provider carrier~~] is prepared to accept claims filed or refiled [~~re-filed~~] on form CMS-1500 (02/12) [~~CMS-1500 (08/05)~~], a physician or noninstitutional provider may submit claims on form CMS-1500 (02/12) [~~CMS-1500 (08/05)~~] prior to the subsection (b)(1) mandatory use date described in this paragraph, subject to the subsection (b)(1) required data elements set forth in this paragraph.

(A) subscriber's or patient's [~~subscriber's/patient's~~] plan ID number (CMS-1500 (08/05), field 1a) is required;

(B) patient's name (CMS-1500 (08/05), field 2) is required;

(C) patient's date of birth and sex [~~gender~~] (CMS-1500 (08/05), field 3) is required;

(D) subscriber's name (CMS-1500 (08/05), field 4) is required, if shown on the patient's ID card;

(E) patient's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (08/05), field 5) is required;

(F) patient's relationship to subscriber (CMS-1500 (08/05), field 6) is required;

(G) subscriber's address (street or P.O. Box, city, state, ZIP Code) (CMS-1500 (08/05), field 7) is required, but physician or provider may enter "same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;

(H) other insured's or enrollee's name (CMS-1500 (08/05), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph [~~(1)(Q) of this subsection~~], "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(I) other insured's or enrollee's policy or group [~~policy/group~~] number (CMS-1500 (08/05), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph [~~(1)(Q) of this subsection~~], "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician

or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(J) other insured's or enrollee's date of birth (CMS-1500 (08/05), field 9b) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph [~~(I)(Q) of this subsection~~], "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(K) other insured's or enrollee's plan name (employer, school, etc.), (CMS-1500 (08/05), field 9c) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph [~~(I)(Q) of this subsection~~], "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element. If the field is required and the physician or the provider is a facility-based radiologist, pathologist, or anesthesiologist with no direct patient contact, the physician or the provider must either enter the information or enter "NA" (not available) if the information is unknown;

(L) other insured's or enrollee's HMO or insurer name (CMS-1500 (08/05), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in subparagraph (Q) of this paragraph [~~(I)(Q) of this subsection~~], "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete this data element;

(M) whether the patient's condition is related to employment, auto accident, or other accident (CMS-1500 (08/05), field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists must [~~shall~~] enter "N" if the answer is "No" or if the information is not available;

(N) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (08/05), field 10d);

(O) subscriber's policy number (CMS-1500 (08/05), field 11) is required;

(P) HMO or insurance company name (CMS-1500 (08/05), field 11c) is required;

(Q) disclosure of any other health benefit plans (CMS-1500 (08/05), field 11d) is required;

(i) if answered "yes," then:

(I) data elements specified in subparagraphs (H) - (L) of this paragraph [~~(I)(H) - (L) of this subsection~~] are required unless the physician or the provider submits with the claim documented proof that the physician or the provider has made a good faith but unsuccessful attempt to obtain from the enrollee or the insured any of the information needed to complete the data elements in subparagraphs (H) - (L) of this paragraph [~~(I)(H) - (L) of this subsection~~];

(II) the data element specified in subparagraph (KK) of this paragraph [~~(I)(II) of this subsection~~] is required when submitting claims to secondary payor MCCs [~~HMOs or preferred provider carriers~~];

(ii) if answered "no," the data elements specified in subparagraphs (H) - (L) of this paragraph [~~(I)(H) - (L) of this subsection~~] are not required if the physician or the provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage; although the submission of the signed document is not a required data element, the physician or the provider must [~~shall~~] submit a copy of the signed document to the MCC [~~HMO or preferred provider carrier~~] upon request;

(R) patient's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (08/05), field 12) is required;

(S) subscriber's or authorized person's signature or a notation that the signature is on file with the physician or the provider (CMS-1500 (08/05), field 13) is required;

(T) date of injury (CMS-1500 (08/05), field 14) is required if due to an accident;

(U) when applicable, the physician or the provider must [~~shall~~] enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (08/05), field 17); however, if there is no referral, the physician or the provider must [~~shall~~] enter "Self-referral" or "None";

(V) if there is a referring physician noted in CMS-1500 (08/05), field 17, the physician or the provider must [~~shall~~] enter the ID Number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (08/05), field 17a);

(W) [~~for claims filed or re-filed on or after May 23, 2008,~~] if there is a referring physician noted in CMS-1500 (08/05), field 17, the physician or the provider must [~~shall~~] enter the NPI number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (08/05), field 17b) if the referring physician is eligible for an NPI number;

(X) narrative description of procedure (CMS-1500 (08/05), field 19) is required when a physician or a provider uses an unlisted or unclassified [~~not classified~~] procedure code or an NDC code for drugs;

(Y) for diagnosis codes or nature of illness or injury (CMS-1500 (08/05), field 21), up to four diagnosis codes may be entered, but at least one is required, but the [~~(~~]primary diagnosis must be entered first[~~)~~];

(Z) verification number (CMS-1500 (08/05), field 23) is required if services have been verified under [~~pursuant to~~] §19.1719 [~~§19.1724~~] of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans). If no verification has been provided, a prior authorization number (CMS-1500 (08/05), field 23) is required when prior authorization is required and granted;

(AA) date(s) of service (CMS-1500 (08/05), field 24A) is required;

(BB) place of service code(s) (CMS-1500 (08/05), field 24B) is required;

(CC) procedure/modifier code (CMS-1500 (08/05), field 24D) is required;

(DD) diagnosis code by specific service (CMS-1500 (08/05), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;

(EE) charge for each listed service (CMS-1500 (08/05), field 24F) is required;

(FF) number of days or units (CMS-1500 (08/05), field 24G) is required;

(GG) [~~for claims filed or re-filed on or after May 23, 2008,~~] the NPI number of the rendering physician or provider (CMS-1500 (08/05), field 24J, unshaded portion) is required if the rendering provider is not the billing provider listed in CMS-1500 (08/05), field 33, and if the rendering physician or provider is eligible for an NPI number;

(HH) physician's or provider's federal tax ID number (CMS-1500 (08/05), field 25) is required;

(II) whether assignment was accepted (CMS-1500 (08/05), field 27) is required if assignment under Medicare has been accepted;

(JJ) total charge (CMS-1500 (08/05), field 28) is required;

(KK) amount paid (CMS-1500 (08/05), field 29) is required if an amount has been paid to the physician or the provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan to comply [~~in accordance~~] with subparagraph (Q) of this paragraph [~~(1)(P) of this subsection~~] and as required by subsection (d) of this section;

(LL) signature of physician or provider or a notation that the signature is on file with the MCC [~~HMO or preferred provider carrier~~] (CMS-1500 (08/05), field 31) is required;

(MM) name and address of the facility where services were rendered, [~~(~~]if other than home[~~)~~]] (CMS-1500 (08/05), field 32) is required;

(NN) [~~for claims filed or re-filed on or after May 23, 2008,~~] the NPI number of the facility where services were [~~are~~] rendered, [~~(~~]if other than home[~~)~~]] (CMS-1500 (08/05), field 32a) is required if the facility is eligible for an NPI;

(OO) physician's or provider's billing name, address, and telephone number (CMS-1500 (08/05), field 33) is required;

(PP) [~~for claims filed or re-filed on or after May 23, 2008,~~] the NPI number of the billing provider (CMS-1500 (08/05), field 33a) is required if the billing provider is eligible for an NPI number; and

(QQ) provider number (CMS-1500 (08/05), field 33b) is required if the MCC [~~HMO or preferred provider carrier~~] required provider numbers and gave notice of the requirement to physicians and providers prior to June 17, 2003.

~~[(2) Required form and data elements for physicians or noninstitutional providers for claims filed or re-filed before the later of July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) for Medicare claims. The CMS-1500 (12/90) and the data elements described in this paragraph are required for claims filed or re-filed by physicians or noninstitutional providers before the later of these two dates: July 18, 2007, or the earliest compliance date required by CMS for mandatory use of the CMS-1500 (08/05) for Medicare claims. The CMS-1500 (12/90) must be completed in accordance with the special instructions applicable to the data element as described in this paragraph for clean claims filed by physicians and noninstitutional providers. However, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form CMS-1500 (08/05), a physician or noninstitutional provider may submit claims on form CMS-1500 (08/05) prior to the subsection (b)(1) mandatory use date, subject to the subsection (b)(1) required data elements.]~~

~~[(A) subscriber's/patient's plan ID number (CMS-1500 (12/90), field 1a) is required;]~~

~~[(B) patient's name (CMS-1500 (12/90), field 2) is required;]~~

~~[(C) patient's date of birth and gender (CMS-1500 (12/90), field 3) is required;]~~

~~[(D) subscriber's name (CMS-1500 (12/90), field 4) is required, if shown on the patient's ID card;]~~

~~[(E) patient's address (street or P.O. Box, city, state, ZIP) (CMS-1500 (12/90), field 5) is required;]~~

~~[(F) patient's relationship to subscriber (CMS-1500 (12/90), field 6) is required;]~~

~~[(G) subscriber's address (street or P.O. Box, city, state, ZIP) (CMS-1500 (12/90), field 7) is required, but physician or provider may enter "same" if the subscriber's address is the same as the patient's address required by subparagraph (E) of this paragraph;]~~

~~[(H) other insured's or enrollee's name (CMS-1500 (12/90), field 9) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;]~~

~~[(I) other insured's or enrollee's policy/group number (CMS-1500 (12/90), field 9a) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;]~~

~~[(J) other insured's or enrollee's date of birth (CMS-1500 (12/90), field 9b) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;]~~

~~[(K) other insured's or enrollee's plan name (employer, school, etc.) (CMS-1500 (12/90), field 9c) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim doc-~~

umented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element. If the field is required and the physician or provider is a facility-based radiologist, pathologist or anesthesiologist with no direct patient contact, the physician or provider must either enter the information or enter "NA" (not available) if the information is unknown;]

[(L) other insured's or enrollee's HMO or insurer name (CMS-1500 (12/90), field 9d) is required if the patient is covered by more than one health benefit plan, generally in situations described in subsection (d) of this section. If the required data element specified in paragraph (2)(Q) of this subsection, "disclosure of any other health benefit plans," is answered "yes," this element is required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete this data element;]

[(M) whether patient's condition is related to employment, auto accident, or other accident (CMS-1500 (12/90, field 10) is required, but facility-based radiologists, pathologists, or anesthesiologists shall enter "N" if the answer is "No" or if the information is not available;]

[(N) if the claim is a duplicate claim, a "D" is required; if the claim is a corrected claim, a "C" is required (CMS-1500 (12/90), field 10d);]

[(O) subscriber's policy number (CMS-1500 (12/90), field 11) is required;]

[(P) HMO or insurance company name (CMS-1500 (12/90), field 11c) is required;]

[(Q) disclosure of any other health benefit plans (CMS-1500 (12/90), field 11d) is required;]

[(i) if answered "yes", then:]

[(I) data elements specified in paragraph (2)(H) - (L) of this subsection are required unless the physician or provider submits with the claim documented proof that the physician or provider has made a good faith but unsuccessful attempt to obtain from the enrollee or insured any of the information needed to complete the data elements in paragraph (2)(H) - (L) of this subsection;]

[(II) the data element specified in paragraph (2)(H) of this subsection is required when submitting claims to secondary payor HMOs or preferred provider carriers;]

[(ii) if answered "no", the data elements specified in paragraph (2)(H) - (L) of this subsection are not required if the physician or provider has on file a document signed within the past 12 months by the patient or authorized person stating that there is no other health care coverage; although the submission of the signed document is not a required data element, the physician or provider shall submit a copy of the signed document to the HMO or preferred provider carrier upon request;]

[(R) patient's or authorized person's signature or notation that the signature is on file with the physician or provider (CMS-1500 (12/90), field 12) is required;]

[(S) subscriber's or authorized person's signature or notation that the signature is on file with the physician or provider (CMS-1500 (12/90), field 13) is required;]

[(T) date of injury (CMS-1500 (12/90), field 14) is required, if due to an accident;]

[(U) when applicable, the physician or provider shall enter the name of the referring primary care physician, specialty physician, hospital, or other source (CMS-1500 (12/90) field 17); however, if there is no referral, the physician or provider shall enter "Self-referral" or "None";]

[(V) the physician or provider shall enter the ID Number of the referring primary care physician, specialty physician, or hospital (CMS-1500 (12/90), field 17a); however, if there is no referral, the physician or provider shall enter "Self-referral" or "None";]

[(W) narrative description of procedure (CMS-1500 (12/90), field 19) is required when a physician or provider uses an unlisted or not classified procedure code or an NDC code for drugs;]

[(X) for diagnosis codes or nature of illness or injury (CMS-1500 (12/90), field 21), up to four diagnosis codes may be entered, but at least one is required (primary diagnosis must be entered first);]

[(Y) verification number (CMS-1500 (12/90), field 23) is required if services have been verified pursuant to §19.1724 of this title (relating to Verification). If no verification has been provided, a prior authorization number (CMS-1500 (12/90), field 23) is required when prior authorization is required and granted;]

[(Z) date(s) of service (CMS-1500 (12/90), field 24A) is required;]

[(AA) place of service code(s) (CMS-1500 (12/90), field 24B) is required;]

[(BB) procedure/modifier code (CMS-1500 (12/90), field 24D) is required;]

[(CC) diagnosis code by specific service (CMS-1500 (12/90), field 24E) is required with the first code linked to the applicable diagnosis code for that service in field 21;]

[(DD) charge for each listed service (CMS-1500 (12/90), field 24F) is required;]

[(EE) number of days or units (CMS-1500 (12/90), field 24G) is required;]

[(FF) physician's or provider's federal tax ID number (CMS-1500 (12/90), field 25) is required;]

[(GG) whether assignment was accepted (CMS-1500 (12/90), field 27) is required if assignment under Medicare has been accepted;]

[(HH) total charge (CMS-1500 (12/90), field 28) is required;]

[(II) amount paid (CMS-1500 (12/90), field 29) is required if an amount has been paid to the physician or provider submitting the claim by the patient or subscriber, or on behalf of the patient or subscriber or by a primary plan in accordance with paragraph (2)(P) of this subsection and as required by subsection (d) of this section;

[(JJ) signature of physician or provider or notation that the signature is on file with the HMO or preferred provider carrier (CMS-1500 (12/90), field 31) is required;]

[(KK) name and address of facility where services rendered (if other than home or office) (CMS-1500 (12/90), field 32) is required; and]

[(LL) physician's or provider's billing name, address, and telephone number is required, and the provider number (CMS-1500 (12/90), field 33) is required if the HMO or preferred provider

carrier required provider numbers and gave notice of that requirement to physicians and providers prior to June 17, 2003.]

(3) Required form and data elements for institutional providers [for claims filed or re-filed on or after July 18, 2007]. The UB-04 claim form [CMS-1450] and the data elements described in this paragraph are required for claims filed or refiled [re-filed] by institutional providers [on or after July 18, 2007]. The UB-04 claim form [CMS-1450] must be completed under [in accordance with] the special instructions applicable to the data elements as described by this paragraph for clean claims filed by institutional providers. [Further, upon notification that an HMO or preferred provider carrier is prepared to accept claims filed or re-filed on form UB-04 CMS-1450, an institutional provider may submit claims on UB-04 CMS-1450 prior to the mandatory use date described in this paragraph, subject to the required data elements set forth in this paragraph.]

(A) provider's name, address, and telephone number (UB-04, field 1) are [is] required;

(B) patient control number (UB-04, field 3a) is required;

(C) type of bill code (UB-04, field 4) is required and must [shall] include a "7" in the fourth position if the claim is a corrected claim;

(D) provider's federal tax ID number (UB-04, field 5) is required;

(E) statement period (beginning and ending date of claim period) (UB-04, field 6) is required;

(F) patient's name (UB-04, field 8a) is required;

(G) patient's address (UB-04, field 9a - 9e) is required;

(H) patient's date of birth (UB-04, field 10) is required;

(I) patient's sex (UB-04, field 11) is required;

(J) date of admission (UB-04, field 12) is required for admissions, observation stays, and emergency room care;

(K) admission hour (UB-04, field 13) is required for admissions, observation stays, and emergency room care;

(L) type of admission (such as [e.g.,] emergency, urgent, elective, newborn) (UB-04, field 14) is required for admissions;

(M) point of origin for admission or visit code [source of admission code] (UB-04, field 15) is required;

(N) discharge hour (UB-04, field 16) is required for admissions, outpatient surgeries, or observation stays;

(O) patient discharge status [patient-status-at-discharge] code (UB-04, field 17) is required for admissions, observation stays, and emergency room care;

(P) condition codes (UB-04, fields 18 - 28) are required if the CMS UB-04 manual contains a condition code appropriate to the patient's condition;

(Q) occurrence codes and dates (UB-04, fields 31 - 34) are required if the CMS UB-04 manual contains an occurrence code appropriate to the patient's condition;

(R) occurrence span codes and from and through dates (UB-04, fields 35 and 36) are required if the CMS UB-04 manual contains an occurrence span code appropriate to the patient's condition;

(S) value code and amounts (UB-04, fields 39 - 41) are required for inpatient admissions, and may be entered as value code "01" if[. If] no value codes are applicable to the inpatient admission [, the provider may enter value code 01];

(T) revenue code (UB-04, field 42) is required;

(U) revenue description (UB-04, field 43) is required;

(V) Healthcare Common Procedure Coding System (HCPCS) codes or rates [HCPCS/Rates] (UB-04, field 44) are required if Medicare is a primary or secondary payor;

(W) service date (UB-04, field 45) is required if the claim is for outpatient services;

(X) date bill submitted (UB-04, field 45, line 23) is required;

(Y) units of service (UB-04, field 46) are required;

(Z) total charge (UB-04, field 47) is required;

(AA) MCC [HMO or preferred provider carrier] name (UB-04, field 50) is required;

(BB) prior payments-payor (UB-04, field 54) are required if payments have been made to the provider by a primary plan as required by subsection (d) of this section;

(CC) [for claims filed or re-filed on or after May 23, 2008,] the NPI number of the billing provider (UB-04, field 56) is required if the billing provider is eligible for an NPI number;

(DD) other provider number (UB-04, field 57) is required if the HMO or preferred provider carrier, prior to June 17, 2003, required provider numbers and gave notice of that requirement to physicians and providers;

(EE) subscriber's name (UB-04, field 58) is required if shown on the patient's ID card;

(FF) patient's relationship to subscriber (UB-04, field 59) is required;

(GG) patient's or subscriber's [patient's/subscriber's] certificate number, health claim number, ID number (UB-04, field 60) is required if shown on the patient's ID card;

(HH) insurance group number (UB-04, field 62) is required if a group number is shown on the patient's ID card;

(II) verification number (UB-04, field 63) is required if services have been verified under §19.1719 [pursuant to §19.1724] of this title. If no verification has been provided, treatment authorization codes (UB-04, field 63) are required when authorization is required and granted;

(JJ) principal diagnosis code (UB-04, field 67) is required;

(KK) diagnosis [diagnoses] codes other than principal diagnosis code (UB-04, fields 67A - 67Q) are required if there are diagnoses other than the principal diagnosis;

(LL) admitting diagnosis code (UB-04, field 69) is required;

(MM) principal procedure code (UB-04, field 74) is required if the patient has undergone an inpatient or outpatient surgical procedure;

(NN) other procedure codes (UB-04, fields 74 - 74e) are required as an extension of subparagraph (MM) of this paragraph if additional surgical procedures were performed;

(OO) attending physician NPI number (UB-04, field 76) is required [~~on or after May 23, 2008,~~] if the attending physician is eligible for an NPI number; and (PP) attending physician ID (UB-04, field 76, qualifier portion) is required.

(PP) attending physician ID (UB-04, field 76, qualifier portion) is required.

~~[(4) Required form and data elements for institutional providers for claims filed or re-filed before July 18, 2007. The UB-92 CMS-1450 and the data elements described in this paragraph are required for claims filed or re-filed by institutional providers before July 18, 2007. The UB-92 CMS-1450 must be completed in accordance with the special instructions applicable to the data element as described in this paragraph for clean claims filed by institutional providers. However, upon notification that an HMO or preferred provider carrier will accept claims filed or re-filed on form UB-04 CMS-1450, an institutional provider may submit claims on form UB-04 CMS-1450 prior to the subsection (b)(3) mandatory use date, subject to the subsection (b)(3) required data elements.]~~

~~[(A) provider's name, address and telephone number (UB-92, field 1) is required;]~~

~~[(B) patient control number (UB-92, field 3) is required;]~~

~~[(C) type of bill code (UB-92, field 4) is required and shall include a "7" in the third position if the claim is a corrected claim;]~~

~~[(D) provider's federal tax ID number (UB-92, field 5) is required;]~~

~~[(E) statement period (beginning and ending date of claim period) (UB-92, field 6) is required;]~~

~~[(F) covered days (UB-92, field 7) is required if Medicare is a primary or secondary payor;]~~

~~[(G) noncovered days (UB-92, field 8) is required if Medicare is a primary or secondary payor;]~~

~~[(H) coinsurance days (UB-92, field 9) is required if Medicare is a primary or secondary payor;]~~

~~[(I) lifetime reserve days (UB-92, field 10) is required if Medicare is a primary or secondary payor and the patient was an inpatient;]~~

~~[(J) patient's name (UB-92, field 12) is required;]~~

~~[(K) patient's address (UB-92, field 13) is required;]~~

~~[(L) patient's date of birth (UB-92, field 14) is required;]~~

~~[(M) patient's gender (UB-92, field 15) is required;]~~

~~[(N) patient's marital status (UB-92, field 16) is required;]~~

~~[(O) date of admission (UB-92, field 17) is required for admissions, observation stays, and emergency room care;]~~

~~[(P) admission hour (UB-92, field 18) is required for admissions, observation stays, and emergency room care;]~~

~~[(Q) type of admission (e.g., emergency, urgent, elective, newborn) (UB-92, field 19) is required for admissions;]~~

~~[(R) source of admission code (UB-92, field 20) is required;]~~

~~[(S) discharge hour (UB-92, field 21) is required for admissions, outpatient surgeries, or observation stays;]~~

~~[(T) patient-status-at-discharge code (UB-92, field 22) is required for admissions, observation stays, and emergency room care;]~~

~~[(U) condition codes (UB-92, fields 24 - 30) are required if the CMS UB-92 manual contains a condition code appropriate to the patient's condition;]~~

~~[(V) occurrence codes and dates (UB-92, fields 32 - 35) are required if the CMS UB-92 manual contains an occurrence code appropriate to the patient's condition;]~~

~~[(W) occurrence span code, from and through dates (UB-92, field 36), are required if the CMS UB-92 manual contains an occurrence span code appropriate to the patient's condition;]~~

~~[(X) value code and amounts (UB-92, fields 39-41) are required for inpatient admissions. If no value codes are applicable to the inpatient admission, the provider may enter value code 01;]~~

~~[(Y) revenue code (UB-92, field 42) is required;]~~

~~[(Z) revenue description (UB-92, field 43) is required;]~~

~~[(AA) HCPCS/Rates (UB-92, field 44) are required if Medicare is a primary or secondary payor;]~~

~~[(BB) Service date (UB-92, field 45) is required if the claim is for outpatient services;~~

~~[(CC) units of service (UB-92, field 46) are required;]~~

~~[(DD) total charge (UB-92, field 47) is required;]~~

~~[(EE) HMO or preferred provider carrier name (UB-92, field 50) is required;]~~

~~[(FF) provider number (UB-92, field 51) is required if the HMO or preferred provider carrier, prior to June 17, 2003, required provider numbers and gave notice of that requirement to physicians and providers.]~~

~~[(GG) prior payments-payor and patient (UB-92, field 54) are required if payments have been made to the physician or provider by the patient or another payor or subscriber, on behalf of the patient or subscriber, or by a primary plan as required by subsection (d) of this section;]~~

~~[(HH) subscriber's name (UB-92, field 58) is required if shown on the patient's ID card;]~~

~~[(II) patient's relationship to subscriber (UB-92, field 59) is required;]~~

~~[(JJ) patient's/subscriber's certificate number, health claim number, ID number (UB-92, field 60) is required if shown on the patient's ID card;]~~

~~[(KK) insurance group number (UB-92, field 62) is required if a group number is shown on the patient's ID card;]~~

~~[(LL) verification number (UB-92, field 63) is required if services have been verified pursuant to §19.1724 of this title. If no verification has been provided, treatment authorization codes (UB-92, field 63) are required when authorization is required and granted;]~~

~~[(MM) principal diagnosis code (UB-92, field 67) is required;]~~

~~[(NN) diagnoses codes other than principal diagnosis code (UB-92, fields 68 - 75) are required if there are diagnoses other than the principal diagnosis;]~~

~~[(OO) admitting diagnosis code (UB-92, field 76) is required;]~~

[(PP) procedure coding methods used (UB-92, field 79) is required if the CMS UB-92 manual indicates a procedural coding method appropriate to the patient's condition;]

[(QQ) principal procedure code (UB-92, field 80) is required if the patient has undergone an inpatient or outpatient surgical procedure;]

[(RR) other procedure codes (UB-92, field 81) are required as an extension of subparagraph (QQ) of this paragraph if additional surgical procedures were performed;]

[(SS) attending physician ID (UB-92, field 82) is required;]

[(TT) signature of provider representative, electronic signature or notation that the signature is on file with the HMO or preferred provider carrier (UB-92, field 85) is required; and]

[(UU) date bill submitted (UB-92, field 86) is required.]

(c) Required data elements for dental [elements-dental] claims. The data elements described in this subsection are required as indicated and must be completed or provided under [in accordance with] the special instructions applicable to the data elements for nonelectronic [non-electronic] clean claims filed by dental providers with HMOs.

(1) patient's [Patient's] name is required;

(2) patient's [Patient's] address is required;

(3) patient's [Patient's] date of birth is required;

(4) patient's sex [Patient's gender] is required;

(5) patient's [Patient's] relationship to subscriber is required;

(6) subscriber's [Subscriber's] name is required;

(7) subscriber's [Subscriber's] address is required, but the provider may enter "same" if the subscriber's address is the same as the patient's address required by paragraph (2) of this subsection;

(8) subscriber's [Subscriber's] date of birth is required, if shown on the patient's ID card;

(9) subscriber's sex [Subscriber's gender] is required;

(10) subscriber's [Subscriber's] identification number is required, if shown on the patient's ID card;

(11) subscriber's plan or group [Subscriber's plan/group] number is required, if shown on the patient's ID card;

(12) - (13) (No change.)

(14) disclosure [Disclosure] of any other plan providing dental benefits is required and must [shall] include a "no" if the patient is not covered by another plan providing dental benefits. If the patient does have other coverage, the provider must [shall] indicate "yes," and the elements in paragraphs (15) - (20) of this subsection are required unless the provider submits with the claim documented proof [to the HMO] that the provider has made a good faith but unsuccessful attempt to obtain from the enrollee any of the information needed to complete the data elements;

(15) other [Other] insured's or enrollee's name is required as called for by [in accordance with] the response to and requirements of paragraph (14) of this subsection;

(16) other [Other] insured's or enrollee's date of birth is required as called for by [in accordance with] the response to and requirements of the element in paragraph (14) [(15)] of this subsection;

(17) other [Other] insured's or enrollee's sex [gender] is required as called for by [in accordance with] the response to and requirements of the element in paragraph (14) [(15)] of this subsection;

(18) other [Other] insured's or enrollee's identification number is required as called for by [in accordance with] the response to and requirements of the element in paragraph (14) [(15)] of this subsection;

(19) patient's [Patient's] relationship to other insured or enrollee is required as called for by [in accordance with] the response to and requirements of the element in paragraph (14) [(15)] of this subsection;

(20) name [Name] of other HMO or insurer is required as called for by [in accordance with] the response to and requirements of the element in paragraph (14)[(15)] of this subsection;

(21) verification [Verification] or preauthorization number is required, if a verification or preauthorization number was issued by an HMO to the provider;

(22) date(s) [Date(s)] of service(s) or procedure(s) is required;

(23) area [Area] of oral cavity is required, if applicable;

(24) tooth [Tooth] system is required, if applicable;

(25) tooth [Tooth] number(s) or letter(s) are required, if applicable;

(26) tooth [Tooth] surface is required, if applicable;

(27) procedure [Procedure] code for each service is required;

(28) description [Description] of procedure for each service is required, if applicable;

(29) charge [Charge] for each listed service is required;

(30) total [Total] charge for the claim is required;

(31) missing [Missing] teeth information is required, if a prosthesis constitutes part of the claim. A provider that provides information for this element must [shall] include the tooth number(s) or letter(s) of the missing teeth;

(32) notification [Notification] of whether the services were for orthodontic treatment is required. If the services were for orthodontic treatment, the elements in paragraphs (33) and (34) [and (35)] of this subsection are required;

(33) date [Date] of orthodontic appliance placement is required, if applicable;

(34) months [Months] of orthodontic treatment remaining is required, if applicable;

(35) notification [Notification] of placement of prosthesis is required, if applicable. If the services included placement of a prosthesis, the element in paragraph (36) of this subsection is required;

(36) date [Date] of prior prosthesis placement is required, if applicable;

(37) name [Name] of billing provider is required;

(38) address [Address] of billing provider is required;

(39) billing [Billing] provider's provider identification number is required, if applicable;

(40) billing [Billing] provider's license number is required;

(41) billing [~~Billing~~] provider's social security number or federal tax identification number is required;

(42) billing [~~Billing~~] provider's telephone number is required; and

(43) treating [~~Treating~~] provider's name and license number are required if the treating provider is not the billing provider.

(d) Coordination of benefits or nonduplication [~~non-duplication~~] of benefits.

(1) If a claim is submitted for covered services or benefits for [~~in~~] which coordination of benefits is necessary under [~~pursuant to~~] §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits), a successor rule adopted by the commissioner, or [~~and~~] §11.511(1) of this title (relating to Optional Provisions) [~~is necessary~~], the amount paid as a covered claim by the primary plan is a required element of a clean claim for purposes of the secondary plan's [~~processing of the~~] claim processing and CMS-1500 (02/12), field 29, or CMS-1500 (08/05), field 29, or[~~; CMS-1500(12/90), field 29;~~] UB-04, field 54[~~; or UB-92, field 54~~], as applicable, must be completed under [~~pursuant to~~] subsection (b)(1)(GG), (2)(KK), and [~~(b)(1)(KK), (2)(II),~~] (3)(BB)[~~, and (4)(GG)~~] of this section.

(2) If a claim is submitted for covered services or benefits for [~~in~~] which nonduplication [~~non-duplication~~] of benefits under [~~pursuant to~~] §3.3053 of this title (relating to Non-duplication of Benefits Provision) is an issue, the amounts paid as a covered claim by all other valid coverage is a required element of a clean claim, and CMS-1500 (02/12), field 29, or CMS-1500 (08/05), field 29, or[~~; CMS-1500 (12/90), field 29;~~] UB-04, field 54[~~; or UB-92, field 54~~], as applicable, must be completed under [~~pursuant to~~] subsection (b)(1)(GG), (2)(KK), and [~~(b)(1)(KK), (2)(II),~~] (3)(BB)[~~, and (4)(GG)~~] of this section.

(3) If a claim is submitted for covered services or benefits and the policy contains a variable deductible provision as set forth in §3.3074(a)(4) of this title (relating to Minimum Standards for Major Medical Expense Coverage), the amount paid as a covered claim by all other health insurance coverages, except for amounts paid by individually underwritten and issued hospital confinement indemnity, specified disease, or limited benefit plans of coverage, is a required element of a clean claim, and CMS-1500 (02/12), field 29, or CMS-1500 (08/05), field 29, or[~~; CMS-1500 (12/90), field 29;~~] UB-04, field 54[~~; or UB-92, field 54~~], as applicable, must be completed under [~~pursuant to~~] subsection (b)(1)(GG), (2)(KK), and [~~(b)(1)(KK), (2)(II),~~] (3)(BB)[~~, and (4)(GG)~~] of this section. Despite [~~Notwithstanding~~] these requirements, an MCC [~~HMO or preferred provider carrier~~] may not require a physician or a provider to investigate coordination of other health benefit plan coverage.

(e) Submission of electronic clean claim. A physician or a provider submits an electronic clean claim by [~~submitting a claim~~] using the applicable format that complies with all applicable federal laws related to electronic health care claims, including applicable implementation guides, companion guides, and trading partner agreements.

(f) Coordination of benefits on electronic clean claims. If a physician or a provider submits an electronic clean claim that requires coordination of benefits under [~~pursuant to~~] §§3.3501 - 3.3511 of this title (relating to Group Coordination of Benefits), a successor rule adopted by the commissioner, or §11.511(1) of this title [~~(relating to Optional Provisions)~~], the MCC [~~HMO or preferred provider carrier~~] processing the claim as a secondary payor must [~~shall~~] rely on the primary payor information submitted on the claim by the physician or the provider. The primary payor may submit primary payor information electronically to the secondary payor using the ASC X12N 837 format and in compliance with federal laws related to electronic health care claims, including applicable implementation guides, companion guides, and trading partner agreements.

(g) Format of elements. The elements of a clean claim set forth in subsections (b) - (f) of this section, as [~~(b), (c), (d), (e), and (f), if~~] applicable, must be complete, legible, and accurate.

(h) Additional data elements or information. The submission of data elements or information on or with a claim form by a physician or a provider in addition to those required for a clean claim under this section does [~~shall~~] not render such claim deficient.

§21.2804. Requests for Additional Information from Treating Preferred Provider.

(a) If necessary to determine whether a claim is payable, an MCC [~~HMO or preferred provider carrier~~] may, within 30 days of receipt of a clean claim, request additional information from the treating preferred provider. The time [~~period~~] to request additional information may be extended as allowed by §21.2819(c) of this title (relating to Catastrophic Event). An MCC [~~HMO or preferred provider carrier~~] may make only one request to the submitting treating preferred provider for information under this section.

(b) (No change.)

(c) An MCC [~~HMO or preferred provider carrier~~] that requests information under this section must [~~shall~~] determine whether the claim is payable and pay or deny the claim, or audit the claim in compliance [~~accordance~~] with §21.2809 of this title (relating to Audit Procedures), on or before the later of:

(1) the 15th day after the date the MCC [~~HMO or preferred provider carrier~~] receives the requested information as required under subsection (e) of this section;

(2) the 15th day after the date the MCC [~~HMO or preferred provider carrier~~] receives a response under subsection (d) of this section; or

(3) the latest date for determining whether the claim is payable under §21.2807 of this title (relating to Effect of Filing a Clean Claim).

(d) (No change.)

(e) An MCC must [~~HMO or preferred provider carrier shall~~] require the preferred provider responding to a request made under this section to either attach a copy of the request to the response or include with the response[~~,~~] the name of the patient, the patient identification number, the claim number as provided by the MCC [~~HMO or preferred provider carrier~~], the date of service, and the name of the treating preferred provider. If the MCC [~~HMO or preferred provider carrier~~] submitted the request for additional information electronically in compliance [~~accordance~~] with federal requirements concerning electronic transactions, the treating preferred provider must submit the response in compliance [~~accordance~~] with those requirements. To resume the claims payment period as described in subsection (c) of this section, the treating preferred provider must deliver the requested information in compliance with this subsection.

(f) (No change.)

§21.2805. Requests for Additional Information from Other Sources.

(a) If an MCC [~~HMO or preferred provider carrier~~] requests additional information from a person other than the preferred provider who submitted the claim, the MCC must [~~HMO or preferred provider carrier shall~~] provide[~~,~~] to the preferred provider who submitted the claim[~~,~~] a notice containing the name of the physician, the provider, or the other entity from whom the MCC [~~HMO or preferred provider carrier~~] is requesting information. The MCC [~~HMO or preferred provider~~

carrier] may not withhold payment beyond the applicable [21-, 30- or 45-day] statutory claims payment period pending receipt of information requested under subsection (b) of this section. If, on receiving information requested under this subsection the MCC [HMO or preferred provider carrier] determines that there was an error in payment of the claim, the MCC [HMO or preferred provider carrier] may recover any overpayment under §21.2818 of this title (relating to Overpayment of Claims).

(b) An MCC must [HMO or preferred provider carrier shall] request that the entity responding to a request made under this section [to] attach a copy of the request to the response. If the request for additional information was submitted electronically in compliance with [in accordance with] applicable federal requirements concerning electronic transactions, the responding entity must submit the response in compliance with [shall be submitted in accordance with] those requirements, if applicable.

(c) (No change.)

§21.2806. Claim [Claims] Filing Deadline.

(a) Claim submission deadline. A physician or a provider must submit a claim to an MCC [HMO or preferred provider carrier] not later than the 95th day after the date the physician or the provider delivers [provides] the medical care or health care services for which the claim is made. An MCC [HMO or preferred provider carrier] and a physician or a provider may agree, by contract, to extend the period for submitting a claim. For a claim submitted by an institutional provider, the 95-day period does not begin until the date of discharge. For a claim for which coordination of benefits applies, the 95-day period does not begin for submission of the claim to the secondary payor until the physician or the provider receives notice of the payment or the denial from the primary payor.

(b) Failure to meet claim submission deadline. If a physician or a provider fails to submit a claim in compliance with this section, the physician or the provider forfeits the right to payment unless the physician or the provider has certified that the failure to timely submit the claim is a result of a catastrophic event in compliance [accordance] with §21.2819 of this title (relating to Catastrophic Event).

(c) Manner of claim submission. A physician or a provider may submit claims via United States mail, first class; United States mail, return receipt requested;[,] overnight delivery service;[,] electronic transmission;[,] hand delivery;[,] facsimile, if the MCC [HMO or preferred provider carrier] accepts claims submitted by facsimile;[,] or as otherwise agreed to by the physician or the provider and the MCC [HMO or preferred provider carrier]. An MCC must [HMO or preferred provider carrier shall] accept as proof of timely filing a claim filed in compliance with this subsection or information from another MCC [HMO or preferred provider carrier] showing that the physician or the provider submitted the claim to the other MCC [HMO or preferred provider carrier] in compliance with this subsection.

(d) Determining date of submission. Section 21.2816 [§21.2816] of this title (relating to Date of Receipt) determines the date an MCC [HMO or preferred provider carrier] receives a claim.

(e) Duplicate claims.

(1) A physician or a provider may not submit a duplicate claim prior to the 46th day, or the 31st day if filed electronically, [or the 22nd day if a claim for prescription benefits,] after the date the original claim is received according to the provisions of §21.2816 of this title, except as provided in paragraph (2) of this subsection for prescription benefit claims.

(2) A physician or a provider may not submit a duplicate claim for prescription benefits prior to the 22nd day, or the 19th day if filed electronically, after the date the original claim is received according to the provisions of §21.2816 of this title.

(3) An MCC [HMO or preferred provider carrier] that receives a duplicate claim prior to the applicable date specified in paragraphs (1) and (2) of this subsection [46th day after receipt of the original claim, a duplicate electronic claim prior to the 31st day after receipt of the original claim, or a duplicate claim for prescription benefits prior to the 22nd day after receipt of the original claim] is not subject to the provisions of §21.2807 [§§21.2807] of this title (relating to Effect of Filing a Clean Claim) or §21.2815 [21.2815] of this title (relating to Failure to Meet the Statutory Claims Payment Period) with respect to the duplicate claim.

§21.2807. Effect of Filing a Clean Claim.

(a) The statutory claims payment period begins to run upon receipt of a clean claim, including a corrected claim that is a clean claim, from a preferred provider, under [pursuant to] §21.2816 of this title (relating to Date of Receipt), at the address designated by the MCC [HMO or preferred provider carrier], in compliance [accordance] with §21.2811 of this title (relating to Disclosure of Processing Procedures), whether it be the address of the MCC [HMO, preferred provider carrier,] or any other entity, including a clearinghouse or a repricing company, designated by the MCC [HMO or preferred provider carrier] to receive claims. The date of claim payment is determined in §21.2810 of this title (relating to Date of Claim Payment).

(b) After receipt of a clean claim and[,] prior to the expiration of the applicable statutory claims payment period specified in §21.2802 of this title (relating to Definitions), an MCC must [HMO or preferred provider carrier shall]:

(1) pay the total amount of the clean claim as specified in [in accordance with] the contract between the preferred provider and the MCC [HMO or preferred provider carrier];

(2) deny the clean claim in its entirety after a determination that the MCC [HMO or preferred provider carrier] is not liable for the clean claim and notify the preferred provider in writing why the clean claim will not be paid;

(3) notify the preferred provider in writing that the entire clean claim will be audited and pay 100 percent [100%] of the contracted rate on the claim to the preferred provider; or

(4) pay the portion of the clean claim for which the MCC [HMO or preferred provider carrier] acknowledges liability as specified in [in accordance with] the contract between the preferred provider and the MCC [HMO or preferred provider carrier], and:

(A) deny the remainder of the clean claim after a determination that the MCC [HMO or preferred provider carrier] is not liable for the remainder of the clean claim and notify the preferred provider in writing why the remainder of the clean claim will not be paid; or

(B) notify the preferred provider in writing that the remainder of the clean claim will be audited and pay 100 percent [100%] of the contracted rate on the unpaid portion of the clean claim to the preferred provider.

(c) With regard to a clean claim for a prescription benefit subject to the statutory claims payment period specified in §21.2802 of this title, an HMO or preferred provider carrier shall, after receipt of an electronically submitted clean claim for a prescription benefit that is affirmatively adjudicated pursuant to Insurance Code Article 3.70-3C, §3A(f) (Preferred Provider Benefit Plans) and Insurance Code §843.339, pay the prescription benefit claim within 21 calendar days after the clean claim is adjudicated.

(d) An MCC or an MCC's [~~HMO or preferred provider carrier or an HMO's or preferred provider carrier's~~] clearinghouse that receives an electronic clean claim is subject to the requirements of this subchapter regardless of whether the claim is submitted together with, or in a batch submission with, a claim that is deficient.

§21.2808. Effect of Filing a Deficient Claim.

If an MCC [~~HMO or preferred provider carrier~~] determines that a submitted claim is [~~to be~~] deficient, the MCC must [~~HMO or preferred provider carrier shall~~] notify the preferred provider submitting the claim that the claim is deficient within 45 calendar days of the MCC's [~~HMO's or preferred provider carrier's~~] receipt of the nonelectronic claim, or within 30 days of receipt of an electronic claim. If an MCC [~~HMO or preferred provider carrier~~] determines that a [~~an electronically submitted~~] claim for a prescription benefit is [~~to be~~] deficient, the MCC must [~~HMO or preferred provider carrier shall~~] notify the provider that the claim is deficient within 21 calendar days of the MCC's [~~HMO's or preferred provider carrier's~~] receipt of the nonelectronic claim, or within 18 days of receipt of an electronic claim.

§21.2809. Audit Procedures.

(a) Notice and payment required. If an MCC [~~HMO or preferred provider carrier~~] is unable to pay or deny a clean claim, in whole or in part, within the applicable statutory claims payment period specified in §21.2802 [~~§21.2802(28)~~] of this title (relating to Definitions) and intends to audit the claim to determine whether the claim is payable, the MCC must [~~HMO or preferred provider carrier shall~~] notify the preferred provider that the claim is being audited and pay 100 percent [~~100%~~] of the contracted rate within the applicable statutory claims payment period.

(b) Failure to provide notice and payment. An MCC [~~HMO or preferred provider carrier~~] that fails to provide notice [~~notification~~] of the decision to audit the claim and pay 100 percent [~~100%~~] of the applicable contracted rate subject to copayments and deductibles within the applicable statutory claims payment period, or, if applicable, the extended periods allowed for by §21.2804(c) of this title (relating to Requests for Additional Information from Treating Preferred Provider) or §21.2819(c) of this title (relating to Catastrophic Event), may not make use of the audit procedures set forth in this section. A preferred provider that receives less than 100 percent [~~100%~~] of the contracted rate [~~in conjunction~~] with a notice of intent to audit has received an underpayment and must notify the MCC [~~HMO or preferred provider carrier~~] within 270 [~~180~~] days in compliance [~~accordance~~] with the provisions of §21.2815(f)(2) [~~§21.2815(e)(2)~~] of this title (relating to Failure to Meet the Statutory Claims Payment Period) to qualify to receive a penalty for the underpaid amount.

(c) [~~(b)~~] Explanation of payment. The MCC must [~~HMO or preferred provider carrier shall~~] clearly indicate on the explanation of payment that the claim is being audited and that the preferred provider is being paid 100 percent [~~100%~~] of the contracted rate, subject to completion of the audit. A nonelectronic [~~paper~~] explanation of payment complies with this requirement if the notice of the audit is clearly and prominently identified.

(d) [~~(c)~~] Audit deadline and requirements. The MCC must [~~HMO or preferred provider carrier shall~~] complete the audit within 180 calendar days from receipt of the clean claim. The HMO or preferred provider carrier must [~~shall~~] provide written notice [~~notification~~] of the results of the audit. The MCC must include in the notice [~~shall include~~] a listing of the specific claims paid and not paid under [~~pursuant to~~] the audit, as well as a listing of specific claims and amounts for which a refund is due and, for each claim, the basis and specific reasons for requesting a refund. An MCC [~~HMO or preferred provider carrier~~] seeking recovery of any refund under this section must [~~shall~~] comply with the procedures set forth in §21.2818 of this title (relating to Overpayment of Claims).

(e) [~~(d)~~] Requests for information. An MCC [~~HMO or preferred provider carrier~~] may recover the total amount paid on the claim under subsection (a) of this section if a physician or a provider fails to timely provide additional information requested under [~~pursuant to~~] the requirements of Insurance Code §1301.105 [~~Article 3.70-3C §3A(g)~~] or §843.340(c). Section 21.2816 of this title (relating to Date of Receipt) applies to the submission and receipt of a request for information under this subsection.

(f) [~~(e)~~] Opportunity for appeal. Prior to seeking a refund for a payment made under this section, an MCC [~~HMO or preferred provider carrier~~] must provide a preferred provider with the opportunity to appeal the request for a refund in compliance [~~accordance~~] with §21.2818 of this title. An MCC [~~HMO or preferred provider carrier~~] may not seek to recover the refund until all of the preferred provider's internal appeal rights under §21.2818 of this title have been exhausted.

(g) [~~(f)~~] No admission of liability. Payments made under [~~pursuant to~~] this section on a clean claim are not an admission that the MCC [~~HMO or preferred provider carrier~~] acknowledges liability on that claim.

§21.2811. Disclosure of Processing Procedures.

(a) In contracts with preferred providers, or in the physician or the provider manual or other document that sets forth the procedure for filing claims, or by any other method mutually agreed upon by the contracting parties, an MCC [~~HMO or preferred provider carrier~~] must disclose to its preferred providers:

(1) (No change.)

(2) the telephone number to [~~at~~] which preferred providers' questions and concerns regarding claims may be directed;

(3) any entity, along with its address, including physical address and telephone number, to which the MCC [~~HMO or preferred provider carrier~~] has delegated claim payment functions[~~, if applicable~~]; and

(4) the mailing address, [~~and~~] physical address, and telephone number of any separate claims processing centers for specific types of services[~~, if applicable~~].

(b) An MCC must [~~HMO or preferred provider carrier shall~~] provide no less than 60 calendar days prior written notice of any changes of address for submission of claims, and of any changes of delegation of claims payment functions, to all affected preferred providers [~~with whom the HMO or preferred provider carrier has contracts~~].

§21.2812. Denial of Clean Claim Prohibited for Change of Address.

After a change of claims payment address or a change in delegation of claims payment functions, an MCC [~~HMO or preferred provider carrier~~] may not premise the denial of a clean claim upon a preferred provider's failure to file a [~~clean~~] claim within the claim [~~claims~~] filing deadline set forth in §21.2806 of this title (relating to Claim [~~Claims~~] Filing Deadline), unless the MCC has given timely written notice as required by §21.2811(b) of this title (relating to Disclosure of Processing Procedures) [~~has been given~~].

§21.2813. Requirements Applicable to Other Contracting Entities.

Any contract or delegation agreement between an MCC [~~HMO or preferred provider carrier~~] and an entity that processes or pays claims, obtains the services of physicians and providers to provide health care services, or issues verifications or preauthorizations may not [~~be construed to~~] limit the MCC's [~~HMO's or preferred provider carrier's~~] authority

or responsibility to comply with all applicable statutory and regulatory requirements.

§21.2814. [Electronic] Adjudication of Prescription Benefits.

If a prescription benefit does not require authorization by an MCC [HMO or preferred provider carrier], the statutory claims payment period must [shall] begin on the date of affirmative adjudication of the [a] claim for a prescription benefit [that is electronically transmitted].

§21.2815. Failure to Meet the Statutory Claims Payment Period.

(a) An MCC [HMO or preferred provider carrier] that determines under §21.2807 of this title (relating to Effect of Filing a Clean Claim) that a claim is payable must pay the contracted rate owed on the claim; and [shall]:

(1) if the claim is paid on or before the 45th day after the end of the applicable [21-, 30- or 45-day] statutory claims payment period, pay to a noninstitutional [the] preferred provider[, in addition to the contracted rate owed on the claim,] a penalty in the amount of the lesser of:

(A) (No change.)

(B) $100,000;[.]

(2) if [If] the claim is paid on or after the 46th day and before the 91st day after the end of the applicable [21-, 30- or 45-day] statutory claims payment period, pay to a noninstitutional [the] preferred provider[, in addition to the contracted rate owed on the claim,] a penalty in the amount of the lesser of:

(A) (No change.)

(B) $200,000;[.]

(3) if [If] the claim is paid on or after the 91st day after the end of the applicable [21-, 30- or 45-day] statutory claims payment period:[,]

(A) pay to the noninstitutional preferred provider[, in addition to the contracted rate owed on the claim,] a penalty computed under paragraph (2) of this subsection; and

(B) pay to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the Texas Department of Insurance (the department) [plus] 18 percent annual interest on the penalty amount paid to a noninstitutional preferred provider under paragraph (2) of this subsection. Interest under this paragraph [subsection] accrues beginning on the date the MCC [HMO or preferred provider carrier] was required to pay the claim and ending on the date the claim and the penalty are paid in full to the noninstitutional provider;[.]

(4) if the claim is paid to an institutional preferred provider on or before the 45th day after the end of the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraphs (A) or (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph is in the amount of the lesser of:

(A) 50 percent of the difference between the billed charges and the contracted rate; or

(B) $100,000;

(5) if the claim is paid to an institutional preferred provider on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraphs (A) or (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and fifty percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph is in the amount of the lesser of:

(A) 100 percent of the difference between the billed charges and the contracted rate; or

(B) $200,000; and

(6) if the claim is paid to an institutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period:

(A) pay the penalty amount to the institutional provider and the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department as specified in paragraph (5) of this subsection; and

(B) pay 18 percent annual interest on the penalty amount computed under paragraph (5) of this subsection. Interest under this paragraph accrues beginning on the date the MCC was required to pay the claim and ending on the date the claim and the institutional provider's portion of the penalty are paid in full. The MCC must pay 50 percent of the interest to the institutional preferred provider and 50 percent of the interest to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department.

(b) The following examples demonstrate how to calculate penalty amounts under subsection (a)(1) - (3) [(a)] of this section:

(1) if [If] the contracted rate, including any patient financial responsibility, is $10,000 and the billed charges are $15,000, and the MCC [HMO or preferred provider carrier] pays the claim on or before the 45th day after the end of the applicable statutory claims payment period, the MCC must [HMO or preferred provider carrier shall] pay, in addition to the amount owed on the claim, 50 percent of the difference between the billed charges ($15,000) and the contracted rate ($10,000) or $2,500. The basis for the penalty is the difference between the total contracted amount, including any patient financial responsibility, and the noninstitutional provider's billed charges;

(2) if the claim is paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, the MCC must [HMO or preferred provider carrier shall] pay, in addition to the contracted rate owed on the claim, 100 percent of the difference between the billed charges and the contracted rate or $5,000; and

(3) if the claim is paid on or after the 91st day after the end of the applicable statutory claims payment period, the MCC must [HMO or preferred provider carrier shall] pay to the noninstitutional provider, in addition to the contracted rate owed on the claim, the $5,000 penalty. The MCC must also pay to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department[, plus] 18 percent annual interest on the $5,000 penalty amount accruing from the statutory claim payment deadline until the date the claim and penalty are paid in full to the noninstitutional provider.

(c) Except as provided by this section, an MCC [HMO or preferred provider carrier] that determines under §21.2807 of this title that a claim is payable, pays only a portion of the amount of the claim on or before the end of the applicable [21-, 30- or 45-day] statutory claims payment period, and pays the balance of the contracted rate owed for the claim after that date must, in addition to paying the contracted amount owed [shall]:

(1) if [If] the balance of the claim is paid to a noninstitutional preferred provider on or before the 45th day after the applicable

[~~21-, 30- or 45-day~~] statutory claims payment period, pay to the preferred provider[~~, in addition to the contracted amount owed,~~] a penalty on the amount not timely paid in the amount of the lesser of:

(A) (No change.)

(B) $100,000;[~~.~~]

(2) if [~~If~~] the balance of the claim is paid to a noninstitutional preferred provider on or after the 46th day and before the 91st day after the end of the applicable [~~21-, 30- or 45-day~~] statutory claims payment period, pay to the preferred provider[~~, in addition to the contracted amount owed,~~] a penalty in the amount of the lesser of:

(A) (No change.)

(B) $200,000;[~~.~~]

(3) if [~~If~~] the balance of the claim is paid to a noninstitutional preferred provider on or after the 91st day after the end of the applicable [~~21-, 30- or 45-day~~] statutory claims payment period, pay to the preferred provider[~~, in addition to the contracted amount owed,~~] a penalty computed under paragraph (2) of this subsection plus 18 percent annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the MCC [~~HMO or preferred provider carrier~~] was required to pay the claim and ending on the date the claim and the penalty are paid in full;[~~.~~]

(4) if the balance of the claim is paid to an institutional preferred provider on or before the 45th day after the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraphs (A) and (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph on the amount not timely paid is in the amount of the lesser of:

(A) 50 percent of the underpaid amount; or

(B) $100,000;

(5) if the balance of the claim is paid to an institutional preferred provider on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period, pay a penalty in the amount specified in subparagraphs (A) and (B) of this paragraph. The MCC must pay 50 percent of the penalty to the institutional preferred provider and 50 percent of the penalty to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department. The penalty under this paragraph is in the amount of the lesser of:

(A) 100 percent of the underpaid amount; or

(B) $200,000; and

(6) if the balance of the claim is paid to an institutional preferred provider on or after the 91st day after the end of the applicable statutory claims payment period, pay a penalty computed under paragraph (5) of this subsection plus 18 percent annual interest on the penalty amount. Interest under this subsection accrues beginning on the date the MCC was required to pay the claim and ending on the date the claim and the institutional provider's portion of the penalty are paid in full. The MCC must pay 50 percent of the interest to the institutional preferred provider and 50 percent of the interest to the Texas Health Insurance Pool until its dissolution, and after its dissolution to the department.

(d) For the purposes of subsection (c) of this section, the underpaid amount is calculated on the ratio of the balance owed by the MCC [~~carrier~~] to the total contracted rate, including any patient financial responsibility, as applied to an amount equal to the billed charges minus the contracted rate. For example, a claim for a contracted rate to a noninstitutional preferred provider of $1,000 and billed charges of $1,500 is initially underpaid at $600, with the insured owing $200 and the MCC [~~HMO or preferred provider carrier~~] owing a balance of $200. The MCC [~~HMO or preferred provider carrier~~] pays the $200 balance on the 30th day after the end of the applicable statutory claims payment period. The amount the MCC [~~HMO or preferred provider carrier~~] initially underpaid, $200, is 20 percent of the contracted rate. To determine the penalty, the MCC [~~HMO or preferred provider carrier~~] must calculate 20 percent of the billed charges minus the contracted rate, which is $100. This amount represents the underpaid amount for subsection (c)(1) of this section. The MCC [~~Therefore, the HMO or preferred provider carrier~~] must pay, as a penalty, 50 percent of $100, or $50.

(e) For purposes of calculating a penalty when an MCC [~~HMO or preferred provider carrier~~] is a secondary plan MCC [~~carrier~~] for a claim, the contracted rate and billed charges must be reduced in proportion to [~~accordance with~~] the percentage of the entire claim that is owed by the secondary plan MCC [~~carrier~~]. The following example illustrates this method: Carrier A pays 80 percent of a claim to a noninstitutional preferred provider for a contracted rate of $1,000 and billed charges of $1,500, leaving $200 unpaid as the patient's financial responsibility. The patient has coverage through Carrier B that is secondary, and Carrier B will owe the $200 balance under [~~pursuant to~~] the coordination of benefits provision of Carrier B's policy. If Carrier B fails to pay the $200 within the applicable statutory claims payment period, Carrier B will pay a penalty based on the percentage of the claim that it owed. The contracted rate for Carrier B will [~~therefore~~] be $200 (20 percent of Carrier A's $1,000 contracted rate), and the billed charges will be $300 (20 percent of $1,500). Although Carrier B may have a contracted rate with the provider that is different from [~~than~~] Carrier A's contracted rate, it is Carrier A's contracted rate that establishes the entire claim amount for the purpose of calculating Carrier B's penalty.

(f) An MCC [~~HMO or preferred provider carrier~~] is not liable for a penalty under this section:

(1) if the failure to pay the claim within [~~in accordance with~~] the applicable statutory claims payment period is a result of a catastrophic event that the MCC [~~HMO or preferred provider carrier~~] certified according to the provisions of §21.2819 of this title (relating to Catastrophic Event); or

(2) if the claim was paid in compliance [~~accordance~~] with §21.2807 of this title, but for less than the contracted rate, and:

(A) the preferred provider notifies the MCC [~~HMO or preferred provider carrier~~] of the underpayment after the 270th day after the date the underpayment was received; and

(B) the MCC [~~HMO or preferred provider carrier~~] pays the balance of the claim on or before the 30th day after the date the insurer receives the notice of underpayment.

(g) Subsection (f) of this section does not relieve the MCC [~~HMO or preferred provider carrier~~] of the obligation to pay the remaining unpaid contracted rate owed the preferred provider.

(h) An MCC [~~HMO or preferred provider carrier~~] that pays a penalty under this section must [~~shall~~] clearly indicate on the explanation of payment the amount of the contracted rate paid, the amount of the billed charges as submitted by the physician or the provider, and the amount paid as a penalty. A nonelectronic [~~non-electronic~~] explanation of payment complies with this requirement if it clearly and prominently identifies the notice of the penalty amount.

§21.2816. Date of Receipt.

(a) A written communication, including a claim, referenced under this subchapter is subject to and must [~~shall~~] comply with this section unless otherwise stated in this subchapter.

(b) An entity subject to these rules may deliver written communications as follows:

(1) submit the communication by United States mail, first class;[~~,~~] by United States mail, return receipt requested; or by overnight delivery;

(2) - (4) (No change.)

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

(e) If a claim is submitted electronically, the claim is presumed received on the date of the electronic verification of receipt by the MCC [~~HMO or preferred provider carrier~~] or the MCC's [~~HMO's or preferred provider carrier's~~] clearinghouse. If the MCC's [~~HMO's or preferred provider carrier's~~] clearinghouse does not provide a confirmation of receipt of the claim or a rejection of the claim within 24 hours of submission by the physician, or the provider, or the physician's or provider's clearinghouse, the physician's or provider's clearinghouse must [~~shall~~] provide the confirmation. The physician's or provider's clearinghouse must be able to verify that the claim contained the correct payor identification of the entity to receive the claim.

(f) - (g) (No change.)

(h) Any entity submitting a communication under subsection (b)(1) - (4) of this section may choose to maintain a mail log to provide proof of submission and establish date of receipt. The entity must [~~shall~~] fax or electronically transmit a copy of the mail log, if used, to the receiving entity at the time of the submission of a communication and include another copy with the relevant communication. The log must [~~shall~~] identify each separate claim, request for information, or response included in a batch communication. The mail log must [~~shall~~] include the following information: name of claimant; address of claimant; telephone number of claimant; claimant's federal tax identification number; name of addressee; name of MCC [~~HMO or preferred provider carrier~~]; designated address;[~~,~~] date of mailing or hand delivery; subscriber name; subscriber ID number; patient name; date(s) of service or occurrence; [~~service/occurrence,~~] delivery method;[~~,~~] and claim number, if applicable.

§21.2817. Terms of Contracts.

Unless otherwise provided in this subchapter, contracts between MCCs [~~HMOs or preferred provider carriers~~] and preferred providers may [~~shall~~] not include terms that [~~which~~]:

(1) extend the statutory or regulatory time frames; or

(2) waive the preferred provider's right to recover reasonable attorney's fees and court costs under [~~pursuant to~~] Insurance Code §1301.108 [~~Article 3.70-3C §3A(n)~~] and §843.343.

§21.2818. Overpayment of Claims.

(a) An MCC [~~HMO or preferred provider carrier~~] may recover a refund due to overpayment or completion of an audit if:

(1) the MCC [~~HMO or preferred provider carrier~~] notifies the physician or the provider of the overpayment not later than the 180th day after the date of receipt of the overpayment; or

(2) the MCC [~~HMO or preferred provider carrier~~] notifies the physician or the provider of the completion of an audit under §21.2809 of this title [~~the subchapter~~] (relating to Audit Procedures [~~Audits~~]).

(b) Notification under subsection (a) of this section must [~~shall~~]:

(1) be in written form and include the specific claims and amounts for which a refund is due, and for each claim, the basis and specific reasons for the request for refund;

(2) (No change.)

(3) describe the methods by which the MCC [~~HMO or preferred provider carrier~~] intends to recover the refund.

(c) A physician or a provider may appeal a request for refund by providing written notice of disagreement with the refund request not later than 45 days after receipt of notice described in subsection (a) of this section. Upon receipt of written notice under this subsection, the MCC must [~~HMO or preferred provider carrier shall~~] begin the appeal process provided for in the MCC's [~~HMO's or preferred provider carrier's~~] contract with the physician or the provider.

(d) An MCC [~~HMO or preferred provider carrier~~] may not recover a refund under this section until:

(1) for overpayments, the later of the 45th day after notification under subsection (a)(1) of this section or the exhaustion of any physician or provider appeal rights under subsection (c) of this section, where the physician or the provider has not made arrangements for payment with an MCC [~~HMO or preferred provider carrier~~]; or

(2) for audits, the later of the 30th day after notification under subsection (a)(2) of this section or the exhaustion of any physician or provider appeal rights under subsection (c) of this section, where the physician or the provider has not made arrangements for payment with an MCC [~~HMO or preferred provider carrier~~].

(e) If an MCC [~~HMO or preferred provider carrier~~] is a secondary payor and pays a portion of a claim that should have been paid by the MCC [~~HMO or preferred provider carrier~~] that is the primary payor, the secondary payor may only recover overpayment from the MCC [~~HMO or preferred provider carrier~~] that is primarily responsible for that amount. If the portion of the claim overpaid by the secondary payor was also paid by the primary payor, the secondary payor may recover the amount of overpayment from the physician or the provider that received the payment under the procedures set forth in this section.

(f) Subsections (a) - [~~through~~] (e) of this section do not affect an MCC's [~~a carrier's~~] ability to recover an overpayment in the case of fraud or a material misrepresentation by a physician or a provider.

§21.2819. Catastrophic Event.

(a) An MCC, a [~~HMO, preferred provider carrier,~~] physician, or a provider must notify the department if, due to a catastrophic event, it is unable to meet the deadlines in §§21.2804 [~~of this title~~] (relating to Requests [~~Request~~] for Additional Information from Treating Preferred Provider), 21.2806 (relating to Claim [~~Claims~~] Filing Deadline), 21.2807 (relating to Effect of Filing a Clean Claim), 21.2808 (relating to Effect of Filing a Deficient Claim), 21.2809 (relating to Audit Procedures), and 21.2815 [~~of this title~~] (relating to Failure to Meet the Statutory Claims Payment Period)of this title, as applicable. The entity must send the notification required under this subsection to the department within five days of the catastrophic event.

(b) Within 10 [~~ten~~] days after the entity returns to normal business operations, the entity must send a certification of the catastrophic event to the Life/Health and HMO Intake Team [~~department, to the Life/Health/HMO Filings Intake Division~~], Texas Department of Insurance, P.O. Box 149104, Mail Code 106-1E, Austin, Texas 78714-9104. The certification must:

(1) be in the form of a sworn affidavit from:

(A) for a physician or a provider, the physician, the provider, the office manager, the administrator, [~~administrators~~] or their designees; or

(B) for an MCC [~~HMO or preferred provider carrier~~], a corporate officer or a [~~the~~] corporate officer's designee;[~~.~~]

(2) identify the specific nature and date of the catastrophic event; and

(3) identify the length of time the catastrophic event caused an interruption in the claims submission or processing activities of the physician, the provider, or the MCC [~~HMO or preferred provider carrier~~].

(c) (No change.)

§21.2820. Identification Cards.

(a) An identification card, or other similar document that includes information necessary to allow enrollees and insureds to access services or coverage under an HMO evidence of coverage, [~~or~~] a preferred provider benefit plan, or an exclusive provider benefit plan that is issued by an MCC [~~HMO or preferred provider carrier~~] subject to this subchapter must [~~pursuant to §21.2801 of this title (relating to Scope) shall~~] comply with the requirements of this section.

(b) An identification card or other similar document issued to enrollees or to insureds must [~~shall~~] include the following information:

(1) the name of the enrollee or the insured;

(2) the first date on which the enrollee or the insured became eligible for benefits under the plan or a toll-free number that a preferred provider may use to obtain such information; [~~and~~]

(3) for an exclusive provider benefit plan, the acronym "EPO" or the phrase "Exclusive Provider Organization"; and

(4) [~~(3)~~] the letters "TDI" or "DOI" prominently displayed on the front of the card or the document.

[~~(c) The requirements of this section apply to an HMO evidence of coverage or a preferred provider benefit plan issued or renewed on or after February 1, 2004.~~]

§21.2821. Reporting Requirements.

(a) An MCC must [~~HMO or preferred provider carrier shall~~] submit to the department quarterly claims payment information in compliance [~~accordance~~] with the requirements of this section.

(b) The MCC must [~~HMO or preferred provider carrier shall~~] submit the report required by subsection (a) of this section to the department on or before:

(1) May 15th for the months of January, February, and March of each year;

(2) August 15th for the months of April, May, and June of each year;

(3) November 15th for the months of July, August, and September of each year; and

(4) February 15th for the months of October, November, and December of each preceding calendar year.

[~~(c) The HMO or preferred provider carrier shall submit the first report required by this section to the department on or before February 15, 2004 and shall include information for the months of September, October, November and December of the prior calendar year.~~]

(c) [~~(d)~~] The report required by subsection (a) of this section must [~~shall~~] include, at a minimum, the following information:

(1) number of claims received from noninstitutional [~~non-institutional~~] preferred providers;

(2) number of claims received from institutional preferred providers;

(3) number of clean claims received from noninstitutional [~~non-institutional~~] preferred providers;

(4) number of clean claims received from institutional preferred providers;

(5) number of clean claims from noninstitutional [~~non-institutional~~] preferred providers paid within the applicable statutory claims payment period;

(6) number of clean claims from noninstitutional [~~non-institutional~~] preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(7) number of clean claims from institutional preferred providers paid on or before the 45th day after the end of the applicable statutory claims payment period;

(8) number of clean claims from noninstitutional [~~non-institutional~~] preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(9) number of clean claims from institutional preferred providers paid on or after the 46th day and before the 91st day after the end of the applicable statutory claims payment period;

(10) number of clean claims from noninstitutional [~~non-institutional~~] preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(11) number of clean claims from institutional preferred providers paid on or after the 91st day after the end of the applicable statutory claims payment period;

(12) number of clean claims from institutional preferred providers paid within the applicable statutory claims payment period;

(13) number of claims paid under [~~pursuant to~~] the provisions of §21.2809 of this title (relating to Audit Procedures);

(14) number of requests for verification received under §19.1719 [~~pursuant to §19.1724~~] of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans);

(15) number of verifications issued under §19.1719 [~~pursuant to §19.1724~~] of this title;

(16) number of declinations of requests for verifications, under §19.1719[~~, pursuant to §19.1724~~] of this title;

(17) number of certifications of catastrophic events sent to the department;

(18) number of calendar days business was interrupted for each corresponding catastrophic event;

(19) number of electronically submitted, affirmatively adjudicated pharmacy claims received by the MCC [~~HMO or preferred provider carrier~~];

(20) number of electronically submitted, affirmatively adjudicated pharmacy claims paid within the 18-day [~~21-day~~] statutory claims payment period;

(21) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or before the 45th day after the end of the 18-day [~~21-day~~] statutory claims payment period;

(22) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 46th day and before the 91st day after the end of the 18-day [~~21-day~~] statutory claims payment period; and

(23) number of electronically submitted, affirmatively adjudicated pharmacy claims paid on or after the 91st day after the end of the 18-day [~~21-day~~] statutory claims payment period.

(d) [~~(c)~~] An MCC must [~~HMO or preferred provider carrier shall~~] annually submit to the department, on or before August 15th, at a minimum, information related to the number of declinations of requests for verifications from July 1st of the prior year to June 30th of the current year, in the following categories:

(1) policy or contract limitations:

(A) premium payment time frames [~~timeframes~~] that prevent verifying eligibility for a 30-day period;

(B) policy deductible, specific benefit limitations, or annual benefit maximum;

(C) benefit exclusions;

(D) no coverage or change in membership eligibility, including individuals not eligible, not yet effective, or for whom membership is canceled [~~cancelled~~];

(E) preexisting [~~pre-existing~~] condition limitations; and

(F) other;[~~.~~]

(2) declinations due to an inability to obtain necessary information in order to verify requested services from the following persons:

(A) the requesting physician or provider;

(B) any other physician or provider; and

(C) any other person.

§21.2822. Administrative Penalties.

(a) An MCC [~~HMO or preferred provider carrier~~] that fails to comply with §21.2807 of this title (relating to Effect of Filing a Clean Claim) for more than two percent of clean claims submitted to the MCC [~~HMO or preferred provider carrier~~] is subject to an administrative penalty under [~~pursuant to the~~] Insurance Code[~~,~~] §843.342(k) or §1301.137(k) [~~Article 3.70-3C section 3I(k)~~], as applicable.

(b) The percentage of the MCC's [~~HMO or preferred provider carrier's~~] compliance with §21.2807 of this title must [~~shall~~] be determined on a quarterly basis and must [~~shall~~] be separated into a compliance percentage for noninstitutional preferred provider claims and institutional preferred provider claims. Claims paid in compliance with §21.2809 of this title (relating to Audit Procedures) are not included in calculating the compliance percentage under this section.

§21.2823. Applicability to Certain Noncontracting [~~Non-Contracting~~] Physicians and Providers.

The provisions of §19.1719 of this title (relating to Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans) [~~§§19.1724~~] and §21.2807 of this title (relating to [~~Verification and~~] Effect of Filing a Clean Claim) apply to a physician or a provider that provides to an enrollee or an insured of an MCC [~~HMO or preferred provider carrier~~]:

(1) (No change.)

(2) specialty or other medical care or health care services at the request of the MCC [~~HMO, preferred provider carrier~~], the physician, or the provider because the services are not reasonably available from a physician or a provider who is included in the MCC's [~~HMO's or preferred provider carrier's~~] network.

§21.2824. Applicability.

The amendments to §§21.2801 - 21.2803, 21.2807 - 21.2809, and 21.2811 - 21.2817 of this title (relating to Scope, Definitions, Elements of a Clean Claim, Effect of Filing a Clean Claim, Effect of Filing Deficient Claim, Audit Procedures, Disclosure of Processing Procedures, Denial of Clean Claim Prohibited for Change of Address, Requirements Applicable to Other Contracting Entities, Electronic Adjudication of Prescription Benefits,[~~,~~] Failure to Meet the Statutory Claims Payment Period, Date of Receipt, and Terms of Contracts), and new §§21.2804 - 21.2806, [~~§§~~]21.2818, 21.2819, and 21.2821 - 21.2825 of this title (relating to Requests for Additional Information from Treating Preferred Provider, Requests for Additional Information from Other Sources, Claims Filing Deadline, Overpayment of Claims, Catastrophic Event, Reporting Requirements, Administrative Penalties, Applicability to Certain Non-Contracting Physicians and Providers, Applicability, and Severability) apply to services provided, or inpatient services beginning, under [~~pursuant to~~] contracts entered into or renewed between an MCC [~~HMO or preferred provider carrier~~] and a preferred provider on or after October 5, 2003, and to services provided or hospital confinements beginning on or after October 5, 2003, by physicians and providers that do not have a contract with an MCC [~~HMO or preferred provider carrier~~].

§21.2825. Severability.

If a court of competent jurisdiction holds that any provision of this subchapter or its application to any person or circumstance [~~is inconsistent with any statutes of this state, is unconstitutional, or~~] is invalid for any reason, the invalidity does not affect other provisions or applications of this subchapter that can be given effect without the invalid provision or application, and to this end the provisions of this subchapter are severable [~~remaining provisions of this subchapter shall remain in full effect~~].

§21.2826. Waiver.

In compliance with Insurance Code §1211.001, the [~~The~~] provisions in [~~of Texas~~] Insurance Code Chapter 1301, §1301.069, §1301.162, and Subchapters C and C-1; Chapter 1213; [~~Articles 3.70-3C, Sections 3A, 3C-3J, 10-12; and 21.52Z;~~] Chapter 843, §843.209, §843.319, and Subchapter J [~~and Sections 843.209 and 843.319~~]; as well as this subchapter and §§3.3703(a)(20), 11.901(a)(11), 19.1718 [~~§§3.3703(20), 11.901(10), 19.1723~~], and 19.1719 [~~19.1724~~] of this title (relating to Contracting Requirements, Required Provisions, Preauthorization for Health Maintenance Organizations and Preferred Provider Benefit Plans, and Verification for Health Maintenance Organizations and Preferred Provider Benefit Plans, respectively) are not applicable to Medicaid and Children's Health Insurance Program [~~(CHIP)~~] plans provided by an MCC [~~HMO or preferred provider carrier~~] to persons enrolled in the medical assistance program established under [~~Chapter 32,~~] Human Resources Code Chapter 32[~~,~~] or the child health plan established under [~~Chapter 62,~~] Health and Safety Code Chapter 62.

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

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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CHAPTER 25. INSURANCE PREMIUM FINANCE

SUBCHAPTER E. EXAMINATIONS AND ANNUAL REPORTS

28 TAC §25.88

The Texas Department of Insurance (department) proposes amendments to 28 Texas Administrative Code §25.88, concerning an assessment that will be used to cover the general administrative expenses of the department's regulation of insurance premium finance companies. The proposed amendments are necessary to adopt the rate of assessment to ensure that there are sufficient funds to meet the expenses of performing the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies. Under §25.88, the department levies a rate of assessment to cover the department's general administrative expenses for fiscal year 2014.

The department has determined that the estimated revenue need requires the collection of the minimum assessment amount of $250 from each insurance premium finance company for calendar year 2014.

The department proposes an amendment in the first sentence of the section to update the reference to the year in the section to 2014.

The department proposes amendments in the first and second sentences of the section that are nonsubstantive in nature to conform with the department's writing style guides. In the first sentence, the department deletes the word "the" before the Insurance Code citation. In the second sentence of the section, the department updates the address and replaces "TPA/Premium Finance" with "Market Conduct" as the recipient, and adds the proper mail code.

The following paragraphs provide an explanation of the methodology the department used to determine its assessments for insurance premium finance companies for 2014.

In general, the department's 2014 revenue need (the amount that must be funded by maintenance taxes or fees; examination overhead assessments; the department's self-directed budget account, as established under Insurance Code §401.252; and premium finance exam assessments) is determined by calculating the department's total cost need, and subtracting from that number funds resulting from fee revenue and funds remaining from fiscal year 2013.

To determine its total cost need, the department combined costs from the following: (i) appropriations set out in Chapter 1411 (SB 1), Acts of the 83rd Legislature, Regular Session, 2013 (the General Appropriations Act), which come from two funds, the General Revenue Dedicated - Texas Department of Insurance Operating Account No. 0036 (Account No. 0036) and the General Revenue Fund - Insurance Companies Maintenance Tax and Insurance Department Fees; (ii) funds allowed by Insurance Code Subchapters D and F of Chapter 401 as approved by the commissioner for the self-directed budget account in the Treasury Safekeeping Trust Company to be used exclusively to pay examination costs associated with salary, travel, or other personnel expenses; (iii) an estimate of other costs statutorily required to be paid from those two funds and the self-directed budget account, such as fringe benefits and statewide allocated costs; and (iv) an estimate of the cash amount necessary to finance both funds and the self-directed budget account from the end of the 2014 fiscal year until the next assessment collection period in 2015. From these combined costs, the department subtracted costs attributable to the Division of Workers' Compensation and the workers' compensation research and evaluation group.

The department determined how to allocate the revenue need to be attributed to each funding source using the following method:

For each section within the department that provides services directly to the public or the insurance industry, the department allocated the costs for providing those direct services on a percentage basis to each funding source, such as the maintenance tax or fee line, the premium finance assessment, the examination assessment, the self-directed budget account as limited by Insurance Code §401.252, or another funding source.

The department applied these percentages to each section's annual budget to determine the total direct cost to each funding source. The department calculated a percentage for each funding source by dividing the total directly allocated to each funding source by the total of the direct cost. The department used this percentage to allocate administrative support costs to each funding source. Examples of administrative support costs include services provided by human resources, accounting, budget, the commissioner's administration, and information technology. The department calculated the total of direct costs and administrative support costs for each funding source.

The department's examination division bases its current allocation on the number of hours market conduct staff performs examinations on premium finance companies.

To complete the calculation of the revenue need, the department combined the costs allocated to the premium finance assessment source and the self-directed source attributable to regulation of premium finance insurance companies. The department subtracted the fiscal year 2014 estimated amount of premium finance fee revenue and the estimated combined 2013 ending funding balance of the premium finance assessment source and the self-directed budget account attributable to premium finance from the amount of the combined costs for regulation of premium finance insurance companies. The resulting balance was the amount of revenue need for the purpose of calculating the premium finance assessment rate. The department divided the revenue need by the estimated loan dollar volume to determine the proposed rate of assessment for premium finance insurance companies. Based on this, the department determined that the estimated revenue need requires the collection of the minimum assessment amount of $250 from each insurance premium finance company.

FISCAL NOTE. Joe Meyer, assistant chief financial officer, has determined that for each year of the first five years the proposal will be in effect, the expected fiscal impact on state government is estimated income of $51,000 to the Texas Department of Insurance examination self-directed account in the Texas Treasury Safekeeping Trust Company. There will be no fiscal implications for local government as a result of enforcing or administering the

proposed section, and there will be no effect on local employment or local economy.

PUBLIC BENEFIT/COST NOTE. Mr. Meyer also has determined that for each year of the first five years the proposed amended section is in effect, the public benefit expected as a result of enforcing the section will be sufficient funds to cover the department's expenses for regulating insurance premium finance companies.

There are two components of costs for entities required to comply with the proposal: the cost to gather information and complete the required forms, and the cost of the assessment.

The actual cost of gathering the information required to fill out the form and complete the form will be the same for micro, small, and large businesses. A person familiar with the accounting records of the company and accounting practices in general will probably perform the activities necessary to comply with the section. Such persons are similarly compensated by micro, small, and large insurance premium finance companies. The compensation is generally between $24 and $40 an hour. The department estimates that, regardless of whether the company is micro, small, or large, the required form can be completed in two hours.

The requirement to pay the assessment is the result of the legislative enactment of the statute that imposes the assessment and is not a result of the adoption or enforcement of this proposal.

There is no difference in proposed rates of assessment for micro, small, and large businesses. The cost of the assessment to a premium finance company in 2014, regardless of whether the company is micro, small, or large, will be $250, which has been the minimum assessment cost under §25.88 in previous years.

The department, after considering the purpose of the authorizing statute, does not believe it is legal or feasible to waive or modify the statutorily mandated requirements of the proposal for small and micro businesses.

ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS FOR SMALL AND MICRO BUSINESSES. As required by Government Code §2006.002(c), the department has determined that the proposal may have an adverse economic effect on approximately 104 to 122 licensed insurance premium finance companies that are small or micro businesses required to comply with the proposed rules. Adverse economic impact may result from costs associated with the amount of the required examination fee resulting from this proposal. The cost of compliance will not vary between large businesses and small or micro businesses, and the department's cost analysis and resulting estimated costs in the public benefit/cost note portion of this proposal is equally applicable to small or micro businesses. The total cost of compliance to large businesses and small or micro businesses is not dependent on the size of the business, but rather is dependent on each insurance premium finance company paying the $250 minimum assessment.

In accord with Government Code §2006.002(c-1), the department has considered other regulatory methods to accomplish the objectives of the proposal that will also minimize any adverse impact on small and micro businesses.

The primary objective of the proposal is to promulgate a rule addressing the rate of assessment to cover the department's statutory responsibilities for examining, investigating, and regulating insurance premium finance companies in 2014.

The other regulatory methods considered by the department to accomplish the objectives of the proposal and to minimize any adverse impact on small and micro businesses include: (i) not adopting the proposed rule, (ii) adopting different assessment for small and micro businesses, and (iii) exempting small and micro businesses from the assessment requirements.

Not adopting the proposed rule. Without adopting a rule the department will be unable to collect the necessary funds to cover costs of the examination function of the department. The purpose of conducting examinations is to monitor the activities and solvency of premium finance companies. Failure of the department to perform its examination functions could result in public harm if an insurance premium finance company ceased compliance with the Insurance Code or became insolvent and this was not detected because of the lack of regular examinations. Not adopting the rule would also result in premium finance companies being out of compliance with Insurance Code §651.006, which requires a licensed insurance premium finance company to pay an amount that covers the direct and indirect costs of an examination or investigation and a proportionate share of the general administrative expense attributable to the regulation of licensed insurance premium finance companies. This option has been rejected.

Adopting a different assessment for small and micro businesses. The proposed assessment is already based on the most equitable methodology the department can develop. The department applies an assessment methodology that this year results in an assessment of $250. This amount is equal to the minimum assessment required by previous versions of the rule extending back to its initial adoption in 1995. The department anticipates that a small or micro business that would be most susceptible to economic harm would be one that has a lower loan dollar volume. However, based on the proposed rule, a small or micro business would pay this minimum assessment, thereby reducing its risk of economic harm. This option has been rejected.

Exempting small and micro businesses from the assessment requirements. As previously noted, the current methodology used to develop the proposed amendments is already the most equitable that the department can develop. The department applies a methodology that contemplates companies, including those that are small or micro businesses, paying the minimum assessment that has been required under this section. However, if the assessment were completely eliminated for small or micro businesses, the department would need to completely revise its calculations to shift costs to other insurers and entities, which would result in a less balanced methodology. This option has been rejected.

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

REQUEST FOR PUBLIC COMMENT. If you want the department to consider written comments on the proposal, you must submit them no later than 5:00 p.m. on December 15, 2013 to Sara Waitt, General Counsel, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104. You must simultaneously submit an additional copy of the comment to Joe Meyer, Assistant Chief Financial Officer, Financial Services, Mail Code 108-3A, Texas Department of Insurance,

P.O. Box 149104, Austin, Texas 78714-9104. You should separately submit any request for a public hearing to the Office of the Chief Clerk, Mail Code 113-2A, Texas Department of Insurance, P.O. Box 149104, Austin, Texas 78714-9104, before the close of the public comment period. If the department holds a hearing, the department will consider written and oral comments presented at the hearing.

STATUTORY AUTHORITY. The amendments are proposed under Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); 651.006(a); and 36.001.

Insurance Code §201.001(a)(1) states that the Texas Department of Insurance operating account is an account in the general revenue fund, and that the account includes taxes and fees received by the commissioner or comptroller that are required by the Insurance Code to be deposited to the credit of the account. Section 201.001(b) states that the commissioner must administer money in the Texas Department of Insurance operating account and may spend money from the account in accord with state law, rules adopted by the commissioner, and the General Appropriations Act. Section 201.001(c) states that money deposited to the credit of the Texas Department of Insurance operating account may be used for any purpose for which money in the account is authorized to be used by law.

Insurance Code §651.003 authorizes the commissioner to adopt and enforce rules necessary to administer Insurance Code Chapter 651.

Insurance Code §651.005(b) requires that the department deposit an assessment or fee associated with examination costs, as defined by §401.251, to the account described by §401.156(a).

Insurance Code §651.006(a) requires each insurance premium finance company licensed by the department to pay an amount imposed by the department to cover the direct and indirect costs of examinations and investigations and a proportionate share of general administrative expenses attributable to regulation of insurance premium finance companies.

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

CROSS REFERENCE TO STATUTE. The following statutes are affected by this proposal: Insurance Code §§201.001(a)(1), (b), and (c); 651.003; 651.005(b); and 651.006(a)

§25.88. General Administrative Expense Assessment.

No later than April 1, 2014 [~~2013~~], each insurance premium finance company holding a license issued by the department under [~~the~~] Insurance Code Chapter 651 must pay an assessment to cover the general administrative expenses attributable to the regulation of insurance premium finance companies. An insurance premium finance company must send payment to the Texas Department of Insurance, Financial[~~,~~] - Market Conduct [~~TPA/Premium Finance~~], Mail Code 9999 [~~999~~], 333 Guadalupe, P.O. Box 149104, Austin, Texas 78701-9104. The assessment to cover general administrative expenses is $250.

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

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Sara Waitt
General Counsel
Texas Department of Insurance
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For further information, please call: (512) 463-6327

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION
SUBCHAPTER S. MOTOR FUEL TAX

34 TAC §3.434

The Comptroller of Public Accounts proposes an amendment to §3.434, concerning liquefied gas tax decal.

Subsection (a) states this rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, are governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L. The amendment removes subsection (a). Subsequent subsections are re-lettered and corrections to subsections referenced are made throughout the section.

Subsections (a) and (g)(2) are amended to implement House Bill 2148, 83rd Legislature, 2013. Subsection (a) deletes the reference to natural gas and methane as a means of powering a motor vehicle that is required to obtain a liquefied gas decal. Subsection (g)(2) is amended to allow the use of a Class T liquefied gas decal for compressed natural gas and liquefied natural gas transit vehicles operated by metropolitan transit authorities and regional transit authorities under Tax Code, §162.312.

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 clarifying which vehicles are not required to obtain a liquefied gas decal, and which vehicles are allowed to use such a decal. This rule is proposed under Tax Code, Title 2, and does not require a statement of fiscal implications for small businesses. There is no significant anticipated economic cost to individuals who are required to comply with the proposed rule.

Comments on the proposal may be submitted to Teresa G. Bostick, Manager, Tax Interpretations & Publications Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register*.

The amendment is proposed under Tax Code, §111.002, which provides the comptroller with the authority to prescribe, adopt, and enforce rules relating to the administration and enforcement of the provisions of Tax Code, Title 2.

The amendment implements Tax Code, §§162.302, 162.3021, 162.305, 162.306, and 162.312.

§3.434. Liquefied Gas Tax Decal [(Tax Code, §§162.302, 162.3021, 162.305, 162.307, 162.309, and 162.311)].

[(a) Effective date. This rule applies only to motor fuel transactions that take place on or after January 1, 2004. Motor fuel transactions that occur prior to January 1, 2004, will be governed by sections in Texas Administrative Code, Title 34, Part 1, Chapter 3, Subchapter L.]

(a) [(b)] Use of decal. Except as provided in subsections (b), (c) [(c), (d)], and (f) [(g)] of this section, a person who operates a motor vehicle that is required to be licensed in Texas for use on the public highways of Texas and that is powered by [natural gas, methane,] ethane, propane, butane, or a mixture of those gases, including a motor vehicle equipped to use liquefied gas interchangeably with another motor fuel, must:

(1) obtain from the comptroller a liquefied gas decal; and

(2) prepay the liquefied gas tax to the comptroller on an annual basis.

(b) [(c)] Motor Vehicle Dealer. A motor vehicle dealer registered under Transportation Code, Chapter 503, must pay the liquefied gas tax to a licensed liquefied gas dealer when the fuel is delivered into the fuel supply tanks of each motor vehicle that display a motor vehicle dealer decal and that is held for resale.

(c) [(d)] Interstate trucker. An interstate trucker registered under a multistate tax agreement (International Fuel Tax Agreement), must pay the liquefied gas tax to a licensed liquefied gas dealer when the fuel is delivered into the fuel supply tanks of motor vehicles that have two axles and a registered gross weight in excess of 26,000 pounds; have three or more axles, or are used in combination and the registered gross weight of the combination exceeds 26,000 pounds, and that display current multistate tax agreement (International Fuel Tax Agreement) decals.

(d) [(e)] Vehicle registered in another state. A liquefied gas tax decal cannot be issued to a motor vehicle registered in a state other than Texas. Owners of such vehicles must pay tax to a licensed liquefied gas dealer on fuel delivered into the fuel supply tanks.

(e) [(f)] Application. Each person purchasing liquefied gas for use in a liquefied gas powered motor vehicle must submit an annual application to the comptroller for each vehicle.

(1) Initial application. An applicant initially applying for a liquefied gas tax decal for a Class A - F motor vehicle must purchase a decal based on an estimate of miles that will be driven during the next one-year period.

(2) Renewal. The applicant must produce an ending odometer reading on the renewal application. In the absence of an ending odometer reading, the previous year's mileage will be presumed to be at least 15,000 miles. Applications for the upcoming year should be submitted during the month of expiration of the current decal.

(A) The liquefied gas tax does not apply to miles traveled outside the state. A record of miles traveled by the motor vehicle outside Texas must be maintained and submitted with the renewal each year. The record must include the date(s) of travel, beginning and ending odometer readings and destination.

(B) Special use vehicles. Vehicles required to be licensed for highway use but whose main purpose, design, and use is off the highway may renew a liquefied gas decal for a rate less than the mileage indicated on the odometer if a record or log indicating the miles traveled on the highway by the vehicle is maintained and attached to the renewal application.

(f) [(g)] Exceptions.

(1) School district transportation and county exceptions. The liquefied gas tax does not apply to liquefied gas sold to public school districts and counties in this state, or to commercial transportation companies providing transportation services to public school districts in this state. These transportation companies must obtain letters of exception from the comptroller, as discussed in §3.448 of this title (relating to Transportation Services for Texas Public School Districts).

(2) Decal not required. A public school district, a commercial transportation company providing transportation services to a public school district and holding a valid letter of exception from the comptroller, or a county in this state operating a motor vehicle powered by liquefied gas is not required to prepay the liquefied gas tax and obtain a decal for the motor vehicle.

(g) [(h)] Rate schedule.

(1) The following rate schedule (based on mileage driven the previous year) applies.
Figure: 34 TAC §3.434(g)(1)
[Figure: 34 TAC §3.434(h)(1)]

(2) Transit company. A special use liquefied gas tax decal and tax is required for the following type of vehicles: Class T: Transit carrier vehicles operated by a transit company, $444. The Class T special use liquefied gas decal may be displayed by compressed natural gas and liquefied natural gas transit carrier vehicles that qualify under Tax Code, §162.312.

(h) [(i)] Display of decal. The decal shall be affixed to the inside, lower right corner of the windshield (passenger side) of the vehicle. An expired or invalid liquefied gas tax decals shall be removed before installing a new decal or transferring ownership of the motor vehicle.

(i) [(j)] Refunds; transfer of decal. If a motor vehicle bearing a liquefied gas tax decal is sold, transferred, destroyed, or the liquefied gas carburetor system (regulator or fuel supply tank) is removed from the motor vehicle the owner is entitled to a refund of the unused portion of the advanced taxes paid for the decal year. The owner must submit to the comptroller the liquefied gas tax decal with an affidavit identifying the motor vehicle and circumstances for requesting a refund. The comptroller shall refund that portion of the tax payment that corresponds to the number of complete months remaining in the decal year.

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

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Ashley Harden
General Counsel
Comptroller of Public Accounts
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For further information, please call: (512) 475-0387

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CHAPTER 9. PROPERTY TAX ADMINISTRATION

SUBCHAPTER L. PROCEDURES FOR PROTESTING COMPTROLLER PROPERTY VALUE STUDY AND AUDIT FINDINGS

34 TAC §9.4301, §9.4317

The Comptroller of Public Accounts proposes amendments to §9.4301 and §9.4317, concerning Subchapter L, Procedures for Protesting Comptroller Property Value Study and Audit Findings. These sections are being amended to provide added clarification and to provide appraisal districts with additional information regarding results of protests filed by eligible property owners.

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 improving the administration of local property valuation and taxation. 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 amendments may be submitted to Deborah Cartwright, Director, Property Tax Assistance Division, P.O. Box 13528, Austin, Texas 78711-3528. Comments must be received no later than 30 days from the date of publication of the proposal in the *Texas Register.*

These amendments are proposed under Government Code, §403.303(c) which provides for the comptroller to adopt rules governing the conduct of protest hearings.

These amendments implement Government Code, §403.303(c).

§9.4301. Definitions.

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

(1) Agent--A petitioner may designate an agent to act on behalf of the petitioner in protesting comptroller's findings pursuant to this subchapter. Except as provided in paragraph (7) of this section, a petitioner may designate only one agent per protest. The agent is the individual that the petitioner, if acting through an agent, is required to designate in the petition to perform the following activities on behalf of the petitioner:

(A) receive and act on all notices, orders, decisions, exceptions, replies to exceptions, and any other communications regarding the petitioner's protest;

(B) resolve any matter raised in petitioner's protest;

(C) argue and present evidence at any hearing on petitioner's protest and authorize individuals other than the agent to argue and present evidence at a hearing on petitioner's protest; and

(D) any other action required of petitioner.

(2) ALJ--An Administrative Law Judge employed by the State Office of Administrative Hearings.

(3) Clerical error--A numerical error that is or results from a mistake or failure in writing, copying, transcribing, entering or retrieving computer data, computing, or calculating. In this subchapter, "clerical error" does not include an error that is or results from a mistake in judgment or reasoning. In this subchapter, "clerical error" does not include any claim regarding the conduct of the study generally, such as a claim of a study design defect; only district-specific numerical errors are included in the definition of "clerical error."

(4) Division--The comptroller's Property Tax Assistance Division.

(5) Division director--Director of the comptroller's Property Tax Assistance Division. Except as otherwise provided in this subchapter, all petitions and other documents related to a protest shall be filed or served, as applicable, by delivery to the division director.

(6) Eligible property owner--A property owner in a school district or school district split whose property is included in the study conducted by the comptroller under Government Code, §403.302 and whose tax liability on such property is $100,000 or more. A property owner is an "eligible property owner" only in a school district or school district split in which all of the requirements of this subsection are met. Property is "included in the study" only if, in conducting the study, the comptroller appraised or otherwise assigned a value other than local value to the property and the value of the property is reflected on the study's confidence interval detail for the school district or school district split in which the property was located. Additionally, in the case of a protest of the comptroller's findings under Government Code, §403.302(h), the property must not have been deleted from the study before final findings were certified to the commissioner of education. In the case of a protest of the comptroller's findings under Government Code, §403.302(g), the property owner's property must be included in the study for the year in which the preliminary findings were made that are the subject of the protest. In the case of a protest of the comptroller's findings under Government Code, §03.302(h), the property owner's property must have been included in the study for the year that is the subject of the audit under protest. Property is not "included in the study" in the case of a protest under Government Code, §403.302(g) or (h) by virtue of any calculations made pursuant to Government Code, §403.302(c-1), (d), (d-1), (e), (i) - (k) and a property owner does not have standing to protest such calculations.

(7) Petition--The documents and supporting evidence filed by petitioner in accordance with this subchapter to protest the comptroller's findings under Government Code, §403.302(g) or (h). A petitioner is limited to one petition per audit or property value study, except that a petitioner protesting property value study findings may file a separate petition solely to address self report corrections pursuant to §9.4305(g) of this title (relating to Who May Protest). If a petitioner files one petition to protest property value study findings and a separate petition pursuant to §9.4305(g) of this title, the petitioner may designate different agents for each protest. If a petitioner files one petition to protest both property value study findings and to address self report corrections pursuant to §9.4305(g) of this title, the petitioner may designate only one agent.

(8) Petitioner--A school district or eligible property owner who submits a petition to protest the comptroller's findings under Government Code, §403.302(g) or (h). In addition, an appraisal district may be a petitioner if it is authorized in writing by a school district to file a petition to protest and the school district is not filing a petition to protest. Unless the context clearly indicates otherwise, in this subchapter, the term "petitioner" includes petitioner's agent. When, in this subchapter, information is to be provided to or served on a petitioner, such information, except as otherwise provided in this subchapter, shall be provided to or served on the agent designated by petitioner or, if no agent has been designated, to petitioner's designated employee contact.

(9) SOAH--The State Office of Administrative Hearings. A matter may be referred to SOAH only by the comptroller.

(10) Comptroller--The Comptroller of Public Accounts and employees and designees of the Comptroller of Public Accounts.

(11) School district split--Each portion of a school district located in different counties where properties are appraised by different appraisal districts. The property value study is conducted by school district split in school districts that are located in two or more counties; therefore, protests under this subchapter that are filed regarding a school district that is located in two or more counties may only be filed in the split(s) in which the protesting party has standing and the protest is otherwise permitted as provided in this subchapter. As used in this subchapter, unless the context clearly indicates otherwise, "school district" means an applicable school district split for a school district that is located in two or more counties.

§9.4317. Effect of Final Decision and Certification of Changes.

(a) A final decision ordering changes to findings made as a result of a school district's protest or other final resolution of the protest under this subchapter resulting in changes to preliminary findings arising from a school district's protest will change Government Code, §403.302 findings for the school district or school district split regarding which the protest was filed and Tax Code, §5.10 findings for all appraisal districts in which the school district or school district split is located.

(b) A final decision ordering changes to findings made as a result of a property owner's protest or other final resolution of the protest under this subchapter resulting in changes to preliminary findings arising from a property owner's protest will change Government Code, §403.302 findings for the school district(s) or school district split(s) regarding which the protest was filed [~~in which the property that is the subject of the protest is located~~] and Tax Code, §5.10 findings for the appraisal district(s) in which the school district(s) or school district split(s) [~~property that is the subject of the protest~~] is located. After final resolution of a property owner's protest resulting in changes in preliminary findings and involving property located in two or more school districts or school district splits that is valued as a unit, the division will provide to each appraisal district in which the property is located and to the protesting taxpayer a list of value ratios calculated on the revised unit value for each school district and school district split located within the appraisal district in which the property is located. The list is provided for informational purposes only and will not impact the values certified to the commissioner of education.

(c) A final decision ordering changes to findings made as a result of an appraisal district's protest authorized by this subchapter or other final resolution of the protest under this subchapter resulting in changes to preliminary findings arising from an authorized appraisal district's protest will change Government Code, §403.302 findings for the school district or school district split regarding which the protest was filed and Tax Code, §5.10 findings for the appraisal district.

(d) [~~(c)~~] Certification of changes to preliminary findings. Unless the comptroller determines that circumstances require otherwise, the comptroller shall certify to the commissioner of education all changes to Government Code, §403.302(g) preliminary findings on or before August 15 of the year following the year of the study.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304986

Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: December 15, 2013
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

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), new §700.332, concerning eligibility for foster care day care services; and an amendment to §700.1013, concerning who is eligible for child-care services, in its chapter governing Child Protective Services. The purpose of the sections is to implement Senate Bill (SB) 430, which was passed in the 83rd Legislature, Regular Session, as well as to clarify the existing criteria for authorizing child-care services. SB 430 requires DFPS to implement a process to verify that each foster parent and kinship caregiver (also referred to as "relative or other designated caregiver") seeking monetary assistance for day care has attempted to find day care services through community services, such as Head Start or pre-K. SB 430 stemmed from a Legislative Budget Board (LBB) Government Effectiveness and Efficiency Report recommendation to contain DFPS day care costs. Specifically, the LBB recommended that the legislature amend statute and require DFPS to standardize the process of verifying that caregivers eligible for foster and kinship day care cannot be served through any other community resources. SB 430 further instructed that DFPS rules specify the documentation requirements in order for the foster parent and kinship caregiver to comply with the verification requirement. The bill prohibits DFPS from offering monetary assistance for day care unless the caregiver submits the required documentation or DFPS determines that a waiver of the requirement is necessary to make an emergency placement in the best interest of the child. The proposed rules implement the required verification process and specify the criteria for granting a waiver of a verification requirement.

The proposal also places existing policy in rules with respect to (1) the eligibility requirements for offering day care services to foster parents, and (2) the ability of the Assistant Commissioner for Child Protective Services to grant a good-cause waiver to the current eligibility requirements that are unrelated to SB 430.

A summary of the changes follows:

New §700.332: (1) defines relevant terms; (2) provides that for a foster parent to be eligible for day care, the following criteria must be met: (a) each foster parent must work outside the home 40 hours per week or more; (b) the foster parent must be a resident of Texas; and (3) the foster parent must provide written verification of the foster parent's attempts to secure community resources; (4) requires the creation of a priority system in policy; (5) authorizes DFPS to waive the requirement of written verification of attempts to secure community resources if the re-

quirement would interfere with an emergency placement in the child's best interest; and (6) provides for a good cause waiver by the Assistant Commissioner for Child Protective Services of requirements other than the verification process.

The amendment to §700.1013: (1) defines relevant terms; (2) amends current eligibility criteria to add the requirement the caregiver provide written verification of the caregiver's attempts to secure community resources; (3) authorizes DFPS to waive the requirement of written verification of attempts to secure community resources if the requirement would interfere with an emergency placement in the child's best interest; and (4) provides for a good cause waiver by the Assistant Commissioner for Child Protective Services of current requirements other than the verification process.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that more foster parents and kinship caregivers may avail themselves of community day care resources and DFPS day care costs could experience a concomitant reduction. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed new section and amendment do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Lori L. Lewis-Conerly at (512) 438-4747 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-482, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER C. ELIGIBILITY FOR CHILD PROTECTIVE SERVICES

40 TAC §700.332

The new section is proposed 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 section implements Texas Family Code §264.124 and §264.755(d) and (e).

§700.332. Eligibility for Foster Care Day Care Services.

(a) In this section, the following terms have the following meanings:

(1) "Day care" means the assessment, care, training, education, custody, treatment, or supervision of a foster child by a person other than the child's foster parent for less than 24 hours a day, but at least two hours a day, three or more days a week.

(2) "Emergency placement that is in the child's best interest" means that despite the exercise of reasonable diligence, compliance with the Department's verification process regarding the availability of community day care resources would interfere with a placement that is in the child's best interest.

(b) To the extent funds are available, DFPS may provide day care to a foster parent if:

(1) each foster parent in the home works outside the home 40 hours per week or more;

(2) the foster parent is a resident of Texas; and

(3) the foster parent verifies in writing that the foster parent has attempted to find appropriate day-care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the foster parent's community.

(c) To monitor the spending of funds, a priority system among foster parents will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care is critical to maintaining the placement of the child with the foster parent; and

(2) at least one child placed by DFPS:

(A) is under six years of age or over six years of age but in day care during a scheduled break in the public school system; or

(B) has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(d) Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a foster parent's attempts to find appropriate community day-care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the foster parent's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day-care services.

(e) The Assistant Commissioner for Child Protective Services may grant a good cause waiver of any of the requirements in paragraphs (1) and (2) of subsection (b) of this section, if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the foster parent cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the foster parent and caregivers must be outside the home for employment.

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

Filed with the Office of the Secretary of State on October 30, 2013.

TRD-201304932
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS
DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1013

The amendment is proposed 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 Texas Family Code §264.124 and §264.755(d) and (e).

§700.1013. Who is eligible for child-care services?

(a) In this section, the following terms have the following meanings:

(1) "Child-care services" has the same meaning as "day care."

(2) "Day care" means the assessment, care, training, education, custody, treatment, or supervision of a child in DFPS conservatorship by a person other than the child's caregiver for less than 24 hours a day, but at least two hours a day, three or more days a week.

(3) "Emergency placement that is in the child's best interest" means that despite the exercise of reasonable diligence, compliance with the Department's verification process regarding the availability of community day care resources would interfere with a placement that is in the child's best interest.

(b) [~~(a)~~] To the extent funds are available, DFPS may provide child-care services to a caregiver who meets the requirements in §700.1003 of this title (relating to What are the eligibility requirements for caregiver assistance?) if:

(1) all appropriate caregivers work outside the home 40 hours per week or more; [~~and~~]

(2) the caregiver is a resident of Texas; and[~~,~~]

(3) the caregiver verifies in writing that the caregiver has attempted to find appropriate day-care services for the child through community services, including:

(A) Head Start programs;

(B) Prekindergarten classes;

(C) Early education programs offered in public schools; and

(D) Any other available and appropriate resources in the caregiver's community.

(c) [~~(b)~~] To monitor the spending of funds, a priority system among caregivers will also be established in policy. The priority system will be based upon need, but at a minimum will require:

(1) a determination by DFPS that the provision of day care [~~child-care services~~] is critical to maintaining the placement of the child with the caregiver; and

(2) at least one child placed by DFPS is:

(A) under six years of age or over six years of age but in day care during a scheduled break in the public school system;[~~,~~] or

(B) at least one child placed by DFPS has a developmental delay (including physical, emotional, and cognitive or language) or physical disability.

(d) Notwithstanding any other provision of this section, if DFPS determines that requiring the written verification of a caregiver's attempts to find appropriate community day-care services would prevent an emergency placement in the child's best interest, DFPS may waive the submission of the written verification of the caregiver's attempts. DFPS is authorized to require the submission of the written verification at any point following the initial authorization of day care services.

(e) The Assistant Commissioner for Child Protective Services may grant a good cause waiver of any of the requirements in paragraphs (1) and (2) of subsection (b) of this section if that person determines that:

(1) the placement cannot be sustained or is unlikely to be sustained if the caregivers cannot receive day care;

(2) there is no reasonable alternative to the provision of day care, such as a change in working hours; and

(3) day care services are only authorized in increments that are commensurate with the hours and days the relative caregiver must be outside the home for employment.

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

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER E. INTAKE, INVESTIGATION, AND ASSESSMENT

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §700.507; and new §§700.507, 700.551, 700.553, 700.555, 700.557, 700.559, 700.561, 700.563, 700.565, and 700.567, concerning response to allegations of abuse and neglect and alternative response, in its chapter governing Child Protective Services (CPS). The purpose of this proposal is to implement Senate Bill (SB) 423, enacted in the 83rd Regular Session of the Texas legislature. SB 423 amended Texas Family Code (TFC) §261.3015, to authorize DFPS to conduct an alternative response to an investigation that otherwise meets the criteria for a CPS investigation. An alternative response is a protective intervention that involves an assessment of the family, including a safety assessment, and the provision of agreed-upon services and supports. The key differences from a traditional investigation are: (1) There will not be a formal finding about whether abuse/neglect occurred and, thus, no designation of a perpetrator because such administrative findings are not necessary to keep the child safe in these cases; (2) As there is no designated perpetrator, there will not be anyone added to the central registry as a result of the intervention; and (3) Family engagement will be undertaken in a less adversarial, more collaborative approach.

There are many anticipated benefits from implementing the alternative response initiative. Studies from states that have implemented an alternative response process have shown that a child's safety is not compromised and found that families on the alternative track felt more engaged and involved with decisions made about their children. Caseworkers have reported that families on the alternative track were more cooperative and willing to accept services.

Studies also indicate that having an alternative response system generally contains costs. Since there is no formal finding of abuse or neglect or designation of a perpetrator in a case following the alternative track, costly and time consuming administrative reviews and hearings are eliminated from these cases. Moreover, studies have shown that states with an alternative response system reduce costs over time because families following the alternative track are less likely to have a subsequent report or investigation.

Recognizing the benefits of alternative response, in 2011, Congress amended the Child Abuse Prevention and Treatment Act (CAPTA), mandating that all states receiving CAPTA funding have some type of alternative response process (referred to as "differential response" in CAPTA) in place by September 1, 2011.

DFPS currently meets the CAPTA requirements through its investigative screening process, which was originally implemented in 2006 pursuant to TFC §261.3015. Using the authority under the Texas Family Code to create a "flexible response system" for investigations, there are currently two different tracks a report can follow after it is referred to CPS from Statewide Intake. Reports involving serious abuse allegations or young children are immediately referred for a traditional investigation, while reports requiring a less immediate response are referred for a formal screening. With a formal screening, trained screeners do preliminary information gathering on a report. Based on the information they gather, if the report does not meet the criteria to warrant an investigation, the screener refers the family to any available and needed community resources and then closes the case without an investigation. Otherwise, the screener refers the case to be assigned for a traditional investigation.

The alternative response initiative implemented by these proposed rules will work within the already established formal screening process. Serious abuse cases that do not meet the criteria for an initial formal screening will continue to be referred for a traditional investigation that follows all of the current policies and procedures.

For cases that are eligible to be screened, screeners will continue to follow the same standards and procedures in closing cases that do not need further action. But when a screener determines that further action is needed, they will now have two options. Cases meeting specified criteria will be referred to an alternative response, with all other cases referred to a traditional investigation.

Like cases on the investigative track, those referred to an alternative response will have a home visit, an assessment of the family including a safety assessment and, if appropriate, service planning and some form of ongoing CPS involvement for a limited period of time. However, the form of the assessment, service planning and CPS involvement may be different from a traditional investigation and there will not be any formal abuse or neglect finding or designation of a perpetrator.

Under the proposed alternative response model, a case in the alternative response track may be reassigned to the investigation track if a caseworker determines that the case is more serious than originally identified, there is an imminent safety threat to the child, or the case no longer meets the alternative response criteria for some other reason. There will be a process to refer the case for an investigation after taking any protective actions that are immediately necessary. Under the currently contemplated model, however, once a case is assigned for an investigation it will stay on that track.

A summary of the changes follows:

Section 700.507 is repealed and proposed as new. The new section sets forth all the actions DFPS is authorized to take in response to a report that initially appears to meet the criteria for an investigation by CPS, which are: (1) Closure of the intake report without further action by CPS if staff determine after contacting a professional or other credible source that the child's safety can be assured without an investigation or alternative response; (2) A preliminary investigation and administrative closure of the case when CPS determines the allegations have already been investigated, that it lacks jurisdiction to investigate, or initial, credible contacts refute the allegations of abuse or neglect or risk thereof and the children in the family appear to be safe from abuse and neglect and risk thereof in the foreseeable future; (3) An abbreviated investigation with a disposition of "ruled out" if CPS staff determine that no abuse or neglect has occurred and that is unlikely any abuse or neglect will occur in the foreseeable future; (4) A thorough investigation resulting in a case disposition and role designation for each alleged perpetrator and alleged victim; or (5) An alternative response as provided in new Division 2 of Subchapter E of this title (relating to Alternative Response). The new section also clarifies the circumstances under which DFPS is not required to interview a person who is otherwise required to be interviewed to complete a thorough investigation.

New §700.551 provides a general overview and definition of an alternative response.

New §700.553: (1) Describes the types of cases that may be handled as an alternative response; (2) Permits DFPS to conduct an alternative response on certain cases that are within CPS's jurisdiction that do not involve any alleged victims under the age of 6; are not assigned a Priority I; and for which there is not an open investigation or conservatorship case; (3) Excludes cases from being conducted as an alternative response if any of the following factors are present: (a) current allegation or risk of sexual abuse; (b) current allegations of an abuse or neglect-related child fatality or a household member who is a designated perpetrator of physical abuse that led to a pervious child fatality; (c) a risk of serious physical injury or immediate serious harm to a child who is the subject of the alternative response; (d) the case is a facility investigation, including a school investigation; or (e) the alleged perpetrator is a foster parent or prospective adoptive parent; and (4) Authorizes DFPS to exclude an alternative response case on the basis of the identified factors at any point at which DFPS gains the information necessary to determine that the case is excluded.

New §700.555 grants DFPS the sole discretion to transfer a case initially assigned for an alternative response to be conducted as an investigation; and identifies factors DFPS considers in determining when to make such a transfer.

New §700.557 clarifies that unless otherwise provided or clearly indicated by context, an alternative response is governed exclusively by the provisions in TFC §261.3015 and Division 2 of Subchapter E of this chapter (relating to Alternative Response).

New §700.559 sets out the basic components of an alternative response, which are: (1) assessment of the family, including a safety assessment; and (2) the provision of services and supports in collaboration with the family.

New §700.561: (1) Clarifies that DFPS staff conducting an alternative response may take any necessary protective action and may gather information from any person in like manner and to the same extent authorized for a case that is handled as an investigation; (2) Provides that information gathering should generally be undertaken in collaboration with families; (3) Allows DFPS staff conducting an alternative response to take necessary protective actions prior to or after initiating a transfer to an investigation; and (4) Specifies that DFPS is not required to involve an absent parent when conducting an alternative response.

New §700.563 requires DFPS to maintain a written record of an alternative response.

New §700.565 specifies that DFPS maintains and withholds or releases confidential alternative response records as it does case records generated in an investigation, but that alternative response records will not be released in response to a request for information received pursuant to TFC §261.308(e).

New §700.567 specifies the actions taken by DFPS upon closure of an alternative response, which are: written notification of case completion and, if appropriate and in consultation with the family, referral for additional services necessary to ensure child safety.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that child safety will not be compromised; families will have a tailored response to less serious allegations of abuse and neglect; some caseworkers may have increased job satisfaction from a non-adversarial program to assess and assist families; and there may be an increase in receptivity of community partners to CPS because it can offer families a protective intervention that does not result in a case disposition and in which families may be more motivated to engage in services. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed repeal and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Gail Blackwell at (512) 438-3026 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-484, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

DIVISION 1. INVESTIGATIONS

40 TAC §700.507

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeal is proposed 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 repeal implements Texas Family Code §261.3015 and 42 U.S.C. §5016a(b)(2)(B)(v).

§700.507. Investigation Interviews.

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

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 438-3437

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40 TAC §700.507

The new section is proposed 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 section implements Texas Family Code §261.3015 and 42 U.S.C. §5016a(b)(2)(B)(v).

§700.507. Response to Allegations of Abuse or Neglect.

(a) Response to allegations of abuse or neglect. When the Department of Family and Protective Services (DFPS) receives an intake report of alleged abuse or neglect of a child that initially appears to be subject to investigation by DFPS, DFPS staff may respond with any of the following protective interventions, as further described in this section:

(1) closure without assignment for investigation following screening;

(2) administrative closure following a preliminary investigation;

(3) an abbreviated investigation;

(4) a thorough investigation; or

(5) an alternative response.

(b) Intake closed without assignment for investigation.

(1) Less serious cases of abuse and neglect may be screened out without assignment for investigation by specialized screening staff if DFPS determines after contacting a professional or other credible source that the child's safety can be assured without conducting an investigation or alternative response and the case meets the following criteria:

(A) the report is assigned a priority other than Priority I;

(B) there are no alleged victims younger than six; and

(C) there is no other open DFPS case involving the family.

(2) Supervisory staff may close an intake without assignment if the staff determines that the case is not appropriate for a CPS investigation for reasons including:

(A) the investigation is the responsibility of an entity other than CPS;

(B) the report does not give enough information to locate the child or the child's family, after the staff makes reasonable efforts to find additional locating information based on details in the report;

(C) the situation does not appear to involve a reasonable likelihood that a child will be abused or neglected in the foreseeable future; or

(D) after making any necessary calls to the reporter or other collateral sources, the allegations are too vague or general to determine whether a child has been abused or neglected or is likely to be abused or neglected.

(3) Before making a decision to close an intake without assignment for investigation or alternative response, DFPS staff must consider the following:

(A) the behavior of the family, including a review of all relevant prior history the family has with DFPS and any concerning involvement the family has with other agencies, such as law enforcement or service providers;

(B) the nature of the allegations and other relevant information such as the ages of each child in the home, alleged conditions in the home, and the types and seriousness of any alleged injuries;

(C) whether an alleged victim made an outcry of abuse or neglect; and

(D) any additional information obtained from the reporter or collateral sources.

(c) Preliminary investigation resulting in administrative closure.

(1) Under certain circumstances, a report which was initially assigned for investigation may be closed administratively as a result of additional information, indicating that an investigation by DFPS is no longer warranted. Criteria DFPS considers when deciding to administratively close an investigation case include, but are not limited to, situations where a preliminary investigation reveals that:

(A) the allegations have already been investigated by DFPS;

(B) DFPS does not have jurisdiction to conduct the investigation because:

(i) another authorized entity, such as law enforcement or another state agency, has jurisdiction to conduct the investigation;

(ii) the alleged victim is not a child or was not born alive;

(iii) the abuse or neglect, a safety threat, or risk of abuse or neglect is not occurring in Texas; or

(iv) the investigation was initiated on the basis of an anonymous report and after making initial, credible collateral contacts, the investigator determines DFPS lacks corroborating evidence; or

(C) as a result of new or additional information obtained from initial, credible contacts, the investigator determines that:

(i) the allegations of abuse or neglect or risk thereof are refuted; or

(ii) the children in the family appear to be safe from abuse and neglect or the risk thereof.

(2) DFPS staff must give all allegations the disposition of administrative closure if the case will be closed administratively.

(d) Abbreviated investigation with a disposition of "ruled out." Cases assigned for investigation may be handled with an abbreviated investigation with findings of "ruled out," when DFPS staff have determined that no abuse or neglect has occurred and that it is unlikely that any abuse or neglect will occur in the foreseeable future. Before closing an abbreviated investigation, staff must at a minimum perform the following tasks:

(1) interview each alleged victim child;

(2) interview at least one parent of the victim child; and

(3) complete a safety assessment and document whether any noted safety threats are controlled by the protective capacities of the child's parents.

(e) Thorough investigation.

(1) Except as provided in subsection (f) of this section and Division 2 of this subchapter (relating to Alternative Response), DFPS staff must complete a thorough investigation if DFPS obtains information indicating that:

(A) there are safety threats to the child because of abuse or neglect;

(B) risk of abuse or neglect is indicated; or

(C) based on information in the report and any initial contacts, it is impossible to determine whether or not there are safety threats to the child because of abuse or neglect or whether risk of abuse or neglect is indicated.

(2) Before closing a thorough investigation, staff must at a minimum perform the following tasks:

(A) interview each alleged victim child;

(B) interview at least one of the parents of the alleged victim child;

(C) interview each alleged perpetrator;

(D) interview other individuals who have information that is relevant or potentially relevant to the report of abuse or neglect;

(E) complete a safety assessment and document whether any noted safety threats are controlled by the protective capacities of the child's parents, unless the investigation relates to a deceased child and there is no other child in the home; and

(F) assess the risk of future abuse or neglect, unless the investigation relates to a deceased child and there is no other child in the home.

(f) Alternative response. An alternative response is a protective intervention governed by Division 2 of this subchapter and Texas Family Code, §261.3015, that involves an assessment of the family, including a safety assessment, provision of necessary services and supports, and does not result in a formal finding of abuse or neglect or the designation of a perpetrator, as further provided in Division 2 of this subchapter.

(g) Exceptions to required interview. Notwithstanding subsections (d) and (e) of this section, DFPS is not required to conduct an otherwise required interview to close an abbreviated or thorough investigation if DFPS exhausts all reasonable efforts to conduct the interview but is unable to do so because:

(1) the person to be interviewed is unable to be interviewed because of age or other exceptional circumstance;

(2) the person to be interviewed, the person's parent or other legal guardian, or the attorney representing the person refuses to permit the interview;

(3) the alleged perpetrator has been arrested or is under investigation by a law enforcement agency and the interview would interfere with the investigation or violate the alleged perpetrator's rights; or, the alleged perpetrator is detained and the jail, prison, or other detention facility in which the alleged perpetrator is detained will not permit the interview; or

(4) the person to be interviewed has been interviewed by another entity and DFPS accepts the substitute interview; except that if DFPS accepts a substitute interview, and the person, the person's parent or other legal guardian, or the attorney representing the person requests that the person also be interviewed by DFPS, DFPS must conduct one supplemental interview.

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

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Cynthia O'Keeffe
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DIVISION 2. ALTERNATIVE RESPONSE

40 TAC §§700.551, 700.553, 700.555, 700.557, 700.559, 700.561, 700.563, 700.565, 700.567

The new sections are proposed 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 Texas Family Code §261.3015 and 42 U.S.C. §5016a(b)(2)(B)(v).

§700.551. What is alternative response?

Alternative response is a type of protective intervention conducted by the Department of Family and Protective Services (DFPS) in response to allegations of abuse or neglect of a child by a person responsible for the child's care, custody or welfare that is an alternative to an abbreviated or thorough investigation as described in §700.507 of this title (relating to Response to Allegations of Abuse or Neglect). Cases that are handled with alternative response:

(1) do not result in a formal disposition of the allegations of abuse or neglect as provided in §700.511 of this title (relating to Disposition of the Allegations of Abuse or Neglect) or in the designation of a perpetrator as described in §700.512 of this title (relating to the Conclusions about Roles);

(2) do not result in the listing of any individual on the DFPS central registry; and

(3) focus on short-term collaboration with and engagement of families in order to empower them to ensure the safety of their children.

§700.553. Which cases may be conducted as an alternative response?

(a) DFPS may conduct an alternative response to any allegation of abuse or neglect that meets the criteria for investigation by Child

Protective Services pursuant to Texas Family Code, Chapter 261, and Division 1 of this subchapter (relating to Investigations), provided that:

(1) the case is assigned a priority other than Priority I;

(2) the case does not involve an alleged victim younger than six;

(3) there is no open investigation or conservatorship case involving the family; and

(4) the case is not excluded pursuant to subsection (b) of this section.

(b) DFPS does not conduct or continue to conduct an alternative response if any of the following conditions are present:

(1) there is a current allegation of sexual abuse or risk of sexual abuse;

(2) the current report or alternative response involves a child fatality that is alleged to be the result of abuse or neglect:

(3) the current report or alternative response involves a family or household member who is a designated or sustained perpetrator of physical abuse that led to a child fatality in a previous investigation;

(4) there is a current allegation or other credible information indicating a risk of serious physical injury or immediate serious harm to a child who is the subject of the alternative response;

(5) an investigation is required to be conducted pursuant to Texas Family Code, Chapter 261, Subchapter E, including a school investigation conducted pursuant to Texas Family Code §261.406; or

(6) the alleged perpetrator is a foster parent or prospective adoptive parent.

(c) DFPS may exclude a case for one of the conditions identified in subsection (b) of this section at the point the intake is received or screened, or based on information discovered during the conduct of the alternative response.

§700.555. Can a case initially assigned for an alternative response be conducted as an investigation?

Yes. DFPS in its sole discretion may at any time route a case that is assigned for and otherwise appears to meet the criteria for alternative response to be conducted as a thorough investigation. A non-exhaustive list of the factors DFPS may consider in deciding to change a case from an alternative response to an investigation includes:

(1) inability of DFPS staff to assess the safety of the child who is the subject of the report;

(2) inability to locate or reach the family;

(3) increased risk of abuse or neglect; or

(4) a change in household composition.

§700.557. Which provisions govern the conduct of an alternative response?

(a) Unless otherwise specified or the context clearly indicates otherwise, an alternative response is governed solely by the provisions in this division and Texas Family Code (TFC) §261.3015.

(b) An alternative response is an investigatory response for which DFPS is exempt from the payment of fees for records in accordance with TFC §261.316.

§700.559. What are the basic components of an alternative response?

An alternative response entails:

(1) assessment of the family, including in every instance an assessment of the safety of the child who is the subject of the report; and

(2) where indicated and in collaboration with the child's family, identification of any necessary and appropriate services or supports to reduce the risk of future harm to the child.

§700.561. What investigative actions may DFPS staff conducting an alternative response take?

(a) DFPS staff conducting an alternative response may take any protective action authorized for an investigation that is necessary for the protection of a child, including but not limited to:

(1) removing the child;

(2) facilitating a parental-child safety placement;

(3) obtaining a court order in aid of investigation; or

(4) obtaining a court order to participate in services.

(b) DFPS staff may take any appropriate protective action either prior to or following transfer of the case to be handled as an investigation.

(c) DFPS staff conducting an alternative response may contact and obtain information and records from any person from whom DFPS is authorized to obtain information or records from in the conduct of an investigation pursuant to Division 1 of this subchapter (relating to Investigations). However, to the greatest extent possible while ensuring child safety, staff attempt to obtain information and records in collaboration with the family and in a manner that is least intrusive to the family.

(d) DFPS staff are not required to attempt to find or notify a parent who does not reside in the home of a family for whom DFPS is conducting an alternative response.

§700.563. Does DFPS maintain written records from an alternative response?

Yes. DFPS must maintain a written record of an alternative response.

§700.565. What provisions govern the release and maintenance of records generated in conjunction with an alternative response?

(a) Records of an alternative response are confidential case records as provided by Texas Family Code §261.201, and §700.202(1) of this title (relating to Definitions).

(b) DFPS may withhold or release confidential alternative response case records in the same manner as other records that are gathered or maintained in response to a report of abuse or neglect of a child, as authorized by state and federal law, including §700.203 of this title (relating to Access to Confidential Information Maintained by the Texas Department of Family and Protective Services (DFPS)).

(c) DFPS maintains alternative response case records in accordance with its published records retention schedule. DFPS may utilize information from an alternative response if alternative response case records are available and DFPS receives a subsequent report of abuse or neglect involving a person who participated in an alternative response case.

(d) Notwithstanding any other provision of this chapter, DFPS does not release alternative response case records in response to a request for information received pursuant to Texas Family Code §261.308(e).

§700.567. What occurs when an alternative response is complete?

When an alternative response is completed:

(1) DFPS provides notification of case completion to the family for whom the alternative response was conducted; and

(2) DFPS may refer the case, in consultation with the family, for additional services that may be necessary to ensure the child's safety.

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

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Cynthia O'Keeffe
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Department of Family and Protective Services
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SUBCHAPTER J. ASSISTANCE PROGRAMS FOR RELATIVES AND OTHER CAREGIVERS
DIVISION 1. RELATIVE AND OTHER DESIGNATED CAREGIVER PROGRAM

40 TAC §700.1005

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.1005, concerning what types of cash assistance are available, in its chapter governing Child Protective Services. The purpose of the amendment is to implement changes made to the Texas Family Code §264.755(b) by Senate Bill (SB) 502, 83rd Legislature, Regular Session, 2013. Since March 2006, the Relative and Other Designated Caregiver Assistance Program, established by the 79th Legislature, SB 6, has sought to ensure the availability of financial support for kinship placements that may not otherwise be sustained due to the financial strain of providing care for a kin child. Over the past 10 years, Texas has more than doubled the percentage of children and youth placed in kinship care and financial payments to kinship caregivers.

The Relative and Other Designated Caregiver Assistance Program provides two types of cash assistance to kinship caregivers: one-time integration payments and annual reimbursement payments. Both require the kinship caregiver's income to be at or below 300% of the federal poverty limit. This proposed rule makes changes to the one-time integration payment. The annual reimbursement payment remains the same.

Currently, unverified kinship caregivers may qualify for an integration payment of *up to* $1000 per sibling group. The integration payment is provided to kinship caregivers who are caring for either a single child or a sibling group consisting of two or more children.

With the passage of SB 502, the integration payment for the initial placement of a sibling group will increase from a cap of $1,000 per sibling group to *at least* $1,000 for the sibling group, but may not exceed $1,000 for each child in the group. The amendment to §700.1005 will provide for a payment of $1,000 for the first child placed in an eligible kinship home, and an additional payment in an amount to be determined by DFPS for each additional child placed in the same kinship home during the same foster care episode. Based on appropriations and current projections for the fiscal biennium that began September 1, 2013, DFPS has determined that the amount of the additional payment for each additional child placed in the home will be $495 per child, effective September 1, 2013.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be a total fiscal impact of $6,303,330 for state government as a result of enforcing or administering the section. However, the amount of the increased integration payments will be consistent with amounts appropriated by the Legislature for this purpose. There are no fiscal implications to local governments.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be improved financial assistance and placement stability by providing more equitable financial support proportionate to the size of the placement. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section. Unverified kinship caregivers who care for more than one child will receive an increased integration payment, currently established at the rate of an additional $495 for each additional child placed in the caregiver's home. Because kinship caregivers of sibling groups will receive higher integration payments, the initial burden of integrating a child into a kinship caregiver's home is reduced. This may encourage the placement of more siblings in relative homes rather than in foster care, and may reduce disproportionality.

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

Questions about the content of the proposal may be directed to Debbie Bouldin at (512) 438-4937 in DFPS's Child Protective Services Division. Electronic comments may be submitted to Marianne.Mcdonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-485, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030, within 30 days of publication in the *Texas Register.*

The amendment is proposed 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 Texas Family Code §264.755(b).

§700.1005. What types of cash assistance are available?

(a) Subject to the availability of funds, eligible caregivers may receive two types of cash assistance:

(1) an initial, one-time cash payment of $1,000 for a child with no siblings or $1,000 for the first child in a sibling group with an additional payment for each subsequent sibling placed in the caregiver's home at any time during the same foster care episode. The amount of the additional payment(s) for subsequent children placed in the caregiver's home is determined by DFPS, but shall not exceed $1,000 per child. These payments are intended to defray costs incurred for essential child care items at the time of each child's placement; and [~~an initial, one-time cash payment of not more than $1,000 per sibling group to defray costs incurred for essential child care items at the time of placement; and~~]

(2) (No change.)

(b) (No change.)

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

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Cynthia O'Keeffe
General Counsel
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CHAPTER 732. CONTRACTED SERVICES

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§732.105, 732.111, and 732.202; and the repeal of §§732.107, 732.113, 732.115, 732.203 - 732.213, and 732.215 - 732.229, concerning general procedures and contract administration, in Chapter 732, concerning Contracted Services. Effective September 1, 2013, DFPS Procurement functions transferred to the Procurement and Contracting Services (PCS) Division of HHSC. Since DFPS will no longer conduct purchases, DFPS is revising its Procurement and Contracting rules to reflect this change in function. All DFPS rules in this chapter focusing exclusively on purchasing and acquisitions are repealed and replaced by rules that reference the appropriate HHSC Procurement rules. In addition, technical changes are made to §732.111 to correct a legal reference in that rule.

The amendment to §732.105 deletes all language related to purchases conducted by DFPS.

The amendment to §732.111 corrects the reference to the General Services Commission HUB rules, which no longer exist, and replaces it with the correct reference to the Texas Comptroller of Public Accounts HUB rules.

The amendment to §732.202 deletes the portions of the rule that reference DFPS conducting procurements and adds language that clarifies that all DFPS purchases are conducted by HHSC.

Sections 732.107, 732.113, 732.115, 732.203 - 732.213, and 732.215 - 732.229 are repealed because the entire rules reference DFPS conducting procurements and emergency procurements.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that the rules will reflect current procedures. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

HHSC has determined that the proposed amendments and repeals do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Jared Davis at (512) 438-5647 in DFPS's Legal Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-481, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER A. GENERAL PROCEDURES

40 TAC §732.105, §732.111

The amendments are proposed 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 implement Human Resources Code §40.058, which grants DFPS the authority to enter into contracts, and Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

§732.105. Are all contracting procedures and criteria contained in this chapter?

[~~(a) Federal and State statutes and regulations control many aspects of purchasing and contract management. The Department and all other parties must comply with them when they are applicable.~~]

(a) [~~(b)~~] The Health and Human Services Commission has adopted rules at 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health and Human Services Agencies). Those rules apply to the purchase of goods and services by this Department, whether for administrative or client use or benefit. The rules in 1 TAC Chapter 391 (relating to Purchase of Goods and Services by Health

and Human Services Agencies) govern to the extent of any conflict with a procedure or requirement prescribed by another state agency except for [other than] a rule relating to:

(1) historically underutilized businesses; or

(2) the purchase of goods or services from persons with disabilities.

(b) [(c)] The determination of allowable and unallowable costs for residential child-care contracts is governed by 1 TAC Chapter 355 (relating to Reimbursement Rates).

[(d) The rules of the Health and Human Services Commission do not apply to the following transactions:]

[(1) the lease, purchase, or lease-purchase of real property;]

[(2) the award of grants; or]

[(3) interstate or international agreements executed in accordance with applicable law.]

[(e) Other rules of this Department provide additional procedures, criteria, and requirements concerning specific types of contracts or specific stages of the contract process. For example, Chapter 700 of this title (relating to Child Protective Services) contains additional procedures, criteria, and requirements concerning contracts for residential child care, and Chapter 730 of this title (relating to Legal Services) contains procedures, criteria, and requirements concerning hearings.]

(c) [(f)] The commissioner or designee may adopt policies to guide the Department concerning contracting. The policies may interpret statutes, rules, or contract provisions; however, they do not create any new rights or responsibilities for any client or contractor unless the person agrees in writing. The Department may enforce the policies against employees and any person who has agreed to implement the policies. The commissioner or designee may waive policies but may not waive rules.

§732.111. What rules apply relating to historically underutilized businesses?

The Department will comply with the rules of the Texas Comptroller of Public Accounts [General Services Commission] found at 34 TAC Chapter 20 [1 TAC Chapter 111], Subchapter B (relating to the Historically Underutilized Business Program).

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

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40 TAC §§732.107, 732.113, 732.115

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed 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 Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

§732.107. May the Department use all procedures, criteria, and exceptions contained in the rules of the Health and Human Services Commission?

§732.113. What rules apply to emergency purchases?

§732.115. Are the rules for purchasing with federal funds different?

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

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SUBCHAPTER L. CONTRACT ADMINISTRATION

40 TAC §732.202

The amendment is proposed 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 Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

§732.202. How does the Department purchase goods and services?

[(a)] The Department may purchase goods and services through competitive and noncompetitive procurement methods found

~~in the~~] Health and Human Services Commission conducts all Department purchases for goods and services on the basis of the best value to the State and the Department using the purchasing rules at 1 TAC Chapter 391 (relating to Purchase of Goods and Services) by Health and Human Services Agencies, and 1 TAC Chapter 392 (relating to Procurements by Health and Human Services Commission). [~~purchasing rules at 1 TAC §391.101 (relating to Competitive Procurement Methods) and 1 TAC §391.103 (relating to Noncompetitive Procurements).~~]

[~~(b) When the Department procures subrecipient contracts or grants using competitive methods, the Department does not provide a protest procedure for awards or tentative awards, but on request the Department will provide a debriefing to an unsuccessful applicant.~~]

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

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40 TAC §§732.203 - 732.213, 732.215 - 732.229

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed 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 Government Code §531.0055(f), which grants the Health and Human Services Executive Commissioner operational authority and responsibility for the procurements of a Health and Human Services agency, including the Department of Family and Protective Services.

§732.203. How long may a contract period last and when may the contract be renewed?
§732.204. When may the Department purchase goods and services through competitive bidding?
§732.205. When may the Department purchase goods and services through competitive negotiation?
§732.206. When may the Department purchase goods and services through noncompetitive negotiation?
§732.207. When may the Department cancel or suspend a solicitation?
§732.208. How does the Department develop a solicitation instrument?
§732.209. How does the Department advertise solicitations?
§732.210. How can answers be obtained to clarify questions about a solicitation instrument?
§732.211. Can the information submitted by a vendor be held confidential?
§732.212. What does the Department do when an inadequate number of responses are submitted for a solicitation?
§732.213. How does the Department handle modifications or withdrawals of offers before the closing date of the solicitation?
§732.215. May clerical mistakes in an offer be corrected?
§732.216. May minor irregularities in an offer be corrected?
§732.217. May mistakes other than clerical mistakes or minor irregularities in an offer be corrected?
§732.218. May an offer be withdrawn after the closing date of the solicitation?
§732.219. How does the Department establish the mechanisms to be used when evaluating offers?
§732.220. How does the Department screen vendors?
§732.221. How does the Department review vendor responses?
§732.222. May the Department validate information submitted in an offer by a vendor?
§732.223. May the Department decide in a competitive procurement to discuss a contract with more than one vendor?
§732.224. Must the Department notify unsuccessful vendors?
§732.225. May a vendor revise the offer during a negotiation?
§732.226. May subcontracts be used to provide goods and services?
§732.227. What does the Department do when there are equal low bids submitted by two or more vendors?
§732.228. Who may inspect competitive bids after they are opened?
§732.229. May an unsuccessful vendor request a debriefing or file a procurement protest?

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

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 744. MINIMUM STANDARDS FOR SCHOOL-AGE AND BEFORE OR AFTER-SCHOOL PROGRAMS

SUBCHAPTER C. RECORD KEEPING

DIVISION 4. PERSONNEL RECORDS

40 TAC §744.901

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §744.901, concerning what information must I maintain, in Chapter 744, concerning Minimum Standards for School-Age and Before or After-School Programs. Senate Bill (SB) 939, 83rd Legislature, Regular Session, added Human Resources Code (HRC) §42.0426(a-1), which requires employees of school-age and before or after-school programs to sign a statement verifying their attendance at training in

the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record. The amendment to §744.901 adds paragraph (10) requiring that an employee's personnel record include a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these, as required in §744.1303 of this title (relating to What should orientation to my operation include?).

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that Child Care Licensing will be able to better monitor the requirement that employees at school-age programs and before or after-school programs have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Penni L. Massingill at (512) 438-2366 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-480, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

The amendment is proposed 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(a) and §42.0426(a-1).

§744.901. What information must I maintain in my personnel records?

You must have the following records at the operation and available for review during your hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) - (7) (No change.)

(8) A copy of a photo identification; [~~and~~]

(9) A copy of a current driver's license for each person who transports a child in care; and[.]

(10) A statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as outlined in §744.1303 of this title (relating to What should orientation to my operation include?).

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

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CHAPTER 745. LICENSING

The Health and Human Services Commission (HHSC) proposes, on behalf of the Department of Family and Protective Services (DFPS), the repeal of §745.615 and §745.630; amendments to §§745.115, 745.129, 745.601, 745.625, 745.651, 745.686, 745.697, 745.8481, 745.8485, 745.8487, 745.8491, 745.8493, 745.8711, 745.8993, 745.9037, 745.9071, and 745.9093; and new §§745.603, 745.615, 745.616, 745.630, 745.8495, 745.8713, 745.8715, and 745.8934, concerning exemptions from regulation, background checks, confidentiality, monetary actions, remedial action for licensed administrators and applicants for an administrator's license, and independent court-ordered social studies, in its Licensing chapter. The purpose of the repeals, amendments, and new sections is to implement Senate Bill (SB) 330, SB 353, SB 427, House Bill (HB) 1648, and HB 2725, which were enacted by the 83rd Legislature, Regular Session.

SB 330 amended the Texas Family Code (TFC) by adding §107.05145, which enables a social study evaluator to obtain from DFPS a complete, unredacted copy of any investigative record regarding abuse or neglect that relates to any person residing in the residence subject to the social study.

SB 353 amended Human Resources Code (HRC) §42.041(b)(12) to create an exemption for certain emergency shelters that: (1) do not otherwise operate as a child-care facility that must have a license from DFPS; (2) provide shelter or care to a minor and the minor's children, if any, pursuant to TFC §32.201; and (3) either contract with a state or federal agency or are a family violence center that meets the requirements to obtain a contract with HHSC as specified in HRC §51.005(b)(3).

SB 427 amended the HRC by adding §42.041(b)(23), which creates an exemption for certain emergency shelters that: (1) do not otherwise operate as a child-care facility that must have a license from DFPS; (2) provide emergency shelter and care for up to 15 days to alleged victims of human trafficking (as defined under Penal Code §20A.02) who are between the ages of 13 and 17; (3) are operated by a nonprofit organization; and (4) are located

in a municipality with a population of at least 600,000 that is in a county on an international border, and are either: (A) licensed by, or operate under an agreement with, a state or federal agency to provide shelter and care to children; or (B) a family violence shelter that meets the requirements to obtain a contract with HHSC as specified in HRC §51.005(b)(3).

SB 353 and SB 427 amended HRC §42.041(b)(13) to correct the name of a state agency from "Texas Youth Commission" to "Texas Juvenile Justice Department."

SB 427 amended HRC §42.056 by adding Federal Bureau of Investigation (FBI) fingerprint check requirements for the following persons affiliated with a child-placing agency, independent foster home, or general residential operation unless a valid FBI check was previously obtained: (1) any prospective foster or adoptive parent regardless of whether the child-placing agency accepts placement of children in the conservatorship of DFPS; (2) a current foster parent; (3) the director, owner, and operator; (4) an employee; (5) a prospective employee; and (6) any person, other than a client in care, who is aged 14 or older who: (A) is counted in the child/caregiver ratio; (B) has unsupervised access to children in care; or (C) resides in a residential operation, foster or adoptive home, or prospective foster or adoptive home.

SB 427 amended HRC §42.078(a) and (a-1) and added (a-2) to: (1) permit DFPS to impose a monetary penalty against any type of operation (other than a small employer-based child care operation or a temporary shelter program) or a controlling person; (2) clarify that a nonmonetary penalty must be imposed before a monetary penalty unless the violation is listed in subsection (a-2); and (3) permit DFPS to impose a monetary penalty before imposing a non-monetary penalty in accordance with subsection (a-2) for the following violations: failing to timely submit background check requests on two or more occasions; failing to submit a background check request before the 30th day after being notified by DFPS that the background check request is overdue; allowing a person to be present at an operation when the results of the background check have not been received (except in certain cases where there is a staff shortage); knowingly allowing a person to be present at an operation when the background check results have been received and those results preclude the person's presence; and violating a condition or restriction that was placed on the person's presence at the operation as part of a pending or approved risk evaluation.

SB 427 amended HRC §43.004 and §43.009 by adding FBI fingerprint check requirements for licensed administrators and applicants for an administrator's license unless a valid FBI check was previously obtained.

SB 427 amended HRC §43.010 by adding that DFPS may deny, revoke, suspend, or refuse to renew a license for an applicant for an administrator's license or a currently licensed administrator who has engaged in conduct that makes the person ineligible for: (1) a permit under HRC §42.072; or (2) employment as a controlling person or services in that capacity under §42.062.

HB 1648 added HRC §42.004, which makes photographs, audio or video recordings, depictions, or documentations of a child made by Child Care Licensing in the course of an inspection or investigation confidential, and allows Child Care Licensing to release these items only as specified in rule or other state or federal law.

HB 2725 amended Government Code §522.138 to define a "victims of trafficking shelter center" and expand existing confidentiality requirements for family violence shelters and sexual assault programs to victims of trafficking shelter centers that are licensed as general residential operations, independent foster homes, or child-placing agencies.

DFPS is also proposing changes to comply with federal background check requirements, clarify existing background check requirements, provide more flexibility to operations requesting risk evaluations, and reduce risk to children by thoroughly vetting a person who is on parole before allowing him or her to be present at an operation.

A summary of the changes follows:

The amendment to §745.115 implements HRC §42.041(b)(13) by changing the title of Texas Youth Commission to Texas Juvenile Justice Department.

The amendment to §745.129 implements HRC §42.041(b)(12) and (b)(23) by amending paragraph (4) and adding paragraph (7) to specify the circumstances under which an emergency shelter is exempt from licensure when the shelter provides shelter and care to a minor and the minor's children, if any, or a victim of human trafficking as defined in Penal Code §20A.02.

The amendment to §745.601 adds definitions for the terms "initial background check" and "renewal background check", which are used in Subchapter F of this chapter, to clarify requirements relating to background checks.

New §745.603 clarifies existing background check requirements by defining who DFPS considers to be present at an operation while children are in care.

Section 745.615 is repealed and proposed as new. The new section implements HRC §42.042 and §42.056 and makes the following changes from the repealed version of §745.615: (1) deletes references to background checks for an administrator's license, which are addressed in rule amendments in Subchapter N of this chapter; (2) deletes a subsection that only required an FBI fingerprint check prior to the placement of a child in DFPS conservatorship in some cases; (3) requires child-placing agencies, independent foster homes, and general residential operations to request a FBI fingerprint check for all persons listed in subsection (a)(1) - (6); and (4) adds needed clarification to the background check requirements.

New §745.616 is a transitional rule that authorizes a phased-in timeframe for implementation of new fingerprint-based criminal history checks that must be submitted for certain persons by general residential operations, child-placing agencies, and independent foster homes as a result of changes to law enacted by the 83rd Legislature in SB 427. This rule establishes deadlines for the submission of the newly required fingerprint-based checks during Fiscal Year 2014, and provides that technical assistance will be offered to providers for a limited period of time to assist them with implementation of this rule, after which time providers will be cited for non-compliance for any violation of the new background check requirements. Licensing has already sent notification to providers of this phased-in implementation schedule so that they will have as much advance notice of the new fingerprint-based checks at possible.

The amendment to §745.625 changes the title and rule to clarify when an initial or renewal background check is due in accordance with HRC §42.056. In order to provide greater specificity regarding the deadline for submission of a renewal background check for a person, the language in the repealed version of the rule requiring that renewal background checks be resubmitted every 24 months has been modified to require that an operation

submit a renewal background check for a person no later than two years from the date that same operation submitted their last background check for that person.

Section 745.630 is repealed and proposed as new. The new section changes the title and clarifies state law with respect to how long a previously conducted FBI fingerprint-based criminal history check remains valid, as well as the circumstances under which a new FBI fingerprint check may be waived if one was previously performed by DFPS or is accessible to DFPS through the DPS clearinghouse. Subsection (c) of this section provides a grandfathering provision for anyone whose fingerprint-based check was previously waived by DFPS in accordance with the repealed version of §745.630, unless and until certain circumstances occur that will require any person subject to FBI checks to submit new fingerprints and undergo a new check.

The amendment to §745.651 adds that a person must have an approved risk evaluation prior to being present at an operation if the person: (1) was convicted of a felony not enumerated in the criminal convictions charts of the DFPS website; and (2) is currently on parole for the offense. The purpose of the rule changes is to reduce risk to children by thoroughly vetting a person who is on parole before allowing him or her to be present at an operation.

The amendment to §745.686 gives operations additional time to submit a risk evaluation packet and requires providers to submit a completed packet within 21 days of being notified that a risk evaluation is required.

The amendment to §745.697: (1) states a person with an approved risk evaluation at an operation does not need a new risk evaluation if the person's role as identified in the risk evaluation letter did not change at that operation, and the circumstances of that person's contact with children at that operation are the same as when the risk evaluation was approved; and (2) states that if any of the criteria for making an approved risk evaluation permanent is not met then: (A) the operation must request a new risk evaluation and all of the time frames and processes noted in Subchapter F of this chapter (relating to Background Checks) would apply; (B) the Centralized Background Check Unit (CBCU) will determine whether or not the person may work or be present at the operation; and (C) the conditions or restrictions noted on the previously approved risk evaluation will remain in effect unless or until the CBCU explicitly amends them.

The amendment to §745.8481: (1) clarifies that the rule is applicable to all information in the operation's monitoring file, not only inspection results; and (2) adds a cross-reference to §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) in order to more clearly specify what information from the operation's monitoring file is confidential and may not be released.

The amendment to §745.8485: (1) clarifies that completed investigations that do not involve abuse and neglect become part of the operation's monitoring file and the confidentiality limits of those records are specified in §745.8481 of this title (relating to Is information in my operation's monitoring file confidential?); and (2) deletes duplicative language in subsection (c) regarding what information may not be released to the public, as that information is also specified in §745.8493 of this title.

The amendment to §745.8487 states that DFPS: (1) must remove the information listed in the rule before releasing it to the public; and (2) may not release to the public information that is confidential under §745.8493 of this title.

The amendment to §745.8491: (1) changes the title and rule to clarify that the rule describes which persons can obtain information in the portions of the abuse or neglect investigation file that is both confidential and not releasable to the public, yet not prohibited from being released to anyone as described in §745.8493 of this title and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?); and (2) implements TFC §107.05145 by specifying that a social study evaluator has the authority to obtain from DFPS a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study.

The amendment to §745.8493: (1) changes the title and rule to expand the rule's applicability to include all Licensing records; (2) deletes subsection (a)(1), which covers the confidentiality of photographs, videotapes, and audiotapes of children taken during an abuse or neglect investigation, because the requirements related to the confidentiality of these items are being moved to new §745.8495 of this title as part of implementation of HRC §42.004; (3) implements Government Code §522.138, which expands existing confidentiality requirements for family violence shelters and sexual assault programs to victims of trafficking shelter centers that are licensed as General Residential Operations or Child-Placing Agencies by specifying that certain information regarding these shelter centers cannot be released; (4) implements TFC §107.05145, by authorizing the release to a social study evaluator of a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study; and (5) adds a statement to clarify that any other information made confidential under state or federal law also may not be released.

New §745.8495 implements HRC §42.004, which makes confidential photographs, audio or video recordings, depictions, or documentations of a child made by Child Care Licensing in the course of an inspection or investigation. The new rule specifies who may have access to these confidential records. Because HRC §42.004 takes effect on September 1, 2013, Licensing is proposing the simultaneous adoption of §745.8495, as an emergency rule, in order to provide immediate rule-based authority for who can have access to the records made confidential by §42.004. The emergency rule will remain in effect until such time as the proposed non-emergency §745.8495 takes effect. The emergency rule adoption of §745.8495 appears elsewhere in this same edition of the *Texas Register.*

The amendment to §745.8711 implements HRC §42.078 by referencing an exception to imposing a nonmonetary penalty before a monetary one as specified in new §745.8713 of this title (relating to When may Licensing impose a monetary penalty before a corrective action?).

New §745.8713 implements HRC §42.078 and provides that a monetary penalty may be imposed before imposing corrective action against an operation or the controlling person of the operation (except small employer-based child care operations and temporary shelter programs) for: (1) failing to timely submit background check requests on two or more occasions; (2) failing to submit a background check request before the 30th day after being notified by DFPS that the background check request is overdue; (3) allowing a person to be present at an operation when the results of the background check have not been received (except in certain cases where there is a staff shortage); (4) knowingly allowing a person to be present at an operation when the

background check results have been received and those results preclude the person's presence; or (5) violating a condition/restriction that was placed on the person's presence at the operation as part of a pending or approved risk evaluation.

New §745.8715 implements HRC §42.078 by listing circumstances under which an administrative penalty may be imposed against a controlling person.

New §745.8934 implements HRC §43.004 by requiring applicants for an administrator's license to undergo fingerprint-based criminal history checks.

The amendment to §745.8993 implements HRC §43.009 by requiring licensed administrators to undergo a fingerprint-based criminal history check each time their license is renewed, unless DFPS relies upon a previously conducted fingerprint-based criminal history check that remains valid as provided by §745.630 of this title.

The amendment to §745.9037 implements HRC §43.010 by: (1) changing "child-care facility" to "facility" to be consistent with statute; and (2) allowing DFPS to deny, revoke, suspend, or refuse to renew a license for an applicant for an administrator's license or a currently licensed administrator who is sustained as a controlling person and currently barred from obtaining a permit.

The amendment to §745.9071 implements TFC §107.05145, which enables a social study evaluator to obtain from DFPS a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the pre-adoptive social study. The title of the rule is changed and subsection (c) is added to specify how the social study evaluator may obtain an unredacted copy of an investigative report regarding abuse or neglect.

The amendment to §745.9093 implements TFC §107.05145, which enables a social study evaluator to obtain from DFPS a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the post-placement adoptive social study. The title of the rule is changed and subsection (c) is added to specify how the social study evaluator will obtain an unredacted copy of an investigative report regarding abuse or neglect.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for local government as a result of enforcing or administering the sections. Implementation of SB 427, which mandates that FBI checks be conducted on additional persons, will increase the CBCU's workload; however, the Legislature provided the funding and authorization for a full time employee to cover the increase in workload. Child Protective Services (CPS) will be required to meet fingerprinting requirements for some of their current staff who fall under the purview of CPS' child-placing agency license. The cost of the fingerprint check is $41.45 per employee. The legislature provided funding to cover $31.50 per check. CPS is paying the extra $9.95 for each check. CPS anticipates paying for 2,125 FBI checks during the first year of implementation for a total of $21,144 and 430.3 FBI checks during each subsequent year of implementation for a total of $4,281 per year. These costs will be absorbed within existing resources.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that there will be reduced risk to children. Also, there will be increased flexibility for operations requesting risk evaluations. Additionally, DFPS will be in compliance with the HRC, TFC, the Government Code, and federal background check requirements. The proposed changes to §745.615 will impact large, small, and micro-businesses and persons who must comply with the new regulations concerning fingerprint-based background checks. The proposed changes will impact three categories of residential operations: (1) general residential operations; (2) child-placing agencies; and (3) independent foster homes. Some of these operations meet the definition of a small or micro-business under Chapter 2006 of the Government Code. The proposed changes will also impact individuals who currently hold an administrator's license and individuals who apply for an administrator's license, as well as other individuals who must newly undergo fingerprint based checks and for whom this cost is not paid by the operation with which they are affiliated.

Impact to Individuals - The impact to individuals, including licensed administrators and applicants for an administrator's license, who must undergo a fingerprint-based criminal history check will be the cost of obtaining a criminal history check, which is currently $39.95 for foster and adoptive parents, and $41.45 for all other persons. This is a one-time cost for individuals who undergo timely name-based checks at least every two years. A small number of individuals who pay this fee and who continue to be subject to fingerprint-based checks may be required to resubmit their fingerprints and pay this fee in the future if they move out-of-state at any time after their initial fingerprint-based criminal history check is completed or they do not undergo a subsequent name based check every two years after their initial finger-print based check is completed.

Impact to Residential Operations - According to the Fiscal Year (FY) 2012 DFPS Annual Report and Data Book, there were 457 residential operations as of August 31, 2012. It is estimated that 59 of the 457 residential operations (or approximately 12%) are small businesses or micro-businesses that are for-profit and have (1) fewer than 100 employees or (2) less than $6,000,000 in annual gross receipts. This estimated number of residential operations that are small businesses or micro-businesses was derived from the approximate number of for-profit residential operations (i.e., limited liability companies, corporations, partnerships, and sole proprietorships) as reflected in Licensing's automated database. An FBI fingerprint check costs $39.95 for foster and adoptive parents, and $41.45 for all other persons. The rules do not specify whether the subject of the fingerprint check (i.e. the individual) or the child-care operation requesting the check incurs the cost of the check. For the purposes of this analysis, it is assumed that many child-care operations will absorb the cost of the fingerprint checks as part of their costs of operation, although it is possible that the operation will pass the one-time cost to the individual. For operations that assume the costs of conducting fingerprint checks, the total economic impact will vary greatly, depending on the size of the operation, the number of background checks requested by the operation, and the turnover rate of the operation's employees. The cost to child-care operations after the first year of implementation will be mitigated as the one-time cost of the FBI fingerprint check in each subsequent year of implementation will be limited to just those prospective employees and foster and adoptive parents who have not already had a fingerprint check. An FBI fingerprint check remains valid as long as the subject of the check does not move out of state and continues to have a name-based background check every two years.

Although the expanded population of persons who must undergo a fingerprint-based check may have fiscal impact on some operations who are small or micro-businesses, a regulatory flexibility analysis is not required because the new requirements are mandated by state law and therefore presumed to be necessary for the health and safety of the individuals whom the state law was intended to protect.

HHSC has determined that the proposed repeals, amendments, and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Ryan Malsbary at (512) 438-5836 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-483, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER C. OPERATIONS THAT ARE EXEMPT FROM REGULATION
DIVISION 2. EXEMPTIONS FROM REGULATION

40 TAC §745.115, §745.129

The amendments are proposed 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 implement HRC §42.042(a) and §42.041(b).

§745.115. What programs regulated by other governmental entities are exempt from Licensing regulation?

The following programs and facilities are exempt from our regulation: Figure: 40 TAC §745.115

§745.129. What miscellaneous programs are exempt from Licensing regulation?

The following miscellaneous programs are exempt from our regulation: Figure: 40 TAC §745.129

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

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SUBCHAPTER F. BACKGROUND CHECKS
DIVISION 1. DEFINITIONS

40 TAC §745.601, §745.603

The amendment and new section are proposed 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 and new section implement HRC §42.042(a) and §42.056.

§745.601. What words must I know to understand this subchapter?

These words have the following meanings:

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

(4) Initial background check--The first background check that your operation requests on a person who is required to undergo a background check, as provided in this subchapter.

(5) [~~(4)~~] Non-continuous visit--Being physically present at an operation for a period of time of less than 24 hours. Multiple or periodic visits to an operation within the same day is one visit.

(6) [~~(5)~~] Owner--A person who owns a child-care operation. An owner includes:

(A) A sole proprietor;

(B) A partner in a partnership; or

(C) An officer of the governing body if the officer:

(i) Has a role in the everyday [~~every day~~] operation of the facility;

(ii) Participates in making policies that address the everyday operation of the child-care operation or DFPS requirements; or

(iii) Signs background check requests or requests risk evaluations for the operation.

(7) [~~(6)~~] Regularly--On a scheduled basis.

(8) Renewal background check--A recurring background check that your operation must request for someone periodically after your operation submits an initial background check for that person, as provided in this subchapter.

(9) [~~(7)~~] Substitute employee--A person on the premises of a child-care operation for the purpose of fulfilling an employee or caregiver role in the absence of an employee or caregiver usually present at the operation.

(10) [~~(8)~~] Unsupervised access--The person is allowed to be with children without the presence of a qualified caregiver.

§745.603. Who does DFPS consider to be present at an operation while children are in care?

DFPS considers someone to be present at an operation while children are in care if the person:

(1) Is physically present at the operation while any child is in the care of the operation;

(2) Has responsibilities that may require the person to be present at the operation while children are in care;

(3) Resides at the operation or is present at the operation on a regular or frequent basis; or

(4) Otherwise may have access to children in care of the operation, regardless of the location where the care is provided.

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

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DIVISION 2. REQUESTING BACKGROUND CHECKS

40 TAC §745.615, §745.630

(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 Department of Family and Protective Services or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The repeals are proposed 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 implements HRC §42.042(a) and §42.056.

§745.615. On whom must I request background checks?

§745.630. If a fingerprint-based criminal history check has already been completed on a person, is a new fingerprint-based criminal history check required for that person every 24 months?

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

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40 TAC §§745.615, 745.616, 745.625, 745.630

The new sections and amendment are proposed 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 and amendment implement HRC §§42.042(a) and 42.056.

§745.615. On whom must I request background checks?

(a) You must request a name-based criminal history check and a DFPS central registry check for:

(1) The director, owner, and operator of the operation;

(2) Each person employed at the operation;

(3) Each prospective employee at the operation;

(4) Each current or prospective foster parent providing foster care through a child-placing agency;

(5) Each prospective adoptive parent seeking to adopt through a child-placing agency;

(6) Each person at least 14 years of age, other than a client in care, who:

(A) Is counted in child-to-caregiver ratios in accordance with the relevant minimum standards;

(B) Will reside in a prospective adoptive home if the adoption is through a child-placing agency;

(C) Has unsupervised access to children in care at the operation; or

(D) Resides in the operation;

(7) Each person 14 years of age or older, other than a client in care, who will regularly or frequently be staying or working at an operation or prospective adoptive home while children are in care; and

(8) Each substitute employee, unless you confirm that the organization providing the substitute employee has completed a background check for the person through DFPS within the last 24 months.

(b) In addition to any other background check required by this section, you must request fingerprint-based criminal history checks on the following:

(1) If you are a permit holder, or applicant for a permit, for a child-placing agency, general residential operation, independent foster home, child-care center, before or after-school program, or school-age program, you must request a fingerprint-based criminal history check for each person who is required to have a name-based background check under subsection (a)(1) - (6) of this section; and

(2) If you are a permit holder, or applicant for a permit, for any operation type, you must request a fingerprint-based criminal history check for each person whose name is submitted for a background check under subsection (a) of this section if:

(A) The person has lived in another state any time during the five-year period prior to the date you submit an initial background check; or

(B) The person moved out-of-state at any time between the date on which you submitted your last background check and the date your next renewal background check for that person is due; or

(C) At the time your initial or renewal background check is due, you have reason to suspect other criminal history exists in another state.

(c) In addition to any other background check required by this section, child-placing agencies and independent foster homes that will accept the placement of children in the conservatorship of DFPS must request an out-of-state central registry check for a foster or adoptive parent applicant and any other adult living in the home of the applicant who has lived outside of the state any time during the previous five years preceding the prospective foster or adoptive parent's application to become a foster or adoptive parent.

(d) You do not have to request a background check on a professional who is licensed or is required to have a background check to meet compliance with another governmental entity's requirements if:

(1) You do not employ or contract with the professional;

(2) The professional will only be present at the child-care operation in an official capacity; and

(3) For day care operations, you obtain written parental consent before allowing the professional to have unsupervised access to a child in care.

§745.616. Transitional rule for submission of fingerprint-based criminal history checks required by the 83rd Texas Legislature.

(a) Background and Purpose. The 83rd Texas Legislature enacted changes to Human Resources Code (HRC) §42.056, imposing new fingerprint check requirements on certain persons affiliated with residential child-care operations who had not previously been required to undergo these checks. See Acts 2013, 83rd R.S., Ch. 746, §3. The purpose of this transitional rule is to provide guidance on when these checks should be submitted and when Licensing will begin to cite an operation for a violation of minimum standards for failing to submit the required fingerprint-based checks. This rule section applies only to general residential operations, child-placing agencies and independent foster homes, and only with respect to persons who were not required to undergo fingerprint-based criminal history checks under HRC §42.056, as that statute existed on August 31, 2013.

(b) Employees Hired and Homes Verified or Approved On or After September 1, 2013. Beginning September 1, 2013, you must submit fingerprint checks for employees who are hired on or after September 1, 2013, and persons in homes verified or approved on or after September 1, 2013, in accordance with the timeframes listed below:
Figure: 40 TAC §745.616(b)

(c) Employees Hired and Homes Verified or Approved Before September 1, 2013. Beginning September 1, 2013, you must submit fingerprint checks for all current employees and persons in already verified or approved homes who do not already have a valid fingerprint-based check on file, in accordance with the timeframes listed below:
Figure: 40 TAC §745.616(c)

(d) Technical Assistance and Enforcement. For persons described in subsection (b) of this section, Licensing will provide technical assistance to residential operations until March 1, 2014, and will begin citing operations for violation of minimum standards for any deficiencies relating to fingerprint-based checks after March 1, 2014. For persons described in subsection (c) of this section, Licensing will provide technical assistance to residential operations until September 1, 2014, and will begin citing operations for violation of minimum standards for any deficiencies relating to fingerprint-based checks after September 1, 2014.

(e) Rule Expiration. This rule expires on December 31, 2014.

§745.625. When must I submit a request for an initial or renewal [a] background check?

(a) You must submit a request for an initial [a] background check for each person [all persons] required to have a background check under §745.615 of this title (relating to On whom must I request background checks?):

(1) At the time you submit your application for a permit to us;

(2) At the time you hire someone;

(3) At the time you contract with someone who requires a background check;

(4) At the time a person applies to be a foster or adoptive parent;

(5) At the time a non-client resident 14 years or older moves into your home or operation, or a non-client resident living in your home or operation becomes 14 years old; and

(6) At the time you become aware of anyone requiring a background check under §745.615 of this title, for on whom you have not previously requested the required background check.[; and]

[(7) Every 24 months after each person's background check was first submitted.]

(b) You must request a renewal background check for each person required to have a background check under §745.615 of this title, which is due no later than two years from the date of your most recently requested initial or renewal background check on that person.

§745.630. If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due?

(a) At the time you submit an initial or renewal background check for a person who has previously undergone a fingerprint-based criminal history background check, you indicate that whether that person is required to undergo a fingerprint-based check as provided in subsection (b) of §745.615 of this title (relating to On whom must I request background checks?). However, a previously conducted fingerprint-based check remains valid and DFPS will waive the requirement to submit new fingerprints under the following circumstances:

(1) DFPS previously conducted a fingerprint-based check for the person, and:

(A) The results of the previously completed check are still available to DFPS; and

(B) The date on which you submit an initial or renewal background check for the person is not more than two years since the date you or another operation last submitted a name-based check for that person;

(2) An entity other than DFPS, including but not limited to the Texas Education Agency, previously conducted a fingerprint-based criminal history check on the person, and those results:

(A) Are stored in the Department of Public Safety (DPS) Clearinghouse and are available to DFPS;

(B) Were obtained from a comparative search between the person's fingerprints and the DPS database of crimes committed in the State of Texas and the Federal Bureau of Investigation (FBI) database of crimes committed anywhere in the United States; and

(C) Were received by DPS from the FBI not more than two years from the date on which your first fingerprint-based check on the person is due; or

(3) DFPS relied upon a previously completed fingerprint-based check from the DPS clearinghouse, as provided in paragraph (2) of this subsection, and the person who was the subject of that check continues to undergo name-based criminal history checks which are submitted to DFPS no less frequently than every two years since the date of the last background check submitted for that person.

(b) Notwithstanding subsection (a) of this section, a previously completed fingerprint-based criminal history check is no longer considered valid and a new fingerprint-based check must be conducted by DFPS if:

(1) DFPS previously conducted a fingerprint-based check for the person or waived the requirement based on a previously submitted check that another entity completed, the person failed to undergo a name-based check at least every two years since the most recent fingerprint-based check conducted by DFPS;

(2) The person moved out-of-state after the most recent fingerprint-based check was completed by DFPS or another entity; or

(3) You have reason to suspect that the person has out-of-state criminal history since the most recent fingerprint-based check was completed by DFPS or another entity.

(c) This rule applies to fingerprint-based checks that are first required for a person on or after March 1, 2014, the effective date of this rule. Persons for whom a fingerprint-based check was conducted prior to March 1, 2014, are governed by the rules and DFPS policies that were in effect at the time their first fingerprint-based check was conducted, unless or until one of the circumstances described in subsection (b) of this section occurs on or after March 1, 2014.

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DIVISION 3. CRIMINAL CONVICTIONS AND CENTRAL REGISTRY FINDINGS OF CHILD ABUSE OR NEGLECT

40 TAC §745.651

The amendment is proposed 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(a) and §42.056.

§745.651. What types of criminal convictions may affect a person's ability to be present at an operation?

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

(c) For any felony offense that is not specifically enumerated in the relevant chart listed in subsection (a) of this section [~~and is within 10 years of the date of conviction~~], the person must have an approved risk evaluation prior to being present at the operation if: [~~while children are in care.~~]

(1) The person was convicted within the past 10 years for the offense; or

(2) The person is currently on parole for the offense.

(d) (No change.)

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DIVISION 4. EVALUATION OF RISK BECAUSE OF A CRIMINAL CONVICTION OR A CENTRAL REGISTRY FINDING OF CHILD ABUSE OR NEGLECT

40 TAC §745.686, §745.697

The amendments are proposed 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 implement HRC §42.042(a) and §42.056.

§745.686. What are the time frames for requests for a risk evaluation?

(a) If you have been notified that a person who was the subject of the background check may continue to work or be present at an operation pending a risk evaluation, then:

(1) (No change.)

(2) You must return the completed risk evaluation packet to the CBCU within 21 [~~14~~] calendar days after you receive notice from CBCU that a risk evaluation is required [~~notify CBCU of your intent to request a risk evaluation~~]. However, you may request two 14-calendar-day extensions for good cause.

(b) - (e) (No change.)

§745.697. Is an approved risk evaluation permanent?

(a) You do not have to request a risk evaluation for the same criminal conviction or central registry finding that a previous background check revealed if each of the following conditions are met:

(1) Your operation previously requested a risk evaluation for the same finding or criminal conviction, and DFPS approved the risk evaluation;

(2) The more recent check does not reveal a new finding or criminal conviction; and

(3) The person's role as identified in the risk evaluation decision letter and the circumstances of the person's contact with children at the operation are the same as when we approved the risk evaluation.

(b) You must submit a new request for a risk evaluation by notifying the Centralized Background Check Unit (CBCU) at the time any of the conditions under subsection (a) of this section can no longer be met. The CBCU will then determine whether the person can continue to work or be present at your operation pending the new risk evaluation. After you notify the CBCU that you intend to request a new risk evaluation, the time frames and other processes for completing a risk evaluation that are described in this subchapter apply. Any conditions or restrictions that the CBCU put on the person's presence at the operation as a result of the previously approved risk evaluation will remain in effect unless and until they are explicitly amended by the CBCU.

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

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SUBCHAPTER K. INSPECTIONS AND INVESTIGATIONS
DIVISION 3. CONFIDENTIALITY

40 TAC §§745.8481, 745.8485, 745.8487, 745.8491, 745.8493, 745.8495

The amendments and new section are proposed 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 HRC §42.042(a) and §42.004, Government Code §552.138, and Texas Family Code §107.05145.

§745.8481. Is information in my operation's monitoring file [~~Are routine inspections of my operation~~] confidential?

(a) No, [~~we keep this~~] information in your operation's monitoring file [~~and it~~] is, for the most part, available to the general public.

(b) We will not release some information in your operation's monitoring file [~~these files~~] because of other state and federal laws that make the information confidential, as provided in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?). [~~For example, the results of an HIV test, certain medical information, the location of a family violence shelter, or information pertaining to an individual who was provided family violence services will not be released.~~]

§745.8485. Are investigations confidential?

(a) (No change.)

(b) Completed investigations that do not involve abuse or neglect become part of the operation's monitoring file, which is, for the most part, available to the general public, as provided in §745.8481 of this title (relating to Is information in my operation's monitoring file confidential?) [~~are not confidential and are available to the general public~~].

(c) Completed investigations [~~The following information relating to a completed investigation~~] of child abuse or neglect are [~~is~~] confidential and not available to the general public, except as provided under this chapter and applicable federal or state law.[~~:~~]

[~~(1) The description of the allegation of child abuse or neglect;~~]

[~~(2) The identity of the person making the allegation;~~]

[~~(3) The files, reports, records, communications, audiotapes, videotapes, and working papers used or developed during an investigation;~~]

[~~(4) The location of a family violence shelter; and~~]

[~~(5) Information pertaining to an individual who was provided family violence services.~~]

(d) (No change.)

§745.8487. What information can Licensing release to the public after the completion of the abuse or neglect investigation?

(a) We may release to the public only those portions of the abuse or neglect investigation record that we must file in the operation's monitoring file under §745.8489 of this title (relating to What portions of the child abuse or neglect investigation must Licensing keep in the operation's monitoring file?).[~~:~~]

(b) Before releasing portions of the abuse or neglect investigation that are in the operation's monitoring file, [~~provided that~~] we must remove:

(1) The [~~the~~] identity of any alleged victims or their families;[~~:~~]

(2) The identity of any other children involved in the investigation;[,]

(3) The identity of the reporter;[,]

(4) The identity of the alleged perpetrator;[,]

(5) The identity of [and] any other individual whose life or safety might be endangered by the release; and[, ~~including the location of a family violence shelter or information pertaining to an individual who was provided family violence services.~~]

(6) Any other information that may not be released under §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?).

§745.8491. Who can obtain [~~confidential~~] information from the confidential portions of an abuse or neglect investigation [~~that is not in the operation's monitoring~~] file?

(a) The following may [~~have the authority to~~] obtain [~~confidential~~] information from the confidential portions of [~~relating to~~] an abuse or neglect investigation file, subject to the limitations described in §745.8493 of this title (relating to Are there any portions of Licensing records that Licensing may not release to anyone?) and §745.8495 of this title (relating to Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?):

(1) - (10) (No change.)

(b) (No change.)

(c) A social study evaluator may obtain a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code §107.05145.

§745.8493. Are there any portions of Licensing records [~~a child abuse or neglect investigation file~~] that Licensing may not release to anyone?

(a) We may not release the following portions of Licensing records [~~an abuse or neglect investigation file~~] to anyone:

[~~(1) The audio taped or videotaped interview of a child, as well as any photographs taken of a child. An authorized person may review them but may not have copies;~~]

(1) [~~(2)~~] Any information that would interfere with an ongoing law enforcement investigation or prosecution;

(2) [~~(3)~~] Any information identifying [~~The name of~~] the person who made a [~~the~~] report that resulted in an investigation [~~or any information identifying this person~~];

(3) [~~(4)~~] The location of a family violence shelter;

(4) [~~(5)~~] Information pertaining to an individual who was provided family violence services; [~~and~~]

(5) The location of a victims of trafficking shelter center;

(6) Information pertaining to an individual who was provided services at a victims of trafficking shelter center;

(7) [~~(6)~~] The identity of any child or information identifying the child in an abuse or neglect investigation, unless the requestor is:

(A) The child's parent or prospective adoptive parent;

(B) The operation that was cited for a deficiency as a result of the investigation; or

(C) The single-source continuum contractor (SSCC) for foster care redesign when:

(i) The SSCC subcontracts with the operation;

(ii) The operation has signed a release of information; and

(iii) The operation was cited for a deficiency as a result of the investigation; and[.]

(8) Any other information confidential under state or federal law.

(b) Notwithstanding any other provision in this section, DFPS may provide any of the above confidential information to the following parties in the relevant situations:

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

(3) A member of the state legislature when necessary to carry out that member's official duties; [~~and~~]

(4) Any other individuals ordered by an administrative law judge or judge of a court of competent jurisdiction; and[.]

(5) A social study evaluator who has requested a complete, unredacted copy of any investigative report regarding abuse or neglect that relates to any person residing in the residence subject to the social study, as provided by Texas Family Code §107.05145.

(c) (No change.)

§745.8495. Who can review or have a copy of a photograph or an audio or visual recording, depiction, or documentation of a child that is in Licensing records?

(a) We may provide a copy of a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records to any of the following:

(1) DFPS staff, including volunteers, as necessary to perform their assigned duties;

(2) Law enforcement for the purpose of investigating allegations of child abuse or neglect, failure to report child abuse or neglect, or false or malicious reporting of alleged child abuse or neglect;

(3) An administrative law judge or a judge of a court of competent jurisdiction in a criminal or civil case to which the inspection or investigation is relevant;

(4) The parent of the child; and

(5) Any other person authorized by state or federal law to have a copy.

(b) The following persons may review a photograph or an audio or visual recording, depiction, or documentation of a child in Licensing records, but may not have a copy:

(1) An attorney ad litem, guardian ad litem, or court appointed special advocate of the child;

(2) The operation;

(3) With a signed release from the operation, a single-source continuum contractor (SSCC) for foster-care redesign that subcontracts with the operation; and

(4) A prospective adoptive parent of the child, as provided in Texas Family Code §162.006.

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SUBCHAPTER L. REMEDIAL ACTIONS
DIVISION 5. MONETARY ACTIONS

40 TAC §§745.8711, 745.8713, 745.8715

The amendment and new sections are proposed 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 and new sections implement HRC §42.042 and §42.078.

§745.8711. What monetary actions may Licensing impose?
We may impose administrative penalties or ask the court to order civil penalties, which are described below:
Figure: 40 TAC §745.8711

§745.8713. When may Licensing impose a monetary penalty before a corrective action?
We may impose a monetary penalty before imposing a corrective action any time we find one of the following:

(1) A failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter (relating to Background Checks) on two or more occasions;

(2) A failure to timely submit the information required to conduct a background and criminal history check under Subchapter F of this chapter before the 30th day after the date we notify you that the information is overdue;

(3) Except as provided in §745.626 of this title (relating to How soon after I request a background check on a person can that person provide direct care or have direct access to a child?), you knowingly allow a person to be present in your child-care operation before you have received the results of the person's background and criminal history check;

(4) You knowingly allow a person to be present in your child-care operation after you have received the person's background and criminal history check, if the results contain criminal history or central registry findings that preclude the person from being present in the child-care operation; or

(5) You violate a condition or restriction we have placed on a person's presence at your child-care operation as part of a pending or approved risk evaluation of the person's background and criminal history or central registry findings.

§745.8715. When may Licensing impose an administrative penalty against a controlling person?

We may impose an administrative penalty against a controlling person when the controlling person:

(1) Violates a term of a license or registration;

(2) Makes a statement about a material fact that the person knows or should know is false:

(A) On an application for the issuance of a license or registration or an attachment to the application; or

(B) In response to a matter under investigation;

(3) Refuses to allow a representative of DFPS to inspect:

(A) A book, record, or file required to be maintained by the child-care operation; or

(B) Any part of the premises of the child-care operation;

(4) Purposefully interferes with the work of a DFPS representative or the enforcement of Human Resources Code (HRC), Chapter 42; or

(5) Fails to pay a penalty assessed under HRC, Chapter 42, on or before the date the penalty is due as determined under HRC §42.078.

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

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SUBCHAPTER N. ADMINISTRATOR LICENSING
DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §745.8934

The new section is proposed 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 section implements HRC §43.005 and §43.004.

§745.8934. What other actions must I take to become a licensed administrator?

In addition to submitting the background check request form required by §745.8933 of this title (relating to What does a complete application to become a licensed administrator include?), you must submit fingerprints for a fingerprint-based criminal history check, as provided under §745.629 of this title (relating to How do I submit fingerprints for a fingerprint-based criminal history check?), unless you have previously undergone a fingerprint-based criminal history that remains valid, as provided under §745.630 of this title (relating to If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due?).

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Cynthia O'Keeffe
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DIVISION 4. RENEWING YOUR ADMINISTRATOR LICENSE

40 TAC §745.8993

The amendment is proposed 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 §43.005 and §43.010.

§745.8993. Am I eligible to renew my administrator's license?

(a) To be eligible to renew your administrator's license, you must:

(1) Be in current compliance with all applicable laws, including these rules;

(2) Have completed 15 clock hours of continuing education each year during the two-year period before renewal;

(3) Undergo a new name-based criminal history and central registry background check and may not have a criminal history or central registry history that would prohibit you from working in a residential child-care operation, as specified in Subchapter F of this chapter (relating to Background Checks); and

(4) Submit the appropriate renewal fee.

(b) In addition to undergoing a name-based background check as provided under subsection (a) of this section, you must submit fingerprints for a fingerprint-based criminal history check, as provided under §745.629 of this title (relating to How do I submit fingerprints for a fingerprint-based criminal history check?), unless you have previously undergone a fingerprint-based criminal history that remains valid, as provided under §745.630 of this title (relating to If a fingerprint-based criminal history check has already been completed on a person, must that person submit new fingerprints at the time my initial or renewal background check on that person is due?).

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

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DIVISION 5. REMEDIAL ACTIONS

40 TAC §745.9037

The amendment is proposed 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 §43.005 and §43.010.

§745.9037. Under what circumstances may Licensing take remedial action against my administrator's license or administrator's license application?

(a) We may take remedial action against your administrator's license or administrator's license application if you:

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

(6) Have a criminal history or central registry record that:

(A) Would prohibit you from working in a [~~child-care~~] facility as specified in Subchapter F of this chapter (relating to Background Checks); or

(B) (No change.)

(7) Use or abuse drugs or alcohol in a manner that jeopardizes your ability to function as an administrator; [~~or~~]

(8) Perform your duties as a licensed administrator in a negligent manner; or[.]

(9) Engage in conduct that makes you ineligible to:

(A) Receive a permit under Human Resources Code (HRC) §42.072; or

(B) Be employed as a controlling person or serve in that capacity in a facility or family home under HRC §42.062.

(b) - (d) (No change.)

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

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SUBCHAPTER O. INDEPENDENT COURT-ORDERED SOCIAL STUDIES
DIVISION 3. PRE-ADOPTIVE SOCIAL STUDIES

40 TAC §745.9071

The amendment is proposed 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 Texas Family Code §107.05145.

§745.9071. How do I obtain a criminal history background check, a [~~or~~] central registry background check, or an investigative report regarding abuse and neglect for an independent pre-adoptive social study?

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

(c) You can obtain from us a complete, unredacted copy of any investigative report as provided by Texas Family Code §107.05145 by completing the request form that is available on the DFPS public website.

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

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DIVISION 4. POST-PLACEMENT ADOPTIVE SOCIAL STUDY AND REPORT

40 TAC §745.9093

The amendment is proposed 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 Texas Family Code §107.05145.

§745.9093. How do I obtain a criminal history background check, a [~~or~~] central registry background check, or an investigative report regarding abuse and neglect for an independent post-placement adoptive social study and report?

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

(c) You can obtain from us a complete, unredacted copy of any investigative report as provided by Texas Family Code §107.05145 by completing the request form that is available on the DFPS public website.

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

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CHAPTER 746. MINIMUM STANDARDS FOR CHILD-CARE CENTERS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §746.801 and §746.901; and new §§746.5623, 746.5625, and 746.5627, concerning recordkeeping and transportation, in Chapter 746, concerning Minimum Standards for Child-Care Centers. The amendments and new sections implement Senate Bill (SB) 939 and House Bill (HB) 1741, which were enacted by the 83rd Legislature, Regular Session. SB 939 added Human Resources Code (HRC) §42.0426(a-1), which requires employees of child-care centers to sign a statement verifying their attendance at training in recognition of and the procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the child-care center maintain the statement in the employee's personnel record. HB 1741 added HRC §42.0424, which: (1) defines "electronic child safety alarm"; (2) requires licensed child-care centers to equip each vehicle used to transport children with an

electronic child safety alarm system if the vehicle is designed to seat eight or more persons and is purchased or leased on or after December 31, 2013; and (3) requires licensed child-care centers to ensure that the alarm is properly maintained and used while transporting children in care. A summary of the changes is described below:

The amendment to §746.801 adds paragraph (26), which requires the child-care center to maintain documentation for a vehicle that is used to transport children in care unless it is equipped with an electronic child safety alarm or is not designed to seat eight or more persons.

The amendment to §746.901 adds paragraph (10) to require that an employee's personnel record include a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as required in §746.1303 of this title (relating to What should orientation to my child-care center include?).

New §746.5623 defines an electronic child safety alarm in accordance with HRC §42.0424.

New §746.5625 outlines the requirement for licensed child-care centers to install an electronic child safety alarm system in a vehicle used to transport children. This rule implements HRC §42.0424 by requiring licensed child-care centers to: (1) equip each vehicle used to transport children with an electronic child safety alarm system if the vehicle is designed to seat eight or more persons and is purchased or leased on or after December 31, 2013; and (2) ensure that the alarm is properly maintained and used while transporting children in care.

New §746.5627 supports enforcement of HRC §42.0424 by requiring licensed child-care centers to maintain documentation of a vehicle used to transport children in care unless the vehicle: (1) is equipped with an electronic child safety alarm; or (2) is not designed to seat eight or more persons.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that Child Care Licensing will be able to better monitor the requirement that employees in child-care centers have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation; and child-care centers have an additional safeguard to help ensure that no child is left unattended in a parked vehicle operated by a child-care center - both resulting in improved care of children.

There will be an effect on large, small, and micro-businesses as a result of new §746.5625, because child-care centers must install an electronic child safety alarm in each vehicle if the vehicle seats eight or more persons, is used to transport children in care, and is bought or leased on or after December 31, 2013. The cost of an electronic child safety alarm ranges from $119.95 to $299.95 according to the costs provided by three different alarm manufacturers. The average cost of installing an electronic child safety alarm ranges from $65/hour to $100/hour and the average installation time is one to two hours/vehicle according to costs provided by three different manufacturers, two child-care operators, and one vehicle vendor in Texas. Based on these numbers, Child Care Licensing estimates that the cost for child-care centers to comply with the proposed rule ranges from $185 to $500 for each vehicle that is subject to the rule. The cost for each child-care center will depend on the number of vehicles they purchase or lease after December 31, 2013.

The DFPS Fiscal Year 2012 data book reflects 8,104 licensed child-care centers in Texas, many of which are either a small business or micro-business as defined in Chapter 2006, Government Code. Chapter 2006 defines a small business as one that is for-profit, independently owned, and has fewer than 100 employees or less than $6 million in annual gross receipts. A small business that has no more than 20 employees is further defined as a micro-business. Based on a survey of child-care providers conducted in 2010, DFPS estimates that roughly 55% of child-care centers are for-profit businesses and that roughly 70% are independently owned. Approximately 98% of child-care centers have fewer than 100 employees and roughly 68% have no more than 20 employees. Chapter 2006 requires that an agency prepare a Regulatory Flexibility Analysis (RFA) for any rule that has a negative economic impact on small businesses, unless consideration of alternative methods of achieving the rule's purpose would not be consistent with the health, safety, and environmental and economic welfare of the state. Because §746.5625 is required by §42.0424, Human Resources Code, the changes are considered *per se* necessary for the health and safety of the children served by child-care centers subject to these rules. Accordingly, no RFA was prepared prior to proposal of these rules.

Consumers of child-care services may experience nominal increases in the cost of care to the extent that any given child-care center may pass any increased costs of installing electronic child safety alarms on to its consumers. The amount of such increase, if any, is impossible to estimate given the variability in the number of vehicles each child-care center will buy or lease on or after December 31, 2013.

HHSC has determined that the proposed amendments and new sections do not restrict or limit an owner's right to his or her property that would otherwise exist in the absence of government action and, therefore, do not constitute a taking under §2007.043, Government Code.

Questions about the content of the proposal may be directed to Penni L. Massingill at (512) 438-2366 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-480, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER C. RECORD KEEPING

DIVISION 3. RECORDS THAT MUST BE KEPT ON FILE AT THE CHILD-CARE CENTER

40 TAC §746.801

The amendment is proposed 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(a) and §42.0424.

§746.801. What records must I keep at my child-care center?

You must maintain and make the following records available for our review upon request, during hours of operation. Paragraphs (18), (19), and (20) are optional, but if provided, allow Licensing to avoid duplicating the evaluation of standards that have been evaluated by other state agencies within the past year:

(1) - (23) (No change.)

(24) System to track when a child's care begins and ends daily; [~~and~~]

(25) Documentation for cribs as specified in §746.2409 of this title (relating to What specific safety requirements must my cribs meet?), if applicable; and[.]

(26) Documentation for vehicles specified in §746.5627 of this title (relating to What documentation must I keep at the child-care center for each vehicle used to transport children in care?), if applicable.

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

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DIVISION 4. PERSONNEL RECORDS

40 TAC §746.901

The amendment is proposed 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(a) and §42.0426(a-1).

§746.901. What information must I maintain in my personnel records?

You must have the following records at the child-care center and available for review during hours of operation for each employee, caregiver, substitute, and volunteer as specified in this chapter:

(1) - (7) (No change.)

(8) A copy of a photo identification; [~~and~~]

(9) A copy of a current driver's license for each person who transports a child in care; and[.]

(10) A statement signed and dated by the employee verifying the date the employee attended training that includes an overview of your policy on preventing and responding to abuse and neglect of children as outlined in §746.1303 of this title (relating to What should orientation to my child-care center include?).

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

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SUBCHAPTER X. TRANSPORTATION

40 TAC §§746.5623, 746.5625, 746.5627

The new sections are proposed 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 §42.042(a) and §42.0424.

§746.5623. What is an electronic child safety alarm?

An electronic child safety alarm is an alarm system installed in a vehicle. The alarm prompts the driver of a vehicle to inspect the vehicle to determine whether children are in the vehicle before the driver exits the vehicle.

§746.5625. When and how must I install and use an electronic child safety alarm in a vehicle?

(a) You must ensure that a vehicle purchased or leased on or after December 31, 2013, is equipped with an electronic child safety alarm if:

(1) The vehicle is designed to seat eight or more persons; and

(2) Your operation uses the vehicle to transport children in care.

(b) You are responsible for ensuring that the alarm is installed and maintained according to the manufacturer's instructions.

(c) The alarm must be used at all times whenever a vehicle describe in subsection (a) of this section is used to transport a child in care.

§746.5627. What documentation must I keep at the child-care center for each vehicle used to transport children in care?

You must keep documentation at your child-care center that shows when your center first purchased or leased a vehicle unless it:

(1) Is equipped with an electronic child safety alarm; or

(2) Is not designed to seat eight or more persons.

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

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CHAPTER 747. MINIMUM STANDARDS FOR CHILD-CARE HOMES
SUBCHAPTER C. RECORD KEEPING
DIVISION 4. RECORDS ON CAREGIVERS AND HOUSEHOLD MEMBERS

40 TAC §747.901

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §747.901, concerning what information must I maintain in my personnel records, in Chapter 747, concerning Minimum Standards for Child-Care Homes. Senate Bill (SB) 939, 83rd Legislature, Regular Session, added Human Resources Code (HRC) §42.0426(a-1), which requires employees of licensed child-care homes to sign a statement verifying their attendance at training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the home maintain the statement in the employee's personnel record. The amendment to §747.901 adds paragraph (9) requiring that an employee's personnel record include a statement signed and dated by the employee verifying the date the employee attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these, as required in §747.1305 of this title (relating to What should orientation to my child-care home include?).

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that Child Care Licensing will be able to better monitor the requirement that employees at child-care homes have had the required training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Penni L. Massingill at (512) 438-2366 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-480, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

The amendment is proposed 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(a) and §42.0426(a-1).

§747.901. What information must I maintain in my personnel records?

You must keep at least the following at the child-care home for each assistant caregiver and substitute, as specified in this chapter:

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

(7) A copy of a photo identification; [~~and~~]

(8) A copy of a current driver's license for each person or caregiver that transports a child in care; and[~~.~~]

(9) A statement signed and dated by the caregiver in a licensed child-care home verifying the date the caregiver attended training that includes an overview of symptoms of child abuse, neglect, and sexual abuse and the responsibility for reporting these as outlined in §747.1305 of this title (relating to What should orientation to my child-care home include?).

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

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CHAPTER 748. MINIMUM STANDARDS FOR GENERAL RESIDENTIAL OPERATIONS

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§748.363, 748.1205, and 748.1211, concerning what information must the personnel record of an employee include, what information must I document in the child's record at admission, and what information must I share with the parent at the time of placement, in Chapter 748, concerning Minimum Standards for General Residential Operations. The purpose of the amendments is to implement Senate Bill (SB) 717 and SB 939, which were enacted by the 83rd Legislature, Regular Session.

SB 717 amended the Texas Family Code (TFC) by adding §32.203, which allows a minor to consent to housing or care provided to the minor child and any children of the minor child, through a transitional living program at a general residential operation, child-placing agency, or independent foster home if the minor is: (1) 16 years of age or older and resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence, and manages their own financial affairs, regardless of the source of income; or (2) unmarried and pregnant or is the parent of a child. SB 717 further provides that when a minor consents to such housing or care, the operation must attempt to notify the minor's parent, managing conservator, or guardian regarding the child's location.

SB 939 amends the Human Resources Code (HRC) by adding §42.0426(a-1), to require employees of general residential operations to sign a statement verifying their attendance at training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record.

A summary of the changes follows:

The amendment to §748.363 implements HRC §42.0426(a-1) by adding paragraph (8)(B) to require that an employee's personnel record include a statement signed and dated by the employee that he has attended training in preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect, and exploitation, as required in §748.881(2) of this title (relating to What curriculum components must be included in the general pre-service training?). An additional technical correction is made to this section to delete references to "caregivers," who are not always employees, as this rule is intended to apply solely to the personnel records maintained regarding employees.

The amendment to §748.1205 implements TFC §32.203 by adding subsection (a)(15) to require a general residential operation to document in the child's record at admission the attempts to notify a parent of a child when the child consents to housing or care at the operation's transitional living program.

The amendment to §748.1211 implements TFC §32.203 by adding subsection (c) to require that a general residential operation attempt to notify a parent of a child when the child consents to housing or care at the operation's transitional living program.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that (1) Child Care Licensing will be able to better monitor for the requirement that employees at general residential operations have attended the required training on preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect and exploitation; and (2) regulated residential child-care facilities will be able to provide homeless and runaway youths, including those with children, with residential living services through a transitional living program, without consent of the child's parents, and in such circumstances parents will be notified of the child's whereabouts unless the facility is unable to provide such notice after making a good faith effort to do so. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-479, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 3. PERSONNEL RECORDS

40 TAC §748.363

The amendment is proposed 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(a) and §42.0426(a-1).

§748.363. What information must the personnel record of an employee include?

For each employee, the personnel record must include:

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

(7) A statement signed and dated by the employee documenting [~~or caregiver~~] that the employee [~~he~~] has read a copy of the:

(A) Operational policies; and

(B) Personnel policies;

(8) A statement signed and dated by the employee documenting: [or caregiver indicating]

(A) That the employee [that he] must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and to the operation's administrator or administrator's designee; and

(B) The date the employee attended training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation, as required by §748.881(2) of this title (relating to What curriculum components must be included in the general pre-service training?);

(9) - (13) (No change.)

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

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Cynthia O'Keeffe
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SUBCHAPTER I. ADMISSION, SERVICE PLANNING, AND DISCHARGE
DIVISION 1. ADMISSION

40 TAC §748.1205, §748.1211

The amendments are proposed 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 implement Texas Family Code §32.203.

§748.1205. What information must I document in the child's record at admission?

(a) You must include the following in the child's record at admission:

(1) - (12) (No change.)

(13) Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s); [and]

(14) A copy of the placement agreement, if applicable; and[.]

(15) Documentation of the attempt to notify the parent of the child's location as required by §748.1211(c) of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) - (c) (No change.)

§748.1211. What information must I share with the parent at the time of placement?

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

(c) You must attempt to notify the parent of a child you admit to a transitional living program of the child's location if the child was admitted without the consent of the parent, as provided in Texas Family Code §32.203.

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

Filed with the Office of the Secretary of State on October 30, 2013.

TRD-201304920
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 438-3437

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CHAPTER 749. MINIMUM STANDARDS FOR CHILD-PLACING AGENCIES

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§749.553, 749.1107, and 749.1113, concerning what information must the personnel record of an employee include, what information must I document in the child's record at the time of admission, and what information must I share with the parent at the time of placement, in Chapter 749, concerning Minimum Standards for Child-Placing Agencies. The purpose of the amendments is to implement Senate Bill (SB) 717 and SB 939, which were enacted by the 83rd Legislature, Regular Session. The amendments to this chapter will also affect Chapter 750, Minimum Standards for Independent Foster Homes, which contains minimum standards for independent foster homes. Many standards in Chapter 750 cross-reference standards in this chapter for the requirements.

SB 717 amended the Texas Family Code (TFC) by adding §32.203, which allows a minor to consent to housing or care provided to the minor child and any children of the minor child, through a transitional living program at a general residential operation, child-placing agency, or independent foster home if the child is: (1) 16 years of age or older and resides separate and apart from the minor's parent, managing conservator, or guardian, regardless of whether the parent, managing conservator, or guardian consents to the residence and regardless of the duration of the residence, and manages their own financial affairs, regardless of the source of income; or (2) unmarried and pregnant or is the parent of a child. SB 717 further provides that when a child consents to such housing or care, the operation must attempt to notify the minor's parent, managing conservator, or guardian regarding the child's location.

SB 939 amends the Human Resources Code (HRC) by adding §42.0426(a-1), to require employees of child-placing agencies

to sign a statement verifying their attendance at training in the recognition of and procedure for reporting suspected child abuse, neglect, and sexual molestation that is currently required in HRC §42.0426(a). The law also requires that the operation maintain the statement in the employee's personnel record.

A summary of the changes follows:

The amendment to §749.553 implements HRC §42.0426(a-1) by adding paragraph (8)(B) to require that an employee's personnel record include a statement signed and dated by the employee that he has attended training in preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect, and exploitation, as required in §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?). Because the independent foster home minimum standard in §750.201(3) of this title (relating to What are the requirements for reports and record keeping?) cross-references all rules in Subchapter D of this chapter (relating to Reports and Record Keeping), this rule also applies to personnel records for independent foster homes.

The amendment to §749.1107 implements TFC §32.203 by adding subsection (a)(15) to require a child-placing agency to document in the child's record at admission the attempts to notify a parent of a child when the child consents to housing or care at the operation's transitional living program. Because the independent foster home minimum standard in §750.501(1) of this title (relating to What are the requirements for admission?) cross-references all rules in Subchapter H of this chapter (relating to Foster Care Services: Admission and Placement), this rule also applies to what an independent foster home must document in the child's record at admission.

The amendment to §749.1113 implements TFC §32.203 by adding subsection (c) to require that a child-placing agency attempt to notify a parent of a child when the child consents to housing or care at the operation's transitional living program. Because the independent foster home minimum standard in §750.501(1) of this title (relating to What are the requirements for admission?) cross-references all rules in Subchapter H of this chapter, this rule also applies to what an independent foster home must share with the parent at the time of placement.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed sections will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Ms. Brown also has determined that for each year of the first five years the sections are in effect the public benefit anticipated as a result of enforcing the sections will be that (1) Child Care Licensing will be able to better monitor for the requirement that employees at child-placing agencies have attended the required training on preventing, identifying, treating, and reporting suspected child abuse, sexual abuse, neglect and exploitation; and (2) regulated residential child-care facilities will be able to provide homeless and runaway youths, including those with children, with residential living services through a transitional living program, without consent of the child's parents, and in such circumstances parents will be notified of the child's whereabouts unless the facility is unable to provide such notice after making a good faith effort to do so. There will be no effect on large, small, or micro-businesses because the proposed changes do not impose new requirements on any business and do not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed sections.

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

Questions about the content of the proposal may be directed to Leslie Reid at (512) 438-4666 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-479, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

SUBCHAPTER D. REPORTS AND RECORD KEEPING

DIVISION 3. PERSONNEL RECORDS

40 TAC §749.553

The amendment is proposed 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(a) and §42.0426(a-1).

§749.553. What information must the personnel record of an employee include?

For each employee, excluding foster parents, the personnel record must include:

(1) - (7) (No change.)

(8) A statement signed and dated by the employee indicating that:

(A) The employee [~~he~~] must immediately report any suspected incident of child abuse, neglect, or exploitation to the Child Abuse Hotline and the agency's administrator or administrator's designee; and

(B) The date the employee attended training in measures to prevent, identify, treat, and report suspected occurrences of child abuse (including sexual abuse), neglect, and exploitation, as required by §749.881(3) of this title (relating to What curriculum components must be included in the general pre-service training?);

(9) - (13) (No change.)

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

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TRD-201304921

Cynthia O'Keefe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER H. FOSTER CARE SERVICES: ADMISSION AND PLACEMENT
DIVISION 1. ADMISSIONS

40 TAC §749.1107, §749.1113

The amendments are proposed 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 implement Texas Family Code §32.203.

§749.1107. What information must I document in the child's record at the time of admission?

(a) You must include the following in the child's record at the time of admission:

(1) - (12) (No change.)

(13) Identification of the child's high-risk behavior(s), if applicable, and the safety plan staff and caregivers will implement related to the behavior(s); [~~and~~]

(14) A copy of the placement agreement, if applicable; and[~~.~~]

(15) Documentation of the attempt to notify the parent of the child's location as required by §749.1113(c) of this title (relating to What information must I share with the parent at the time of placement?), if applicable.

(b) (No change.)

§749.1113. What information must I share with the parent at the time of placement?

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

(c) You must attempt to notify the parent of a child that you admit to a transitional living program of the child's location if the child was admitted without the consent of the parent, as provided in Texas Family Code §32.203.

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

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER M. FOSTER HOMES: SCREENINGS AND VERIFICATIONS
DIVISION 3. VERIFICATION OF FOSTER HOMES

40 TAC §749.2473

The Health and Human Services Commission proposes, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §749.2473, concerning what must I do to verify a foster home that another child-placing agency has previously verified, in its Minimum Standards for Child-Placing Agencies chapter. The purpose of the amendment is to clarify background check requirements by requiring child-placing agencies to meet the requirements in Chapter 745, Subchapter F of this title (relating to Background Checks), rather than requiring the child-placing agency to request new background checks, before approving a foster home that another child-placing agency has previously approved.

Cindy Brown, Chief Financial Officer of DFPS, has determined that for the first five-year period the proposed section will be in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the section.

Ms. Brown also has determined that for each year of the first five years the section is in effect the public benefit anticipated as a result of enforcing the section will be that child-placing agency providers will be better able to understand background check requirements. There will be no effect on large, small, or micro-businesses because the proposed change does not impose new requirements on any business and does not require the purchase of any new equipment or any increased staff time in order to comply. There is no anticipated economic cost to persons who are required to comply with the proposed section.

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

Questions about the content of the proposal may be directed to Ryan Malsbary at (512) 438-5836 in DFPS's Child Care Licensing Division. Electronic comments may be submitted to Marianne.McDonald@dfps.state.tx.us. Written comments on the proposal may be submitted to Texas Register Liaison, Legal Services-483, Department of Family and Protective Services E-611, P.O. Box 149030, Austin, Texas 78714-9030 within 30 days of publication in the *Texas Register.*

The amendment is proposed 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 Ser-

vices 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 and §42.056.

§749.2473. What must I do to verify a foster home that another child-placing agency has previously verified?

(a) When a home has previously been verified by another agency, you may:

(1) (No change.)

(2) Use [~~You may use~~] the foster home screening and home study the previous child-placing agency conducted as a basis for meeting the requirement. You must update the information for every required section. You must describe any changes from the previous information. This verification will require you to:

(A) (No change.)

(B) Conduct [~~new~~] criminal history and central registry background checks for foster home members in accordance with Chapter 745, Subchapter F of this title (relating to Background Checks), with results documented in the foster home record. Homes transferring from one agency to another, with children in care, may be verified by the receiving agency prior to completion of background checks;

(C) - (G) (No change.)

(b) (No change.)

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

Filed with the Office of the Secretary of State on October 30, 2013.

TRD-201304948
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 1. MANAGEMENT

SUBCHAPTER A. ORGANIZATION AND RESPONSIBILITIES

43 TAC §1.2

The Texas Department of Transportation (department) proposes amendments to §1.2, concerning the organization and responsibilities of the department.

EXPLANATION OF PROPOSED AMENDMENTS

In response to Minute Order 111738, adopted by the Texas Transportation Commission (commission) on March 26, 2009, the department established four regional support centers in Fort Worth, Houston, San Antonio, and Lubbock. After careful evaluation of the regional management model and with the recognition of new ways to gain efficiency and improvement of operations, the department determined that it should centralize certain support functions that were within the Regional Support Centers to improve and expand their business service, create more effective and efficient business processes, and become a more streamlined, collaborative, and responsive organization. In 2012 the department transferred several of the regional functions, including right of way responsibilities, project management, information technology, and accounting, to existing central divisions. The department has determined that the best business decision is to transfer the remaining regional functions to four new divisions, the Procurement, Professional Engineering Procurement Services (PEPS), Fleet, and Support Services divisions, for the effective management of those functions. The purpose of these rule amendments is to remove various terms in the rules that refer to departmental regions.

Amendments to §1.2, Texas Department of Transportation, remove information about the department's regional support centers by deleting subsection (e).

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each 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.

Lauren Garduno, Chief Procurement and Deputy Administrative Officer, 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. Garduno 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 a savings of approximately $200 million, a primary part of which is associated with decreased fleet costs. 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 §1.2 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "1.2." The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

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.

§1.2. Texas Department of Transportation.

(a) Executive director.

(1) The commission will elect an executive director for the department who shall be skilled in transportation planning and development and in organizational management. The executive director, as the chief executive officer of the department, is authorized to administer the day-to-day operations of the department. The executive director may hold that position until removed by the commission.

(2) To assist in discharging the duties and responsibilities of the executive director, the executive director may organize, appoint, and retain such administrative staff as he or she deems appropriate, including the chief financial officer of the department.

(3) The executive director shall:

(A) serve the commission in an advisory capacity, without vote;

(B) submit quarterly, annually, and biennially to the commission detailed reports of the progress of public road construction, public and mass transportation development, and detailed statement of expenditures;

(C) hire, promote, assign, re-assign, transfer, and, consistent with applicable law and policy, terminate staff necessary to accomplish the roles and missions of the department;

(D) notify the chair of grounds for removal of a commissioner if the executive director knows that a potential ground for removal exists, or, if the potential ground for removal relates to the chair, notify another commissioner;

(E) under the direction and with the approval of the commission, prepare a comprehensive plan providing a system of state highways; and

(F) perform other responsibilities as required by law or assigned by the commission.

(4) The executive director may, consistent with applicable law, delegate one or more of the functions listed under paragraph (3)(B) - (F) of this subsection to the staff of the department.

(b) Department staff. The staff of the Texas Department of Transportation, under the direction of the executive director, is responsible for:

(1) implementing the policies and programs of the commission by:

(A) formulating and applying operating procedures; and

(B) prescribing such other operating policies and procedures as may be consistent with and in furtherance of the roles and missions of the department;

(2) providing the chair and commissioners administrative support necessary to perform their respective duties and responsibilities, including:

(A) assigning staff to assist commissioners;

(B) providing necessary office space and equipment;

(C) furnishing in-house legal counsel;

(D) providing all information and documents necessary for the commission to effectively perform its responsibilities; and

(E) preparing an agenda under the direction of the chair, providing notice, and transcribing commission meetings and hearings as required by the Texas Open Meetings Act, Government Code, Chapter 551; and

(3) performing all other duties as prescribed by law or as assigned by the commission.

(c) Divisions. Consistent with commission direction provided under §1.1(b)(1)(Q) of this subchapter, the executive director shall organize the department into headquarters operating divisions and offices reflecting the various functions and duties assigned to the department, and shall designate a division or office director who shall administer each division or office.

(d) Districts.

(1) District office. The department is divided into geographical districts, each containing one district office. Each district is administered by a district engineer who is a registered professional engineer and is appointed by the executive director.

(2) Area office. A district contains one or more area offices, each of which is responsible for carrying out the department's primary functions at the local level for a designated geographical area. Each area office is normally administered by an area engineer who shall be a registered professional engineer.

(3) Project office. A district may contain one or more project offices, which is normally responsible for a specific project within an area.

~~[(e) Regional Support Centers. The department has four regional support centers, which provide operational and project development support functions to the districts. The regional support centers are located in Fort Worth, Houston, San Antonio, and Lubbock.]~~

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304998
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER M. DONATIONS

43 TAC §1.503

The Texas Department of Transportation (department) proposes amendments to §1.503, concerning Donations.

EXPLANATION OF PROPOSED AMENDMENTS

Under Transportation Code, §201.206, the department has authority to accept donations for the purpose of carrying out its functions and duties. Government Code, §575.003, provides the process that all state agencies must use in the acceptance of gifts. For the purposes of that statute, "gift" is synonymous with "donation." The statute requires that a state agency that has a governing board may accept a gift with a value of $500 or more only if the agency has authority to accept gifts and a majority of the board, in an open meeting, acknowledges the acceptance of the gift within 90 days after the gift is accepted by the agency.

The department's current rules require the approval of the Texas Transportation Commission (commission) for the acceptance of a gift by the department, except that the department, with the approval of the executive director, may accept a gift or donation with a value of less than $1,500 or a donation of $1,500 or more that is for travel reimbursement for staff attendance at a conference. If the executive director approves such a gift or donation and it is valued at $500 or more, the acceptance must be acknowledged by the commission within 60 days of the acceptance. The requirement of the commission's approval delays the department's ability to use the donation for the intended purpose.

Amendments to §1.503, Acceptance, remove the requirement that a gift or donation to the department be approved by the commission and specify that the acceptance of any gift to the department must be approved by the executive director. Under the current rules, the definition of "executive director" authorizes the executive director to delegate the powers granted and duties assigned under §1.503 to a department employee who holds a position that is not below the level of district engineer, division director, or special office director; that authority is unchanged by the amendments to the section. The added language, in compliance with Government Code, §575.003, also provides that the commission must acknowledge a gift or donation of more than $500 not later than the 90th day after the date it is accepted by the executive director. These changes will allow the department to more efficiently manage gifts and donations and eliminate delays in their use. The amendments also repeal the exceptions provided by current subsections (d) and (e) because they are no longer needed.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each 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.

Jeff Graham, 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. Graham 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 efficient and timely use of donations made to the department. 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 §1.503 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "1.503." The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

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

Government Code, Chapter 575 and Transportation Code, §201.206.

§1.503. Acceptance.

(a) Acceptance of a gift or donation made to the department under this subchapter must be approved by the executive director. If the gift or donation has a value of $500 or more, it must be acknowledged by order of the commission not later than the 90th day after the date the donation is accepted by the department[, ~~except that a gift or donation valued under $1,500 may be accepted with the approval of the executive director~~].

(b) Except as provided in subsection (c) of this section, the executive director [~~commission or the department~~] may approve acceptance of [~~accept~~] a gift or donation if the executive director [~~it~~] determines that:

(1) the gift or donation will further the department's responsibilities;

(2) the donor is not a party to a contested case before the department, unless the decision in the case became final under Government Code, §2001.144, at least 30 days prior to the donation; and

(3) the donor is not subject to department regulation or oversight, or interested in or likely to become interested in any contract, purchase, payment, or claim with or against the department.

(c) The executive director [~~commission or the department~~] may approve the acceptance of a gift or donation notwithstanding subsection (b)(3) of this section if the executive director [~~it~~] determines that acceptance:

(1) would provide a significant public benefit; and

(2) would not influence or reasonably appear to influence the department in the performance of its duties.

[~~(d) A donation of $1,500 or more for reimbursement for an employee's travel for the purpose of being a speaker at a conference may be accepted with the approval of the executive director.~~]

[~~(e) If the executive director approves the acceptance of a gift or donation valued at $500 or more under subsection (a) or (d) of this section, the acceptance must be acknowledged by the commission not later than the 60th day after the date the donation is accepted.~~]

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304999
Joanne Wright
General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-8683

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CHAPTER 3. PUBLIC INFORMATION

The Texas Department of Transportation (department) proposes amendments to §§3.11 - 3.13 and §3.26, all concerning public information.

EXPLANATION OF PROPOSED AMENDMENTS

In response to Minute Order 111738, adopted by the Texas Transportation Commission (commission) on March 26, 2009, the department established four regional support centers in Fort Worth, Houston, San Antonio, and Lubbock. After careful evaluation of the regional management model and with the recognition of new ways to gain efficiency and improvement of operations, the department determined that it should centralize certain support functions that were within the Regional Support Centers to improve and expand their business service, create more effective and efficient business processes, and become a more streamlined, collaborative, and responsive organization. In 2012 the department transferred several of the regional functions, including right of way responsibilities, project management, information technology, and accounting, to existing central divisions. The department has determined that the best business decision is to transfer the remaining regional functions to four new divisions, the Procurement, Professional Engineering Procurement Services (PEPS), Fleet, and Support Services divisions, for the effective management of those functions. The purpose of these rule amendments is to remove various terms in the rules that refer to departmental regions.

Amendments to §3.11 remove the definition of "regional director" and subsequent definitions are renumbered. Amendments to §3.12 remove the terms "regional director" and "region" in subsections (a), (e), and (f) of that section. Amendments to §3.13 remove the term "regional director" in subsection (b) of that section. Amendments to §3.26 remove the term "region" in subsection (c) of that section. Additionally, reference to an old Internet address for the department is removed because it is obsolete.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each 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.

Lauren Garduno, Chief Procurement and Deputy Administrative Officer, 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. Garduno 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 a savings of approximately $200 million, a primary part of which is associated with decreased fleet costs. 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 §§3.11-3.13 and §3.26 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "3.11-3.26." The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

SUBCHAPTER B. ACCESS TO OFFICIAL RECORDS

43 TAC §§3.11 - 3.13

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.

§3.11. Definitions.

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

(1) Commission--Texas Transportation Commission.

(2) Department--Texas Department of Transportation.

(3) District engineer--The chief administrative officer of a district of the department.

(4) Division director--The chief administrative officer of a division or office of the department.

(5) Political subdivision--A county, municipality, local board, or other governmental body of this state having authority to provide a public service.

~~[(6) Regional director--The chief administrative officer of a region of the department.]~~

(6) [~~(7)~~] Special district--A political subdivision of the state established to provide a single public service within a specific geographical area.

(7) [~~(8)~~] Written request--A request made in writing, including electronic mail, electronic media, and facsimile transmission.

§3.12. Public Access.

(a) Request for records. A person seeking public information shall submit a request in writing to the department.

(1) A request made by other than electronic mail may be submitted to:

(A) the department's General Counsel;

(B) the department's officer for public information; or

(C) the district engineer or[~~,~~] division director[~~, or regional director~~] of the district or[~~,~~] division[~~, or region~~] responsible for the information.

(2) A request made by electronic mail shall be sent via the department's Internet site, located at http://www.txdot.gov [~~or http://www.dot.state.tx.us~~].

(b) Production of records. Except as provided in subsections (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) Examination of information.

(1) A person requesting to examine official records in the offices of the department must complete the examination without disrupting the normal operations of the department and not later than the 10th day after the date the records are made available to the person. Upon written request, the department will extend the examination period by increments of 10 days, not to exceed a total of 30 days.

(2) The inspection of records may be interrupted by the department if the records are needed for use by the department. The period of interruption will not be charged against the requestor's 10-day period to examine the records.

(3) A person may not remove an original copy of an official department record from the offices of the department.

(d) Request for opinion. If the department considers that requested records fall within an exception under the Government Code, and that the records should be withheld, the department will ask for a decision from the attorney general about whether the records are within that exception if there has not been a previous determination about whether the records fall within one of the exceptions. The request for a decision from the attorney general will be made by the 10th business day after the date of receiving the written request.

(e) Certified records. In accordance with Transportation Code, §201.501, the following officials shall serve as the executive director's authorized representatives for the purpose of certifying official department records.

(1) The department's chief clerk to the commission or assistant chief clerk may certify commission minute orders. The executive director may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(2) Other official records of the department may be certified by the district engineer, division director, [~~regional director,~~] or other department official having official custody of the records. A district engineer or[,] division director[~~, or regional director~~] may delegate certification authority to other officials to assure sufficient availability of authorized certifying officials.

(f) Correction of Information. 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 Internet site, located at http://www.txdot.gov [~~or http://www.dot.state.tx.us~~]. The request must be directed to the district engineer or[,] division director[~~, or regional director~~] of the district or[,] division[~~, or region~~] responsible for the information.

(2) The request must include the individual's name, address, and telephone number.

(3) The request must identify the record to be corrected with as much specificity as reasonably possible. The department will not process requests that do not identify particular records.

(4) This subsection applies only to a request to correct information that relates directly to an individual, including the individual's name, address, telephone number, and similar information.

(5) The department may contact the individual or take other steps as necessary to obtain additional information with regard to the record to be corrected, the nature of the correction to be made, the reasons that the current information maintained by the department is incorrect, or other relevant matters.

(6) The district engineer or[,] division director[~~, or regional director~~] responsible for the information will determine if the current information maintained by the department is incorrect.

(A) If the current information maintained by the department is determined to be incorrect, the department's records will be corrected. The district engineer or[,] division director[~~, or regional director~~] responsible for the information will determine the manner in which the correction will be made.

(B) If the current information maintained by the department is determined to be correct, the request for correction will be noted in connection with the relevant record.

(C) The department may refuse to alter records that were correct at the time they were first prepared, but are no longer correct. If the department refuses to alter a record that was correct at the time it was first prepared, but is no longer correct, the request for correction will be noted in connection with the relevant record.

(7) This subsection does not authorize the cancellation, issuance, or alteration of any official record, including a title, a license, or a permit. Application for a new official record must be made in the manner required by law.

§3.13. Waiver of Fees for Certain Copies of Official Records.

(a) When an employee files an internal employee grievance, the department will provide copies of relevant records free of charge to an official party to the proceeding. The department's General Counsel will determine which records are relevant under this subsection.

(b) The department may waive or reduce the fees charged for copies of records if the executive director or the district engineer or[,] division director[~~, or regional director~~] with jurisdiction over the records determines a waiver to be in the public interest because providing the records primarily benefits the general public or because the records can be produced at a minimal expense to the public.

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

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SUBCHAPTER C. COMPLAINT RESOLUTION

43 TAC §3.26

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.

§3.26. Complaint Data Collection, Analysis, and Reporting.

(a) Data collection. The department will maintain a computer database for complaints. The database will contain for each complaint filed under §3.23 of this subchapter (relating to Filing a Complaint) customer information that is appropriate for the compilation and analysis of detailed complaint data. The information will include:

(1) the date the complaint is filed;

(2) the name of the person filing the complaint;

(3) the subject matter of the complaint;

(4) a record of each person contacted in relation to the complaint;

(5) a summary of the results of the review or investigation of the complaint;

(6) if the department takes no action on the complaint, an explanation of the reasons that no action was taken;

(7) the length of time required to provide a response to the customer from the date that the complaint was received by the department; and

(8) if applicable, the county and district where the person, thing, or condition that is the subject of the complaint is located.

(b) Data analysis.

(1) The department will provide detailed statistics and analyze trends on a district and division basis.

(2) The department will identify trends related to similar complaints, including the number of persons who filed each type of complaint.

(c) Data reporting. The department will report complaint information:

(1) monthly to [~~region,~~] division[~~,~~] and office directors, district engineers, and individuals filling senior leadership positions; and

(2) quarterly to the Texas Transportation Commission.

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

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CHAPTER 10. ETHICAL CONDUCT BY ENTITIES DOING BUSINESS WITH THE DEPARTMENT

SUBCHAPTER A. GENERAL PROVISIONS

43 TAC §10.6

The Texas Department of Transportation (department) proposes amendments to §10.6, concerning Ethical Conduct by Entities Doing Business with the Department.

EXPLANATION OF PROPOSED AMENDMENTS

In response to Minute Order 111738, adopted by the Texas Transportation Commission (commission) on March 26, 2009, the department established four regional support centers in Fort Worth, Houston, San Antonio, and Lubbock. After careful evaluation of the regional management model and with the recognition of new ways to gain efficiency and improvement of operations, the department determined that it should centralize certain support functions that were within the Regional Support Centers to improve and expand their business service, create more effective and efficient business processes, and become a more streamlined, collaborative, and responsive organization. In 2012 the department transferred several of the regional functions, including right of way responsibilities, project management, information technology, and accounting, to existing central divisions. The department has determined that the best business decision is to transfer the remaining regional functions to four new divisions, the Procurement, Professional Engineering Procurement Services (PEPS), Fleet, and Support Services divisions, for the effective management of those functions. The purpose of these rule amendments is to remove various terms in the rules that refer to departmental regions.

Amendments to §10.6 remove the term "region director" in subsection (b) of that section.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each 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.

Lauren Garduno, Chief Procurement and Deputy Administrative Officer, 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. Garduno 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 a savings of approximately $200 million, a primary part of which is associated with decreased fleet costs. 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 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "10.6." The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

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 position at or above the level of district engineer, division director, or office director[, ~~or region director~~] 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

(2) 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) Subsection (b)(1) of this section does not apply to a position that is designated as an interim position.

(d) For the purpose of subsection (b)(2) 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.

(e) Before submitting a bid or undertaking some other interaction with the department, a for-profit entity or a former employee of the department to whom subsection (b) of this section applies may request from the department a determination of whether the interaction would constitute a conflict of interest under subsection (b) of this section. Such a request must be made in writing and must contain a concise explanation of the relevant facts. The department will not respond to a request under this subsection before consulting with the Office of General Counsel. The department will issue a written determination in response to a valid request made under this subsection as soon as practicable.

(f) Subsection (b)(1) of this section applies only to an individual whose employment with the department ends on or after the date that paragraph takes effect.

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

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CHAPTER 12. PUBLIC DONATION AND PARTICIPATION PROGRAM
SUBCHAPTER K. ACKNOWLEDGMENT PROGRAM

43 TAC §§12.351 - 12.355

The Texas Department of Transportation (department) proposes amendments to §§12.351 - 12.355, concerning the acknowledgement program.

EXPLANATION OF PROPOSED AMENDMENTS

These amendments to the acknowledgement program rules provide the department with greater flexibility in implementing the program and address issues identified through the vendor selection process.

Amendments to §12.351 clarifies examples of types of services suitable for the acknowledgement program. The department did not intend to limit the types of highway related services for which donations could be accepted. The amendment deletes the word "certain" in reference to highway related service to eliminate the confusion. The department also added travel service to the list of examples to clarify that items, such as wireless internet connections and information kiosks, could be considered under the program.

Amendments to §12.352 add a definition of "Acknowledgment," which means a notification intended to inform the public that a participating sponsor has provided a donation to support the highway related service. This definition comes from the federal guidelines and is used to distinguish acknowledgement from advertising.

Amendments to §12.353 change subsection (a) to allow the department to accept non-monetary donations, including services such as internet connectivity, under the program. Subsection (e) is amended to remove the requirement that the department provide the highway related service to be consistent with the removal of the requirement in subsection (a) that a donation be money. Changes to subsection (f) specify that the vendor will install and maintain the acknowledgments under the program, including acknowledgment signs. This eliminates the need for the department to erect and remove the acknowledgments. The department has determined that the program will be more efficient if the vendor is allowed to install the acknowledgements. The vendor will be working directly with the participating sponsors and will be able to more quickly address their issues. This will alleviate the department's staff time needed to manage this program. Changes to subsection (h) regarding the types of products that cannot be referenced on the sign is reworded to coordinate with the changes to subsection (f), making the restrictions apply to an acknowledgement installed by a vendor.

Amendments to subsection (i) of §12.353 address compliance with Government Code, §575.003, regarding the acceptance of gifts. The donations under the acknowledgement program will be considered gifts to the department and must comply with that section. Subsection (i) requires that gift be acknowledged by the Texas Transportation Commission within 90 days after the gift is accepted by the department. Subsection (j) is added to provide that all acknowledgments must comply with all applicable law to insure that the acknowledgement program meets all state and federal legal requirements.

Amendments to §12.354 remove the requirement that the vendors' contracts with participating sponsors be for a term of not less than two years. This requirement was initially included to eliminate staffing issues with the installation and removal of acknowledgement signs. With the vendor responsible for the maintenance of the signs, the department is eliminating the requirement to provide flexibility in the program to attract various levels of participating sponsors. This section also requires the vendor to describe the method and location of each acknowledgement. This change is also a result of transferring the responsibilities to the vendor. The department will now require the vendor to notify the department of the location and type of acknowledgement used for each participating sponsor.

Amendments to §12.355 add a new subsection (f) that requires a sign installation to comply with all applicable department standards. This change is needed due to the transfer of the signing responsibilities to the vendor. The vendor will be responsible for installing and maintaining all signs in accordance with all department signing standards. Subsection (g) is amended to replace the department with the vendor to coordinate with the transfer of the signing responsibilities.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each 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.

Howard Holland, Director, Maintenance 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. Holland 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 a more efficient acknowledgement program. 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 §§12.351 - 12.355 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "§§12.35 - 12.355" The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Government Code, Chapter 575 and Transportation Code, §201.206.

§12.351. Purpose.

The purpose of this subchapter is to provide for a state acknowledgment program that allows the department to acknowledge donations for [~~certain~~] highway-related services such as [~~ground maintenance identified as~~] mowing, litter and debris pick-up, travel services [~~on the state's right-of-way~~], and maintenance of [~~services for~~] safety rest areas, Travel Information Centers, and toll gantry facilities [~~with federally approved acknowledgment signs in the state right-of-way~~].

§12.352. Definitions.

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

(1) Acknowledgment--A notification that is intended only to inform the public that a highway-related service is sponsored by a participating sponsor.

(2) [~~(1)~~] Acknowledgment sign--A sign that is located adjacent to the traveled way and that is intended only to inform the traveling public that a highway-related service is sponsored by a participating sponsor.

(3) [~~(2)~~] Department--The Texas Department of Transportation.

(4) [~~(3)~~] Participating sponsor--An individual, corporation, business, firm, group, or association that contributes towards a highway-related service.

(5) [~~(4)~~] TMUTCD--Texas Manual on Uniform Traffic Control Devices issued by the department.

(6) [~~(5)~~] Vendor--An individual or business that acts as the authorized agent of the department in the marketing, administration, and soliciting of a participating sponsor for the acknowledgment program.

§12.353. Acknowledgment Program.

(a) The department may develop an acknowledgment program to recognize [~~monetary~~] donations provided to benefit a highway-related service.

(b) A donation may be used only for the highway-related purpose for which it is made.

(c) The acknowledgment program is applicable to all state highways.

(d) Chapter 1, Subchapter M of this title (relating to Donations) does not apply to a donation accepted under this program.

(e) The department may contract with a vendor under §12.354 of this subchapter (relating to Acknowledgment Program Vendor Contract; Program Agreement) for services related to the program. [~~If a vendor is used, the department will continue to manage and provide the highway-related services funded by the donations.~~]

(f) The vendor [~~department~~] will install and maintain acknowledgments, including signs, [~~the acknowledgment signs~~] erected under this program.

(g) The department or vendor may not accept donations from an individual or entity that is regulated by the department or that is involved with the department through a contract, purchase, payment, or claim, and such an individual or entity may not participate in the acknowledgment program.

(h) An acknowledgment may not reference [~~The department may not place an acknowledgment sign that references~~]:

(1) an alcoholic beverage;

(2) tobacco product; or

(3) sexually oriented business, product, or service.

(i) A donation received by the department under this program must be acknowledged by the Texas Transportation Commission in an open meeting not later than the 90th day after the date the donation is accepted by the department.

(j) An acknowledgment must comply with all applicable law.

§12.354. Acknowledgment Program Vendor Contract; Program Agreement.

(a) The department may contract with one or more individuals or businesses for professional services to market, administer, recruit, or secure sponsors for the acknowledgment program.

(b) The department will require a vendor to enter into an agreement prescribed by the department with each participating sponsor.

(c) The agreement must:

~~[(1) be for a term of not less than two years;]~~

(1) [~~(2)~~] require that the participating sponsor comply with state law, including laws prohibiting discrimination based on race, religion, color, age, sex, or national origin;

(2) [~~(3)~~] include a termination clause based on safety concerns, interference with the free and safe flow of traffic, or a determination that the sponsorship agreement is not in the public interest;

(3) [~~(4)~~] provide the specific amount of the donation;

(4) [~~(5)~~] state the fee or fees charged by the vendor to administer the program (directly or indirectly paid by the participating sponsor);

(5) [~~(6)~~] state the specific service being sponsored;

(6) describe the method and location of each acknowledgment;

(7) provide the location of each [~~the~~] acknowledgment sign, to include roadway, exit number or crossroad, and county; and

(8) state the date of expiration of agreement.

(d) The vendor shall notify the department within three calendar days of receipt of a donation from a participating sponsor. The notification must include:

(1) the name of the participating sponsor;

(2) the transportation service for which the donation was made;

(3) a description of the method and location of each acknowledgment;

(4) [~~(3)~~] the general location for each [~~the~~] acknowledgment sign;

(5) [~~(4)~~] the name, logo, or emblem requested by the participating sponsor to be placed on the sign; and

(6) [~~(5)~~] the date on which the sponsorship agreement expires.

(e) The department will determine the location of each acknowledgment sign and promptly will provide the determination to the vendor. The vendor shall maintain the location information in the participating sponsor's file.

(f) The vendor shall furnish an annual report to the department. The annual report must include a listing of all participating sponsors for which the vendor has accepted a donation under an existing agreement, administrative fees collected, and the annual revenue submitted to the department for each program category. The department, in its discretion, may require one or more other reports from a vendor.

(g) The vendor shall furnish, in a format prescribed by the department, a monthly electronic inventory to the department. The inventory shall include:

(1) a list of all participating sponsors in the program for which the vendor is responsible;

(2) contact information on each participating sponsor including address and key contact name and telephone numbers;

(3) a description of the method and location of each acknowledgment;

(4) [~~(3)~~] the location information for each acknowledgment sign, as provided at the time of installation [~~by the department~~]; and

(5) [~~(4)~~] the date of expiration of the agreement for each participating sponsor.

(h) If the department determines that a regulatory, warning, or guide sign is needed at a location, an acknowledgment sign at or planned for that location will be removed or relocated. The vendor, as directed by the department, will notify the participating sponsor of the change. If an acknowledgment sign is removed and not relocated within 24 hours of the time of removal, the vendor may extend the participation agreement for a period equal to the number of days in which the acknowledgment sign was not posted.

(i) The department may award one or more contracts for professional services to market, administer, recruit, and secure sponsors for the acknowledgment program.

§12.355. Acknowledgment Sign.

(a) An acknowledgment sign must comply with the requirements of the TMUTCD, including the size and format requirement.

(b) Regulatory, warning, and guidance signs take precedence over an acknowledgment sign.

(c) An acknowledgment sign will be placed near the site for which the associated donation was offered.

(d) Except as provided in subsection (f) of this section, acknowledgment signs will be placed at least 1 mile apart from each other if facing in the same direction and associated with the same highway related purpose.

(e) An acknowledgment sign may not be appended to any other sign, sign assembly, or other traffic control device.

(f) Acknowledgement sign installation must comply with all applicable department standards.

(g) [~~(f)~~] If a donation is made for a rest area or travel information center the vendor [~~department~~]:

(1) may [~~will~~] install one acknowledgment sign for each direction of travel on the highway mainline; and

(2) may install an acknowledgment sign in the rest area or travel information center if that sign is not visible to the highway mainlane traffic and does not pose a safety risk to the rest area or travel information center users.

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

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CHAPTER 27. TOLL PROJECTS
SUBCHAPTER A. COMPREHENSIVE DEVELOPMENT AGREEMENTS

43 TAC §§27.2, 27.4, 27.10

The Texas Department of Transportation (department) proposes amendments to §27.2, Definitions, §27.4, Solicited Proposals, and §27.10, Formula for Determining Compensation Upon Termination for Convenience, concerning comprehensive development agreements.

EXPLANATION OF PROPOSED AMENDMENTS

Senate Bill 1730, 83rd Legislature, Regular Session, 2013, amended Transportation Code, §223.201 to authorize the department to enter into a comprehensive development agreement for a nontolled state highway improvement project authorized by the legislature, and to combine in a comprehensive development agreement two or more eligible projects described in Transportation Code, §223.201(f). Senate Bill 1730 amended Transportation Code, §371.101 to require a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project to contain a provision authorizing the department to terminate the agreement for convenience and purchase the interest of the private participant in the comprehensive development agreement and related property, and to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens. The department is required to assign points to and score each proposer's price breakdown in the evaluation of proposals.

Amendments to §27.2 revise the definition of eligible project (a project for which the department may enter into a comprehensive development agreement) to include a nontolled state highway improvement project authorized by the Texas Legislature and a project that combines two or more eligible projects described in Transportation Code, §223.201(f).

Amendments to §27.4 provide that the department will publish notice advertising the issuance of a request for qualifications in the Texas Register and will post the notice and the request for qualifications on the department's Internet website. Transportation Code, §223.203(c) requires the department to publish a notice advertising a request for qualifications in the Texas Register that includes the criteria to be used to evaluate the proposals, the relative weight given to the criteria, and a deadline by which responses must be received. The amendments to §27.4 are consistent with the requirements of §223.203(c), and are anticipated to enhance competition in comprehensive development agreement procurements.

As required by Transportation Code, §371.101, §27.4 is amended to provide that a request for proposals must require the submission of a proposed price breakdown if required by §27.10, and to provide that the criteria used to evaluate proposals will include the proposed price breakdown included in the proposal if inclusion of the price breakdown is required by §27.10.

Senate Bill 1730 amended Transportation Code, §371.101 to repeal provisions requiring a toll project entity having rulemaking authority to by rule develop a formula for making termination payments to terminate a comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project. The commission previously adopted §27.10 in compliance with that requirement.

Amendments to §27.10 remove the existing provisions relating to the formula previously required under Transportation Code, §371.101, including changing the title of that section. Section 27.10 is amended to require the department to include in a comprehensive development agreement subject to Transportation Code, §371.101 a provision authorizing the department to terminate the agreement for such a project for convenience and purchase the interest of the private participant in the comprehensive development agreement and related property, and to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens.

Section 27.10 is amended to describe the methodology for determining the compensation amount owed to the private participant as a result of the termination for convenience of a comprehensive development agreement in which the private participant has an ownership right to the toll revenues and is subject to Transportation Code, §371.101. The commission and the department have construed the requirement in Transportation Code, §371.101 that the private participant receive the right to operate and collect revenue to require the private participant to have an ownership right to the revenue (e.g., in a concession agreement) and not to contracts that include an obligation to operate a toll project, but where the private participant does not have an interest in the project and related property.

Section 27.10 is also amended to define terms used in that section that apply to the methodology prescribed in Transportation Code, §371.101 for determining the compensation amount owed to the private participant in the event of termination. Section 27.10 requires a proposer for an agreement to which that section applies to include a proposed price breakdown in its proposal, using the specified intervals required by the department, and

provides that the department will evaluate the proposed price breakdowns as provided in §27.4.

Section 27.10 requires a comprehensive development agreement to which that section applies to include provisions regarding compensation to the private participant if the department chooses to terminate the agreement for convenience at any time before the toll project opens. As required by Transportation Code, §371.101, §27.10 requires a comprehensive development agreement to which that section applies to provide that if the department chooses to exercise its option to terminate the agreement for convenience at any time during a specified interval, the compensation to the private participant may generally not exceed the lesser of the price stated for the interval in the price breakdown in effect on the date of purchase or the greater of the fair market value of the private participant's interest on the valuation date or an amount equal to the amount of outstanding debt specified in the comprehensive development agreement. Transportation Code, §371.101 requires the agreement to authorize the department to terminate the agreement and purchase the private participant's interest at any time during a specified interval.

As required by Transportation Code, §371.101, §27.10 requires a comprehensive development agreement subject to that section to include a provision requiring the private participant to notify the department of the beginning of a price interval not later than 12 months before the price interval takes effect. The department is required to notify the private participant if it will exercise the option to terminate for convenience the agreement during the price interval not later than 6 months after receiving the private participant's notice. Section 27.10 requires the comprehensive development agreement to provide that the department may rescind a notice of the exercise of an option to terminate without liability. Section 27.10 provides that the price for terminating the comprehensive development agreement may be adjusted to reflect the changes in the agreement if the project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each 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.

Ed Pensock, Director, Strategic Projects 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. Pensock 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 to define at the beginning of the contract term the compensation amount the department must pay to a private participant because of a termination of a comprehensive development agreement for convenience and to enhance competition in comprehensive development agreement procurements. 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 §§27.2, 27.4, and 27.10 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "27.2." The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §223.209, which requires the commission to adopt rules, procedures, and guidelines governing the selection and negotiation process for comprehensive development agreements.

CROSS REFERENCE TO STATUTE

Transportation Code, §223.201 and §371.101.

§27.2. Definitions.

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

(1) Affiliate--An entity that directly or indirectly controls, is controlled by, or is under common control with a private entity.

(2) Certification of eligibility status form--A notarized form describing any suspension, voluntary exclusion, ineligibility determination actions by an agency of the federal government, indictment, conviction, or civil judgment involving fraud or official misconduct, each with respect to the proposer or any person associated with the proposer in the capacity of owner, partner, director, officer, principal investor, project director/supervisor, manager, auditor, or a position involving the administration of federal funds, covering the three-year period immediately preceding the date of the qualification statement.

(3) Commission--The Texas Transportation Commission.

(4) Comprehensive development agreement--An agreement with a private entity that, at a minimum, provides for the design and construction, reconstruction, extension, expansion, or improvement of an eligible project and may also provide for the financing, acquisition, maintenance, or operation of an eligible project.

(5) Confidential questionnaire--A prequalification form reflecting detailed financial and experience data.

(6) Conflict of interest--A circumstance arising out of the existing or past activities, business interests, contractual relationships, or organizational structure of a consultant, proposer, or developer, where:

(A) the private entity is or may be unable to give impartial assistance or advice to the department;

(B) the private entity's objectivity in performing the scope of work sought by the department is or might be otherwise impaired;

(C) the private entity has an unfair competitive advantage;

(D) the private entity's performance of services on behalf of the department provides or may provide an unfair competitive advantage to a third party; or

(E) there is a reasonable perception or appearance of impropriety or unfair competitive advantage benefiting the private entity or a third party as a result of the private entity's participation in a comprehensive development agreement project.

(7) Consultant--An individual or business entity, including any division or affiliate of the entity, retained by the department to provide consultant services in connection with a comprehensive development agreement project. The term includes an individual or business entity providing or that has provided services under contract to a consultant, either directly or through a subconsultant, at any level.

(8) Consultant services--All services provided to the department by an independent contractor under a best value or qualifications based procurement method, including architectural and engineering services, right-of-way acquisition services, environmental services, planning services, procurement services, traffic and revenue services, project oversight services, financial services (including financial advisory and banking services), and legal services.

(9) Control--The possession, directly or indirectly, of the power to cause the direction of the management of the entity, whether through voting securities, by contract, family relationship, or otherwise.

(10) Debarment--Disqualification of a private entity from submitting a qualification submittal or other proposal to the department, as described in §§27.3 - 27.5 of this subchapter, entering into a comprehensive development agreement, or participating as a member of a proposer or developer team.

(11) Department--The Texas Department of Transportation.

(12) Design--Includes planning services, technical assistance, and technical studies provided in support of the environmental review process undertaken with respect to an eligible project, as well as surveys, investigations, the development of reports, studies, plans and specifications, and other professional services provided for an eligible project.

(13) Design-build contract--a comprehensive development agreement that includes the design and construction of a toll project, does not include the financing of a toll project, and may include the acquisition, maintenance, or operation of a toll project.

(14) Developer--A private entity (including any division or affiliate of the entity) that has entered into a comprehensive development agreement with the department.

(15) Eligible project--A project described in Transportation Code, §223.201, and including a:

(A) toll project;

(B) state highway improvement project that includes both tolled and nontolled lanes and that may include nontolled appurtenant facilities;

(C) state highway improvement project in which the private entity has an interest in the project;

(D) state highway improvement project financed wholly or partly with the proceeds of private activity bonds, as defined by Section 141(a), Internal Revenue Code of 1986; [~~or~~]

(E) project that combines a toll project and a rail facility as defined in Transportation Code, §91.001;[.]

(F) nontolled state highway improvement project authorized by the Texas Legislature; or

(G) project that combines two or more eligible projects described in Transportation Code, §223.201(f).

(16) Environmental and planning services--Some or all of the following services provided to the department with respect to a comprehensive development agreement project:

(A) the study and evaluation of alternatives and potential environmental impacts of the proposed project;

(B) preparation of environmental analysis and impact documents relating to the project, including facility and corridor analyses and draft and final environmental impact statements; and

(C) planning associated with the environmental approval, permitting, and clearance process for the project.

(17) Executive director--The executive director of the department or designee not below the level of assistant executive director.

(18) Financial services--Some or all of the following services provided to the department with respect to a comprehensive development agreement project:

(A) acting in the capacity of financial advisor to the department by providing advice on finance-related issues, including development of short-term or long-term finance strategy and plans of finance for individual projects or on an ongoing basis;

(B) identifying and pursuing sources of funds; and

(C) acting as underwriter (either lead or co-lead) for a revenue bond issuance on a comprehensive development agreement project or facility, but excluding underwriters for bonds that are not related to a comprehensive development agreement project.

(19) Gift or benefit--Anything reasonably regarded as pecuniary gain or pecuniary advantage, including any benefit or favor to another person in whose welfare the beneficiary has a direct and substantial interest, regardless of whether the donor is reimbursed. The term includes, but is not limited to, cash, loans, meals, lodging, services, tickets, door prizes, free entry to entertainment or sporting events, transportation, or hunting or fishing trips.

(20) Legal services--Some or all of the following services with respect to a comprehensive development agreement project:

(A) providing advice on legal issues and strategies relating to project environmental approvals, planning, procurement, financing, contract administration, risk management, and disputes, claims, or litigation; and

(B) reviewing, drafting, and negotiating procurement documents, project contracts, and other documents.

(21) Preliminary engineering and architectural services--Preparation of preliminary design and architectural documents and reports, utility and right-of-way mapping, and provision of similar technical documents that will be incorporated by others into a request for qualifications, request for competing proposals and qualifications, or request for proposals, but not including the evaluation or selection of alignments in connection with the development of environmental documents, assistance with development of the solicitation documents, developer scope of work/technical provisions, evaluation criteria for a procurement, or other items that would constitute environmental services or procurement services.

(22) Procurement services--Some or all of the following services provided to the department with respect to a comprehensive development agreement project:

(A) development of procurement strategy;

(B) development and preparation of the solicitation documents, developer scope of work/technical provisions, or contract documents;

(C) implementation and administration of the solicitation;

(D) preparation or implementation of any evaluation criteria, process, or procedures;

(E) evaluation of proposer submissions (e.g., qualification submittals and proposals);

(F) negotiation of the contract; and

(G) any other activities determined by the department as related to a procurement.

(23) Project oversight services--Some or all of the following services provided to the department with respect to a comprehensive development agreement project after award of the comprehensive development agreement:

(A) design review;

(B) construction oversight and inspection;

(C) quality control and quality assurance;

(D) project management and overview;

(E) contract administration;

(F) claims management;

(G) public relations and community outreach;

(H) right of way acquisition services; and

(I) appraisal, legal description, condemnation package, and utility assembly review.

(24) Proposal review fee--A fee prescribed by these rules that is required to be tendered with any unsolicited proposal.

(25) Proposer--A private entity, including any division or affiliate of the entity, that has submitted a statement of qualifications, proposal, or other submission in order to participate in an ongoing procurement for the development, design, construction, financing, operation, or maintenance of an eligible project under a comprehensive development agreement.

(26) Reprimand--A formal, written warning that documents an act or omission committed by the private entity.

(27) Request for proposals--A request for submittal of a detailed proposal from private entities to acquire, design, develop, finance, construct, reconstruct, extend, expand, maintain, or operate an eligible project.

(28) Request for qualifications--A request for submission by a private entity of a description of that entity's experience, technical competence, and capability to complete an eligible project, and such other information as the department considers relevant or necessary.

(29) Sanction--Debarment, suspension, prohibition against participation in particular procurement opportunities, or reprimand.

(30) Subconsultant--An individual or business entity that performs or performed work on behalf of a consultant as part of the performance of the consultant's work for the department, either directly or through a subconsultant at any level.

(31) Suspension--Immediate, temporary disqualification of a private entity from submitting a qualification submittal or other proposal to the department, as described in §§27.3 - 27.5 of this subchapter, entering into a comprehensive development agreement, or participating as a member of a proposer or developer team. Suspension differs from debarment in that it may take effect prior to and during the hearing process.

(32) Toll project--Has the meaning assigned by Transportation Code, §201.001.

(33) Traffic and revenue services--Some or all of the following services provided to the department with respect to a comprehensive development agreement project:

(A) conducting draft and investment grade traffic and revenue studies, toll elasticity studies, toll feasibility studies, toll pricing studies, or studies or analyses of a similar nature, including peer review studies; and

(B) data mining and preparation of reports, analyses, and projections in connection with the traffic and projected revenues.

§27.4. Solicited Proposals.

(a) Applicability. If the department develops a concept for private participation in an eligible project, it will solicit participation in accordance with the requirements of this section.

(b) Request for qualifications - notice. If authorized by the commission to issue a request for qualifications for an eligible project, the department will set forth the basic criteria for professional experience, technical competence, and capability to complete a proposed project, and such other information as the department considers relevant or necessary in the request for qualifications. The department [~~and~~] will publish notice advertising the issuance of the request for qualifications [~~it at a minimum~~] in the *Texas Register* and will post the notice and the request for qualifications on the department's Internet website [~~in one or more newspapers of general circulation in this state~~]. The department may also elect to furnish the request for qualifications to businesses in the private sector that the department otherwise believes might be interested and qualified to participate in the project which is the subject of the request for qualifications.

(c) Request for qualifications - content. At its sole option, the department may elect to furnish conceptual designs, fundamental details, technical studies and reports or detailed plans of the proposed project in the request for qualifications. The request for qualifications may request one or more conceptual approaches to bring the project to fruition.

(d) Request for qualifications - evaluation. The department, after evaluating the qualification submittals received in response to a request for qualifications, will identify and approve a "short-list" that is composed of those entities that are considered most qualified to submit detailed proposals for a proposed project. In evaluating the qualification submittals, the department will consider the results of performance evaluations conducted by the department under §27.3 of this subchapter (relating to General Rules for Private Involvement) and §9.152 of this title (relating to General Rules for Design-Build Contracts) determined by the department to be relevant to the project, the results of other performance evaluations determined by the department to be relevant to the project, and other objective evaluation criteria that the department considers relevant to the project, which may include the private entity's financial condition, management stability, technical capability, experience, staffing, and organizational structure. The request for qualifications will include the criteria used to evaluate the qualification submit-

tals and the relative weight given to the criteria. The department shall advise each entity providing a qualification submittal whether it is on the short-list of qualified entities.

(e) Requests for proposals. If authorized by the commission, the department will issue a request for proposals from all private entities qualified for the short-list, consisting of the submission of detailed documentation regarding the project. The request for proposals will require the submission of a proposed price breakdown if required by §27.10 of this subchapter, and may require the submission of additional information relating to:

(1) the proposer's qualifications and demonstrated technical competence;

(2) the feasibility of developing the project as proposed;

(3) detailed engineering or architectural designs;

(4) the proposer's ability to meet schedules;

(5) a detailed financial plan, including costing methodology, cost proposals, and project financing approach; or

(6) any other information the department considers relevant or necessary.

(f) Requests for proposals - payment for work product. The request for proposals may stipulate an amount of money, as authorized under Transportation Code, §223.203(m), that the department will pay to an unsuccessful proposer that submits a detailed proposal that is responsive to the requirements of the request for proposals. The commission shall approve the amount of the payment to be stipulated in the request for proposals. In determining whether to approve a payment, the commission shall consider:

(1) the effect of a payment on the department's ability to attract meaningful proposals and to generate competition;

(2) the work product expected to be included in the proposal and the anticipated value of that work product; and

(3) the costs anticipated to be incurred by a private entity in preparing a proposal.

(g) Joint proposal by private entity and environmental consultant. If the department solicits proposals in which an entity affiliated with the proposing private entity will act as the department's environmental consultant for an eligible project, the request for proposals may require the submission of a consolidated joint proposal from the private entity and the environmental consultant or subcontractor that results in a comprehensive development agreement and separate contract for environmental services.

(h) Detailed proposal evaluation criteria. The proposals will be evaluated by the department based on the results of performance evaluations conducted by the department under §27.3 of this subchapter and §9.152 of this title determined by the department to be relevant to the project, the results of other performance evaluations determined by the department to be relevant to the project, the proposed price breakdown included in the proposal if required by §27.10 of this subchapter, and other objective evaluation criteria the department deems appropriate for the project, which may include the reasonableness of any financial plan submitted by a proposer, the reasonableness of the project schedule, reasonableness of assumptions (including those related to ownership, legal liability, law enforcement, and operation and maintenance of the project), forecasts, financial exposure and benefit to the department, compatibility with other planned or existing transportation facilities, likelihood of obtaining necessary approvals and other support, cost and pricing, toll rates and projected usage, scheduling, environmental impact, manpower availability, use of technology, governmental liaison, and project coordination, with attention to efficiency, quality of finished product and such other criteria, including conformity with department policies, guidelines and standards, as may be deemed appropriate by the department to maximize the overall performance of the project and the resulting benefits to the state. Specific evaluation criteria and requests for pertinent information will be set forth in the request for proposals.

(i) Apparent best value proposal. Based on the evaluation and the evaluation criteria described under subsection (h) of this section and set forth in the request for proposals, the department will rank all proposals that are complete, responsive to the request for proposals, and in conformance with the requirements of this subchapter, and may select the private entity whose proposal offers the apparent best value to the department. If the request for proposals provides for a consolidated joint proposal to be submitted for a separate environmental consultant contract as well as the comprehensive development agreement, the request for proposals shall specify how the two parts of the proposal will be evaluated in making the overall best value determination.

(j) Selection of entity. The department shall submit a recommendation to the commission regarding approval of the proposal determined to provide the apparent best value to the department. The commission may approve or disapprove the recommendation, and if approved, will award the comprehensive development agreement to the apparent best value proposer. Award may be subject to the successful completion of negotiations, any necessary federal action, execution by the executive director of the comprehensive development agreement, and satisfaction of such other conditions that are identified in the request for proposals or by the commission. The proposers will be notified in writing of the department's rankings. The department shall also make the rankings available to the public.

(k) Negotiations with selected entity. If authorized by the commission, the department will attempt to negotiate a comprehensive development agreement with the apparent best value proposer to design, develop, construct, finance, reconstruct, extend, expand, maintain, or operate the project and (if included in the request for proposals) an environmental consultant contract. If a comprehensive development agreement satisfactory to the department cannot be negotiated with that proposer, or if, in the course of negotiations, it appears that the proposal will not provide the department with the overall best value, the department will formally end negotiations with that proposer and, in its sole discretion, either:

(1) reject all proposals;

(2) modify the request for proposals and begin again the submission of proposals; or

(3) proceed to the next most highly ranked proposal and attempt to negotiate a comprehensive development agreement with that entity in accordance with this paragraph.

(l) Negotiations with environmental consultant. If an environmental consultant contract satisfactory to the department cannot be negotiated with the selected consultant, the department may elect to terminate negotiations and proceed with the negotiation of the comprehensive development agreement only.

§27.10. [~~Formula for Determining~~] Compensation upon Termination for Convenience.

(a) Purpose. Transportation Code, §371.101 requires a [~~toll project entity having rulemaking authority by rule to develop a formula for making termination payments to terminate a~~] comprehensive development agreement under which a private participant receives the right to operate and collect revenue from a toll project to contain a provision

authorizing the department to terminate the agreement for convenience and purchase the interest of the private participant in the comprehensive development agreement and related property, and to include a price breakdown stating a specific price for the purchase of the private participant's interest at specified intervals from the date the toll project opens. [A formula must calculate an estimated amount of loss to the private participant as a result of the termination for convenience. The formula must be based on investments, expenditures, and the internal rate of return on equity under the agreed base case financial model as projected over the original term of the comprehensive development agreement, plus the agreed percentage markup on that amount. A formula may not include any estimate of future revenue from the project that is not included in the agreed base case financial model.] This section describes the methodology for determining the compensation amount owed to the private participant as a result of the termination for convenience of a [prescribes the formula required by Transportation Code, §371.101 that shall be used in] comprehensive development agreement in which the private participant has an ownership right to the toll revenues and is [agreements] subject to Transportation Code, §371.101 [that section].

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

(1) Fair market value [Adjusted equity IRR]--The amount that a willing and able buyer would offer, and a willing and able seller would accept, for the purchase and sale of the private participant's interest, in an arm's length transaction, under the conditions specified [equity IRR plus a number of basis points as set forth] in the comprehensive development agreement.

(2) Specified interval [Base case financial model]--A period of not less than two years and not more than five years that is specified by the department within the term of [The financial model identified and agreed to by the department and the private participant under] the comprehensive development agreement from the date the toll project opens, as defined in the comprehensive development agreement [at or about the time the agreement is executed].

[(3) Department--The Texas Department of Transportation.]

[(4) Equity Internal Rate of Return (Equity IRR)--A blended nominal post-tax rate of return on equity over the full term of the comprehensive development agreement equal to that projected in the base case financial model. For this purpose, equity may include unsecured capital contributions to the developer by affiliates or other equity investors in the developer, and secured project debt subordinate in priority to project debt included in the definition of senior debt termination amount.]

[(5) Net present value--The aggregate of the discounted values, calculated as of the valuation date, of each of the relevant projected distributions, in each case discounted using the equity IRR.]

[(6) Post-tax--After the payment of or provision for federal income or state margin taxes at assumed rates as described in the comprehensive development agreement.]

[(7) Senior debt termination amount--The amount necessary to repay the outstanding principal, accrued unpaid interest, including any interest owed through the prepayment or redemption date, and breakage costs respecting senior lien debt and first tier, unaffiliated subordinate debt secured by the developer's interest in the project, including TIFIA financing, as may be more particularly defined and described in the comprehensive development agreement.]

[(8) TIFIA--The Transportation Infrastructure Finance and Innovation Act of 1998, codified at 23 U.S.C. §601, et seq.]

[(9) Valuation date--The date established by the comprehensive development agreement as the valuation date. The valuation date may not be earlier than the date the department gives notice of termination for convenience.]

(c) Price breakdown. A proposer shall include a proposed price breakdown in its proposal, using the specified intervals required by the department. The department will evaluate the proposed price breakdowns as provided in §27.4 of this subchapter.

(d) [(c)] Compensation amount. A comprehensive development agreement under which a private participant has an ownership right to revenue from a toll project shall include provisions regarding compensation to the private participant if the department chooses to exercise its option to terminate for convenience the comprehensive development agreement at any time before the toll project opens. A comprehensive development agreement under which a private participant has an ownership [receives the] right to [operate and collect] revenue from a toll project shall provide that, if the department chooses to exercise its option to terminate for convenience the comprehensive development agreement and lease at any time during a specified interval, the compensation to the private participant respecting the termination may not exceed the lesser of [amount determined under the following formula]:

(1) the price stated for the interval in the price breakdown included in the comprehensive development agreement that is in effect on the date of purchase, as defined in the comprehensive development agreement [senior debt termination amount]; or [plus]

(2) the greater of:

(A) the fair market value of the private participant's interest on the valuation date, as defined in the comprehensive development agreement, plus or minus any other applicable amounts specified in the comprehensive development agreement; or

(B) an amount equal to the amount of outstanding debt specified in the comprehensive development agreement, plus or minus any other applicable amounts specified [amount necessary to reimburse reasonable and documented demobilization costs (if applicable) for the developer and third party contractors, as may be more particularly defined and described] in the comprehensive development agreement.[; plus]

[(3) the amount computed using the formula A+B (assuming, for purposes of the calculation, that the distributions projected to be made under the base case financial model between the date the comprehensive development is executed and the valuation date have been made), where:]

[(A) A is the net present value of the distributions projected to be made under the base case financial model between the valuation date and the date the original term of the agreement expires (without taking into account the effect of the termination for convenience); and]

[(B) B is an incremental adjustment in the form of one or more special distributions that, when added to A, would increase the equity IRR to a blended, nominal post-tax rate of return on equity equal to the adjusted equity IRR; plus]

[(4) the net increase in costs the developer will incur to provide training, instruction, and assistance to the department or its designees in the use and operation of project systems and programs as part of the transition of operations resulting from the termination for convenience, as may be more particularly defined and described in the comprehensive development agreement; plus]

[(5) the amount that will put the developer in the same post-tax position as it would have been had the payment under paragraph (3) of this subsection not been subject to tax, as may be more particularly defined and described in the comprehensive development agreement; minus]

[(6) cash and credit balances held by or on behalf of the developer, as may be more particularly defined and described in the comprehensive development agreement].

(e) Notification of price interval and exercise of option to terminate. A comprehensive development agreement subject to this section shall include a provision requiring the private participant to notify the department of the beginning of a price interval not later than 12 months before the price interval takes effect. The department shall notify the private participant if it will exercise the option to terminate for convenience the comprehensive development agreement during the price interval not later than 6 months after receiving the private participant's notice. The comprehensive development agreement shall provide that the department may rescind a notice of the exercise of an option to terminate without liability.

(f) Adjustments to compensation amount. If a project requires expansion or reconstruction in a manner that differs from the manner provided in the original project scope or schedule, the price for terminating the comprehensive development agreement may be adjusted to reflect the changes in the agreement.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305004
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-8683

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SUBCHAPTER B. TRANSFER OF DEPARTMENT TOLL PROJECTS AND CONVERSION OF NON-TOLL STATE HIGHWAYS

The Texas Department of Transportation (department) proposes amendments to §27.11, Purpose, and the repeal of §27.14, Conversion of Non-toll State Highways, concerning the transfer of department toll projects and conversion of non-toll state highways.

EXPLANATION OF PROPOSED REPEAL AND AMENDMENTS

Senate Bill 1029, 83rd Legislature, Regular Session, 2013, repealed Transportation Code, §§228.201(a)(7), 228.202, 228.203, 228.207, and 228.208, which authorized the Texas Transportation Commission, after making the required determinations and after the required county and voter approval, to convert a non-toll segment of the state highway system to a department toll project.

Amendments to §27.11 delete provisions relating to the conversion of non-toll segments of the state highway system to department toll projects from the description of the purpose of the subchapter.

These rules repeal §27.14, which provides the process used for the conversion of non-toll state highways to toll projects, because the authority for the conversion was repealed by Senate Bill 1029.

FISCAL NOTE

James Bass, Chief Financial Officer, has determined that for each of the first five years in which the amendments and repeal as proposed are in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeal and amendments.

Ed Pensock, Director, Strategic Projects Division, has certified that there will be no significant impact on local economies or overall employment as a result of enforcing or administering the repeal and amendments.

PUBLIC BENEFIT AND COST

Mr. Pensock 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 repeal and amendments will be to implement the legislative direction to not convert existing nontolled state highways to toll roads. 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 §27.11 and the repeal of §27.14 may be submitted to Rule Comments, Office of General Counsel, Texas Department of Transportation, 125 East 11th Street, Austin, Texas 78701-2483 or to RuleComments@txdot.gov with the subject line "27.11." The deadline for receipt of comments is 5:00 p.m. on December 16, 2013. In accordance with Transportation Code, §201.811(a)(5), a person who submits comments must disclose, in writing with the comments, whether the person does business with the department, may benefit monetarily from the proposed amendments, or is an employee of the department.

43 TAC §27.11

STATUTORY AUTHORITY

The amendments are proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.204, which requires the commission to adopt rules implementing Subchapter E of Chapter 228.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228.

§27.11. Purpose.

Transportation Code, §228.151, authorizes the Texas Department of Transportation to lease, sell, or transfer a toll project to certain entities if approved by the Texas Transportation Commission and the governor. [Transportation Code, §228.202, authorizes the Texas Transportation Commission under certain circumstances to convert a non-toll segment of the state highway system to a Texas Department of Transportation toll project.] This subchapter prescribes the policies and procedures

governing commission approval of the lease, sale, or transfer of a toll project [~~or the conversion of a non-toll segment of the state highway system to a toll project~~].

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305005
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-8683

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43 TAC §27.14

(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 Department of Transportation or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

STATUTORY AUTHORITY

The repeal is proposed under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, §228.204, which requires the commission to adopt rules implementing Subchapter E of Chapter 228.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 228.

§27.14. Conversion of Non-toll State Highways.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305006
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Earliest possible date of adoption: December 15, 2013
For further information, please call: (512) 463-8683

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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 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 21. STUDENT SERVICES

SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2264

The Texas Higher Education Coordinating Board withdraws the proposed amendment to §21.2264 which appeared in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5192).

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305048
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 4, 2013
For further information, please call: (512) 427-6114

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

19 TAC §21.2273

The Texas Higher Education Coordinating Board withdraws the proposed amendment to §21.2273 which appeared in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5192).

Filed with the Office of the Secretary of State on October 31, 2013.

TRD-201304960
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: October 31, 2013
For further information, please call: (512) 427-6114

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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §§22.518, 22.519, 22.521 - 22.523

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §§22.518, 22.519, and 22.521 - 22.523 which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7593).

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305049
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 4, 2013
For further information, please call: (512) 427-6114

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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §§22.531, 22.533 - 22.535

The Texas Higher Education Coordinating Board withdraws the proposed amendments to §22.531 and §§22.533 - 22.535 which appeared in the November 1, 2013, issue of the *Texas Register* (38 TexReg 7595).

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305050
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Effective date: November 4, 2013
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 1. TEXAS BOARD OF ARCHITECTURAL EXAMINERS

CHAPTER 1. ARCHITECTS

SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §1.149

The Texas Board of Architectural Examiners withdraws the proposed amendment to §1.149 which appeared in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6142).

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305035
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 4, 2013
For further information, please call: (512) 305-9040

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CHAPTER 3. LANDSCAPE ARCHITECTS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §3.149

The Texas Board of Architectural Examiners withdraws the proposed amendment to §3.149 which appeared in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6143).

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305036
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 4, 2013
For further information, please call: (512) 305-9040

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CHAPTER 5. REGISTERED INTERIOR DESIGNERS
SUBCHAPTER H. PROFESSIONAL CONDUCT

22 TAC §5.158

The Texas Board of Architectural Examiners withdraws the proposed amendment to §5.158 which appeared in the September 20, 2013, issue of the *Texas Register* (38 TexReg 6145).

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305037
Cathy L. Hendricks, RID, ASID/IIDA
Executive Director
Texas Board of Architectural Examiners
Effective date: November 4, 2013
For further information, please call: (512) 305-9040

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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 537. PROFESSIONAL AGREEMENTS AND STANDARD CONTRACTS

22 TAC §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.44, 537.47, 537.53

The Texas Real Estate Commission withdraws the proposed amendments to §§537.20, 537.28, 537.30 - 537.32, 537.37, 537.44, and 537.47; and new §537.53 which appeared in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5673).

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304994
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: November 1, 2013
For further information, please call: (512) 936-3092

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

TITLE 1. ADMINISTRATION

PART 2. TEXAS ETHICS COMMISSION

CHAPTER 20. REPORTING POLITICAL CONTRIBUTIONS AND EXPENDITURES

SUBCHAPTER A. GENERAL RULES

1 TAC §20.18

The Texas Ethics Commission (the commission) adopts new §20.18, relating to political recordkeeping requirements. The new rule is adopted with nonsubstantive changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5609) and will be republished.

The new rule provides a safe harbor for candidates, officeholders, and political committees required to comply with the recordkeeping requirements under the campaign finance law.

The new rule provides guidance for individuals that maintain political recordkeeping.

Several comments were received regarding the adoption of the new rule. A common concern raised in the comments was the lack of a retention period for holding the records.

The new rule is adopted under Government Code, Chapter 571, §571.062, which authorizes the commission to adopt rules concerning the laws administered and enforced by the commission.

§20.18. Recordkeeping Required.

(a) Records required to be maintained by §254.001 of the Election Code consist of records containing information needed to comply with reporting requirements, examples may include bank statements (front and back), deposit slips, cancelled checks (front and back), receipts, invoices, bills, and ledgers of contributions and expenditures.

(b) Candidates, officeholders, and campaign treasurers of a political committee comply with §254.001 of the Election Code when they maintain the following:

(1) Bank statements for all campaign activity;

(2) Invoices or bills for campaign expenditures;

(3) Copies of checks paid for campaign activity;

(4) Donation documentation for each person from whom a political contribution, loan, gain, or reimbursement is accepted;

(5) Receipts for reimbursed campaign expenses, which document the purpose of the reimbursement;

(6) Employee timesheets and payroll records;

(7) Extra care must be taken if cash is received or disbursed including: a separate receipt indicating the source of the donation or the person who received the disbursement, and the amount of the donation or expenditure.

(c) A person required to maintain a record under this section shall preserve the record for at least two years beginning on the filing deadline for the report containing the information in the record.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305032
Natalia Luna Ashley
Special Counsel
Texas Ethics Commission
Effective date: November 26, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 463-5800

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PART 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER A. PURCHASED HEALTH SERVICES

The Texas Health and Human Services Commission (HHSC) adopts the amendments to §354.1005, concerning unauthorized charges, and §354.1131, concerning payments to eligible providers. The amendment to §354.1005 is adopted without changes to the proposed text as published in the August 2, 2013, issue of the *Texas Register* (38 TexReg 4830) and will not be republished. The amendment to §354.1131 is adopted with changes to the proposed text as published in the August 2, 2013, issue of the *Texas Register* (38 TexReg 4830) and will be republished.

Background and Justification

The amendments are adopted to update obsolete Texas Administrative Code citations, update agency and program names, clarify the use of inconsistent terminology, and align the rules with HHSC's preferred drafting style. The amendments do not change current agency policy or practice.

The adopted amendments align the rules with HHSC's preferred drafting style. Whenever possible, HHSC prefers drafting rules

in the singular and using concise and consistent terminology, including defined terms. According to §311.012(b) of the Texas Government Code, use of the singular includes the plural.

Comments

During the 30-day comment period, which ended September 1, 2013, staff received one written comment concerning §354.1131 from the Coalition for Nurses in Advanced Practice.

Comment: The commenter recommended the rule language in §354.1131 be revised to clarify that physicians may delegate medical diagnosis and prescribing to Advanced Practice Registered Nurses (APRNs) and physician assistants (PAs) under current Texas law (Chapter 157, Subchapter B, Texas Occupations Code).

Response: HHSC reviewed the comment and determined that the recommended change would clarify the rule and better reflect current state law related to delegated prescriptive authority. The language in §354.1131 is revised to include a service prescribed by a non-physician practitioner. The commenter's language recommendation was revised prior to its inclusion in the rule to accommodate federal and state restrictions on Medicaid services and the prescriptive authority of non-physician practitioners.

DIVISION 1. MEDICAID PROCEDURES FOR PROVIDERS

1 TAC §354.1005

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties under Texas Government Code Chapter 531; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305033
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 24, 2013
Proposal publication date: August 2, 2013
For further information, please call: (512) 424-6900

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DIVISION 11. GENERAL ADMINISTRATION

1 TAC §354.1131

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out HHSC's duties under Texas Government Code Chapter 531; and Texas Human Resources Code §32.021 and Texas Government Code §531.021, which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§354.1131. Payments to Eligible Providers.

(a) The Health and Human Services Commission or its designee (HHSC) pays an eligible provider on behalf of an eligible recipient for a service that is a benefit of the Texas Medicaid Program when the service is medically necessary for diagnosis or treatment, or both, of illness or injury, or when the service is appropriately authorized for prevention of the occurrence of a medical condition, and is prescribed by a physician or other qualified practitioner, as appropriate to the particular benefit, in accordance with federal or state law or policy and the utilization review provisions of this chapter.

(b) Subject to the qualifications, limitations, and exclusions set forth in this chapter, Medicaid payment for a covered service is made only to an eligible provider of that service. The provider must accept payment of the reasonable charge, reasonable costs, or stipulated fee for service, as appropriate to the eligible provider, as the full and complete payment. The provider may not charge or take other recourse against any eligible recipient for a service for which payment is made or will be made, except as may otherwise be specifically provided. An eligible provider may charge an eligible recipient for a service that is outside the amount, duration, and scope of benefits of the Texas Medicaid Program. Payment for a covered service is not made to any eligible recipient.

(c) An eligible provider may not bill or take other recourse against an eligible recipient for a denied or reduced claim for a service that is within the amount, duration, and scope of benefits of the Texas Medicaid Program if the denial or payment reduction results from any of the following, as determined by HHSC:

(1) the provider's failure to submit a claim, including claims that are not received by HHSC;

(2) the provider's failure to submit a claim within the claims filing period established by HHSC;

(3) the filing of an unsigned or otherwise incomplete claim, including but not limited to, failure to submit a valid hysterectomy acknowledgment statement or sterilization consent form when these forms are required for the applicable procedures;

(4) the filing of an incorrect claim;

(5) the provider's failure to resubmit a claim within the resubmittal period established by HHSC;

(6) the provider's failure to appeal a claim within the appeal filing period(s) established by HHSC;

(7) errors made in the claims preparation, submission, or appeal processes that are attributable to the provider as discerned by HHSC.

(d) HHSC does not pay claims for services that are not reasonable and medically necessary according to the criteria established by HHSC, as cited at §354.1149(a) of this chapter (relating to Exclusions and Limitations). An eligible provider may bill an eligible recipient only if:

(1) a specific service is provided at the request of the recipient; and

(2) the provider has obtained and kept a written acknowledgment, signed by the recipient, that states: "I understand that, in the opinion of (provider's name), the services or items that I have requested to be provided to me on (dates of service) may not be covered under the Texas Medicaid Program as being reasonable and medically necessary for my care. I understand that the Texas Health and Human Services

Commission or its designee determines the medical necessity of the services or items that I request and receive. I also understand that I am responsible for payment of the services or items I request and receive if these services or items are determined not to be reasonable and medically necessary for my care."

(e) An attempt by the eligible provider to bill or recover money from an eligible recipient beyond the conditions stated in subsections (d) and (g) of this section is in noncompliance with these rules and constitutes a violation of the agreement between HHSC and the provider for participation in the Texas Medicaid Program.

(f) Before providing a service to an eligible recipient, a provider who does not participate in the Texas Medicaid Program should inform the eligible recipient that the provider will not file a Medicaid claim for any service provided to the recipient. A recipient receiving a service from a provider who does not participate in the Texas Medicaid Program is directly responsible for the payment of that service. HHSC has no liability for reimbursement for any service provided to an eligible recipient by a provider who does not participate in the Texas Medicaid Program.

(g) An eligible recipient is responsible for any service the eligible recipient receives that is outside the amount, duration, and scope of benefits of the Texas Medicaid Program, as determined by HHSC. An eligible provider must inform the recipient of this responsibility.

(h) Each eligible provider must provide covered Medicaid services to eligible Medicaid recipients in the same manner, to the same extent, and of the same quality as services provided to other patients. A service made available to other patients must be made available to an eligible recipient if the service is covered by the Texas Medicaid Program. The provider may not bill the recipient for a covered service.

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

Filed with the Office of the Secretary of State on November 4, 2013.

TRD-201305034
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: November 24, 2013
Proposal publication date: August 2, 2013
For further information, please call: (512) 424-6900

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TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 21. CITRUS

The Texas Department of Agriculture (the department) adopts amendments to Chapter 21, Subchapter A, §21.1, concerning citrus quarantines; the repeal of Subchapter C, §21.30 and new §21.30, concerning citrus budwood certification program; and new Subchapter D, §§21.60 - 21.68, concerning citrus nursery stock certification program, without changes to the proposed text published in the September 27, 2013, issue of the *Texas Register* (38 TexReg 6351). The amendments, repeal and new sections were developed with the advice of the Citrus Budwood Advisory Council established in Texas Agriculture Code, §19.005. The amendments, repeal and new sections are adopted to consolidate and clarify definitions, amend requirements for movement of citrus budwood and citrus plants, clarify requirements for certified budwood, and provide a regulatory framework for the propagation and growing of citrus nursery stock propagated for the purpose of sale within or for commercial and noncommercial use within the citrus zone. These amendments, repeal and new rules are adopted to implement restrictions found in Texas Agriculture Code §§19.615 - 19.622, relating to combatting the spread of citrus greening, and to implement the requirements of Senate Bill 1427 (S.B. 1427), passed by the 83rd Regular Session of the Texas Legislature (2013).

In addition, the amendments, repeal and new sections are adopted in order to effectively combat and prevent the spread of citrus greening to non-infected areas, including to commercial citrus groves, citrus nursery plant production areas and ornamental citrus in Texas and other states. The citrus and nursery industries are in peril because without the adoption of the amendments, repeal and new sections, the spread of citrus greening disease would be difficult to combat. The adopted amendments, repeal and new sections take necessary steps to combat the spread of infection, thus protecting the state's vital citrus fruit and nursery plants.

Amendments to §21.1 consolidate definitions in that section with certain definitions currently in §21.30, which is repealed, and include new definitions to clarify terms in Chapter 21. New §21.30 clarifies regulatory requirements for certified budwood. New §21.60 delineates the scope of the Citrus Nursery Stock Certification Program. New §21.61 sets specific structural requirements for facilities for the propagation and growing of citrus nursery stock. New §21.62 describes application procedures and sets fees for certified citrus nurseries. New §21.63 sets sanitation requirements for facilities for the propagation and growing of certified citrus nursery stock in or for movement into the citrus zone. New §21.64 establishes requirements for propagating and growing rootstock. New §21.65 sets requirements for propagation and growing of citrus nursery stock, foundation trees, increase trees, and rootstock. New §21.66 establishes labeling requirements for citrus nursery stock. New §21.67 sets recordkeeping requirements. New §21.68 establishes criteria for stop-sale orders issued for violations of regulations related to the Citrus Nursery Stock Certification Program.

One comment in support of the proposal was received. Texas Citrus Mutual stated its support of the proposal and commented that the viability of the citrus industry depends on homeowners and commercial producers only planting citrus nursery stock that is disease-free, and that the citrus industry has been very active in the development of both S.B. 1427 and the adopted regulations, which represent an important advancement in the protection of commercial citrus orchards from exposure to citrus diseases. No comments in opposition to the proposal were received.

SUBCHAPTER A. CITRUS QUARANTINES

4 TAC §21.1

The amendments to §21.1 are adopted under the Texas Agriculture Code, §19.006, which provides the department with the authority to adopt standards and rules as necessary to administer the citrus budwood certification program and the citrus nursery certification program, regulate the sale of citrus budwood and citrus nursery trees and stock; and §12.020, which authorizes

the department to assess administrative penalties for violations of Chapter 19.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304989
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
Proposal publication date: September 27, 2013
For further information, please call: (512) 463-4075

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SUBCHAPTER C. CITRUS BUDWOOD CERTIFICATION PROGRAM

4 TAC §21.30

The repeal of §21.30 is adopted under the Texas Agriculture Code, §19.006, which provides the department with the authority to adopt standards and rules as necessary to administer the citrus budwood certification program and the citrus nursery certification program, regulate the sale of citrus budwood and citrus nursery trees and stock.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304990
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
Proposal publication date: September 27, 2013
For further information, please call: (512) 463-4075

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4 TAC §21.30

New §21.30 is adopted under the Texas Agriculture Code, §19.006, which provides the department with the authority to adopt standards and rules as necessary to administer the citrus budwood certification program and the citrus nursery certification program, regulate the sale of citrus budwood and citrus nursery trees and stock.

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

Filed with the Office of the Secretary of State on November 1, 2013.

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General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
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For further information, please call: (512) 463-4075

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SUBCHAPTER D. CITRUS NURSERY STOCK CERTIFICATION PROGRAM

4 TAC §§21.60 - 21.68

New §§21.60 - 21.68 are adopted under the Texas Agriculture Code, §19.006, which provides the department with the authority to adopt standards and rules as necessary to administer the citrus budwood certification program and the citrus nursery certification program, regulate the sale of citrus budwood and citrus nursery trees and stock; and §12.020, which authorizes the department to assess administrative penalties for violations of Chapter 19.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304992
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
Proposal publication date: September 27, 2013
For further information, please call: (512) 463-4075

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CHAPTER 28. TEXAS AGRICULTURAL FINANCE AUTHORITY

The Board of Directors (Board) of the Texas Agricultural Finance Authority (TAFA) of the Texas Department of Agriculture adopts amendments to Chapter 28, Subchapter A, §28.2 and §28.3; Subchapter B, §28.13; and Subchapter C, §28.29, concerning TAFA programs, without changes to the proposed text as published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5958).

The amendments clarify applicant eligibility criteria and TAFA program administration. More specifically, the amendment to §28.2 adds a reference to the TAFA definitions within the Texas Agriculture Code and also adds the definition of "rural," as defined by the Board. The amendment to §28.3 clarifies the process to submit a public information request to the Board. The amendment to §28.13 is adopted to add the state's goal of development and expansion of business in rural areas within the Interest Rate Reduction Program definitions, to make the section consistent with amendments made to Texas Agriculture Code, Chapter 44, §44.007, relating to the Interest Rate Reduction Program. The amendment to §28.29 of the Agricultural Loan Guarantee Program rules clarifies the program limit and revises the annual date for calculating program balances.

No comments were received on the proposal.

SUBCHAPTER A. FINANCIAL ASSISTANCE RULES

4 TAC §28.2, §28.3

The amendments to Subchapter A, §28.2 and §28.3, are adopted under the Texas Agriculture Code, §58.022, which provides that the Board may adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the board to carry out its duties to administer its programs.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305018
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
Proposal publication date: September 13, 2013
For further information, please call: (512) 463-4075

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SUBCHAPTER B. INTEREST RATE REDUCTION PROGRAM

4 TAC §28.13

The amendment to Subchapter B, §28.13, is adopted under the Texas Agriculture Code, §58.022, which provides that the Board may adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the board to carry out its duties to administer its programs.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305019
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
Proposal publication date: September 13, 2013
For further information, please call: (512) 463-4075

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SUBCHAPTER C. AGRICULTURAL LOAN GUARANTEE PROGRAM

4 TAC §28.29

The amendment to Subchapter C, §28.29, is adopted under the Texas Agriculture Code, §58.022, which provides that the Board may adopt and enforce bylaws, rules, and procedures and perform all functions necessary for the board to carry out its duties to administer its programs.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305020
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: November 21, 2013
Proposal publication date: September 13, 2013
For further information, please call: (512) 463-4075

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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 1. AGENCY ADMINISTRATION
SUBCHAPTER A. GENERAL PROVISIONS

19 TAC §1.18

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §1.18, concerning Operations of Education Research Centers, with changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5818).

The amendments to §1.18 are due to the statutory changes brought about by the passage of House Bill 2103 during the 83rd Texas Legislature, Regular Session. Specifically, these amendments clarify the membership and meeting schedule of the Joint Advisory Board and requirements of the centers to report any security breach.

The following comments were received concerning these amendments:

Comment: Section 1.18(a)(3). Texas State University would like clarification by removing the word "the". The University of Texas at Austin requests that the last sentence be modified to "The P-20 Workforce Data Repository shall be located at and be operated by the Coordinating Board, with the Coordinating Board having responsibility to authorize the use of the data deposited into the repository."

Staff response: Staff concurs with the suggested modification by Texas State University. However, given the Data Center Consolidation in which the Coordinating Board participates, the data cannot be located at the Coordinating Board and the authority to use the data is joint with the cooperating agencies and the advisory committee.

Comment: Section 1.18(a)(5). Texas State University and E3 Alliance identified that the proposed language limits the masking to only data from Texas Education Agency (TEA), Texas Workforce Commission (TWC) and the Coordinating Board. E3 Alliance also pointed out that some of the data elements mentioned are not provided to an Education Research Centers (ERC).

Staff response: Staff concurs with the suggested modification. The additional information (social security numbers, names, and birthdates) was also deleted since those data elements are not provided to an ERC.

Comment: Section 1.18(a)(5)(A). Texas State University and E3 Alliance suggested that the masking rules be modified to match those currently used by TEA in the Performance Reporting division for the AEIS reports.

Staff response: No change is being recommended since there is already an approval process that can be used for various masking methodologies.

Comment: Section 1.18(b)(1). E3 Alliance asked that the wording from "ERCs may be established... " to "ERCs shall be established... " to comply with changes from House Bill 2103. UT Dallas ERC requested that the wording related to ERC data being accessed only within Texas be modified to allow the Coordinating Board to approve sites outside of the state.

Staff response: Staff concurs with the comment from E3 Alliance and the wording has been changed. Staff does not concur with the suggested change from the UT Dallas ERC since there is a need for the ability to audit ERC locations for security compliance.

Comment: Section 1.18(b)(3). The University of Texas at Austin requests that language be added to clarify that the costs associated with the FTEs are only at the Coordinating Board and TEA and are documented costs. They also want the following sentence added "Costs payable for reasonable employee and equipment expenses at each agency necessary to prepare and maintain ERC data will be limited to reported time and effort toward fulfilling the ERC data requirements."

Staff response: Staff agrees that all costs should be documented, however there are administrative costs associated with operating the data repository. Changes were made to clarify the FTEs are only at TEA and the Coordinating Board, however the expenses cannot be limited to fulfilling the data requirements alone.

Comment: Section 1.18(c)(1). Texas State University understands that the Advisory Board is not governed by the Open Meetings Act, but requests that meeting be made public for interested educational researchers.

Staff response: No change is being recommended since this section follows the statute. Staff plans on posting all meetings with the Texas Register, but acknowledges the continued need for the ability to have telephonic meetings for the sake of timeliness in reviewing the proposals.

Comment: Section 1.18(c)(3). The University of Texas at Austin suggested that the wording in (A) - (C) match the wording in the statute. Texas State University is unclear of the meaning. E3 Alliance suggested changing the wording to "ensure approval by the ERC Director or a designee of the research design and the methods to be used."

Staff response: Section 1.18(c)(3)(B) was changed to make it clear that there needs to be approval of the research design and methodology by the ERC Director or designee. All the language was not changed to match exactly the statute, but provides the meaning.

Comment: Section 1.18(c)(5). Texas State University and E3 Alliance suggested that it is ambiguous whose compliance with FERPA the written agreement addresses.

Staff response: Additional language was added to clarify that it is the researcher's compliance.

Comment: Section 1.18(c)(6). E3 Alliance suggested adding "All meetings shall be open to the public."

Staff response: The sentence was changed to add "and such meetings will be open to the public".

Comment: Section 1.18(d)(2). The University of Texas at Austin suggests that the language be changed to say the managing director be required to report to the president or chief executive officer of the sponsoring institution, or an authorized designee of the president or chief executive officer.

Staff response: Staff does not recommend making a change the current wording allows for that flexibility.

Comment: Section 1.18(d)(3). Texas State University pointed out that House Bill 2103 changed the statutory language to request from require. E3 Alliance suggested that the request can be made by either the Commissioner of Higher Education or the Commissioner of Education. The University of Austin suggested the addition of the criteria that the agency must provide sufficient funds for the project.

Staff response: Staff concurs and all suggestions were included.

Comment: Section 1.18(d)(4). E3 Alliance suggested clarifying language so that all ERC data be considered confidential.

Staff response: Staff concurs with the recommendation.

Comment: Section 1.18(d)(5)(E). E3 Alliance commented the "Given the fact that the ERCs contain only existing data and all projects will be IRB exempt, this step should not be necessary." The University of Texas at Austin suggested changing the language to make the researcher certify that the research proposal complies with the IHE's institutional review board or similar research review board with oversight before final approval is given by the Advisory Board.

Staff response: No changes were made based on the E3 Alliance comments since most projects are not IRB exempt. However, wording changes requiring certification that the research proposal meets all IRB or similar requirements were made to match what is in the current contract.

Comment: Section 1.18(d)(6)(A) and (B). The University of Texas at Austin commented that the term "All research produced.." could be too broadly interpreted and yield unreliable information to cooperating agencies and others reports or analysis.

Staff response: The wording was changed to indicate that the section is referring to the final research.

Comment: Section 1.18(d)(6)(D). Texas State University and E3 Alliance suggested that this places an unnecessary burden on the ERCs. If aggregated/summary data removed from the ERC are FERPA-compliant, then when these data are included in presentations or published papers the reported data must also be FERPA-compliant. It is logically impossible for FERPA-compliant data to generate non-FERPA-compliant data. This item should be deleted. The University of Texas at Austin commented that they did not think it is necessary.

Staff response: Staff concurs and §1.18(d)(6)(D) has been deleted.

Comment: Section 1.18(d)(7). UT Dallas ERC commented that the provision that one of the cooperating agencies can refer a

public information request to an ERC has been removed from the latest contract.

Staff response: Staff concurs with the comment and that language has been removed.

Comment: Section 1.18(d)(8). UT Dallas commented that the requirement for a penetration test by the Department of Information Resources, or a contractor approved by that Department has been removed from the latest contract.

Staff response: Staff does not concur, the requirement is still in the contract on page 2, paragraph 6.

Comment: Section 1.18(e)(1) and (2). Texas State University commented that the meaning for additional audits is unclear.

Staff response: Language was modified to clarify the meaning.

Comment: Section 1.18(e)(3). Texas State University suggested that the words "delete or" be added before "return all confidential data to the CB... ".

Staff response: Staff has determined that it is more appropriate in this case for all data to be returned so that we can verify that the ERC being terminated has a record of all data received.

Comment: Section 1.18(f)(2). Texas State University noticed the redundancy between this section and (b)(1). UT Dallas ERC suggested the same comments from (b)(1) above.

Staff response: Staff concurs and §1.18(f)(2) is removed. Since §1.18(f)(2) is being removed the comments from the UT Dallas ERC are moot.

The amendments are adopted under the Texas Education Code, §1.005, Education Research Centers; Sharing Student Information, which provides the Coordinating Board with authority to adopt rules pertaining to the sharing of student information.

§1.18. Operation of Education Research Centers.

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

(1) FERPA means the Family Educational Rights and Privacy Act, 42 U.S.C. §1232g, including regulations and informal written guidance issued by the United States Department of Education and any amendments or supplementation thereof.

(2) Cooperating Agencies means the Texas Education Agency (TEA), the Texas Higher Education Coordinating Board (CB), and the Texas Workforce Commission (TWC).

(3) P-20/Workforce Data Repository refers to the collection of data from each Cooperating Agency. The cooperating agencies shall execute agreements for the sharing of data for the purpose of facilitating the studies or evaluations at Education Research Centers (ERCs). In accordance with the agreements, each cooperating agency shall make available all appropriate data, including to the extent possible data collected by the cooperating agency for the preceding 20 years. A cooperating agency shall periodically update the data as additional data is collected, but not less than once each year. The repository shall be operated by the CB.

(4) The CB may enter into data agreements for data required for approved studies or evaluations with the state education agency of another state, giving priority to the agencies of those states that send the highest number of postsecondary education students to this state or that receive the highest number of postsecondary education students from this state. An agreement under this paragraph must be reviewed by the United States Department of Education and must require the agency of another state to comply with all data security measures required of a center. The CB may also enter into data agreements with local agencies or organizations that provide education services to students in this state or that collect data that is relevant to current or former students of public schools in this state and is useful to the conduct of research that may benefit education in this state.

(5) Confidential information as applied to data in the P-20/Workforce Data Repository provided to an ERC includes all individual-level data, including any data cells small enough to allow identification of an individual. All data cells containing between one and four individuals, inclusive, are confidential.

(A) Small data cells will be considered any cell containing between one and four individuals inclusive. Information may not be disclosed where small data cells can be determined through subtraction or other simple mathematical manipulations or subsequent cross-tabulation of the same data with other variables. Institutions may use any of the common methods for masking including:

(i) hiding the small cell and the next larger cell on the row and column so the size of the small cell cannot be determined; or

(ii) hiding the small cell and displaying the total for both the row and column as a range of at least ten; or

(iii) any methodology approved by the cooperating agencies.

(B) References to the CB shall also be deemed to include the Commissioner of Higher Education. References to the TEA shall also be deemed to include the Commissioner of Education. References to the TWC shall also be deemed to include the Workforce Commissioners.

(b) Purpose.

(1) ERCs shall be established by the CB. An ERC may only be established at a sponsoring public institution of higher education in Texas but may be awarded to a consortium of such institutions. An ERC must be physically located within Texas and must retain all data at that location except for secure off-site data back-up in accordance with written procedures approved by the Advisory Board. Individual level data may not be provided to a researcher at a location other than a Research Center or the CB or a public institution of higher education located in Texas that is an acknowledged consortium member of the ERC.

(2) The CB is responsible for general oversight and technical assistance of ERCs, except as otherwise provided in this chapter. All policy decisions shall be approved by the CB.

(3) Sponsoring institutions of higher education are responsible for all equipment, salaries and other operating costs of an ERC, including documented staff time and equipment at TEA and the CB necessary to prepare and maintain data for the ERCs, as well as reasonable reimbursable expenses of the Advisory Board. Costs will include actual documented expenses up to two full-time equivalent employees at TEA and CB along with associated data storage costs as set by DIR for the data center consolidation rates unless otherwise agreed to by the CB and the ERCs.

(4) The ERCs may provide researchers access to shared data only through secure methods and require each researcher to execute an agreement regarding compliance with the Family Educational Rights and Privacy Act of 1974 (20 U.S.C. §1232g) and rules and regulations adopted under that Act. Each ERC shall adopt rules or policies to protect the confidentiality of information used or stored at the center in accordance with applicable state and federal law, including rules or

policies establishing procedures to ensure that confidential information is not duplicated or removed from a center in an unauthorized manner.

(c) Advisory Board.

(1) The Commissioner of Higher Education shall create and maintain an advisory board to review and approve, as it deems appropriate, research involving access to confidential information and to adopt policies and rules governing the protection of such information in ERC operations. The Advisory Board is not a governmental body for purposes of Chapters 551 and 552 of the Texas Government Code.

(2) Membership of the Advisory Board shall include, at a minimum:

(A) the Commissioner of Higher Education, as Chair;

(B) a representative of TEA, designated by the Commissioner of Education;

(C) a representative of the CB, designated by the Commissioner of Higher Education;

(D) a representative of the TWC, designated by the Commission;

(E) the Director or Director's designee of each ERC; and

(F) a representative of preschool, elementary, or secondary education, designated by the Commissioner of Higher Education.

(G) Additional member(s) may be appointed within the discretion of and as determined by the Commissioner of Higher Education.

(3) The Advisory Board will review each study or evaluation proposal. A study or evaluation proposal must be approved in advance by majority vote of the Advisory Board before it can be conducted at an ERC. The Advisory Board's review of a proposal must include the following factors:

(A) the potential to benefit education in Texas;

(B) require each ERC Director or designee to approve of the research design and methods to be used; and

(C) the extent to which the required data is not readily available from another source.

(4) The Advisory Board will decide if a submitted proposal falls under the "studies" exception or the "audit/evaluation" exception described in FERPA and its implementing regulations. Should a proposed study or evaluation not be permitted by FERPA or its implementing regulations, the proposal will be denied.

(5) Each ERC will enter into a written agreement with each researcher mandating the researcher's compliance with FERPA.

(6) The Advisory Board shall meet at the call of the Chair at least quarterly each year and such meetings will be open to the public.

(7) Meetings may be conducted by electronic means, including telephonic, video conference call, Internet, or any combination of those means.

(8) The Advisory Board may create committees and subcommittees as it deems necessary or appropriate.

(d) Operation.

(1) An ERC may operate only under written authorization by the CB. Status as an ERC may not be assigned, delegated or transferred to any other entity.

(2) An ERC shall be led by a managing Director who is a professional employee of the sponsoring institution of higher education (IHE). The managing Director shall report directly to the chief operating officer of the sponsoring IHE unless a different reporting structure is approved by the CB.

(3) All research at an ERC involving access to confidential information shall be conducted with the approval of the Advisory Board or by request of the Texas Workforce Commission, Commissioner of Higher Education or the Commissioner of Education if the requesting agency provides sufficient funds to the ERC to finance the project.

(4) Confidential information provided to an ERC shall be protected by procedures to ensure that any unique identifying number is not traceable to any individual. Such procedures must be maintained as confidential by TEA and the CB and may not be shared with an ERC, or used for any other purpose. Under no circumstances may social security numbers, names, or birthdates be accessed for the purpose of research at an ERC.

(5) ERCs shall adopt written procedures for research conducted using confidential information, subject to FERPA and its implementing regulations and approval by the Advisory Board. An ERC may not access confidential information until all such procedures are approved. Such procedures shall include:

(A) measures to ensure against unauthorized disclosure of confidential information;

(B) independent review of all research products/results by a designated ERC staff person not involved in that specific project to ensure against unauthorized disclosure of confidential information in accordance with guidelines adopted under FERPA;

(C) measures to ensure that confidential information is not copied or removed from the ERC;

(D) annual certification of full compliance with all requirements of state and federal laws and regulations regarding the use of confidential information for research purposes by the internal auditor of each participating IHE;

(E) before final approval of a research proposal by the Advisory Board, the researcher must certify that the research proposal complies with the IHE's institutional review board or similar research review board with oversight over research design, including any applicable requirements for research involving human subjects the ERC shall provide evidence of approval from the IRB or justification for exclusion from the IRB process before a researcher has access to any data; and

(F) criteria for allocating research access capacity for researchers not affiliated with the sponsoring IHEs.

(6) All final research reports or analysis produced at an ERC shall:

(A) be made available upon request to the cooperating agencies;

(B) a single copy shall be made available to the cooperating agencies for any copyright publications at no cost to the cooperating agencies; institutionally produced or non-copyright publications shall be available for public distribution, copying or reproduction at no cost to the cooperating agencies;

(C) contain a disclaimer in a form acceptable to the cooperating agencies stating that the conclusions of the research do not necessarily reflect the opinion or official position of those entities or of the State of Texas;

(7) An ERC shall comply with the requirements of the Texas Public Information Act, including requirements relating to data manipulation. Charges for processing Public Information Act requests shall be based on guidelines developed by the Texas Attorney General's Office.

(8) A sponsoring IHE shall cooperate fully with all audit requests made by the CB or the Advisory Board. Each ERC shall annually request and undergo a security audit performed by the Texas Department of Information Resources, or a contractor approved by that Department, which shall include a penetration test of computer equipment and access, and provide the results thereof to the CB.

(9) Research projects that require access to data not then included in the database maintained by the CB for research will be provided by the cooperating agencies if available. An ERC will be charged the cost to process or manipulate such data.

(e) Sanctions and Termination.

(1) Upon a determination that confidential information has been released or has been copied to another location, or that appropriate security measures are not in place to protect confidential information, the CB may, in addition to other remedies set forth in this section, require an ERC to obtain appropriate services or equipment or to remove confidential information from such other location in order to remedy a security deficit. Such services or equipment shall be purchased by the ERC from vendors subject to approval of the CB.

(2) The ERC under review shall be required to pay all reasonable costs to the CB for time necessary to re-audit and ensure appropriate security measures are in place after a possible breech occurs.

(3) An ERC may be terminated by the CB for failure to meet the requirements of state or federal law, of this subchapter, or of the terms of a contract establishing the ERC. An ERC shall be entitled to an informal review of a determination to terminate its status by a designee of the Commissioner of Higher Education prior to the effective date of the termination. An ERC shall return all confidential data to the CB within five (5) days of its receipt of a notice of termination and shall not retain a copy, replica, or duplicate thereof, whether in whole or in part. The Commissioner of Higher Education may suspend an ERC while determining whether the ERC's failure to meet the requirements of state or federal law, of this subchapter, or of the terms of a contract establishing the ERC are of such significance to warrant termination. An ERC may not operate during any period of time it is suspended.

(4) Notice of termination under paragraphs (1) and (2) of this subsection shall be provided to the ERC's designated representative and shall contain information regarding the reasons for the termination.

(5) A termination made pursuant to this section shall become final and binding unless, within 30 days of its receipt of the notice of termination, the ERC invokes the administrative remedies contained in Subchapter B of this chapter (relating to Dispute Resolution). If this chapter is so invoked, any ultimate recommendations regarding termination shall be made to the CB which, in turn, shall render its decision in due course. The ERC shall be suspended during the pendency of any such proceedings.

(f) Security.

(1) An ERC must comply with all requirements of FERPA in accessing confidential information to conduct research. Notwithstanding any other provision in this subchapter, failure to maintain adequate security to avoid the unauthorized disclosure of confidential information provided to the ERC shall be grounds for immediate termination of the authorization to access such data.

(2) The CB may suspend access to confidential information provided to an ERC based on a significant risk of unauthorized disclosure of confidential information.

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

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CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER C. TEXAS SUCCESS INITIATIVE

19 TAC §§4.53, 4.54, 4.57

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§4.53, 4.54, and 4.57, concerning the Texas Success Initiative (TSI). Section 4.53 and §4.57 are adopted without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5821). Section 4.54 is adopted with changes to the proposed text as published.

The amendments are adopted to reflect developmental education reform efforts as required in House Bill 1244, House Bill 3468, and Senate Bill 162 (82nd Legislature, Regular Session). Specifically, the amendment to §4.53(12), corrects the course number for GOVT 2305/2306; the amendment to §4.54(c) clarifies previously approved language related to the ESOL Waiver for students with limited English proficiency; and the amendment to §4.57(b), clarifies language addressing Adult Basic Education cut scores.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §51.3062 which provides the Coordinating Board with the authority to establish policies and procedures relating to the TSI; and §51.307 which provides the Coordinating Board with the authority to adopt and publish rules and regulations to effectuate the provisions of Chapter 51, Subchapter F of the Texas Education Code.

§4.54. Exemptions, Exceptions, and Waivers.

(a) The following students shall be exempt from the requirements of this title, whereby exempt students shall not be required to provide any additional demonstration of college readiness and shall be allowed to enroll in any entry-level freshman course as defined in §4.53(12) of this title (relating to Definitions):

(1) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) ACT: composite score of 23 with a minimum of 19 on the English test shall be exempt for both the reading and writing sections of the TSI Assessment, and/or 19 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment;

(B) SAT: a combined critical reading (formerly "verbal") and mathematics score of 1070 with a minimum of 500 on the critical reading test shall be exempt for both reading and writing sections of the TSI Assessment, and/or 500 on the mathematics test shall be exempt for the mathematics section of the TSI Assessment; or

(2) For a period of three (3) years from the date of testing, a student who is tested and performs on the Texas Assessment of Academic Skills (TAAS) with a minimum scale score of 1770 on the writing test, a Texas Learning Index (TLI) of 86 on the mathematics test and 89 on the reading test.

(3) For a period of five (5) years from the date of testing, a student who is tested and performs at or above the following standards that cannot be raised by institutions:

(A) on the Eleventh grade exit-level Texas Assessment of Knowledge and Skills (TAKS) with a minimum scale score of 2200 on the math section and/or a minimum scale score of 2200 on the English Language Arts section with a writing subsection score of at least 3, shall be exempt from the TSI Assessment required under this title for those corresponding sections; or

(B) STAAR end-of-course (EOC) with a minimum score of Level 2 on the English III shall be exempt from the TSI Assessment required under this title for both reading and writing, and a minimum score of Level 2 on the Algebra II EOC shall be exempt from the TSI Assessment required under this title for the mathematics section.

(4) A student who has graduated with an associate or baccalaureate degree from an institution of higher education.

(5) A student who transfers to an institution from a private or independent institution of higher education or an accredited out-of-state institution of higher education and who has satisfactorily completed college-level coursework as determined by the receiving institution.

(6) A student who has previously attended any institution and has been determined to have met readiness standards by that institution.

(7) A student who is enrolled in a certificate program of one year or less (Level-One certificates, 42 or fewer semester credit hours or the equivalent) at a public junior college, a public technical institute, or a public state college.

(8) A student who is serving on active duty as a member of the armed forces of the United States, the Texas National Guard, or as a member of a reserve component of the armed forces of the United States and has been serving for at least three years preceding enrollment.

(9) A student who on or after August 1, 1990, was honorably discharged, retired, or released from active duty as a member of the armed forces of the United States or the Texas National Guard or service as a member of a reserve component of the armed forces of the United States.

(b) An institution may exempt a non-degree-seeking or non-certificate-seeking student.

(c) ESOL Waiver--An institution may grant a temporary waiver from the assessment required under this title for students with demonstrated limited English proficiency in order to provide appropriate ESOL/ESL coursework and interventions. The waiver must be removed after the student attempts 15 credit hours of developmental ESOL coursework or prior to enrolling in entry-level freshman coursework, whichever comes first, at which time the student would be administered the TSI Assessment. Funding limits as defined in Texas Education Code, §51.3062(l)(1) and (2) for developmental education still apply.

(d) Any student who has been determined to be exempt in mathematics, reading, and/or writing under subsection (a) or (b) of this section shall not be required to enroll in developmental coursework and/or interventions in the corresponding area of exemption.

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

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CHAPTER 21. STUDENT SERVICES
SUBCHAPTER J. THE PHYSICIAN EDUCATION LOAN REPAYMENT PROGRAM

19 TAC §§21.251, 21.254, 21.256 - 21.258, 21.260, 21.262

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§21.251, 21.254, 21.256 - 21.258, 21.260, and 21.262, concerning the Physician Education Loan Repayment Program (PELRP), without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5186).

The amendments would codify new provisions resulting from the passage of House Bill 2550, 83rd Texas Legislature, Regular Session. These provisions create an eligibility path for physicians who are not practicing in a Health Professional Shortage Area (HPSA), but who provide services to a designated number of Medicaid and Texas Women's Health Program enrollees. Applications from these physicians may be considered only if funds are remaining at the end of the fiscal year, after shortage area physicians and up to ten physicians practicing in secure correctional facilities have received consideration.

The amendment to §21.251(b) adds the word "primary" to clarify that the primary purpose of the program is to encourage physicians to practice medicine in HPSAs.

The amendment to §21.254 clarifies the definition of Rural HPSA and adds the definition of the Texas Women's Health Program.

The amendment to §21.256 adds a statement that application deadlines will be posted on the program web page; clarifies that physicians qualifying on the basis of practice in a HPSA must

agree to provide four years of service in a HPSA; replaces the reference to the Texas Youth Commission with the current name of the agency; and adds the provision for physicians qualifying on the basis of providing services to a designated number of Medicaid and Texas Women's Health Program enrollees.

The amendment to §21.257 states that application deadlines will be posted to the program web page throughout the fiscal year. Additionally, the second priority relating to practice in a rural HPSA incorporates the consolidated definition of rural HPSA. The priority relating to HPSA score is amended to refer to HPSA scores in non-rural areas and clarifies that the scores reflecting the highest degrees of shortage will receive priority ranking. The amendment also adds, as a last priority for ranking, the physicians who are not practicing in HPSAs or secure correctional facilities, but who have served a designated number of Medicaid and Texas Women's Health Program enrollees. The amendment also states that the designated number will be established in the Board's Memorandum of Understanding with the Texas Health and Human Services Commission.

The amendment to §21.258 adds "or to cover costs incurred after completion of medical school" to the statement that the loan may not have been made during residency.

The amendment to §21.260 adds the statement that physicians practicing in HPSAs will be released from the agreement to provide four years of eligible service for any year for which loan repayment funds are not available. Additionally this section has been updated to add the statement that physicians who are not practicing in HPSAs must apply for participation in the program each year by established deadlines and will be subject to the ranking criteria set forth in §21.257. This change is to clarify that the Coordinating Board will not make multi-year financial commitments to physicians qualifying on the basis of services to Medicaid and Texas Women's Health Program enrollees, should funds be available at the end of the fiscal year, or to physicians providing services in secure correctional facilities. The governing statute states that repayment assistance to physicians serving patients in these facilities will be limited to the first ten physicians who establish eligibility each fiscal year. Also included in this amendment is the new statutory requirement that applications from physicians qualifying on the basis of services to Medicaid and Texas Women's Health Program enrollees will be considered only if funds are available after financial commitments for the fiscal year have been made to physicians practicing in HPSAs and secure correctional facilities.

No comments were received regarding the amendments.

The amendments are adopted under the Texas Education Code, §61.537, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§61.531 - 61.540.

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

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SUBCHAPTER M. TEXAS COLLEGE WORK-STUDY PROGRAM

19 TAC §21.409

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.409, concerning Authority to Transfer Funds, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5188).

The amendments will add language to the Texas College Work-Study (TCWS) rules to address institutions' authority to transfer funds between all applicable programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

No comments were received regarding the amendments.

The amendments are adopted under Texas Education Code, §56.077, which provides the Coordinating Board with the authority to adopt rules to implement the TCWS Program.

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

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SUBCHAPTER T. THE VACCINATION AGAINST BACTERIAL MENINGITIS FOR ENTERING STUDENTS AT PUBLIC AND PRIVATE OR INDEPENDENT INSTITUTIONS OF HIGHER EDUCATION

19 TAC §§21.611, 21.612, 21.614

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§21.611, 21.612, and 21.614, concerning the vaccination against bacterial meningitis for entering students at public or private or independent institutions of higher education, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5189).

The intent of the amendments was to incorporate into existing rules changes and provisions enacted by the 83rd Texas Legislature, Regular Session (Senate Bill 62). Language has been added to change the age for an exemption from the vaccine requirement from the age of 30 to 22 years of age or older. A definition was added for "public junior college." A provision was added that allows entering students attending public junior colleges to submit a form through a secure, Internet-based process developed and implemented by the Texas Department of State Health Services (DSHS) to claim an objection from the bacterial meningitis vaccine requirement for reasons of conscience. Language has been added that allows public junior colleges to require an entering student to use the Internet-based process as the exclusive method to apply for an exemption from the vaccine requirement for reasons of conscience. The newly amended statute will affect entering students enrolling in public and private or independent institutions of higher education on or after January 1, 2014.

The following comments were received but no changes were made to the rules as a result of these comments.

Comment: The Immunization Partnership stakeholders commented that §21.614(b)(2) of proposed rules states "A conscientious exemption form from the Texas Department of State Health Services must . . . be submitted to the designated department or unit no later than the 90th day after the date the affidavit is notarized." This 90 day period has caused confusion among institutions of higher education and they are uncertain why this time limit is in place. Another commenter requested that the 90 day submission requirement be removed.

Staff response: Senate Bill 62 was passed and requires that a conscientious objection waiver be submitted to the appropriate admitting official not later than the 90th day after the date the affidavit was notarized. This is a statutory requirement. No change is required.

Comment: The Immunization Partnership stakeholders and commenter from St. Mary's University seek clarification on the best method for a student who is enrolling in courses on a short-term basis at a public community college or university (other than their degree-seeking institution) to prove their immunization or exemption status. The Immunization Partnership stakeholders request clarification on when photocopies may be used (i.e., for proof of exemption outside a student's primary degree-seeking institution).

Staff response: Students can bring the original or a copy of their original immunization record that is stamped as "copy" from their degree-seeking institution, or a copy of the evidence provided to show that they submitted an exemption for reasons of conscience.

Comment: Immunization Partnership stakeholders and commenter from St. Mary's University suggest a requirement for high school registrars to include meningitis vaccination information on academic transcripts.

Staff response: The Coordinating Board supports efforts to encourage potential higher education students to be immunized at the earliest possible time and at the lowest cost. However, the Coordinating Board has no jurisdiction to require that immunization information be included on high school transcripts.

Comment: Immunization Partnership stakeholders request clarification on whether a minor under the age of 18 need a parent or guardian to sign the conscientious objection form, or whether a student under the age of 18 may complete the form themselves.

Staff response: 25 TAC §97.62(2) requires that to claim an exclusion from immunization requirements for reasons of conscience, a signed affidavit must be presented by the child's parent or legal guardian. No change is required.

Comment: One comment was received from St. Mary's University requesting that there be no expiration for the DSHS conscientious objection form.

Staff Response: 25 TAC §97.62(2) requires that the DSHS conscientious objection form affidavit be valid for a two-year period. However, there is no requirement in the statute or rules requiring an expiration date for the form when submitted to institutions of higher education.

Comment: One comment was received from St. Mary's University requesting that there be more encouragement to have immunizations entered into the State Registry.

Staff response: No change recommended. The Coordinating Board has no authority to recommend that immunizations be entered into the State Registry. The Immunization Partnership or DSHS would be more appropriate agencies to provide the encouragement, as childhood immunizations are entered into the State Registry.

Comment: One comment was received from staff of Texas A&M University requesting that the Coordinating Board conscientious objection form be reinstated or that 4-year universities be included in the DSHS online exemption system. The rationale given was that while DSHS makes every effort to provide the form in a timely manner, there will be no way for a student to satisfy the requirement on the same day should they come to orientation without the proper proof of vaccination. The ability to download a form, notarize it and turn it in on the same day has been helpful to students. The removal of the downloadable form may cause Texas A&M University to have to deny registration to students while they wait to receive a form from the DSHS.

Staff response: This would require revision to the existing statute. Staff encourage institutions to work with DSHS on the implementation of the new portal.

Comment: One comment was received from St. Mary's University requesting removal of the exemption from the bacterial meningitis vaccine requirement for students taking less than 360 contact hours of continuing education. The rationale for the request is that contact hours are too difficult to track, and "people are not truly students of the university."

Staff response: A review of the Coordinating Board's inventory of continuing education courses that are 360 contact hours or more revealed approximately 228 programs ranging from 360-800 contact hours. The offerings include a broad range of programs, such as training for firefighters, massage therapists, peace officers, paramedics, and police academy. Students enrolled in these CE programs are more likely to be in the target group and demographic for students at risk for contracting the disease. No change required.

The amendments are adopted under Texas Education Code, Chapter 51, §51.9192(e), which provides the Coordinating Board with the authority to administer the programs.

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

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SUBCHAPTER U. NURSING FACULTY LOAN REPAYMENT ASSISTANCE PROGRAM

19 TAC §§21.630 - 21.638

The Texas Higher Education Coordinating Board (Coordinating Board) adopts new §§21.630 - 21.638, concerning the Nursing Faculty Loan Repayment Assistance Program, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5190).

The new sections codify new provisions resulting from the passage of House Bill 2099, 83rd Regular Session of the Texas Legislature. These provisions create a student loan repayment program for nursing faculty at Texas institutions of higher education. Funds will be available for this program only if gifts, grants, or donations are received, or if funds are reallocated for this purpose from the Physician Education Loan Repayment Program account at the end of a fiscal year. Therefore, applications will be considered only if funds are available at the end of the fiscal year.

Section 21.630 states the authority for the program and the purpose of the program, which is to improve access to nursing education programs by encouraging qualified nurses to serve as faculty at eligible institutions.

Section 21.631 provides definitions.

Section 21.632 describes eligibility requirements.

Section 21.633 states priorities of application acceptance, if there are not sufficient funds to award loan repayment assistance to all eligible nursing faculty whose applications are received by the published deadline.

Section 21.634 describes eligible lender and holder.

Section 21.635 describes eligible education loan.

Section 21.636 states when and how repayment awards are disbursed.

Section 21.637 states limitations in the number of years a nursing faculty member may receive loan repayment assistance, the maximum annual award amount, and the fact that applications will be considered only if funds are available for this purpose at the end of the state fiscal year.

Section 21.638 states that program information will be disseminated to eligible institutions and appropriate state agencies and professional associations.

No comments were received regarding the new section.

The new sections are adopted under Texas Education Code, §61.9828, which provides the Coordinating Board with the authority to adopt rules for the administration of Texas Education Code, §§61.9821 - 61.9828.

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

Filed with the Office of the Secretary of State on October 31, 2013.

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
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For further information, please call: (512) 427-6114

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SUBCHAPTER SS. WAIVER PROGRAMS FOR CERTAIN NONRESIDENT PERSONS

19 TAC §21.2263

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §21.2263, concerning Competitive Scholarships, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5192).

The amendments add language to §21.2263 to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. The amendments are in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.0601, which provides the Coordinating Board with the authority to adopt rules to implement these waiver programs.

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

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Bill Franz
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CHAPTER 22. GRANT AND SCHOLARSHIP PROGRAMS

SUBCHAPTER B. PROVISIONS FOR THE TUITION EQUALIZATION GRANT PROGRAM

19 TAC §§22.23, 22.25, 22.30

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §§22.23, 22.25, and 22.30, concerning Provisions for the Tuition Equalization Grant (TEG) Program, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5193).

The amendment to §22.23 clarifies that it is the Commission on Colleges of the Southern Association of Colleges and Schools that accredits institutions. New §22.23(a)(4) and (5) reflect new language from Senate Bill 976, passed by the 83rd Legislature, Regular Session, that enables the Board to grant certain institutions temporary permission to participate in the TEG program if they had previously participated in the program, lost their accreditation status, but have taken specific steps to reacquire that status.

The amendment to §22.25 indicates the provisions of that section will expire as of January 1, 2016. This is in accordance with Senate Bill 490, passed by the 83rd Legislature, Regular Session. The section relates to eligibility requirements for students who entered the program prior to fall 2005.

The amendment to §22.30 will update language to address institutions' authority to transfer funds between programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §61.229, which provides the Coordinating Board with the authority to adopt rules to implement the TEG Program.

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

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Bill Franz
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SUBCHAPTER D. PROVISIONS FOR THE TEXAS PUBLIC EDUCATIONAL GRANT PROGRAM

19 TAC §22.63

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.63, concerning their responsibilities regarding the Texas Public Educational Grant Program (TPEG), without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5194).

The amendments to §22.63 remove language that indicated the Coordinating Board is to review guidelines submitted by institutions for the administration of their TPEG funds. The authority for the Coordinating Board to review the guidelines was terminated as of September 1, 2013 through the passage of Senate Bill 5 by the 82nd Legislature. In order to remain in compliance with §11.2, Special Provisions Relating only to State Agencies of Higher Education, page 111-237 of the General Appropriations Act for 2014-2015 Biennium, however, institutions are still required to file copies of their guidelines with the Coordinating Board.

There were no comments received regarding the amendments.

The amendments are adopted under Senate Bill 5, Article 9; repealer, §9.01(b)(5), 82nd Legislative Session.

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

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Bill Franz
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SUBCHAPTER H. PROVISIONS FOR THE LICENSE PLATE INSIGNIA SCHOLARSHIP PROGRAM

19 TAC §22.144

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.144, concerning eligible students for the License Plate Insignia Scholarship Program, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5194).

The amendments to §22.144 add language to the program rules to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. This amendment is in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Transportation Code, §504.615, which provides the Coordinating Board with the authority to adopt rules to implement the License Plate Insignia Scholarship Program.

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

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Bill Franz
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SUBCHAPTER M. TEXAS EDUCATIONAL OPPORTUNITY GRANT PROGRAM

19 TAC §22.262

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.262, concerning Allocation and Reallocation of Funds, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5200).

This amendment will add language to the Texas Educational Opportunity Grant (TEOG) Program rules to address institutions' authority to transfer funds between programs as provided in Rider 22, page III-49 of the General Appropriations Act for the 2014-2015 Biennium.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §56.403, which provides the Coordinating Board with the authority to adopt rules to implement the TEOG Program.

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

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Bill Franz
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SUBCHAPTER P. EXEMPTION PROGRAM FOR CLINICAL PRECEPTORS AND THEIR CHILDREN

19 TAC §22.305, §22.306

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.305 and §22.306, concerning the Exemption Program for Clinical Preceptors and Their Children, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5201).

The amendments to these sections add language to the exemption program rules to indicate that, to be eligible, a preceptor (§22.305) or his or her child (§22.306) must meet Selective Service registration requirements or be exempt from them, unless attending a public community college. The amendments are in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.356, which provides the Coordinating Board with the authority to adopt rules to implement the Preceptor Exemption Program.

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

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Bill Franz
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SUBCHAPTER T. EXEMPTION FOR FIREFIGHTERS ENROLLED IN FIRE SCIENCE COURSES

19 TAC §22.518, §22.521

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.518 and §22.521, concerning the Exemption for Firefighters Enrolled in Fire Science Courses, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5201).

The amendments to §22.518 update the statutory citation for the Exemption Program, based on changes resulting from the passage of Senate Bill 220 by the 83rd Legislature.

The amendments to §22.521(a)(2) updates the eligibility requirements for volunteer firefighters to indicate an eligible volunteer firefighter currently, and for at least the past year, must be an active member of an organized volunteer fire department in this state participating in the Texas Emergency Services Retirement System or a retirement system established under the Texas Local Fire Fighters Retirement Act (article 6243e, Vernon's Texas Civil Statutes). This is done in accordance with Senate Bill 220, passed by the 83rd Legislature.

New §22.521(a)(3) indicates that, to be eligible, an otherwise eligible paid or volunteer firefighter must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. This amendment is in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues must meet Selective Service registration requirements or be exempt

from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.353(f), which provides the Coordinating Board with the authority to adopt rules to implement the Firefighter Exemption Program.

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

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Bill Franz
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SUBCHAPTER U. EXEMPTION FOR PEACE OFFICERS ENROLLED IN LAW ENFORCEMENT OR CRIMINAL JUSTICE COURSES

19 TAC §22.530, §22.533

The Texas Higher Education Coordinating Board (Coordinating Board) adopts amendments to §22.530 and §22.533, concerning the Exemption for Peace Officers Enrolled in Law Enforcement or Criminal Justice Courses, without changes to the proposed text as published in the August 16, 2013, issue of the *Texas Register* (38 TexReg 5202).

The amendments to §22.530 updates the statutory citation for the Exemption Program, based on changes resulting from the passage of Senate Bill 220 by the 83rd Legislature, Regular Session.

The first amendment to §22.533 clarifies that, to be eligible for an exemption a person must be employed as a peace officer by the State of Texas or by a political subdivision of the state. The second amendment to §22.533 adds language to the exemption program rules to indicate that, to be eligible, a person must meet Selective Service registration requirements or be exempt from them, unless the person is attending a public community college. This amendment is in accordance with Texas Education Code, §51.9095, which indicates a person receiving any state revenues, must meet Selective Service registration requirements or be exempt from them. Tuition revenues for public institutions other than community colleges are considered state revenues.

There were no comments received regarding the amendments.

The amendments are adopted under Texas Education Code, §54.3531(e), which provides the Coordinating Board with the authority to adopt rules to implement the Peace Officer Exemption Program.

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

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Bill Franz
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PART 2. TEXAS EDUCATION AGENCY

CHAPTER 102. EDUCATIONAL PROGRAMS

SUBCHAPTER FF. COMMISSIONER'S RULES CONCERNING EDUCATOR AWARD PROGRAMS

The Texas Education Agency (TEA) adopts the repeal of §102.1073 and new §102.1073, concerning educator award programs. The repeal is adopted without changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5830) and will not be republished. The new section is adopted with changes to the proposed text as published in the September 6, 2013, issue of the *Texas Register* (38 TexReg 5830). Section 102.1073 established procedures and adopted guidelines for the administration of the district awards for teacher excellence program. The adopted repeal and new section implement the requirements of the Texas Education Code (TEC), Chapter 21, Subchapter O, as amended by House Bill (HB) 1751, 83rd Texas Legislature, Regular Session, 2013, that requires the commissioner by rule to establish procedures and adopt guidelines for the administration of competitive awards for the educator excellence innovation program.

HB 1751, 83rd Texas Legislature, Regular Session, 2013, amended the TEC, Chapter 21, Subchapter O, establishing an educator excellence innovation program that competitively awards funding to districts interested in developing innovative structures to more effectively address educator recruitment, hiring, induction, support, evaluation, and professional development. The legislation requires that the commissioner establish the competitive grant award program and adopt rules for developing local educator excellence innovation plans and the awarding of funds. Because the legislation replaced what was the District Awards for Teacher Excellence, which is the program the current 19 TAC §102.1073 addresses, it is necessary to repeal that section in order to appropriately establish and implement the provisions of HB 1751, 83rd Texas Legislature, Regular Session, in rule.

Adopted new 19 TAC §102.1073 implements the TEC, Chapter 21, Subchapter O, by establishing the Educator Excellence Innovation Program. The new rule establishes provisions that: (1) establish the purpose of the program and requirement that interested school districts develop local educator excellence innovation plans in order to be considered for funding; (2) define

applicable words and terms; (3) provide details relating to district eligibility, application, and notification; (4) specify requirements for development of local educator excellence innovation plans, including the process to apply for a waiver for exemption from certain statutory requirements; (5) set forth conditions of operation, including specifications for districts to create and submit to the TEA measurable and objective performance measures; (6) address how the amount of grant awards would be determined; and (7) stipulate for which purposes award payments are to be allocated, including permissible actions districts may take in targeting award funds.

In response to public comment, the following changes were made at adoption.

Subsection (a)(1) was modified to add two purposes articulated in statute.

Subsection (b)(4); subsection (e)(2)(D)(i)(II), (E), (F), (G), and (I); and subsection (f)(1)(B) were modified by replacing the phrase "student performance" with "student learning and academic performance" for clarification.

Subsection (b)(4) was also modified to replace "pedagogy" with "instructional growth," to add the word "delivery" to "content," and to replace "school day" with "school week" for clarification. Subsection (e)(2)(G) was also modified by replacing "school day" with "school week" for clarification.

Proposed subsection (b)(6) was deleted because other changes at adoption made the definition inapplicable. Subsequent definitions were renumbered to reflect this change.

Subsection (e)(2)(D)(i) was modified by replacing "selecting" with "hiring" for clarification.

Subsection (e)(2)(E) was modified by replacing the phrase "new teachers" with "new to the district" for clarification.

Subsection (h)(2) was modified by adding the phrase "but is not limited to" for clarification.

The following changes were also made at adoption.

Subsection (c)(1)(E) was modified by changing the phrase "no less than three school years" to "four years" for consistency with statute.

Subsection (e)(8) was modified for grammatical correctness.

The adopted repeal and new section have no data collection requirements for school districts. The adopted new rule will provide guidelines and procedures for school districts and open-enrollment charter schools to follow in order to apply for the Educator Excellence Innovation Program. As with all Requests for Applications, grantees must agree to submit all information, application materials, and reports required by the TEA. Local school districts will be required to maintain documentation of the following if applying to the TEA for a waiver in accordance with the TEC, §21.7061: (1) approval by a vote of a majority of the members of the local school district board of trustees, (2) approval by a vote of a majority of the educators employed at each campus for which the waiver is sought, and (3) evidence of the timeframe and manner in which the vote of campus educators occurred.

The TEA determined that 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 began September 6, 2013, and ended October 7, 2013. Following is a summary of the public comments received and corresponding agency responses regarding proposed repeal of 19 TAC Chapter 102, Educational Programs, Subchapter FF, Commissioner's Rules Concerning Governor's Educator Excellence Award Programs, §102.1073, District Awards for Teacher Excellence, and new 19 TAC §102.1073, Educator Excellence Innovation Program.

Comment: Educate Texas commented that the repeal is necessary in order to establish a new rule based on legislation from the 83rd Texas Legislature, 2013.

Agency Response: The agency agrees.

Comment: Educate Texas commented that it is an improvement that this new program will distribute funds competitively in order to allow funds to go to districts that are prepared to address many of the challenges that come with shifting long standing educator policies.

Agency Response: The agency agrees.

Comment: The Texas Classroom Teachers Association (TCTA) commented that two of the purposes listed in statute need to be included in the rule and that language should be added to the end of §102.1073(a)(1) to that effect.

Agency Response: The agency agrees and has modified §102.1073(a)(1) to add language capturing the other two purposes of the program.

Comment: The TCTA commented that the rule needs to include definitions for "teacher" and "educator" since both those terms are used and are terms of art defined in statute. The TCTA also stated that it is important to include these definitions to reinforce the intent of the enabling statute that these programs are to be focused on full-time teachers, not other positions such as permanent substitutes.

Agency Response: The agency disagrees with including these additional definitions. Districts are encouraged to develop plans that best serve their needs for both instructional growth and improved student learning and academic performance, whether that includes only full-time teachers or all personnel on campus focused on student learning.

Comment: Educate Texas commented that the following terms could be listed under the definitions: high-achieving recent college graduates; high-performing education preparation programs; effective teachers; and highly successful former teachers.

Agency Response: The agency disagrees with including these additional definitions. Districts are best suited to determine the strategies that will allow them to achieve the recruitment and hiring goals within their local educator excellence innovation plan, and the definition of the suggested terms will vary based on the needs of the applying district and the plan submitted within its application.

Comment: The TCTA commented that they have concerns about the restrictiveness of the language in §102.1073(b)(4) regarding the allowable topics to be addressed in collaborations and suggested using the phrase "focused on instructional growth" instead of "on pedagogy, content, and the needs of student populations."

Agency Response: The agency agrees in part. The phrase "instructional growth" better captures the goal of the statute.

The agency disagrees, however, that the use of "instructional growth" alone makes the phrasing less restrictive and has maintained the language that reads "the needs of student populations." The agency has modified §102.1073(b)(4) to replace the phrase "throughout the school year on pedagogy, content, and the needs of student populations" with "throughout the school year on instructional growth, content delivery, and the needs of student populations."

Comment: The TCTA suggested changing the language in §102.1073(b)(4) that reads "position dedicated to improvement of pedagogy and student performance" by using "instructional growth" instead of "student performance."

Agency Response: The agency agrees that the phrase "instructional growth" better captures the goal of the statute over "pedagogy" and has modified language accordingly. The agency disagrees that the phrase "student performance" should be excluded, although "student performance" has been changed to read "improved student learning and academic performance" in response to another comment.

Comment: The TCTA commented that changing the words "school day" to "school week" everywhere it is mentioned, beginning with §102.1073(b)(4), will allow funding for teacher collaborations that occur immediately before or after the school day since that is when many collaborations occur.

Agency Response: The agency agrees and has modified language in §102.1073(b)(4) and (e)(2)(G) accordingly.

Comment: The TCTA commented that §102.1073(b)(6) defines "new teacher" as one with "less than two years of experience" while the statute talks about mentoring for teachers in their first three years of classroom teaching.

Agency Response: The agency agrees and has modified §102.1073(b) to remove the definition of "New teacher," as the phrase has been removed in response to another comment.

Comment: The TCTA commented that since the enabling statute specifies that "the agency shall approve plans that most comprehensively and innovatively address the purposes of the program as described by the Texas Education Code (TEC), §21.7011, so that the effectiveness of various plans in achieving those purposes can be compared and evaluated," these criteria should be captured in proposed new §102.1073(c)(3).

Agency Response: The agency disagrees and has maintained language in new §102.1073(c)(3) as published as proposed. The comprehensiveness of an applicant's plan is a qualitative matter best captured in the request for application (RFA) and evaluated in the application review process. District eligibility and the priority points awarded based on district demographic information are not qualitative.

Comment: The TCTA commented that language from the current district awards for teacher excellence (DATE) rule, proposed for repeal, was not carried forward in proposed new §102.1073(e)(2), requiring that a local plan must make information available to staff and the public before the beginning of the period on which the awards will be based on the methodology used to determine award amounts and timelines for the duration of a school district's participation in the grant program. The TCTA recommended that this language be included in the proposed new subsection (e). The TCTA further recommended strengthening the provisions in §102.1073(e)(2) by adding the phrase "and immediately after any amendments."

Agency Response: The agency disagrees. The educator excellence innovation program (EEIP) is an entirely new grant program. The DATE awards, amounts, and methodology to determine such awards referenced in repealed 19 TAC §102.1073 were qualities unique to the previous DATE program, and those qualities that necessitated such notifications did not carry over to the new EEIP.

Comment: The TCTA commented that the proposed new rule should include language requiring that the district-level planning committee approve any amendments to the local plan, specifically in §102.1073(e)(2).

Agency Response: The agency disagrees. Statute requires the district-level planning committee to develop the local educator excellence innovation plan. The only requirement in statute for a district to amend its plan is that the agency approve the amendment.

Comment: The TCTA commented that retention is in the enabling statute but not contained in §102.1073(e)(2) and recommended that this concept be added to the proposed rule, suggesting the following language: "establish research-based retention practices, including methods to improve working conditions identified by teachers as needing improvement, involving teachers in major campus decisions, and ensuring accountability for quality school leadership."

Agency Response: The agency disagrees. Retention is listed in §102.1073(a)(1) as a program purpose. The practices described in §102.1073(e)(2) are the actions that applicants would pursue that would lead to the improved retention of effective teachers.

Comment: Educate Texas commented that using the district-level planning and decision-making committee makes sense since they have a required teacher representative, but allowing districts to create a committee with teachers and other personnel interested in developing the plan should be considered.

Agency Response: The agency provides the following clarification. The proposed new rule does not prevent districts from forming committees or assigning personnel to assist with creating or developing plans. It only requires, in alignment with statute, that the district-level planning committee be the entity responsible for developing the plan.

Comment: The TCTA commented that the intent of the enabling statute was not limited to the recruitment of new teachers, and that the need to prepare teachers to succeed with a campus's student population would be applicable to more than just teachers new to the profession, but rather to all teachers new to the district. In addition, Educate Texas commented that the recruiting and selecting of new teachers is incongruous with demonstrating success in improving student performance and that the section needs to be clarified.

Agency Response: The agency agrees and has modified §102.1073(e)(2)(D)(i) to read "recruiting and hiring new teachers" and §102.1073(e)(2)(E) to read "preparing teachers new to the district."

Comment: Educate Texas commented that capturing the need for multiple measures but allowing the committee and district to determine the measures is a practice that is more likely to result in more buy-in from educators and lead to a better program.

Agency Response: The agency agrees.

Comment: The TCTA commented that the phrase "improved student learning and academic performance" is statutory language, and that the language should be used instead of the phrase "student performance" throughout the rule, especially in §102.1073(e)(2)(G).

Agency Response: The agency agrees and has changed the phrase "student performance" to "student learning and academic performance" throughout the rule.

Comment: The TCTA recommended deleting §102.1073(e)(4) since the enabling statute does not authorize this prohibition. The TCTA commented that the language does not serve any purpose.

Agency Response: The agency disagrees and has maintained language as published as proposed. Allowing individual appeals from local district decisions to approve and submit a district local educator excellence innovation plan and grant application would be inefficient, would impractically delay implementation, and would not be consistent with the purposes of the program.

Comment: The TCTA suggested including a requirement that program applicants demonstrate evidence of significant campus-wide (teacher) support for participating in the program.

Agency Response: The agency disagrees that such a provision should be placed in rule. The provision requiring teacher approval for participation in the previous DATE program is no longer consistent with statute.

Comment: The TCTA commented that the standards for granting or denying a waiver application are not articulated in the proposed rule, other than what the waiver application must contain, and should be added.

Agency Response: The agency disagrees. The determination for granting or denying a waiver request is based on a qualitative review of the need to waive the identified section of the TEC after the conditions of §102.1073(e)(8)(A) are met.

Comment: The TCTA commented that there is no language in the proposed rule specifying that neither the board of trustees of a school district nor the district superintendent may compel a waiver of rights under this section, as stated in statute, and recommended that language be added to this effect.

Agency Response: The agency disagrees. The conditions for waiver consideration and approval captured in §102.1073(e)(8)(A) clearly indicate that a waiver cannot be compelled by a district's board of trustees or the district's superintendent.

Comment: Educate Texas commented that the inclusion of waivers is bold and allows a flexibility that can provide some good lessons for the state.

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

Comment: The TCTA recommended that the proposed rule be updated to reflect the new terminology from the statute by changing the language in §102.1073(f)(1)(B) to read "include measures of student learning and academic performance and growth."

Agency Response: The agency agrees and has modified language in §102.1073(f)(1)(B) accordingly.

Comment: The TCTA suggested that, because campuses selected for participation in this program are likely to need targets uniquely tailored to meet the particular situations on that campus, the proposed language in §102.1073(f)(1)(D) be inclusive instead of exclusive, such that the words "including targets" be inserted before the phrase "that align to the components of the indices that comprise the state academic accountability system."

Agency Response: The agency disagrees and has maintained language as published as proposed. The language is inclusive and does not prevent the use of other targets of school district performance in addition to targets that align to the state academic accountability system.

Comment: Educate Texas commented that while the listed items under §102.1073(h)(2) reflect critical use of funds for the success of the program, the agency may consider allowing use of funds to include: (1) incentives for teachers to resign positions earlier in the year to assist district hiring; (2) hiring incentives for hard-to-staff teaching positions; and (3) professional development offerings to increase teacher effectiveness.

Agency Response: The agency disagrees that the listed use of grant funds in subsection (h) needs to include the items articulated in the comment, as rule does not exclude districts from using the funds in the manner suggested. The agency agrees, however, that the language in §102.1073(h)(2) could be interpreted as exclusive, and has modified subsection (h)(2) to include the phrase "may include, but is not limited to."

Comment: Educate Texas asked if the listed items under §102.1073(h)(2) could include salaries as allowable use of funds.

Agency Response: The agency provides the following clarification. The use of grant funds in accordance with §102.1073(h)(2)(F)-(H) could include salaries, provided that the salaries are for personnel dedicated to furthering the purposes of the local educator excellence innovation plan and that the applicant adheres to the "supplement not supplant" provision of the grant.

19 TAC §102.1073

The repeal is adopted under the Texas Education Code (TEC), §21.702, as amended by House Bill (HB) 1751, 83rd Texas Legislature, Regular Session, 2013, which requires the commissioner of education by rule to establish the program under which school districts, in accordance with local educator excellence innovation plans approved by the commissioner, receive competitive program grants from the agency for carrying out the purposes of the program as described by the TEC, §21.7011; TEC, §21.703, as amended by HB 1751, 83rd Texas Legislature, Regular Session, 2013, which requires the agency to provide each school district approved on a competitive basis under the TEC, Chapter 21, Subchapter O, with a grant in an amount determined by the agency in accordance with commissioner rule; TEC, §21.7061, as added by HB 1751, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules for a school district to apply for a waiver to exempt the district or one or more district campuses from certain statutory requirements if the waiver is necessary to carry out the purposes of the Educator Excellence Innovation Program; and TEC, §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Innovation Program.

The repeal implements the TEC, §§21.702, 21.703, 21.7061, and 21.707, as amended and added by HB 1751, 83rd Texas Legislature, Regular Session, 2013.

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

Filed with the Office of the Secretary of State on October 29, 2013.

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Cristina De La Fuente-Valadez
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Texas Education Agency
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For further information, please call: (512) 475-1497

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19 TAC §102.1073

The new section is adopted under the Texas Education Code (TEC), §21.702, as amended by House Bill (HB) 1751, 83rd Texas Legislature, Regular Session, 2013, which requires the commissioner of education by rule to establish the program under which school districts, in accordance with local educator excellence innovation plans approved by the commissioner, receive competitive program grants from the agency for carrying out the purposes of the program as described by the TEC, §21.7011; TEC, §21.703, as amended by HB 1751, 83rd Texas Legislature, Regular Session, 2013, which requires the agency to provide each school district approved on a competitive basis under the TEC, Chapter 21, Subchapter O, with a grant in an amount determined by the agency in accordance with commissioner rule; TEC, §21.7061, as added by HB 1751, 83rd Texas Legislature, Regular Session, 2013, which authorizes the commissioner to adopt rules for a school district to apply for a waiver to exempt the district or one or more district campuses from certain statutory requirements if the waiver is necessary to carry out the purposes of the Educator Excellence Innovation Program; and TEC, §21.707, which requires the commissioner of education to adopt rules necessary to administer the Educator Excellence Innovation Program.

The new section implements the TEC, §§21.702, 21.703, 21.7061, and 21.707, as amended and added by HB 1751, 83rd Texas Legislature, Regular Session, 2013.

§102.1073. Educator Excellence Innovation Program.

(a) Establishment of program.

(1) In accordance with the Texas Education Code (TEC), §21.702, the Educator Excellence Innovation Program (EEIP) is established as a grant program under which a school district may receive a competitive program grant from the Texas Education Agency (TEA) for the purposes of systematically transforming educator quality and effectiveness through improved and innovative school district-level recruitment, preparation, hiring, induction, evaluation, professional development, strategic compensation, career pathways, and retention; of systematically transforming district administrative practices to improve quality, effectiveness, and efficiency; and of using enhanced educator and administrative quality and effectiveness to improve student learning and academic performance in the manner provided by the TEC, §21.706. Provisions regarding implementation of the program are described in this section.

(2) Funds from this program will be distributed on a competitive basis to those selected school districts or open-enrollment charter schools that submitted an approved local educator excellence innovation plan developed in accordance with the TEC, §21.704, and subsection (e) of this section.

(b) Definitions.

(1) Districtwide--Every campus within the school district.

(2) Early hiring practices--District or local campus practices that attempt to ensure that staffing decisions for instruction-based personnel, including the discovery and filling of imminent vacancies, occur as early as possible, and no later than April 1, in preparation for the subsequent school year so that appropriate recruitment, induction, and support services can be provided to potential new hires.

(3) Grant award--Funds the TEA makes available to districts for grant purposes.

(4) Learning communities--Two or more educators, including classroom teachers, principals, assistant principals, instructional coaches, master teachers, mentors, district or campus content specialists, or any other position dedicated to instructional growth and improved student learning and academic performance, that collaborate regularly within the school week and throughout the school year on instructional growth, content delivery, and the needs of student populations.

(5) Local educator excellence innovation plan--A plan developed by a school district in accordance with the TEC, §21.704, and subsection (e) of this section that sets forth procedures for the school district's use of EEIP grant funds.

(6) School district--For the purpose of this section, the definition of school district includes an open-enrollment charter school.

(7) Selected campus--A campus identified by a school district to receive grant funds when the district innovation program is not implemented districtwide.

(c) District eligibility.

(1) A school district is eligible to apply for grant funds for the EEIP if the school district:

(A) completes and submits a Notice of Intent to Apply to the TEA by a date established by the commissioner of education;

(B) complies with all assurances in the Notice of Intent to Apply and grant application;

(C) develops a local educator excellence innovation plan for the district;

(D) participates in the required technical assistance activities established by the commissioner, including but not limited to establishing leadership teams, master teachers, mentor teachers, and instructional coaches and developing career pathways;

(E) agrees to participate for four years; and

(F) complies with any other activities set forth in the program requirements.

(2) An eligible school district must submit an application in a form prescribed by the commissioner.

(A) Each eligible applicant must meet all deadlines, requirements, and assurances specified in the application.

(B) The commissioner may waive any eligibility requirements specified in this subsection. All waiver requests must be submitted, along with a completed application, to the TEA and meet the requirements of the TEC, §7.056.

(3) Priority will be given to those districts that receive federal funding under Title I of the Elementary and Secondary Education Act of 1965 (20 United States Code, §6301, et seq.) and have at a majority of district campuses a student enrollment that is at least 50 percent educationally disadvantaged.

(d) Notification. The TEA will notify each applicant in writing of its selection or non-selection to receive a grant under the EEIP program.

(e) Local educator excellence innovation plan.

(1) In accordance with the TEC, §21.704, a school district that intends to participate in the EEIP and that meets the requirements specified in the TEC, Chapter 21, Subchapter O, and this section is required to submit a local educator excellence innovation plan to the TEA for approval. The TEA may only approve on a competitive basis a local educator excellence innovation plan that meets the program requirements specified in the TEC, §21.706, and this section.

(2) A local educator excellence innovation plan must:

(A) be developed by the district-level planning and decision-making committee under the TEC, Chapter 11, Subchapter F, for a school district that intends to participate in the program;

(B) be designed to carry out each purpose of the program as described by the TEC, §21.7011;

(C) identify campus participation districtwide or for selected campuses, as defined in subsection (b) of this section;

(D) describe the process for the following:

(i) recruiting and hiring new teachers:

(I) from the ranks of high-achieving recent college graduates and high-performing education preparation programs; or

(II) with a proven record of success in improving student learning and academic performance during prior teaching experience; and

(ii) adopting early hiring practices;

(E) describe the process for preparing teachers new to the district to succeed with the campus's student population, including providing meaningful, robust mentorship and professional collaboration opportunities for the purpose of improving student learning and academic performance;

(F) describe the process for providing timely and frequent diagnostic feedback to teachers on both pedagogical and professional performance based on multiple measures for the purpose of improving student learning and academic performance;

(G) describe the process for aligning embedded, contextual professional development opportunities within the school week to multiple measures of student learning and academic performance and teacher performance, including observation and evaluation results, so teachers can efficiently improve their practice for the purpose of improving student learning and academic performance;

(H) establish strategic career pathways for professional educators that provide for non-administrative opportunities and responsibilities; and

(I) establish compensation plans to recruit and retain effective teachers or highly successful former teachers and deploy them meaningfully to support campus collaboration and pedagogical improvement for the purpose of improving student learning and academic performance.

(3) A school district must act pursuant to its local school board policy for submitting a local educator excellence innovation plan and grant application to the TEA.

(4) A local decision to approve and submit a district local educator excellence innovation plan and grant application may not be appealed to the commissioner.

(5) A school district may renew its local educator excellence innovation plan for three consecutive school years without resubmitting a full grant application to the TEA.

(6) A school district may amend, with the TEA approval, its local educator excellence innovation plan in accordance with subsections (c) and (h) of this section for each school year the school district receives a program grant.

(7) A school district may apply to the commissioner in writing for a waiver to exempt the district or one or more district campuses from one or more of the statutory sections listed in the TEC, §21.7061(a).

(8) If a district applies for a waiver in accordance with the TEC, §21.7061, then:

(A) the application for the waiver must demonstrate:

(i) why waiving the identified section of the TEC is necessary to carry out the purposes of the program as described by the TEC, §21.7011;

(ii) approval for the waiver by a vote of a majority of the members of the school district board of trustees;

(iii) approval for the waiver by a vote of a majority of the educators employed at each campus for which the waiver is sought; and

(iv) evidence that the voting occurred during the school year and in a manner that ensured that all educators entitled to vote had a reasonable opportunity to participate in the voting;

(B) the commissioner shall notify in writing each district that applies for a waiver under this subsection whether the application has been granted or denied not later than April 1 of the year in which the application is submitted; and

(C) a waiver granted under this subsection expires when the waiver is no longer necessary to carry out the purposes of the program as described by the TEC, §21.7011, in accordance with the district's local educator excellence innovation plan.

(f) Conditions of operation.

(1) A school district must identify performance measures in the application for the success of the local educator excellence innovation plan. The performance measures must:

(A) directly relate to the program purposes as specified in the TEC, §21.7011;

(B) include measures of student learning and academic performance and growth;

(C) relate to improved teacher performance, growth, support, and retention;

(D) include targets for school district performance, and specifically for selected campuses if the district program is not districtwide, that align to the components of the indices that comprise the state academic accountability system; and

(E) be in accordance with program guidelines established by the commissioner.

(2) If a school district fails to faithfully implement the local educator excellence innovation plan as approved by the TEA, the commissioner may disqualify a school district from receiving a grant award from the EEIP the subsequent grant year.

(3) If a school district fails to accurately keep and appropriately report performance measures or other EEIP requirements, the commissioner may disqualify a school district from receiving a grant award from the EEIP the subsequent grant year.

(g) Amount of grant awards.

(1) In accordance with the TEC, §21.703, each school district selected to receive a competitively awarded grant under the EEIP is entitled to an award in an amount determined by considerations such as:

(A) the scope of the approved educator excellence innovation plan;

(B) the number of campuses within a district participating in the approved educator excellence innovation plan and the student enrollment of those campuses; and

(C) other considerations to allow for the successful implementation of the district's approved educator excellence innovation plan.

(2) Award amounts may vary from one year to the next.

(h) Award payments.

(1) A school district may use grant funds awarded to the district under this program only to carry out purposes of the program as described by the TEC, §21.7011, in accordance with the district's local educator excellence innovation plan.

(2) The use of grant funds may include, but is not limited to:

(A) implementation and administration of a high-quality mentoring program for teachers in a teacher's first three years of classroom teaching using mentors who meet the qualifications prescribed by the TEC, §21.458(b);

(B) implementation of a teacher evaluation system using multiple measures that include:

(i) the results of classroom observations, which may include student comments;

(ii) the degree of student educational growth and learning; and

(iii) the results of teacher self-evaluations;

(C) to the extent permitted under the TEC, Chapter 25, Subchapter C, restructuring of the school day or school year to provide for embedded and collaborative learning communities for the purpose of professional development;

(D) establishment of an alternative teacher compensation or retention system;

(E) implementation of incentives designed to reduce teacher turnover;

(F) funding for campus non-teaching positions dedicated to acting as coaches or master teachers to facilitate leadership team meetings and educator meetings designed to promote and implement proven strategies in the classroom and provide formative feedback to educators on a weekly basis;

(G) funding for instructional coaches; and

(H) implementation of strategies designed to bring prestige to the teaching profession, which may include but are not limited to establishing career pathways.

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

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TITLE 22. EXAMINING BOARDS

PART 11. TEXAS BOARD OF NURSING

CHAPTER 216. CONTINUING COMPETENCY

22 TAC §216.3

Introduction. The Texas Board of Nursing (Board) adopts an amendment to §216.3, relating to Requirements. Section 216.3(c)(3) is adopted with changes to the proposed text published in the August 16, 2013, issue of the *Texas Register.* (38 TexReg 5214).

Reasoned Justification. The Board formally proposed an amendment to §216.3(c)(3) in the August 16, 2013, issue of the *Texas Register.* In response to a written comment on the published proposal, the Board has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes that the changes address the commenter's stated concern.

Summary of Changes

The Board has changed some of the language in §216.3(c)(3) as adopted in response to a written comment. Although the commenter generally supports the requirement that an advanced practice registered nurse (APRN) who orders or prescribes controlled substances must complete an additional three contact hours of continuing education related to prescribing controlled substances every biennium, the commenter suggests that the rule contain a start date for when an APRN must show compliance with the new continuing education requirements. The Board agrees, and in response to this comment, has amended §216.3(c)(3) as adopted to clarify that the new continuing education requirements will apply in every licensure cycle after January 1, 2015.

Background

The amendment to §216.3(c)(3) is adopted pursuant to the Occupations Code §§157.0511, 301.151, 301.152, and 301.303 and requires APRNs who prescribe controlled substances to complete an additional three hours of continuing education related to prescribing controlled substances each biennium.

The adopted amendment is necessary for consistency with the requirements of adopted new 22 TAC Chapter 222, relating to Advanced Practice Registered Nurses with Prescriptive Authority. The adoption of new Chapter 222 is being published elsewhere in this issue of the *Texas Register.*

The Board proposed new Chapter 222 in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4990). The new chapter was primarily proposed in order to implement Senate Bill (SB) 406, enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. SB 406 was intended to improve the process by which physicians delegate and supervise the prescribing and/or ordering of drugs to APRNs and physician assistants. SB 406 also expands the scope of APRNs by authorizing APRNs to prescribe and/or order Schedule II controlled substances in certain practice settings. The proposed new chapter contained additional continuing education requirements for APRNs who order or prescribe controlled substances. The amendment to §216.3 was originally proposed and is now adopted for consistency with the continuing education requirements in new Chapter 222, which are also adopted by the Board in this issue of the *Texas Register.*

In addition to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium, adopted §216.3(c)(3) requires an APRN who orders or prescribes controlled substances to complete at least three additional hours of continuing education related to prescribing controlled substances in every licensure cycle after January 1, 2015.

The Board has determined that targeted continuing education is reasonably related to the expanded scope of practice authorized by SB 406. Pursuant to the provisions of SB 406, an APRN may order or prescribe Schedule II controlled substances under certain, specified conditions. The additional continuing education required under adopted §216.3(c)(3) is intended to ensure that APRNs who prescribe controlled substances stay abreast of current industry practices, enhance their professional competence, learn about new treatment regimens, and continually update their clinical skills.

Although APRNs will be required to complete additional continuing education under the adopted rule, an APRN may complete the additional continuing education in any area related to prescribing controlled substances. Thus, the Board anticipates that many different types of continuing education courses may meet the adopted new requirement. For instance, courses in pain management, content related to recognition of patients with addictions/pseudo addictions, and medical management of patients with conditions such as Attention Deficit Hyperactivity Disorder could appropriately meet the new continuing education requirements. So long as the content of a course relates to the prescription of controlled substances in a meaningful way, the Board anticipates that the course would be sufficient to meet the new continuing education requirements.

How the Adopted Section Will Function.

Adopted §216.3(c)(3) requires an APRN who holds prescriptive authority to complete, in addition to the requirements of §216.3(c), at least five additional contact hours of continuing education in pharmacotherapeutics. In every licensure cycle after January 1, 2015, the APRN who holds prescriptive authority and prescribes controlled substances must complete, in addition to the requirements of §216.3(c), at least three additional contact hours of continuing education related to prescribing controlled substances.

Summary of Comments and Agency Response.

Comment: A commenter representing the Coalition for Nurses in Advanced Practice supports requiring three additional hours of continuing education relating to prescribing controlled substances. The commenter believes the additional continuing education is consistent with discussions among legislators during the 83rd Texas Legislature as they debated and passed SB 406. The commenter believes the additional hours of continuing education helps APRNs continue to treat patients with the utmost care and safety. However, the commenter requests that the implementation of the new requirements become effective no earlier than January 1, 2015 to give APRNs time to identify and complete the coursework necessary to comply with the new requirements.

Agency Response: The Board agrees that requiring additional hours of continuing education is in the best interests of patients and the public and that APRNs who prescribe controlled substances should be educated regularly regarding the potential for controlled substance abuse and diversion and appropriate safeguards, regulations, and standards of care. Further, the Board agrees that the rule as adopted should establish a compliance date and has amended subsection (c)(3) of the rule text as suggested by the commenter.

Names of Those Commenting For and Against the Proposal. For: None.

Against: None.

For, with changes: The Coalition for Nurses in Advanced Practice.

Neither for nor against, with changes: None.

Statutory Authority.

The amendment is adopted under the Occupations Code §§157.0511, 301.151, 301.152, and 301.303.

Section 157.0511(b-1) provides that a physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only: (i) in a hospital facility-based practice under §157.054, in accordance with policies approved by the hospital 's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who: (A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or (B) is receiving services in the emergency department of the hospital; or (ii) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.152(a) states that "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist,

and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

Section 301.152(b) states that the Board shall adopt rules to: (i) license a registered nurse as an advanced practice registered nurse; (ii) establish: (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054; (B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054 on the receipt of evidence of completing the specialized education and training requirement under paragraph (A); and (C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under paragraph (B); and (iii) concurrently renew any license or approval granted to an advanced practice registered nurse under §301.152(b) and a license renewed by the advanced practice registered nurse under §301.301.

Section 301.152(c) states that at a minimum, the rules adopted under §301.152(b)(2) must: (i) require completion of pharmacology and related pathophysiology education for initial approval; and (ii) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under §301.303.

Section 301.303(a) states that the Board may recognize, prepare, or implement continuing competency programs for license holders under Chapter 301 and may require participation in continuing competency programs as a condition of renewal of a license. The programs may allow a license holder to demonstrate competency through various methods, including: (i) completion of targeted continuing education programs; and (ii) consideration of a license holder's professional portfolio, including certifications held by the license holder.

Section 301.303(c) states that, if the Board requires participation in continuing education programs as a condition of license renewal, the Board by rule shall establish a system for the approval of programs and providers of continuing education. Section 301.303(e) provides that the Board may adopt other rules as necessary to implement §301.303.

Section 301.303(g) states that the Board by rule may establish guidelines for targeted continuing education required under Chapter 301. The rules adopted under §301.303(g) must address: (i) the nurses who are required to complete the targeted continuing education program; (ii) the type of courses that satisfy the targeted continuing education requirement; (iii) the time in which a nurse is required to complete the targeted continuing education; (iv) the frequency with which a nurse is required to meet the targeted continuing education requirement; and (v) any other requirement considered necessary by the board.

§216.3. Requirements.

(a) A nurse must meet either the requirements of this subsection or subsection (b) of this section. A nurse may choose to complete 20 contact hours of continuing education within the two years immediately preceding renewal of registration in his or her area of practice. These hours shall be obtained by participation in programs approved by a credentialing agency recognized by the board. A list of these agencies/organizations may be obtained from the board's office or web site.

(b) A nurse must meet either the requirements of this subsection or subsection (a) of this section. A nurse may choose to demonstrate the achievement, maintenance, or renewal of an approved national nursing certification in the nurse's area of practice. A list of approved national nursing certification criteria may be obtained from the board's office or web site.

(c) Requirements for the Advanced Practice Registered Nurse. The licensee authorized by the board as an advanced practice registered nurse (APRN) is required to obtain 20 contact hours of continuing education or attain, maintain or renew the national certification recognized by the board as meeting the certification requirement for the advanced practice registered nurse's role and population focus area of licensure within the previous two years of licensure. National certification as discussed in this section will only meet the requirement for licensure renewal.

(1) The required hours are not in addition to the requirements of subsection (a) or (b) of this section.

(2) The 20 contact hours of continuing education must be appropriate to the advanced specialty area and role recognized by the board.

(3) The APRN who holds prescriptive authority must complete, in addition to the requirements of this subsection, at least five additional contact hours of continuing education in pharmacotherapeutics. In every licensure cycle after January 1, 2015, the APRN who holds prescriptive authority and prescribes controlled substances must complete, in addition to the requirements of this subsection, at least three additional contact hours of continuing education related to prescribing controlled substances.

(4) Category I Continuing Medical Education (CME) contact hours will meet requirements as described in this chapter.

(d) Forensic Evidence Collection.

(1) Each nurse licensed in Texas and employed in an emergency room (ER) setting on or after September 1, 2006 shall complete a minimum of two hours of continuing education relating to forensic evidence collection, as required by the Occupations Code §301.306 and this subsection:

(A) by September 1, 2008 for nurses to whom this requirement applies who are employed in an ER setting on or before September 1, 2006; or

(B) within two years of the initial date of employment in an ER setting. This requirement may be met through completion of approved continuing education activities, as set forth in §216.4 of this chapter (relating to Criteria for Acceptable Continuing Education Activity).

(2) This requirement shall apply to nurses who work in an ER setting that is:

(A) the nurse's home unit;

(B) an ER unit to which the nurse "floats" or schedules shifts; or

(C) a nurse employed under contractual, temporary, per diem, agency, traveling, or other employment relationship whose duties include working in an ER.

(3) A licensed nurse in Texas who would otherwise be exempt from CE requirements during the nurse's initial licensure or first renewal periods under §216.8(b) or (c) of this chapter (relating to Relicensure Process) shall comply with the requirements of this section. This is a one-time requirement for each nurse employed in an ER setting. In compliance with §216.7(b) of this chapter (relating to Responsibilities of Individual Licensee), each licensee is responsible for maintaining records of CE attendance. Validation of course completion in

Forensic Evidence Collection should be retained by the nurse indefinitely, even if a nurse changes employment.

(4) The minimum 2 hours of continuing education requirement shall include information relevant to forensic evidence collection and age or population-specific nursing interventions that may be required by other laws and/or are necessary in order to assure evidence collection that meets requirements under the Government Code §420.031 regarding use of a service-approved evidence collection kit and protocol. Content may also include but is not limited to documentation, history-taking skills, use of sexual assault kit, survivor symptoms, and emotional and psychological support interventions for victims.

(5) The required hours under this subsection are included in the continuing education requirements for nurses.

(e) A nurse who is 65 years old or older and who holds or is seeking to hold a valid volunteer retired (VR) nurse authorization in compliance with the Occupations Code §112.051 and §217.9(d) of this title (relating to Inactive Status):

(1) Must have completed at least 10 hours of continuing education as defined in this chapter during the previous biennium, unless the nurse also holds valid recognition as an advanced practice registered nurse or is a Volunteer Retired Registered Nurse (VR-RN) with advanced practice authorization in a given role and specialty in the State of Texas.

(2) Must have completed at least 20 hours of CE as defined in this chapter if authorized by the board in a specific advanced practice role and specialty. The 20 hours of CE must meet the same criteria as APRN CE defined under subsection (c) of this section. An APRN authorized as a VR-RN with APRN authorization may not hold prescriptive authority. This does not preclude a registered nurse from placing his/her APRN authorization on inactive status and applying for authorization only as a VR-RN.

(3) Is exempt from fulfilling targeted CE requirements except as required for volunteer retired advanced practice registered nurses.

(f) Tick-Borne Diseases. An APRN, whose practice includes the treatment of tick-borne diseases, is encouraged to participate in continuing education relating to the treatment of tick-borne diseases. The continuing education course(s) should contain information relevant to treatment of the disease within the role and population focus area applicable to the APRN and may represent a spectrum of relevant medical clinical treatment relating to tick-borne disease. Completion of continuing medical education in the treatment of tick-borne disease that meets the requirements of this subsection shall be credited as continuing education under this chapter.

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

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CHAPTER 222. ADVANCED PRACTICE REGISTERED NURSES WITH PRESCRIPTIVE AUTHORITY

22 TAC §§222.1 - 222.12

Introduction. The Texas Board of Nursing (Board) adopts the repeal of Chapter 222, §§222.1 - 222.12, concerning Advanced Practice Registered Nurses with Prescriptive Authority. The repeal is adopted without changes to the proposed text published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4989) and will not be re-published herein.

Reasoned Justification. This repeal is necessary because the Board is simultaneously adopting a new chapter concerning advanced practice registered nurses (APRNs) with prescriptive authority. The adopted new chapter, also entitled Advanced Practice Registered Nurses with Prescriptive Authority, is necessary to implement the provisions of Senate Bill (SB) 406, which was enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. The adopted new chapter also clarifies the Board's endorsement and enforcement processes and requires APRNs who prescribe controlled substances to complete an additional three hours of continuing education related to prescribing controlled substances each biennium. Although the Board is repealing existing Chapter 222 and adopting a new chapter in its place, many of the provisions of the former chapter are incorporated into the adopted new chapter and remain unchanged from their former structure. The Board has chosen to repeal the existing version of Chapter 222 and adopt a new chapter, primarily due to the many organizational changes of the chapter. The adoption of the new chapter is being published elsewhere in this issue of the *Texas Register,* in conjunction with this adopted repeal.

How the Sections Will Function. The adoption of the repeal will allow for the adoption of a new chapter that implements the requirements of SB 406, clarifies the Board's endorsement and enforcement processes, and implements new continuing education requirements for APRNs who order or prescribe controlled substances.

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

Statutory Authority. The repeal of §§222.1 - 222.12 is adopted under the Occupations Code §301.151.

Section 301.151 provides that the Board may adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders under Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

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

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22 TAC §§222.1 - 222.10

Introduction. The Texas Board of Nursing (Board) adopts new Chapter 222, §§222.1 - 222.10, concerning Advanced Practice Registered Nurses with Prescriptive Authority, in conjunction with the repeal of existing Chapter 222, also entitled Advanced Practice Registered Nurses with Prescriptive Authority. Sections 222.1, 222.3 -222.8 and 222.10 are being adopted with changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4990). Section 222.2 and §222.9 are being adopted without changes and will not be republished. The adopted repeal of Chapter 222 is being published elsewhere in this issue of the *Texas Register* without changes to the proposed text published in the August 9, 2013, issue of the *Texas Register.*

Reasoned Justification. The Board formally proposed new Chapter 222 in the August 9, 2013, issue of the *Texas Register* (38 TexReg 4990). A public hearing on the rule proposal was held on September 13, 2013. In response to written comments on the published proposal and comments received during the public hearing, the Board has changed some of the proposed language in the text of the rule as adopted. The changes, however, do not materially alter issues raised in the proposal, introduce new subject matter, or affect persons other than those previously on notice. Further, the Board believes that the changes address many of the commenters' stated concerns.

Summary of Changes

General Comments. The Board received a general comment on the proposed rule that the terminology used throughout the rule text should be standardized as much as possible, particularly regarding the terms "prescribe"; "prescription drug order"; "drug"; and "APRN with valid prescription authorization number"; "APRN with full licensure and valid authorization number"; and "APRN with full licensure". The Board agrees with the comment and has made changes throughout the rule text as adopted to ensure that consistent terminology is used throughout the rule. Further, as suggested by the commenter, the Board has replaced the terms "prescribe" with "order or prescribe"; "drugs" with "drugs or devices"; "prescription drug order" with "prescription drug order and medication order"; and "APRN with valid prescription authorization number"; "APRN with full licensure and valid authorization number"; and "APRN with full licensure" with "APRN with full licensure and a valid prescription authorization number".

Commenters also generally recommended removing references to the word "site" from the rule text because SB 406 eliminated the "site based" model and "site based" terminology is not used in SB 406. The Board agrees with the comments and has eliminated references to the term "site" from the rule text as adopted.

Commenters also recommended replacing the term "collaborating physician" in the rule text with "authorizing physician" or "delegating physician". In response to these comments, the Board has replaced the term "collaborating physician" with the term "delegating physician" in the rule text as adopted. The Board has determined that the term "delegating physician" is more consistent with the terminology of the Occupations Code Chapter 157 (relating to Authority of Physician to Delegate Certain Medical Acts) and SB 406.

§222.1

The Board has made several changes to §222.1 as adopted in response to comments. First, commenters stated that the proposed definitions of the terms "advanced practice registered nurse"; "controlled substance"; "dangerous drug"; "device"; "medication order"; "non-prescription drug"; "physician group practice"; "prescribe or order a drug or device"; "prescription drug"; and "prescriptive authority agreement" should track the language of SB 406 as closely as possible. The Board agrees with the comments and has amended the definitions in §222.1(4), (6), (7), (8), (15), (16), (17), (20), (21), and (22) as adopted in order to more closely track the statutory language of SB 406.

Another commenter suggested deleting the proposed definitions of the terms "durable medical equipment", "general hospital", and "special hospital" because these definitions are not necessary and/or are not relevant to an advanced practice registered nurse (APRN) prescribing or ordering drugs or devices under SB 406. In response to this comment, the Board has deleted definitions of the terms "durable medical equipment", "general hospital", and "special hospital" from §222.1 as adopted.

Commenters also stated that the proposed definitions of the terms "facility based practice" and "protocols or other written authorization" should be more consistent with the terminology used by the Texas Medical Board in its proposed rules relating to the implementation of SB 406 and with the intent of SB 406. In response to these comments, the Board has amended §222.1(10) as adopted for consistency with the definition of the term "facility based practice" proposed by the Texas Medical Board in its published rule proposal (38 TexReg 5985). Further, the Board has amended §222.1(23) as adopted to include additional language from the Texas Medical Board's proposed definition of the term "protocols" in order to promote consistency between the two rules, should the Texas Medical Board's proposed rule be adopted without changes.

§222.3

The Board has changed some of the language in §222.3 as adopted in response to comments. Although the commenters generally support the requirement that an APRN who orders or prescribes controlled substances must complete an additional three contact hours of continuing education related to prescribing controlled substances every biennium, the commenters suggested that the rule contain a start date for when an APRN must show compliance with the new continuing education requirements. Further, the commenters requested that the section clarify that the additional three hours of continuing education relating to prescribing controlled substances is in addition to the continuing education required only under 22 Texas Administrative Code §216.3(c)(1) and (2). In response to these comments, the Board has amended §222.3(b) as adopted to clarify that the new continuing education requirements will apply in every licensure cycle after January 1, 2015. Further, the Board has added additional language in §222.3(c) as adopted to clarify that the new continuing education requirements in §222.3(b) are in addition to the continuing education required under 22 Texas Administrative Code Chapter 216 for APRNs.

§222.4

The Board has modified the language in §222.4(a)(1)(B) and (2) as adopted in response to comments. One commenter stated that the proposed rule text should be amended to reflect that APRNs must comply with either the chart review requirements in the prescriptive authority agreement or the requirements in the facility based written protocols or other written authorization, but not both. A second commenter stated that the rules should reflect that the prescriptive authority agreement, and not the Board's rules, dictate the requirements for periodic face to face meetings, since the prescriptive authority agreement may include additional or more prescriptive requirements than the minimum requirements set forth in SB 406. The Board agrees with both comments and has amended §222.4(a)(1)(B) as adopted to clarify that APRNs must comply with either the chart review requirements and periodic face to face meetings set forth in the prescriptive authority agreement or the requirements set forth in the facility based written protocols or other written authorization, but not both. Further, because the Board agrees that a prescriptive authority agreement may contain additional or more prescriptive requirements than the requirements set forth in SB 406 (which establishes the minimal requirements for the agreement), the Board has amended §222.4(a)(2) as adopted to clarify that an APRN must comply with the requirements for chart reviews and periodic face to face meetings set forth in the prescriptive authority agreement.

§222.5

Commenters suggested re-wording §222.5(a) so that the subsection does not imply that a prescriptive authority agreement is the only delegation mechanism that can be used to authorize an APRN to prescribe or order drugs or devices. The Board agrees and has amended §222.5(a) as adopted to clarify that a prescriptive authority agreement is a mechanism by which an APRN may be delegated the authority to order or prescribe drugs or devices by a physician, but it is not the only mechanism for such lawful delegation.

Commenters also objected to the definition of "good standing" in the proposed rule text. Commenters expressed concerned that the proposed definition is too limiting and could categorically preclude some APRNs from executing prescriptive authority agreements, even if they are only under Board investigation, and a final disciplinary order has not been entered against them. The Board generally agrees with the comments and has modified the language in §222.5(b)(1) as adopted to clarify that an APRN's eligibility to enter into a prescriptive authority agreement will be based upon the licensure status of the APRN and whether the APRN's license and/or prescriptive authorization number is encumbered by a disciplinary action. The adopted standard is much less limiting than the standard originally proposed by the Board and is intended to alleviate some of the commenter's stated concerns.

Commenters also suggested that the language of proposed §222.5(c)(8) be re-worded to more closely reflect the statutory language and to ensure that the reader knows immediately that designating an alternate physician/s is not required by the rule. Another commenter also suggested that the proposed language track the language of SB 406 directly so that the specifics of the statute are clearly reflected in the rule. The Board agrees with the comments and has amended §222.5(c)(8) as adopted to track the language of the statute verbatim.

A commenter suggested adding language to the rule to emphasize that SB 406 authorizes credit for time a delegating physician and an APRN practiced together prior to the effective date of the bill. The commenter further stated that not addressing the credit in the rule may result in some APRNs not realizing the credit is available. The Board agrees and has amended the rule text as adopted in order to include a new subsection, §222.5(m), which tracks the language of the statute verbatim regarding credit for time a delegating physician and an APRN practiced together prior to the effective date of SB 406.

One commenter stated that §222.5(f) as proposed should be clarified to reflect that an alternate physician, if any, must be designated in the prescriptive authority agreement. Further, another commenter stated that the proposed rule text limits the participation of alternate physicians in quality assurance meetings to those in physician group practices only, although the language of the bill seems to permit a broader application. The Board agrees with the comments and has modified §222.5(f) as adopted to clarify that the designation of an alternate physician must be included in the prescriptive authority agreement. Further, the Board has removed the language from the subsection as adopted that may have suggested that the participation of an alternate physician is limited to only those in physician group practices.

One commenter suggested adding a statutory reference to §222.5(i) to make clear that a party may not waive, void, or nullify any provision of the rule or the statute. In response to this comment, the Board has included a reference to the Occupations Code §157.0512 and §157.0513 in §222.5(i) as adopted.

§222.6.

A commenter suggested removing the word "site" from the title of the section as proposed, as well as from the section itself. The Board agrees with the comment and has removed references to "site" throughout the entire rule as adopted.

Another commenter pointed out a typographical error in §222.6(a)(1) as proposed, and the Board has modified §222.6(a)(1) as adopted to correctly reference §222.5, as pointed out by the commenter.

One commenter also recommended modifying the formatting of the paragraph in order to clarify the Board's intent regarding whether written authorization used for prescriptive authority must be in accordance with facility policy and reviewed annually. Another commenter suggested specifically addressing the issue of prescriptive authority agreements in facility based practices in the section. The Board generally agrees with the comments and has amended §222.6(a) as adopted to clarify that an APRN with full licensure and a valid prescriptive authorization number may order or prescribe a drug or device at a facility based practice pursuant to either a prescriptive authority agreement or through protocols or other written authorization developed in accordance with facility medical staff policies. Further, §222.6(a)(1) as adopted clarifies that, if ordering or prescribing at a facility based practice pursuant to a prescriptive authority agreement, an APRN must maintain a prescriptive authority agreement that meets the requirements of §222.5, as adopted. Adopted §222.6(a)(2) has been amended to clarify the requirements that apply when an APRN orders or prescribes at a facility based practice pursuant to protocols or other written authorization developed in accordance with facility medical staff policies. The specific requirements are set forth in §222.6(a)(2)(A) - (D) as adopted. Further, §222.6(b) as adopted includes the definition of the term "protocols or other written authorization" for additional clarity in the subsection. Finally, the Board has

added new §222.6(c) as adopted to further clarify the use of prescriptive authority agreements in facility based practices. This new subsection is consistent with the statutory language of the Occupations Code §157.054(b-1).

§222.7.

A commenter suggested that the last sentence of proposed §222.7 be deleted because it appears inappropriate in the section. Another commenter stated that the proposed section should refer to the requirements of proposed §222.8 specifically because the requirements in §222.8 pertain to controlled substances. Based upon the comments received, the Board believes that the requirements of the section should be clarified. First, the Board has amended the title of the adopted section to specify that the section relates to an APRN's authority to order and prescribe non-prescription drugs, dangerous drugs, and devices. The Board has also modified the language of the section as adopted in an effort to clarify that an APRN may order or prescribe non-prescription drugs, dangerous drugs, and devices by meeting the standards and requirements of the adopted chapter. However, if the APRN wishes to also order or prescribe controlled substances, the adopted language of the section makes clear that the APRN must also meet the additional requirements of adopted §222.8, which sets forth the specific requirements that the APRN must meet in order to be eligible to order or prescribe controlled substances.

§222.8.

Based upon comments regarding §222.7 as proposed, and the changes made by the Board in response to those comments, the Board has also modified the title of §222.8 as adopted in order to further distinguish the specific requirements that apply to an APRN who wishes to order and prescribe controlled substances.

Additionally, one commenter stated that §222.8(a) and (d) as proposed are unnecessarily redundant and recommends deleting subsection (d) from the rule text. The Board agrees with the comment and has deleted subsection(d) from the adopted rule text.

§222.10.

One commenter recommended changing the term "sign prescription drug orders" in proposed §222.10(f) to "order or prescribe" for consistency with SB 406. The Board agrees with this comment and has made the suggested change in §222.10(f) as adopted.

The Board declines to make the commenters' remaining requested changes and the Board has specifically addressed those comments in the portion of this rule adoption entitled "Summary of Comments and Agency Response."

Background

The new chapter is adopted under the authority of the Occupations Code Chapter 157 and §§301.151, 301.152, 301.452, 301.453, and 301.4531 and is necessary to implement Senate Bill (SB) 406, which was enacted by the 83rd Texas Legislature, Regular Session, effective November 1, 2013. The adopted new chapter also clarifies the Board's endorsement and enforcement process and requires APRNs who prescribe controlled substances to complete an additional three hours of continuing education related to prescribing controlled substances each biennium. Although the Board is repealing existing Chapter 222 and adopting a new chapter in its place, many of the provisions of the former chapter are incorporated into the adopted new chapter and remain unchanged from their former structure. The Board has chosen to repeal the existing version of Chapter 222 and adopt a new chapter, primarily due to the many organizational changes of the chapter.

SB 406

Many of the changes in the adopted new chapter result from the enactment of SB 406. SB 406 was intended to improve the process by which physicians delegate and supervise the prescribing or ordering of drugs to APRNs and physician assistants. Further, SB expands the scope of APRNs by authorizing APRNs to prescribe or order Schedule II controlled substances in certain practice settings. SB 406 also eliminates alternate practice site and primary practice site requirements and authorizes the use of a prescriptive authority agreement for physician delegation of ordering and/or prescribing drugs and devices. Further, SB 406 continues to recognize the use of protocols or other written authorization for physician delegation of ordering and/or prescribing drugs and devices in facility based practices. Finally, SB 406 requires collaboration among the Board, the Texas Medical Board, and the Texas Physician Assistant Board regarding the sharing of disciplinary information and maintaining public lists of practitioners who have entered into prescriptive authority agreements.

Collaboration

The adopted provisions were considered by the Advanced Practice Nursing Advisory Committee (Committee) on May 31, 2013. The Committee reviewed SB 406 and considered its impact on the prescriptive authority of APRNs in this state. Following its discussions of the proposed new chapter and SB 406, the Committee voted to approve the proposed new provisions and recommended their adoption to the Board, with one exception. Instead of requiring additional continuing education for APRNs who prescribe controlled substances, the Committee voted to recommend that the Board encourage, but not require, APRNs who prescribe controlled substances to complete pharmacotherapeutics continuing education activities related to controlled substances.

Board Staff also met with Staff of the Texas Medical Board to discuss the provisions of SB 406 and their implication. Following preliminary discussions, Board Staff felt that the provisions of the proposed new chapter were consistent with the Texas Medical Board's interpretation and projected implementation of SB 406. As a result, Staff recommended the proposed new requirements to the Board at its July 2013 meeting. The Board considered the proposed new requirements, the Committee's recommendations, and Staff's recommendations at its July 2013 meeting. Following discussion and deliberation, the Board determined that it was appropriate to require additional continuing education for APRNs who prescribe controlled substances. The Board then voted to approve the publication of the proposed new chapter in the *Texas Register.*

The proposal of new Chapter 222 and the proposed repeal of existing Chapter 222 was published in the *Texas Register* on August 9, 2013, and the public comment period ended on September 9, 2013. A rule hearing was held on September 13, 2013, in order to receive public testimony on the proposed new chapter. The Board considered the written comments received on proposed new Chapter 222 and the oral testimony given at the September 13, 2013, rule hearing at its October 17-18, 2013, meeting. After discussion and deliberation, the Board voted to approve the adoption of new Chapter 222, with changes from

the published rule text. Further, the Board voted to approve the adoption of the repeal of existing Chapter 222, without changes from the published proposal.

Overview of New Chapter 222.

Adopted new §222.1 sets forth the definitions of the terms to be used throughout the new chapter.

Adopted new §222.2 sets forth the requirements that an APRN must meet in order to receive a prescription authorization number. The requirements in adopted new §222.2 are similar to the former provisions of Chapter 222, except that the requirements related to practice sites have been eliminated from the adopted rule for consistency with the provisions of SB 406. Under the adopted section, applicants must have full licensure from the Board to practice as an APRN; must file an application with the Board; and must submit evidence of the successful completion of specified graduate level courses to the Board. Further, adopted new §222.2 clarifies that an APRN applying for prescriptive authority in this state based upon his/her advanced practice licensure and prescriptive authority issued in another state (by endorsement) must provide evidence to the Board that all education requirements for prescriptive authority in this state have been met.

Adopted new §222.3 sets forth the requirements that an APRN must meet in order to renew his/her prescriptive authority. In addition to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium, the adopted new section requires APRNs who order or prescribe controlled substances to complete at least three additional hours of continuing education related to prescribing controlled substances in every licensure cycle after January 1, 2015.

The Board has determined that targeted continuing education is reasonably related to the expanded scope of practice authorized by SB 406. Pursuant to the provisions of SB 406, an APRN may order or prescribe Schedule II controlled substances under certain, specified conditions. The additional continuing education required under adopted §222.3(b) is intended to ensure that APRNs who prescribe controlled substances stay abreast of current industry practices, enhance their professional competence, learn about new treatment regimens, and continually update their clinical skills.

Although APRNs will be required to complete additional continuing education under the adopted rule, an APRN may complete the additional continuing education in any area related to prescribing controlled substances. Thus, the Board anticipates that many different types of continuing education courses may meet the adopted new requirement. For instance, courses in pain management, content related to recognition of patients with addictions/pseudo addictions, and medical management of patients with conditions such as Attention Deficit Hyperactivity Disorder could appropriately meet the new continuing education requirements. So long as the content of a course relates to the prescription of controlled substances in a meaningful way, the Board anticipates that the course would be sufficient to meet the new continuing education requirements.

Adopted new §222.4 addresses the minimum standards applicable to an APRN who prescribes or orders drugs or devices pursuant to physician delegation. SB 406 authorizes the use of a prescriptive authority agreement to effectuate such delegation, in addition to the use of protocols or other written authorization in a facility based practice. Consistent with the bill's requirements, the adopted provisions of §222.4 require the use of a prescriptive authority agreement in all settings where an APRN seeks to order or prescribe drugs or devices through physician delegation, except for facility based practices, where either a prescriptive authority agreement or protocols or other written authorization may be utilized.

In settings where a prescriptive authority agreement is utilized, SB 406 prescribes the particular requirements that the prescriptive authority agreement must meet. In addition to several other requirements, SB 406 requires periodic face to face meetings between the APRN and the physician who delegates the act of prescribing and/or ordering drugs and devices to the APRN through a prescriptive authority agreement. While SB 406 sets forth the minimum requirements that must be included in a prescriptive authority agreement, the parties to a prescriptive authority agreement may also include more stringent provisions in the agreement, including additional provisions related to chart reviews and periodic face to face meetings. As such, adopted new §222.4 makes clear that an APRN must comply with all of the requirements of the prescriptive authority agreement, including those related to chart review and periodic face to face meetings. Further, for an APRN who orders or prescribes drugs or devices under facility based protocols or other written authorization, adopted new §222.4 clarifies that the APRN must comply with the requirements set forth in the protocols or other written authorization. Also pursuant to SB 406, adopted new §222.4 requires an APRN to cooperate with Board representatives or representatives from the Texas Medical Board during any audit or inspection relating to the operation and implementation of a prescriptive authority agreement.

The remaining provisions of adopted new §222.4 contain essentially the same requirements as former Chapter 222 regarding prescription information, generic substitution, off label use, and prescribing medications for sexually transmitted diseases for partners of an established patient.

Adopted new §222.5 contains the requirements applicable to a prescriptive authority agreement. A prescriptive authority agreement is the mechanism by which a physician may delegate the authority to order or prescribe drugs or devices to an APRN in all practice settings, except for facility based practices, where protocols or other written authorization may also be utilized. SB 406 sets forth the specific requirements that apply to the use of a prescriptive authority agreement. Consistent with the provisions of SB 406, adopted new§222.5 sets forth the minimum requirements that a prescriptive authority agreement must meet. Further, the adopted section requires an APRN to be in good standing with the Board in order to enter into a prescriptive authority agreement. "Good standing", as defined under adopted new §222.5(b)(1), means that an APRN's license and prescriptive authorization number are not encumbered by a disciplinary action.

Further, although a prescriptive authority agreement must meet the requirements of adopted new §222.5, the agreement may also include additional provisions or information agreed to by the delegating physician and APRN, including any provision that may have been previously included in protocols or other written authorization.

The provisions of adopted new §222.6 set forth the requirements that apply when an APRN wishes to order or prescribe a drug or device at a facility based practice pursuant to physician delegation. Both SB 406 and the adopted new chapter recognize that either a prescriptive authority agreement or protocols or other written authorization may be utilized in a facility based practice

for physician delegation. The provisions of adopted new §222.6 set forth the requirements applicable to the use of each mechanism in a facility based practice.

Under the provisions of adopted new §222.6(a)(1), if an APRN orders or prescribes at a facility based practice pursuant to a prescriptive authority agreement, the APRN must maintain a prescriptive authority agreement that meets the requirements of adopted new §222.5. If an APRN orders or prescribes at a facility based practice pursuant to protocols or other written authorization, the APRN must meet the requirements set forth in adopted new §222.6(a)(2). Further, adopted new §222.6(c) has been added to the rule as adopted in order to clarify the delegation of prescribing or ordering drugs or devices at a facility based practice.

Adopted new §222.7 clarifies that APRNs with a valid prescription authorization number are eligible to order or prescribe non-prescription drugs, dangerous drugs, and devices, including durable medical equipment, provided that the APRN meets the applicable standards and requirements of the chapter. However, in order for the APRN to also be eligible to order and/or prescribe controlled substances, the adopted rule makes clear that the APRN must also meet the requirements of adopted new §222.8.

Adopted new §222.8 sets forth the requirements that apply when an APRN wishes to order or prescribe controlled substances. Consistent with the former provisions of Chapter 222, an APRN may order or prescribe controlled substances in Schedules III through V, pursuant to certain limitations. First, the prescription may not exceed a 90 day supply, including a refill of the prescription. The adopted new section clarifies that this limitation applies to a prescription, either in the form of a new prescription or in the form of a refill, for the same controlled substance that a patient has been previously issued within a 90 day time period. Therefore, an APRN may not circumvent the limitations of this section by writing a new prescription for the same controlled substance for longer than 90 days without consulting with the APRN's delegating physician and documenting the consultation in the patient's chart. Limitations relating to the prescription of a controlled substance for a child less than two years of age remain unchanged from the former provisions of Chapter 222.

SB 406 authorizes APRNs to prescribe Schedule II controlled substances in certain circumstances. Consistent with this expanded authority, adopted new §222.8(c) authorizes APRNs to prescribe Schedule II controlled substances in a hospital facility-based practice for a patient who has been admitted to the hospital for an intended length of stay of 24 hours or greater or is receiving services in the emergency department of the hospital or as part of the plan of care for a patient who is receiving hospice treatment from a qualified hospice provider.

Adopted new §222.9 contains substantially similar requirements as former Chapter 222, with slight modifications made to address the use of prescriptive authority agreements. The provisions of this section address the requirements for obtaining and distributing drug samples.

Finally, new adopted §222.10 clarifies that an APRN may be subject to disciplinary action by the Board for ordering and/or prescribing in a manner that is inconsistent with the standard of care and/or for violating a provision of the adopted new chapter. Further, the new section outlines examples of behavior that may subject an APRN to discipline and identifies the procedures that will be followed if an APRN becomes the subject of a Board investigation and/or receives a disciplinary order from the Board. The remaining provisions of new §222.10 also set forth the responsibilities of the Board, the Texas Medical Board, and the Texas Physician Assistant Board regarding the regulation of delegation and supervision of prescriptive authority.

How the Adopted Sections Will Function.

The title of new Chapter 222 is Advanced Practice Registered Nurses with Prescriptive Authority.

Adopted new §222.1 sets forth the definitions used in the new chapter.

Adopted new §222.2(a) sets forth the requirements an RN must meet in order to be issued a prescription authorization number to prescribe or order a drug or device. Specifically, an RN must have full licensure from the Board to practice as an APRN and file a complete application for prescriptive authority and submit such evidence as required by the Board to verify successful completion of graduate level courses in advanced pharmacotherapeutics, advanced pathophysiology, advanced health assessment, and diagnosis and management of diseases and conditions within the role and population focus area.

Nurse Practitioners, Nurse-Midwives, and Nurse Anesthetists will be considered to have met the course requirements of adopted new §222.2 on the basis of courses completed in the advanced practice nursing educational program. Clinical Nurse Specialists must submit documentation of successful completion of separate, dedicated, graduate level courses in the content areas described in adopted new §222.2. These courses shall be academic courses with a minimum of 45 clock hours per course from a nursing program accredited by an organization recognized by the Board. Clinical Nurse Specialists who were previously approved by the Board as APRNs by petition on the basis of completion of a non-nursing master's degree shall not be eligible for prescriptive authority.

Adopted new §222.2(b) provides that APRNs applying for prescriptive authority on the basis of endorsement of advanced practice licensure and prescriptive authority issued in another state must provide evidence that all education requirements for prescriptive authority in this state have been met.

Adopted new §222.3(a) requires an APRN to renew his/her privilege to sign prescription drug orders and medication orders in conjunction with his/her RN and advanced practice license renewal application.

Adopted new §222.3(b) requires an APRN seeking to maintain his/her prescriptive authority to complete at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium. For APRNs who order or prescribe controlled substances, adopted new §222.3(b) requires the APRN to complete at least 3 additional contact hours of continuing education related to prescribing controlled substances in every licensure cycle after January 1, 2015.

Adopted new §222.3(c) makes clear that the continuing education requirements in new §222.3(b) are in addition to the continuing education required under Chapter 216 of this title (relating to Continuing Competency) for APRNs.

Adopted new §222.4(a) provides that an APRN with full licensure and a valid prescription authorization number is authorized to order or prescribe only those drugs or devices that are: (i) authorized by a prescriptive authority agreement or, if practicing in a facility-based practice, authorized by either a prescriptive

authority agreement or protocols or other written authorization; and (ii) ordered or prescribed for patient populations within the accepted scope of professional practice for the APRN's license. Further, the APRN must comply with the requirements for chart reviews and periodic face to face meetings set forth in the prescriptive authority agreement or comply with the requirements set forth in protocols or other written authorization, if ordering or prescribing drugs or devices under facility based protocols or other written authorization.

Adopted new §222.4(b) requires the format and essential elements of a prescription drug order to comply with the requirements of the Texas State Board of Pharmacy. Further, the following information must be provided on each prescription: (i) the patient's name and address; (ii) the name, strength, and quantity of the drug to be dispensed; (iii) directions to the patient regarding taking of the drug and the dosage; (iv) the intended use of the drug, if appropriate; (v) the name, address, and telephone number of the physician with whom the APRN has a prescriptive authority agreement or facility-based protocols or other written authorization; (vi) address and telephone number of the site at which the prescription drug order was issued; (vii) the date of issuance; (viii) the number of refills permitted; (ix) the name, prescription authorization number, and original signature of the APRN who authorized the prescription drug order; and (x) the United States Drug Enforcement Administration numbers of the APRN and the delegating physician, if the prescription drug order is for a controlled substance.

Adopted new §222.4(c) permits an APRN to authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to generic substitution.

Adopted new §222.4(d) permits an APRN to order or prescribe medications for sexually transmitted diseases for partners of an established patient, if the APRN assesses the patient and determines that the patient may have been infected with a sexually transmitted disease. However, nothing in adopted §222.4(d) requires the APRN to issue prescriptions for partners of patients.

Adopted new §222.4(e) permits an APRN to order or prescribe only those medications that are FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial. "Off label" use, or prescription of FDA-approved medications for uses other than that indicated by the FDA, is only permitted when such practices are: (i) within the current standard of care for treatment of the disease or condition; and (ii) supported by evidence-based research.

Adopted new §222.4(f) requires the APRN with full licensure and a valid prescriptive authorization number to cooperate with representatives of the Board and the Texas Medical Board during an inspection and audit relating to the operation and implementation of a prescriptive authority agreement.

Adopted new §222.5(a) defines the prescriptive authority agreement as a mechanism by which an APRN is delegated the authority to order or prescribe drugs or devices by a physician.

Adopted new §222.5(b) states that an APRN with full licensure and a valid prescriptive authorization number and a physician are eligible to enter into or be parties to a prescriptive authority agreement only if the APRN holds an active license to practice in this state that is in good standing. An APRN is in good standing if the APRN's license and prescriptive authorization number are not encumbered by a disciplinary action. Further, an APRN with prescriptive authority and a physician are eligible to enter into or be parties to a prescriptive authority agreement only if the APRN (i) is not currently prohibited by the Board from executing a prescriptive authority agreement; and (ii) before executing the prescriptive authority agreement, the APRN and the physician disclose to the other prospective party to the agreement any prior disciplinary action by the applicable licensing board.

Adopted new §222.5(c) requires a prescriptive authority agreement to, at a minimum: (i) be in writing and signed and dated by the parties to the agreement; (ii) state the name, address, and all professional license numbers of the parties to the agreement; (iii) state the nature of the practice, practice locations, or practice settings; (iv) identify either the types or categories of drugs or devices that may be prescribed or ordered or the types of categories of drugs or devices that may not be prescribed or ordered; (v) provide a general plan for addressing consultation and referral; (vi) provide a plan for addressing patient emergencies; (vii) state the general process for communication and the sharing of information between the APRN and the physician related to the care and treatment of patients; (viii) if alternate physician supervision is to be utilized, designate one ore more alternate physicians who may: (A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of the Occupations Code Chapter 157, Subchapter B; and (B) participate in the prescriptive authority quality assurance and improvement plan meetings required under the Occupations Code §157.0512; and (ix) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes chart review, with the number of charts to be reviewed determined by the APRN and physician and periodic face to face meetings between the APRN and the physician at a location agreed upon by both providers.

Adopted new §222.5(d) requires the periodic face to face meetings described by new §222.5(c) to: (i) include the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals and discussion of patient care improvement; and (ii) be documented and occur, except as provided by new §222.5(d), at least monthly until the third anniversary of the date the agreement is executed; and at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet; or (iii) if during the seven years preceding the date the agreement is executed, the APRN for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision, at least monthly until the first anniversary of the date the agreement is executed; and at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet.

Adopted new §222.5(e) makes clear that, although a prescriptive authority agreement must include the information specified by new §222.5, the agreement may include other provisions agreed to by the APRN and physician, including provisions that were previously contained in protocols or other written authorization.

Adopted new §222.5(f) requires an APRN to participate in quality assurance meetings with an alternate physician in a physician group practice, if the alternate physician has been designated in

the prescriptive authority agreement to conduct and document the meeting.

Adopted new §222.5(g) states that a prescriptive authority agreement is not required to describe the exact steps that an APRN must take with respect to each specific condition, disease, or symptom.

Adopted new §222.5(h) requires an APRN who is a party to a prescriptive authority agreement to retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

Adopted new §222.5(i) prohibits a party to a prescriptive authority agreement from waiving, voiding, or nullifying the provisions of the rule or the Occupations Code §157.0512 or §157.0513 by contract.

Adopted new §222.5(j) states that, in the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the respective licensing board, the individual shall immediately notify the other party to the prescriptive authority agreement.

Adopted new §222.5(k) requires the prescriptive authority agreement and any amendments to be reviewed at least annually, dated, and signed by the parties to the agreement. Further, the prescriptive authority agreement must be made available to the Board, the Texas Medical Board, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of the request from the respective licensing board.

Adopted new §222.5(l) states that the prescriptive authority agreement should promote the exercise of professional judgment by the APRN commensurate with the APRN's education and experience and the relationship between the APRN and the physician.

Adopted new §222.5(m) states that the calculation under the Occupations Code Chapter 157 of the amount of time an APRN has practiced under the delegated prescriptive authority of a physician under a prescriptive authority agreement shall include the amount of time the APRN practiced under the delegated prescriptive authority of that physician before November 1, 2013.

Adopted new §222.6(a) states that an APRN with full licensure and a valid prescriptive authorization number may order or prescribe a drug or device at a facility based practice pursuant to a prescriptive authority agreement or through protocols or other written authorization developed in accordance with facility medical staff policies.

Adopted new §222.6(a)(1) provides that, if ordering or prescribing at a facility-based practice pursuant to a prescriptive authority agreement, the APRN must maintain a prescriptive authority agreement that meets the requirements of §222.5.

Adopted new §222.6(a)(2) sets forth the requirements that must be met if an APRN is ordering or prescribing at a facility based practice pursuant to protocols or other written authorization developed in accordance with facility medical staff policies.

Adopted new §222.6(b) refers to the definition of "protocols or other written authorization".

Adopted new §222.6(c) includes language that is consistent with the Occupations Code §157.054(b-1) regarding the use of prescriptive authority agreements at facility based practices.

Adopted new §222.7 provides that an APRN who has been issued full licensure and a valid prescription authorization number by the Board may order or prescribe non-prescription drugs, dangerous drugs, and devices, including durable medical equipment, in accordance with the standards and requirements set forth in the adopted new chapter. However, if the APRN wishes to also order or prescribe controlled substances, the APRN must also meet the additional requirements of §222.8.

Adopted new §222.8(a) permits APRNs with full licensure and valid prescription authorization numbers to obtain authority to order and prescribe certain categories of controlled substances. However, the APRN must comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to, requirements set forth by the Texas Department of Public Safety and the United States Drug Enforcement Administration.

Adopted new §222.8(b) permits orders and prescriptions for controlled substances in Schedules III through V to be authorized, provided that certain, identified criteria are met.

Adopted new §222.8(c) sets forth the conditions under which an APRN may order and/or prescribe Schedule II controlled substances, consistent with the expanded authority authorized by SB 406.

Adopted new §222.9 permits an APRN with full licensure and a valid prescription authorization number to request, receive, possess, and distribute prescription drug samples provided: (i) all requirements for the APRN to order and prescribe medications and devices are met; (ii) a prescriptive authority agreement or facility-based protocols or other written authorization authorizes the APRN to order and prescribe the medications and devices; (iii) the samples are for only those drugs or devices that the APRN is eligible to order or prescribe in accordance with the standards and requirements set forth in this chapter; and (iv) a record of the sample is maintained and samples are labeled as specified in the Dangerous Drug Act (Chapter 483, Health and Safety Code) or the Texas Controlled Substances Act (Chapter 481, Health and Safety Code) and 37 Texas Administrative Code Chapter 13.

Adopted new §222.10(a) states that any APRN who violates the sections of the Board's rules or orders or prescribes in a manner that is not consistent with the standard of care shall be subject to removal of the authority to order or prescribe under adopted new §222.10 and disciplinary action by the Board.

Behaviors associated with ordering and prescribing medications for which the Board may impose disciplinary action include, but are not limited to: (i) ordering, prescribing, dispensing, or administering medications or devices for other than evidenced based therapeutic or prophylactic purposes that meet the minimum standards of care; (ii) ordering, prescribing, or dispensing medications or devices for personal use; (iii) failing to properly assess and document the assessment prior to ordering, prescribing, dispensing, or administering a medication or device; (iv) selling, purchasing, trading, or offering to sell, purchase, or trade a prescription drug sample; and (v) delegation of authority to any other person to order, prescribe, or dispense of an order or prescription for a drug or device.

Adopted new §222.10(b) states that failure to cooperate with a representative of the Board who conducts an onsite investigation may result in disciplinary action. Further, failure to cooperate with a representative of the Board or the Texas Medical Board who inspects and audits the practice relating to the implementation and operation of the prescriptive authority agreement may result in disciplinary action.

Adopted new §222.10(c) states that the Board shall immediately notify the Texas Medical Board and the Texas Physician Assistant Board when an APRN licensed by the Board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority and upon the final disposition of an investigation involving an APRN licensed by the Board and the delegation and supervision of prescriptive authority.

Adopted new §222.10(d) provides that, upon receipt of notice from the Texas Medical Board and/or the Texas Physician Assistant Board that a licensee of one of those boards is under investigation involving the delegation and supervision of prescriptive authority, the Board may open an investigation against an APRN who is a party to the prescriptive authority agreement with the licensee who is under investigation by the board that provided the notice.

Adopted new §222.10(e) states that the Board shall report to the Texas Department of Public Safety and the United States Drug Enforcement Administration any of the following: (i) any significant changes in the status of the RN license or advanced practice license; or (ii) disciplinary action impacting an APRN's ability to authorize or issue prescription drug orders and medication orders.

Adopted new §222.10(f) states that the practice of the APRN approved by the Board to order and prescribe is subject to monitoring by the Board on a periodic basis.

Adopted new §222.10(g) states that the Board shall maintain a list of APRNs who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

Adopted new §222.10(h) states that the Board shall provide information to the public regarding APRNs who are prohibited from entering into or practicing under a prescriptive authority agreement.

Summary of Comments and Agency Response.

General Comments

Comment: A commenter representing the Texas Medical Association (TMA) states that SB 406 reaffirms that the prescribing of drugs and devices is the practice of medicine, which is limited to those individuals who have been licensed to practice medicine by the Texas Medical Board. The commenter further states that physicians may delegate the prescribing and ordering of drugs or devices, but any such delegation must be appropriately supervised by a physician in accordance with the standard of care. SB 406 replaced an arbitrary system based on location and percentages with a system that is custom made for the individual physician and APRN based upon reasonableness and appropriateness. Further, the commenter states that, although SB 406 includes elements of a prescriptive authority agreement that must be addressed, the agreement may include more elements, more requirements, and more frequent meetings, as determined by the delegating and supervising physician.

Agency Response: The Board agrees with the commenter that an APRN has always been required to provide medical aspects of care under the delegated authority of a licensed physician. See the Occupations Code §157.001 and §157.005, which were not modified by SB 406.

Comment: A commenter representing the Texas Nurses Association (TNA) suggests moving Board Rules 221.14, 221.15, and 221.16 into Chapter 222 and re-wording the title of Chapter 222 to read: "Prescribing, Ordering or Providing Drugs or Devices by Advanced Practice Registered Nurses". The commenter states that SB 406 expanded the drugs an APRN may prescribe or order under a prescriptive authority agreement to include controlled substances Schedule II in certain settings. The commenter states that this may provide certified nurse midwives and certified registered nurse anesthetists (CRNAs) an additional delegation mechanism for ordering controlled substances Schedule II in hospitals. The commenter believes it would promote a better understanding of the different delegation mechanisms if all the rules relating to physician delegation of prescribing, ordering, or providing drugs or devices to APRNs were set out in Chapter 222.

Agency Response: The Board declines to move the content of Board Rules 221.14, 221.15, and 221.16 into Chapter 222, as adopted, or to change the proposed title of Chapter 222. Re-organization of these two chapters is impractical at this time.

Comment: A commenter representing TNA notes that the rule does not set out an effective date. The commenter believes that the effective date of the adopted rule should be November 1, 2013, since the rule will implement the provisions of SB 406, which goes into effect November 1, 2013.

Agency Response: The Board disagrees. An agency rule cannot become effective before it is properly proposed and adopted under the Administrative Procedure Act. Although SB 406 will become effective on November 1, 2013, this statutory timeline does not have any effect upon the Board's adopted rule. The Board's rule will become effective 20 days after the Board submits its adoption to the Secretary of State's Office. Imposing an arbitrary effective date that pre-dates the adoption of the rules under the Administrative Procedure Act would be improper.

Comment: A commenter representing TNA believes it might be helpful if standardized terminology was identified and used throughout Rule 222, such as: (i) unless the context clearly indicates otherwise, wherever the terms "prescribe", "prescription drug order", or "drug" appear, replace with "order or prescribe"; "prescription drug orders or medication orders"; and "drug or device", etc.; and (ii) unless the context clearly indicates otherwise, use "APRN with prescriptive authority" instead of varying terminology, such as "APRN with valid prescription authorization number", "APRN with full licensure and valid authorization number", and "APRN with full licensure".

Agency Response: The Board generally agrees with the comment and has made changes to the rule text as adopted to ensure that consistent terminology is used throughout the rule wherever possible.

Comment: A commenter representing TNA states that it is not clear that APRNs dispense, so the commenter is not sure why it is referred to in the proposed rule. If the term is referring to APRNs supplying drug samples, then the commenter believes it is better to state that explicitly.

Agency Response: The Board declines to make the suggested changes, as the Board believes the term "dispense" has a plain meaning understood by APRNs.

Comment: A commenter representing TNA believes there is redundancy in the proposed rule that could be eliminated to make the rule shorter and simpler. The commenter states that "protocol or other written authorization" is defined in §222.1 and §222.6. Since the term is used primarily in §222.6, the

commenter suggests that may be the best place to define the term.

Agency Response: The Board declines to make the suggested change. The Board does not believe that defining the term in §222.1 makes the rule unnecessarily redundant or long. Rather, the Board believes that most readers would first refer to the definition section of the rule (§222.1) when searching for the definition of the term. Further, although the term is discussed in detail in §222.6, this is not the only section of the rule that includes a reference to the term. As such, the Board believes that inclusion of the term in §222.1 is necessary.

Comment: A commenter representing TNA states that §222.10(b) is probably the more appropriate place to address requirements related to inspection and audits. In the proposed rule, it is addressed in both §222.4(f) and §222.10(b).

Agency Response: The Board declines to make the suggested change. While §222.4(f) and §222.10(b) both include references to inspection and audits, the two sections serve different purposes. Section 222.4 sets forth minimum standards of conduct related to an APRN prescribing or ordering drugs and devices, while §222.10 identifies conduct that may result in disciplinary action, including failing to meet the standards of conduct set out in §222.4. Further, because SB 406 specifically authorizes on site audits, the Board believes that it is important to specify an APRN's responsibility to cooperate during an audit, as well as providing adequate notice of the potential consequences of failing to do so.

Comment: A commenter representing TNA believes that, unless the context clearly indicates otherwise, any reference to "site" should be deleted from the rule. SB 406 eliminated the "site-based" model and "site" terminology is not used in SB 406.

Agency Response: The Board generally agrees and has eliminated the reference from §222.1(11) and §222.6 of the rule text as adopted. The remaining references to the term "site" in the rule text as adopted are necessary for context.

Comment: A commenter representing the Coalition for Nurses in Advanced Practice (CNAP) notes that the Texas Medical Board's proposed rules include the term "authorizing physician" to include a physician delegating prescriptive authority. For consistency, the commenter recommends that the Board replace the term "collaborating physician" in §222.1(23) and §222.4(b)(10) with "authorizing physician" and the term "delegating physician" in §222.6 and §222.8(b)(2) and (3) with "authorizing physician".

Agency Response: The Board agrees that there should be consistency within its adopted rule. However, the Board declines to make the commenter's suggested change. Instead, the Board has determined that the term "delegating physician" is more consistent with the terminology of the Occupations Code Chapter 157, relating to Authority of Physician to Delegate Certain Medical Acts, and has replaced the term "collaborating physician" in adopted §222.1(23) and §222.4(b)(10) with the term "delegating physician".

Definitions

Comment: A commenter representing TNA believes that it is desirable for the definitions in Chapter 222 to track as closely as possible the definitions in SB 406, and when possible, the definitions used by the Texas Medical Board.

The commenter recommends that the definition of "advanced practice registered nurse" track the definition in SB 406 and the Nursing Practice Act §301.152. The commenter states that the proposed definition sets out criteria for how to qualify as an APRN instead of identifying the nurses to whom the rule applies. Although this type of definition may be appropriate in another rule, the commenter states that is unnecessary for this rule.

Further, the commenter states that the definition of durable medical equipment is unnecessary since the term "DME" is not ambiguous and is a term APRNs understand. DME is used in various Texas laws and rules relating to reimbursement for DMEs, and the commenter cannot find the term defined by any of these laws or rules. The commenter believes that DME can be used as an undefined term.

The commenter recommends deleting the definition of "general hospital". The commenter states that the definition is unnecessary as the distinction between a general and special hospital is not relevant to an APRN prescribing or ordering drugs or devices.

The commenter also recommends deleting the definition of "special hospital", as the distinction between a general and special hospital is not relevant to an APRN prescribing or ordering drugs or devices.

The commenter recommends that the definition of "medication order" more closely track how SB 406 defines the term or how the Texas Medical Board defines the term in its proposed rules. The commenter states that the proposed definition does not capture adequately the aspect of a medication order being an order to a hospital pharmacist to dispense a medication.

With respect to the term "protocol or other written authorization", the commenter believes it would be desirable for the Board to review the Texas Medical Board's proposed definition to be sure the definitions are completely consistent. The definition of "protocol" in the Texas Medical Board's proposed rule states that a prescriptive authority agreement may reference a protocol. If the Board incorporates this language into its definitions, the commenter recommends that it describe the protocol as a "clinical protocol or guideline".

Finally, the commenter suggests adding the following definitions as necessary or appropriate: (i) APRN with prescriptive authority; (ii) prescription drug order, which may be needed to distinguish from "medication order"; and (iii) "authorizing physician", which would be the physician delegating the authority to an APRN to prescribe or order drugs or devices.

Agency Response: The Board agrees with many of the commenter's suggestions. First, the Board agrees that the definitions in the rule as adopted should track the definitions contained in SB 406 verbatim. The Board has therefore amended the definitions of the terms "controlled substance", "dangerous drug", "device", "medication order", "non-prescription drug", "physician group practice", "prescribe or order a drug or device", "prescription drug", and "prescriptive authority agreement" in the rule as adopted to track the definitions set forth in SB 406 verbatim.

With respect to the definition of the term "advanced practice registered nurse", the Board agrees with the comment and has amended the definition of this term in the rule as adopted to track the definition set forth in SB 406 verbatim.

With regard to the definitions of the terms "durable medical equipment", "general hospital", and "special hospital", the Board agrees with the commenter and has deleted those definitions from the rule as adopted.

With respect to the definition of "protocol or other written authorization", the Board has amended its definition of this term in the rule text as adopted to include additional language found in the Texas Medical Board's proposed definition of "protocols" to promote more consistency should the Texas Medical Board's proposed definition be adopted without changes.

The Board declines to make the commenter's remaining suggested changes, as the Board believes that the amendments to the definitions in the rule as adopted provides sufficient clarity.

Comment: A commenter representing TMA opposes the definitions of "advanced health assessment", "advanced practice registered nurse", and "diagnosis and management course". The commenter states that each of these proposed definitions implies that an APRN has the authority to make a medical diagnosis. The commenter opposes use of the word "diagnosis" in these proposed definitions because making a medical diagnosis is beyond the scope of nursing in Texas.

Further, the commenter states that it is inappropriate to define the term "advanced health assessment" in a way that would allow nurses to gain the knowledge and skill needed to perform an act which they are prohibited by law from performing, namely making diagnoses of health status.

The commenter also objects to the use of the term "diagnosis" in the definition of "advanced practice registered nurse". Regarding the definition of "diagnosis and management course", the commenter states that it is inappropriate to imply that a nurse can make a make a medical diagnosis and misleading to train nurses to perform an act that is prohibited by the Nursing Practice Act. The commenter goes on to state that diagnosis is the practice of medicine, and no one is allowed to practice medicine without a license from the Texas Medical Board. Further, the commenter states that the Legislature did not intend for nurses to diagnose. The Nursing Practice Act specifically excludes "diagnosis" from the nursing scope of practice. The commenter states that the Board does not have the authority to expand, by rule, a licensee's scope of practice beyond that authorized by the Legislature. The commenter urges the Board to remove the term "diagnose" from its proposed definitions.

The commenter also suggests changing the word "must" to "may" in the definition of "diagnosis and management course". The commenter states that the definition is misleading in that APRNs may only prescribe drugs or devices under the delegation and supervision of a physician. If a physician does not delegate this act, or other acts which are the practice of medicine, then the APRN is not authorized to perform such acts. The commenter states that all references should be made to require delegation and supervision.

Agency Response: The Board disagrees that diagnosing is beyond the scope of an APRN who has been appropriately delegated the authority for medical aspects of care by a licensed physician. Under the Occupations Code §157.005, a person to whom a physician delegates the performance of a medical act is not considered to be practicing medicine unless the person acts with knowledge that the delegation is in violation of the authorizing statute/s. Further, under §157.001, a physician may delegate any medical act, within the scope of sound medical judgment, to a qualified and properly trained person acting under the physician's delegation, so long as the act can be properly and safely performed by the delegate, is performed in its customary manner, is not in violation of any other statute, and the delegate does not represent that he/she is authorized to practice medicine. Further, SB 406 amended the Occupations Code §301.002(2)(G) to specifically include the performance of an act delegated by a physician under the Occupations Code §§157.0512, 157.054, 157.058, or 157.059 in the scope of professional nursing. Because the law specifically contemplates the delegation of medical acts in such situations, an APRN who has been delegated the authority to perform such acts does not have to be licensed to practice medicine by the Texas Medical Board in order to do so.

Additionally, a physician cannot delegate a medical act to an APRN unless the APRN is qualified and properly trained. The Board agrees that an APRN cannot perform a medical act unless the act is delegated to the APRN by a licensed physician, in accordance with applicable law. The Board disagrees that its rules suggest otherwise and it is not the Board's intention to do so. The Board's rules require APRNs to be educationally trained to assume responsibility for the assessment, diagnosis, and management of patient care, including the use and prescription of pharmacologic and non-pharmacologic interventions, in compliance with state law. The Board does not issue an APRN license to an individual unless the individual has shown that he/she has completed the requisite educational coursework and passed a national certification test, verifying that he/she is appropriately trained to perform delegated medical aspects of care. The Board must, therefore, set forth the minimum educational requirements that an individual must meet in order to be eligible for APRN licensure, including specifying the coursework that must be completed. Coursework in clinical decision making and aspects of medical diagnosis and medical management of diseases and conditions in the particular role and population focus area are an appropriate part of an APRN's training and education and must be if an APRN is to perform the delegated medical acts. If an APRN is not properly trained in these areas, the APRN cannot be an appropriate candidate for physician delegation because the APRN is not qualified to perform the delegated tasks. The Board's rule as adopted properly recognizes that delegation of medical aspects of care and the authority to prescribe or order drugs and devices to an APRN must conform to the requirements of SB 406, other relevant statutory requirements, and rules promulgated by the Texas Medical Board and the Board, as applicable. Therefore, with the exception of the definition of "advanced practice registered nurse", which has already been addressed in this response to comments, the Board declines to make the commenter's remaining suggested changes.

Comment: A commenter representing TMA states that, for the definition of "facility based practice site", the definition should be consistent with the Texas Medical Board's proposed rules and the intent of SB 406. The commenter suggests adding the following language to the proposed definition: "A facility based practice does not include a freestanding clinic, center, or other medical practice associated with or owned or operated by a hospital or licensed long-term care facility".

The commenter also states that the definition of "prescribe or order a drug or device" is broader than the definition provided in SB 406, and the commenter recommends using the definition exactly as it appears in SB 406. Further, the commenter states that the Board's current rules contain a definition for "prescribing" and "signing a prescription drug order" that specify that an APRN must be designated to the Texas Medical Board by the delegating physician as a person delegated to sign a prescription. The commenter points out, however, that the proposed definition in the new chapter is silent regarding the requirement of delegation and such silence suggests a level of independence by stat-

ing that an APRN may be the one to determine the dangerous drug or controlled substances or devices that shall be used or administered. The commenter states that APRNs do not have independent practice to make such determinations. Rather, the determination will be delegated by a physician and will be made based on the specific drugs or devices that an APRN is authorized to prescribe pursuant to delegation and supervision.

The commenter further states that SB 406 replaced the term "carrying out or signing a prescription drug order" with "prescribing or ordering a drug or device". However, the commenter states that this change was not meant to be substantive. Therefore, the commenter states that the Board should not suggest a substantive change in its definition and suggests using the exact definition of "prescribing or ordering a drug or device" that is used in SB 406.

The commenter also has concerns regarding the Board's use of the term "collaborating physician" in the Board's proposed definition of "protocols or other written authorization". The commenter states that the Legislature has shown that Texas does not authorize prescriptive authority to APRNs through a "collaboration model", but rather through delegation and supervision. The commenter states that the term "collaborating physician" is confusing and misleading. The commenter recommends that the Board replace the term "collaborating" with "delegating". The commenter supports a physician led team approach to patient care, but it must be clear that the team is physician led, not physician collaborated.

Finally, the commenter states that while the term "special hospital" is generally consistent with SB 406, it contains additional language that could be misleading. SB 406 references §241.003, Health and Safety Code. Although it appears that the Board has tracked the language from §241.003 in its proposed definition, the definition contains additional language pertaining to a medical staff in regular attendance "as required by the rules of the Department of State Health Services". The commenter states that this additional language is not in §241.003. Section 241.003 requires a medical staff in regular attendance, and does not refer to DSHS requirements. The requirement for a medical staff in regular attendance flows from statute, not from DSHS. There could also be other requirements that may apply, such as Joint Commission standards, in addition to requirements by DSHS. Thus, the commenter recommends removing the additional language from the proposed definition.

Agency Response: As explained previously in this response to comments, the Board has determined that the term "prescribe or order a drug or device" should track the language of SB 406 verbatim and has amended the rule as adopted to incorporate this change. Further, as previously explained in this response to comments, the Board has determined that the term "special hospital" should be deleted from the rule as adopted. Also as previously explained in this response to comments, the Board has determined that references in the proposed rule to "collaborating physician" should be changed to "delegating physician" in the rule as adopted. Finally, with respect to the definition of "facility based practice", the Board agrees with the commenter and, for consistency with the proposed definition of the Texas Medical Board, has amended the definition of "facility based practice" to include the additional language suggested by the commenter.

§222.2

Comment: A commenter representing TMA opposes the implication in proposed §222.2(a)(2) that a nurse is authorized to make a medical diagnosis. The commenter states that professional nursing does not include acts of medical diagnosis. The commenter urges the Board to remove reference to diagnosis from this section.

Agency Response: The Board declines to make this change. As previously explained in this response to comments, pursuant to the Occupations Code §157.001, §157.005, and §301.002(2)(G), an APRN who has been properly delegated a medical act by a licensed physician may carry out that act, provided that all statutory and regulatory requirements are met.

§222.3

Comments: A commenter representing TNA believes that §222.3 should clarify that the three hours of continuing education in ordering or prescribing controlled substances is in addition to any continuing education required to maintain the APRN's registered nurse license. Further, the commenter notes that the proposed rule does not set out a start date for when APRNs must show compliance with the new continuing education requirement and states that there should be at least one year lead time to allow for the continuing education offering to be developed and for APRNs to meet the new requirement.

A commenter representing TMA supports the additional continuing educational requirements of this section and states that the required number of hours could be higher. The commenter states that APRNs with prescriptive authority should be educated regularly regarding the potential for controlled substance abuse and diversion. Opioid addiction is a national epidemic and all health care providers involved in the prescribing, administering, or dispensing of controlled substances should be well apprised of the issues involved, including appropriate safeguards, regulations, and standards of care.

A commenter representing CNAP supports requiring three additional hours of continuing education relating to prescribing controlled substances. The commenter believes the additional continuing education is consistent with discussions among legislators during the 83rd Texas Legislature as they debated and passed SB 406. The commenter believes the additional hours of continuing education helps APRNs continue to treat patients with the utmost care and safety. However, the commenter requests that the implementation of the new requirements become effective no earlier than January 1, 2015 to give APRNs time to identify and complete the coursework necessary to comply with the new requirements. Further, the commenter suggests that the Board clarify that the additional three hours of continuing education relating to prescribing controlled substances is in addition to the continuing education required only under §216.3(c)(1) and (2). The commenter provides suggested language as follows:

(b) the APRN seeking to maintain prescriptive authority shall attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium, as required in §216.3(c)(3). After January 1, 2015, those APRNs seeking to maintain prescriptive authority who order or prescribe controlled substances shall attest, on forms provided by the Board, to completing at least three additional contact hours of continuing education related to prescribing controlled substances within the preceding biennium, as required in §216.3(c)(3).

(c) The continuing education requirements in subsection (b) of this section shall be in addition to continuing education required under §216.3(c)(1) and (2) of this title (relating to Continuing Competency).

Agency Response: The Board agrees that requiring additional hours of continuing education is in the best interests of patients and the public and that APRNs who prescribe controlled substances should be educated regularly regarding the potential for controlled substance abuse and diversion and appropriate safeguards, regulations, and standards of care. Further, the Board agrees that the rule as adopted should establish a compliance date and has amended subsection (b) of the rule text as adopted in this regard. Further, the Board has provided additional language in subsection (c) of the rule text as adopted to clarify the continuing education requirements applicable to APRNs.

§222.4

Comment: A commenter representing CNAP states that the rule should be amended to reflect that APRNs must comply with the chart review requirements in the prescriptive authority agreement or the requirements in the facility-based written protocols or other written authorization, but not both. The commenter provides the following suggested language:

(a) The APRN with a valid prescription authorization number shall:

(1) order or prescribe only those drugs or devices that are:

(A) authorized by a prescriptive authority agreement or, if practicing in a facility based practice, authorized by either a prescriptive authority agreement or protocols or other written authorization; and

(B) ordered or prescribed for patient populations within the accepted scope of professional practice for the APRN's license; and

(2) comply with the requirements for chart reviews specified in the prescriptive authority agreement and periodic face to face meetings set forth in this chapter; or

(3) comply with the requirements set forth in protocols or other written authorization if ordering or prescribing drugs or devices under facility-based protocols or other written authorization.

Agency Response: The Board agrees with the commenter and has made the suggested change in the rule text as adopted.

Comment: A commenter representing TMA states that the requirements related to periodic face to face meetings are to be set forth in the prescriptive authority agreement and not the Board's rules. Further, the commenter states that the rules should be written to reflect that the elements of the prescriptive authority agreement are at a minimum. Section 157.0512(g) states that the prescriptive authority agreement may include other provisions agreed to by the physician and APRN or physician assistant. Therefore, it is the prescriptive authority agreement, and not the Board's rules and not statute, which provide the requirements for periodic face to face meetings. The commenter suggests replacing "set forth in this chapter" with "set forth in the prescriptive authority agreement".

The commenter is also concerned about the reference to "collaborating physician" in §222.4(b)(10). The commenter states that Texas does not authorize prescriptive authority for an APRN through collaboration. The prescribing of drugs or devices by an APRN or PA may only be accomplished through the delegation and supervision of a physician. The commenter therefore urges the Board to remove references to "collaborating physician" from its proposed rules and, because it is inaccurate and misleading, replace such terminology with "delegating physician".

Agency Response: The Board agrees that the minimum requirements for a prescriptive authority agreement are set forth in SB 406. The Board further agrees that a prescriptive authority agreement may contain additional or more prescriptive elements than specified by SB 406, as determined and agreed to by the parties to the agreement. As such, the Board agrees with the commenter and has amended §222.4(a)(2) as adopted accordingly. Further, as has been previously explained in this response to comments, the Board has amended the term "collaborating physician" to "delegating physician" throughout the rule text as adopted.

§222.5(a)

Comments: A commenter representing TNA suggests rewording this subsection so that it does not imply that a prescriptive authority agreement is the only delegation mechanism that can be used to authorize an APRN to prescribe or order drugs or devices. In addition to a prescriptive authority agreement, the commenter states that a protocol may also be used as the delegation mechanism in a facility-based practice and Medical Practice Act §157.058 is an additional delegation available to CRNAs.

A commenter representing the Texas Association of Nurse Anesthetists (TANA) recommends that the word "the" be changed to the word "a" to indicate that a prescriptive authority agreement is a mechanism by which a CRNA may be delegated the authority to order or prescribe drugs or devices by a physician. The commenter states, however, that SB 406 did not alter the provisions of the Occupations Code §157.058 and a CRNA may continue to obtain delegated authority for the ordering of the drugs and devices necessary for the CRNA to administer an anesthetic or an anesthesia-related service ordered by a physician pursuant to §157.058.

A commenter representing CNAP also recommends that the word "the" be changed to the word "a" to reflect the intent of SB 406 that APRNs in facility-based practices can also use protocols or other written authorizations in lieu of a prescriptive authority agreement. The commenter states that the lack of changes in the Occupations Code §157.058 and the minimal changes to §157.054 in SB 406 were intended to ensure a mechanism for CRNAs and other hospital-based APRN practices to continue as they currently practice.

Agency Response: The Board agrees with the comments and has amended the rule text as adopted accordingly.

§222.5(b)

Comments: A commenter representing TNA notes that the proposed definition of "good standing" would preclude an APRN from executing a prescriptive authority agreement if there was any current adverse action against the APRN's license or authorization or even if there is a pending investigation. The commenter does not believe this interpretation is the correct interpretation of Medical Practice Act §157.0512(b)(2)(A) or one supported by the rules of statutory construction. Further, the commenter does not believe it is good public policy to place restrictions on a nurse's practice based on the opening of an investigation or on the filing of formal charges. The commenter states that the Nursing Practice Act §301.455 gives the Board the authority to immediately suspend or restrict a nurse's license if it believes the nurse's practice poses an imminent threat to the public welfare. Adoption of a rule placing restrictions on a nurse's license on the basis of a pending investigation or formal charges would be setting a bad precedent. The commenter suggests that the Board define "good standing" as determined only on the basis

of a final disciplinary action against an APRN and not on the basis of opening of an investigation or filing of formal charges and so that not every adverse action, regardless of severity, against an APRN's license or authorization categorically precludes an APRN from executing a prescriptive authority agreement. The commenter's suggested language also includes a mechanism for APRNs with adverse actions pending on November 1, 2013, to be able to execute a prescriptive authority agreement. The commenter also recognizes that there may be other mechanisms that would accomplish the desired result. The commenter proposes the following language:

(b) An APRN with prescriptive authority and a physician are eligible to enter into or be parties to a prescriptive authority agreement only if the APRN:

(1) holds an active license to practice in this state and the APRN is in good standing. An APRN is in good standing if the APRN's nursing license(s) or authorization(s) is not encumbered, or if encumbered, the APRN is permitted by Board order to be a party to a prescriptive authority agreement. APRNs with a license or authorization encumbered as of November 1, 2013, shall be considered in good standing if in compliance with any restriction or condition of probation imposed on the license or authorization.

A commenter representing CNAP recommends striking the definition of "good standing" as proposed and using its recommended definition. The commenter states that the definition as proposed would prohibit an APRN from being a party to a prescriptive authority agreement if the Board opened an investigation involving any APRN. This, the commenter states, would in effect prohibit the APRN from prescribing or ordering drugs except in facility based practices. The commenter states that, since most complaints do not result in a finding that the APRN violated the Nursing Practice Act, and the majority of complaints do not relate to the APRN's competence in prescribing, it would be inappropriate to prohibit an APRN from prescribing before the Board actually took any disciplinary action against the APRN and determined that the APRN was not competent to prescribe or order drugs and medical devices. The commenter recommends the following language:

(b) An APRN with prescriptive authority and a physician are eligible to enter into or be parties to a prescriptive authority agreement only if the APRN:

(1) holds an active license to practice in this state that is in good standing. For purposes of this chapter, "good standing" means that the advanced practice registered nurse's license has not been suspended and the Board of Nursing has not taken disciplinary action that prohibits the nurse from executing a prescriptive authority agreement.

Agency Response: The Board generally agrees with the commenters that the definition of "good standing" in §222.5(b) as proposed is too limiting in nature. However, the Board declines to adopt the commenters' suggested language. The Board believes that an APRN's eligibility to enter into a prescriptive authority agreement should be based upon the licensure status of the APRN and whether the APRN's license and/or prescriptive authorization number is encumbered by a disciplinary action. The Board has therefore amended the rule text as adopted accordingly.

§222.5(c)

Comments: A commenter representing CNAP recommends that the wording of the paragraph be re-ordered to more closely reflect the statute so the reader knows immediately that designating an alternate physician or physicians is not required. The commenter proposes the following language:

(8) if an alternate physician arrangement is to be utilized, designate one or more alternate physicians who may participate in the execution of the prescriptive authority agreement in accordance with the rules of the Texas Medical Board; and

A commenter representing TMA opposes §222.5(c)(8) as written because it inaccurately states that a prescriptive authority agreement may designate one or more alternate physicians who may participate in the execution of the prescriptive authority agreement. The commenter states that §222.5(c)(8) is inaccurate in that it allows an alternate physician to execute the prescriptive authority agreement, which SB 406 does not permit; because it does not specify that alternate supervision is allowed only in a physician group practice; and because it does not provide that the supervision is to be on a temporary basis. The commenter suggests that the Board track the language of the Occupations Code §157.0512(e)(8) directly, such that the specifics that the statute provides are clearly provided in the rule.

Agency Response: The Board agrees that the rule text should track the language of SB 406 verbatim, and has amended the rule text as adopted accordingly.

§222.5(d)

Comments: A commenter representing TMA has concerns about §222.5(d)(2)(B). The commenter states that the paragraph does not clearly reflect that the minimums for periodic face to face meetings can be modified based only on previous involvement of prescriptive authority with the same physician who is executing the prescriptive authority agreement. The commenter points out that the Texas Medical Board's proposed rules require the same physician to be involved in the previous delegation and TMA believes this is the correct interpretation of SB 406. In order to accurately reflect the intent of SB 406, and to be consistent with the Texas Medical Board's interpretation, the commenter suggests the following language: "If during the seven years preceding the date the agreement is executed, the advanced practice registered nurse was supervised for at least five years in a practice that included the exercise of prescriptive authority with required physician supervision by the physician with whom the prescriptive authority agreement is entered..."

Agency Response: The Board declines to make the commenter's suggested change, as the Board believes its proposed language is generally consistent with the language of SB 406. However, to the extent that the proposed rule text is not exactly the same as the language of SB 406, the Board has made minor changes in the rule text as adopted to ensure that the rule text as adopted tracks the language of SB 406 verbatim.

Comment: A commenter representing TNA suggests adding a new subdivision to the proposed section to emphasize that SB 406 authorizes credit for time the delegating physician and APRN practiced together (with APRN authorized to prescribe) prior to November 1, 2013. The commenter states that not addressing the credit in the rule may result in some APRNs not realizing the credit is available. The commenter suggests the following language:

(C) If during any period of time prior to November 1, 2013, the APRN practiced under the delegated prescriptive authority of the physician signing the prescriptive authority agreement, that period of time shall be included in calculating the third anniversary

under Subdivision (A)(i) or the first anniversary under Subdivision (B)(i).

Agency Response: The Board acknowledges that the rule text as proposed does not include all of the language of SB 406 that may affect the calculation of time under §222.5. As such, the Board has amended the text of the rule as adopted to track the language of SB 406 verbatim, including the bill's provisions regarding the calculation of the amount of time, in new subsection (m).

§222.5(e)

Comment: A commenter representing TMA supports §222.5(e), which states that a prescriptive authority agreement may include other provisions. The commenter reiterates that the elements of the agreement enumerated in SB 406 are only minimums and the requirements of delegation and supervision will be tailored to the health care providers involved, in accordance with the standard of care.

Agency Response: The Board agrees that SB 406 prescribes the minimum requirements that must be included in a prescriptive authority agreement and that the prescriptive authority agreement may include additional or more restrictive provisions agreed to by the parties to the agreement consistent with the standard of care.

§222.5(f)

Comments: A commenter representing TMA states that §222.5(f) should be clarified to reflect that an alternate physician, if any, must be designated in the prescriptive authority agreement. The commenter suggests adding "in the prescriptive authority agreement" after "has been designated" and before "to conduct and document' in subsection (f).

A commenter representing CNAP states that the rule appears to limit the participation of alternate physicians in quality assurance meetings to those in physician group practices. The commenter states that, although §157.0512(h) is limited to a physician group practice, §157.0512(8) is more broadly written. The commenter recommends the following language:

(f) The APRN shall participate in quality assurance meetings with an alternate physician if an alternate physician has been designated in the prescriptive authority agreement.

Agency Response: The Board agrees with the commenters and has made changes to the rule text as adopted. The Board notes that, when read together, the Occupations Code §157.0512(e)(8) and (h) require that an alternate supervising physician, if any, be designated in the prescriptive authority agreement. Further, the Board agrees that the provisions of SB 406 do not limit the designation of an alternate supervising physician to a physician group practice only. As such, the Board has removed the limiting language from the rule text as adopted.

§222.5(i)

Comment: With respect to §222.5(i), a commenter representing TMA points out that §157.0512(k) states that a party to an agreement may not by contract waive, void, or nullify any provision of §157.0512 or §157.0513. The commenter suggests adding "or §157.0512 or §157.0513, Occupations Code" to the proposed rule to make clear that a party may not waive, void, or nullify any provision of the rules or the statutory provisions.

Agency Response: Although the Board does not believe that the suggested language is necessary since the statutory provisions of SB 406 clearly speak for themselves, the Board has nonetheless included a reference to §157.0512(k) in the rule text as adopted for additional clarity.

§222.5

Comment: A commenter representing TANA recommends adding a new subsection to clarify that SB 406 does not require a CRNA to practice pursuant to a prescriptive authority agreement, but that CRNAs may continue to order drugs and devices necessary to administer anesthesia and anesthesia-related services pursuant to the Occupations Code §157.058. The commenter recommends the following language: "A nurse anesthetist to whom a physician has delegated the ordering of drugs and devices necessary for the nurse anesthetist to administer anesthesia or anesthesia-related services, including pre-operative, post-operative, and consultative services, pursuant to Section 157.058 of the Texas Occupations Code is not required to obtain a prescriptive authority agreement for the ordering of prescription or non-prescription drugs, dangerous drugs, or controlled substances."

Agency Response: The Board agrees with the commenter that SB 406 does not require a CRNA to practice pursuant to a prescriptive authority agreement and that a CRNA may continue to order drugs and devices necessary to administer anesthesia and anesthesia-related services under physician delegation, as provided for in the Occupations Code §157.058. Because SB 406 did not amend §157.058, the Board does not believe it is necessary to include the suggested language in the rule as adopted.

§222.6

Comments: A commenter representing CNAP recommends deleting "sites" in the title of the section and the text of subsection (a), as that definition has been removed from the statute and the rest of the proposed rules. The commenter further recommends that "this section" be deleted from §222.6(a)(1) since it is the APRN who must meet the requirements, not the document. The commenter also recommends modifying the formatting of the paragraph if it is the Board's intent that any written authorization used for prescriptive authority is in accordance with facility policy and reviewed annually. The commenter proposes the following language:

(a) When ordering or prescribing a drug or device at a facility-based practice, the APRN with prescriptive authority shall:

(1) maintain either a prescriptive authority agreement or protocols or other written authorization;

(A) developed in accordance with facility medical staff policies; and

(B) reviewed with the appropriate medical staff at least annually;

A commenter representing TMA points out a presumed typographical error, in that there is a reference to meeting the prescriptive authority agreement requirements "of this section". However, the prescriptive authority agreement requirements are located in proposed section §222.5 and not §222.6. The commenter recommends making reference to §222.5 instead.

A commenter representing TNA suggests amending the section's title by removing "site" since SB 406 eliminated the "site-based" model and "site" terminology is not used in SB 406. The commenter further states that SB 406 does not explicitly address the issue of prescriptive authority agreements in facility based practices. However, §157.0512 does not limit the practices where an agreement can be used. Section 157.054 neither

explicitly permits nor precludes the use of a prescriptive authority agreement at a facility based practice. However, §157.054 authorizes delegation of prescribing and ordering at a facility based practice only if certain requirements are met. The commenter believes that the most plausible interpretation of SB 406 is that a prescriptive authority agreement may be used as a delegation mechanism at a facility based practice and, if used, must comply with the requirements of both §157.0512 (relating to prescriptive authority agreements) and §157.054 (relating to facility based practices). If this is the correct interpretation of SB 406, the commenter believes the Board's rules should explicitly state that if a prescriptive authority agreement is used at a facility based practice, it must meet the requirements of both §222.5 and §222.6.

Agency Response: The Board agrees that the term "site" should be removed from the title of the section, as well as from the section itself, and has made these suggested changes in the rule text as adopted. The Board further agrees that there is a typographical error in §222.6(a)(1) as pointed out by the commenter and has changed the rule text as adopted to appropriately reference §222.5 instead. Regarding the remainder of the comments, the Board has amended the rule text to better clarify the requirements that apply when prescriptive authority agreements are utilized in facility based practices and when protocols and other written authorization are utilized in facility based practices. Additionally, the Board has determined that the language of the Occupations Code §157.054(b-1) should be included in the rule text as adopted to provide further clarity regarding the use of prescriptive authority agreements in facility based practices.

§222.7

Comments: A commenter representing CNAP states that the last sentence of the section should be deleted because it deals with prescribing controlled substances and appears inappropriate in this section. The language to be deleted is: "APRNs with full licensure and valid prescription authorization numbers are not eligible to order or prescribe controlled substances unless they meet the applicable requirements of this rule".

Comment: A commenter representing TMA states that this section is concerning in that it does not reference the delegation and supervision by a physician to an APRN. Rather, the commenter points out that the rule states that APRNs are eligible to order or prescribe non-prescription drugs, dangerous drugs, and devices. Further, it also states that APRNs are not eligible to order or prescribe controlled substances unless they meet the applicable requirements of the rule. The commenter suggests that the rule should reference the requirement for delegation and supervision, prior to an eligible APRN being able to exercise prescriptive authority. Further, the commenter points out that the last sentence of the proposed rule references the requirements "of this rule", but it is the requirements of §222.8 that should be met pertaining to controlled substances. The commenter recommends that §222.8 be referenced in the proposed rule and that the requirement of physician delegation and supervision be referenced as well.

Agency Response: As previously explained in this response to comments, the Board does not believe the proposed rules authorize an APRN to order or prescribe drugs or devices without appropriate delegation from a licensed physician. However, the Board agrees that the section should be clarified in general. The purpose of the section is to recognize that an APRN may not wish to obtain authority to prescribe or order controlled substances. Instead, the APRN may only wish to obtain authority to prescribe or order non-prescription drugs, dangerous drugs, and devices. Therefore, the section is intended to set forth the requirements that apply to an APRN who wishes to obtain authority to prescribe or order non-prescription drugs, dangerous drugs, and devices only and to clarify that an APRN who wishes to also prescribe or order controlled substances must meet the requirements of §222.8 in order to be eligible to do so. The Board has amended the rule text as adopted to clarify these issues.

§222.8

Comments: A commenter representing TNA states that the requirement that an APRN comply with DPS and DEA requirements are set out in §222.8(a) and (d).

A commenter representing CNAP states that (a) and (d) are redundant and (d) should be deleted in favor of (a).

Agency Response: The Board agrees with the comments and has deleted subsection (d) in the rule text as adopted.

§222.10

Comment: A commenter representing CNAP states that the rule contemplates the Board notifying the Texas Medical Board and the Texas Physician Assistant Board when an APRN becomes the subject of an investigation regarding the delegation of prescriptive authority. The commenter suggests that a new subsection (d) be added to require notification of the Texas Physician Assistant Board only when a physician assistant is a party to a prescriptive authority agreement involving an APRN subject to investigation. If there is not a physician assistant included in the agreement, the commenter states that notification by the Board appears to be unnecessary and of no public benefit. The commenter suggests the following language:

(c) The Board shall immediately notify the Texas Medical Board and the Texas Physician Assistant Board:

(1) when an APRN licensed by the Board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority; and

(2) upon the final disposition of an investigation an APRN licensed by the Board and the delegation and supervision of prescriptive authority.

(d) If no physician assistant is party to the prescriptive authority agreement of an advanced practice registered nurse, the Board is not required to notify the Texas Physician Assistant Board.

Agency Response: The Board declines to make the suggested change. SB 406 requires the Board to immediately notify both the Texas Medical Board and the Texas Physician Assistant Board when a license holder becomes the subject of an investigation, as well as when there is a final disposition of the investigation. The Board believes its proposed requirements are more consistent with the provisions of SB 406 than the suggested revisions of the commenter.

§222.10(f)

Comment: A commenter representing CNAP states that this section references "sign prescription drug orders", which should be changed to "order or prescribe" for consistency with SB 406. The commenter suggests the following language:

(f) The practice of the APRN approved by the Board to order and prescribe is subject to monitoring by the Board on a periodic basis.

Agency Response: The Board agrees with the comment and has amended the rule text as adopted to reflect this suggested change.

Comment: A commenter representing TNA recommends adding a new §222.10 whose content would include that of current Rule 221.16, related to CRNAs ordering anesthesia-related drugs and devices. The commenter states that, prior to the passage of SB 406, Medical Practice Act §157.058 addressed the delegation mechanism for CRNAs to order controlled substances Schedule II anesthesia-related drugs. SB 406 provided potential additional mechanisms by permitting APRNs to prescribe schedule II controlled substances for hospital inpatients and hospital emergency room patients under protocols and prescriptive authority agreements. The commenter feels there may now be confusion about what delegation mechanism can be used to authorize CRNAs to order anesthesia-related drugs and services. The commenter believes that adding the new language will make explicit that the delegation mechanism allowed by Medical Practice Act §157.058 remains an option available to CRNAs. The commenter suggests using the current text from §221.15, and adding "notwithstanding any other section of this chapter," to the beginning of the section.

Agency Response: The Board declines to make the change. As previously explained in this response to comments, the Board agrees that SB 406 does not require a CRNA to practice pursuant to a prescriptive authority agreement and that a CRNA may continue to order drugs and devices necessary to administer anesthesia and anesthesia-related services under physician delegation, as provided for in the Occupations Code §157.058. Because SB 406 did not amend §157.058, the Board does not believe it is necessary to include the suggested language in the rule as adopted.

Names of Those Commenting For and Against the Proposal. For: None. Against: None. For, with changes: The Texas Medial Association (TMA); the Coalition for Nurses in Advanced Practice (CNAP); the Texas Association of Nurse Anesthetists (TANA); and the Texas Nurses Association (TNA). Neither for nor against, with changes: None.

Statutory Authority.

The new chapter is adopted under the Occupations Code Chapter 157 and §§301.151, 301.152, 301.452, 301.453, and 301.4531.

Section 157.051 sets forth the definitions utilized in Chapter 157, Subchapter B.

Section 157.0511(a) provides that a physician's authority to delegate the prescribing or ordering of a drug or device under Chapter 157, Subchapter B is limited to: (i) nonprescription drugs; (ii) dangerous drugs; and (iii) controlled substances to the extent provided by Subsections (b) and (b-1).

Section 157.0511(b) provides that, except as provided by Chapter 157, Subsection (b-1), a physician may delegate the prescribing or ordering of a controlled substance only if: (i) the prescription is for a controlled substance listed in Schedule III, IV, or V as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code; (ii) the prescription, including a refill of the prescription, is for a period not to exceed 90 days; (iii) with regard to the refill of a prescription, the refill is authorized after consultation with the delegating physician and the consultation is noted in the patient's chart; and (iv) with regard to a prescription for a child less than two years of age, the prescription is made after consultation with the delegating physician and the consultation is noted in the patient's chart.

Section 157.0511(b-1) provides that a physician may delegate the prescribing or ordering of a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, only: (i) in a hospital facility-based practice under §157.054, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital bylaws to ensure patient safety, and as part of the care provided to a patient who: (A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or (B) is receiving services in the emergency department of the hospital; or (ii) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

Section 157.0511(b-2) provides that the board shall adopt rules that require a physician who delegates the prescribing or ordering of a drug or device to register with the board the name and license number of the physician assistant or advanced practice registered nurse to whom a delegation is made. Further, the board may develop and use an electronic online delegation registration process for registration under Chapter 157, Subchapter B.

Section 157.0511(c) states that Chapter 157, Subchapter B does not modify the authority granted by law for a licensed registered nurse or physician assistant to administer or provide a medication, including a controlled substance listed in Schedule II as established by the commissioner of the Department of State Health Services under Chapter 481, Health and Safety Code, that is authorized by a physician under a physician's order, standing medical order, standing delegation order, or protocol.

Section 157.0512(a) provides that a physician may delegate to an advanced practice registered nurse or physician assistant, acting under adequate physician supervision, the act of prescribing or ordering a drug or device as authorized through a prescriptive authority agreement between the physician and the advanced practice registered nurse or physician assistant, as applicable.

Section 157.0512(b) states that a physician and an advanced practice registered nurse or physician assistant are eligible to enter into or be parties to a prescriptive authority agreement only if: (i) if applicable, the Texas Board of Nursing has approved the advanced practice registered nurse's authority to prescribe or order a drug or device as authorized under Chapter 157, Subchapter B; (ii) the advanced practice registered nurse or physician assistant: (A) holds an active license to practice in this state as an advanced practice registered nurse or physician assistant, as applicable, and is in good standing in this state; and (B) is not currently prohibited by the Texas Board of Nursing or the Texas Physician Assistant Board, as applicable, from executing a prescriptive authority agreement; and (iii) before executing the prescriptive authority agreement, the physician and the advanced practice registered nurse or physician assistant disclose to the other prospective party to the agreement any prior disciplinary action by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, as applicable.

Section 157.0512(c) states that, except as provided by §157.0512(d), the combined number of advanced practice reg-

istered nurses and physician assistants with whom a physician may enter into a prescriptive authority agreement may not exceed seven advanced practice registered nurses and physician assistants or the full-time equivalent of seven advanced practice registered nurses and physician assistants.

Section 157.0512(d) states that §157.0512(c) does not apply to a prescriptive authority agreement if the prescriptive authority is being exercised in: (i) a practice serving a medically underserved population; or (ii) a facility-based practice in a hospital under §157.054.

Section 157.0512(e) provides that a prescriptive authority agreement must, at a minimum: (i) be in writing and signed and dated by the parties to the agreement; (ii) state the name, address, and all professional license numbers of the parties to the agreement; (iii) state the nature of the practice, practice locations, or practice settings; (iv) identify the types or categories of drugs or devices that may be prescribed or the types or categories of drugs or devices that may not be prescribed; (v) provide a general plan for addressing consultation and referral; (vi) provide a plan for addressing patient emergencies; (vii) state the general process for communication and the sharing of information between the physician and the advanced practice registered nurse or physician assistant to whom the physician has delegated prescriptive authority related to the care and treatment of patients; (viii) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may: (A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of Chapter 157, Subchapter B, and (B) participate in the prescriptive authority quality assurance and improvement plan meetings required under §157.0512; and (ix) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following: (A) chart review, with the number of charts to be reviewed determined by the physician and advanced practice registered nurse or physician assistant; and (B) periodic face-to-face meetings between the advanced practice registered nurse or physician assistant and the physician at a location determined by the physician and the advanced practice registered nurse or physician assistant.

Section 157.0512(f) provides that the periodic face-to-face meetings described by §157.0512(e)(9)(B) must: (i) include: (A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and (B) discussion of patient care improvement; and (ii) be documented and occur: (A) except as provided by Paragraph (B): (i) at least monthly until the third anniversary of the date the agreement is executed; and (ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet; or (B) if during the seven years preceding the date the agreement is executed the advanced practice registered nurse or physician assistant for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision: (i) at least monthly until the first anniversary of the date the agreement is executed; and (ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including videoconferencing technology or the Internet.

Section 157.0512(g) provides that the prescriptive authority agreement may include other provisions agreed to by the physician and advanced practice registered nurse or physician assistant.

Section 157.0512(h) provides that if the parties to the prescriptive authority agreement practice in a physician group practice, the physician may appoint one or more alternate supervising physicians designated under §157.0512(e)(8), if any, to conduct and document the quality assurance meetings in accordance with the requirements of Chapter 157, Subchapter B.

Section 157.0512(i) provides that the prescriptive authority agreement need not describe the exact steps that an advanced practice registered nurse or physician assistant must take with respect to each specific condition, disease, or symptom.

Section 157.0512(j) provides that a physician, advanced practice registered nurse, or physician assistant who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

Section 157.0512(k) provides that a party to a prescriptive authority agreement may not by contract waive, void, or nullify any provision of §157.0512 or §157.0513.

Section 157.0512(l) provides that in the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the board, the Texas Board of Nursing, or the Texas Physician Assistant Board, the individual shall immediately notify the other party to the prescriptive authority agreement.

Section 157.0512(m) provides that the prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement and any amendments must be made available to the board, the Texas Board of Nursing, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of request, if any.

Section 157.0512(n) provides that the prescriptive authority agreement should promote the exercise of professional judgment by the advanced practice registered nurse or physician assistant commensurate with the advanced practice registered nurse's or physician assistant's education and experience and the relationship between the advanced practice registered nurse or physician assistant and the physician.

Section 157.0512(o) provides that §157.0512 shall be liberally construed to allow the use of prescriptive authority agreements to safely and effectively utilize the skills and services of advanced practice registered nurses and physician assistants.

Section 157.0512(p) provides that the board may not adopt rules pertaining to the elements of a prescriptive authority agreement that would impose requirements in addition to the requirements under §157.0512. The board may adopt other rules relating to physician delegation under Chapter 157.

Section 157.0512(q) provides that the board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop responses to frequently asked questions relating to prescriptive authority agreements not later than January 1, 2014. Chapter 157, Subchapter B expires January 1, 2015.

Section 157.0513(a) states that the board, the Texas Board of Nursing, and the Texas Physician Assistant Board shall jointly develop a process: (i) to exchange information regarding the

names, locations, and license numbers of each physician, advanced practice registered nurse, and physician assistant who has entered into a prescriptive authority agreement; (ii) by which each board shall immediately notify the other boards when a license holder of the board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority, as well as the final disposition of any such investigation; and (iii) by which each board shall maintain and share a list of the board's license holders who have been subject to final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

Section 157.0513(b) states that if the board, the Texas Board of Nursing, or the Texas Physician Assistant Board receives a notice under §157.0513(a)(2), the board that received notice may open an investigation against a license holder of the board who is a party to a prescriptive authority agreement with the license holder who is under investigation by the board that provided notice under §157.0513(a)(2).

Section 157.0513(c) states that the Board shall maintain and make available to the public a searchable online list of physicians, advanced practice registered nurses, and physician assistants who have entered into a prescriptive authority agreement authorized under §157.0512 and identify the physician, advanced practice registered nurse, or physician assistant with whom each physician, advanced practice registered nurse, and physician assistant has entered into a prescriptive authority agreement.

Section 157.0513(d) states that the Board shall collaborate with the Texas Board of Nursing and the Texas Physician Assistant Board to maintain and make available to the public a list of physicians, advanced practice registered nurses, and physician assistants who are prohibited from entering into or practicing under a prescriptive authority agreement.

Section 157.0514 states that if the board receives a notice under §157.0513(a)(2), the board or an authorized board representative may enter, with reasonable notice and at a reasonable time, unless the notice would jeopardize an investigation, a site where a party to a prescriptive authority agreement practices to inspect and audit any records or activities relating to the implementation and operation of the agreement. To the extent reasonably possible, the board and the board's authorized representative shall conduct any inspection or audit under §157.0514 in a manner that minimizes disruption to the delivery of patient care.

Section 157.054(a) states that one or more physicians licensed by the board may delegate, to one or more physician assistants or advanced practice registered nurses acting under adequate physician supervision whose practice is facility-based at a hospital or licensed long-term care facility, the administration or provision of a drug and the prescribing or ordering of a drug or device if each of the delegating physicians is: (i) the medical director or chief of medical staff of the facility in which the physician assistant or advanced practice registered nurse practices; (ii) the chair of the facility's credentialing committee; (iii) a department chair of a facility department in which the physician assistant or advanced practice registered nurse practices; or (iv) a physician who consents to the request of the medical director or chief of medical staff to delegate the prescribing or ordering of a drug or device at the facility in which the physician assistant or advanced practice registered nurse practices.

Section 157.054(a-1) states that the limits on the number of advanced practice registered nurses or physician assistants to whom a physician may delegate under §157.0512 do not apply to a physician under §157.054(a) whose practice is facility-based under §157.054 provided that the physician is not delegating in a freestanding clinic, center, or practice of the facility.

Section 157.054(b) states that a physician's authority to delegate under §157.054(a) is limited as follows: (i) the delegation must be made under a physician's order, standing medical order, standing delegation order, or another order or protocol developed in accordance with policies approved by the facility's medical staff or a committee of the facility's medical staff as provided by the facility bylaws; (ii) the delegation must occur in the facility in which the physician is the medical director, the chief of medical staff, the chair of the credentialing committee, a department chair, or a physician who consents to delegate under §157.054(a)(4); (iii) the delegation may not permit the prescribing or ordering of a drug or device for the care or treatment of the patients of any other physician without the prior consent of that physician; and (iv) delegation in a long-term care facility must be by the medical director and is limited to the prescribing or ordering of a drug or device to not more than seven advanced practice registered nurses or physician assistants or their full-time equivalents.

Section 157.054(b-1) states that a facility-based physician may not delegate at more than one hospital or more than two long-term care facilities under this section unless approved by the board. The facility-based physician may not be prohibited from delegating the prescribing or ordering of drugs or devices under §157.0512 at other practice locations, including hospitals or long-term care facilities, provided that the delegation at those locations complies with all the requirements of §157.0512.

Section 157.054(c) states that physician supervision of the prescribing or ordering of a drug or device must conform to what a reasonable, prudent physician would find consistent with sound medical judgment but may vary with the education and experience of the particular advanced practice registered nurse or physician assistant. A physician shall provide continuous supervision, but the constant physical presence of the physician is not required.

Section 157.055 states that a protocol or other order shall be defined in a manner that promotes the exercise of professional judgment by the advanced practice registered nurse and physician assistant commensurate with the education and experience of that person. Under §157.055, an order or protocol used by a reasonable and prudent physician exercising sound medical judgment: (i) is not required to describe the exact steps that an advanced practice registered nurse or a physician assistant must take with respect to each specific condition, disease, or symptom; and (ii) may state the types or categories of medications that may be prescribed or the types or categories of medications that may not be prescribed.

Section 157.057 states that the board may adopt additional methods to implement: (i) a physician's prescription; or (ii) the delegation of prescriptive authority.

Section 157.059(b) states that a physician may delegate to a physician assistant offering obstetrical services and certified by the board as specializing in obstetrics or an advanced practice registered nurse recognized by the Texas Board of Nursing as a nurse midwife the act of administering or providing controlled substances to the physician assistant's or nurse midwife's clients during intrapartum and immediate postpartum care.

Section 157.059(d) states that the delegation of authority to administer or provide controlled substances under §157.059(b) must be under a physician's order, medical order, standing delegation order, prescriptive authority agreement, or protocol that requires adequate and documented availability for access to medical care.

Section 157.059(e) states that the physician's orders, medical orders, standing delegation orders, prescriptive authority agreements, or protocols must require the reporting of or monitoring of each client's progress, including complications of pregnancy and delivery and the administration and provision of controlled substances by the nurse midwife or physician assistant to the clients of the nurse midwife or physician assistant.

Section 157.059(f) states that the authority of a physician to delegate under §157.059 is limited to: (i) seven nurse midwives or physician assistants or their full-time equivalents; and (ii) the designated facility at which the nurse midwife or physician assistant provides care.

Section 157.059(j) states that §157.059 does not limit the authority of a physician to delegate the prescribing or ordering of a controlled substance under Chapter 157, Subchapter B.

Section 157.060 states that, unless the physician has reason to believe the physician assistant or advanced practice registered nurse lacked the competency to perform the act, a physician is not liable for an act of a physician assistant or advanced practice registered nurse solely because the physician signed a standing medical order, a standing delegation order, or another order or protocol, or entered into a prescriptive authority agreement, authorizing the physician assistant or advanced practice registered nurse to administer, provide, prescribe, or order a drug or device.

Section 301.151 authorizes the Board to adopt and enforce rules consistent with Chapter 301 and necessary to: (i) perform its duties and conduct proceedings before the Board; (ii) regulate the practice of professional nursing and vocational nursing; (iii) establish standards of professional conduct for license holders Chapter 301; and (iv) determine whether an act constitutes the practice of professional nursing or vocational nursing.

Section 301.152(a) states that "advanced practice registered nurse" means a registered nurse licensed by the board to practice as an advanced practice registered nurse on the basis of completion of an advanced educational program. The term includes a nurse practitioner, nurse midwife, nurse anesthetist, and clinical nurse specialist. The term is synonymous with "advanced nurse practitioner" and "advanced practice nurse."

Section 301.152(b) states that the Board shall adopt rules to: (i) license a registered nurse as an advanced practice registered nurse; (ii) establish: (A) any specialized education or training, including pharmacology, that an advanced practice registered nurse must have to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054; (B) a system for approving an advanced practice registered nurse to prescribe or order a drug or device as delegated by a physician under §157.0512 or §157.054 on the receipt of evidence of completing the specialized education and training requirement under paragraph (A); and (C) a system for issuing a prescription authorization number to an advanced practice registered nurse approved under paragraph (B); and (iii) concurrently renew any license or approval granted to an advanced practice registered nurse under §301.152(b) and a license renewed by the advanced practice registered nurse under §301.301.

Section 301.152(c) states that at a minimum, the rules adopted under §301.152(b)(2) must: (i) require completion of pharmacology and related pathophysiology education for initial approval; and (ii) require continuing education in clinical pharmacology and related pathophysiology in addition to any continuing education otherwise required under §301.303.

Section 301.452(a) defines intemperate use to include practicing nursing or being on duty or on call while under the influence of alcohol or drugs.

Section 301.452(b) provides that a person is subject to denial of a license or to disciplinary action under Subchapter J for: (i) a violation of Chapter 301, a rule or regulation not inconsistent with Chapter 301, or an order issued under Chapter 301; (ii) fraud or deceit in procuring or attempting to procure a license to practice professional nursing or vocational nursing; (iii) a conviction for, or placement on deferred adjudication community supervision or deferred disposition for, a felony or for a misdemeanor involving moral turpitude; (iv) conduct that results in the revocation of probation imposed because of conviction for a felony or for a misdemeanor involving moral turpitude; (v) use of a nursing license, diploma, or permit, or the transcript of such a document, that has been fraudulently purchased, issued, counterfeited, or materially altered; (vi) impersonating or acting as a proxy for another person in the licensing examination required under §301.253 or §301.255; (vii) directly or indirectly aiding or abetting an unlicensed person in connection with the unauthorized practice of nursing; (viii) revocation, suspension, or denial of, or any other action relating to, the person's license or privilege to practice nursing in another jurisdiction; (ix) intemperate use of alcohol or drugs that the Board determines endangers or could endanger a patient; (x) unprofessional or dishonorable conduct that, in the Board's opinion, is likely to deceive, defraud, or injure a patient or the public; (xi) adjudication of mental incompetency; (xii) lack of fitness to practice because of a mental or physical health condition that could result in injury to a patient or the public; or (xiii) failure to care adequately for a patient or to conform to the minimum standards of acceptable nursing practice in a manner that, in the Board's opinion, exposes a patient or other person unnecessarily to risk of harm.

Section 301.452(c) provides that the Board may refuse to admit a person to a licensing examination for a ground described under §301.452(b).

Section 301.452(d) provides that the Board by rule shall establish guidelines to ensure that any arrest information, in particular information on arrests in which criminal action was not proven or charges were not filed or adjudicated, that is received by the Board under §301.452 is used consistently, fairly, and only to the extent the underlying conduct relates to the practice of nursing.

Section 301.453(a) provides that, if the Board determines that a person has committed an act listed in §301.452(b), the Board shall enter an order imposing one or more of the following: (i) denial of the person's application for a license, license renewal, or temporary permit; (ii) issuance of a written warning; (iii) administration of a public reprimand; (iv) limitation or restriction of the person's license, including limiting to or excluding from the person's practice one or more specified activities of nursing or stipulating periodic Board review; (v) suspension of the person's license for a period not to exceed five years; (vi) revocation of the person's license; or (vii) assessment of a fine.

Section 301.453(b) provides that, in addition to or instead of an action under §301.453(a), the Board, by order, may require the

person to: (i) submit to care, counseling, or treatment by a health provider designated by the Board as a condition for the issuance or renewal of a license; (ii) participate in a program of education or counseling prescribed by the Board; (iii) practice for a specified period under the direction of a registered nurse or vocational nurse designated by the Board; or (iv) perform public service the Board considers appropriate.

Section 301.453(c) provides that the Board may probate any penalty imposed on a nurse and may accept the voluntary surrender of a license. The Board may not reinstate a surrendered license unless it determines that the person is competent to resume practice.

Section 301.453(d) states that if the Board suspends, revokes, or accepts surrender of a license, the Board may impose conditions for reinstatement that the person must satisfy before the Board may issue an unrestricted license.

Section 301.4531(a) states that the Board by rule shall adopt a schedule of the disciplinary sanctions that the Board may impose under Chapter 301. In adopting the schedule of sanctions, the Board shall ensure that the severity of the sanction imposed is appropriate to the type of violation or conduct that is the basis for disciplinary action.

Section 301.4531(b) states, in determining the appropriate disciplinary action, including the amount of any administrative penalty to assess, the Board shall consider: (i) whether the person is being disciplined for multiple violations of either Chapter 301 or a rule or order adopted under Chapter 301 or has previously been the subject of disciplinary action by the Board and has previously complied with Board rules and Chapter 301; (ii) the seriousness of the violation; (iii) the threat to public safety; and (iv) any mitigating factors.

Section 301.4531(c) provides that, in the case of a person described by §301.4531(b)(1)(A), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a single violation; and in the case of a person described by §301.4531(b)(1)(B), the Board shall consider taking a more severe disciplinary action, including revocation of the person's license, than the disciplinary action that would be taken for a person who has not previously been the subject of disciplinary action by the Board.

§222.1. Definitions.

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

(1) Advanced health assessment--A course that offers content supported by related clinical experience such that students gain the knowledge and skills needed to perform comprehensive assessments to acquire data, make diagnoses of health status, and formulate effective clinical management plans. Content must include assessment of all human systems, advanced assessment techniques, concepts, and approaches.

(2) Advanced Pharmacotherapeutics--A course that offers advanced content in pharmacokinetics, pharmacodynamics, pharmacotherapeutics of all broad categories of agents, and the application of drug therapy to the treatment of disease and/or the promotion of health.

(3) Advanced Physiology and Pathophysiology--A dedicated, comprehensive, system-focused pathology course(s) that provides students with the knowledge and skills to analyze the relationship between normal physiology and pathological phenomena produced by altered states across the life span.

(4) Advanced practice registered nurse (APRN)--As defined by §301.152, Occupations Code. The term includes an advanced nurse practitioner and advanced practice nurse.

(5) Board--The Texas Board of Nursing.

(6) Controlled Substance--As defined by §481.002, Health and Safety Code.

(7) Dangerous Drug--As defined by §483.001, Health and Safety Code.

(8) Device--As defined by §551.003, Occupations Code, and includes durable medical equipment.

(9) Diagnosis and management course--A course offering both didactic and clinical content in clinical decision-making and aspects of medical diagnosis and medical management of diseases and conditions. Supervised clinical practice must include the opportunity to provide pharmacological and non-pharmacological management of diseases and conditions considered within the scope of practice of the APRN's population focus area and role.

(10) Facility-based practice--A hospital, as defined by §157.051(6), Occupations Code, or a licensed long term care facility. A facility based practice does not include a freestanding clinic, center, or other medical practice associated with or owned or operated by a hospital or licensed long term care facility.

(11) Health professional shortage area--

(A) An urban or rural area of this state that:

(i) is not required to conform to the geographic boundaries of a political subdivision but is a rational area for the delivery of health services;

(ii) the Secretary of Health and Human Services determines has a health professional shortage; and

(iii) is not reasonably accessible to an adequately served area;

(B) A population group that the Secretary of Health and Human Services determines has a health professional shortage; or

(C) A public or non-profit private medical facility or other facility that the Secretary of Health and Human Services determines has a health profession shortage as described by 42 U.S.C. §254e(a)(1).

(12) Hospital--A facility that:

(A) is:

(i) a general hospital or a special hospital, as those terms are defined by §241.003, Health and Safety Code, including a hospital maintained or operated by a state; or

(ii) a mental hospital licensed under Chapter 577, Health and Safety Code; and

(B) has an organized medical staff.

(13) Medication order--As defined by §551.003, Occupations Code and §481.002, Health and Safety Code.

(14) Non-prescription drug--As defined by §551.003, Occupations Code.

(15) Physician group practice--An entity through which two or more physicians deliver health care to the public through the practice of medicine on a regular basis and that is:

(A) owned and operated by two or more physicians; or

(B) a freestanding clinic, center, or office of a non-profit health organization certified by the Texas Medical Board under §162.001(b), Occupations Code, that complies with the requirements of Chapter 162.

(16) Population focus area--The section of the population with which the APRN has been licensed to practice by the Board.

(17) Practice serving a medically under-served population--

(A) A practice in a health professional shortage area;

(B) A clinic designated as a rural health clinic under 42 U.S.C.§1395x(aa);

(C) A public health clinic or a family planning clinic under contract with the Health and Human Services Commission or the Department of State Health Services;

(D) A clinic designated as a federally qualified health center under 42 U.S.C. §1396d(1)(2)(B);

(E) A county, state, or federal correctional facility;

(F) A practice:

(i) that either:

(I) is located in an area in which the Department of State Health Services determines there is an insufficient number of physicians providing services to eligible clients of federally, state, or locally funded health care programs; or

(II) is a practice that the Department of State Health Services determines serves a disproportionate number of clients eligible to participate in federally, state, or locally funded health care programs; and

(ii) for which the Department of State Health Services publishes notice of the department's determination in the *Texas Register* and provides an opportunity for public comment in the manner provided for a proposed rule under Chapter 2001, Government Code; or

(G) A practice at which a physician was delegating prescriptive authority to an APRN or physician assistant on or before March 1, 2013, based on the practice qualifying as a site serving a medically under-served population.

(18) Prescribe or order a drug or device--Prescribing or ordering a drug or device, including the issuing of a prescription drug order or a medication order.

(19) Prescription drug--As defined by §551.003, Occupations Code.

(20) Prescriptive authority agreement--An agreement entered into by a physician and an APRN or physician assistant through which the physician delegates to the APRN or physician assistant the act of prescribing or ordering a drug or device.

(21) Protocols or other written authorization--Written authorization to provide medical aspects of patient care that are agreed upon and signed by the APRN and delegating physician, reviewed and signed at least annually, and maintained in the practice setting of the APRN. The term "protocols or other written authorization" is separate and distinct from a prescriptive authority agreement. However, a prescriptive authority agreement may reference or include the terms of a protocol or other written authorization. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the APRN commensurate with his/her education and experience. Such protocols or other written authorization need not describe the exact steps that the APRN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs or devices that may be prescribed or ordered rather than just list specific drugs or devices.

(22) Shall and must--Mandatory requirements.

(23) Should--A recommendation.

§222.3. Renewal of Prescriptive Authority.

(a) The APRN shall renew the privilege to sign prescription drug orders and medication orders in conjunction with the RN and advanced practice license renewal application.

(b) The APRN seeking to maintain prescriptive authority shall attest, on forms provided by the Board, to completing at least five contact hours of continuing education in pharmacotherapeutics within the preceding biennium. In every licensure cycle after January 1, 2015, those APRNs seeking to maintain prescriptive authority who order or prescribe controlled substances shall attest, on forms provided by the Board, to completing at least three additional contact hours of continuing education related to prescribing controlled substances within the preceding biennium.

(c) The continuing education requirements in subsection (b) of this section shall be in addition to continuing education required under Chapter 216 of this title (relating to Continuing Competency) for APRNs.

§222.4. Minimum Standards for Prescribing or Ordering Drugs and Devices.

(a) The APRN with full licensure and a valid prescription authorization number shall:

(1) order or prescribe only those drugs or devices that are:

(A) authorized by a prescriptive authority agreement or, if practicing in a facility-based practice, authorized by either a prescriptive authority agreement or protocols or other written authorization; and

(B) ordered or prescribed for patient populations within the accepted scope of professional practice for the APRN's license; and

(2) comply with the requirements for chart reviews specified in the prescriptive authority agreement and periodic face to face meetings set forth in the prescriptive authority agreement; or

(3) comply with the requirements set forth in protocols or other written authorization if ordering or prescribing drugs or devices under facility-based protocols or other written authorization.

(b) Prescription Information. The format and essential elements of a prescription drug order shall comply with the requirements of the Texas State Board of Pharmacy. The following information must be provided on each prescription:

(1) the patient's name and address;

(2) the name, strength, and quantity of the drug to be dispensed;

(3) directions to the patient regarding taking of the drug and the dosage;

(4) the intended use of the drug, if appropriate;

(5) the name, address, and telephone number of the physician with whom the APRN has a prescriptive authority agreement or facility-based protocols or other written authorization;

(6) address and telephone number of the site at which the prescription drug order was issued;

(7) the date of issuance;

(8) the number of refills permitted;

(9) the name, prescription authorization number, and original signature of the APRN who authorized the prescription drug order; and

(10) the United States Drug Enforcement Administration numbers of the APRN and the delegating physician, if the prescription drug order is for a controlled substance.

(c) Generic Substitution. The APRN shall authorize or prevent generic substitution on a prescription in compliance with the current rules of the Texas State Board of Pharmacy relating to generic substitution.

(d) An APRN may order or prescribe medications for sexually transmitted diseases for partners of an established patient, if the APRN assesses the patient and determines that the patient may have been infected with a sexually transmitted disease. Nothing in this subsection shall be construed to require the APRN to issue prescriptions for partners of patients.

(e) APRNs may order or prescribe only those medications that are FDA approved unless done through protocol registration in a United States Institutional Review Board or Expanded Access authorized clinical trial. "Off label" use, or prescription of FDA-approved medications for uses other than that indicated by the FDA, is permitted when such practices are:

(1) within the current standard of care for treatment of the disease or condition; and

(2) supported by evidence-based research.

(f) The APRN with full licensure and a valid prescriptive authorization number shall cooperate with representatives of the Board and the Texas Medical Board during an inspection and audit relating to the operation and implementation of a prescriptive authority agreement.

§222.5. Prescriptive Authority Agreement.

(a) The prescriptive authority agreement is a mechanism by which an APRN is delegated the authority to order or prescribe drugs or devices by a physician.

(b) An APRN with full licensure and a valid prescriptive authorization number and a physician are eligible to enter into or be parties to a prescriptive authority agreement only if the APRN:

(1) holds an active license to practice in this state that is in good standing. For purposes of this chapter, an APRN is in good standing if the APRN's license and prescriptive authorization number are not encumbered by a disciplinary action;

(2) is not currently prohibited by the Board from executing a prescriptive authority agreement; and

(3) before executing the prescriptive authority agreement, the APRN and the physician disclose to the other prospective party to the agreement any prior disciplinary action by the applicable licensing board.

(c) A prescriptive authority agreement must, at a minimum:

(1) be in writing and signed and dated by the parties to the agreement;

(2) state the name, address, and all professional license numbers of the parties to the agreement;

(3) state the nature of the practice, practice locations, or practice settings;

(4) identify either:

(A) the types or categories of drugs or devices that may be ordered or prescribed; or

(B) the types of categories of drugs or devices that may not be ordered or prescribed;

(5) provide a general plan for addressing consultation and referral;

(6) provide a plan for addressing patient emergencies;

(7) state the general process for communication and the sharing of information between the APRN and the physician related to the care and treatment of patients;

(8) if alternate physician supervision is to be utilized, designate one or more alternate physicians who may:

(A) provide appropriate supervision on a temporary basis in accordance with the requirements established by the prescriptive authority agreement and the requirements of Chapter 157, Subchapter B, Occupations Code; and

(B) participate in the prescriptive authority quality assurance and improvement plan meetings required under §157.0512, Occupations Code;

(9) describe a prescriptive authority quality assurance and improvement plan and specify methods for documenting the implementation of the plan that includes the following:

(A) chart review, with the number of charts to be reviewed determined by the APRN and physician; and

(B) periodic face to face meetings between the APRN and the physician at a location agreed upon by both providers.

(d) The periodic face to face meetings described by subsection (c)(9)(B) of this section must:

(1) include:

(A) the sharing of information relating to patient treatment and care, needed changes in patient care plans, and issues relating to referrals; and

(B) discussion of patient care improvement; and

(2) be documented and occur:

(A) except as provided by subparagraph (B) of this paragraph:

(i) at least monthly until the third anniversary of the date the agreement is executed; and

(ii) at least quarterly after the third anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet; or

(B) if during the seven years preceding the date the agreement is executed, the APRN for at least five years was in a practice that included the exercise of prescriptive authority with required physician supervision:

(i) at least monthly until the first anniversary of the date the agreement is executed; and

(ii) at least quarterly after the first anniversary of the date the agreement is executed, with monthly meetings held between the quarterly meetings by means of a remote electronic communications system, including video conferencing technology or the internet.

(e) Although a prescriptive authority agreement must include the information specified by this section, the agreement may include other provisions agreed to by the APRN and physician, including provisions that were previously contained in protocols or other written authorization.

(f) The APRN shall participate in quality assurance meetings with an alternate physician if the alternate physician has been designated in the prescriptive authority agreement to conduct and document the meeting.

(g) The prescriptive authority agreement is not required to describe the exact steps that an APRN must take with respect to each specific condition, disease, or symptom.

(h) An APRN who is a party to a prescriptive authority agreement must retain a copy of the agreement until the second anniversary of the date the agreement is terminated.

(i) A party to the prescriptive authority agreement may not by contract waive, void, or nullify any provision of this rule or §157.0512 or §157.0513, Occupations Code.

(j) In the event that a party to a prescriptive authority agreement is notified that the individual has become the subject of an investigation by the respective licensing board, the individual shall immediately notify the other party to the prescriptive authority agreement.

(k) The prescriptive authority agreement and any amendments must be reviewed at least annually, dated, and signed by the parties to the agreement. The prescriptive authority agreement shall be made available to the Board, the Texas Medical Board, or the Texas Physician Assistant Board not later than the third business day after the date of receipt of the request from the respective licensing board.

(l) The prescriptive authority agreement should promote the exercise of professional judgment by the APRN commensurate with the APRN's education and experience and the relationship between the APRN and the physician.

(m) The calculation under Chapter 157, Occupations Code, of the amount of time an APRN has practiced under the delegated prescriptive authority of a physician under a prescriptive authority agreement shall include the amount of time the APRN practiced under the delegated prescriptive authority of that physician before November 1, 2013.

§222.6. Prescribing at Facility-Based Practices.

(a) An APRN with full licensure and a valid prescriptive authorization number may order or prescribe a drug or device at a facility based practice pursuant to a prescriptive authority agreement or through protocols or other written authorization developed in accordance with facility medical staff policies.

(1) If ordering or prescribing at a facility based practice pursuant to a prescriptive authority agreement, the APRN must maintain a prescriptive authority agreement that meets the requirements of §222.5 (relating to Prescriptive Authority Agreement) of this chapter.

(2) If ordering or prescribing at a facility based practice pursuant to protocols or other written authorization developed in accordance with facility medical staff policies, the APRN must:

(A) review the authorizing documents with the appropriate medical staff at least annually;

(B) order or prescribe drugs and devices in a hospital based facility in which the delegating physician is the medical director, the chief of medical staff, the chair of the credentialing committee, or a department chair, or a physician who consents to the request of the medical director or chief of the medical staff to delegate;

(C) order or prescribe drugs and devices in a long term care facility in which the delegating physician is the medical director; and

(D) order or prescribe drugs and devices for the care or treatment of only those patients for whom physicians have given their prior consent.

(b) Protocols or other written authorization is authorization to provide medical aspects of patient care that are agreed upon and signed by the APRN and the physician, reviewed and signed at least annually, and maintained in the practice setting of the APRN. Protocols or other written authorization shall be defined to promote the exercise of professional judgment by the APRN commensurate with his/her education and experience. Protocols or other written authorization need not describe the exact steps that the APRN must take with respect to each specific condition, disease, or symptom and may state types or categories of drugs or devices that may be ordered or prescribed.

(c) A facility based physician may not be prohibited from delegating the prescribing or ordering of drugs or devices to an APRN under §157.0512, Occupations Code or §222.5 of this chapter at other practice locations, including hospitals or long term care facilities, provided that the delegation at those locations complies with all of the requirements of §157.0512 and §222.5 of this chapter.

§222.7. Authority to Order and Prescribe Non-prescription Drugs, Dangerous Drugs, and Devices.

An APRN who has been issued full licensure and a valid prescription authorization number by the Board may order or prescribe non-prescription drugs, dangerous drugs, and devices, including durable medical equipment, in accordance with the standards and requirements set forth in this chapter. However, if the APRN wishes to also order or prescribe controlled substances, the APRN must also meet the additional requirements of §222.8 (relating to Authority to Order and Prescribe Controlled Substances) of this chapter.

§222.8. Authority to Order and Prescribe Controlled Substances.

(a) APRNs with full licensure and a valid prescription authorization number are eligible to obtain authority to order and prescribe certain categories of controlled substances. The APRN must comply with all federal and state laws and regulations relating to the ordering and prescribing of controlled substances in Texas, including but not limited to, requirements set forth by the Texas Department of Public Safety and the United States Drug Enforcement Administration.

(b) Orders and prescriptions for controlled substances in Schedules III through V may be authorized, provided the following criteria are met:

(1) Prescriptions for a controlled substance in Schedules III through V, including a refill of the prescription, shall not exceed a 90 day supply. This requirement includes a prescription, either in the form of a new prescription or in the form of a refill, for the same

controlled substance that a patient has been previously issued within the time period described by this subsection.

(2) Beyond the initial 90 days, the refill of a prescription for a controlled substance in Schedules III through V shall not be authorized prior to consultation with the delegating physician and notation of the consultation in the patient's chart.

(3) A prescription of a controlled substance in Schedules III through V shall not be authorized for a child less than two years of age prior to consultation with the delegating physician and notation of the consultation in the patient's chart.

(c) Orders and prescriptions for controlled substances in Schedule II may be authorized only:

(1) in a hospital facility-based practice, in accordance with policies approved by the hospital's medical staff or a committee of the hospital's medical staff as provided by the hospital's bylaws to ensure patient safety and as part of care provided to a patient who:

(A) has been admitted to the hospital for an intended length of stay of 24 hours or greater; or

(B) is receiving services in the emergency department of the hospital; or

(2) as part of the plan of care for the treatment of a person who has executed a written certification of a terminal illness, has elected to receive hospice care, and is receiving hospice treatment from a qualified hospice provider.

§222.10. Enforcement.

(a) Any APRN who violates the sections of this rule or orders or prescribes in a manner that is not consistent with the standard of care shall be subject to removal of the authority to order or prescribe under this section and disciplinary action by the Board. Behaviors associated with ordering and prescribing medications for which the Board may impose disciplinary action include, but are not limited to:

(1) ordering, prescribing, dispensing, or administering medications or devices for other than evidenced based therapeutic or prophylactic purposes that meet the minimum standards of care;

(2) ordering, prescribing, or dispensing medications or devices for personal use;

(3) failing to properly assess and document the assessment prior to ordering, prescribing, dispensing, or administering a medication or device;

(4) selling, purchasing, trading, or offering to sell, purchase, or trade a prescription drug sample; and

(5) delegation of authority to any other person to order, prescribe, or dispense of an order or prescription for a drug or device.

(b) Failure to cooperate with a representative of the Board who conducts an onsite investigation may result in disciplinary action. Failure to cooperate with a representative of the Board or the Texas Medical Board who inspects and audits the practice relating to the implementation and operation of the prescriptive authority agreement may result in disciplinary action.

(c) The Board shall immediately notify the Texas Medical Board and the Texas Physician Assistant Board:

(1) when an APRN licensed by the Board becomes the subject of an investigation involving the delegation and supervision of prescriptive authority; and

(2) upon the final disposition of an investigation involving an APRN licensed by the Board and the delegation and supervision of prescriptive authority.

(d) Upon receipt of notice from the Texas Medical Board and/or the Texas Physician Assistant Board that a licensee of one of those boards is under investigation involving the delegation and supervision of prescriptive authority, the Board may open an investigation against an APRN who is a party to the prescriptive authority agreement with the licensee who is under investigation by the board that provided the notice.

(e) The Board shall report to the Texas Department of Public Safety and the United States Drug Enforcement Administration any of the following:

(1) any significant changes in the status of the RN license or advanced practice license; or

(2) disciplinary action impacting an APRN's ability to authorize or issue prescription drug orders and medication orders.

(f) The practice of the APRN approved by the Board to order and prescribe is subject to monitoring by the Board on a periodic basis.

(g) The Board shall maintain a list of APRNs who have been subject to a final adverse disciplinary action for an act involving the delegation and supervision of prescriptive authority.

(h) The Board shall provide information to the public regarding APRNs who are prohibited from entering into or practicing under a prescriptive authority agreement.

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

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Jena Abel
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PART 23. TEXAS REAL ESTATE COMMISSION

CHAPTER 535. GENERAL PROVISIONS
SUBCHAPTER R. REAL ESTATE INSPECTORS

22 TAC §§535.206, 535.208, 535.209, 535.211, 535.216

The Texas Real Estate Commission (TREC) adopts amendments to §535.206, concerning the Texas Real Estate Inspector Committee; §535.208, concerning Application for a License; §535.209, concerning Examinations; §535.211, concerning Professional Liability Insurance, or Any Other Insurance That Provides Coverage for Violations of Subchapter G of Texas Occupations Code, Chapter 1102; and §535.216, concerning Renewal of License. Section 535.209 is adopted with changes

to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5668). Sections 535.206, 535.208, 535.211 and 535.216 are adopted without changes to the proposed text and will not be republished.

The difference between the sections as proposed and as adopted and comments received on each section are described below. All of the comments received were reviewed by the Texas Real Estate Inspector Committee and all of the changes to the language published in the *Texas Register* were recommended by the Texas Real Estate Inspector Committee.

Most of the amendments are adopted to implement the relevant provisions of House Bill (HB) 2911, 83rd Session, Texas Legislature, Regular Session (2013). The effective date of the relevant provisions of HB 2911 is September 1, 2013. In relevant part, HB 2911 amended Texas Occupations Code, Chapter 1102, regarding late renewals, examinations, financial responsibility, and fingerprinting. Many of the same amendments were adopted on an emergency basis because of the September 1, 2013 effective date.

The amendments to §535.206 add term limits for inspector and public members. No comments were received on this proposal and no changes were made to the amendments as published.

The amendments to §535.208 change the reference to professional responsibility requirements, change the period for completing all application requirements from six to 12 months, and add a new fingerprinting requirement for applicants to be consistent with new statutory requirements. No comments were received on this proposal and no changes were made to the amendments as published.

The amendments to §535.209 add a new subsection to the rule regarding additional education requirements for applicants who fail an exam three consecutive times to be consistent with new statutory requirements. No comments were received on this proposal but input from a third party vendor who administers the examinations and staff was received regarding difficulties of implementation and confusion between subsections (e) and (f) of the amendments as written. The differences between the amendments as proposed and as adopted are: subsection (d) is deleted as the date of applicability has already passed and proposed subsection (e) is adopted as (d). Subsection (f) is renumbered to (e) and is rewritten to be consistent with former subsection (e) (renumbered to (d)) and to better clarify when an examination is considered passed and the period examination results remain valid for an application. Former subsection (g) (renumbered to (f)) is rewritten to simplify the requirements for additional education following three consecutive examination failures.

The amendments to §535.211 add new proof of professional responsibility requirements to be consistent with new statutory requirements. No comments were received on this proposal and no changes were made to the amendments as published.

The amendments to §535.216 add new provisions for late renewals and fingerprinting to be consistent with new statutory requirements. No comments were received on this proposal and no changes were made to the amendments as published.

The revisions to the sections as adopted do not change the nature or scope so much that they could be deemed different rules. The amendments as adopted do not affect individuals other than those contemplated by the amendments as proposed. The sections as adopted do not impose more onerous requirements than the proposed sections.

The reasoned justification for the amendments to the sections is compliance with amendments to Texas Occupations Code, Chapter 1102, regarding late renewals, financial responsibility, reexamination and fingerprinting set out in HB 2911, 83rd Session, Texas Legislature, Regular Session (2013).

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by the amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

§535.209. Examinations.

(a) Effective January 1, 2013, there shall be an examination for a real estate inspector license and for a professional inspector license, consisting of a national part and a state part. The commission adopts the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors for the national part of the examination. For the state part of the examination, questions shall be used which measure competency in the subject areas required for a license by Chapter 1102, and which demonstrate an awareness of its provisions relating to inspectors. Each real estate inspector applicant must achieve a score of at least 70% on the state part of the examination. Each professional inspector applicant must achieve a score of at least 75% on the state part of the examination.

(b) Except as otherwise required by Chapter 1102 or this section, examinations shall be conducted as provided by §535.61 of this title (relating to Examinations).

(c) The commission may waive the national part of the examination of an applicant for a real estate or professional inspector license if the applicant maintains an active license in another state and has passed the National Home Inspector Examination developed by the Examination Board of Professional Home Inspectors.

(d) If the applicant has not satisfied all requirements within one year from the time the commission accepted an application for filing, including passing both parts of the examination, the application is terminated and a new application is required.

(e) Examination results are valid for a period of one year from the date the examination is passed. An examination is considered passed when an applicant has received a passing grade on both parts of the examination.

(f) An applicant who fails the examination three consecutive times may not apply for reexamination or submit a new license application unless the applicant submits evidence satisfactory to the commission that the applicant has completed additional core education as follows, after the date the applicant failed the examination for the third time:

(1) for an applicant who failed the national part of the examination, 32 hours;

(2) for an applicant who failed the state part of the examination, 8 hours; and

(3) for an applicant who failed both parts of the examination, 40 hours.

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

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Kerri Lewis
General Counsel
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For further information, please call: (512) 936-3092

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22 TAC §535.210

The Texas Real Estate Commission (TREC) adopts amendments to §535.210, concerning Fees, without changes to the rule text as proposed in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5668).

The amendments are adopted to implement the relevant provisions of House Bill (HB) 2911, 83rd Session, Texas Legislature, Regular Session (2013). The effective date of the relevant provisions of HB 2911 is September 1, 2013. In relevant part, HB 2911 amended Texas Occupations Code, Chapter 1102, regarding examinations, late renewals, education requirements, financial responsibility, and fingerprinting.

The amendments to §535.210 add new fees for late renewals and fingerprinting to be consistent with new statutory requirements. In addition, the amendments to §535.210 add a new fee of $40 for preparing a certificate of active licensure or sponsorship.

The reasoned justification for the amendments to the rule is compliance with amendments to Texas Occupations Code, Chapter 1102, regarding late renewals and fingerprinting set out in HB 2911, 83rd Session, Texas Legislature, Regular Session (2013); and to cover all costs of operation in accordance with a legislative mandate under Senate Bill 1000, 82nd Legislature, Regular Session (2011).

No comments were received on this proposal and no changes were made to the amendments as proposed.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by the amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

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

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22 TAC §§535.212 - 535.214, 535.218

The Texas Real Estate Commission (TREC) adopts amendments to §535.212, concerning Education and Experience Requirements for a License; §535.213, concerning Approval of Courses in Real Estate Inspection; §535.214, concerning Providers of Real Estate Inspection Courses; and §535.218, concerning Continuing Education. Sections 535.212, 535.213 and 535.218 are adopted with changes to the proposed text as published in the August 30, 2013, issue of the *Texas Register* (38 TexReg 5670). Section 535.214 is adopted without changes to the proposed text and will not be republished.

The difference between the sections as published and as adopted and comments received on each section are described below. All of the comments received were reviewed by the Texas Real Estate Inspector Committee and all of the changes to the language published in the *Texas Register* were recommended by the Texas Real Estate Inspector Committee.

Most of the amendments are adopted to implement the relevant provisions of House Bill (HB) 2911, 83rd Session, Texas Legislature, Regular Session (2013). The effective date of the relevant provisions of HB 2911 is September 1, 2013. In relevant part, HB 2911 amended Texas Occupations Code, Chapter 1102, regarding education and experience requirements, course and provider approval and continuing education. Many of the same amendments were adopted on an emergency basis because of the September 1, 2013 effective date. Other amendments were made pursuant to the recommendation of the Texas Real Estate Inspector Committee to implement required field work for substitute experience requirements for a license and a more comprehensive continuing education program for inspectors.

The amendments to §535.212 increase the number of hours required for education for a professional inspector license by two hours and change the specific requirements for substitute experience requirements for real estate and professional inspectors to apply new statutory requirements. The amendments also correct and clarify the language of the rule to increase comprehension. The difference between the rule as published and as adopted are: subsections (f) and (g) were restructured to combine the interactive experience training classroom hours proposed under (f)(1)(A) and (g)(1)(A) with the proposed required field work hours under (f)(1)(B)(i) and (g)(1)(B)(i) respectively; current provisions allowing an option for all interactive experience training modules with no field work under subsections (f)(1)(B)(ii) and (g)(1)(B)(ii) were reinstated; and new subsections (f)(3) and (g)(3) which accept the substitute experience under reinstated subsections (f)(1)(B)(ii) and (g)(1)(B)(ii) if completed prior to May 1, 2014 were added.

Twelve comments were received on the proposal, ten opposed and two in favor. Additionally, two comments were received from legislators expressing concern about the need to study the cost, benefits and burden of requiring the maximum hours of ride along experience and requested that more time be given to fully investigate alternatives. The main reasons given by commenters

for opposition to the proposed changes were that there will not be enough instructors available to teach the required ride along portion and that the new requirement could reduce the number of people entering the industry. Other comments given by those opposed were that it was too onerous, would create greater costs, would be a difficult option for those in rural areas, and choosing the maximum number of hours permitted by the legislature for field work was not following the legislative intent. One of the commenters in favor of requiring ride along field work stated that there was great value in ride alongs and her school was working toward incorporating that requirement and thought it could be provided at a reasonable cost. The Texas Real Estate Inspector Committee reviewed the comments and recommended that the Commission keep the proposed 20 hour ride along requirement for substitute experience requirement for a real estate inspector license and 40 hours for a professional inspector's license, because it is critical to consumer protection that an applicant get hands on experience before becoming licensed. Given the extensive nature of the standards of practice (SOPs) that a new inspector has to apply and the fact that examples of issues under the SOPs will be different in every house, the Committee did not feel that 20/40 hours of ride along experience was excessive. The Committee also noted that current interactive training modules do not adequately address Texas specific SOPs in a comparable manner to a ride along session. However, based on some of the concerns raised by the commenters, the Committee also recommended reinstating the provision allowing all substitute experience hours to be completed through interactive experience training modules until May 1, 2014. This will allow time to adjust to and implement the change, to study and present viable alternatives and to develop a larger pool of ride along instructors. The Commission adopted the amendments with the Committee's changes based on comments received. The Commission stressed at the meeting that it wanted all options investigated promptly, giving them time to consider additional options and make any further adjustments to the requirements on or before their April 28, 2014 Commission meeting.

The amendments to §535.213 clarify that the rule applies to core courses, define certain terms, and clarify the qualifications for correspondence courses. The difference between the proposal as published and the rule as adopted is that the proposed increase in the time frame that an applicant cannot receive repeat credit for a course was dropped in response to comments received. Comments were received on the proposal from two trade associations. The trade associations requested that the timeframe that an applicant cannot receive repeat credit for a course be left at two years to be consistent with the renewal cycle to avoid confusion and allow repetition of courses where an inspector might be weak. The Committee and the Commission agreed to make this change.

The amendment to §535.214 clarifies that the rule applies to providers of core education courses. No comments were received on this proposal and no changes were made to the amendments as published.

The amendments to §535.218 provide a process and requirements for approval of real estate inspector courses, providers and instructors and set out requirements for the Texas Standards of Practice/Legal/Ethics Update course and a ride along inspection course. The differences between the proposal as published and the rule as adopted are: the rule was restructured for greater clarity, including moving subsection (d) into subsection (b) and rearranging a portion of subsection (e); references to §535.213(e)(11) and (12) were added since they were inadvertently left out of the proposal; in subsection (b) the number of hours allowed in any one single subject was increased from eight to twelve and the word "topic" was changed to "subject" to track the terminology used in §535.213(e). In subsection (e), the following sentence was added to the beginning of the section "Subsections (k) - (n) of §535.71 of this title do not apply to course approval or instructors of non-elective courses for inspectors" since it is currently not applicable. The word "substantially" before "the same course" was deleted from subsection (g); and the proposed increase in the time frame that an applicant cannot receive repeat credit for a course was dropped in response to comments received.

Two trade groups and two individuals commented on the proposal. One individual felt that there were not going to be enough ride along instructors and that the cost would be too much. The Texas Real Estate Inspector Committee reviewed the comments. The Committee's response is that the ride along course for continuing education is an optional course and not required and that more inspectors will likely agree to teach the course now that it will be available for credit for the trainee and the trainer. The trade associations and one individual were opposed to approval of all continuing education courses or instructors by the Commission. The Committee made no recommended changes based on these comments since approval of instructors and courses were proposed to be the same as is currently required for all other license types regulated by the Commission and no good reason for a different application exists. The one exception to this is the non-elective course for inspectors, which was excluded from these provisions in subsection (e) since there is not currently one single Commission approved course. The trade associations and one individual requested that the timeframe that an applicant cannot receive repeat credit for a course be left at two years to be consistent with the renewal cycle to avoid confusion and allow repetition of courses where an inspector might be weak. The Committee and the Commission agreed to make this change. The trade associations also requested that there be no limitation on the number of hours an inspector could take in any give subject because they might be weak in one area and need additional education in that area. The Committee stated that the reason for putting in the limitation of no more than 8 hours in any single subject was to ensure that inspectors got a well-rounded education for their continuing education. Taking all of your biannual education in only one of the 12 subject areas does not keep the inspector up to date in all of the necessary systems. However, in consideration of this concern, the Committee did agree to increase the limitation to no more than 12 hours. The Commission agreed with changes made by the Committee to the proposed rule.

The reasoned justification for the amendments to the rules is compliance with amendments to Texas Occupations Code, Chapter 1102, regarding examinations, education and experience requirements, in House Bill (HB) 2911, 83rd Session, Texas Legislature, Regular Session (2013); and to provide a more robust substitute experience requirement and continuing education program for inspectors that will provide better educated inspectors resulting in greater consumer protection.

The amendments are adopted under Texas Occupations Code, §1101.151, which authorizes the Texas Real Estate Commission to adopt and enforce rules necessary to administer Chapters 1101 and 1102; and to establish standards of conduct and ethics for its licensees to fulfill the purposes of Chapters 1101 and 1102 and ensure compliance with Chapters 1101 and 1102.

The statutes affected by the amendments are Texas Occupations Code, Chapters 1101 and 1102. No other statute, code or article is affected by the amendments.

§535.212. Education and Experience Requirements for a License.

(a) To become licensed as a real estate inspector or professional inspector, a person must satisfy:

(1) the education and experience requirements outlined in §1102.108 and §1102.109 of Chapter 1102; or

(2) the education requirements outlined in §1102.108 and §1102.109 of Chapter 1102 and the substitute experience requirements established by the commission pursuant to §1102.111 in subsection (f) or (g) of this section.

(b) A person may satisfy the 90-hour education requirement for licensure as a real estate inspector pursuant to subsection (a)(1) or (2) of this section by completing the following coursework:

(1) 10 hours in foundations;

(2) 8 hours in framing;

(3) 10 hours in building enclosure;

(4) 10 hours in roof systems;

(5) 8 hours in plumbing systems;

(6) 10 hours in electrical systems;

(7) 10 hours in heating, ventilation, and air conditioning systems;

(8) 8 hours in appliances;

(9) 4 hours in Texas Standards of Practice;

(10) 4 hours in Texas Standard Report Form/Report Writing; and

(11) 8 hours in Texas Legal/Ethics.

(c) Effective September 1, 2013, a person may satisfy the 130-hour education requirement for licensure as a professional inspector pursuant to subsection (a)(1) or (2) of this section by completing the following coursework:

(1) the courses required for licensure as a real estate inspector in subsection (b) of this section;

(2) 8 additional hours in Texas Standard Report Form/Report Writing;

(3) 8 additional hours in Texas Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title (relating to Continuing Education); and

(4) 24 additional hours in any core inspection subject(s).

(d) For the purpose of measuring the number of inspections required to receive a license or to sponsor apprentice inspectors or real estate inspectors, the commission considers an improvement to real property to be any unit capable of being separately rented, leased or sold, subject to the following restrictions:

(1) An inspection of an improvement to real property that includes the structural and equipment/systems of the unit constitutes a single inspection.

(2) Half credit will be given for an inspection limited to structural components only or to equipment/systems only.

(3) No more than 80% of the inspections for which experience credit is given may be limited to structural components only or to equipment/systems components only.

(4) A report addressing two or more improvements is considered a single inspection.

(5) The commission may not give experience credit to the same applicant or professional inspector for more than three complete or six partial inspections per day. No more than three applicants may receive credit for the inspection of the same unit within a 30 day period, and no more than three apprentice inspectors may receive credit for an inspection of the same unit on the same day.

(e) For the purpose of satisfying any requirement that an applicant hold a license for a period of time in order to be eligible for a license as a real estate inspector or professional inspector, the commission shall not give credit for periods in which a license was on inactive status. An applicant for a real estate inspector license must have been licensed on active status for a total of at least three months within the 12 month period prior to the filing of the application. An applicant for a professional inspector license must have been licensed on active status for a total of at least 12 months within the 24 month period prior to the filing of the application.

(f) Effective January 1, 2014, a person may satisfy the substitute experience requirements for licensure as a real estate inspector pursuant to subsection (a)(2) of this section as follows:

(1) A person who does not have two years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 32 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing;

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics Update as defined in§535.218 of this title;

(iii) 16 hours in any core inspection subject(s); and

(B) either:

(i) complete 20 hours of field work through ride along inspection course sessions as defined in §535.218 of this title and 40 hours of an approved classroom or alternative delivery interactive experience training module;

(ii) complete 60 hours of an approved interactive experience training module presented by a licensed professional inspector and submit a certificate of completion; or

(iii) have three years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property and provide two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least two years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 16 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing; and

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics Update; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(3) Paragraph (1)(B)(ii) of this subsection will only be accepted to satisfy the substitute experience requirement if completed prior to May 1, 2014.

(g) Effective January 1, 2014, a person may satisfy the substitute experience requirements for licensure as a professional inspector pursuant to subsection (a)(2) of this section as follows:

(1) A person who does not have three years of experience as an architect, engineer, or engineer-in-training must:

(A) complete a total of 200 additional hours of core inspection coursework, which must include the following:

(i) 30 hours in foundations;

(ii) 30 hours in framing;

(iii) 24 hours in building enclosure;

(iv) 24 hours in roof systems;

(v) 16 hours in plumbing systems;

(vi) 24 hours in electrical systems;

(vii) 24 hours in heating, ventilation, and air conditioning systems;

(viii) 6 hours in appliances;

(ix) 8 hours in Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title;

(x) 8 hours in Standard Report Form/Report Writing; and

(xi) 6 hours in any core inspection subject(s); and

(B) either:

(i) complete 40 hours of field work through ride along inspection course sessions as defined in §535.218 of this title and 80 hours of an approved classroom or alternative delivery interactive experience training module;

(ii) complete 120 hours of an approved interactive experience training module presented by a licensed professional inspector and submit a certificate of completion; or

(iii) have five years of experience in a field directly related to home inspection, including but not limited to installing, servicing, repairing or maintaining the structural, mechanical and electrical systems found in improvements to real property, and provide two affidavits from persons who have personal knowledge of the applicant's work, detailing the time and nature of the applicant's relevant experience.

(2) A person who has at least three years of experience as an active practicing licensed or registered architect, professional engineer, or engineer-in-training must:

(A) complete a total of 16 additional hours of core inspection coursework, which must include the following:

(i) 8 hours in Texas Standard Report Form/Report Writing; and

(ii) 8 hours in Texas Standards of Practice/Legal/Ethics Update as defined in §535.218 of this title; and

(B) submit a license history from the regulatory agency that issued the license or registration documenting the period of practice as a licensed or registered architect, professional engineer, or engineer-in-training.

(3) Paragraph (1)(B)(ii) of this subsection will only be accepted to satisfy the substitute experience requirement if completed prior to May 1, 2014.

(h) For purposes of this section, "core inspection coursework" means course work on the subject matters listed in §535.213(e) of this title (relating to Approval of Core Courses in Real Estate Inspection).

§535.213. Approval of Core Courses in Real Estate Inspection.

(a) To be accepted for inspector licensing, a course must meet each of the following requirements.

(1) The course was devoted to a subject listed in §1102.001(5) of Chapter 1102 or this section; provided, however, that the commission will not accept more than 30 hours of course credit for inspection-related business, legal, report writing or ethics courses.

(2) The student was present in the classroom for the hours of credit granted by the course provider or completed makeup in accordance with the requirements of the provider or by applicable commission rule.

(3) Successful completion of a final examination or other form of final evaluation was a requirement for receiving credit from the provider.

(4) The daily course presentation did not exceed ten hours.

(5) The course was offered by a provider accredited by the commission to offer inspection courses or exempt from the requirement to be accredited by the commission.

(b) A classroom course may include up to 50% of total course time for appropriate field trips relevant to the course topic. Field trips may not be included as part of correspondence or alternative delivery courses.

(c) Except as provided to the contrary by this section, the review and acceptance of correspondence courses or courses offered by alternative delivery systems such as computers will be conducted in the manner prescribed by §535.62 of this title (relating to Acceptable Courses of Study). Correspondence courses are acceptable only if offered by or in association with an accredited college or university and the school has certified to the commission that the course was offered in accordance with the college or university's curriculum accreditation standards. Using the name of the school "in association with" the name of the college or university on the course completion certificate or electronic course submission constitutes certification to the commission that the course was offered in compliance with the college or university's curriculum accreditation standards.

(d) Providers wishing to obtain prior approval of a classroom course shall submit the following items to the commission:

(1) a course description, including the number of hours of credit to be awarded;

(2) a timed course outline;

(3) a copy of any textbook, course outline, syllabus or other written course material provided to students;

(4) a cross reference to the course material which demonstrates in a manner that is satisfactory to the commission where the required subject matter is covered in the course; and

(5) a copy of the written final examination which measures a student's mastery of the course.

(e) The following subjects shall be considered core real estate inspection courses:

(1) Foundations, which shall include the following topics:

(A) site analysis/location;

(B) grading;

(C) foundations;

(D) flat work;

(E) material;

(F) foundation walls;

(G) foundation drainage;

(H) foundation waterproofing and damp proofing;

(I) columns; and

(J) under floor space.

(2) Framing, which shall include the following topics:

(A) flashing;

(B) wood frame - stick/balloon;

(C) roof structure - rafters/trusses;

(D) floor structure;

(E) porches/decks/steps/landings/balconies;

(F) doors;

(G) ceilings;

(H) interior walls;

(I) stairways;

(J) guardrails/handrails/balusters;

(K) fireplace/chimney;

(L) sills/columns/beams/joist/sub-flooring;

(M) wall systems/structure - headers;

(N) rammed earth;

(O) straw bale;

(P) ICF;

(Q) panelized;

(R) masonry;

(S) wood I joist;

(T) roof sheathing;

(U) wood wall;

(V) steel wall;

(W) wood structural panel; and

(X) conventional concrete.

(3) Building Enclosure, which shall include the following topics:

(A) review of foundation and roofing relation;

(B) review of flashing;

(C) cladding;

(D) windows/glazing;

(E) weather barriers;

(F) vapor barriers;

(G) insulation;

(H) energy codes; and

(I) ingress/egress.

(4) Roof Systems, which shall include the following topics:

(A) review - rafters, roof joist, ceiling joist, collar ties, knee walls, purling, trusses, wood I joist, roof sheathing, steel framing;

(B) roof water control;

(C) skylights;

(D) flashing;

(E) ventilation/non-ventilation;

(F) attic access;

(G) re-roofing;

(H) slopes - step roof/low slope/near flat;

(I) materials - asphalt, fiberglass, wood shake, wood shingle, slate, clay tile, concrete tile, fiber cement (asbestos cement, mineral cement), metal, roll, build up, modified bitumen, synthetic rubber (EPDM), plastic (PVC); and

(J) valleys.

(5) Plumbing Systems, which shall include the following topics:

(A) water supply systems;

(B) fixtures;

(C) drains;

(D) vents;

(E) water heaters (gas and electric);

(F) gas lines; and

(G) hydro-therapy equipment.

(6) Electrical Systems, which shall include the following topics:

(A) general requirements, equipment location and clearances;

(B) electrical definitions;

(C) services;

(D) branch circuit and feeder requirements;

(E) wiring methods;

(F) power and lights distribution;

(G) devices and light fixtures; and

(H) swimming pool.

(7) HVAC Systems, which shall include the following topics:

(A) heating;

(B) ventilation;

(C) air conditioning; and

(D) evaporative coolers.

(8) Appliances, which shall include the following topics:

(A) dishwasher;

(B) food waste disposer;

(C) kitchen exhaust hood;

(D) range, cooktop, and ovens (electric and gas);

(E) microwave cooking equipment;

(F) trash compactor;

(G) bathroom exhaust fan and heater;

(H) whole house vacuum systems;

(I) garage door operator;

(J) doorbell and chimes; and

(K) dryer vents.

(9) Texas Standards of Practice, which shall include the following topics:

(A) review of general principles and specific Texas practice standards;

(B) inspection guidelines for structural systems;

(C) inspection guidelines for electrical systems;

(D) inspection guidelines for heating, ventilation, and air conditioning systems;

(E) inspection guidelines for plumbing systems;

(F) inspection guidelines for appliances; and

(G) inspection guidelines for optional systems.

(10) Legal/Ethics, which shall include the following topics:

(A) Chapter 1102;

(B) commission rules related to inspectors;

(C) agency enforcement action relating to inspectors; and

(D) related case law.

(11) Texas Standard Report Form/Report Writing, which shall include the following topics:

(A) use of the required inspection report form;

(B) allowed reproductions;

(C) allowed changes;

(D) exceptions from use of the form;

(E) review of typical comments for each heading in the report; and

(F) review of generally accepted technical writing techniques.

(12) Other approved courses as they relate to real estate inspections, which shall include one or more of the following topics:

(A) Environmental Protection Agency;

(B) Consumer Product Safety Commission; and

(C) general business practices applied to the operation of an inspection business.

(f) A course approved to satisfy a specific subject matter requirement must address each part of the subject as described by this subchapter.

(g) A course that combines more than one subject into a composite course may be approved by the commission to satisfy core course education requirements; however, composite courses will not satisfy the requirements for coursework in specific subject areas unless they are approved for a specific number of hours for each subject area.

(h) An applicant may not take the same course more than once for credit toward the education requirements for a license; however, a course for which credit was granted toward a lower license may be counted again toward the requirements for a higher license.

(i) An applicant will not receive credit for more than one course with substantially the same course content within a two year period.

§535.218. Continuing Education.

(a) Effective September 1, 2011, continuing education for renewal of a real estate inspector or professional inspector license must include six hours of Texas Standards of Practice/Legal/Ethics Update.

(b) Effective January 1, 2014, the thirty-two hours of continuing education required for each renewal of a real estate inspector or professional inspector license must include:

(1) twenty-four hours of core subjects as described in §535.213(e)(1) - (8), (11) and (12) of this title (relating to Approval of Core Courses in Real Estate Inspection), with a maximum of twelve hours on any one single subject; and

(2) eight hours of Texas Standards of Practice/Legal/Ethics Update. The Texas Standards of Practice/Legal/Ethics Update is a non-elective course and must consist of the following coursework:

(A) 4 hours of Standards of Practice;

(B) 2 hours of Legal; and

(C) 2 hours of Ethics.

(c) Except as provided by this section, the approval of real estate inspection continuing education providers, courses, and instructors will be conducted in the same manner as provided for real estate licensees under §535.71 of this title (relating to Approval of Providers, Courses, and Instructors) with references to real estate license or licensee to include inspector licensees, statutory references to Chapter 1101 to include the corresponding section applicable to inspectors in Chapter 1102, and references to legal and ethics update courses to include Texas Standards of Practice/Legal/Ethics Update for inspector licensees.

(d) Up to eight hours of continuing education credit per two year license period can be given to a licensee for ride along inspection course sessions. To receive continuing education credit for the course, the instructor of the course must submit a certification of completion of a ride along inspection session, within one week of completion of a ride along inspection session, on a form approved by the commission

(1) The course, at a minimum, must:

(A) consist of one full residential property inspection;

(B) review applicable standards of practice and departure provisions contained in §§535.227 - 535.233 of this title (relating to Standards of Practice); and

(C) have no more than two students per session.

(2) The instructor of the course may:

(A) review report writing;

(B) deliver a notice regarding the ride along session on a form approved by the commission to the prospective buyer or seller of the home being inspected.

(e) Subsections (k) - (n) of §535.71 of this title do not apply to course approval or instructors of non-elective courses for inspectors. To be approved as an instructor of Texas Standards of Practice/Legal/Ethics Update, or as an instructor of a ride along inspection course, a person must have five years of active licensure as a professional inspector, and have:

(1) performed a minimum of 200 real estate inspections as a professional inspector; or

(2) three years of experience in teaching and/or sponsoring trainees or inspectors.

(f) Courses submitted for continuing education credit must be successfully completed during the term of the current license. The commission may not grant continuing education credit twice for a course with the same course content taken by a licensee within a two year period.

(g) Other than for correspondence courses or courses offered by alternative delivery methods, such as by computer, completion of a final examination is not required for a licensee to obtain continuing education credit for a course.

(h) A professional inspector or real estate inspector who fails to renew a license that is subject to continuing education requirements and who files an application for reinstatement within two years after the previous license has expired must provide evidence satisfactory to the commission that the applicant has completed any continuing education that would have been required for timely renewal of the previous license.

(i) Providers may request continuing education credit be given to instructors of real estate inspection courses subject to the following guidelines.

(1) The instructors may receive credit for only those portions of the course which they teach.

(2) The instructors may receive full course credit by attending all of the remainder of the course.

(3) Instructors of ride along inspection course sessions may only receive up to 8 hours of continuing education credit for teaching the course per two year license renewal period.

(j) The commission will not grant partial credit to an inspector who attends a portion of a course.

(k) Presentation of courses, advertising, record keeping, compliance and enforcement for inspector continuing education courses will be conducted in the same manner as provided for real estate licensees under §535.72 and §535.73 of this title (relating to Presentation of Courses, Advertising and Records; and Compliance and Enforcement).

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201304997
Kerri Lewis
General Counsel
Texas Real Estate Commission
Effective date: November 21, 2013
Proposal publication date: August 30, 2013
For further information, please call: (512) 936-3092

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 13. HEALTH PLANNING AND RESOURCE DEVELOPMENT
SUBCHAPTER A. RECRUITMENT OF PHYSICIANS TO UNDERSERVED AREAS

25 TAC §§13.1 - 13.3

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§13.1 - 13.3, concerning physician visa waivers without changes to the proposed text as published in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4486) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Federal law (Title 8 United States Code §1182 and §1184) allows waiver of normal immigration requirements for foreign physicians who agree to provide certain specified types of medical services in the United States. The United State Citizenship and Immigration Services provide these waivers based upon the recommendation of state health departments. This is called the "physician visa waiver" or "Conrad 30" program after the original name of the sponsor of the federal legislation and the number of exemptions provided to each state. Corresponding state law (Health and Safety Code, §12.0127) allows the department to implement the Texas Conrad 30 program in Texas. The purpose of the program is to recruit physicians to underserved areas of the state by making a recommendation for the waiver of the two-year home residence requirement for foreign physicians who trained in the United States on a "J-1 Exchange Visitor Visa." The waiver recommendation comes with a three-year service obligation for the physician to practice in an underserved area. The program is authorized by the federal government to make 30 waiver recommendations per year.

The amendment to §13.1 is necessary because the program no longer utilizes the "Flex" provision, allowing for state health departments to make visa waiver recommendations to areas that are not designated as having a shortage of physicians.

Government Code, §2001.039, requires that each state agency review and consider for re-adoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 13.1 - 13.3 have been reviewed and the department has determined that the reasons for

adopting the sections continue to exist because rules on this subject are needed.

SECTION-BY-SECTION SUMMARY

The amendment to §13.1 eliminates the priorities the program would consider if the "Flex" provision was utilized. The amendments to §13.2 and §13.3 make minor revisions for clarity.

COMMENTS

The department, on behalf of the commission, did not receive any comments regarding the proposed rules during the comment period.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §12.0127, which allows the department to charge fees to cover the costs incurred by Conrad 30 program; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on October 30, 2013.

TRD-201304914
Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: November 19, 2013
Proposal publication date: July 12, 2013
For further information, please call: (512) 776-6990

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CHAPTER 98. TEXAS HIV MEDICATION PROGRAM

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13, 98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, and 98.118, concerning the Texas HIV State Pharmacy Assistance Program and the Texas HIV Medication Program, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4146). The sections will not be republished.

BACKGROUND AND PURPOSE

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13, 98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, and 98.118 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are needed to comply with statutory requirements and to effectively operate the program.

SECTION-BY-SECTION SUMMARY

The amendments to §98.2 add new definitions for the terms "HIV disease" and "Medicare prescription drug plan," and also revise the definition for the term "Texas resident." The new definitions help ensure consistency in the use of these terms across the program. Amendments to the definition of a "Texas resident" clarify that the department may request what information it believes is relevant to help in its residency determinations. The remaining parts of the section are renumbered as appropriate, given the amended substantive changes referenced in this paragraph.

The amendments to §§98.1, 98.3, 98.5 - 98.7, 98.10, 98.11, and 98.13(a) clarify that the program provides assistance for medications covered by Medicare, and delete the reference to "Part D" to clarify that any coverage under a Medicare drug plan is covered under the rule. This amendments are made because Medicare prescription drug coverage is now offered in a variety of different plans due to the introduction and availability of Medicare managed care plans. The deletion of "Part D" allows the program to include anyone covered under any Medicare prescription drug plan.

The amendments to §98.5(c) and §98.8(a) and (b) reflect recent changes in the name of the Branch under which the program resides and reflect changes to the program's mailing address.

Amendments to §98.10(a)(1)(A) replace "Medicare" with "Social Security Administration" to more accurately reflect the source of Low Income Subsidies.

Amendment to §98.11 clarifies that the department may contract with a claims processor to interface with "plans that provide Medicare prescription drug benefits" and delete the reference to Medicare "Part D." This amendment is made because Medicare prescription drug coverage is now offered in a variety of different plans and providers due to the introduction and availability of Medicare managed care plans.

Amendments to §98.12(a) reflect recent changes in the name of the Branch under which the program resides and also reflect changes to the program's mailing address. Amendments to subsection (b) reflect recent changes made to the name of the agency Unit and the Branch and corresponding titles for managers who participate in the appeal review panel described in this subsection.

Amendments to §98.13(c) reflect changes to the department's HIPAA Privacy Officer contact information, including new mailing address, phone numbers and email address.

Amendments to §98.101 better reflect the statutory role for hospital districts, local health departments, public or nonprofit hospitals and clinics and nonprofit community organizations as described in Health and Safety Code, §85.064(c). Under that provision, these entities may contribute money into the program for the purpose of purchasing medications for patients. This provision has been incorrectly interpreted at times by these other entities to mean that the program could buy medications at special pricing available only to state programs for those entities in this provision and have those entities reimburse the department. The federal Office of Pharmacy Affairs has clarified that state pro-

grams cannot purchase medications for other entities and that doing so would be illegal. However the entities referenced in the statutory provision do benefit indirectly from the program when patients with HIV disease in their respective jurisdictions receive direct assistance from the program, thereby eliminating the need for those entities to provide services to these patients.

Amendments to §98.102 add new definitions for "HIV disease" and for "Payer of last resort." The new definitions help ensure consistency in the use of these terms across the program. The addition of the term "Payer of last resort" is made to reflect state law, department policy and federal grant conditions that require the program to be the payer of last resort. Amendments to the definition of a "Texas resident" are made in order to clarify that the department may request what information it believes is relevant to help in its residency determinations. The remaining parts of the section are renumbered as appropriate, given the substantive changes reflected in this paragraph.

Amendments to §§98.103, 98.110, and 98.118 update recent changes in the name of the Branch under which the program resides and reflect changes to the program's mailing address.

Amendment to §98.107 deletes language that allow the Director of the Health Promotions Unit to make exceptions to the Medical Eligibility Criteria. This amendment is made to better meet the statutory requirements of Health and Safety Code, §85.062, regarding eligibility. In addition, federal grant conditions specify that only HIV-positive individuals are eligible for the program and that no exceptions to this criterion can be made.

Amendments to §98.109 clarify that the program is the payer of last resort and reflect state law, department policy and federal grant conditions that require the program to be the payer of last resort.

Amendments to §98.115(c)(1) delete language that calls for a specific order of implementing and reversing cost-containment measures. Potential program budget shortfalls as revealed by quarterly actuarial projections may require the need for cost-containment measures. The change made in this subsection gives the program and the department greater flexibility to address those shortfalls while attempting to minimize impact to affected patients. Amendments to subsection (c)(2) delete language that calls for reversing cost-containment measures in the order which they were implemented to parallel deleted language in subsection (c)(1). New language in subsection (c)(2) gives the department greater flexibility to rescind cost-containment measures appropriate to specific circumstances at the time when the measures are implemented.

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were the following associations and groups: the Coalition for Nurses in Advanced Practice (CNAP); and Gardere Wynne Sewell, LLP (GWS). The commenters were not against the rules in their entirety; however, suggested recommendations for change are discussed in this summary of comments.

Comment: Concerning §98.107 and §98.110, CNAP suggests that the department update these sections by including Advanced Practice Registered Nurses (APRNs) and Physician Assistants (PAs), at §98.107(2) and §98.110(a)(4), because some of the clients accessing this program may be in medically underserved areas and would benefit from the care provided by APRNs and PAs.

Response: The commission declines to make these changes. Health and Safety Code, §85.062, states that, as part of the program's eligibility requirements, an individual must be diagnosed by a "licensed physician." The department infers from that language that there is a legislative intent that the medical care associated with these patients in the program be provided by a licensed physician. The department is not necessarily adverse to the change suggested by CNAP, but believes that the statute would need to address the issue before the commission could appropriately make the suggested rule changes. Additionally, while it is true that physicians in Texas may delegate some of their duties in the course of practicing medicine in the state, the department does not have the resources to review the scope and propriety of all such orders that could affect the eligibility of patients for this program. It is the department's belief that the issue of whether the program should be expanded to include participation by the non-physician professions referenced by CNAP is one that needs to be decided in a clear manner at the legislative level.

Comment: Concerning the deletion of §98.107(b), GWS asks that the department confirm the commenter's understanding that deletion of this authority only relates to the criteria contained in §98.107, Medical Eligibility Criteria.

Response: The commission agrees and confirms that deletion of §98.107(b) only applies to the criteria found in §98.107, Medical Eligibility Criteria, as discussed in more detail in the Section-By-Section summary of this preamble. No change was made as a result of this comment.

LEGAL CERTIFICATION

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

SUBCHAPTER A. TEXAS HIV STATE PHARMACY ASSISTANCE PROGRAM

25 TAC §§98.1 - 98.3, 98.5 - 98.8, 98.10 - 98.13

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §85.003, which requires the department to act as lead agency and primary resource for AIDS and HIV policy; Health and Safety Code, §85.013, which requires the department to maximize the use of federal and private funds for HIV-related treatment; Health and Safety Code, §85.016, which allows for the adoption of rules; Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Health and Safety Code, §85.063, which requires the department to establish procedures and eligibility guidelines for the HIV Medication Program; Health and Safety Code, Chapter 81, which provides authority for agency actions regarding the prevention and control of communicable diseases; and Government Code, §531.0055, and by Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6990

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SUBCHAPTER C. TEXAS HIV MEDICATION PROGRAM
DIVISION 1. GENERAL PROVISIONS

25 TAC §§98.101 - 98.103, 98.107, 98.109, 98.110, 98.115, 98.118

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §85.003, which requires the department to act as lead agency and primary resource for AIDS and HIV policy; Health and Safety Code, §85.013, which requires the department to maximize the use of federal and private funds for HIV-related treatment; Health and Safety Code, §85.016, which allows for the adoption of rules; Health and Safety Code, §85.061, which establishes the Texas HIV Medication Program; Health and Safety Code, §85.063, which requires the department to establish procedures and eligibility guidelines for the HIV Medication Program; Health and Safety Code, Chapter 81, which provides authority for agency actions regarding the prevention and control of communicable diseases; and Government Code, §531.0055, and by Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

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Lisa Hernandez
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CHAPTER 169. ZOONOSIS CONTROL

SUBCHAPTER D. STANDARDS FOR ALLOWABLE METHODS OF EUTHANASIA FOR ANIMALS IN THE CUSTODY OF AN ANIMAL SHELTER

25 TAC §§169.81 - 169.84

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§169.81 - 169.84, concerning the standards for allowable methods of euthanasia for animals in the custody of an animal shelter. The amendments are adopted without changes to the proposed text as published in the August 23, 2013, issue of the *Texas Register* (38 TexReg 5413) and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

The rules are necessary to comply with Health and Safety Code, Chapter 821, Subchapter C, "Euthanasia of Animals," which provides the Executive Commissioner of the Health and Human Services Commission with the authority to administer the chapter and adopt rules necessary to effectively administer the program.

On May 10, 2013, Senate Bill (SB) 360, 83rd Legislature, Regular Session, 2013, was signed into law by the Governor, and amended Health and Safety Code, Chapter 821, Subchapter C. SB 360 prohibits the use of carbon monoxide and requires the administration of sodium pentobarbital for euthanizing dogs and cats in the custody of an animal shelter. This legislation requires rules to be adopted by the Executive Commissioner by December 1, 2013, and compliance by January 1, 2014.

Government Code, §2001.039, requires that each state agency review and consider for readoption each rule adopted by that agency pursuant to the Government Code, Chapter 2001 (Administrative Procedure Act). Sections 169.81 - 169.84 have been reviewed and the department has determined that reasons for adopting the sections continue to exist because rules on this subject are mandated.

Specifically, the sections cover purpose, definitions, animal identification and owner notification, and allowable methods of euthanasia.

After carefully considering the alternatives, the department believes the rules as amended are the best method of implementing the statute to protect the public health with rules on the standards for allowable methods of euthanasia for animals in the custody of an animal shelter in the State of Texas.

SECTION-BY-SECTION SUMMARY

The amendment to §169.81 provides clarification and modifies the language to make it more concise.

The amendment to §169.82 clearly defines the term "animal shelter" and adds a definition for "department."

Section 169.83 adds new language to provide instruction to animal shelter personnel to document attempts to identify animal ownership and notifying owners prior to euthanasia.

Section 169.84 is amended to comply with SB 360; it also was modified to incorporate some of the updates provided by the American Veterinary Medical Association (AVMA) in the recently revised edition of the *AVMA Guidelines for the Euthanasia of Animals.*

COMMENTS

The department, on behalf of the commission, has reviewed and prepared responses to the comments received regarding the proposed rules during the comment period, which the commission has reviewed and accepts. The commenters were individuals, associations, and/or groups, including the following: Texas Humane Legislative Network (THLN), The Humane Society of the United States (HSUS), and the American Society for the Prevention of Cruelty to Animals (ASPCA). The commenters were not against the rules in their entirety; however, the commenters recommended changes as discussed in the summary of comments.

Comment: Concerning §169.83, a commenter stated that "it is important to change 'should' to 'shall' to help ensure no euthanasia of an owned animal occurs. Also, we have found that 'universal scanners' are the only scanner to catch all microchips. In the same section, we suggests [sic] 'an animal' instead of a 'dog or cat' because most cities, including Dallas, Houston, San Antonio, and Austin are using sodium pentobarbital on animals other than dogs and cats; for example, ferrets, rabbits, gerbils, raccoons, etc. We believe the published requirements should apply to those euthanasias as well."

Response: Although the commission agrees that scanning for microchips prior to euthanizing an animal is a highly recommended practice, the commission disagrees to making them mandatory because many shelters do not have scanners and it could pose a hardship on them if they are required to use them.

The term "animal" is used throughout §169.83; since the term "dog or cat" is not used in this section, no change was needed or made. However, the commission believes that the commenter was referring to §169.84(a) for this portion of the comment. By changing the term to "animal," it would prevent the usage of alternative routes on euthanasia administration determined to be acceptable for other species by the AVMA. For example, according to the *AVMA's Guidelines for the Euthanasia of Animals* (2013 Edition), the recommended routes for amphibians and reptiles are IV, intracoelomically, subcutaneous lymph sacs, or lymph sacs, which, except for IV, are not in the list of approved routes of administration for dogs and cats. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(b)(1), a commenter stated to add "oral administration of sodium phenobarbital for animals too aggressive or stressed to inject even after pre-euthanasia sedation as a viable option. This is for the health and safety of the shelter workers. Also, HSUS suggests that injectable administration of sodium pentobarbital be limited to only intravenous injection."

Response: The commission disagrees and refers to the expertise of the AVMA. According to the *AVMA's Guidelines for the Euthanasia of Animals,* "The oral route has several disadvantages when considered for administration of euthanasia agents, including lack of established drugs and doses, variability in agent bioavailability and rate of absorption, potential difficulty of administration (including potential for aspiration), and potential for loss of agent through vomiting or regurgitation (in species that are capable of these functions). For these reasons, the oral route is generally unacceptable as a sole means of euthanasia, but may be an appropriate way to deliver sedatives prior to administration of parenteral euthanasia agents." Additionally, all the routes for administration of sodium pentobarbital for dogs and cats, as listed in §169.84(b)(1), are deemed acceptable by the AVMA. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(d)(1), a commenter recommended that "'or one designed and constructed, at a minimum, to equal the effectiveness of a commercially manufactured chamber,' be deleted. Prior to the introduction of SB 360, we contacted over 1,000 Texas cities to determine which city shelters still used carbon monoxide as a form of shelter euthanasia for dogs and cats and discovered that many of the cities that still use gas chambers have 'homemade' chambers that fail to comply with the §169.84, governing 'homemade' chambers. Carbon monoxide is tasteless, odorless and dangerous, hence the requirement of a gas gage and carbon monoxide detector, which are clearly missing from these chambers. As a result, Texas should only allow a commercially manufactured chamber to ensure the health, safety and welfare of its shelter employees."

Response: Although the commission agrees with this concept, there are very few manufacturers of these chambers and the expense of purchasing one could cause economic hardship for some shelters. Compliance with the rule mandates that non-commercially manufactured carbon monoxide chambers be designed and constructed, at a minimum, to equal the effectiveness of a commercially manufactured chamber. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(c)(3)(E), a commenter recommended "the addition of the phrase 'when .01% or more carbon monoxide gas is present.' This additional language establishes an exact criterion as to when the alarm is activated. Once again, this will help to ensure the health and safety of shelter employees when operating a gas chamber."

Response: There is no §169.84(c)(3)(E). However, the commission believes that the commenter was referring to §169.84(d)(3)(E), in which case the commission disagrees because the level of carbon monoxide at which a carbon monoxide monitor will sound an alarm is determined by the manufacturer while also being in compliance with any relevant laws pertaining to carbon monoxide monitors. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(e), a commenter recommended "that the word 'should' be replaced with the word 'must' to emphasize the importance of the best practice of 'minimizing the fear, anxiety, and distress of the animal scheduled for euthanasia.'"

Response: Although the commission agrees that all available measures should be taken to minimize the fear, anxiety, and distress of an animal being euthanized and, therefore, has added the recommendation for this practice in §169.84(e), it would be difficult to make this prescriptive given the varying circumstances of euthanasia scenarios (for instance, a euthanasia conducted under emergency field conditions) and the subjective nature to this topic. No change was made to the rule as a result of this comment.

Comment: Concerning §169.84(f), a commenter recommended "that death be confirmed by two separate methods such as lack of breathing, lack of heartbeat, lack of corneal reflex and presence of rigor mortis. This is an additional safeguard to avoid any continued suffering on the part of a live animal."

Response: The commission disagrees because the Health and Safety Code, Chapter 821, lists "techniques for verifying an an-

imal's death" as a required topic in euthanasia training courses. Therefore, specific modes for this verification under varying circumstances are covered in the mandated training courses. No change was made to the rule as a result of this comment.

Comment: Concerning a general statement, a commenter recommended "that the rules and regulations include a requirement that the department be notified of any Texas municipality or county continuing to use carbon monoxide after January 1, 2014. Based on the research collected since November of 2011, there are currently 29 gas chambers still being utilized for euthanizing. Many of these gas chambers are 'homemade' and not in compliance with §169.84. Requiring a listing of the chambers will allow the department to inspect them for compliance and will better ensure the health and safety of those persons operating these chambers."

Response: The commission disagrees because it is not under the purview of the commission to track or inspect shelters for compliance with Health and Safety Code, Chapter 821, or these rules. No change was made to the rule as a result of this comment.

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendments are authorized under the Health and Safety Code, Chapter 821, "Euthanasia of Animals," §821.053, which requires the Executive Commissioner of the Health and Human Services Commission to establish the requirements and procedures for administering sodium pentobarbital to euthanize an animal in the custody of an animal shelter; §821.054, which requires the Executive Commissioner of the Health and Human Services Commission to establish standards for a carbon monoxide chamber used to euthanize an animal (other than a dog or cat) in the custody of an animal shelter and the requirements and procedures for administering commercially compressed carbon monoxide to euthanize an animal in the custody of an animal shelter; §4 of SB 360, 83rd Legislature, Regular Session, 2013, which requires the Executive Commissioner to adopt rules necessary to conform to amended Health and Safety Code, §821.052 and §821.054, by December 1, 2013; and Government Code, §531.0055, and Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Health and Safety Code, Chapter 1001. Review of the rules implements Government Code, §2001.039.

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

Filed with the Office of the Secretary of State on October 31, 2013.

TRD-201304958

Lisa Hernandez
General Counsel
Department of State Health Services
Effective date: December 1, 2013
Proposal publication date: August 23, 2013
For further information, please call: (512) 776-6990

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 19. DEPARTMENT OF FAMILY AND PROTECTIVE SERVICES

CHAPTER 700. CHILD PROTECTIVE SERVICES

SUBCHAPTER F. RELEASE HEARINGS

40 TAC §700.602

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), an amendment to §700.602, without changes to the proposed text published in the July 19, 2013, issue of the *Texas Register* (38 TexReg 4567).

The justification for the amendment is to clarify that DFPS may conduct a non-emergency release of an abuse/neglect finding when there is both a sustained finding against a perpetrator, meaning that the finding was upheld following an opportunity for a due process hearing, and evidence that the perpetrator poses a substantial risk of harm to one or more children or vulnerable adults.

The amendment will function by providing the public with better notice regarding the basis for the release by DFPS of a sustained finding of abuse or neglect to a person or entity that has control over a perpetrator's access to children or vulnerable adults.

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 §40.002.

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

Filed with the Office of the Secretary of State on October 31, 2013.

TRD-201304974

Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
Effective date: December 1, 2013
Proposal publication date: July 19, 2013
For further information, please call: (512) 438-3437

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SUBCHAPTER Z. IV-A EMERGENCY ASSISTANCE PROGRAM

40 TAC §§700.2701, 700.2703, 700.2705

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§700.2701, 700.2703, and 700.2705 without changes to the proposed text published in the July 19, 2013, issue of the *Texas Register* (38 TexReg 4568).

The justification for the amendments is to bring the rules into agreement with the Texas Title IV-A State Plan. DFPS implemented the Title IV-A Emergency Assistance (EA) program in 1994 in cooperation with the designated single state agency for Title IV-A of the Social Security Act, which is now the Health and Human Services Commission. When Congress replaced Title IV-A with the Temporary Assistance for Needy Families (TANF) block grant, they included a provision to allow states to claim TANF funds for programs authorized under prior law, which includes the DFPS Emergency Assistance program. In 1995 and again in 1997, the state submitted amendments to the Texas Title IV-A State Plan that changed the eligibility requirements, and both sets of amendments were approved by the Administration for Children and Families. Although the state modified its rules after the 1995 state plan amendment, the rules were not updated after the 1997 amendment.

The amendment to §700.2701 deletes an obsolete reference to the Texas Department of Human Services, since the program was transferred to DFPS and replaces references to specific provisions in federal law with more general references to Title IV-A and the approved state plan.

The amendment to §700.2703 revises the eligibility requirements to comply with the current state plan.

The amendment to §700.2705 deletes reference to the 12-month limit for service provision, which makes this section consistent with the current state plan.

The sections will function by ensuring that the rules are consistent with the Title IV-A State Plan.

No comments were received regarding adoption of the amendments.

The amendments are adopted under Human Resources Code (HRC) §40.0505 and Government Code §531.0055, which provide that the Health and Human Services Executive Commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including the Department of Family and Protective Services; 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 implement federal statutes that govern TANF at 42 U.S.C. §601, et. seq. Specifically, 42 U.S.C. §604(a)(2) allows states to use TANF funds to carry out any program or activity that the state conducted under its pre-1996 programs, which includes the use of Emergency Assistance funds for staff and services. The amendments also implement §40.002, Human Resources Code, which designates DFPS to be the state agency to cooperate with the federal government in the administration of programs under Parts B and E, Title IV, Social Security Act (42 U.S.C. §620 et seq. and §670 et seq.) and other federal law for which the department has administrative responsibility.

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

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TRD-201304975
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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CHAPTER 745. LICENSING

The Health and Human Services Commission adopts, on behalf of the Department of Family and Protective Services (DFPS), amendments to §§745.21, 745.8913, 745.8933, and 745.8951; and new §745.8920 without changes to the proposed text published in the July 19, 2013, issue of the *Texas Register* (38 TexReg 4569).

The justification for the rule changes is to implement Senate Bill (SB) 1733 and SB 162, enacted in the 82nd and 83rd Regular Legislative Sessions, respectively. Both bills amended Chapter 55, Texas Occupations Code, and require administrative rule changes that allow special considerations for military service members, military spouses, and military veterans who apply for a license that an individual must have to participate in a particular business. DFPS issues a child-placing agency administrator's license and a child-care administrator's license that are subject to the provisions of Chapter 55, Occupations Code.

SB 1733 enacted Occupations Code §55.004, which requires DFPS to adopt rules concerning the issuance of an administrator's license to a military spouse who applies for a license and either: (1) holds a current administrator's license in another state that has licensing requirements substantially equivalent to those in Texas; or (2) held an administrator's license in Texas within five years of the application date that expired while the military spouse lived in another state for at least six months. Such rules must allow for alternative demonstrations of competency by military spouses in order to meet requirements for an administrator's license.

SB 162 further amended Chapter 55, Occupations Code by: (1) adding definitions of "military spouse," "military service member," and "military veteran" in §55.001(1-a), (1-b), and (1-c); (2) requiring an expedited application and licensing process for a military spouse as provided by §55.005; and (3) requiring that verified military service, training, or education be credited toward the li-

censing requirements for an applicant who is a military service member or military veteran, subject to certain exceptions, as provided by §55.007.

A summary of the changes follows:

The amendment to §745.21 adds the definitions of a "military service member," "military spouse," and "military veteran" in accordance with Occupations Code §55.001(1-a), (1-b), and (1-c).

The amendment to §745.8913 implements Occupations Code §55.004 related to the issuance of a license to a qualifying military spouse and clarifies existing provisions of the rule, as follows:

(1) The title of the rule is changed to reflect that some of the provisions in this section will now be applicable to both a child-placing agency administrator's license as well as a child-care administrator's license.

(2) Subsection (a) is amended to provide that Child Care Licensing (CCL) may waive any prerequisite for either type of administrator's license if the applicant holds a valid administrator's license in another state that has licensing requirements substantially equivalent to those in Texas.

(3) Amendments to subsection (b) clarify that CCL may issue a provisional license to certain applicants seeking a child-care administrator's license.

New §745.8920 implements Occupations Code §55.004 and §55.007, which require that special considerations be given to applicants for an administrator's license who are military spouses, service members, or veterans. Subsection (a) authorizes the Assistant Commissioner of CCL or that person's designee to: (1) allow a military spouse who holds an administrator's license in another state, or who previously held an administrator's license in Texas within the past five years that expired while the applicant was in another state for at least six months, to demonstrate competence with respect to a licensing requirement though an appropriate alternative method; and (2) credit verified military service, training, or education toward a licensing requirement for an applicant who is a military service member or military veteran, unless that applicant holds a professional or occupational license in another jurisdiction that is restricted. Subsection (b) provides that no special consideration can be provided under this section to an applicant who is ineligible for an administrator's license because of a criminal conviction or Central Registry finding, as provided by Chapter 745, Subchapter F, Division 3 of this title (relating to Criminal Convictions and Central Registry Findings of Child Abuse or Neglect).

The amendment to §745.8933 requires that certain information must be included with an application for an administrator's license to enable DFPS to assess whether a person qualifies as a military spouse, service member, or veteran and whether the person, as a result of that status, is eligible for certain benefits as provided by Chapter 55, Occupations Code. Subsection (b) is added, and states that a complete application from a military spouse seeking expedited handling of the application, or from any person seeking recognition of their out-of-state administrator's license, must include, as applicable: (1) documentation demonstrating status as a military spouse; (2) documentation related to each administrator's license currently held outside of Texas; and (3) a copy of the regulations pertaining to the current out-of-state administrator's license. Subsection (c) is added, and states that a complete application from a military spouse, military service member, or military veteran seeking special consideration under new §745.8920, must include, as applicable, documentation demonstrating status as a military spouse, military service member, or military veteran; documentation related to any professional or occupational license currently held outside of Texas and additional documents needed to demonstrate competency by an alternative method, or that verified military service, training, or education should be credited towards a license requirement.

The amendment to §745.8951 states that CCL will notify a military spouse of the status of his or her application for an administrator's license as soon as practicable, but not later than 21 days. Occupations Code §55.005(a) requires a state agency to process an application for a military spouse "as soon as practicable."

The sections will function by providing a more flexible and more expedient licensing process for military service members, their spouses, and military veterans.

During the public comment period DFPS received one comment from an individual day care owner, who expressed concern that the rules would add to the costs of providing regulated day-care and would force small day-care operations to go out of business because of additional costs required to renew a child-care administrator's license. DFPS does not agree with this comment, because the proposed rule amendments do not require persons who currently hold a valid administrator's license to renew that license; nor do they impact the costs of operating a day-care operation. Rather, the proposed rules offer optional, alternative methods of satisfying certain requirements in order to obtain a child-care administrator or child-placing agency administrator license in Texas when the license applicant is a veteran, military service member, or spouse of a military service member. Moreover, there is no requirement that an owner or employee of a day-care operation hold a license as a child-care administrator or child-placing agency administrator, so these rules do not impact the costs of running a day-care operation in any way. DFPS made no changes in response to this comment.

SUBCHAPTER A. PRECEDENCE AND DEFINITIONS

DIVISION 3. DEFINITIONS FOR LICENSING

40 TAC §745.21

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 Occupations Code Chapter 55.

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

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TRD-201304976
Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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SUBCHAPTER N. ADMINISTRATOR LICENSING

DIVISION 1. OVERVIEW OF ADMINISTRATOR'S LICENSING

40 TAC §745.8913, §745.8920

The amendment 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 amendment and new section implement HRC §43.0042 and Occupations Code §55.004 and §55.007.

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

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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DIVISION 2. SUBMITTING YOUR APPLICATION MATERIALS

40 TAC §745.8933

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 Occupations Code Chapter 55.

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

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Cynthia O'Keeffe
General Counsel
Department of Family and Protective Services
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For further information, please call: (512) 438-3437

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DIVISION 3. LICENSING'S REVIEW OF YOUR APPLICATION

40 TAC §745.8951

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 Occupations Code Chapter 55.

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

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Cynthia O'Keeffe
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For further information, please call: (512) 438-3437

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TITLE 43. TRANSPORTATION

PART 1. TEXAS DEPARTMENT OF TRANSPORTATION

CHAPTER 28. OVERSIZE AND OVERWEIGHT VEHICLES AND LOADS

SUBCHAPTER G. ANALYSIS OF ROUTES FOR SUPERHEAVY PERMITTED LOADS

43 TAC §§28.80 - 28.88

The Texas Department of Transportation (department) adopts new Subchapter G, §§28.80 - 28.88, concerning Analysis of Routes for Superheavy Permitted Loads. New §§28.80 - 28.88 are adopted without changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 5024) and will not be republished.

EXPLANATION OF ADOPTED NEW SECTIONS

The Texas Department of Motor Vehicles (TxDMV) issues permits for the operation of oversize and overweight vehicles on Texas roadways. The department provides assistance to TxDMV by providing routing information in the issuance of permits for the operation of oversize and overweight vehicles. For the permitting of superheavy loads a specific route analysis must be performed. To timely provide the required route information, the department relies on bridge analysis reports submitted by a third-party engineering firm on behalf of the permit applicant. Two engineering firms have been acting as the department's agents under this process. Additional firms have indicated an interest in providing this routing service for the department. In order to ensure that a firm has the necessary experience and training to provide these services, the department has developed the certification process initiated in this rulemaking. The certification process will provide the oversize and overweight permit applicant assurances that the engineering firm used is qualified to provide them with an initial route analysis that meets the requirements of the department.

New §28.80, Purpose, sets out the background and purpose of the subchapter.

New §28.81, Definition, defines a superheavy load to match the definition used by TxDMV in issuing oversize and overweight permits.

New §28.82, Certification Required, clarifies that all private engineering firms performing superheavy route analyses that will be used in issuing an oversize and overweight permit by TxDMV must be approved by the department. The department's Bridge Division specializes in bridge design, inspection, construction, and maintenance. It is within the Bridge Division's area of expertise to evaluate third-party firms for the experience and engineering expertise to perform a superheavy route analysis. By having the firms certified, the department will be able to expedite the issuance of the route information to TxDMV.

New §28.83, Certification Application Process, lists the criteria that an engineering firm must meet in order to be certified to prepare engineering analysis reports for moving superheavy loads across bridges in Texas. The firm must be registered by the Texas Board of Professional Engineers; that registration requires that each engineer who performs work for the firm is licensed to practice in Texas. An engineer performing the route analysis must have competence in bridge rating and overload analysis. The department will also conduct an interview of the applicant to further investigate their knowledge of requirements for issuing a route analysis. This application process ensures that the work will be performed by an individual who has received the proper training and has demonstrated competence in the field of structural analysis. Identifying specific criteria for certification also will enable the department to fairly and consistently evaluate the third-party engineering firms seeking certification.

New §28.84, Application Review, identifies the bases on which an application for certification may be denied. The application review process ensures that only those engineering firms with the licensure, experience, and expertise to perform superheavy route analyses will be certified to do so.

New §28.85, Certification Decision, outlines how and when the certification decision is conveyed to the third party engineering firm. This rule gives the department 60 days to approve or deny an application and to notify the applicant in writing of its decision. If the application is denied, the department will set out the specific criteria the firm failed to meet and provide guidance on how the firm may become eligible to re-apply. If denied for qualification purposes, the applicant cannot reapply for 12 months after the date of a denial notice to ensure that any deficiencies in experience are thoroughly addressed.

New §28.86, Bridge Report, contains the requirement that the third party engineering firm must provide a detailed structural analysis of the bridges on the proposed route using the form prescribed by the department. Consistency in reporting is necessary so that applications can be timely reviewed and to ensure that all relevant information regarding the structures to be crossed is included in each analysis. The form is available from the Bridge Division of the department.

New §28.87, Termination of Certification, provides that the department can terminate the certification of a firm for cause at any time. The department will provide written notification of the termination. After the issuance of the notification the department will no longer accept a route analysis from that firm. This provides the department with the authority necessary to ensure that only qualified and experienced firms provide routing information.

New §28.88, Disclosure of Bridge Information, requires that as a prerequisite for obtaining bridge information, including bridge plans and inspection reports, from the department, an engineering firm must be certified under Chapter 28, Subchapter G, and must enter into a confidentiality agreement with the department relating to that information. The Office of the Attorney General has held that information contained in bridge inspection files is confidential. As a consequence of providing services to the applicant for an oversize and overweight permit, the engineering firm is acting in a limited agency capacity for the department in the review of the route information. Providing bridge information to a certified firm for the purpose of providing required information for an oversize and overweight permit is not a release of the information to the public. The firm can only use the information to conduct the requested bridge analysis. To ensure that the information maintains its confidential nature the department requires that the firm sign the confidentiality agreement. The confidentiality agreement will prohibit the release of bridge information by the firm and will require that the firm notify and cooperate with the department if the firm receives a request for the documents or if ever ordered by a court to release the information to a third party.

COMMENTS

No comments on the proposed new sections were received.

STATUTORY AUTHORITY

The new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 623, Subchapter B.

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

Filed with the Office of the Secretary of State on November 1, 2013.

TRD-201305007
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Effective date: November 21, 2013
Proposal publication date: August 9, 2013
For further information, please call: (512) 463-8683

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CHAPTER 31. PUBLIC TRANSPORTATION

The Texas Department of Transportation (department) adopts amendments to §§31.3, 31.11, 31.13, 31.16 - 31.18, 31.21, 31.22, 31.26, 31.36, 31.37, 31.43 - 31.45, 31.48, 31.49, and 31.57; the repeal of §§31.31, 31.40, and 31.42; and new §§31.30, 31.31, 31.38, 31.40, 31.42, and 31.51, all concerning public transportation. The amendments to §§31.16, 31.21, 31.22, 31.26, 31.37, 31.43 - 31.45, and 31.49; the repeal of §§31.31, 31.40, and 31.42; and new §31.40 and §31.42 are adopted without changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 5027) and will not be republished. The amendments to §§31.3, 31.11, 31.13, 31.17, 31.18, 31.36, 31.48, and 31.57; and new §§31.30, 31.31, 31.38, and 31.51 are adopted with changes to the proposed text as published in the August 9, 2013, issue of the *Texas Register* (38 TexReg 5027).

EXPLANATION OF ADOPTED AMENDMENTS, REPEALS, AND NEW SECTIONS

The enactment of Moving Ahead for Progress in the 21st Century, better known as MAP-21, made significant changes to parts of the Federal Transit Law, Chapter 53 of Title 49, United States Code. These amendments align existing department policies and procedures with new or amended federal requirements in MAP-21 and updates from the Federal Transit Administration (FTA).

Additionally, MAP-21 created three new federal programs: §5339 Grant Program for Bus and Bus Facilities, addressed in new §31.30; §5329 Public Transit Safety Program, addressed in new §31.38; and §5326 Asset Management Program, addressed in new §31.51.

Throughout the chapter, changes are made that apply to grammar and uniformity of terminology. Many of the word substitutions clarify intent or reflect changes in definitions. For uniformity with current Texas Administrative Code guidelines, the symbol for percent is replaced with the word "percent"; the word "section" is replaced with the symbol "§"; a reference to the United States Code is changed from "USC" to "U.S.C."; and a reference to the Code of Federal Regulations is changed from "CFR" to "C.F.R."

After the rules were proposed, staff determined through public comment and additional review that non-substantive, grammar and word usage changes are appropriate for the final adoption of these rules for accuracy and clarity. These changes include use of the words "nonurbanized" instead of "rural", "ensure" instead of "insure", "low-income" instead of "low income" and are made throughout the documents for final adoption. Other non-substantive changes are noted in the explanations below.

SUBCHAPTER A, GENERAL

Amendments to §31.3, Definitions, add new definitions including "Americans with Disabilities Act (ADA)" in paragraph (3), "Asset management plan" in paragraph (4), "Clean Air Act" in paragraph (8), "Disability" in paragraph (15), "Public transportation safety plan" in paragraph (43), "Rural area" in paragraph (49), and "Senior" in paragraph (51). "Federal Transit Administration (FTA)" and "Metropolitan Planning Organization (MPO)" appear as deleted or new definitions in order to list the definitions in the section in alphabetical order.

Amendments to §31.3 also modify certain definitions. "Allocation" indicates that organizations other than subrecipients may receive an allocation from the department. "Authority" is amended to clarify that for entities created under Transportation Code, Chapter 453, Municipal Transit Department, the population at the time of creation determines the status as an authority. "Designated recipient" language is modified to duplicate that in Transportation Code, §456.001. "District" is amended to reflect organizational changes regarding personnel that oversee public transportation activities. "Job access project" has two different meanings: one defined by MAP-21 (49 U.S.C. §5302), as amended, and the other by Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) (49 U.S.C. §5316). "Local governmental entity" is amended to reference authority, as previously defined, and deletes the duplicative list of agencies that are an authority. "Low-income individual" has two different meanings: one defined by MAP-21 (49 U.S.C. §5302), as amended, and the other by SAFETEA-LU (49 U.S.C. §5316). "Mobility management" is clarified to show it is neither applicable to the §5309 or §5339 Grant Programs nor does it include associated capital maintenance items, which are more clearly identified in this definition. "Public transportation" reflects MAP-21 changes to the definition. "Reverse commute project" has two different meanings: one defined by MAP-21 (49 U.S.C. §5302), as amended, and the other by SAFETEA-LU (49 U.S.C. §5316). "Stakeholders" elaborates on who these persons or organizations are and mirrors federal guidance. "Urban transit district" incorporates language from Transportation Code, Chapter 458 and states that authorities are not considered urban transit districts. "Welfare recipient" has two different meanings: one defined by MAP-21 (49 U.S.C. §5302), as amended, and the other by SAFETEA-LU (49 U.S.C. §5316).

Terms deleted because they are no longer in use in the chapter include: "Deputy executive director", "District engineer", "Rural public transportation (RPT)", and "Strategic priorities". "Operating expenses" is deleted because it is defined within the applicable subsections.

SUBCHAPTER B, STATE PROGRAMS

Amendments to §31.11 clarify the entities that receive urban state grants and add a provision for the department to consider negative performance impacts to allocations for circumstances beyond an urban or rural transit agency's control.

Amendments to §31.11(b)(1)(A) delete text that further defines an urban transit district as the term is defined in §31.3(57) and change "elderly" to "seniors" to be consistent with changes in federal programs as modified by MAP-21. Amendments to §31.11(b)(1)(A) and (B) allow the department to adjust performance allocations to compensate for a negative impact in

the performance factor allocations under certain situations. Amendments to §31.11(b)(1)(C) and subsequent paragraphs clarify to which transit agencies the text applies by specifying urban or rural transit district rather than using the generic term designated recipient.

Section 31.13(b) is changed at final adoption to substitute "local public entity" for "local governmental entity" as eligible recipients. The term "local public entity" includes transit districts (i.e., political subdivisions), but "local governmental entity" does not. Transit districts are eligible for these funds. Additional text clarifies that authorities are not eligible for discretionary funds. Amendments to §31.13(c) remove the term "designated recipient" as not all organizations that are designated recipients are eligible for §31.13 funds. The amendments also delete "district" to reflect department organizational changes.

SUBCHAPTER C, FEDERAL PROGRAMS

Amendments to Subchapter C, Federal Programs, include changes as a result of MAP-21 modification to the structure of numerous areas of the transit portion of the United States Code. Additionally, MAP-21 repurposed §5309 Grant Program (§31.16), and repealed §5316 Grant Program (§31.17) and §5317 Grant Program (§31.18) as stand-alone programs. These sections remain in the chapter because the department still has active grants using appropriations made prior to MAP-21.

Amendments to §31.16(a) respond to a major change in the §5309 capital investment program as a result of MAP-21. Bus and bus facilities projects are no longer part of the revised §5309 federal program. However, the department has active contracts with subrecipients that use funds appropriated prior to MAP-21 and will continue to follow §31.16 in the administration of those grants.

Amendments to §31.17(a) reflect the repeal of the §5316 Job Access and Reverse Commute Program (JARC) by MAP-21. The department has active contracts with subrecipients that use JARC funds appropriated prior to MAP-21 and will continue to follow §31.17 in the administration of those grants.

Amendments to §31.18(a) reflect the repeal of the §5317 New Freedom Program (NF) by MAP-21. The department has active contracts with subrecipients that use NF funds appropriated prior to MAP-21 and will continue to follow §31.18 in the administration of those grants.

Amendments to §31.21 reflect a change in department procedures for the administration of §5303 metropolitan planning program. Amendments to §31.21(a) add §5303 to correct a missing reference regarding transportation planning and development activities for metropolitan planning organizations.

At the request of the Texas Association of Metropolitan Planning Organizations and the department, the Texas Transportation Commission (commission) directed the consolidation of federal highway and federal transit planning funds for Metropolitan Planning Organizations into a single consolidated grant. Amendments to §31.21(c) reflect this change in the administration of the §5303 metropolitan planning grant program.

Section 31.21(d) is deleted as it is no longer needed.

Amendments to §31.22(a) add §5304 to correct a missing reference regarding eligible planning and research activities. Amendments to §31.22(c) add transportation development credits to the list of eligible local match sources and update the FTA circular reference. For clarity, current text is deleted and replaced with new text. Amendments to §31.22(d) delete reference to a §5303 application which is no longer necessary with the change made in §31.21(c).

Amendments to §31.26(b), the addition of the governor's designee, parallels federal language for the §5307 urbanized grant program. Amendments to §31.26(d) and (e) delete the word "designated" included in the term "designated recipient" as the definition of a designated recipient in §31.3 includes transit agencies that are not part of the governor's apportionment.

Amendments to §31.26(e)(2) add a definition for a transportation management area. Since this is the only time the term appears in 43 TAC Chapter 31, it is not included in the definitions section. Amendments to §31.26(e)(3) clarify the department's role in regards to redistribution of federal funds. Section 31.26(e)(4) is reworded to more clearly describe how the department handles unexpended §5307 funds. For clarity, current text is deleted and replaced with new text.

New §31.30 allows the department to administer the bus and bus facilities program (49 U.S.C. §5339) created by MAP-21. The department is the designated recipient of funds for urbanized areas of less than 200,000 population and rural areas. The section specifies the formula for distribution to eligible subrecipients, eligible activities, and the required nonfederal match and sources. A change to the final rules clarifies that, until the department implements the requirements of asset management planning in §31.51, FTA §5339 projects need not be linked to a transit asset management plan. The department's administrative duties are comparable to those of other grant programs.

New §31.31 reflects the revised regulations for the §5310 grant program as a result of significant restructuring that occurs in MAP-21. For clarity, the current section text is deleted and replaced with new text. The impact of the many changes to existing and potential subrecipients, and the interest expressed in this program, prompts the following subsection-by-subsection descriptions.

New §31.31(a), Purpose. The previously undefined term "elderly" is replaced with the word "senior," which MAP-21 and this chapter define as an individual 65 and older. This newly defined term will impact the projects that are eligible under the §5310 grant program.

New §31.31(b) Goals and objectives. MAP-21 repealed the New Freedom Program (NF) and made NF type projects eligible under the §5310 grant program. The subsection incorporates objectives reflecting this change.

New §31.31(c), Department role. Prior to MAP-21, the department was the designated recipient of all §5310 funds coming to the state. Under MAP-21, the department is the designated recipient for urbanized areas less than 200,000 population and all rural areas; urbanized areas of 200,000 population or more may request the department to act as their designated recipient. Most administrative functions remain unchanged from the previous text. Recognizing a long-standing practice, a paragraph clarifies that the department may terminate a contract that is not pursued in a timely fashion and re-award the funds to another project.

New §31.31(d), Eligible recipients. The original concepts of primary and alternate recipients of §5310 funds remain for rural and urbanized areas with a population of less than 200,000. Primary recipients are urban and rural transit districts. Alternate recipients are local public bodies, private nonprofit organizations, and

taxis providing shared-ride service. Where the department is the designated recipient for an urbanized area with a population of 200,000 or more, the transit authority or an alternate recipient may receive funds.

New §31.31(e), Eligible assistance categories. As is current practice, the department may use up to 10 percent of the annual apportionment to defray administrative expenses. Subrecipient capital expenses now include construction activities typically associated with the NF program. There is a higher reimbursement rate for vehicle purchases that comply with the ADA or Clean Air Act. However, a sliding scale of increased federal share available to states with federal public lands or tribal property is discontinued for this program. Operating expense is a new category of eligible expenses for §5310. A list of typical operating expenses is added in paragraph (3) and may be reimbursed at 50 percent of the net operating expense.

New §31.31(f), Local share requirements. Sources of local match include cash, service agreements with other agencies, in-kind donations, volunteer services, and transportation development credits. The section notes qualifications to these various sources. However, in no instance can U.S. DOT funds be used as match.

New §31.31(g)(1) - (3), Funding distribution. MAP-21 provides for separate apportionments for various geographical areas. A previous uniform formula for statewide application remains unchanged; however, it is broken into three segments to reflect the separate apportionments. Following the boundaries of a department district in which there are eligible urbanized areas of less than 200,000 population, 25 percent of the apportionment will be distributed equally and the remaining 75 percent will be allocated on a pro rata basis using the urbanized population of seniors and individuals with disabilities. Following department district boundaries in which there are eligible rural areas, 25 percent of the apportionment will be distributed equally and the remaining 75 percent will be allocated on a pro rata basis using the rural population of seniors and individuals with disabilities. If the department serves as the designated recipient of any large urbanized area with a population of 200,000 or more, funds must be programmed within that geographic area.

New §31.31(g)(4), Funding distribution. If, when an urbanized area with a population of less than 200,000 or rural area project selection process is completed, there remain unallocated funds, the department may allocate the funds to another like area elsewhere in the state. MAP-21 also permits the state to transfer funds between the urbanized less than 200,000 population category and the rural category; the department may use this authority to fully obligate the state's apportionment. Unless the department serves as the designated recipient, it has no authority over funds apportioned to specific urbanized areas with populations of 200,000 or more. However, when the department is the designated recipient for an urbanized area with a population of 200,000 or more, the funds must be used within that specific urbanized area or left for allocation at a later date.

New §31.31(h), Application requirements. This section is unchanged from the current language in §31.31(h) and requires prospective applicants to submit formal applications in the format and at the time specified by the department. All applications must document the need for services and the inclusion of the project in the coordinated public transit-human service plan.

New §31.31(i), Project selection. The consultative process continues but with some major modifications. The recommended composition of the stakeholder group includes transportation partners, passengers and advocates, and human service and work force agencies. To streamline decision-making processes and maximize coordination opportunities, the department may choose to combine contiguous department district boundaries for stakeholder engagement, project selection, and public outreach. In addition to the current uniform requirements for all projects, there are new, specific guiding criteria for selecting projects. The requirement for a district-wide three-year transit development plan is discontinued to better align with other regional planning activities.

New §31.31(j), Vehicle leasing. This subsection is unchanged from the current language in §31.31(l) and allows a subrecipient to lease a §5310 vehicle to another entity under certain conditions.

New §31.31(k), Incidental vehicle use. This subsection is unchanged from the current language in §31.31(m) and allows a subrecipient to use a vehicle for other than its intended purposes, as long as the activity does not interfere with public transportation services and the subrecipient does not alter the vehicle to accommodate the incidental use.

New §31.31(l), Private for-profit transportation business participation, provides for the role of private for-profit transportation businesses in the §5310 program.

Amendments to §31.36 reflect the revised regulations for the §5311 grant program as a result of MAP-21. Amendments throughout §31.36 substitute the word "rural" for "nonurbanized" to conform to MAP-21 terminology for the §5311 program. Additional amendments include a provision for the department to react to negative performance impacts and place an emphasis on certain types of intercity bus projects.

Amendments to §31.36(b)(1) emphasize the intercity bus component of the §5311 program. Amendments to §31.36(c) use the word "apportioned" instead of "appropriated" to more correctly define the flow of funds from the Federal Transit Administration to the department.

Amendments to §31.36(e)(1) decrease the maximum state administration amount to 10 percent of the annual apportionment to comply with MAP-21. Amendments to §31.36(e)(2)(C) add the higher reimbursement rate for vehicle purchases that comply with the ADA or Clean Air Act. New §31.36(e)(5) defines planning activities eligible in the §5311 program. MAP-21 added planning as an eligible activity.

Amendments to §31.36(f)(2) delete text concerning a minimal amount of cash as the local share because it is no longer a requirement of FTA. New §31.36(f)(4) adds a new match source for intercity bus projects as codified by MAP-21. New §31.36(f)(5) clearly identifies transportation development credits as a match source.

Amendments to §31.36(g)(1) reinforce the rural connection nature of the intercity bus program. Amendments to §31.36(g)(1)(A) and (B) highlight the growing participation of rural transit districts in providing intercity bus services. Amendments to §31.36(g)(2)(C)(i) use the word "apportioned" instead of "appropriated" to more correctly define the flow of funds from the Federal Transit Administration to the department. New §31.36(g)(2)(C)(ii) allows the department to adjust performance allocations to compensate for a negative impact in the performance factor allocations under certain situations. Amendments to §31.36(g)(3) add a reference to department goals, incorporat-

ing a long-standing consideration in the award of discretionary funds. Amendments to §31.36(g)(6) delete reference to district offices to reflect current department organizational structure.

Amendments to §31.36(i) allow the department to consider the overall needs of the intercity bus program and target areas of greatest need, eligible applicant groups, or project types within the annual solicitation of projects.

Amendments to §31.37(d)(1) replace the word "will" with "may" to allow the department to use an interagency agreement to secure assistance from state universities for research and technical assistance projects.

SUBCHAPTER D, PROGRAM ADMINISTRATION

Changes to Subchapter D include the addition of two new sections and several amended sections as a result of changes under MAP-21.

New §31.38 allows the department to administer the public transit safety program (49 U.S.C. §5329) required by MAP-21. Absent more definitive federal guidance, the section outlines the basic requirements stated in federal law for the department and its subrecipients. The department must certify the safety plans of §5311 subrecipients and will assist these agencies upon request. Components of the transit safety plan as detailed in MAP-21 are listed. A technical correction is made in the final rules in subsection (a) to correctly reference the requirement for a "transit safety plan". The term "transit asset management" was inadvertently used in the proposed text.

New §31.40 removes references to metropolitan planning and reflects necessary added language for projects funded by programs repealed by MAP-21 but still active. For clarity, current text is deleted and replaced with new text.

New §31.42 replaces a list of 85 specific citations of federal laws and procedures with three over-arching paragraphs. For clarity, current text is deleted and replaced with new text.

Amendments to §31.43(c) reflect the current department organizational structure. Additionally, required references for subcontracts are deleted as these requirements are included in the Master Grant Agreement each agency signs.

Amendments to §31.44(b)(1)(B) allow less complex procurement procedures to be used for purchases of goods, services, or equipment with a total cost of $3,000 or less.

Amendments to §31.48(b)(5)(B) require subrecipients who must have transit asset management plans (49 U.S.C. §5326) to provide the department with requested data. Amendments to §31.48(b)(5)(C) - (E) clarify that all transit operators are required to submit data to the department for the listed performance-based measures. Language is added to the final rules to mirror the state statute regarding data collection and publication. However, these changes reflect a department practice that has been in place for a number of years and put no new burden on transit agencies.

Amendments to §31.48(c)(2)(B) reflect the continuing drug and alcohol testing requirements for §5316 and §5317 subrecipients receiving funds appropriated prior to the passage of MAP-21. Amendments to §31.48(c)(3) and (7) reflect the current department organizational structure.

Amendments to §31.49(b)(1) correct a cross reference.

SUBCHAPTER E, PROPERTY MANAGEMENT STANDARDS

Changes to Subchapter E include the addition of a new section as a result of changes under MAP-21 and one amended section to mirror current practice.

New §31.51 authorizes the department to administer the asset management program (49 U.S.C. §5326) created by MAP-21. Absent more definitive federal guidance, the section outlines the basic requirements stated in federal law for the department and its subrecipients. The department must certify subrecipient compliance and will assist these agencies upon request. Components of the asset management plan are listed.

Amendments to §31.57(c) state the department's preference that equipment or property, purchased with federal funds and scheduled for disposition, be offered to another FTA recipient before being passed to a third party. Similarly, amendments to §31.57(d) state the department's preference that equipment or property, purchased with state funds and scheduled for disposition, be offered to another FTA or state recipient before being passed to a third party.

Section 31.57(d)(1)(D) is revised and moved to the end of the section as new §31.57(e). Amendments to §31.57(d)(2)(B) clarify that equipment as well as property is covered by this subparagraph.

New §31.57(e) incorporates previously deleted language and allows the department to consider alternatives to standard disposition procedures on a case-by-case basis.

The statutory duties of the Public Transportation Advisory Committee (PTAC) include advising the commission on the needs and problems of the state's public transportation providers, including recommending methods for allocating public transportation funds, and providing feedback on proposed rule changes involving public transportation matters during development and prior to final adoption.

PTAC met on September 24, 2013, and by motion recommended to the commission all of the amendments, repeals, and new sections.

Pursuant to the Administrative Procedure Act, Government Code, Chapter 2001, the department conducted a public hearing at 9:00 a.m. on Wednesday, September 4, 2013, in the Ric Williamson Hearing Room, 125 East 11th Street, Austin, Texas. No member of the public attended and no additional comments were received.

COMMENTS

Comments were received from the Alamo Area Council of Governments, San Antonio, Texas and from the Panhandle Regional Organization to Maximize Public Transportation.

Grant Gaul, Projects Coordinator, Alamo Area Council of Governments, San Antonio, Texas (AACOG):

Comment: The definition for Public Transportation Safety Plan contains detailed information about the contents of the plan. The AACOG suggested this is not needed as the contents are detailed in the specific area of code covering the plan.

Response: The department agrees with the comment. The extensive wording describing the content of the plan is also included in §31.38, Section 5329 Public Transit Safety Program, and is not necessary as part of a definition. The definition in §31.3(43) is reduced to a single sentence.

Comment: AACOG also asked a question regarding the definition of "revenue vehicle" and if the definition would be used in the context of FTA's drug and alcohol program.

Response: The question asked is outside of the scope of this rulemaking process. This definition of revenue vehicle applies only to that term's meaning within the context of this chapter of the Texas Administrative Code. Specifically it is used in the calculation of performance measures in §31.48, Project Oversight.

Comment: AACOG noted that the MAP-21 definition of a senior (age 65 or older) does not match that of the Area Agencies on Aging (age 60 or older) and requests the department address this issue with FTA.

Response: The department acknowledges the differences in programs authorized under various federal statutes and administered by various federal agencies. The programs covered under this chapter of the Texas Administrative Code must follow federal statute and FTA policy. The department expects the discrepancy in definitions will be addressed during the next reauthorization.

Comment: AACOG suggested consistent use of the term "rural" instead of "nonurbanized" throughout this chapter of the Texas Administrative Code.

Response: The department agrees that "rural" is the more appropriate term for use in state programs and most federal programs and has made the appropriate changes. However for the federal programs in §31.17 and §31.18, the Job Access and New Freedom programs, respectively, the department is leaving "nonurbanized" in place to match federal terminology used in these programs, repealed by MAP-21, as federal guidance and other documents are not expected to change terminology.

Comment: Regarding §31.30, AACOG is concerned about the lack of detail as to how TxDOT will compare the remaining useful lives of transit agencies' fleets in its calculations for the distribution of §5339 funds.

Response: The language in §31.30(c)(1) for the Bus and Bus Facilities program replicates that for the §5309 Capital Investment (VCR) Program prior to its repeal by MAP-21, and has been used numerous times in past years. This approach to distribution of funds was first suggested at the January 16, 2013 semi-annual business meeting with transit operators and not questioned during any of the department's ensuing outreach activities. After considering all the outreach efforts and PTAC input, the department made no change to §31.30(c)(1).

Comment: Regarding §31.30, AACOG expressed that if §5339 funds are to be allocated based on fleet condition, they believe it troublesome that transit agencies may use §5339 funds for any purpose authorized by FTA Circular 9300.1. Doing so puts agencies that have maintained the viability of their fleets but are struggling to maintain other infrastructure at a disadvantage to those agencies that, for whatever reason, have a less viable fleet. The commenter realizes the complexity of doing so, but urges TXDOT to evaluate both fleet and facilities components for purposes of allocating §5339 funds to better level the playing field in competing for scarce dollars.

Response: The department appreciates the point of view expressed by AACOG. Conversations during the January semi-annual meeting, the discussion groups that followed the next day, the white papers, and in PTAC meetings all point to needing a valid database on which to calculate a distribution of funds. Consistently "fleet" was recommended. Also recommended was giving agencies latitude and a local decision to use funds in the most beneficial manner.

While including facilities (and equipment) in the funding equation was not raised in the outreach period, another consideration is that the department does not have a comprehensive listing of these items owned by urban and rural transit districts similar to that for vehicles. Agencies that do not own facilities could argue that factoring facilities into the equation places them at a disadvantage. After considering all the outreach efforts and PTAC input, the department made no change to §31.30(c)(1) or (d).

Comment: AACOG asked why the level of detail for the §5310 (TAC §31.31) program is far greater than that of other programs.

Response: As a result of MAP-21, the new multiple layers in the §5310 program contribute to the need for greater detail. The department's role, eligible recipients, project selection, and funding distribution must all be covered separately for the large urbanized, small urbanized, and rural areas of the program. The section also includes topics not present in other programs - leases, incidental use, and private for-profit transportation business participation.

Comment: Regarding §31.57, AACOG asks if TxDOT will create a mechanism to facilitate offering disposal property and equipment to other FTA or state recipients.

Response: The department maintains the Used Transit Vehicle Clearinghouse site on its website for this purpose. See http://www.txdot.gov/inside-txdot/division/public-transportation/local-assistance/ptms.html. Additionally, department public transportation coordinators can assist in locating interested receiving agencies.

Comment: AACOG pointed out several grammar changes. These include: §31.57, use of the word "insure"; §31.57(c), delete the "d" in "provided"; use of the term "low income" versus "low-income"; and several other grammatical changes.

Response: The department appreciates the proof reading comments and agrees in most cases with the suggested changes. The deletion of the "d" in "provided" in the following sentence "The department shall be notified of the disposition and shall be provided information necessary to delete the property from inventory records...." is improper. The agency must tell the department what inventory item to delete. The commenter's suggestion implies the opposite.

Lylene Springer, Chairman, Panhandle Regional Organization to Maximize Public Transportation, Amarillo Texas (PROMPT):

Comment: PROMPT expressed concern that the term "strategic priorities" has been deleted from the list of definitions, and further stated that this term is used in the context of stakeholder planning committee meetings.

Response: The term as used in Chapter 31 of the Texas Administrative Code had been deleted from the respective subsection by a previous amendment and is no longer utilized in the chapter.

Comment: PROMPT asks why Job Access and Reverse Commute (JARC) and New Freedom are referred to throughout the document when these programs no longer exist.

Response: Actual references to these programs are mostly confined to their sections (§31.17 and §31.18 respectively). Because the department still has active grants in these programs, and may yet award residual funds in new contracts, retaining

these sections leaves the required administrative guidance in place. When all funds are expended, the sections will be deleted in a later amendment process.

Comment: PROMPT expressed concern regarding §31.31 that the proposal to allow the department to combine department districts for purposes of stakeholder engagement, project selection, and public outreach, but allocate funding by district, places project selection at odds with funding. Different processes applied along disparate boundaries will make consistent application of rules and project prioritization difficult to impossible to achieve.

Response: The department recognizes the multiplicity of boundaries that can impact planning and project selection for the §5310 program - department districts, state planning regions, rural transit districts, Area Agencies on Aging, etc. The purpose of the text is to allow local stakeholders the option of looking at their needs from a broader horizon than the department district. For example, since rural transit districts (RTDs) are a preferred recipient, some districts have already joined together to factor an RTD's service area into project selection considerations. In others where there is a strong lead agency for public transit-human service planning, multiple districts allocate funds to match lead agency priorities.

Comment: Regarding §31.31, the PROMPT advisory council is concerned about the potential disconnect between Medicaid medical transportation boundaries and department district boundaries. It opposes any attempt to realign the §5310 program to match Medicaid boundaries.

Response: The Medicaid medical transportation program is outside the scope of the proposed amendments. However, at this time, the department does not foresee changing funding allocations from a department district basis.

SUBCHAPTER A. GENERAL

43 TAC §31.3

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

§31.3. Definitions.

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

(1) Administrative expenses--Include, but are not limited to, general administrative expenses such as salaries of the project director, secretary, and bookkeeper; insurance premiums or payments to a self-insurance reserve; office supplies; facilities and equipment rental; and standard overhead rates.

(2) Allocation--A preliminary distribution of grant funds representing the maximum amount to be made available to an entity during the fiscal year, subject to the entity's completion of and compliance with all application requirements, rules, and regulations applicable to the specific funding program.

(3) Americans with Disabilities Act (ADA)--The Americans with Disabilities Act of 1990 (42 U.S.C. §12101 et seq.), which provides a comprehensive national mandate for the elimination of discrimination against individuals with disabilities. The ADA provides specific requirements related to public transportation.

(4) Asset management plan--The transit asset management plan prepared in accordance with 49 U.S.C. §5326 and certified by the department. The plan includes at a minimum, capital asset inventories and condition assessments, decision support tools, and investment prioritization.

(5) Authority--A metropolitan transit or regional transportation authority created under Transportation Code, Chapter 451 or 452; a city transit department created under Transportation Code, Chapter 453, by a municipality having a population of not less than 200,000 at the time of its creation; or a coordinated county authority created under Transportation Code, Chapter 460.

(6) Average revenue vehicle capacity--The number of seats in all revenue vehicles divided by the number of revenue vehicles.

(7) Capital expenses--Include the acquisition, construction, and improvement of public transit facilities and equipment needed for a safe, efficient, and coordinated public transportation system.

(8) Clean Air Act--The federal Clean Air Act (42 U.S.C. §7401 et seq.), which seeks to protect and enhance the quality of the nation's air resources by promoting and financing reasonable federal, state, and local governmental actions for pollution prevention.

(9) Commission--The Texas Transportation Commission.

(10) Common Rule--49 C.F.R. Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments or 49 C.F.R. Part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.

(11) Contractor--A recipient of public transportation funds through a contract or grant agreement with the department.

(12) Department--The Texas Department of Transportation.

(13) Designated recipient--The state, an authority, a municipality that is not included in an authority, a local governmental body, another political subdivision, or a nonprofit entity providing rural public transportation services, that receives federal or state public transportation money through the department or the Federal Transit Administration, or its successor.

(14) Director--The director of public transportation for the department.

(15) Disability--Disability as defined in the ADA (42 U.S.C. §12102), which includes a physical or mental impairment that substantially limits one or more major life activities of an individual.

(16) District--One of the 25 districts of the department for a designated geographic area.

(17) Employment-related transportation--Transportation to support services that assist individuals in job search or job preparation. Trips to daycare centers, one-stop workforce centers, jobs interviews, and vocational training are examples.

(18) Equipment--Tangible, nonexpendable, personal property having a useful life of more than one year and an acquisition cost of $5,000 or more per unit.

(19) Executive director--The executive director of the department.

(20) Fare box revenues--Fares paid by riders, including those who are later reimbursed by a human service agency or other user-side subsidy arrangement. This definition includes subscription service fees, whether or not collected on-board a transit vehicle. Payments made directly to the transportation system by a human service agency are not considered to be fare box revenues.

(21) Federal Transit Administration (FTA)--The Federal Transit Administration of the United States Department of Transportation.

(22) Federally funded project--A public transportation project that is being funded in part under the provisions of the Federal Transit Act, as amended, 49 U.S.C. §5301 et seq., the Federal-Aid Highway Act of 1973, as amended, 23 U.S.C. §101 et seq., or any other federal program for funding public transportation.

(23) Fiscal year--The state accounting period of 12 months that begins on September 1 of each calendar year and ends on August 31 of the following calendar year.

(24) Good standing--A status indicating that the department's director of public transportation has not sent a letter to an entity signifying the entity is in noncompliance with any aspect of a program.

(25) Incident--An intentional or unintentional act that occurs on or in association with transit-controlled property and that threatens or affects the safety or security of an individual or property.

(26) Job access project--A public transportation project relating to the development and maintenance of transportation services designed to transport welfare recipients and eligible low-income individuals to and from jobs and activities related to their employment, or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU).

(27) Like-kind exchange--The trade-in or sale of a transit vehicle before the end of its useful life to acquire a replacement vehicle of like kind.

(28) Local funds--Directly generated funds, as defined in the latest edition of the Federal Transit Administration National Transit Database Reporting Manual. Examples include, but are not limited to, passenger fares, special transit fares, purchased transportation fares, park and ride revenue, other transportation revenue, charter service revenue, freight tariffs, station and vehicle concessions, advertising revenue, funds dedicated to transit at their source, taxes, cash contributions, contract revenue, general revenue, and in-kind contributions.

(29) Local governmental entity--Any local unit of government including a city, town, village, municipality, county, city transit department, or authority.

(30) Local public entity--Includes a city, county, or other political subdivision of the state, a public agency, or an instrumentality of one or more states, municipalities, or political subdivisions of states.

(31) Local share requirement--The amount of funds required and eligible to match federally funded projects for the improvement of public transportation.

(32) Low-income individual--An individual whose family income is at or below 150 percent of the poverty line, as that term is defined in the Community Services Block Grant Act (42 U.S.C. §9902(2)), including any revision required by that section, for a family of the size involved, or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

(33) Metropolitan Planning Organization (MPO)--The organization designated or redesignated by the governor under 23 U.S.C. §134 as the responsible entity for transportation planning in urbanized areas over 50,000 in population.

(34) Mobility management--Eligible capital expenses consisting of short-range planning and management activities and projects for improving coordination among public transportation and other transportation-service providers carried out by a recipient or subrecipient through an agreement entered into with a person, including a government entity, under 49 U.S.C. §5301 et seq. (other than §5309 and §5339). Mobility management excludes operating public transportation services and excludes equipment, tires, tubes, material, and reconstruction of equipment and material described as associated capital maintenance in the definition of "capital project" under 49 U.S.C. §5302.

(35) Net operating expenses--Those expenses that remain after fare box revenues are subtracted from eligible operating expenses.

(36) New public transportation services or alternatives--An activity that, with respect to the New Freedom program:

(A) is targeted toward people with disabilities;

(B) is beyond the ADA requirements;

(C) meets the intent of the program by removing barriers to transportation and assisting persons with disabilities with transportation, including transportation to and from jobs and employment services; and

(D) is not included in a Transportation Improvement Program or Statewide Transportation Improvement Program prior to August 10, 2005.

(37) Nonprofit organization--A corporation or association determined by the Secretary of the Treasury of the United States to be an organization described by 26 U.S.C. §501(c), one that is exempt from taxation under 26 U.S.C. §504(a) or §101, or one that has been determined under state law to be nonprofit and for which the state has received documentation certifying the status of the organization.

(38) Nonurbanized area--An area outside an urbanized area.

(39) Obligated funds--Monies made available under a valid, unexpired contract or grant agreement between the department and a public transportation subrecipient.

(40) Private--Pertaining to nonpublic entities. This definition does not include municipalities or other political subdivisions of the state; public agencies or instrumentalities of one or more states; Native American tribes (except private nonprofit corporations formed by Native American tribes); public corporations, boards, or commissions established under the law of any state; or entities subject to control by public authority, whether state or municipal.

(41) Project--The public transportation activities to be carried out by a subrecipient, as described in its application for funding.

(42) Public transportation--Shared-ride transportation of passengers and their hand-carried packages or baggage on a regular or continuing basis by means of surface or water conveyance by a governmental entity or by a private entity if the private entity receives financial assistance for that conveyance from any governmental entity. This definition includes fixed guideway transportation and under-

ground transportation. This definition excludes services provided by aircraft, ambulances, emergency vehicles, intercity passenger rail transportation, charter bus service, school bus service, sightseeing service, courtesy shuttle service for patrons of one or more specific establishments, or intra-terminal and intra-facility shuttle services.

(43) Public transportation safety plan--The agency safety plan prepared in accordance with 49 U.S.C. §5329 and certified by the department.

(44) Real property--Land, including improvements, structures, and appurtenances, but excluding movable machinery and equipment.

(45) Revenue service--Passenger transportation occurring when a vehicle is available to the general public and there is a reasonable expectation of carrying passengers that directly pay fares, are subsidized by public policy, or provide payment through some contractual agreement. This does not imply that a cash fare must be paid. Vehicles operated in free fare services are considered in revenue service.

(46) Revenue vehicle--The rolling stock used in providing transit service for passengers. This definition does not include a vehicle used in connection with keeping revenue vehicles in operation, such as a tow truck or a staff car.

(47) Reverse commute project--A public transportation project designed to transport residents of urbanized areas and other than urbanized areas to suburban employment opportunities, or as otherwise defined by 49 U.S.C. §5302 or 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

(48) Ridership--Unlinked passenger trips.

(49) Rural area--A nonurbanized area.

(50) Rural transit district--A political subdivision of the state that provides and coordinates rural public transportation within its boundaries in accordance with the provisions of Transportation Code, Chapter 458.

(51) Senior--An individual who is 65 years of age or older.

(52) Stakeholders--All individuals or groups that are potentially affected by transportation decisions. Examples include public health, work force, and human service agencies; representatives of transportation agency employees or other affected employees; private providers of transportation; non-governmental agencies; local businesses; advocates for persons in diverse and traditionally underserved communities, such as seniors, individuals with disabilities, and persons with low incomes; and other interested parties.

(53) Subrecipient--An entity that receives state or federal transportation funding from the department, rather than directly from FTA or other state or federal funding source.

(54) Uniform grant and contract management standards--The standards contained in the Texas Administrative Code, Title 1, Chapter 5, Subchapter A, concerning uniform grant and contract management standards for state agencies.

(55) U.S. DOT--United States Department of Transportation.

(56) Unlinked passenger trips--The number of passengers who board public transportation vehicles. A passenger is counted each time the passenger boards a vehicle even though the passenger might be on the same journey from origin to destination.

(57) Urban transit district--A local governmental entity or a political subdivision of the state that provides and coordinates public transportation within an urbanized area in accordance with Transportation Code, Chapter 458. This definition includes urban transportation providers under Transportation Code, Chapter 456, that received state money through the department on September 1, 1994. This definition excludes authorities.

(58) Urbanized area--A core area and the surrounding densely populated area with a population of 50,000 or more, with boundaries fixed by the United States Census Bureau.

(59) Vehicle miles--The miles a vehicle travels while in revenue service, plus deadhead miles. This definition excludes miles a vehicle travels for charter service, school bus service, operator training, or maintenance testing.

(60) Vehicle revenue hours or miles--The hours or miles a vehicle travels while in revenue service. This definition includes layover and recovery, but excludes travel to and from storage facilities, the training of operators prior to revenue service, road tests, deadhead travel, and school bus and charter service.

(61) Vehicle utilization--Average daily passenger trips per revenue vehicle, divided by average revenue vehicle capacity. This definition provides a measure of an individual system's ability to use existing seating capacity.

(62) Welfare recipient--An individual who has received assistance under a state or tribal program funded under the Social Security Act, Title IV, Part A, at any time during the previous three year period before the date on which the applicant applies for a grant under 49 U.S.C. §5307 or §5311, or as otherwise defined by 49 U.S.C. §5307 or §5311, or under 49 U.S.C. §5316, the Job Access and Reverse Commute program as established under the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users.

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

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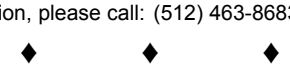

SUBCHAPTER B. STATE PROGRAMS

43 TAC §31.11, §31.13

STATUTORY AUTHORITY

The amendments are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

§31.11. Formula Program.

(a) Purpose. Transportation Code, Chapter 456 requires the commission to allocate, at the beginning of each fiscal biennium, certain amounts appropriated for public transportation. This section sets out the policies, procedures, and requirements for that allocation.

(b) Formula allocation. At the beginning of each state fiscal biennium, an amount equal to the amount appropriated from all sources to the commission by the legislature for that biennium for public transportation, other than federal funds and amounts specifically appropriated for coordination, technical support, or other costs of administration, will be allocated to urban and rural transit districts.

(1) If the appropriated amount to which this subsection applies is $57,482,135 or less, the commission will allocate 35 percent of the appropriated amount to urban transit districts and 65 percent of the appropriated amount to rural transit districts.

(A) Urban funds available under this section will be allocated to urban transit districts as provided by this subparagraph.

(i) Urban funds allocated under this paragraph will be divided into two tiers. Tier one will include urban transit districts that restrict transit eligibility for all public transportation services to seniors and individuals with disabilities. Funding available in tier one is calculated by multiplying the available urban funding by the population of seniors and individuals with disabilities in tier one providers, divided by the service eligible population of urbanized areas receiving funding under this subchapter. Tier two will include urban transit districts that provide any service to the general population. The funds for tier two will be the remaining balance of the available funds after the funds for tier one have been allocated.

(ii) One-half of the funds allocated within each tier provided under clause (i) of this subparagraph will be allocated to urban transit districts as a need based allocation based on population by using the latest census data available from, and as defined by, the U.S. Census Bureau for each urbanized area relative to the sum of all urbanized areas. Any urban transit district whose urbanized area population is 200,000 or greater will have the population adjusted to reflect a population level of 199,999; except that any urban transit district receiving funds in tier one, as described in clause (i) of this subparagraph, will have the population adjusted to reflect a population level of 199,999, or the urbanized area population of the place as defined by the U.S. Census Bureau, whichever is less.

(iii) One-half of the funds allocated within each tier provided under clause (i) of this subparagraph will be allocated to urban transit districts as a performance based allocation. An urban transit district is eligible for funding under this clause if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding based on the following weighted criteria: 30 percent for local funds per operating expense, 20 percent for ridership per capita, 30 percent for ridership per revenue mile, and 20 percent for revenue miles per operating expense. These criteria may be calculated using the urban transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(iv) If an urban transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, including wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that negative impact with an alternate calculation addressing the specific situation. The alternate calculation may be used in subsequent years at the discretion of the department.

(B) Rural funds allocated under this paragraph will be allocated only to rural transit districts in rural areas based upon need and performance as described in clauses (i) and (ii) of this subparagraph.

(i) Sixty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a need based allocation giving consideration to population weighted at 75 percent and on land area weighted at 25 percent for each rural area relative to the sum of all rural areas.

(ii) Thirty-five percent of the funding under this subparagraph will be allocated to rural transit districts as a performance based allocation. A rural transit district is eligible for funding under this clause if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per revenue mile, and revenue miles per operating expense. These criteria may be calculated using the rural transit district's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(iii) If a rural transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, such as wind, fire, or flood, or an unforeseen anomaly, the department may mitigate that impact with an alternate calculation addressing the specific situation. The alternate calculation may be used in subsequent years at the discretion of the department.

(C) Funds allocated under this section and any local funds may be used for any transit-related activity except that an urban transit district not included in a transit authority but located in an urbanized area that includes one or more transit authorities may use funds allocated under this section only to provide up to:

(i) 65 percent of the local share requirement for federally financed projects for capital improvements;

(ii) 50 percent of the local share requirement for projects for operating expenses and administrative costs;

(iii) 50 percent of the total cost of a public transportation capital improvement, if the urban transit district certifies that federal money is unavailable for the proposed project and the commission finds that the proposed project is vitally important to the development of public transportation in the state; and

(iv) 65 percent of the local share requirement for federally financed planning activities.

(D) Subject to available appropriation, no award to an urban or rural transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subsection (b)(1)(A) and (B) of this section are subject to revision to comply with this standard.

(2) If the appropriated amount to which this subsection applies exceeds $57,482,135, the commission will allocate $57,482,135 in accordance with paragraph (1) of this subsection and will allocate all or a part of the excess amount, as necessary to mitigate changes in formula allocations described by subparagraph (A) or (B) of this paragraph, as appropriate, resulting from the application of the 2010 census data.

(A) For an urban transit district, a formula allocation impact may be mitigated if, using 2010 performance data, the total allocation to the district for the need based allocation, as described in subsection (b)(1)(A)(ii) of this section, plus the performance based allocation, as described in subsection (b)(1)(A)(iii) of this section, ob-

tained using 2010 census data, is less than the total corresponding allocation to the district obtained using 2000 census data.

(B) For a rural transit district, a formula allocation impact may be mitigated if, using 2010 performance data, the total allocation to the district for the need based allocation, as described in subsection (b)(1)(B)(i) of this section, plus the performance based allocation, as described in subsection (b)(1)(B)(ii) of this section, obtained using 2010 census data, is less than the total corresponding allocation obtained using 2000 census data.

(C) Allocations under this paragraph are not subject to subsection (b)(1)(D) of this section.

(D) This paragraph expires August 31, 2017.

(3) The commission will award on a pro rata basis, competitively, or using a combination of both any appropriated amount that remains after other allocations made under this subsection. In awarding funds under this paragraph, consideration may be given to coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, funds needed to initiate public transportation service in new designated urbanized areas, adjustment for reductions in purchasing power, reductions in air pollution, or any other appropriate factor. Awards under this paragraph are not subject to subsection (b)(1)(D) of this section in succeeding fiscal years.

(c) Change in service area. If part of an urban or rural transit district's service area is changed due to declaration by the U.S. Census Bureau, or if the service area is otherwise altered, the department and the urban or rural transit district shall negotiate an appropriate adjustment in the funding awarded to that urban or rural transit district for that funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to subsection (b)(1)(D) of this section.

(d) Unobligated funds. Any money under this section that an urban or rural transit district has not applied for before the November commission meeting in the second year of a state fiscal biennium will be administered by the commission under the discretionary program described in §31.13 of this subchapter (relating to Discretionary Program).

(e) Returned funds. Any money under this section that an urban or rural transit district agrees to return to the department will be administered by the commission under the discretionary program described in §31.13 of this subchapter.

(f) Application. To receive funds allocated under this section, a transit district must first submit a completed application, in the form prescribed by the department. The application must include certification that the proposed public transportation project is consistent with continuing, cooperating, and comprehensive regional transportation planning implemented in accordance with 49 U.S.C. §5301. Federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met.

(g) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

§31.13. Discretionary Program.

(a) Purpose. Transportation Code, Chapter 456 allows the commission to allocate any funds not obligated in accordance with the terms of §31.11 of this subchapter (relating to Formula Program) on a discretionary basis. This section sets out the policies, procedures, and requirements for that discretionary allocation.

(b) Discretionary allocation. The commission will allocate funds under this section to a local public entity, other than an authority, or to a private nonprofit organization that has the power to operate or maintain a public transportation system. Funds may be used for:

(1) the same purposes as described in §31.11(b) of this subchapter; and

(2) 80 percent of the cost of capital expenditures associated with ridesharing activities.

(c) Application. To receive funds under this section, an entity must first submit a completed application, in the form prescribed by the department. The application must include:

(1) a description of the project, including estimates of the population that would benefit from the project and the anticipated date of project completion;

(2) a statement of the estimated cost of the project, including estimates of the federally financed portions of the project costs; and

(3) certifications that:

(A) local funds are available for local share requirements if required and that the proposed project is consistent with comprehensive regional transportation plans (federal approval of a proposed public transportation project will be accepted as a determination that all federal planning requirements have been met);

(B) federal funds are not available under §31.11 of this subchapter;

(C) equipment furnished by the applicant in connection with ridesharing activities will be used primarily for commuting purposes;

(D) ridesharing activities will be operated on a nonprofit basis without state subsidies and with accountability in operating the van pool equipment; and

(E) any funding available through the United States Department of Transportation to participate in the capitalized portion of state and locally supported ridesharing activities will be applied for and utilized to supplement the availability of local resources for the recapitalization of van pool equipment.

(d) Project evaluation. In evaluating a project under this section, the department will consider the need for fast, safe, efficient, and economical public transportation and the approval of the FTA, or its successor.

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

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SUBCHAPTER C. FEDERAL PROGRAMS

43 TAC §§31.16 - 31.18, 31.21, 31.22, 31.26, 31.30, 31.31, 31.36, 31.37

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

§31.17. Section 5316 Grant Program.

(a) Applicability. The United States Congress repealed 49 U.S.C. §5316, with the passage of Moving Ahead for Progress in the 21st Century (MAP-21). This section applies only to subrecipients receiving grants with funds appropriated under federal authorization bills prior to the enactment of MAP-21.

(b) Purpose. Section 5316, Federal Transit Act (49 U.S.C. §5316), authorizes the Secretary of the U.S. DOT to make grants for public transportation projects for access to jobs and reverse commute purposes. The commission has been designated by the governor to administer the §5316 program, known as the Job Access and Reverse Commute program, or JARC, in areas with less than 200,000 population.

(c) Goal and objectives. The department's goal in administering the §5316 program is to promote the availability of public transportation services targeted to employment and employment-related transportation needs. To achieve this goal, the department's objectives are to:

(1) promote the development of employment transportation services throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;

(2) fully integrate the §5316 program with other federal and state programs supporting public, employment, and human service transportation;

(3) foster the development of local, coordinated public transit-human service transportation plans from which JARC projects are derived;

(4) support local economic development; and

(5) improve the efficiency and effectiveness of the §5316 program through the provision of technical assistance.

(d) Department role. The department acts as the designated recipient for §5316 funds apportioned to the state for all urbanized areas with less than 200,000 population and all nonurbanized areas. The subrecipient shall retain control of daily operations.

(e) Project types.

(1) Job access projects include:

(A) financing the eligible costs of projects that provide public transportation services targeted to welfare recipients and eligible low-income individuals;

(B) promoting public transportation use by low-income workers, including the use of public transportation by workers with nontraditional work schedules;

(C) promoting the use of employer-provided transportation, including the transit pass benefit program under Section 132 of the Internal Revenue Code of 1986;

(D) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

(E) otherwise facilitating or providing transportation for employment or employment-related purposes by welfare recipients and low-income persons.

(2) Reverse commute projects include:

(A) subsidizing the costs associated with adding reverse commute bus, train, carpool, van routes, or service from urbanized areas and other than urbanized areas to suburban workplaces;

(B) subsidizing the purchase or lease by a nonprofit organization or public agency of a van or bus dedicated to shuttling employees from their residences to a suburban workplace;

(C) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing employment or employment-related transportation services; and

(D) otherwise facilitating or providing public transportation services to suburban employment opportunities.

(f) Eligible subrecipients.

(1) State agencies, local governmental entities, private nonprofit organizations, private for-profit operators, and operators of public transportation services are eligible to receive §5316 funds through the department.

(2) Applicants who are subrecipients of public transportation funds through another program administered by the department must be in good standing with the department as defined in §31.3 of this chapter (relating to Definitions).

(g) Eligible assistance categories.

(1) State administrative expenses. The department may use up to 10 percent of the annual federal apportionment for urbanized areas with less than 200,000 population and nonurbanized areas to defray the expenses incurred for the planning and administration of the §5316 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items are:

(i) buses, vans, or other paratransit vehicles, fare boxes, wheelchair lifts and restraints;

(ii) equipment for transporting bicycles on public transit vehicles;

(iii) radios and communication equipment;

(iv) equipment installation costs;

(v) vehicle procurement, testing, inspection, and acceptance costs;

(vi) preventive maintenance, including all maintenance costs;

(vii) vehicle rebuilding or overhaul;

(viii) capital and operating support including computer hardware or software, with prior department approval;

(ix) transit-related intelligent transportation systems;

(x) the introduction of new technology, through innovative and improved products, into public transportation;

(xi) passenger shelters, bus stop signs, and similar passenger amenities, with prior department approval;

(xii) mobility management;

(xiii) the lease of vehicles or equipment, provided that the subrecipient, with the concurrence of the department, determines that a lease is more cost effective than purchase after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 C.F.R. Part 639;

(xiv) the capital portions of costs for service under contract; and

(xv) the provision of Americans with Disabilities Act of 1990 (ADA) paratransit service directly related to fixed route JARC services, which shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service.

(B) For reimbursement:

(i) federal funds may be used to reimburse up to 80 percent of eligible capital expenditures;

(ii) the federal share may increase up to 90 percent for incremental costs related to compliance with the Clean Air Act or with the ADA; and

(iii) eligibility standards for the higher federal share are defined in FTA Circular 9050.1, or its latest version.

(3) Project administration. Administrative costs associated with a JARC project are eligible for a federal reimbursement rate of 50 percent.

(4) Planning activities. The federal reimbursement rate is 80 percent. Planning activities may include:

(A) studies relating to management, operations, and capital requirements;

(B) evaluation of previously funded projects; and

(C) other similar or related activities prior to and in preparation for the undertaking or improvement of JARC-eligible services.

(5) Marketing projects. The federal reimbursement rate is 80 percent. Marketing activities may include:

(A) market research;

(B) production of route maps and schedules;

(C) information delivery;

(D) website development;

(E) advertising;

(F) promotion of the use of transit vouchers by welfare recipients and eligible low-income individuals; and

(G) promotion of employer-provided transportation, including the Internal Revenue Service's transit pass benefit.

(6) Operating expenses. Operating expenses are reimbursed at 50 percent of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C or its latest published version shall be the guide for determining eligible operating expenses. Examples are:

(A) fuel;

(B) oil;

(C) driver, dispatcher, and mechanic salaries;

(D) purchase of service; and

(E) purchase of vouchers.

(h) Ineligible expenses include:

(1) construction, except for passenger shelters, signage, and similar passenger amenities specifically approved by the department;

(2) extended vehicle warranties;

(3) purchase and/or maintenance of vehicles intended for private use;

(4) purchase of transit passes for use on fixed route or ADA complementary paratransit services; and

(5) other FTA-prohibited expenses.

(i) Local share requirements.

(1) Eligible match sources include local, state, or federal programs, including funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies, and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 U.S.C. §603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.

(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for §5316 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.

(j) Planning requirement.

(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.

(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

(A) overlaps and gaps in the provision of public transportation services, including services that could be more effectively provided by existing, privately funded transportation resources;

(B) underused equipment owned by public transportation providers; and

(C) inefficiencies in the provision of public transportation services by any public transportation provider.

(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local

coordinated planning process described in paragraph (1) of this subsection. Regions interested in participating in the JARC program shall develop and prioritize §5316 projects in response to the employment transportation deficiencies identified in the regional planning process and documented in the plan.

(4) A JARC project must:

(A) contain goals and objectives;

(B) discuss rider origination location and employment and employment-related destinations and how the project fills the transportation gap;

(C) describe how it implements the regional service plan;

(D) describe the role of the local workforce development board or its service provider in developing the project;

(E) explain how the project will maximize use of existing transportation service providers;

(F) provide a cost estimate; and

(G) identify match sources including employer-provided or employer-assisted transportation service strategies incorporated in the project.

(k) Allocation. As part of its administration of the §5316 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state.

(1) The department will act as the designated recipient for projects in urbanized areas with less than 200,000 population and in nonurbanized areas. Of the amount apportioned to these areas by FTA's annual publication in the *Federal Register,* the department may use up to 10 percent of the total for its administrative, planning, and technical assistance activities to support the JARC program statewide.

(2) The department will allocate the remaining §5316 funds to subrecipients through a statewide competitive selection process.

(3) Unless the governor certifies that all program objectives are being met, funds apportioned to urbanized or to nonurbanized areas will be available only to fund projects in urbanized or nonurbanized areas, respectively.

(4) The origination location of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.

(5) At a minimum, the department will publish a notice in the *Texas Register* soliciting proposals for the award of §5316 JARC grants. An eligible entity may submit a proposal for an eligible project in response to the published notice.

(A) The proposal must include a detailed description of:

(i) the project and the need for the project;

(ii) how the award of transportation JARC funds will expand the availability of employment related transportation services;

(iii) how the project will:

(I) promote the development of employment transportation services;

(II) support local economic development and expand economic opportunity for economically disadvantaged individuals;

(III) fully integrate the JARC program with other federal and state programs supporting public, employment, and human service transportation; and

(IV) improve the efficiency and effectiveness of employment related transportation opportunities.

(B) The proposal must describe the project's relationship to the locally developed, coordinated public transit-human service transportation plan.

(C) The department may require supplemental information to clarify the issues described in subparagraphs (A) and (B) of this paragraph.

(l) Grant award.

(1) After commission and FTA approval of the program of projects, the department will enter into grant agreements with individual subrecipients. A subrecipient must comply with all rules and regulations applicable to the §5316 program.

(2) The commission will make the final selection of projects and will select projects based on the potential of the project to:

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(m) Vehicle leasing. Vehicles acquired under the §5316 program may be leased to other entities, with prior department approval, such as local public entities or agencies, private non-profit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the §5316 subrecipient and provide the transportation services as described in the grant application. The §5316 subrecipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.

(n) Incidental vehicle use. A vehicle that is purchased with §5316 funds may be used for incidental uses that do not conflict with the primary use of the vehicle to provide transportation services for employment and employment-related transportation. Examples of permissible incidental uses are stopping for retail purchases en route home from the workday, allowing riders not engaged in employment activities to occupy vacant seats, delivering meals, or using the vehicle for other public transportation activities when it is not required for JARC project purposes. The vehicle shall not be altered in any way to accommodate incidental use.

(o) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for a JARC project and has purchased a vehicle with JARC funds, the vehicle may be transferred to another subrecipient, in accordance with state laws and procedures governing disposition requirements.

§31.18. Section 5317 Grant Program.

(a) Applicability. The United States Congress repealed 49 U.S.C. §5317, with the passage of Moving Ahead for Progress in the 21st Century (MAP-21). This section applies only to subrecipients receiving grants with funds appropriated under federal authorization bills prior to the enactment of MAP-21.

(b) Purpose. Section 5317, Federal Transit Act (49 U.S.C. §5317), authorizes the Secretary of the U.S. DOT to make grants for public transportation projects that provide new public transportation services and public transportation alternatives beyond those currently required by the Americans with Disabilities Act of 1990 (ADA) that assist individuals with disabilities with transportation, including transportation to and from jobs and employment support services. The commission has been designated by the governor to administer the §5317 program, known as the New Freedom Program, or NF, in areas with less than 200,000 population.

(c) Goal and objectives. The department's goal in administering the §5317 program is to provide new or improved public transportation services and alternatives, beyond the requirements of the ADA, to assist individuals with disabilities. To achieve this goal, the department's objectives are to:

(1) promote the development and maintenance of a network of transportation services and alternatives, beyond the requirements of the ADA, for individuals with disabilities throughout the state, in partnership with local officials, public and private non-profit agencies, and operators of public transportation services;

(2) fully integrate the §5317 program with other federal, state, and local resources and programs that are designed to serve similar populations;

(3) foster the development of local, coordinated public transit-human service transportation plans from which NF projects are derived;

(4) improve the efficiency, effectiveness, and safety of §5317 project providers through the provision of technical assistance; and

(5) include private sector operators in the overall plan to provide NF program transportation services for individuals with disabilities.

(d) Department role. The department acts as the designated recipient for §5317 funds apportioned to the state for all urbanized areas with less than 200,000 population and all nonurbanized areas. The subrecipient shall retain control of daily operations.

(e) Project types.

(1) New public transportation service projects, "beyond ADA", include:

(A) providing paratransit services beyond minimum requirements (3/4 mile to either side of a fixed route) for a transit provider operating fixed route service;

(B) making accessibility improvements to existing transit and intermodal stations not designated as key stations; for example, adding an elevator or ramps, detectable warnings, improving signage;

(C) building an accessible path to a bus stop that is currently inaccessible, including curb cuts, sidewalks, pedestrian signals or other accessible features;

(D) implementing technology improvements that enhance accessibility for individuals with disabilities;

(E) implementing "same day" paratransit services; and

(F) otherwise facilitating or providing transportation services beyond ADA requirements, including transportation to and from employment and employment-related destinations.

(2) New public transportation alternatives, "beyond ADA", include:

(A) purchasing vehicles and supporting accessible taxi, ride-sharing, and vanpooling programs;

(B) supporting voucher programs for transportation services offered by human service providers;

(C) supporting volunteer driver and aide programs;

(D) acquiring transportation services by a contract, lease, or other arrangement;

(E) supporting mobility management and coordination programs among public transportation providers and other human service agencies providing transportation;

(F) new feeder service (transit service that provides access) to commuter rail, commuter bus, intercity rail and intercity bus stations, for which complementary paratransit service is not required under the ADA;

(G) new training programs for individual users on awareness, knowledge, and skills of public and alternative transportation options available in their communities. This includes travel instruction and travel training services; and

(H) otherwise facilitating or providing new transportation services for individuals with disabilities, including transportation to and from employment and employment-related destinations.

(f) Eligible subrecipients.

(1) State agencies, local governmental entities, private nonprofit organizations, private for-profit operators, and operators of public transportation services are eligible to receive §5317 funds through the department.

(2) Applicants who are subrecipients of public transportation funds through another program administered by the department must be in good standing with the department as defined in §31.3 of this chapter (relating to Definitions).

(g) Eligible assistance categories include:

(1) State administrative expenses. The department may use up to 10 percent of the annual federal apportionment for urbanized areas with less than 200,000 population and nonurbanized areas to defray its expenses incurred for the planning and administration of the §5317 program. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include:

(i) buses, vans, or other paratransit vehicles, fare boxes, wheelchair lifts and restraints;

(ii) radios and communications equipment;

(iii) accessibility aids;

(iv) equipment installation costs;

(v) vehicle procurement, testing, inspection, and acceptance costs;

(vi) vehicle rebuilding or overhaul;

(vii) capital and operational support including computer hardware or software, with prior department approval;

(viii) preventive maintenance, including all maintenance costs, with prior department approval;

(ix) transit-related intelligent transportation systems;

(x) the introduction of new technology, through innovative and improved products, into public transportation;

(xi) curb cuts, sidewalks, pedestrian signals or other accessible features;

(xii) mobility management;

(xiii) the lease of vehicles or equipment, provided that the subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 C.F.R. Part 639; and

(xiv) the capital portions of costs for service under contract.

(B) For reimbursement:

(i) federal funds may be used to reimburse up to 80 percent of eligible capital expenditures;

(ii) the federal share may increase up to 90 percent for incremental costs related to compliance with the Clean Air Act or with the ADA; and

(iii) eligibility standards for the higher federal share are defined in FTA Circular 9045.1, or its latest version.

(3) Project administration. Administrative costs associated with a NF project are eligible for a federal reimbursement rate of 50 percent.

(4) Operating expenses. Operating expenses are reimbursed at 50 percent of net operating expenses. Operating expenses are those costs directly tied to systems operations. FTA Circular 9030.1C, or its latest published version, shall be the guide for determining eligible operating expenses not specifically listed in this paragraph. Examples are:

(A) fuel and oil;

(B) maintenance, with prior department approval;

(C) driver, dispatcher, and mechanic salaries;

(D) purchase of service;

(E) reimbursement of costs associated with a volunteer driver program; and

(F) purchase of vouchers.

(h) Ineligible expenses include:

(1) extended vehicle warranties;

(2) purchase and/or maintenance of vehicles intended for private use;

(3) marketing;

(4) planning;

(5) purchase of transit passes for use on fixed route or ADA complementary paratransit services; and

(6) other FTA-prohibited expenses.

(i) Local share requirements.

(1) Eligible match sources include local, state, or federal program funds disbursed from the Texas Workforce Commission, local workforce development boards, human service agencies and the Medicaid Medical Transportation Program. Unrestricted federal funds are also eligible as match, such as Temporary Assistance for Needy Families (42 U.S.C. §603(a)(5)(C)(vii)). With prior department approval, in-kind contributions, volunteer services, and donations directly attributable to the project are eligible as local share if the value is documented.

(2) Other U.S. Department of Transportation program funds cannot be used as the local share required for §5317 grants. Fares cannot be used as match for any expense but must, instead, be used to determine the net operating expense to reduce the amount of requested reimbursement.

(j) Planning requirement.

(1) Projects submitted in response to the department's call for projects must be derived from a locally developed, coordinated public transit-human service transportation plan. The plan must be developed through a process that includes representatives of public, private, and nonprofit transportation and human service providers and participation by the public.

(2) The commission supports the development of regional service plans that respond to the department's charge in Transportation Code, §461.004 to identify:

(A) overlaps and gaps in the provision of public transportation services including services that could be more effectively provided by existing, privately funded transportation resources;

(B) underused equipment owned by public transportation providers; and

(C) inefficiencies in the provision of public transportation services by any public transportation provider.

(3) The commission anticipates that the regional service planning process will be used to meet the requirements of the local coordinated planning process defined in paragraph (1) of this subsection. Regions interested in participating in the NF program shall develop and prioritize §5317 projects in response to the opportunities to improve transportation for individuals with disabilities uncovered in the regional planning process and documented in the plan.

(4) An NF project must:

(A) contain goals and objectives;

(B) discuss rider origination location and destinations and how the project fills the transportation gap by providing new transportation services or new transportation alternatives beyond ADA requirements;

(C) describe how it implements the regional service plan;

(D) explain how the project will maximize use of existing transportation service providers;

(E) provide a cost estimate; and

(F) identify match sources.

(G) Where transportation to employment or employment-related destinations is part of the project, any employer-provided or employer-assisted transportation service strategies incorporated in the project must also be identified.

(k) Allocation of funds. As part of its administration of the §5317 program, the department is charged with ensuring that there is a fair and equitable distribution of program funds within the state.

(1) The department will act as the designated recipient for projects in urbanized areas with less than 200,000 population and in nonurbanized areas. Of the amount apportioned to these areas by FTA's

annual publication in the *Federal Register,* the department may use up to 10 percent of the total for its administrative, planning, and technical assistance activities to support the NF program statewide.

(2) The department will allocate the remaining §5317 funds to subrecipients through a competitive selection process.

(3) Funds apportioned to urbanized areas with less than 200,000 population will be available only to fund projects in these geographic areas.

(4) Funds apportioned to nonurbanized areas will be available only for projects serving nonurbanized areas.

(5) The origin of the riders, not their destination, shall be the basis for determining which apportionment the department uses to fund an approved project.

(6) At a minimum, the department will publish a notice in the *Texas Register* soliciting proposals for the award for §5317 NF grants.

(A) An eligible entity may submit a proposal for an eligible project in response to the published notice. The proposal must include a detailed description of:

(i) the project and the need for the project;

(ii) the methods by which the award of transportation NF funds will provide new transportation services or new alternatives, beyond ADA requirements, for individuals with disabilities;

(iii) how the project will:

(I) promote the development and maintenance of a network of transportation services for individuals with disabilities;

(II) expand economic opportunity for individuals with disabilities;

(III) fully integrate the NF program with other federal, state, and local resources and programs that are designed to serve similar populations; and

(IV) improve the efficiency, effectiveness, and safety of transportation services for individuals with disabilities.

(B) The proposal must describe the project's relationship to the locally developed, coordinated public transit-human service transportation plan.

(C) The department may require supplemental information to clarify the issues described in paragraph (6)(A) and (B) of this subsection.

(l) Grant Award.

(1) After commission and FTA approval of the program of projects, the department will enter into grant agreements with individual subrecipients. A subrecipient must comply with all requirements, rules, and regulations applicable to the §5317 program.

(2) The commission will make the final selection of projects and will select projects based on the potential of the project to:

(A) reduce congestion;

(B) expand economic opportunity;

(C) enhance safety;

(D) improve air quality; and

(E) increase the value of transportation assets.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(m) Vehicle leasing. Vehicles acquired under the §5317 program may be leased to other entities, with prior department approval, such as local public entities or agencies, private nonprofit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the §5317 recipient and provide the transportation services as described in the grant application. The §5317 recipient is responsible for seeing that all federal and state rules and regulations are observed by the lessee.

(n) Incidental vehicle use. A vehicle that is purchased with §5317 funds may be used for incidental uses that do not conflict with the primary use of the vehicle to provide new or alternative transportation services beyond ADA requirements. Examples of permissible incidental uses are meal delivery, allowing able-bodied persons to occupy vacant seats or using the vehicle for other public transportation activities not required for its NF project purposes. The vehicle shall not be altered in any way to accommodate incidental use.

(o) Disposition of vehicles at end of the grant. If a subrecipient is no longer receiving funds for an NF project and has purchased a vehicle with NF funds, the vehicle may be transferred to another subrecipient, in accordance with state laws and procedures governing disposition requirements.

§31.30. Section 5339 Grant Program.

(a) Purpose. Title 49 U.S.C. §5339 authorizes the Secretary of the U.S. DOT to make grants for bus and bus facilities.

(b) Eligible recipients. Section 5339 funds are available to states and local public entities.

(c) Department role. The department acts as the designated recipient for §5339 grants to §5307 transit agencies in urbanized areas with less than 200,000 population and §5311 rural transit agencies. As the administering agency, the department will:

(1) allocate the available program funds so that each eligible subrecipient will receive a proportional share of available funding based on the remaining useful life of its public transportation fleet and the cost of replacing that fleet using the department's information system containing transit fleet data;

(2) develop application materials and disseminate information to eligible subrecipients;

(3) prepare the state's funding application and submit the application to the FTA for approval;

(4) negotiate and execute contracts with subrecipients;

(5) prepare requests for federal reimbursement and process payment requests from subrecipients;

(6) monitor and evaluate the progress of local projects, including compliance with federal regulations; and

(7) provide technical assistance to subrecipients as necessary.

(d) Eligible assistance categories. Eligible projects are those listed in FTA Circular 9300.1B or its latest version. While fleet condition will determine each agency's allocation, §5339 funds can be used for any eligible activity in FTA Circular 9300.1B or its latest version.

(e) Link to asset management plan. At such time as the department implements the requirement of a transit asset management plan, subrecipient projects must be linked to the asset management plan re-

quired by §31.51 of this chapter (relating to Asset Management) and 49 U.S.C. §5326.

(f) Reimbursement rates. For reimbursement:

(1) federal funds may be used to defray up to 80 percent of the cost of eligible capital expenditures;

(2) the federal share may increase to up to 85 percent of the net project cost for a project that involves acquiring vehicles for the purpose of complying with the Americans with Disabilities Act or the Clean Air Act; and

(3) the federal share may increase to up to 90 percent for incremental costs related to compliance with the Clean Air Act in areas of air quality non-attainment or with the Americans with Disabilities Act.

(g) Local share requirements. The non-federal share may be provided by:

(1) cash from state or local governments;

(2) cash from non-government sources other than revenues from providing public transportation services;

(3) revenues from the sale of advertising and concessions;

(4) an undistributed cash surplus, a replacement or depreciation cash fund or reserve, or new capital;

(5) service agreements with a state, local, or private social service organization; or

(6) transportation development credits.

§31.31. Section 5310 Grant Program.

(a) Purpose. Title 49 U.S.C. §5310 authorizes the Secretary of the U.S. DOT to make grants for the provision of transportation services meeting the special needs of seniors and individuals with disabilities. The governor has designated the department to administer the §5310 program.

(b) Goal and objectives. The department's goal in administering the §5310 program is to promote the availability of cost-effective, efficient, and coordinated passenger transportation services planned, designed, and carried out to meet the special needs of seniors and individuals with disabilities when public transportation is insufficient, inappropriate, or unavailable, using the most efficient combination of financial and other resources. To achieve this goal, the department's objectives are to:

(1) promote the development and maintenance of a network of transportation services for seniors and individuals with disabilities throughout the state, in partnership with local stakeholders;

(2) fully integrate the §5310 program with other federal, state, and local resources and programs that are designed to serve similar populations;

(3) promote public transportation projects that exceed the requirements of the Americans with Disabilities Act (ADA);

(4) promote public transportation projects that decrease the reliance of individuals with disabilities on ADA complementary paratransit services;

(5) promote and encourage local participation, especially by seniors and individuals with disabilities or their advocates, in decision-making;

(6) improve the efficiency, effectiveness, and safety of §5310 transit systems through the provision of technical assistance; and

(7) include private sector operators in the overall plan to provide transportation services for seniors and individuals with disabilities.

(c) Department role.

(1) The department acts as the designated recipient for all §5310 funds appropriated to:

(A) a rural area;

(B) an urbanized area with less than 200,000 population; and

(C) an urbanized area with a population of 200,000 or more, on request of the metropolitan planning organization of the urbanized area and concurrence by the commission.

(2) The department recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:

(A) develop application materials and disseminate information to prospective applicants and other interested parties;

(B) develop evaluation criteria and select projects for funding, with input from local entities and local individuals, in accordance with the standards set forth in subsection (i) of this section;

(C) prepare the state's annual program of projects and funding application and submit that material to the FTA for approval;

(D) negotiate and execute contracts with local §5310 recipients;

(E) prepare requests for federal reimbursement and process payment requests from §5310 recipients;

(F) monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations and coordination of services; and

(G) provide technical assistance to §5310 recipients to aid them in improving and coordinating transit services.

(3) Failure to expend funds in a timely manner may cause the department to terminate the grant and re-award the unobligated balance to another project.

(d) Eligible recipients.

(1) Existing rural transit districts and urban transit districts serving a population of less than 200,000 will be the primary recipients of funds for their respective service areas.

(2) For an area not covered by a transit provider or for which the existing provider is not willing or able to provide the transportation, the director may choose a local public entity or a private organization as an alternate recipient to receive §5310 funds. Private taxi companies that provide shared-ride taxi service to the public or to special categories of users (such as seniors or individuals with disabilities) on a regular basis are also eligible alternate recipients.

(3) If the department is the designated recipient for an urbanized area with 200,000 population or more, a recipient for that area will be selected from local transportation providers who are transit authorities or eligible alternate recipients under this program.

(e) Eligible assistance categories. The following categories of expenses are eligible for federal reimbursement under the §5310 program.

(1) State administrative expenses. The department may use up to 10 percent of the annual federal program apportionment to de-

fray its expenses incurred for the administration of the §5310 program. State administrative expenses do not require a non-federal match.

(2) Capital expenses.

(A) With department concurrence, eligible items include:

(i) buses;

(ii) vans or other paratransit vehicles;

(iii) the acquisition of transportation services under a contract, lease, or other arrangement;

(iv) mobility management;

(v) curb cuts, sidewalks, pedestrian signals or other accessible features;

(vi) radios and communication equipment;

(vii) vehicle shelters;

(viii) wheelchair lifts and restraints;

(ix) vehicle rehabilitation, remanufacture, or overhaul;

(x) microcomputer hardware and software;

(xi) initial component installation costs;

(xii) vehicle procurement, testing, inspection, and acceptance costs;

(xiii) vehicle extended warranties that do not exceed industry standards;

(xiv) the lease of equipment, provided that the local recipient determines a lease is more cost effective than the purchase of equipment after considering management efficiency, availability of equipment, staffing capabilities, and guidelines on capital leases as contained in 49 C.F.R. Part 639;

(xv) transit-related intelligent transportation systems;

(xvi) the introduction of new technology, through innovative and improved products, into mass transportation; and

(xvii) the acquisition of preventive maintenance services and vehicle parts associated with preventive maintenance services.

(B) For reimbursement:

(i) federal funds may be used to defray up to 80 percent of the cost of eligible capital expenditures;

(ii) the federal share may increase to up to 85 percent of the net project cost for a project that involves acquiring vehicles for the purpose of complying with the Americans with Disabilities Act or the Clean Air Act; and

(iii) the federal share may increase to up to 90 percent for incremental costs related to compliance with the Clean Air Act in areas of air quality non-attainment or with the Americans with Disabilities Act.

(3) Operating expenses.

(A) Operating expenses are costs that are directly tied to systems operations, such as costs for fuel, oil, and replacement parts, and driver, mechanic, and dispatcher salaries.

(B) Operating expenses may be reimbursed at 50 percent of net operating expense.

(f) Local share requirements.

(1) Eligible sources to satisfy local share requirements may be derived from the following:

(A) an undistributed cash surplus, or a replacement or depreciation cash fund or reserve;

(B) a service agreement with a state or local social service or workforce agency, or a private social service organization;

(C) amounts appropriated or otherwise made available to a U.S. department or agency that are eligible to be expended for transportation;

(D) funds to carry out the federal lands highways program established by 23 U.S.C. §204;

(E) funds available under §403(a)(5)(C)(vii) of the Social Security Act (42 U.S.C. §603(a)(5)(C)(vii));

(F) in-kind contributions, volunteer services, and donations attributable to the project if the value is documented and previously approved by the department; or

(G) transportation development credits, with prior department approval.

(2) Funds from any other U.S. DOT program are not eligible for use as local matching funds.

(g) Funding distribution. After the state administrative expenses described in subsection (e)(1) of this section are set aside, funds will be allocated on a formula basis as provided by this subsection.

(1) For urbanized areas with a population less than 200,000, 25 percent of the available funds will be allocated equally, using department district boundaries of the districts that include such an area. To allocate the remaining 75 percent, the department will:

(A) calculate the population of seniors and individuals with disabilities in each of those urbanized areas using the latest census figures available from the United States Census Bureau; and

(B) divide each urbanized area's population of seniors and individuals with disabilities, as determined under subparagraph (A) of this paragraph, by the state's total population for urbanized areas with less than 200,000 population to determine that urbanized area's formula allocation.

(2) For rural areas, 25 percent of the available funds will be allocated equally, using department district boundaries of the districts that include such an area. To allocate the remaining 75 percent, the department will:

(A) calculate the population of seniors and individuals with disabilities in each department district using the latest census figures for counties available from the United States Census Bureau; and

(B) divide each department district's subtotal of the population of seniors and individuals with disabilities, as determined under subparagraph (A) of this paragraph, by the state total of that population in rural areas to determine the district's formula allocation.

(3) For urbanized areas with 200,000 population or more for which the department is the designated recipient, funds will be allocated to the respective urbanized area based on the federal apportionment as published in the *Federal Register*.

(4) Residual funds.

(A) Urbanized areas with populations of less than 200,000 and rural areas. On completion of the project selection procedures described in subsection (i) of this section, if any portion of the allocation described in paragraph (1) or (2) of this subsection is not needed, the commission or the executive director may distribute the balances, as appropriate, to satisfy unmet needs in other areas of the state. This action may require the department to transfer funds, at the state level, between urbanized and rural areas to fully obligate the state's apportionment.

(B) Urbanized areas with populations of 200,000 or more. On completion of the project selection procedures described in subsection (i) of this section, any unallocated funds for urbanized areas with populations of 200,000 or more will remain in that urbanized area until allocated at a future date.

(h) Application requirements. A prospective applicant must submit an application for §5310 grant funds at the time specified by the department. The application must document the need and demand for passenger transportation services for seniors and individuals with disabilities, and also must document inclusion of the project in the coordinated public transit-human service transportation plan.

(i) Project selection. To select projects, the department will consult with all local parties, including metropolitan planning organizations, and follow the procedures set out in this subsection.

(1) Department personnel will establish, after consultation with local stakeholders, processes for local planning and project development, and public outreach. In an effort to streamline decision-making processes and maximize coordination opportunities, the department may choose to combine contiguous department district boundaries for stakeholder engagement, project selection, and public outreach. The stakeholder groups should include representatives of the following groups, further defined in FTA Circular 9070.1F, or its latest version:

(A) transportation partners;

(B) passengers and advocates;

(C) human service and work force agencies; and

(D) others, such as emergency management agencies.

(2) In recommending projects, stakeholder groups should consider the program goals and objectives set forth in subsection (b) of this section and consider projects that:

(A) leverage existing resources and promote innovation;

(B) are the only public transportation option for the proposed service area;

(C) are sustainable over time;

(D) demonstrate efficient use of resources;

(E) involve partnerships that include organizations and for-profit transportation providers; or

(F) provide service continuity.

(3) Not more than 45 percent of the funds allocated by district boundaries or combination of district boundaries may be used for operating expenses. This cap applies to both urbanized areas and rural areas, respectively.

(4) The requirements of this subparagraph apply to all projects recommended for funding.

(A) There must be a demonstrated need for any capital purchases. Examples of items that may be used to demonstrate need include a needs assessment that documents the demand for new services, a vehicle inventory that establishes the need for replacement of older equipment, dispatcher logs that document requests for service that cannot be met with existing equipment, and purchase of service contracts that substantiate the need for additional vehicles.

(B) The proposed applicant must be able to demonstrate its financial and managerial capability to carry out the project. Examples of items that may be used to demonstrate the capability include audited financial statements and review letters from grantor agencies.

(C) Consideration should be given to the applicant's past efforts to coordinate services and related activities with other local entities. Examples showing those efforts include contracts that outline purchase of service agreements, shared maintenance or dispatching functions, and joint training initiatives.

(D) There should be evidence of local support for the proposal. Examples of that evidence include resolutions by local governing bodies and endorsement letters from other organizations or individuals.

(E) The project must be included in the coordinated public transit-human service transportation plan.

(5) Based on stakeholder input, department personnel assigned to cover district areas will rank projects in priority order.

(6) On receipt of the applications recommended for funding, the director, or the director's designee, will review all funding requests for completeness and compliance with all statutory and program administrative requirements. Following commission approval, the department will negotiate a contract with the selected local entities and organizations to implement the projects selected for funding.

(j) Vehicle leasing. Vehicles acquired under the §5310 program may be leased to other entities, such as local public entities or agencies, other private nonprofit agencies, or private for-profit operators. The lessee shall operate the vehicles on behalf of the §5310 recipient and provide the transportation services as described in the original grant application.

(k) Incidental vehicle use. A vehicle that is purchased with §5310 funds may be used for incidental uses that do not conflict with the primary use of the vehicle to provide transportation services for seniors and individuals with disabilities. Examples of permissible incidental uses are allowing riders who are neither senior nor an individual with a disability to occupy vacant seats, delivering meals, or using the vehicle for other public transportation activities when it is not required for seniors or individuals with disabilities project purposes. The vehicle shall not be altered in any way to accommodate incidental use.

(l) Private for-profit transportation business participation. Taxi companies that provide only exclusive-ride service are not eligible subrecipients; however, they may participate in the §5310 program as contractors. Exclusive-ride taxi companies may receive §5310 funds to purchase accessible taxis under contract with an eligible subrecipient.

§31.36. Section 5311 Grant Program.

(a) Purpose. Section 5311, Federal Transit Act (49 U.S.C. §5311), authorizes the Secretary of the U.S. DOT to make grants for public transportation projects in rural areas. The department has been designated by the governor to administer the §5311 program.

(b) Goal and objectives. The department's goal in administering the §5311 program is to promote the availability of cost-effective, efficient, and coordinated passenger transportation services to the gen-

eral public in rural areas using the most efficient combination of financial and other resources. To achieve this goal, the objectives of the department are to:

(1) promote the development and maintenance of a network of general public transportation services, including intercity services, in rural areas throughout the state, in partnership with local officials;

(2) fully integrate the §5311 program with other federal, state, and local resources that are designed to serve rural populations;

(3) improve the efficiency, effectiveness, and safety of §5311 systems through the provision of technical assistance; and

(4) include private sector operators in the overall plan to provide public transportation services.

(c) Department role. The department acts as the designated recipient for all §5311 funds apportioned to the state and has an oversight responsibility for all rural transit services within the state. The department, however, recognizes the subrecipients as partners who shall retain control of daily operations. As the administering agency, the department will:

(1) develop application materials and disseminate information to prospective applicants and other interested parties;

(2) allocate the available program funds in a fair and equitable manner as described in subsection (g) of this section (the department will not provide §5311 funds to more than one transit system in a geographical area);

(3) develop evaluation criteria and select projects for funding;

(4) prepare the state's annual program of projects and funding application and submit that material to the FTA for approval;

(5) negotiate and execute contracts with local §5311 subrecipients;

(6) prepare requests for federal reimbursement, and process payment requests from §5311 subrecipients;

(7) monitor and evaluate the progress of ongoing transportation operations, including compliance with federal regulations; and

(8) provide technical assistance to §5311 subrecipients to aid them in improving transit services.

(d) Eligible subrecipients. State agencies, local public entities, private nonprofit organizations, Native American tribes and organizations, and operators of public transportation services are eligible to receive §5311 funds through the department. Private for-profit operators of public transportation services may participate in the program through contracts with eligible subrecipients. An entity must be a rural transit district to receive §5311 funds except that private for-profit operators of public transportation services and entities that are not rural transit districts are eligible to receive §5311 funds through the department under the intercity bus program, as set forth in subsections (g)(1) and (i) of this section.

(e) Eligible assistance categories. The following categories of expenses are eligible for federal reimbursement under the §5311 program.

(1) State administrative expenses. The department may use up to 10 percent of the annual federal apportionment to defray its expenses incurred for the administration of the §5311 program. These funds may also be used to provide technical assistance to subrecipients. Technical assistance may include project planning, program development, management development, coordination of public transportation projects, and related research. Projects are solicited from subrecipients and other interested parties. State administrative and technical assistance expenses do not require a non-federal match.

(2) Capital expenses.

(A) Eligible items include:

(i) buses;

(ii) vans or other paratransit vehicles;

(iii) radios and communications equipment;

(iv) passenger shelters, bus stop signs, and similar passenger amenities;

(v) wheelchair lifts and restraints;

(vi) vehicle rehabilitation, remanufacture, or overhaul;

(vii) preventive maintenance, including all maintenance costs;

(viii) extended warranties that do not exceed the industry standard;

(ix) the mass transit portion of ferry boats and terminals;

(x) operational support such as computer hardware or software;

(xi) installation costs and vehicle procurement, testing, inspection, and acceptance costs;

(xii) construction or rehabilitation of transit facilities, including design, engineering, and land acquisition;

(xiii) facilities to provide access for bicycles to mass transit facilities and equipment for transporting bicycles on mass transit vehicles;

(xiv) the lease of equipment or facilities, provided that the local subrecipient, with the concurrence of the department, determines that a lease is more cost effective than the purchase of equipment or facilities after considering management efficiency, availability of equipment, staffing capabilities and guidelines on capital leases as contained in 49 C.F.R. Part 639;

(xv) the capital portions of costs for service under contract;

(xvi) joint development projects (FTA Circular 9300.1B, or its latest version, provides guidelines for joint development projects);

(xvii) the introduction of new technology, through innovative and improved products, into mass transportation;

(xviii) transit-related intelligent transportation systems;

(xix) the provision of ADA paratransit service, which shall not exceed 10 percent of the state's annual apportionment of §5311 funds and shall be used only by subrecipients that are in compliance with ADA requirements for both fixed route and demand responsive service;

(xx) mobility management consisting of short-range planning, management activities and projects for improving coordination among public transportation, and other transportation service

providers carried out through an agreement entered into with a person, including a governmental authority, but excluding operating expenses; and

(xxi) crime prevention and security.

(B) The capital cost of contracting includes depreciation, interest on facilities and equipment, and those allowable capital costs that would otherwise be incurred directly, including maintenance. No capital assets (vehicle, equipment, or facility) that have any remaining federal interest in them and no items purchased with state or local government funds may be capitalized under the grant agreement.

(C) For reimbursement:

(i) federal funds may be used to reimburse up to 80 percent of eligible capital expenditures;

(ii) the federal share may increase up to 85 percent of the net project cost for a project that involves acquiring vehicles for the purpose of complying with the Americans with Disabilities Act or the Clean Air Act;

(iii) the federal share may increase to up to 90 percent for bicycle equipment or facilities projects or for incremental costs related to compliance with the Clean Air Act or with the Americans with Disabilities Act of 1990; and

(iv) the federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands, individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments, with eligibility standards for the higher federal share being defined in FTA Circular 9040.1F, or its latest version.

(3) Project administrative expenses. Costs not directly tied, but essential, to the operations of passenger transportation systems may be reimbursed at up to 80 percent with federal funds. The federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands, individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments. Eligibility standards for the higher federal share are defined in FTA Circular 9040.1F, or its latest version.

(4) Operating expenses. Costs directly tied to systems operations, such as costs for fuel, oil, and replacement parts, and driver, mechanic, and dispatcher salaries, may be reimbursed at 50 percent of net operating costs. The federal share may also increase in accordance with 23 U.S.C. §120(b)(2) as determined by FTA regarding the area of nontaxable Native American lands, individual and tribal, public domain lands (reserved and unreserved), national forest, and national parks and monuments. Eligibility standards for the higher federal share are defined in FTA Circular 9040.1F, or its latest version. The local subrecipient must provide a match, either in cash or with in-kind donations.

(5) Planning expenses may be reimbursed at up to 80 percent with federal funds. FTA Circular 8100.1C or its latest version has a complete list of eligible activities, which include:

(A) studies relating to management, planning, operations, capital requirements, and economic feasibility;

(B) evaluation of previous planning projects;

(C) work elements and related activities preliminary to and in preparation for constructing, acquiring, or improving the operations of facilities and equipment;

(D) safety, security, and emergency transportation and evacuation planning; and

(E) coordinated public transit-human service transportation planning.

(f) Local share requirements.

(1) FTA program funds cannot be used as the local share required for §5311 grants.

(2) Cash from local or state programs, donations, or unrestricted federal funds is allowed.

(3) In-kind contributions, volunteer services, and donations are eligible as local share if the value is documented.

(4) For an intercity bus project that includes both feeder service and an unsubsidized segment of intercity bus service to which the feeder service connects, in-kind match may be derived from the costs of a private operator for the unsubsidized segment of intercity bus services for the operating costs of connecting rural intercity bus feeder services. The private operator must agree in writing to the use of the costs of the unsubsidized segment of intercity bus services as in-kind match.

(5) Subrecipients may request transportation development credits be used for all or part of the local match.

(g) Allocation of funds. As part of its administration of the §5311 program, the department is charged with ensuring that there is a fair and equitable distribution of funds within the state (FTA Circular 9040.1F or its latest version). After subtracting funds for state administrative expenses in accordance with subsection (e)(1) of this section, the department will allocate §5311 funds to local subrecipients in the following manner and order.

(1) Intercity bus allocation. Unless the chief executive officer of the state or the executive officer's authorized designee certifies to the Secretary of the U.S. DOT that the intercity bus service needs of the state are being adequately met, the department will allocate not less than 15 percent of the annual §5311 federal apportionment for the development and support of intercity bus transportation facilities and services providing access and connections to rural areas. If it is determined that all or a portion of the set-aside monies is not required for intercity bus service, those funds will be applied to the formula apportionment process described in paragraph (2) of this subsection. Procedures for determining if a certification of adequacy is warranted are as follows.

(A) The department will review all data on intercity bus service availability, including outstanding requests from intercity operators and rural transit districts, and levels of service.

(B) The department will consult with affected intercity bus service providers and rural transit districts.

(C) The department will consult with other state agencies that have jurisdiction with respect to intercity bus regulation and seek their recommendations as to the adequacy of current service.

(D) Based on the findings of subparagraphs (A), (B), and (C) of this paragraph, the commission, the chief executive officer of the state or the executive officer's authorized designee may certify to the adequacy of intercity bus service.

(2) Need and performance allocation. Excluding the amounts allocated under paragraph (1) of this subsection, the balance of the annual §5311 federal apportionment, plus the remaining balance of previous §5311 federal apportionments, not to exceed $20,104,352,

will be allocated to transit providers as described in subparagraphs (A) and (B) of this paragraph.

(A) The need based allocation is 65 percent giving consideration to population weighted at 75 percent and on land area weighted at 25 percent by using the latest census data available from, and as defined by, the U.S. Census Bureau for each rural area relative to the sum of all rural areas.

(B) The performance based allocation is 35 percent. The subrecipient is eligible for funding under this subparagraph if it is in good standing with the department and has no deficiencies and no findings of noncompliance. The commission will award the funding by giving equal consideration to local funds per operating expense, ridership per vehicle revenue mile, and vehicle revenue miles per operating expense. These criteria may be calculated using the subrecipient's annual audit for the previously completed fiscal year, data from other sources, or from the department's records.

(C) Funding stability.

(i) Subject to the available apportionment, no award to a transit district under this paragraph will be less than 90 percent of the award to that transit district for the previous fiscal year. All allocations under subparagraphs (A) and (B) of this paragraph are subject to revision to comply with this standard.

(ii) If a rural transit district experiences a negative impact in its performance factor calculations due to the acquisition or loss of service area, a natural disaster, such as wind, fire, or flood, or unforeseen anomaly, the department may mitigate that impact with an alternate calculation addressing the specific situation. This calculation may be repeated in subsequent years at the discretion of the department.

(3) Discretionary allocation. If the amount of the §5311 federal apportionments exceeds the maximum amount that may be allocated under paragraph (2) of this subsection, a part of that excess, not to exceed 10 percent of the amount computed by subtracting, from the annual §5311 federal apportionment, the funds for state administrative expenses under subsection (e)(1) of this section and funds allocated for intercity bus transportation under paragraph (1) of this subsection, will be available to the commission for award at any time during the fiscal year on a pro rata basis, competitively, or a combination of both. Consideration for the award of these additional funds may include, but is not limited to, coordination and technical support activities, compensation for unforeseen funding anomalies, assistance with eliminating waste and ensuring efficiency, maximum coverage in the provision of public transportation services, adjustment for reductions in purchasing power, furtherance of the department's goals, and reductions in air pollution. An award under this subparagraph will not be considered for the purpose of applying the funding stability allocation process under paragraph (2)(C) of this subsection in succeeding fiscal years.

(4) Vehicle revenue mile allocation. Any amount of the annual §5311 federal apportionment that is not otherwise allocated under this subsection will be allocated to rural areas, with the amount allocated to a rural area based on the proportion of vehicle revenue miles for that rural area to the total of vehicle revenue miles for all rural areas.

(5) Adjustments to allocation.

(A) If part of a transit district's service area is changed due to declaration by the United States Census Bureau or the service area is otherwise altered, the department and that subrecipient shall negotiate an appropriate adjustment in the funding year or any subsequent year, as appropriate. This negotiated adjustment is not subject to the minimum and maximum standards set forth in paragraph (2)(C) of this subsection.

(B) If a previously designated urbanized area is declared rural by the United States Census Bureau, a public transportation subrecipient serving that area must apply for funds in accordance with paragraph (6) of this subsection.

(6) Application and contract. Prior to receiving funds a subrecipient must complete and comply with all application requirements, rules, and regulations applicable to the §5311 program. A completed application must be submitted, in a form prescribed by the department, and document the need and demand for general public passenger transportation services. A contract shall be for no less than 12 months unless authorized by the department.

(h) Program of projects. All projects for a fiscal year will be identified in accordance with the allocation rules included in subsection (g) of this section. After commission approval of the allocation, these projects will be submitted to the FTA as the annual program of projects for the fiscal year.

(i) Intercity bus. For funding from allocations made under subsection (g)(1) of this section, an annual request for proposals will be issued for projects complying with FTA definitions of intercity bus transportation. To ensure a balanced investment in access and connectivity to intercity bus travel, the department may establish investment targets among eligible applicant groups or project types prior to solicitation of project proposals.

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

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Joanne Wright
Deputy General Counsel
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43 TAC §31.31

STATUTORY AUTHORITY

The repeal is adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

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

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Joanne Wright
Deputy General Counsel
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SUBCHAPTER D. PROGRAM ADMINISTRATION

43 TAC §§31.38, 31.40, 31.42 - 31.45, 31.48, 31.49

STATUTORY AUTHORITY

The amendments and new sections are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

§31.38. Public Transit Safety Program.

(a) Purpose. Title 49 U.S.C. §5329, authorizes the Secretary of the U.S. DOT to create and implement a National Public Transportation Safety Plan. Recipients and subrecipients must develop transit safety plans and report to the Secretary annually.

(b) Affected agencies. Subrecipients of §5311 Rural Formula Grants through the department must comply with 49 U.S.C. §5326.

(c) Department role. As the administering agency the department will:

(1) provide guidance to agencies requesting assistance with the development of a transit safety plan;

(2) prepare plans for agencies requesting the department prepare plans on their behalf; and

(3) certify subrecipient compliance with 49 U.S.C. §5329 requirements.

(d) Subrecipient responsibilities. Subrecipients will develop a transit safety plan that, at a minimum, includes:

(1) a requirement that the governing body of the subrecipient approve the agency safety plan and any updates to the agency safety plan;

(2) methods for identifying and evaluating safety risks throughout all elements of the public transportation system of the subrecipient;

(3) strategies to minimize the exposure of the public, personnel, and property to hazards and unsafe conditions;

(4) a process and timeline for conducting an annual review and update of the safety plan of the subrecipient;

(5) performance targets based on the safety performance criteria and state of good repair standards when established by the U.S. DOT Secretary in the National Public Transportation Safety Plan;

(6) assignment of an adequately trained safety officer who reports directly to the general manager, president, or equivalent officer of the subrecipient; and

(7) a comprehensive staff training program for operations personnel and personnel directly responsible for safety that includes:

(A) the completion of a safety training program; and

(B) continuing safety education and training.

§31.48. Project Oversight.

(a) Purpose. This section describes reporting requirements for designated recipients and subrecipients of state or federal public transportation grant funds and monitoring activities to be performed by the department.

(b) Reporting requirements. The subrecipient shall submit reports to the department in a format prescribed by the department within deadlines established by the department.

(1) Incident reports. Subrecipients shall report all incidents that meet criteria established by the department. The subrecipient shall submit the report within five days of the incident or discovery of the incident.

(2) Asset inventory. Each subrecipient shall provide information on state and federally funded equipment as described in §31.50 of this chapter (relating to Recordkeeping and Inventory Requirements).

(3) Charter service. Section 5311 subrecipients shall provide charter service only under the specific circumstances established by the FTA. Operators shall advise the department of any charter service provided and the exemption under which charter service is provided.

(4) Disadvantaged Business Enterprises and Historically Underutilized Businesses. Subrecipients shall submit reports in accordance with Chapter 9, Subchapter L of this title (relating to Historically Underutilized Business (HUB) Program).

(5) Operations reports. All FTA recipients and subrecipients shall submit quarterly and annual operations reports.

(A) Pursuant to the requirements of 49 U.S.C. §5311 and §5335, subrecipients of assistance under §5311 shall submit to the department data required by the department for reporting to the National Transit Database.

(B) Pursuant to the requirements of 49 U.S.C. §5326, subrecipients of FTA assistance through the department shall provide the data required by the department to report on transit asset management.

(C) Pursuant to the requirements of Transportation Code, §456.008(a) and (b), the department will collect monthly data from transit operators in urbanized areas, including transit authorities, and publish annually data on industry utilized standards that best reflect ridership, mileage, revenue by source and service effectiveness. These standards include:

(i) Service efficiency--Operating expense per vehicle revenue hour and operating expense per vehicle revenue mile.

(ii) Cost effectiveness--Operating expense per unlinked passenger trip.

(iii) Service effectiveness--Unlinked passenger trips per vehicle revenue mile and unlinked passenger trips per vehicle revenue hour.

(iv) Safety--Total incidents per 100,000 miles of service and average number of miles between revenue vehicle mechanical system failures that prevent the vehicle from completing a scheduled revenue trip.

(D) Pursuant to the requirements of Transportation Code, §456.008(a) and (b), and 49 U.S.C. §5311, the department will collect monthly from transit operators in rural areas, and publish annually data on industry utilized standards that best reflect ridership, mileage, revenue by source and service effectiveness. These standards include:

(i) Service efficiency--Operating expense per vehicle mile.

(ii) Cost effectiveness--Operating expense per unlinked passenger trip.

(iii) Service effectiveness--Unlinked passenger trips per vehicle mile.

(iv) Safety--Total incidents per 100,000 miles of service and average number of miles between revenue vehicle mechanical system failures that prevent the vehicle from completing a scheduled revenue trip.

(E) Pursuant to the requirements of Transportation Code, §456.008(a) and (b), the department will collect monthly from public transportation providers, as defined in Transportation Code, §461.002, that receive funding under 49 U.S.C. §5310, or §5316 and §5317 (with regard to the grant of funds appropriated under federal authorization bills prior to MAP-21), and publish annually data on industry utilized standards that best reflect ridership, mileage, revenue by source and service effectiveness. These standards include:

(i) Service efficiency--Operating expense per vehicle mile.

(ii) Cost effectiveness--Operating expense per unlinked passenger trip.

(iii) Service effectiveness--Unlinked passenger trips per vehicle mile.

(iv) Any other measure appropriate to the type of project financed using funds from §5310, or §5316 and §5317 with regard to the grant of funds appropriated under federal authorization bills prior to MAP-21.

(6) Significant events. The recipient shall promptly advise the department in writing of events that have a significant effect on the delivery of public transportation services, including:

(A) problems, delays, and adverse conditions that will materially affect the ability to attain program objectives, prevent the meeting of time schedules and goals, or preclude the attainment of project work units by established time periods, accompanied by a statement of the action taken or contemplated and any departmental assistance needed to resolve the situation; and

(B) favorable developments and events that will enable meeting time schedules and goals sooner than anticipated or producing more work units than originally projected.

(7) Miscellaneous reports. Entities receiving funds from either the department or the FTA shall cooperate with the department in providing other information as requested by state and federal funding agencies.

(c) Department monitoring. The department will rely on subrecipient reports as described in subsection (b) of this section as the primary means of monitoring subrecipient performance. In addition, department personnel and the subrecipient at least quarterly will discuss problems encountered by the subrecipient, the subrecipient's need for technical assistance, and other topics related to the provision of public transportation services. Routine monitoring activity will occur in the following areas according to a schedule that accommodates federal deadlines and department and operator workloads. Most, but not all, monitoring activities will occur on a quarterly basis.

(1) Civil rights. The department will monitor subrecipients for compliance with Title VI Civil Rights requirements.

(2) Drugs and alcohol.

(A) Each §5311 subrecipient and each of its subcontractors with safety-sensitive employees shall have policies and programs in place that comply with drug and alcohol standards established by the FTA. The department will monitor subrecipients for compliance with these regulations. In addition, the FTA requires each subrecipient to file a calendar year report (January 1 - December 31) with the department on drug and alcohol testing and compliance activities.

(B) Each §5310 subrecipient, and each §5316 and §5317 subrecipients with regard to the grant of funds appropriated under federal authorization bills prior to MAP-21, shall comply with Federal Motor Carrier Safety Administration requirements for drug and alcohol compliance if it owns a vehicle that requires a commercial driver's license to operate. If the subrecipient also receives §5307 or §5311 funding, the subrecipient shall include §§5310, 5316, and 5317 employees in their FTA testing program.

(3) Fiscal responsibility. A department employee will make on-site quarterly visits to review agency financial records that support requests for payment.

(4) Insurance. Subrecipients of state or federal funds through the department shall insure all facilities, equipment, and vehicles from loss. Checks for appropriate insurance levels will occur at the time the local agency renews its policies.

(5) Maintenance. Subrecipients are required to have written maintenance plans, schedules, and logs to ensure the proper care and longevity of vehicles and facilities in accordance with §31.53(d) of this chapter (relating to Maintenance Requirements). The plans, schedules, and logs are subject to periodic on-site inspection by the department.

(6) Incidental vehicle use. A vehicle purchased with federal or state funds may be used for incidental uses that do not conflict with the primary purposes for which the vehicle was purchased. An example of permissible incidental use is using the vehicle for other public transportation activities when it is not required for project purposes. The vehicle shall not be altered in any way to accommodate an incidental use.

(7) Procurement. The department will work with subrecipients to ensure that procurement activities meet applicable state and federal requirements and that all required documents are received and actions completed in a timely manner. Check sheets will be maintained by the department to ensure all benchmark activities are accomplished in the proper sequence.

(d) Noncompliance. A subrecipient that fails to comply with federal or state law, standard or special grant or subgrant conditions, or contractual agreements on which the grant or subgrant award is predicated, is subject to actions under Chapter 9, Subchapter H of this title (relating to Grant Sanctions).

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

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Joanne Wright
Deputy General Counsel
Texas Department of Transportation
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43 TAC §31.40, §31.42

STATUTORY AUTHORITY

The repeals are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

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

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SUBCHAPTER E. PROPERTY MANAGEMENT STANDARDS

43 TAC §31.51, §31.57

STATUTORY AUTHORITY

The amendments and new section are adopted under Transportation Code, §201.101, which provides the Texas Transportation Commission with the authority to establish rules for the conduct of the work of the department, and more specifically, Transportation Code, Chapter 455, which provides the general powers and duties for the Department of Transportation regarding mass transportation.

CROSS REFERENCE TO STATUTE

Transportation Code, Chapter 455.

§31.51. Asset Management.

(a) Purpose. Title 49 U.S.C. §5326 authorizes the Secretary of the U.S. DOT to establish and implement a national transit asset management system. Recipients and subrecipients must develop transit asset management plans and report to the Secretary annually.

(b) Affected agencies. Subrecipients of federal transit assistance through the department must comply with 49 U.S.C. §5326.

(c) Department role. The department acts as the designated recipient of multiple Federal Transit Act programs. As the administering agency the department will:

(1) provide guidance to agencies requesting assistance with the development of a transit asset management plan;

(2) certify subrecipient compliance with 49 U.S.C. §5326 requirements;

(3) provide the Federal Transit Administration (FTA) with an annual report that includes at a minimum:

(A) overall condition of transit assets;

(B) changes since the last report;

(C) performance measures; and

(D) progress in meeting performance measure targets.

(d) Subrecipient responsibilities.

(1) Subrecipients shall develop a transit asset management plan that covers rolling stock, equipment, infrastructure, and facilities leased or owned by the agency. At a minimum, the plan must include:

(A) capital asset inventories;

(B) condition assessments;

(C) decision support tools; and

(D) investment prioritization.

(2) Subrecipients shall provide the department the data needed to comply with §31.48(b)(5)(B) of this chapter (relating to Project Oversight).

(3) After the U.S. DOT Secretary establishes a definition for the term "state of good repair" (SOGR), agencies must set performance targets to attain SOGR status. The department will assist subrecipients to establish performance targets that may vary by the subrecipient's FTA funding program.

§31.57. Disposition.

(a) Purpose. This section describes the standards that apply to the disposition of equipment purchased in whole or in part with state or federal public transportation funds.

(b) Like-kind exchanges. In the case of like-kind exchanges, the percentage of the department's original contractual interest shall be applied to the fair market value of the equipment being sold at the time of the exchange. That dollar value shall then be transferred as the department's interest in the equipment being acquired and, as appropriate, added to any additional funding provided by the department towards the purchase of the new equipment.

(c) Federal standards. The federal standards contained in the Common Rule shall govern the disposition of real property and equipment purchased under contracts in which the department provides all or part of the local share requirement of federally assisted capital improvements. In cases in which the Common Rule does not require reimbursement of the federal grantor agency, the department will similarly release the state interest in the capital improvement provided that the state's percentage share of any proceeds derived by the subrecipient in the disposition process shall be used by the subrecipient for public transportation purposes similar to those for which the contract award was originally made. If the subrecipient does not intend to use the state's percentage share of the proceeds for public transportation purposes, those monies shall be refunded as described in subsection (d)(2)(B) of this section. In cases in which the Common Rule requires reimbursement of the federal grantor agency, the subrecipient

shall provide the department a percentage of the proceeds of the disposition equal to the percentage of the state's original investment in the property or equipment. Once disposition is authorized, the subrecipient shall relinquish title to the property through either sale, auction, or transfer to another recipient of FTA funding. The department shall be notified of the disposition and shall be provided information necessary to delete the property from inventory records described in §31.50 of this subchapter (relating to Recordkeeping and Inventory Requirements).

(d) State standards. All real property and equipment obtained through contracts in which the department's contractual interest includes federal funds or state monies shall be governed by the disposition standards contained in paragraphs (1) and (2) of this subsection. The department shall be notified of the subrecipient's intent to proceed with the dispositions and provided information necessary to delete the property from inventory records described in §31.50 of this subchapter. Prior to disposition of property under the terms of this subsection, the subrecipient shall obtain written concurrence from the department and receive disposition instructions. Once disposition is authorized, the subrecipient shall relinquish title to the property through either sale, auction, or transfer to another recipient of FTA or state funding.

(1) Disposition criteria.

(A) Vehicles. Disposition may occur when the current per-unit market value is less than $5,000.

(B) Other equipment. Disposition may occur when the current per-unit market value is less than $5,000.

(C) Real property. When real property is no longer needed for the originally authorized purpose, the subrecipient shall request disposition instructions from the department pursuant to this subsection.

(2) Distribution of disposition proceeds.

(A) Refund not required. In cases in which the disposition criteria contained in paragraph (1)(A) and (B) of this subsection have been met, the department will release its contractual interest in the capital improvement. The department will similarly release its contractual interest in cases in which exceptions are granted for early disposition in accordance with the provisions contained in subsection (e) of this section. However, the department's release of its interest in a capital improvement is contingent upon the subrecipient's assurance that the department's contractually specified percentage share of any proceeds derived by the subrecipient in the disposition process will be used by the subrecipient for public transportation purposes similar to those for which the contract award was originally made. In the case of transfers to non-transit uses, as allowed under 49 U.S.C. §5334(h), the department will release only the federal portion of its contractual interest. The department will consult with FTA as necessary to ensure compliance with federal standards. The state's percentage share shall be refunded as described in subparagraph (B) of this paragraph.

(B) Refund required. In cases in which the disposition criteria contained in paragraph (1)(A) and (B) of this subsection have not been met, but the subrecipient has received authorization from the department to proceed with the disposition of equipment or property, the subrecipient shall provide the department a percentage of the proceeds of the disposition equal to the percentage of the department's original contractual interest in the property or equipment. In cases of real property, as described in paragraph (1)(C) of this subsection, and when exceptions are not granted for early disposition, as described in subsection (e) of this section, the subrecipient shall similarly provide the department a percentage of the proceeds of the disposition equal to the percentage of the department's original contractual interest in the property or equipment. In the case of transfers to non-transit uses, as allowed under 49 U.S.C. §5334(h), the subrecipient shall provide the department a percentage of the proceeds of the disposition equal to the percentage of the original state percentage interest in the property or equipment, excluding any federal percentage interest that might have been included in the contract of assistance. The department will consult with FTA as necessary to ensure compliance with federal standards.

(C) Net proceeds from sale of capital assets. In cases in which the Common Rule requires a reimbursement, when the subrecipient receives proceeds from the disposition of the capital property or equipment and those funds will be used for subsequent federal public transportation purposes, the subrecipient shall establish a record of liability demonstrating that these funds are owed. The liability will be removed when the subrecipient uses the proceeds for a subsequent transit project.

(e) Exceptions. The department will consider exceptions to this section on a case-by-case basis. The subrecipient must furnish information requested by the department to determine if an exception is warranted due to special circumstances. The department will consult with FTA as necessary to ensure compliance with federal standards.

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

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Joanne Wright
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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.

Agency Rule Review Plans

Texas Board of Professional Geoscientists

Title 22, Part 39

TRD-201305089
Filed: November 5, 2013

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Texas Real Estate Commission

Title 22, Part 23

TRD-201305015
Filed: November 1, 2013

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Proposed Rule Reviews

Texas Board of Professional Geoscientists

Title 22, Part 39

In accordance with Texas Government Code §2001.039, the Texas Board of Professional Geoscientists (TBPG) files this notice of intent to review and consider for readoption, amendment, or repeal of 22 TAC Chapters 850 and 851, as follows:

Chapter 850. Texas Board of Professional Geoscientists

Subchapter A. Authority and Definitions

Subchapter B. Organization and Responsibilities

Subchapter C. Fees

Subchapter D. Advisory Opinions

Chapter 851. Texas Board of Professional Geoscientists Licensing and Enforcement Rules

Subchapter A. Definitions

Subchapter B. P.G. Licensing, Firm Registration, and GIT Certification

Subchapter C. Code of Professional Conduct

Subchapter D. Compliance and Enforcement

Subchapter E. Hearings--Contested Cases

The Texas Board of Professional Geoscientists will determine whether the reasons for adopting the sections under review continue to exist.

Any interested person may submit comments regarding these chapters and subchapters. In order to give the Board adequate time to consider your input, please submit comments regarding the rule review to TBPG by March 1, 2013. Comments should be directed to Charles Horton, Executive Director, Texas Board of Professional Geoscientists, P.O. Box 13225, Austin, Texas 78711 or by email to chorton@tbpg.state.tx.us.

Any proposed changes to these chapters as a result of this review will be published in the Proposed Rules section of the *Texas Register.* The proposed rules will be open for a standard 30-day public comment period prior to adoption by TBPG.

TRD-201305088
Charles Horton
Executive Director
Texas Board of Professional Geoscientists
Filed: November 5, 2013

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

In accordance with the Texas Government Code §2001.039, the Texas Department of Insurance, Division of Workers' Compensation (Division) will review and consider for readoption, revision, or repeal all sections within 28 TAC Chapter 69, Medical Examination Orders.

Chapter 69. Medical Examination Orders.

§69.5. Application of Chapter.

§69.10. Definitions.

§69.15. Carrier May Apply for Order from Board.

§69.20. Application.

§69.25. Bases for Denial.

§69.30. Appeal.

§69.33. Claimant's Medical Records.

§69.35. Claimant's Expenses.

§69.40. Attendance of Claimant's Health Care Provider.

§69.45. Unreasonable Delay.

§69.50. Reports of Examinations.

§69.55. Failure to Attend Examination.

The Division will consider whether the reasons for adopting these rules continue to exist and whether these rules should be repealed, readopted, or readopted with amendments.

If the Division identifies necessary amendments or repeals during this review, the Division will propose those amendments or repeals in accordance with the Government Code, Chapter 2001.

To be considered, written comments relating to whether these rules should be repealed, readopted, or readopted with amendments must be submitted by 5:00 p.m. CST December 17, 2013. Comments may be submitted by email at RuleReviewComments@tdi.texas.gov or by mailing or delivering your comments to Maria Jimenez, Office of Workers' Compensation Counsel, MS-4D, Texas Department of Insurance, Division of Workers' Compensation, 7551 Metro Center Drive, Suite 100, Austin, Texas 78744-1645. Comments received after 5:00 p.m. CST December 17, 2013, will not be considered.

Comments should clearly specify the particular section of the chapter to which they apply. Comments should include proposed alternative language as appropriate. General comments should be designated as such.

TRD-201305107
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 6, 2013

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Texas Real Estate Commission

Title 22, Part 23

The Texas Real Estate Commission (TREC) files this notice of intention to review Texas Administrative Code, Title 22, Part 23, Chapter 531, Canons of Professional Ethics and Conduct; Chapter 533, Practice and Procedure; and Chapter 534, General Administration. This review is undertaken pursuant to Government Code, §2001.039. TREC will accept comments for 30 days following the publication of this notice in the *Texas Register* as to whether the reasons for adopting the sections under review continue to exist. Final consideration of this rules review is expected at the TREC meeting on April 28, 2014.

Any questions or comments pertaining to this notice of intention to review should be directed to Kerri Lewis, General Counsel, Texas Real Estate Commission. P.O. Box 12188, Austin, Texas 78711-2188 or emailed to general.counsel@trec.state.tx.us within 30 days of publication.

During the review process, TREC may determine that a specific rule may need to be amended to further refine TREC's legal and policy considerations; whether the rules reflect current TREC procedures; that no changes to a rule as currently in effect are necessary; or that a rule is no longer valid or applicable. Rules may also be combined or reduced for simplification and clarity when feasible. Readopted rules will be noted in the *Texas Register's* Rules Review section without publication of the text. Any proposed amendments or repeal of a rule or chapter 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.

TRD-201305016
Kerri Lewis
General Counsel
Texas Real Estate Commission
Filed: November 1, 2013

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Adopted Rule Reviews

Texas Department of Agriculture

Title 4, Part 1

The Board of Directors (Board) of the Texas Agricultural Finance Authority of the Texas Department of Agriculture, adopts the review of 4 Texas Administrative Code (TAC) Chapter 28, concerning Texas Agricultural Finance Authority, consisting of: Subchapter A, concerning Financial Assistance Rules; Subchapter B, concerning Interest Rate Reduction Program; Subchapter C, concerning Agricultural Loan Guarantee Program; Subchapter D, concerning Young Farmer Interest Rate Reduction Rules; Subchapter E, concerning Young Farmer Grant Program Rules; and Subchapter F, concerning Rules for Deposition and Refund of Assessment Fees, and readopts all sections in 4 TAC Chapter 28, Subchapters A - F, along with the amendments proposed in the September 13, 2013, issue of the *Texas Register* (38 TexReg 5958). The Notice of Intent to Review was published in the September 13, 2013, issue of the *Texas Register* (38 TexReg 6043). No comments were received on the Notice of Intent to Review.

As part of the review process, the Board proposed amendments to Chapter 28, Subchapter A, §28.2 and §28.3; Subchapter B, §28.13; and Subchapter C, §28.29. The proposal was published in the Proposed Rules section of the September 13, 2013, issue of the *Texas Register* (38 TexReg 5958). No comments were received on the proposal. The proposal is adopted in this issue of the *Texas Register.*

Section 2001.039 of the Texas Government Code requires state agencies to review and consider for readoption each of their rules every four years. The review must include an assessment of whether the original justification for the rules continues to exist. The assessment of 4 TAC Chapter 28, Subchapters A - F, by the Board indicates that, with the exception of the adopted amendments to Subchapters A - C, the reason for readopting without changes all sections in Subchapters A - F continues to exist.

TRD-201305017
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Filed: November 1, 2013

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Texas Department of Insurance, Division of Workers' Compensation

Title 28, Part 2

In accordance with the Texas Government Code §2001.039, the Texas Department of Insurance, Division of Workers' Compensation (Division) considered readoption, revision, and repeal of all sections within 28 TAC Chapter 144, Dispute Resolution. The notice of proposed rule review was published in the June 21, 2013, issue of the *Texas Register,* (38 TexReg 4007).

The Division has determined that the reasoned justification to adopt the sections pursuant to Government Code §2001.033 continues to exist. The Division received no public comment on the sections within this chapter. Accordingly, the Division readopts the following rules in this chapter:

Chapter 144. Dispute Resolution.

§144.1. Authority and Duties of Arbitrators.

§144.2. Ex Parte Communications.

§144.3. Delivery of Copies of Documents.

§144.4. Election to Engage in Arbitration.

§144.5. Statement of Disputes.

§144.6. Assignment of Arbitrator.

§144.7. Setting the Arbitration Proceeding.

§144.8. Expediting Procedures.

§144.9. Exchange of Evidence and Proposed Resolution.

§144.10. Stipulations, Agreements, and Settlements.

§144.11. Continuance.

§144.12. Failure to Attend Arbitration.

§144.13. Rights of Parties.

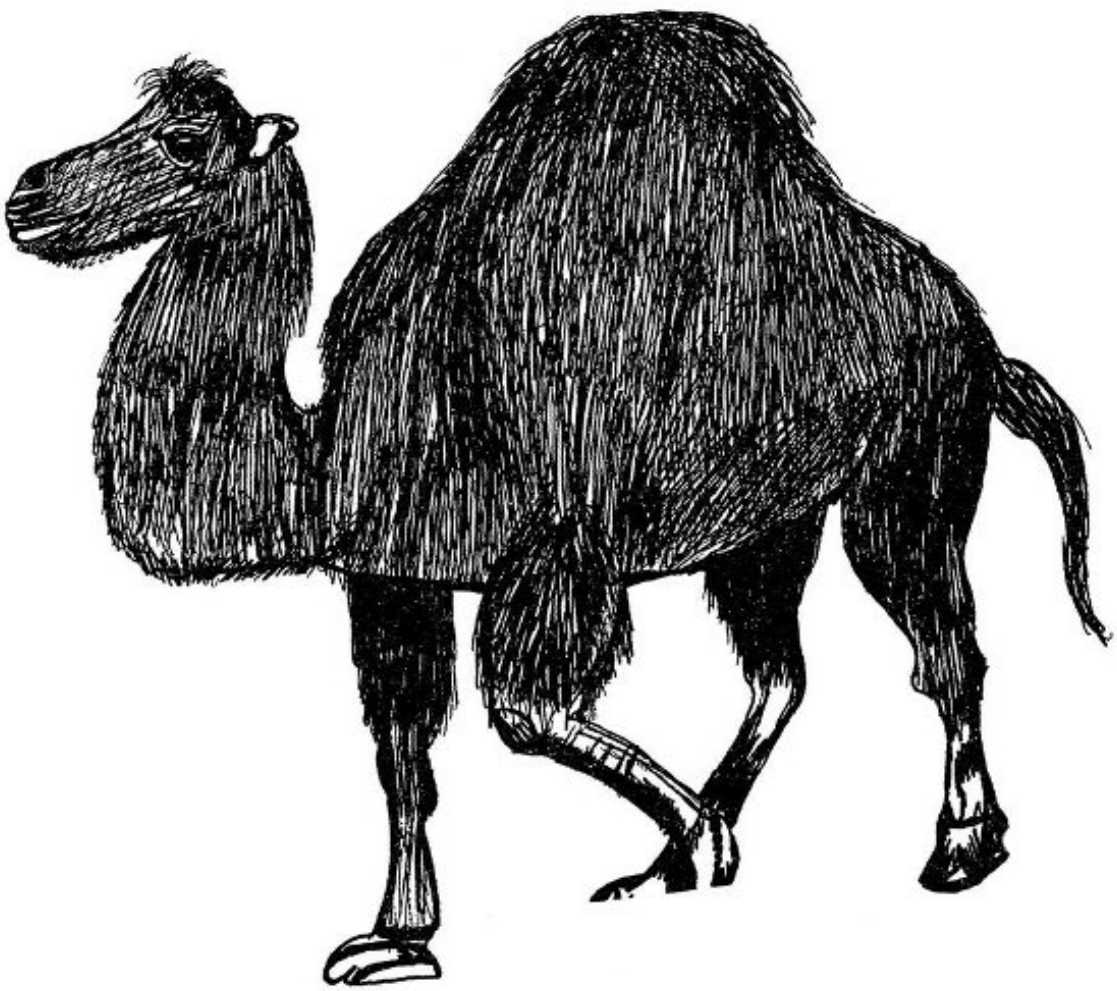
§144.14. Usual Order of Proceedings.

§144.15. Award of the Arbitrator.

§144.16. Requesting a Copy of the Record.

This concludes the review of 28 TAC Chapter 144. Any proposed changes to the sections within 28 TAC Chapter 144 as a result of future reviews will be done in accordance with the Administrative Procedure Act which governs rule proposals and adoptions.

TRD-201305099
Dirk Johnson
General Counsel
Texas Department of Insurance, Division of Workers' Compensation
Filed: November 5, 2013



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: 34 TAC §3.434(g)(1)

Registered Gross Weight	Less Than 5,000 Miles	5,000 to 9,999 Miles	10,000 to 14,999 Miles	15,000 Miles and Over
Class A: Less than 4,000 pounds	$30	$60	$90	$120
Class B: 4,000 to 10,000 pounds	$42	$84	$126	$168
Class C: 10,001 to 15,000 pounds	$48	$96	$144	$192
Class D: 15,001 to 27,500 pounds	$84	$168	$252	$336
Class E: 27,501 to 43,500 pounds	$126	$252	$378	$504
Class F: 43,501 and over	$186	$372	$558	$744

Figure: 40 TAC §745.115

Governmental Entity	Description of Exempt Programs
(1) Federal	A facility operated on a federal installation, including military bases and Indian reservations.
(2) State	(A) A facility operated by the Texas Juvenile Justice Department; (B) A facility providing services solely for the Texas Juvenile Justice Department; (C) Any other correctional facility for children operated or regulated by another state agency or political subdivision; (D) A treatment facility or structured program for treating chemically dependent persons that is licensed by the Department of State Health Services; (E) A youth camp licensed by the Department of State Health Services; and (F) A youth camp exempt from licensure by the Department of State Health Services under the Health and Safety Code, §141.0021, because it is: (1) Operated by or on "a campus of an institution of higher education" or "a private or independent institution of higher education," as those terms are defined in the Education Code, §61.003; and (2) Regularly inspected by a local governmental entity for compliance with health and safety standards.
(3) Municipal	A recreation program for elementary age (5-13 years) children with the following criteria: (A) A municipality operates the program; (B) The governing body of the municipality annually adopts standards of care by ordinance after a public hearing for such programs, although the governing body of a municipality with a population of at least 300,000 that has adopted standards by ordinance after public hearings at least twice may accept public comment through its Internet website for at least 30 days in lieu of having a public hearing; (C) The program provides these standards to the parents of each program participant; (D) The ordinances include child/caregiver ratios, minimum employee qualifications, minimum building, health, and safety standards, and mechanisms for monitoring and enforcing the adopted local standards; (E) The program informs the parents that the state does not license the program; and (F) The program does not advertise itself as a child-care operation.

Figure: 40 TAC §745.129

Exempt Miscellaneous Programs	Criteria for Exemption
(1) Neighborhood Recreation Program	(A) The program provides activities designed for recreational purposes for children ages 5-13; (B) The governing body of the program must adopt standards for care. At a minimum, these standards must include staffing ratios, staff training, and health and safety standards and mechanisms for monitoring, enforcing the standards, and receiving and resolving complaints from parents of the enrolled children; (C) The program does not accept any compensation other than a nominal annual membership fee. The program does not solicit donations as payment for services or goods provided as part of the program; (D) The program is organized as a non-profit organization or is located at the participant's residence; (E) The program must inform each parent that Licensing does not regulate the operation; (F) The program does not advertise or represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services; and (G) The program conducts background checks using information that is obtained from the Department of Public Safety for all program employees and volunteers who work with children.
(2) Skills Program	(A) The program offers direct instruction in a single skill, talent, ability, expertise, or proficiency; (B) The program does not provide or offer services that are not directly related to a single skill, talent, ability, expertise, or proficiency, but may offer transportation and snacks; (C) The program does not advertise or represent that the program is a child-care facility, day-care center, or licensed before-school or after-school program or that the program offers child-care services; (D) The program informs parents that the program is not licensed by the state; (E) The program informs parents of the physical risk a child may face while participating in the program; and (F) The program conducts background checks using information that is obtained from the Department of Public Safety for all program employees and volunteers who work with children.

(3) Caregiver Has Written Agreement with a Parent to Provide Residential Care	(A) A child or sibling group may live with someone other than a relative if the non-relative caregiver does not care for more than one unrelated child or sibling group; (B) The caregiver had a prior relationship with the child, sibling group, or other family members of the child or sibling group; (C) The caregiver does not receive compensation or solicit donations for the care of the child or sibling group; and (D) The caregiver has a written agreement with the parent to care for the child or sibling group.
(4) Emergency Shelter for Minors	(A) The shelter does not otherwise operate as a child-care facility that must have a license from DFPS; (B) The shelter is providing shelter or care to a minor and the minor's child or children, if any; (C) The shelter provides care for the minor and the minor's child or children only when there is an immediate danger to the physical health or safety of the minor or the minor's child or children; (D) The shelter does not provide care for more than 15 days unless: (1) The minor consents to shelter or care to be provided to the minor or the minor's children and is: (i) 16 years of age or older, resides separate and apart from the minor's parent, and manages the minor's own financial affairs; or (ii) Unmarried and is pregnant or is the parent of a child; or (2) The minor has qualified for Temporary Assistance for Needy Families and is on the waiting list for housing assistance; and (E) The shelter is: (1) Currently under contract with a state or federal agency for the provision of shelter or care to children; or (2) A family violence center that meets the requirements listed under Human Resources Code §51.005(b)(3), as determined by the Health and Human Services Commission.
(5) Child or Sibling Group Placed By DFPS	(A) The caregiver has a longstanding and significant relationship with the child or sibling group; (B) DFPS is the managing conservator of the child or sibling group; and (C) DFPS placed the child or sibling group in the caregiver's home.
(6) Food Distribution Program	(A) The program serves an evening meal to children two-years-old or older; and (B) The program is operated by a non-profit food bank in a non-profit, religious, or educational facility for not more than two hours a day on regular business days.

(7) Emergency Shelter for Human Trafficking	(A) The shelter does not otherwise operate as a child-care facility that is required to have a license from DFPS; (B) The shelter is operated by a nonprofit organization; (C) The shelter provides shelter and care for no more than 15 days to alleged victims of human trafficking as defined in Penal Code §20A.02, who are 13-17 years old; and (D) The shelter is located in a municipality with a population of at least 600,000 that is in a county on an international border; and: (1) Is licensed by, or operates under an agreement with, a state or federal agency to provide shelter and care to children; or (2) Is a family violence center that meets the requirements listed under Human Resources Code §51.005(b)(3), as determined by the Health and Human Services Commission.

Figure: 40 TAC §745.616(b)

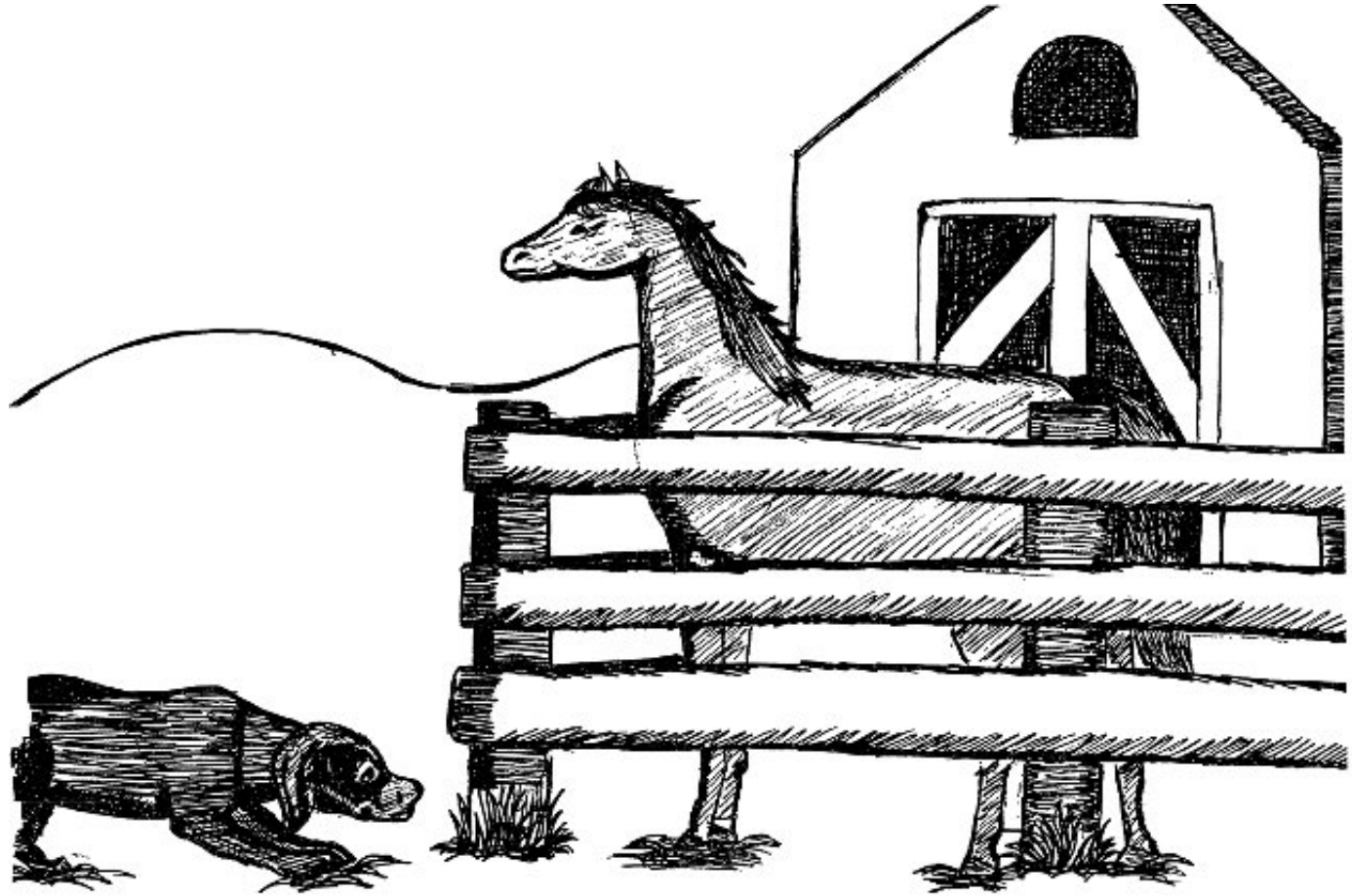
Persons Requiring an FBI Fingerprint Check	**When an FBI Fingerprint Check Is Due**
Prospective foster or adoptive parent	Prior to the foster or adoptive home's verification or approval
Prospective employee	Prior to employment
Person 14 years or older who resides in a prospective foster or adoptive home or a residential operation in applicant status	Prior to the foster or adoptive home's verification or approval or before the person may be in contact with children in care at a residential operation

Figure: 40 TAC §745.616(c)

Persons Requiring an FBI Fingerprint Check	When an FBI Fingerprint Check Is Due
Person who will be turning 14 years of age and is counted in the child/caregiver ratio, has unsupervised access to children in care, or resides in a residential operation, foster home, or adoptive home	At the time of the person's 14th birthday
Any of the following persons affiliated with a general residential operation: • director/owner/operator, • employee (including the designated licensed administrator or backups), or • person already 14 years or older who is counted in child/caregiver ratio, has unsupervised access to children in care, or resides in a general residential operation	By March 1, 2014
Any of the following persons who are affiliated with a child-placing agency, active agency foster home, independent foster home, independent foster group home, or adoptive home, as applicable: • current foster or adoptive parent, • director/owner/operator, • employee (including the designated licensed administrator or backups), or • person already 14 years or older who is counted in child/caregiver ratio, has unsupervised access to children in care, or resides in the operation or home	By June 1, 2014
Any of the following persons who are affiliated with an inactive foster home: • current foster parent; or • person already 14 years or older who is counted in child/caregiver ratio, has unsupervised access to children in care, or resides in the home.	Before the home's status may change from inactive to active
Anyone for whom: • you have requested a risk evaluation; and • a risk evaluation decision is pending	Before the risk evaluation decision may be issued

Figure: 40 TAC §745.8711

Monetary Actions	Description of Action
(1) Administrative Penalties	We impose these fines against you for certain deficiencies as provided by Human Resources Code (HRC), §42.078. Except as provided in §745.8713 of this title (relating to When may Licensing impose a monetary penalty before a corrective action?) and when appropriate, we must impose nonmonetary administrative sanctions including corrective actions before administrative penalties. We may proceed to adverse actions without imposing administrative penalties when we determine the deficiency is serious enough to warrant such action. See the statute for more detailed information.
(2) Civil Penalties	We ask the court to assess civil penalties against you for certain deficiencies as provided by HRC, §42.075. See the statute for more detailed information.



Brazos Valley Council of Governments

Notice of Release of Request for Quotes for Child Care Provider Training Services

On November 1, 2013, the Workforce Solutions Brazos Valley Board (WSBVB) released a Request for Quotes (RFQ) for FY14 and FY15 Child Care Provider Training Services. WSBVB is the Local Workforce Development Board for the Brazos Valley Region. WSBVB is soliciting quotes for Speakers/Presenters to present training sessions during monthly seminars and conferences from January to November 2014. The trainings are to be located at The Center for Regional Services in Bryan, Texas.

To view and download the RFQ go to www.bvjobs.org. The contact person for this procurement is Program Specialist, Jessica Lockhart, (979) 595-2800, or email Jessica.lockhart@bvcog.org. Difficulties downloading the RFQ document should be referred to Jessica Lockhart.

ISSUE DATE: November 1, 2013.

RESPONSE DEADLINE: December 2, 2013, 4:00 p.m. EST.

Questions concerning this RFQ must be submitted in writing to Jessica Lockhart at Jessica.Lockhart@bvcog.org or faxed to Jessica Lockhart's attention at (979) 595-2810. No questions will be accepted after November 15, 2013. Answers to submitted questions will be posted on the Board's website at www.bvjobs.org.

WSBVB reserves the right to accept, reject, any or all applications received, or to cancel or extend, in part or its entirety, this request for proposal.

Workforce Solutions Brazos Valley is an equal opportunity employer and provides equal opportunity programs and services. Auxiliary aids are available upon request to disabled individuals. Relay Texas (800) 735-2989, TDD (800) 735-2988 Voice, TTY (979) 595-2819.

TRD-201304959
Tom Wilkinson
Executive Director
Brazos Valley Council of Governments
Filed: October 31, 2013

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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, 303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 11/11/13 - 11/17/13 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 11/11/13 - 11/17/13 is 18% for Commercial over $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009[3] for the period of 11/01/13 - 11/30/13 is 18% for Consumer/Agricultural/Commercial/credit through $250,000.

The monthly ceiling as prescribed by §303.005 and §303.009 for the period of 11/01/13 - 11/30/13 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.

[3] For variable rate commercial transactions only.

TRD-201305105
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: November 6, 2013

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Texas Commission on Environmental Quality

Agreed Orders

The Texas Commission on Environmental Quality (TCEQ, agency or commission) staff is providing an opportunity for written public comment on the listed Agreed Orders (AOs) in accordance with Texas Water Code (TWC), §7.075. TWC, §7.075 requires that before the commission may approve the AOs, the commission shall allow the public an opportunity to submit written comments on the proposed AOs. TWC, §7.075 requires that notice of the proposed orders and the opportunity to comment must be published in the *Texas Register* no later than the 30th day before the date on which the public comment period closes, which in this case is **December 16, 2013.** 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 December 16, 2013.** 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: Allegheny Development, LLC and Northshore Harbor Sewer Company, LLC; DOCKET NUMBER: 2013-0990-MWD-E;

IDENTIFIER: RN105384739; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.42(a), by failing to obtain authorization to discharge wastewater associated with a wastewater treatment facility; PENALTY: $11,250; Supplemental Environmental Project offset amount of $4,500 applied to Texas Association of Resource Conservation and Development Areas, Incorporated; ENFORCEMENT COORDINATOR: Cheryl Thompson, (817) 588-5886; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(2) COMPANY: Apache Corporation; DOCKET NUMBER: 2013-1369-AIR-E; IDENTIFIER: RN106832959; LOCATION: Barnhart, Irion County; TYPE OF FACILITY: petroleum storage tank battery; RULE VIOLATED: 30 TAC §116.110(a) and Texas Health and Safety Code (THSC), §382.0518(a) and §382.085(b), by failing to obtain authorization to construct and operate a source of air emissions; and 30 TAC §122.121 and §122.130(b) and THSC, §382.054 and §382.085(b), by failing to obtain a federal operating permit; PENALTY: $10,098; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 622 South Oakes, Suite K, San Angelo, Texas 76903-7013, (325) 655-9479.

(3) COMPANY: BAKER HUGHES INCORPORATED; DOCKET NUMBER: 2013-1031-IWD-E; IDENTIFIER: RN105276042; LOCATION: Trinity, Trinity County; TYPE OF FACILITY: oil field services storage warehouse; RULE VIOLATED: 30 TAC §305.125(1) and Texas Pollutant Discharge Elimination System (TPDES) Multi-Sector General Permit (MSGP) Number TXR05V511, Part III Section C.1(c)(1), by failing to record effluent limitation monitoring results on a discharge monitoring report; 30 TAC §305.125(1) and TPDES MSGP Number TXR05V511, Part III Section A.4(d)(3), by failing to develop a maintenance program for structural controls in the storm water pollution prevention plan (SWP3); 30 TAC §305.125(1) and TPDES MSGP Number TXR05V511, Part III Section B.2(c), by failing to develop a routine inspection checklist that includes all of the required information; 30 TAC §305.125(1) and TPDES MSGP Number TXR05V511, Part III Section D.1(c), by failing to maintain a rain gauge on-site to determine when a qualifying storm event occurs; 30 TAC §305.125(1) and TPDES MSGP Number TXR05V511, Part III Section B.5, by failing to conduct the annual comprehensive site compliance investigation for 2012; 30 TAC §305.125(1) and TPDES MSGP Number TXR05V511, Part III Section A.5(a)(1), by failing to maintain a copy of the Notice of Intent in the SWP3; TWC, §26.121(a) and TPDES MSGP Number TXR05V511, Part III Section A.4(b), by failing to prevent the unauthorized discharge of pollutants into or adjacent to water in the state; PENALTY: $5,743; ENFORCEMENT COORDINATOR: Lanae Foard, (512) 239-2554; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(4) COMPANY: Bollinger Texas City, L.P.; DOCKET NUMBER: 2013-1375-IWD-E; IDENTIFIER: RN100218627; LOCATION: Texas City, Galveston County; TYPE OF FACILITY: wastewater treatment plant; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) Permit Number WQ0004824000, Effluent Limitations and Monitoring Requirements Numbers 1 and 2, 30 TAC §305.125(1) and TWC, §26.121(a)(1), by failing to comply with permitted effluent limits; and TPDES Permit Number WQ0004824000, Monitoring and Reporting Requirements Number 1 and 30 TAC §305.125(1) and §319.4, by failing to submit complete monitoring results at the intervals specified in the permit; PENALTY: $4,400; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: Chevron U.S.A. Incorporated; DOCKET NUMBER: 2013-1504-AIR-E; IDENTIFIER: RN100706811; LOCATION: Galena Park, Harris County; TYPE OF FACILITY: storage tank terminal; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(1) and (2), Texas Health and Safety Code, §382.085(b), and Federal Operating Permit Number O3031, General Terms and Conditions, by failing to submit the permit compliance certification no later than 30 days after the end of the certification period; PENALTY: $3,638; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: City of Detroit; DOCKET NUMBER: 2013-1345-PWS-E; IDENTIFIER: RN101389831; LOCATION: Detroit, Red River County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.271(b) and §290.274(a) and (c), by failing to mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each bill paying customer by July 1 of each year and failed to submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of each quarter; PENALTY: $750; ENFORCEMENT COORDINATOR: Lisa Arneson, (512) 239-1160; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(7) COMPANY: City of Mertens; DOCKET NUMBER: 2013-1254-PWS-E; IDENTIFIER: RN101401651; LOCATION: Mertens, Hill County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to timely submit a Disinfectant Level Quarterly Operating Report to the executive director each quarter by the tenth day of the month following the end of the quarter; and 30 TAC §290.271(b) and §290.274(a) and (c), by failing to timely mail or directly deliver one copy of the Consumer Confidence Report (CCR) to each customer by July 1 of each year and failed to timely submit to the TCEQ by July 1 of each year a copy of the annual CCR and certification that the CCR has been distributed to the customers of the facility and that the information in the CCR is correct and consistent with compliance monitoring data; PENALTY: $650; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(8) COMPANY: City of New Boston; DOCKET NUMBER: 2013-1513-PWS-E; IDENTIFIER: RN101251940; LOCATION: New Boston, Bowie County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(e)(4)(C) and Texas Health and Safety Code, §341.033(a), by failing to operate the facility under the direct supervision of at least two water works operators who hold a Class C or higher license; PENALTY: $255; ENFORCEMENT COORDINATOR: Abigail Lindsey, (512) 239-2576; REGIONAL OFFICE: 2916 Teague Drive, Tyler, Texas 75701-3734, (903) 535-5100.

(9) COMPANY: EBELING WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1314-PWS-E; IDENTIFIER: RN101239846; LOCATION: Hale County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.44(d)(4), by failing to provide accurate metering devices at each residential, commercial or industrial service connection for the accumulation of water usage data; PENALTY: $1,020; ENFORCEMENT COORDINATOR: Katy Montgomery, (210) 403-4016; REGIONAL OFFICE: 5012 50th Street, Suite 100, Lubbock, Texas 79414-3421, (806) 796-7092.

(10) COMPANY: Finley Resources Incorporated; DOCKET NUMBER: 2013-1216-AIR-E; IDENTIFIER: RN106653322; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: tank battery; RULE VIOLATED: 30 TAC §101.10(e) and Texas Health and Safety Code (THSC), §382.085(b), by failing to submit an emissions inventory report for the calendar year 2011; 30 TAC §106.8(c)(1) and (4) and THSC, §382.085(b), by failing to maintain a copy of each Permit by Rule applicable to the site and failed to maintain records of complete emissions calculations; PENALTY: $2,250; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(11) COMPANY: FW DRIVE IN BEER & GROCERY, INCORPORATED; DOCKET NUMBER: 2013-1494-PST-E; IDENTIFIER: RN102648144; LOCATION: Fort Worth, Tarrant 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; PENALTY: $3,450; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(12) COMPANY: Happy Lucky Corporation dba Discount Gas Tobacco & Beverage; DOCKET NUMBER: 2013-1572-PST-E; IDENTIFIER: RN103733200; LOCATION: Greenville, Hunt County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank system; PENALTY: $4,125; ENFORCEMENT COORDINATOR: Margarita Dennis, (817) 588-5892; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: INEOS USA LLC; DOCKET NUMBER: 2013-0999-AIR-E; IDENTIFIER: RN100238708; LOCATION: Alvin, Brazoria County; TYPE OF FACILITY: petrochemical manufacturing plant; RULE VIOLATED: 30 TAC §§101.20(2), 113.1090, and 122.143(4), Federal Operating Permit (FOP) Number O2327, Special Terms and Conditions (STC) Number 1.A, 40 Code of Federal Regulations (CFR) §63.6600(b), and Texas Health and Safety Code (THSC), §382.085(b), by failing to comply with the formaldehyde concentration limit of 580 parts per billion by volume dry basis at 15% oxygen; 30 TAC §122.143(4), FOP Number O2327, STC Number 3.A(iv), and THSC, §382.085(b), by failing to conduct quarterly visible emissions observations for 51 stationary vents at the plant; 30 TAC §122.143(4), FOP Number O2327, STC Number 18, and THSC, §382.085(b), by failing to conduct weekly visible emissions observations for the boilers and the co-generation unit; 30 TAC §§101.20(2), 113.1090, and 122.143(4), FOP Number O2327, STC Number 1.A, 40 CFR §63.6650(b), and THSC, §382.085(b), by failing to submit semi-annual compliance reports for the reciprocating internal combustion engines; 30 TAC §§101.20(2), 113.1090, and 122.143(4), FOP Number O2327, STC Number 1.A, 40 CFR §63.6645(c), and THSC, §382.085(b), by failing to submit initial notifications within the specified time frame; 30 TAC §§101.20(2), 113.1090, and 122.143(4), FOP Number O2327, STC Number 1.A, 40 CFR §63.6645(h), and THSC, §382.085(b), by failing to submit a Notification of Compliance Status within the specified time frame; 30 TAC §101.20(2) and §122.143(4), FOP Number O2327, STC Number 1.A, 40 CFR §61.357(d)(2), and THSC, §382.085(b), by failing to submit a complete annual benzene report; and 30 TAC §§101.20(2), 113.1090, and 122.143(4), FOP Number O2327, STC Number 1.A, 40 CFR §63.6645(d) and THSC, §382.085(b), by failing to submit initial notifications within the specified time frame; PENALTY: $80,041; Supplemental Environmental Project offset amount of $32,017 applied to Houston - Galveston Area Council; ENFORCEMENT COORDINATOR: Nadia Hameed, (713) 767-3629; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(14) COMPANY: JN Khan Corporation dba Clark Express; DOCKET NUMBER: 2013-1229-PST-E; IDENTIFIER: RN102715653; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.49(a)(1) and TWC, §26.3475(d), by failing to provide corrosion protection for the underground storage tank (UST) system; 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; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(15) COMPANY: KAML Incorporated dba Mini Mart 110; DOCKET NUMBER: 2013-1483-PST-E; IDENTIFIER: RN102965001; LOCATION: Dickinson, Galveston 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; PENALTY: $4,125; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(16) COMPANY: Liebrum Properties LLC (Field Citation); DOCKET NUMBER: 2013-1974-WQ-E; IDENTIFIER: RN106879752; LOCATION: Nacogdoches, Nacogdoches County; TYPE OF FACILITY: land development; RULE VIOLATED: 30 TAC §281.25(a)(4), by failing to obtain a Construction General Permit (storm water); PENALTY: $875; ENFORCEMENT COORDINATOR: Harvey Wilson, (512) 239-0321; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(17) COMPANY: Louie Koonce; DOCKET NUMBER: 2013-1007-PWS-E; IDENTIFIER: RN102679537; LOCATION: Midland, Midland County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.122(c)(2)(A), by failing to provide public notification regarding the failure to conduct routine coliform monitoring during the months of March and July 2011; 30 TAC §290.109(c)(4)(C), by failing to notify the wholesale system within 24 hours of being notified of a coliform-positive distribution sample; 30 TAC §290.122(c)(2)(A) by failing to provide public notification regarding the failure to conduct increased coliform monitoring during the month of April 2012; 30 TAC §290.106(e), by failing to provide the results of annual nitrate sampling to the executive director for the 2012 reporting period; and 30 TAC §290.109(c)(2)(A)(i) and Texas Health and Safety Code, §341.033(d), by failing to collect routine distribution water samples for coliform analysis for the month of January 2013; PENALTY: $606; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 9900 West IH-20, Suite 100, Midland, Texas 79706, (432) 570-1359.

(18) COMPANY: M SIDDIQI & SON's, INCORPORATED dba B-Z Shop 2; DOCKET NUMBER: 2013-1214-PST-E; IDENTIFIER: RN101431781; LOCATION: Dallas, Dallas 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: $3,735; ENFORCEMENT COORDINATOR: Michael Meyer, (512) 239-4492; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Mahmoud A. Alrafati dba Horizon Grocery #2; DOCKET NUMBER: 2013-1200-PST-E; IDENTIFIER: RN101812337; LOCATION: San Antonio, Bexar 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 release detection for the pressurized piping associated with the underground storage tank system; PENALTY: $2,943; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(20) COMPANY: MEMORIAL CAR CARE CENTER, INCORPORATED; DOCKET NUMBER: 2012-1307-PST-E; IDENTIFIER: RN100526466; 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 tanks (USTs) for releases at a frequency of at least once every month; and 30 TAC §334.50(b)(2) and TWC, §26.3475(a) by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $6,900; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(21) COMPANY: Moss Bluff Hub, LLC; DOCKET NUMBER: 2013-1502-AIR-E; IDENTIFIER: RN100217256; LOCATION: Liberty, Liberty County; TYPE OF FACILITY: natural gas storage plant; RULE VIOLATED: 30 TAC §117.310(c)(1) and Texas Health and Safety Code, §382.085(b), by failing to comply with the concentration limit of 400 parts per million by volume at 3% oxygen for carbon monoxide; PENALTY: $5,850; ENFORCEMENT COORDINATOR: Jessica Schildwachter, (512) 239-2617; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(22) COMPANY: Patrick B. Kelly and Hunter Media, L.L.C.; DOCKET NUMBER: 2013-1458-EAQ-E; IDENTIFIER: RN106666043; LOCATION: New Braunfels, Comal County; TYPE OF FACILITY: three warehouse buildings; RULE VIOLATED: 30 TAC §213.4(a)(1), by failing to obtain approval of a Water Pollution Abatement Plan prior to beginning a regulated activity over the Edwards Aquifer Recharge Zone; PENALTY: $937; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(23) COMPANY: Payan's Fuel Center, Incorporated; DOCKET NUMBER: 2013-1557-AIR-E; IDENTIFIER: RN102865052; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §115.252(2) and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum Reid Vapor Pressure requirement of 7.0 pounds per square inch absolute during the control period of June 1 - September 16; PENALTY: $1,500; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

(24) COMPANY: Rodriguez Chavez Corporation; DOCKET NUMBER: 2013-1341-AIR-E; IDENTIFIER: RN103948014; LOCATION: Houston, Harris County; TYPE OF FACILITY: metal fabrication site; 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 to operate a metal fabricating facility; PENALTY: $2,000; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(25) COMPANY: RURAL BARDWELL WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-1267-MLM-E; IDENTIFIER: RN101454015 and RN101196590; LOCATION: Ennis, Ellis County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §291.93(3) and TWC, §13.139(d), by failing to submit to the executive director a planning report that clearly explains how the retail public utility will provide the expected service demands to the remaining areas within the boundaries of its certificated area when the facility has reached 85% of its capacity; and 30 TAC §290.45(b)(1)(c)(i) and Texas Health and Safety Code, §341.0315(c), by failing to provide a total well capacity of 0.6 gallons per minute per connection; PENALTY: $209; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(26) COMPANY: SIGNOR Logistics, LP dba The Studios; DOCKET NUMBER: 2013-1490-PWS-E; IDENTIFIER: RN106526783; LOCATION: Dimmit County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.39(e)(1) and (h)(1) and Texas Health and Safety Code, §341.035(a), by failing to submit plans and specifications to the executive director for review and approval prior to the establishment of a new public water supply; 30 TAC §290.41(c)(3)(A), by failing to submit well completion data for review and approval prior to placing a well into service as a public water supply source; PENALTY: $105; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 707 East Calton Road, Suite 304, Laredo, Texas 78041-3887, (956) 791-6611.

(27) COMPANY: Suntex Marinas, LLC; DOCKET NUMBER: 2013-1313-WQ-E; IDENTIFIER: RN106411382; LOCATION: Fort Worth, Tarrant County; TYPE OF FACILITY: maintenance and repair facility for recreational watercraft; RULE VIOLATED: 30 TAC §281.25(a)(4) and 40 Code of Federal Regulations §122.26(c), by failing to obtain authorization to discharge storm water associated with industrial activities under Texas Pollutant Discharge Elimination System Multi-Sector General Permit Number TXR050000; PENALTY: $1,312; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(28) COMPANY: The Estate of Patrick Gene Chapman, Sr. and Catherine Naomi Wylie, Administratrix; DOCKET NUMBER: 2013-0989-MWD-E; IDENTIFIER: RN101520237; LOCATION: Crosby, Harris County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: TWC, §26.121(a)(1), 30 TAC §305.64(b), and Texas Pollutant Discharge Elimination System Permit Number WQ0013964001, Permit Conditions Number 5, by failing to obtain authorization prior to operating a wastewater treatment plant; PENALTY: $3,375; ENFORCEMENT COORDINATOR: Jacquelyn Green, (512) 239-2587; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(29) COMPANY: U.S. Silica Company; DOCKET NUMBER: 2013-1261-AIR-E; IDENTIFIER: RN100215672; LOCATION: Kosse, Limestone County; TYPE OF FACILITY: sand and clay mining and processing plant; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §382.085(b), and Federal Operating Permit (FOP) Number O1044, General Terms and Conditions (GTC), by failing to submit a Permit Compliance Certification no later than 30 days from the end of the certification period; 30 TAC §122.143(4) and §122.145(2)(A), THSC, §382.085(b), and FOP Number O1044, GTC, by failing to report all instances of deviations; and 30 TAC §122.143(4) and §122.144(1), THSC, §382.085(b), and FOP Number O1044, Special Terms and Conditions Number 6, by failing to maintain records; PENALTY: $11,251; Supplemental Environmental Project offset amount of $4,500 applied to Texas PTA

- Clean School Buses; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: United Petroleum Transports, Incorporated; DOCKET NUMBER: 2013-1532-AIR-E; IDENTIFIER: RN103894564; LOCATION: El Paso, El Paso County; TYPE OF FACILITY: petroleum transporting facility; RULE VIOLATED: 30 TAC §115.252(2) and Texas Health and Safety Code, §382.085(b), by failing to comply with the maximum Reid Vapor Pressure requirement of 7.0 pounds per square inch absolute during the control period of June 1 - September 16; PENALTY: $1,375; ENFORCEMENT COORDINATOR: Katie Hargrove, (512) 239-2569; REGIONAL OFFICE: 401 East Franklin Avenue, Suite 560, El Paso, Texas 79901-1206, (915) 834-4949.

TRD-201305090
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: November 5, 2013

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Enforcement Orders

An agreed order was entered regarding Horizon Regional Municipal Utility District, Docket No. 2012-1152-IWD-E on October 24, 2013 assessing $6,562 in administrative penalties with $1,312 deferred.

Information concerning any aspect of this order may be obtained by contacting Cheryl Thompson, Enforcement Coordinator at (817) 925-9336, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of La Joya, Docket No. 2012-2521-PWS-E on October 24, 2013 assessing $548 in administrative penalties with $109 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding ELM RIDGE WATER COMPANY, INC., Docket No. 2013-0280-MLM-E on October 24, 2013 assessing $4,750 in administrative penalties with $950 deferred.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Magellan Terminals Holdings, L.P., Docket No. 2013-0305-AIR-E on October 24, 2013 assessing $2,525 in administrative penalties with $505 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jessie W. Sloan dba L E Kwik Stop, Docket No. 2013-0378-PWS-E on October 24, 2013 assessing $1,628 in administrative penalties with $325 deferred.

Information concerning any aspect of this order may be obtained by contacting Jim Fisher, Enforcement Coordinator at (512) 239-2537, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Vinookumar Patel dba Cracker Barrel 4, Docket No. 2013-0530-PST-E on October 24, 2013 assessing $3,879 in administrative penalties with $775 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding GOLDEN ERA, INC. dba Ferry Shell, Docket No. 2013-0567-PST-E on October 24, 2013 assessing $5,818 in administrative penalties with $1,163 deferred.

Information concerning any aspect of this order may be obtained by contacting Clinton Sims, Enforcement Coordinator at (512) 239-6933, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Georgetown, Docket No. 2013-0584-EAQ-E on October 24, 2013 assessing $5,813 in administrative penalties with $1,162 deferred.

Information concerning any aspect of this order may be obtained by contacting Jorge Ibarra, P.E., Enforcement Coordinator at (817) 588-5890, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Federal Bureau of Prisons, Docket No. 2013-0616-PWS-E on October 24, 2013 assessing $650 in administrative penalties with $130 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding S & Y, Inc., Docket No. 2013-0617-PST-E on October 24, 2013 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Great Southern Wood - Columbus, Inc., Docket No. 2013-0633-PST-E on October 24, 2013 assessing $5,130 in administrative penalties with $1,026 deferred.

Information concerning any aspect of this order may be obtained by contacting John Fennell, Enforcement Coordinator at (512) 239-2616, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Sandra West dba Home on the Range RV Park and Shrimpy's Restaurant, Docket No. 2013-0641-PWS-E on October 24, 2013 assessing $413 in administrative penalties with $82 deferred.

Information concerning any aspect of this order may be obtained by contacting Michaelle Garza, Enforcement Coordinator at (210) 403-4076, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Paducah, Docket No. 2013-0663-PWS-E on October 24, 2013 assessing $1,130 in administrative penalties with $226 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Aalmin Corporation dba Maxi Mart, Docket No. 2013-0710-PST-E on October 24, 2013 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Airgas Specialty Gases, Inc., Docket No. 2013-0742-AIR-E on October 24, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Heather Podlipny, Enforcement Coordinator at (512) 239-2603, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Maria P. Hernandez dba Bryan Food Stop, Docket No. 2013-0744-PST-E on October 24, 2013 assessing $2,813 in administrative penalties with $562 deferred.

Information concerning any aspect of this order may be obtained by contacting Thomas Greimel, Enforcement Coordinator at (512) 239-5690, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PALO DURO SERVICE COMPANY, INC. dba Glider Base Estates PWS, Docket No. 2013-0802-PWS-E on October 24, 2013 assessing $800 in administrative penalties with $160 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Texas Department of Transportation, Docket No. 2013-0862-PST-E on October 24, 2013 assessing $3,750 in administrative penalties with $750 deferred.

Information concerning any aspect of this order may be obtained by contacting Jason Fraley, Enforcement Coordinator at (512) 239-2552, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Mission Consolidated Independent School District, Docket No. 2013-0887-PST-E on October 24, 2013 assessing $7,500 in administrative penalties with $1,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding UNION CARBIDE CORPORATION, Docket No. 2013-0906-PWS-E on October 24, 2013 assessing $309 in administrative penalties with $61 deferred.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FIFTY TOES, INC. dba Preston Center Convenience Store, Docket No. 2013-0944-PST-E on October 24, 2013 assessing $3,504 in administrative penalties with $700 deferred.

Information concerning any aspect of this order may be obtained by contacting Margarita Dennis, Enforcement Coordinator at (817) 588-5892, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding N.A.S.A. Enterprises, Inc. dba Sweeny Stop, Docket No. 2013-1133-PST-E on October 24, 2013 assessing $3,375 in administrative penalties with $675 deferred.

Information concerning any aspect of this order may be obtained by contacting David Carney, Enforcement Coordinator at (512) 239-2583, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Queen City, Docket No. 2010-1244-MLM-E on October 25, 2013 assessing $81,400 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Heather Brister, Enforcement Coordinator at (254) 761-3034, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Jose Garcia, Docket No. 2011-2285-MSW-E on October 25, 2013 assessing $15,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FLETCHER ANIMAL CLINIC, P.C. and Donald S. Fletcher, dba Cattail Creek Mobile Home Park, Docket No. 2012-1237-PWS-E on October 25, 2013 assessing $5,070 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jennifer Cook, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Leo Graves dba Graves Tire Service, Docket No. 2012-1480-MLM-E on October 25, 2013 assessing $4,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rudy Calderon, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Joel S. Mattson dba Buttermans Grill, Docket No. 2012-2374-PST-E on October 25, 2013 assessing $21,144 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting David Terry, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding G Jubilee Enterprises, Inc. dba Short Stop, Docket No. 2012-2629-PST-E on October 25, 2013 assessing $10,596 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Sadler, Docket No. 2012-2638-MWD-E on October 25, 2013 assessing $26,250 in administrative penalties with $5,250 deferred.

Information concerning any aspect of this order may be obtained by contacting Christopher Bost, Enforcement Coordinator at (512) 239-4575, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Dodd City, Docket No. 2012-2670-MWD-E on October 25, 2013 assessing $45,325 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding PRODUCERS COOPERATIVE ELEVATOR, Docket No. 2012-2698-PST-E on October 25, 2013 assessing $7,944 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Tom Click dba TBC Recycle Services and Transport, and Amanda Click, Docket No. 2013-0057-MSW-E on October 25, 2013 assessing $15,750 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Kari L. Gilbreth, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding OCHO NLSS MG CORPORATION dba Sam's Food Mart 4, Docket No. 2013-0105-PST-E on October 25, 2013 assessing $9,693 in administrative penalties with $1,938 deferred.

Information concerning any aspect of this order may be obtained by contacting Theresa Stephens, Enforcement Coordinator at (512) 239-2540, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding R & S Brothers LLC dba Discount Self Service 2, Docket No. 2013-0108-PST-E on October 25, 2013 assessing $59,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Boutwell, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding LAKE LIVINGSTON WATER SUPPLY AND SEWER SERVICE CORPORATION, Docket No. 2013-0139-PWS-E on October 25, 2013 assessing $1,464 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Katy Montgomery, Enforcement Coordinator at (210) 403-4016, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding MSSS ENTERPRISES INC. dba S K Food Mart, Docket No. 2013-0190-PST-E on October 25, 2013 assessing $8,881 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Joel Cordero, Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Kingsville, Docket No. 2013-0223-MWD-E on October 25, 2013 assessing $10,318 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Nicholas Nevid, Enforcement Coordinator at (512) 239-2612, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Motiva Enterprises LLC, Docket No. 2013-0304-AIR-E on October 25, 2013 assessing $22,500 in administrative penalties with $4,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding D & D INTERNATIONAL, INC. dba Handi Stop 86, Docket No. 2013-0395-PST-E on October 25, 2013 assessing $18,850 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Phillip M. Goodwin, P.G., Staff Attorney at (512) 239-3400, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding FRP Storage Solutions Co., Docket No. 2013-0405-AIR-E on October 25, 2013 assessing $18,750 in administrative penalties with $3,750 deferred.

Information concerning any aspect of this order may be obtained by contacting Rachel Bekowies, Enforcement Coordinator at (512) 239-2608, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding CITGO Refining and Chemicals Company L.P., Docket No. 2013-0411-AIR-E on October 25, 2013 assessing $8,000 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Rebecca Johnson, Enforcement Coordinator at (361) 825-3423, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding SR & East Texas Journey, LLC dba One Stop, Docket No. 2013-0528-PST-E on October 25, 2013 assessing $8,375 in administrative penalties with $1,675 deferred.

Information concerning any aspect of this order may be obtained by contacting Steven Van Landingham, Enforcement Coordinator at (512) 239-5717, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Rockdale, Docket No. 2013-0555-MWD-E on October 25, 2013 assessing $8,250 in administrative penalties with $1,650 deferred.

Information concerning any aspect of this order may be obtained by contacting Jacquelyn Green, Enforcement Coordinator at (512) 239-2587, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Valero Refining-Texas, L.P., Docket No. 2013-0588-AIR-E on October 25, 2013 assessing $7,938 in administrative penalties with $1,587 deferred.

Information concerning any aspect of this order may be obtained by contacting Amancio Gutierrez, Enforcement Coordinator at (512) 239-3921, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding HANK'S CLEAN-UP & ROLL-OFF SERVICE, INC., Docket No. 2013-0610-PST-E on October 25, 2013 assessing $9,508 in administrative penalties with $1,901 deferred.

Information concerning any aspect of this order may be obtained by contacting Judy Kluge, Enforcement Coordinator at (817) 588-5825, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Rickey Repka and Barbara Repka dba Repka's Grocery, Docket No. 2013-0637-PWS-E on October 25, 2013 assessing $1,483 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Brenham, Docket No. 2013-0741-MWD-E on October 25, 2013 assessing $9,788 in administrative penalties with $1,957 deferred.

Information concerning any aspect of this order may be obtained by contacting Jill Russell, Enforcement Coordinator at (512) 239-4564, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding DCP Midstream, LP, Docket No. 2013-0760-AIR-E on October 25, 2013 assessing $37,500 in administrative penalties with $7,500 deferred.

Information concerning any aspect of this order may be obtained by contacting Jessica Schildwachter, Enforcement Coordinator at (512) 239-2617, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Southside Place, Docket No. 2013-0768-PWS-E on October 25, 2013 assessing $145 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Sam Keller, Enforcement Coordinator at (512) 239-2678, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Austin, Docket No. 2013-0794-MWD-E on October 25, 2013 assessing $9,375 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Remington Burklund, Enforcement Coordinator at (512) 239-2611, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding City of Star Harbor, Docket No. 2013-0827-PWS-E on October 25, 2013 assessing $305 in administrative penalties.

Information concerning any aspect of this order may be obtained by contacting Lisa Westbrook, Enforcement Coordinator at (512) 239-1160, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

An agreed order was entered regarding Michael A. Lewis dba Los Paisanos Rural Trash Service, Docket No. 2013-0837-MLM-E on October 25, 2013 assessing $9,113 in administrative penalties with $1,822 deferred.

Information concerning any aspect of this order may be obtained by contacting Keith Frank, Enforcement Coordinator at (512) 239-1203, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087.

TRD-201305103
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2013

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Notice of Application and Opportunity to Request a Public Meeting for a New Municipal Solid Waste Facility

Application. 130 Environmental Park, LLC, 132 Riverstone Terrace, Suite 103, Canton, GA 30114, has applied to the Texas Commission on Environmental Quality (TCEQ) for proposed Registration No. 40269, to construct and operate a Type V municipal solid waste transfer station. The proposed facility, 130 Environmental Park Transfer Station will be located North of FM 1185, between U.S. Highway 183 and Homanville Trail, in Caldwell County. The Applicant is requesting authorization to transfer and recycle construction and demolition waste. The registration application is available for viewing and copying at the Dr. Eugene Clark Library, 217 S. Main St., Lockhart, Texas and may be viewed online at http://www.biggsandmathews.com/permits.php. The following link to an electronic map of the site or facility's general location is provided as a public courtesy and is not part of the application or notice: http://www.tceq.texas.gov/assets/public/hb610/index.html?lat=29.968003&lng=-97.66777&zoom=12&type=r. For exact location, refer to application.

Public Comment/Public Meeting. Written public comments or written requests for a public meeting must be submitted to the Office of Chief Clerk at the address included in the information section below. If a public meeting is held, comments may be made orally at the meeting or submitted in writing by the close of the public meeting. A public meeting will be held by the executive director if requested by a member of the legislature who represents the general area where the development is to be located or if there is a substantial public interest in the proposed development. The purpose of the public meeting is for the public to provide input for consideration by the commission and for the applicant and the commission staff to provide information to the public. A public meeting is not a contested case hearing. The executive director will review and consider public comments and written requests for a public meeting submitted during the comment period. The comment period shall begin on the date this notice is published and end 60 calendar days after this notice is published. The comment period shall be extended to the close of any public meeting. The executive director is not required to file a response to comments.

Executive Director Action. The executive director shall, after review of an application for registration, determine if the application will be approved or denied in whole or in part. If the executive director acts on an application, the chief clerk shall mail or otherwise transmit notice of the action and an explanation of the opportunity to file a motion to overturn the executive director's decision. The chief clerk shall mail this notice to the owner and operator, the public interest counsel, to adjacent landowners as shown on the required land ownership map and landowners list, and to other persons who timely filed public comment in response to public notice. Not all persons on the mailing list for this notice will receive the notice letter from the Office of the Chief Clerk.

Information. Written public comments or requests to be placed on the permanent mailing list for this application should be submitted to the Office of the Chief Clerk mail code MC 105, TCEQ, P.O. Box 13087, Austin, TX 78711-3087 or electronically submitted to http://www10.tceq.state.tx.us/epic/ecmnts/. If you choose to com-

municate with the TCEQ electronically, please be aware that your e-mail address, like your physical mailing address, will become part of the agency's public record. For information about this application or the registration process, individual members of the general public may call the TCEQ Public Education Program at 1-800-687-4040. General information regarding the TCEQ can be found at our web site at www.tceq.texas.gov. Further information may also be obtained from 130 Environmental Park, LLC at the address stated above or by calling Ernest Kaufmann, President and Manager, at (770) 720-2717.

TRD-201305102
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2013

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Notice of Proposed Amendment and Renewal of a General Permit Authorizing the Discharge of Wastewater and Stormwater from Quarries in the John Graves Scenic Riverway

The Texas Commission on Environmental Quality (TCEQ) proposes to amend and renew Texas Pollutant Discharge Elimination System (TPDES) Permit No. TXG500000, a general permit authorizing discharges of process wastewater, mine dewatering, stormwater associated with industrial activity, construction stormwater, and certain non-stormwater discharges from quarries located greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway. The John Graves Scenic Riverway is that portion of the Brazos River Basin and its contributing watershed located downstream of the Morris Shepard Dam on the Possum Kingdom Reservoir in Palo Pinto County, Texas, and extending to the county line between Parker and Hood Counties, Texas. This general permit has been developed to comply with Texas Water Code (TWC), Chapter 26, Subchapter M and 30 Texas Administrative Code (TAC) Chapter 311, Subchapter H, resulting from passage of Senate Bill 1354 of the 79th Legislature, 2005. Specifically, TWC, §26.553(b) requires quarries greater than one mile from a water body to obtain a general permit. General permits are authorized by TWC, §26.040.

PROPOSED GENERAL PERMIT. The executive director has prepared a draft renewal with amendments to the existing general permit that authorizes discharges of process wastewater, mine dewatering, stormwater associated with industrial activity, construction stormwater, and certain non-stormwater discharges from quarries located greater than one mile from a water body within a water quality protection area in the John Graves Scenic Riverway. The proposed changes to the general permit are included in the proposed general permit and described in the fact sheet.

The proposed general permit requires quarries located greater than one mile from a water body that is within a water quality protection area in the John Graves Scenic Riverway to submit a Notice of Intent, Pollution Prevention Plan, Restoration Plan, and proof of financial assurance for Restoration to obtain authorization for discharge. The proposed general permit specifies the circumstances under which the executive director may require a quarry, otherwise eligible for authorization under this general permit, to apply for an individual TPDES/Texas Land Application Permit. No significant degradation of high quality waters is expected and existing uses will be maintained and protected.

The executive director has reviewed this action for consistency with the goals and policies of the Texas Coastal Management Program (CMP) according to General Land Office regulations and has determined that the action is consistent with applicable CMP goals and policies.

A copy of the proposed general permit and fact sheet are available for viewing and copying at the TCEQ Office of the Chief Clerk located at the TCEQ's Austin office, at 12100 Park 35 Circle, Building F, Austin, Texas 78753. These documents are also available at the TCEQ's Dallas/Fort Worth Region 4 Office, located at 2309 Gravel Drive in Fort Worth, Texas 76118 and on the TCEQ website at: *http://www.tceq.texas.gov/permitting/wastewater/general/jgsrquarries.html.*

PUBLIC COMMENT AND PUBLIC MEETING. You may submit public comments or request a public meeting about this proposed general permit. The purpose of a public meeting is to provide the opportunity to submit written or oral comments or to ask questions about the proposed general permit. Generally, the TCEQ will hold a public meeting if the executive director determines that there is a significant degree of public interest in the proposed general permit or if requested by a local legislator. A public meeting is not a contested case hearing.

Written public comments must be received by the Office of the Chief Clerk, MC 105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087 or electronically at *www.tceq.texas.gov/about/comments.html* within 30 days from the date this notice is published in the *Texas Register.*

APPROVAL PROCESS. After the comment period, the executive director will consider all the public comments and prepare a written response. The response will be filed with the TCEQ Office of the Chief Clerk at least ten days before the scheduled commission meeting when the commission will consider approval of the general permit. The commission will consider all public comments in making its decision and will either adopt the executive director's response or prepare its own response to the comments. The commission will issue its written response on the general permit at the same time the commission issues or denies the general permit. A copy of any issued general permit and response to comments will be made available to the public for inspection at the agency's Austin and regional offices. A notice of the commissioners' action on the proposed general permit and a copy of its response to comments will be mailed to each person who made a comment. Also, a notice of the commission's action on the proposed general permit and the text of its response to comments will be published in the *Texas Register.*

MAILING LISTS. In addition to submitting public comments, you may ask to be placed on a mailing list to receive future public notices mailed by the Office of the Chief Clerk. You may request to be added to: 1) the mailing list for this specific general permit; 2) the permanent mailing list for a specific applicant name and permit number; and 3) the permanent mailing list for a specific county. Clearly specify the mailing lists to which you wish to be added and send your request to the TCEQ Office of the Chief Clerk at the address previously mentioned. Unless you otherwise specify, you will be included only on the mailing list for this specific general permit.

INFORMATION. If you need more information about the proposed general permit 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.texas.gov.*

Further information may also be obtained by calling the TCEQ's Water Quality Division, Stormwater and Pretreatment Team, at (512) 239-4671. Si desea información en español, puede llamar 1-800-687-4040.

TRD-201305083
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: November 4, 2013

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Notice of Water Quality Applications

The following notices were issued on October 25, 2013 through November 1, 2013.

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

CITY OF LA PORTE has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0010206001 which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 7,560,000 gallons per day. The facility is located at 1301 South 4th Street, approximately 0.2 mile south of the intersection of South 4th Street and Fairmont Parkway, La Porte in Harris County, Texas 77571. The applicant has also applied to the TCEQ for approval of a substantial modification to its pretreatment program under the TPDES program.

CITY OF ROSCOE has applied for a renewal of TCEQ Permit No. WQ0010263002, which authorizes the disposal of treated domestic wastewater at a daily average flow not to exceed 240,000 gallons per day via surface irrigation of 82 acres of non-public access agricultural land. This permit will not authorize a discharge of pollutants into waters in the State. The wastewater treatment facility and disposal site are located approximately 3/4 mile south of the intersection of Interstate Highway 20 and Cemetery Road in Nolan County, Texas 79545.

W AND P DEVELOPMENT CORPORATION which operates U.S. Eco Park, has applied for a major amendment to TPDES Permit No. WQ0001160000 to authorize discharge from a centralized waste treatment facility at the site of a former pulp and paper mill at a daily average flow not to exceed 26,000,000 gallons per day (Final Phase) via Outfall 001. The existing permit authorizes the discharge of treated stormwater, landfill leachate, and treated sanitary sewage on an intermittent and flow variable basis via Outfall 001 and stormwater runoff on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The draft permit authorizes the discharge of treated stormwater, landfill leachate, and treated domestic wastewater on an intermittent and flow variable basis (Interim Phase I); treated industrial wastewater, treated domestic wastewater, municipal wastewater, landfill leachate, and stormwater at a daily average flow not to exceed 16,000,000 gallons per day (Interim Phase II) and 26,000,000 gallons per day (Final Phase) via Outfall 001; and stormwater water runoff on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The facility is located at 18511 Beaumont Highway, north of Old Highway 90, between Sheldon Road and the San Jacinto River, within the 5-mile extraterritorial jurisdiction of the City of Houston, Harris County, Texas 77049. The TCEQ Executive Director has reviewed this action for consistency with the Texas Coastal Management Program goals and policies in accordance with the regulations of the General Land Office, and has determined that the action is consistent with the applicable CMP goals and policies.

MARTIN OPERATING PARTNERSHIP LP which operates the Martin Plainview Chemical Fertilizer Facility, has applied for a major amendment to TCEQ Permit No. WQ0001757000 to authorize an increase in flow to the existing south evaporation pond from 38,000 gallons per day to 61,920 gallons per day, and the removal of authorization to discharge wastewater to the north evaporation pond. The current permit authorizes the discharge of storm water and recovered groundwater routed to evaporation Pond # 6 at a daily average flow of 16,000 gallons per day, which will remain the same, and utility wastewater (cooling tower blowdown, team condensate, boiler blowdown, and softener regeneration water), wash water generated from the sulfuric acid plant, storm water collected in the containment sump, and recovered groundwater to the proposed south evaporation pond at a daily average flow of 38,000 gallons per day, and to the north pond at a daily average flow not to exceed 15,000 gallons per day. This permit will not authorize a discharge of pollutants into water in the State. TCEQ received this application on August 25, 2009. The facility and evaporation ponds are located north of State Highway 194, approximately one and one-third miles west of the intersection of State Highway 194 and Interstate Highway 27, Hale County, Texas 79072.

THE LUBRIZOL CORPORATION has applied for a renewal of TPDES Permit No. WQ0002594000, which authorizes the discharge of stormwater from a plant manufacturing additives for lubricating oils, grease, and fuels. The facility is located at 12801 Bay Area Boulevard, Harris County, Texas, 77507.

KMCO LLC which operates KMCO Crosby Plant, has applied for a major amendment to TPDES Permit No. WQ0002712000 to authorize the addition of Outfall 003 to discharge stormwater at an intermittent and variable flow. The current permit authorizes the discharge of treated process wastewater, treated domestic wastewater, boiler blowdown, cooling tower blowdown, and stormwater at a daily average flow not to exceed 200,000 gallons per day via Outfall 001, and the discharge of untreated stormwater at an intermittent and variable flow via Outfall 002. The facility is located at 16503 Ramsey Road, at the intersection with Crosby-Dayton Road, 1.2 miles northeast of the City of Crosby, Harris County, Texas 77532.

CITY OF CRYSTAL CITY has applied for a renewal of TPDES Permit No. WQ0010098001, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 1,200,000 gallons per day. The facility is located at the terminus of Plant Street, approximately 0.2 mile northwest of the intersection of Plant Street and U.S. Highway 83, approximately two blocks west of the intersection of State Highway 393 and U.S. Highway 83, northwest of the City of Crystal City in Zavala County, Texas 78839.

HAMSHIRE FANNETT INDEPENDENT SCHOOL DISTRICT has applied for a renewal of TPDES Permit No. WQ0012098001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility located on the Fannett Campus at 11407 Dugat Road, approximately 1,500 feet south-southwest of the intersection of State Highway 124 and Farm-to-Market Road 365 in Fannett in Jefferson County, Texas 77705.

CITY OF LA WARD has applied for a major amendment to TPDES Permit No. WQ0013479001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 13,000 gallons per day to a daily average flow not to exceed 24,000 gallons per day. The facility is located east of Palacios Street, approximately 200 feet northeast of the intersection of Palacios Street and Rio Grande Street and approximately 1,200 feet northeast of the intersection of Farm-to-Market Road 616 and State Highway 172 in the City of La Ward in Jackson County, Texas 77970.

CITY OF ROCKSPRINGS has applied for a renewal of TPDES Permit No. WQ0013490001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 133,000 gallons per day. The facility is located approximately 4,000 feet northwest of the intersection of U.S. Highway 377 and State Highway 55 in Edwards County, Texas 78880.

STEPHENVILLE MOBILE HOME PARK LTD has applied for a renewal of TPDES Permit No. WQ0013966001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 24,000 gallons per day. The facility is located at 154 Pri-

vate Road 1329, on the south side of U.S. Highway 377 at the intersection of U.S. Highway 377 Business and Bypass, on the east side of Stephenville in Erath County, Texas 76401.

AVNOOR MAHI LLC has applied for a new permit TPDES Permit No. WQ0015087001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 20,000 gallons per day. The facility is located at 11978 U.S. Highway 59 North, in Livingston, Polk County, Texas 77351. The facility was previously permitted under TPDES Permit No. WQ0014960001, which expired February 1, 2013.

CLAY DEVELOPMENT AND CONSTRUCTION INC has applied for a new permit, proposed TPDES Permit No. WQ0015100001, to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 25,000 gallons per day. The facility will be located at the intersection of U.S. Highway 90 and proposed Schlipf Road in Pederson Road Business Park, Katy in Waller County, Texas 77493.

The following do not require publication in a newspaper. Written comments or requests for a public meeting may be submitted to the Office of the Chief Clerk, at the address provided in the information section above, WITHIN (30) DAYS OF THE ISSUED DATE OF THE NOTICE.

LERIN HILLS MUNICIPAL UTILITY DISTRICT has applied for a minor amendment to TPDES Permit No. WQ0014712001 to authorize a deletion of the 180,000 gallons per day (gpd) phase, addition of a 55,000 gpd phase, a 110,000 gpd phase, and reduction of the Final phase from 500,000 gpd to 490,000 gpd. The existing permit authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 500,000 gallons per day. The facility will be located approximately 4.1 miles west of the Interstate Highway 10, as measured along State Highway 46, and then approximately 200 feet due west from that point on State Highway 46 in Kendall County, Texas 78006.

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.texas.gov. Si desea información en español, puede llamar al 1-800-687-4040.

TRD-201305101
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: November 6, 2013

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General Land Office

Notice of Invitation for Offer for Renewal of Major Consulting Services

The Texas General Land Office (GLO) is seeking a consultant to provide services related to the Texas Coastal Ocean Observation Network (TCOON). The consultant will review tide and water level data generated by the Texas A&M Corpus Christi's Conrad Blucher Institute to prove that the data was collected in accordance with National Oceanic and Atmospheric Administrative (NOAA) standards and procedures. Data from the TCOON stations is used to identify the boundary between state and private ownership of submerged land, for approving coastal erosion and beach nourishment projects, for calculating acreage of submerged land tracts for mineral leasing, for identifying and defining the public beach, and for modeling oil spill projections.

Pursuant to §2254.029 and §2254.031 of the Texas Government Code, the GLO is seeking to renew its contract for consulting services relating to the review and verification of tide and water level data from Texas Coastal Ocean Observation Network (TCOON) stations for a twenty-month period beginning December 15, 2013, through August 31, 2015.

It is the intent of the GLO to award this contract to Mr. Douglas Martin subject to the approval of the Governor's Office of Budget and Planning as required by Texas Government Code §2254.028. Mr. Martin has previously provided these consulting services to the GLO with respect to the TCOON program. Further information may be obtained by contacting Craig Davis, Texas General Land Office, 1700 N. Congress Avenue, Austin, Texas 78701-1495, telephone (512) 483-8126.

TRD-201304983
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: October 31, 2013

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Texas Health and Human Services Commission

Public Notice

Hearing. The Texas Health and Human Services Commission (HHSC) will conduct a public hearing on December 5, 2013, at 8:30 a.m., to receive public comment on proposed payment rates for the assisted living/residential care (AL/RC) services under the Community Based Alternatives (CBA) program, CBA Personal Care III services (PCIII) and Residential Care (RC) program. The Department of Aging and Disability Services (DADS) operates these programs. The payment rates are proposed to be effective January 1, 2014.

The public hearing will be held in compliance with Human Resources Code §32.0282 and 1 Texas Administrative Code (TAC) §355.105(g), which require public notice and hearings on proposed reimbursement rates. The public hearing will be held in the Health and Human Services Commission Public Hearing Room, Brown-Heatly Building, located at 4900 North Lamar, Austin, Texas. Entry is through Security at the main entrance of the building, which faces Lamar Boulevard.

Proposal. HHSC proposes to decrease the facility cost area rates for the CBA AL/RC, CBA PCIII services and RC programs to reflect the most recent increase in Federal Supplemental Security Income (SSI) payments in accordance with the rate setting methodologies listed below under Methodology and Justification. The methodologies require that when SSI is increased, the per diem reimbursement be decreased by an amount equal to that increase.

Methodology and justification. The proposed rates were determined in accordance with the rate reimbursement setting methodology at 1 TAC §355.509(c)(2) for the RC program, 1 TAC §355.503(c)(2)(B) for the CBA AL/RC service and 1 TAC §355.503(c)(2)(D) for the CBA PCIII service.

Briefing package. A briefing package describing the proposed reimbursement rates will be available at http://www.hhsc.state.tx.us/rad/rate-packets.shtml on or after November 19, 2013. Interested parties may also obtain a copy of the briefing package prior to the hearing by contacting Michelle Mikulencak or staff at Rate Analysis by telephone at (512) 730-7401; by fax at (512) 730-7475; by e-mail at michelle.mikulencak@hhsc.state.tx.us, by U.S. mail to the Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030. In addition, requests for the briefing package may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751. The briefing package also will be available at the public hearing.

Written and oral comments. Written comments regarding the 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 Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, P.O. Box 149030, Austin, Texas 78714-9030; by fax to Rate Analysis at (512) 730-7475; or by e-mail to michelle.mikulencak@hhsc.state.tx.us. In addition, written comments may be sent by overnight mail or hand delivered to Texas Health and Human Services Commission, Attention: Rate Analysis, Mail Code H-400, Brown-Heatly Building, 4900 North Lamar, Austin, Texas 78751.

Persons with disabilities who wish to attend the hearing and require auxiliary aids or services should contact Rate Analysis at (512) 730-7401 at least 72 hours before the hearing so appropriate arrangements can be made.

TRD-201305095
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 5, 2013

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Home and Community-based Services (HCS) waiver, under the authority of §1915(c) of the Social Security Act. The current waiver submitted to CMS for approval is scheduled to expire August 31, 2018. The proposed effective date for this amendment is September 1, 2013.

The HCS waiver provides services and supports to persons with intellectual disabilities who live in their own home or family home, or in a community setting such as a small group home. To be eligible for the waiver, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

The following changes are occurring in this amendment request:

1. Establishing a new reserved capacity group for individuals who have moved from a state supported living center to a community intermediate care facility for individuals with an intellectual disability and choose to enroll in HCS waiver for up to three years after moving from the state supported living center;

2. Updating mandatory participation requirements to remove the reference to an individual's behavior;

3. Adding a process for HCS providers to procure certain services prior to an individual's planned date of enrollment in the HCS waiver in order to meet the individual's needs and help ensure the individual's health and safety at the time the individual enrolls in the HCS waiver. Services must be based upon the individual's needs identified by the service planning team. The services that can be delivered prior to enrollment in the waiver include:

a. Minor home modifications and any assessment required to justify a requested minor home modification;

b. Adaptive aids and any assessment required to justify a requested adaptive aid;

c. An assessment performed by a registered nurse; and

d. An assessment for behavioral support.

4. Revise provider qualifications for behavioral support to indicate a need for training and remove the requirement for experience; and

5. Update unduplicated count, point-in-time limits, and reserved capacity group limits.

HHSC is requesting that the waiver amendment be approved for the period beginning September 1, 2013, through August 31, 2018. This renewal maintains cost neutrality for waiver years 2013 through 2018.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3427, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201305097
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 5, 2013

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Public Notice

The Texas Health and Human Services Commission (HHSC) is submitting to the Centers for Medicare and Medicaid Services (CMS) a request for an amendment to the Home and Community-based Services (HCS) waiver program, under the authority of §1915(c) of the Social Security Act. The current waiver submitted to the CMS for approval is scheduled to expire August 31, 2018. The proposed effective date for this amendment is March 1, 2014.

The HCS waiver provides services and supports to persons with intellectual disabilities who live in their own home or family home, or in a community setting such as a small group home. To be eligible for the waiver, individuals must meet financial eligibility criteria as well as level of care for admission to an intermediate care facility for individuals with intellectual disabilities.

The following changes are occurring in this amendment request:

1. Adding employment assistance and cognitive rehabilitation therapy, including the consumer directed services option;

2. The consumer directed services option will be expanded to include nursing and supported employment services; and

3. Adding transition assistance services for individuals enrolling into the HCS waiver from a state supported living center, intermediate care facility for individuals with an intellectual disability or related conditions, Department of Family and Protective Services general residential option, or nursing facility.

HHSC is requesting that the waiver amendment be approved for the period beginning March 1, 2014, through August 31, 2018. This renewal maintains cost neutrality for waiver years 2013 through 2018.

To obtain copies of the proposed waiver amendment, interested parties may contact JayLee Mathis by mail at Texas Health and Human Services Commission, P.O. Box 13247, Mail Code H-370, Austin, Texas 78711-3427, phone (512) 462-6289, fax (512) 730-7472, or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201305098
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: November 5, 2013

Department of State Health Services

Department of State Health Services

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The Department of State Health Services has taken actions regarding Licenses for the possession and use of radioactive materials as listed in the tables. The subheading "Location" indicates the city in which the radioactive material may be possessed and/or used. The location listing "Throughout TX" indicates that the radioactive material may be used on a temporary basis at job sites throughout the state.

NEW LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Lubbock	Neutron Lab, Inc. dba Texas Compounding Services	L06588	Lubbock	00	10/25/13
San Antonio	South Texas Oncology and Hematology, P.L.L.C.	L06589	San Antonio	00	10/30/13
Throughout TX	Anderson Perforating Services, L.L.C.	L06587	Albany	00	10/18/13

AMENDMENTS TO EXISTING LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Amarillo	Cardinal Health	L03398	Amarillo	40	10/25/13
Austin	St. David's Healthcare Partnership, L.P., L.L.P. dba North Austin Medical Center	L04910	Austin	94	10/30/13
Channelview	Lyondell Chemical Company	L04439	Channelview	30	10/17/13
El Paso	El Paso Health System, Ltd. dba Del Sol Medical Center	L02551	El Paso	61	10/16/13
El Paso	El Paso Healthcare System, Ltd. dba Las Palmas Medical Center a Campus of Las Palmas de Sol Healthcare	L02715	El Paso	85	10/21/13
Houston	Memorial Hermann Health System dba Memorial Hermann Northeast Hospital	L02412	Houston	94	10/23/13
Houston	Memorial Hermann Health System dba Memorial Hermann Sugarland Hospital	L03457	Houston	43	10/30/13
Houston	Woodlands-North Houston Heart Associates	L04253	Houston	30	10/18/13
Houston	Angiocardiac Care of Texas, P.A. Main Heart Clinic	L05011	Houston	14	10/25/13
Houston	Gulf Coast MRI and Diagnostic	L05333	Houston	21	10/23/13
Houston	American Diagnostic Tech, L.L.C.	L05514	Houston	94	10/28/13
Houston	Oncology Consultants, P.A.	L06339	Houston	04	10/18/13
Houston	The University of Texas M.D. Anderson Cancer Center	L06366	Houston	04	10/23/13
La Porte	Braskem America, Inc.	L06292	La Porte	04	10/17/13
Longview	Texas Oncology, P.A. dba Longview Cancer Center	L05017	Longview	13	10/16/13
Lubbock	Texas Tech University Health Sciences Center	L01869	Lubbock	94	10/21/13
Lufkin	Piney Woods Healthcare System dba Woodland Heights Medical Center	L01842	Lufkin	59	10/22/13
McKinney	Baylor Medical Centers at Garland and McKinney dba Baylor Medical Center at McKinney	L06470	McKinney	02	10/25/13
Midland	Isotech Laboratories, Inc.	L04283	Midland	29	10/31/13
Orange	Baptist Hospital of Southeast Texas dba Memorial Hermann Baptist Orange Hospital	L01597	Orange	34	10/25/13
Richardson	Methodist Hospitals of Dallas dba Methodist Richardson Medical Center	L06474	Richardson	02	10/30/13
San Antonio	The University of Texas Health Science Center at San Antonio	L01279	San Antonio	149	10/25/13
San Antonio	Medi-Physics, Inc. dba G.E. Healthcare	L04764	San Antonio	44	10/23/13
San Antonio	WellMed Networks, Inc. dba Specialists for Health NE Cardiology	L06448	San Antonio	03	10/30/13

AMENDMENTS TO EXISTING LICENSES ISSUED (CONTINUED):

Location	Name	License #	City	Amend-ment #	Date of Action
San Antonio	Cancer Care Network of South Texas, P.A. dba Cancer Care Centers of South Texas	L06449	San Antonio	03	10/29/13
Texarkana	J. M. Hurley, M.D., P.A. dba Texarkana Cardiology Associates	L04738	Houston	14	10/24/13
Texarkana	Christus Health Ark-La-Tex dba Christus Saint Michael Health System	L04805	Texarkana	27	10/30/13
The Woodlands	Greater Houston Physicians Medical Association, P.L.L.C.	L06415	The Woodlands	02	10/25/13
Throughout TX	Lotus, L.L.C.	L05147	Andrews	28	10/25/13
Throughout TX	RWLS, L.L.C. dba Renegade Services	L06307	Andrews	18	10/30/13
Throughout TX	NQS Inspection, Ltd.	L06262	Corpus Christi	07	10/30/13
Throughout TX	Baylor University Medical Center	L01290	Dallas	114	10/28/13
Throughout TX	Rone Engineering Services, Ltd.	L02356	Dallas	44	10/18/13
Throughout TX	Terracon Consultants, Inc.	L05268	Dallas	44	10/22/13
Throughout TX	The Murillo Company Geotechnical & Environmental Consultants	L01373	Houston	22	10/18/13
Throughout TX	The University of Texas Health Science Center at Houston	L02774	Houston	68	10/29/13
Throughout TX	Enviroklean Product Development, Inc.	L06350	Houston	04	10/25/13
Throughout TX	Century Asphalt, Ltd.	L06539	Houston	03	10/18/13
Throughout TX	Acuren Inspection, Inc.	L01774	La Porte	278	10/31/13
Throughout TX	Norm Pipe, Inc.	L06560	Marshall	01	10/31/13
Throughout TX	Team Industrial Services, Inc.	L00087	Pasadena	228	10/24/13
Throughout TX	Quantum Technical Services, L.L.C.	L06406	Pasadena	07	10/31/13
Throughout TX	Drash Consultants, L.L.C.	L06544	San Antonio	01	10/22/13
Throughout TX	Schlumberger Technology Corporation	L01833	Sugar Land	172	10/29/13
Throughout TX	Pumpco Energy Services, Inc.	L06507	Valley View	04	10/29/13
Waco	Providence Health Center	L01638	Waco	60	10/25/13

RENEWAL OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Alice	Christus Spohn Health System Corporation dba Christus Spohn Hospital Alice	L02390	Alice	47	10/25/13
Eagle Pass	Fort Duncan Medical Center, L.P.	L05640	Eagle Pass	10	10/21/13
Houston	Chopra Imaging Center, Inc. dba Advanced Diagnostics	L05566	Houston	07	10/18/13
North Richland Hills	Heartplace, P.A.	L05548	North Richland Hills	20	10/31/13
San Antonio	City Public Service	L02876	San Antonio	27	10/17/13
Throughout TX	Global X-Ray & Testing Corporation	L03663	Aransas Pass	119	10/22/13

TERMINATIONS OF LICENSES ISSUED:

Location	Name	License #	City	Amend-ment #	Date of Action
Bertram	Bullock Bennett & Associates, L.L.C.	L06289	Bertram	01	10/17/13
Lubbock	Cardinal Health	L02737	Lubbock	63	10/29/13
San Antonio	South Texas Oncology and Hematology, P.A. dba Start Center for Cancer Care	L06300	San Antonio	02	10/30/13
Throughout TX	W. W. Webber, L.L.C.	L04904	Hillsboro	16	10/23/13
Webster	Webster Surgical Specialty Hospital, Ltd. dba Houston Physicians Hospital	L06505	Webster	01	10/25/13

In issuing new licenses, amending and renewing existing licenses, or approving license exemptions, the Department of State Health Services (department), Radiation Safety Licensing Branch, has determined that the applicant has complied with the applicable provisions of 25 Texas Administrative Code (TAC) Chapter 289 regarding radiation control. In granting termination of licenses, the department has determined that the licensee has complied with the applicable decommissioning requirements of 25 TAC Chapter 289. In denying the application for a license, license renewal or license amendment, the department has determined that the applicant has not met the applicable requirements of 25 TAC Chapter 289.

This notice affords the opportunity for a hearing on written request of a person affected within 30 days of the date of publication of this notice. A person affected is defined as a person who demonstrates that the person has suffered or will suffer actual injury or economic damage and, if the person is not a local government, is (a) a resident of a county, or a county adjacent to the county, in which radioactive material is or will be located, or (b) doing business or has a legal interest in land in the county or adjacent county. A person affected may request a hearing by writing Richard A. Ratliff, Radiation Program Officer, Department of State Health Services, Radiation Material Licensing - Mail Code 2835, P.O. Box 149347, Austin, Texas 78714-9347. For information call (512) 834-6688.

TRD-201305104
Lisa Hernandez
General Counsel
Department of State Health Services
Filed: November 6, 2013

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Texas Department of Insurance

Company Licensing

Application to change the name of WORLD CORP INSURANCE COMPANY to MEDICO CORP LIFE INSURANCE COMPANY, a foreign life, accident and/or health company. The home office is in Omaha, Nebraska.

Any objections must be filed with the Texas Department of Insurance, within twenty (20) calendar days from the date of publication in the *Texas Register,* addressed to the attention of Godwin Ohaechesi, 333 Guadalupe Street, MC 305-2C, Austin, Texas 78701.

TRD-201305091
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: November 5, 2013

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Texas Lottery Commission

Instant Game Number 1582 "20X the Cash"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1582 is "20X THE CASH." The play style is "key number match."

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1582 shall be $5.00 per Ticket.

1.2 Definitions in Instant Game No. 1582.

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 Instant 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, 6, 7, 8, 9, 11, 12, 13, 14, 15, 16, 17, 18, 19, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 5X SYMBOL, 10X SYMBOL, 20X SYMBOL, $5.00, $10.00, $15.00, $20.00, $40.00, $50.00, $100, $500, $1,000, $10,000 and $250,000.

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. 1582 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
6	SIX
7	SVN
8	EGT
9	NIN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
21	TWON
22	TWTO
23	TWTH
24	TWFR
25	TWFV
26	TWSX
27	TWSV
28	TWET
29	TWNI
30	TRTY
31	TRON
32	TRTO
33	TRTH
34	TRFR
35	TRFV
5X SYMBOL	TIMES5
10X SYMBOL	TIMES10
20X SYMBOL	TIMES20
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$40.00	FORTY
$50.00	FIFTY
$100	ONE HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$250,000	2HUN 50THOU

E. Serial Number - A unique 14 (fourteen) digit number appearing under the latex scratch-off covering on the front of the Ticket. There will be a four (4)-digit "security number" which will be individually boxed and randomly placed within the 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 $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, $10,000 or $250,000.

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 (1582), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 075 within each Pack. The format will be: 1582-0000001-001.

K. Pack - A Pack of "20X THE CASH" Instant Game Tickets contains 075 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of one (1). The Packs will alternate. One will show the front of Ticket 001 and back of 075 while the other fold will show the back of Ticket 001 and front of 075.

L. Non-Winning 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 "20X THE CASH" Instant Game No. 1582 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 "20X THE CASH" Instant Game is determined once the latex on the Ticket is scratched off to expose 46 (forty-six) Play Symbols. If a player matches any of YOUR NUMBERS Play Symbols to any of the WINNING NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "5X" Play Symbol, the player wins 5 TIMES the prize for that symbol. If a player reveals a "10X" Play Symbol, the player wins 10 TIMES the prize for that symbol. If a player reveals a "20X" Play Symbol, the player wins 20 TIMES the prize for that symbol. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the 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 46 (forty-six) 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 46 (forty-six) 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 46 (forty-six) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 46 (forty-six) 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 Texas Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty (20) times on a Ticket in accordance with the approved prize structure.

B. Adjacent Non-Winning Tickets within a Pack will not have identical Play and Prize Symbol patterns. Two (2) Tickets have identical Play and Prize Symbol patterns if they have the same Play and Prize Symbols in the same positions.

C. The top Prize Symbol will appear on every Ticket unless otherwise restricted by other parameters, play action or prize structure.

D. Each Ticket will have six (6) different "WINNING NUMBERS" Play Symbols.

E. Non-winning "YOUR NUMBERS" Play Symbols will all be different.

F. Non-winning Prize Symbols will never appear more than two (2) times.

G. The "5X" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

H. The "10X" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

I. The "20X" Play Symbol will never appear in the "WINNING NUMBERS" Play Symbol spots.

J. The "5X" Play Symbol will appear as dictated by the prize structure.

K. The "10X" Play Symbol will appear as dictated by the prize structure.

L. The "20X" Play Symbol will appear as dictated by the prize structure.

M. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

N. No prize amount in a non-winning spot will correspond with the "YOUR NUMBERS" Play Symbol (i.e., 15 and $15).

2.3 Procedure for Claiming Prizes.

A. To claim a "20X THE CASH" Instant Game prize of $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 Section 2.3.C of these Game Procedures.

B. To claim a "20X THE CASH" Instant Game prize of $1,000, $10,000 or $250,000, 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 "20X THE CASH" 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 Texas 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 under $600 from the "20X THE CASH" 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 "20X THE CASH" 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 16,320,000 Tickets in the Instant Game No. 1582. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1582 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$5	1,740,800	9.38
$10	2,284,800	7.14
$20	435,200	37.50
$50	217,736	74.95
$100	8,432	1,935.48
$500	1,088	15,000.00
$1,000	176	92,727.27
$10,000	28	582,857.14
$250,000	10	1,632,000.00

*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 3.48. 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 Commission.

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. 1582 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 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. 1582, 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-201305084
Bob Biard
General Counsel
Texas Lottery Commission
Filed: November 4, 2013

♦ ♦ ♦

North Central Texas Council of Governments

Consultant Contract Award

Pursuant to the provisions of Government Code, Chapter 2254, the North Central Texas Council of Governments publishes this notice of consultant contract award. The consultant request appeared in the July 12, 2013, issue of the *Texas Register* (38 TexReg 4550). The selected consultant will perform technical and professional work for the formation, implementation, and evaluation of a proposed jobs program oversight model, designated the Regional Jobs Opportunity Pilot Program (RJOPP).

The consultant selected for this project is Baker Consulting Associates, 2401 South Boulevard, Dallas, Texas 75215. The amount of the contract is not to exceed $875,000.

TRD-201305085
R. Michael Eastland
Executive Director
North Central Texas Council of Governments
Filed: November 4, 2013

♦ ♦ ♦

Public Utility Commission of Texas

Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on October 30, 2013, to amend a state-issued certificate of franchise authority, pursuant to §§66.001 - 66.016 of the Public Utility Regulatory Act (PURA).

Project Title and Number: Application of Universal Cable Holdings, Inc. d/b/a Suddenlink Communications to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41974.

The requested amendment is to expand the service area footprint to include the city limits of Paducah, Texas.

Information on the application may be obtained by contacting the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All inquiries should reference Project Number 41974.

TRD-201304985
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2013

♦ ♦ ♦

Notice of Application for Sale, Transfer, or Merger Pursuant to Public Utility Regulation Act §39.158

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on October 29, 2013, pursuant to the Public Utility Regulatory Act, Tex. Util. Code Ann. §39.158 (Vernon 2007 & Supp. 2013) (PURA).

Docket Style and Number: Application of NRG Energy, Inc. Pursuant to §39.158 of the Public Utility Regulatory Act, Docket Number 41972.

The Application: NGG Energy, Inc. (NRG) has filed an application for approval of the proposed purchase of 100% of the ownership interests of the power generation portfolio of Edison Mission Energy (EME) in Texas (the Transaction). EME currently owns indirect interests in the following two wind generation facilities in the Electric Reliability Council of Texas (ERCOT) power region: (1) a 31% interest in Cedro Hill Wind LLC, which owns a 150 MW generating facility located in Webb County (Cedro Hill); and (2) a 100% interest in Goat Wind, LP, which owns a 150 MW generating facility located in Coke and Sterling Counties (Goat Wind). EME also owns an indirect interest in one wind generation facility within Texas in the Southwest Power Pool (SPP) power region, outside the ERCOT footprint; a 99.9% interest in Wildorado Wind, LLC, which owns a 161 MW generating facility located in Oldham, Randall and Potter Counties (Wildorado Wind Ranch).

As a result of the proposed Transaction, Cedro Hill LLC, Goat Wind, LP and Wildorado Wind, LLC will become affiliates of NRG. NRG is required to obtain Commission approval before completing the Transaction if the electricity to be offered for sale in a power region will exceed 1% of the total electricity for sale in in the power region if the Application is approved. The commission shall approve the Application unless the commission finds it results in a violation of PURA §39.154. Under §39.154, upon the introduction of customer choice, a power generation company may not own and control more than 20% of the installed generation capacity located in, or capable of delivering electricity to a power region in Texas.

The combined, direct and indirectly owned generation of NRG following the acquisition of EME's ownership interests in Cedro Hill Wind LLC and Goat Wind, LP will exceed 1% of the electricity offered for sale in ERCOT, but will not result in a violation of the 20% installed capacity share limitations set forth in PURA §39.154.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the commission as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 41972.

TRD-201304984
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: October 31, 2013

♦ ♦ ♦

Notice of Application for Transfer Pursuant to the Public Utility Regulation Act §37.154

Notice is given to the public of an application filed with the Public Utility Commission of Texas on November 1, 2013, pursuant to the Public Utility Regulatory Act, TEX. UTIL. CODE ANN. §37.154 (Vernon 2007 & Supp. 2013) (PURA).

Docket Style and Number: Joint Application of Lea County and Southwestern Public Service Company to Transfer Certificate of Convenience and Necessity Rights, Docket Number 41903.

The Application: Lea County Electric Cooperative, Inc. (Lea County) and Southwestern Public Service Company (SPS) have filed an application for approval of Lea County's purchase of SPS' approximately five (5) miles of 69 kV transmission line that is located in Gaines County, as well as poles, cross-arms, braces, conductors, insulators and associated personal property (the Facilities). This transaction includes the transfer of SPS' certificate of convenience and necessity (CCN) rights as well as right-of-way easements associated with the Facilities to Lea County. The Facilities are being sold to Lea County for $130,670.98.

Lea County and SPS have executed an agreement under which Lea County has agreed to purchase an approximately 5-mile segment of SPS' 69 kilovolt (kV) transmission line, right-of-way easements associated with the facilities, as well as the certificate rights thereto (collectively referred to as the Facilities). The Facilities to be conveyed to Lea County begins at the Lea County KCM Substation located in Gaines County at the northwest corner of the intersection of County Road 208 and County Road 225. From the KCM Substation, Y98 proceeds west along the north side of County Road 208 for approximately five (5) miles to the SPS Johnson Draw Interchange. Lea County will hold legal title to the assets and plans to use the Facilities to energize its KCM Substation and reduce costs associated with providing power to the KCM Substation. Lea County and SPS request the commission approve their proposal in which SPS will transfer to Lea County SPS's existing Certificate of Convenience and Necessity (CCN) right to the Facilities; find that the transfer of the Facilities from SPS to Lea County is consistent with the public interest; and amend Lea County and SPS's respective CCNs to facilitate the transfer of the Facilities. No new facilities are being sought in this filing, nor are the boundaries of SPS's or Lea County's service areas affected by this filing.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas as soon as possible as an intervention deadline will be imposed. A comment or request to intervene should be mailed to P.O. Box 13326, Austin, Texas 78711-3326. Further information may also be obtained by calling the commission's Office of Customer Protection at (512) 936-7120 or (888) 782-8477. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Docket Number 41903.

TRD-201305094
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2013

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 1, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Gaines County, Texas.

Docket Style and Number: Application of Lea County Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for the KCM 69-kV Transmission Tie Line in Gaines County, Docket Number 41944.

The Application: The application of Lea County Electric Cooperative, Inc. (LCEC) is designated as the KCM 69-kV Tie Line Transmission Project located northeast of the city of Seminole. LCEC plans to construct the line with wood single pole tangent structures and self-supporting concrete poles on all angle and dead-end structures. The proposed project is estimated to be approximately one mile in length. The total estimated cost for the project is $320,000.

The proposed project is presented with two alternate routes. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is December 16, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41944.

TRD-201305086
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2013

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Notice of Application to Amend a Certificate of Convenience and Necessity for a Proposed Transmission Line

Notice is given to the public of the filing with the Public Utility Commission of Texas (commission) of an application on November 1, 2013, to amend a certificate of convenience and necessity for a proposed transmission line in Guadalupe County, Texas.

Docket Style and Number: Application of Guadalupe Valley Electric Cooperative, Inc. to Amend its Certificate of Convenience and Necessity for a Proposed 138-kV Transmission Line in Guadalupe County, Docket Number 41967.

The Application: The application of Guadalupe Valley Electric Cooperative, Inc. (GVEC) is designated as the CMC Tap to CMC Substation 138-kv Transmission Line Project. The proposed transmission line addresses two needs: relief of the Seguin-Seguin West overload identified by Electric Reliability Council of Texas (ERCOT) in the ERCOT 2011 Five-Year Transmission Plan Report and the service reliability requirements of a large industrial load at the GVEC owned SMI Substation serving the CMC Steel Plant.

The total estimated cost for the project is approximately $1,768,600. The proposed project is presented with ten alternate routes and is estimated to be approximately 1.63 to 3.48 miles in length depending on the route chosen. Any of the routes or route segments presented in the application could, however, be approved by the commission.

Persons wishing to intervene or comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477. The deadline for intervention in this proceeding is December 16, 2013. Hearing and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41967.

TRD-201305087
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: November 5, 2013

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Texas Department of Transportation

Request for Proposals - Traffic Safety Program

In accordance with 43 TAC §25.901, et seq., the Texas Department of Transportation (department) is requesting project proposals to support the goals and strategies of the Traffic Safety program to reduce the number of motor vehicle related crashes, injuries, and fatalities in Texas. These goals and strategies form the basis for the Federal Fiscal Year 2015 (FY 2015) Highway Safety Plan (HSP).

The authority and responsibility of the traffic safety grant program derives from the National Highway Safety Act of 1966 (23 U.S.C. §401, et seq.), and the Texas Traffic Safety Act of 1967 (Transportation Code, Chapter 723). The Traffic Safety Section (TRF-TS) is an integral part of the department and works through 25 districts for local projects. The program is administered at the state level by the department's Traffic Operations Division (TRF). The executive director of the department is the designated Governor's Highway Safety Representative.

The following information relates to the FY 2015 Traffic Safety Grants - Request for Proposals (RFP). Please review the FY 2015 RFP located online at

www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html for details.

Proposals for Highway Safety Funding are due to TRF-TS no later than **5:00 p.m., January 10, 2014.**

All questions regarding the development of proposals must be submitted by sending an email to trf_rfp@txdot.gov by **5:00 p.m.** on **December 6, 2013.** A list of the questions with answers (Q&A document) will be posted at

www.txdot.gov/apps/eGrants/eGrantsHelp/rfp.html by **5:00 p.m.** on **December 13, 2013.**

A webinar on proposal submissions via eGrants will be hosted by the TRF-TS Austin headquarters staff. Please contact a TRF-TS Program Manager (PM) or Traffic Safety Specialist (TSS) at (512) 416-3204 or send an email to trf_rfp@txdot.gov to acquire access information. Potential subgrantees should attend the session appropriate to the type of grant proposal they intend to submit. On **November 21, 2013, Selective Traffic Enforcement Program (STEP) Grants** are scheduled from **8:00 a.m. to 12:00 p.m.** and **General Traffic Safety Grants** are scheduled from **1:00 p.m. to 5:00 p.m.**

The Program Needs section of the RFP includes a Performance Measures chart which outlines the goals, strategies, and performance measures for each of the Traffic Safety Program Areas. TRF-TS is seeking proposals in all program areas, but is particularly interested in proposals which address the specific program needs listed in the High Priority Program Needs subsection of the Program Needs section of the RFP.

The proposals must be completed using eGrants:

www.txdot.gov/apps/egrants.

TRD-201305030
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 1, 2013

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Request for Qualifications

Pursuant to the authority granted under Transportation Code, Chapter 223, Subchapter F (enabling legislation), the Texas Department of Transportation (department) may enter into, in each fiscal year, up to three design-build contracts for the design, construction, expansion, extension, related capital maintenance, rehabilitation, alteration, or repair of a highway project with a construction cost estimate of $50 million or more. The enabling legislation authorizes private involvement in design-build projects and provides a process for the department to solicit proposals for such projects. Transportation Code §223.245 prescribes requirements for issuance of a request for qualifications and requires the department to publish a notice of such issuance in the *Texas Register.* The Texas Transportation Commission (commission) adopted Texas Administrative Code, Title 43, Chapter 9, Subchapter I relating to design-build contracts (the "rules"). The enabling legislation, as well as the rules, govern the submission and processing of qualifications submittals, and provide for the issuance of a request for qualifications that sets forth the basic criteria for qualifications, experience, technical competence, and ability to develop a proposed project and such other information the department considers relevant or necessary.

The commission has authorized the issuance of a request for qualifications (RFQ) to design and construct the SH 71 Toll Lanes Project from Presidential Boulevard to a point just east of SH 130 in Austin, along with the realignment of FM 973 from just south of the Colorado River to a point approximately 0.5 mile south of the current SH 71/FM 973 intersection, through a design-build contract. The SH 71 Toll Lanes Project to be constructed under the agreement includes the toll lanes, general purpose lanes, overpasses at FM 973 and SH 130, city street connections, including the FM 973 realignment, and tie-in transitions to the existing SH 71, and has estimated design-build costs of approximately $110 million.

Through this notice, the department is seeking qualifications submittals (QS) from teams interested in entering into a design-build contract. The department intends to evaluate any QS received in response to the RFQ and may request submission of detailed proposals, potentially leading to the negotiation, award, and execution of a design-build contract. The department will accept for consideration any QS received in accordance with the enabling legislation, the rules, and the RFQ on or before the deadline in this notice. The department anticipates issuing the RFQ, receiving and analyzing the QSs, developing a shortlist of proposing entities or consortia, and issuing a request for proposals (RFP) to the shortlisted entities. After review and a best value evaluation of the responses to the RFP, the department may negotiate and enter into a design-build contract for the project.

RFQ Evaluation Criteria. QSs will be evaluated by the department for shortlisting purposes using the following general criteria: qualifications and experience, statement of technical approach, and safety qualifications. The specific criteria under the foregoing categories will be identified in the RFQ, as will the relative weighting of the criteria.

Release of RFQ and Due Date. The department currently anticipates that the RFQ will be available on November 15, 2013. Copies of the RFQ will be available at the Texas Department of Transportation, 814 Arion Parkway, Suite 401, San Antonio, Texas 78216, or on the following website:

http://www.txdot.gov/business/partnerships/current-cda/sh71-express.html

QSs will be due by 3:00 p.m. CST on December 13, 2013, at the address specified in the RFQ.

TRD-201305106
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: November 6, 2013

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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 38 (2013) is cited as follows: 38 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 "38 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 38 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)*

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Note**: Back issues of the ***Texas Register, published before September 9, 2005, must be ordered through the Texas Register Section of the Office of the Secretary of State at (512) 463-5561.

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