TEXAS REGISTER

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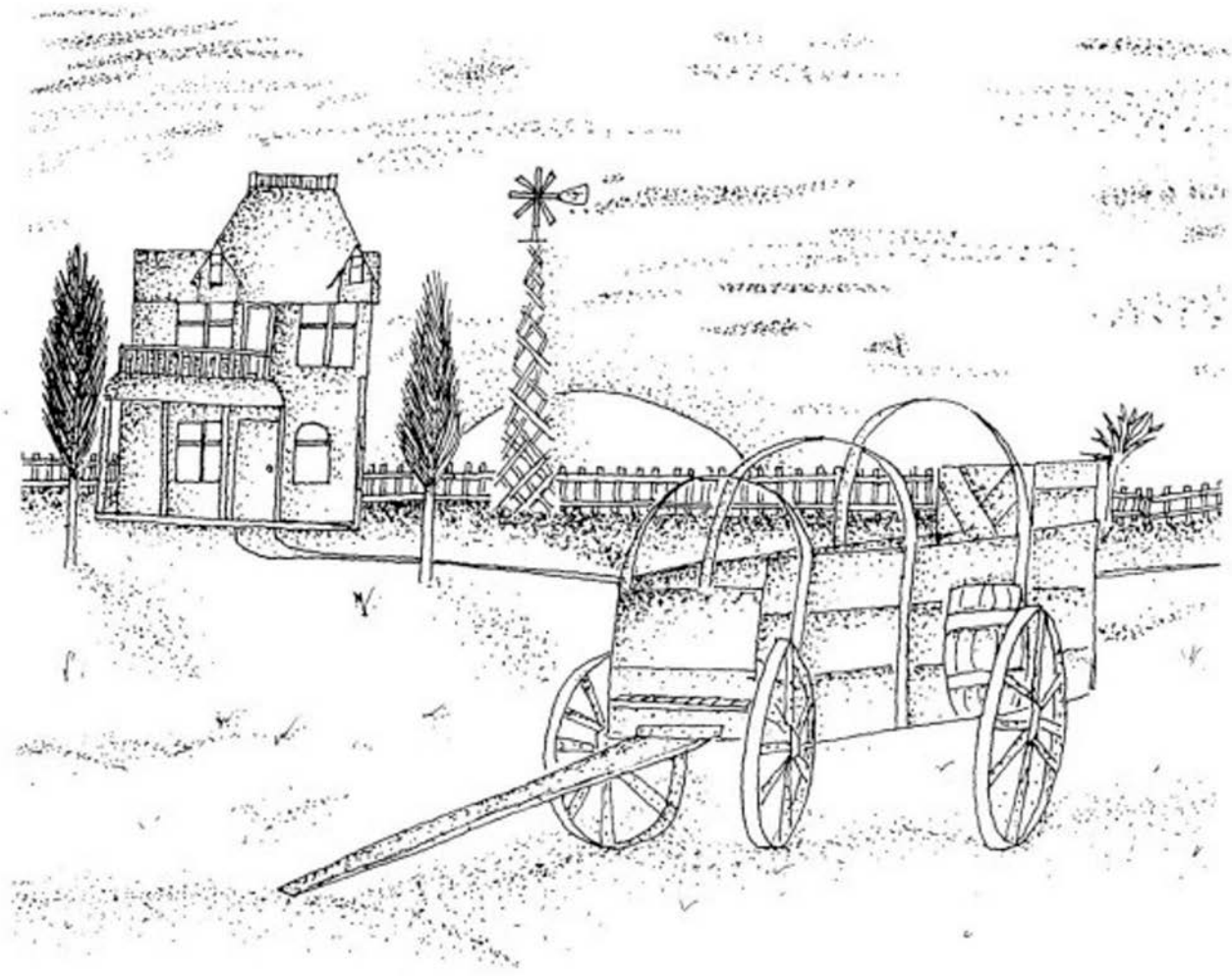

School children's artwork is used to decorate the front cover and blank filler pages of the *Texas Register*. Teachers throughout the state submit the drawings for students in grades K-12. The drawings dress up the otherwise gray pages of the *Texas Register* and introduce students to this obscure but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

Office of the Secretary of State

Texas Department of Transportation

Upper Rio Grande Workforce Development Board

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-1144-GA

Requestor:

The Honorable Dan Patrick

Chair, Committee on Education

Texas State Senate

Post Office Box 12068

Austin, Texas 78711-2068

Requestor:

The Honorable Vince Ryan

Harris County Attorney

1019 Congress, 15th Floor

Houston, Texas 77002

Re: Whether a county judge may deny a petition to order a tax election for a county department of education (RQ-1144-GA)

Briefs requested by September 2, 2013

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

TRD-201303390
Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 14, 2013

♦ ♦ ♦

Opinions

Opinion No. GA-1016

The Honorable Rene O. Oliveira

Chair, Committee on Business & Industry

Texas House of Representatives

Post Office Box 2910

Austin, Texas 78768-2910

Re: Application of Government Code section 573.062, the nepotism continuous-employment exception, to a school district board member's spouse (RQ-1117-GA)

S U M M A R Y

Government Code section 573.062(a)(2)(B) requires that an individual be continuously employed for six months prior to the election of a school district trustee to whom the individual is related in a prohibited degree in order for the nepotism continuous-employment exception to apply. Under the terms of the statute, the continuous-employment period begins the first day the employee is employed by the school district. The continuous-employment period ends the date the public official to whom the employee is related in a prohibited degree assumes office.

Opinion No. GA-1017

The Honorable Jeri Yenne

Brazoria County Criminal District Attorney

111 East Locust, Suite 408A

Angleton, Texas 77515

Re: Whether Family Code section 58.0071 authorizes the custodian of physical records and files in a juvenile case to destroy hard copies in particular instances (RQ-1119-GA)

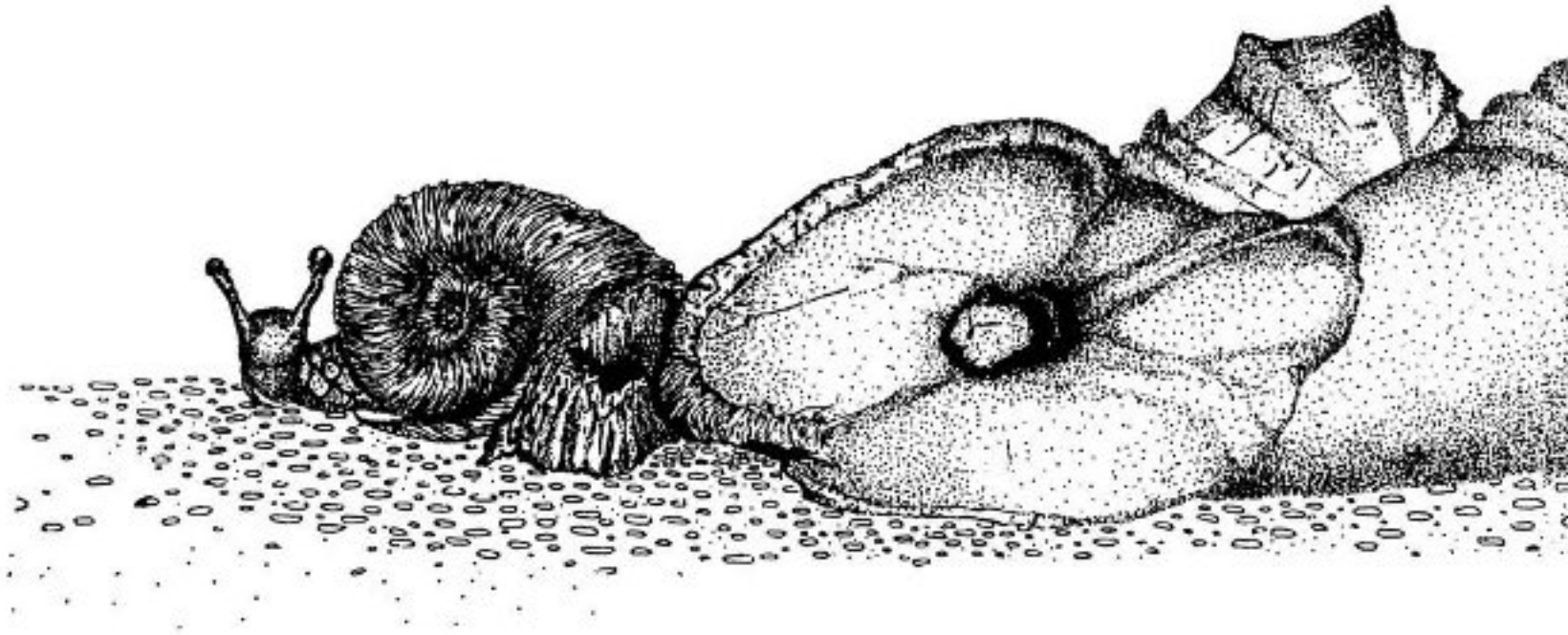
S U M M A R Y

Family Code section 58.0071(b) authorizes the custodian of physical records and files in a juvenile case to destroy hard-copy, original paper records and files at any time if the custodian electronically duplicates and stores the information in the records and files. Family Code section 58.0071(c) authorizes a juvenile board, law enforcement agency, or prosecuting attorney to permanently destroy paper-based and electronic records and files of closed juvenile cases subject to the restrictions of section 58.0071(d) and (e).

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

TRD-201303380
Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 14, 2013

♦ ♦ ♦



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 22. EXAMINING BOARDS

PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners adopts on an emergency basis amendments to §371.3 regarding Fees. The emergency changes to §371.3 are being adopted to cover the contingent revenue as stipulated by the 83rd Texas Legislature which requires the board to assess or increase fees sufficient to generate during the FY 2014-2015 biennium $93,942 in excess of $1,010,000 (Object Code 3562), contained in the Comptroller of Public Accounts' Biennial Revenue Estimate for fiscal years 2014 and 2015. Texas Occupations Code §202.153, Fees, states that the board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter. The emergency rulemaking is necessary, in response to Texas Online and Texas Department of Information Resources schedules, because the fee increase (also for USAS changes) must be in place by Tuesday August 13, 2013 to ensure that the Texas Online vendor can make the requisite online application changes by midnight September 1, 2013. FY 2014 license renewal notices are to be mailed out on August 28, 2013 for the November 1, 2013 (online) license renewal deadline.

Elsewhere in this issue of the *Texas Register,* the amendments to §371.3 are proposed for adoption and open to comment from the public.

The emergency amendments are being adopted under Texas Occupations Code §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The amendment implements Texas Occupations Code §202.153, Fees.

§371.3. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

(1) Examination--$250 plus $39 fee for HB 660 (criminal history record information)

(2) Re-Examination--$250 plus $39 fee for HB 660 (criminal history record information)

(3) Temporary License--$125

(4) Extended Temporary License--$50

(5) Temporary Faculty License--$40

(6) Provisional License--$125

(7) Initial Licensing Fee--$524 [~~$474~~] (i.e. $514 plus $5 TXOL fee, [~~$469~~] plus $5 "Initial" Office of Patient Protection fee for Texas Occupations Code (TOC) §202.301 and TOC §101.307 [~~HB 2985 - 78th Session~~])

(8) Annual Renewal--$520 [~~$470~~] (i.e. $514 plus $5 TXOL fee, [~~$469~~] plus $1 "Renewal" Office of Patient Protection fee for TOC §202.301 and TOC §101.307) [~~HB 2985 - 78th Session~~]

(9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d)

(10) Non certified podiatric technician registration--$35

(11) Non certified podiatric technician renewal--$35

(12) Hyperbaric Oxygen Certificate--$25

(13) Nitrous Oxide Registration--$25

(14) Duplicate License--$50

(15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(16) Statute and Rule Notebook--provided at cost to the agency

(17) Duplicate Certificate--$10

(18) HB 660 (criminal history record information)--$39

(19) Recovery Fee--An additional $100 charge may be applied for processing special requests exceeding standard application/service costs (e.g. examination rescheduling, excessive/amended document reviews, obtaining legal/court documentation, criminal history evaluation letters, etc.).

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

Filed with the Office of the Secretary of State on August 12, 2013.

TRD-201303361

Hemant Makan
Executive Director
Texas State Board of Podiatric Medical Examiners
Effective date: September 1, 2013
Expiration date: December 29, 2013
For further information, please call: (512) 305-7002

♦ ♦ ♦

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 16. ECONOMIC REGULATION

PART 1. RAILROAD COMMISSION OF TEXAS

CHAPTER 8. PIPELINE SAFETY REGULATIONS

SUBCHAPTER C. REQUIREMENTS FOR NATURAL GAS PIPELINES ONLY

16 TAC §8.201

The Railroad Commission of Texas (Commission) proposes to amend §8.201, relating to Pipeline Safety and Regulatory Program Fees, to implement provisions of Senate Bill 1, 83rd Legislature (2013).

Senate Bill 1 authorizes 20 additional full-time equivalent employees (FTEs) for pipeline safety activities, including inspection of intrastate pipeline and pipeline facilities, with an appropriation of $2,631,828. The appropriation of revenue to the natural gas regulatory program is contingent upon the Commission increasing the pipeline safety and regulatory fee, which will allow the Commission's current activities related to pipeline safety programs to be better staffed. Natural gas utilities affected by the proposed amendments are authorized to recover pipeline safety and regulatory program fees from their customers by applying an annual surcharge to customer bills.

In the proposed amendments, the pipeline safety and regulatory program fee, which is assessed by the Commission upon certain natural gas systems, is clearly distinguished from the surcharge assessed by a natural gas distribution system operator upon its customers. In §8.201(b), the Commission proposes to increase the pipeline safety and regulatory program fee from $0.75 to $1.00 annually for each service (service line) reported to be in service at the end of each calendar year, as required by the contingent appropriation in Senate Bill 1.

Mary Ross McDonald, Director, Pipeline Safety Division, has determined that for each year of the first five years that the proposed amendments are in effect, there will be an estimated increase in revenue for state government of $1,214,062.75. The estimated revenue increase is calculated by multiplying the $0.25 increase in the pipeline safety and regulatory program fee by the approximately 4,856,251 services reported to be in service at the end of calendar year 2012.

Revenue derived from the proposed pipeline safety and regulatory program fee will be appropriated to the Commission, subject to contingencies and limitations outlined in Senate Bill 1, to supplement funds received from the U.S. Department of Transportation, Pipeline and Hazardous Materials Safety Administration, Office of Pipeline Safety to support the Commission's existing pipeline safety program and the Commission's underground pipeline damage prevention program. If the number of services reported is lower than the 2012 level in any future year, the State's revenue will decrease accordingly, and the Commission's appropriation will be reduced as well.

Ms. McDonald anticipates there will be no new costs for state government as a result of enforcing or administering the proposed amendments, because state agencies are exempt from the surcharge applied by natural gas distribution system operators to their customers to recover pipeline safety and regulatory program fees assessed under §8.201(b).

Ms. McDonald has determined that there may be *de minimis* fiscal implications for local governments that operate natural gas distribution systems, such as municipalities. These entities will be required to remit to the Commission the increased fee amount; however, these entities are authorized to recover their costs by imposing an annual surcharge upon their customers. Their remittance and billing systems are already in place. There are no fiscal implications for other local governments that operate natural gas distribution systems, such as housing authorities that operate master meter systems; the pipeline safety and regulatory fee for these systems is set by statute at $100 per year and will not change as a result of administering and enforcing the proposed amendment to §8.201.

Ms. McDonald has determined that for each year of the first five years that the proposed amendments are in effect the public benefit will be the continuation of the Commission's pipeline safety and damage prevention programs with additional staffing to conduct pipeline safety inspections and to administer the underground pipeline damage prevention program.

Ms. McDonald developed the following analysis of the probable economic cost to persons required to comply with the proposed amendments for each year of the first five years that they will be in effect, as well as the analysis that is required by Texas Government Code, §2006.002. That statute requires that, before adopting a rule that may have an adverse economic effect on small businesses or micro-businesses, a state agency prepare an economic impact statement and a regulatory flexibility analysis. The economic impact statement must estimate the number of small businesses subject to the proposed rule, project the economic impact of the rule on small businesses, and describe alternative methods of achieving the purpose of the proposed rule. A regulatory flexibility analysis must include the agency's consideration of alternative methods of achieving the purpose of the proposed rule. If consistent with the health, safety, and environmental and economic welfare of the state, the analysis must consider use of regulatory methods that will accomplish the objectives of applicable rules while minimizing adverse impacts on small businesses. The state agency must include in the analysis

several proposed methods of reducing the adverse impact of a proposed rule on a small business. The statute defines "small business" as a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has fewer than 100 employees or less than $6 million in annual gross receipts. A "micro-business" is a legal entity, including a corporation, partnership, or sole proprietorship, that is formed for the purpose of making a profit; is independently owned and operated; and has no more than 20 employees.

Pursuant to Texas Government Code, §2006.002(c), Ms. McDonald estimates that there will be no net cost of compliance for natural gas distribution system operators that are small businesses or micro-businesses. While the pipeline safety and regulatory program fee will increase by $0.25 for each service reported on the DOT Gas Distribution Annual Report, Form PHMSA 7100.1-1, natural gas distribution system operators are authorized to recover these costs through the application of an annual surcharge to their customers. Operators will not incur any additional administrative costs for remitting the fee to the Commission or for assessing the surcharge to customers because the fee has been in effect since 2003, and remittance and billing systems are already in place.

Ms. McDonald expects that there will be a *de minimis* cost of compliance for customers of natural gas distribution systems. The current annual surcharge levied by natural gas distribution system operators upon their customers will rise in order for distribution system operators to recover the increased natural gas pipeline and regulatory fee they remit to the Commission. For a customer of a natural gas distribution system who has one service line, the additional cost of compliance will be $0.25 per year. Large commercial and industrial customers of natural gas distribution systems will have additional annual costs of compliance of $0.25 for each service line. State agency customers of natural gas distributions systems are exempt from payment of such a fee.

The Commission concludes that there will be no adverse impact on small businesses or micro-businesses of adopting, administering, and enforcing the proposed amendments. For this reason, pursuant to Texas Government Code, §2001.006, the Commission is not required to consider whether there are alternative methods for achieving the purpose of the proposed amendments.

The Commission has determined that the proposed rulemaking will not affect a local economy; therefore, pursuant to Texas Government Code, §2001.022, the Commission is not required to prepare a local employment impact statement for the proposed rule.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, online at www.rrc.state.tx.us/rules/commentform.php and by electronic mail to rulescoordinator@rrc.state.tx.us. The Commission will accept comments until 12:00 p.m. (noon) on Monday, September 23, 2013, which is 31 days after publication in the *Texas Register.* The Commission finds that this comment period is reasonable because the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments.

Comments should refer to Gas Utilities Docket No. 10288. The Commission encourages all interested persons to submit comments on the proposal no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Ms. McDonald at (512) 463-7008. The status of pending Commission rulemakings is available at www.rrc.state.tx.us/rules/proposed.php.

The Commission proposes the amendments pursuant to Texas Utilities Code, §121.211, as amended, which authorizes the Commission to adopt by rule a pipeline safety and regulatory fee not to exceed one dollar for each service line reported by a natural gas distribution system operator on the Gas Distribution Annual Report, Form PHMSA F7100.1-1; by Senate Bill 1, 83rd Legislature (2013), which makes the appropriation of revenue to the natural gas regulatory program contingent upon the Commission increasing the pipeline safety and regulatory program fee; and Texas Government Code, §2001.006, which authorizes a state agency, in preparation for the implementation of legislation that has become law but has not taken effect, to adopt a rule or take other administrative action that the agency determines is necessary or appropriate and that the agency would have been authorized to take had the legislation been in effect at the time of the action.

Texas Utilities Code, §121.211, is affected by the proposed amendments.

Statutory authority: Texas Utilities Code, §121.211, and Texas Government Code, §2001.006.

Cross-reference to statute: Texas Utilities Code, §121.211, and Texas Government Code, §2001.006.

Issued in Austin, Texas, on August 6, 2013.

§8.201. Pipeline Safety and Regulatory Program Fees.

(a) (No change.)

(b) Natural gas distribution systems. The Commission hereby assesses each operator of a natural gas distribution system an annual pipeline safety and regulatory program fee of $1.00 [~~$0.75~~] for each service (service line) in service at the end of each calendar year as reported by each system operator on the U.S. Department of Transportation (DOT) Gas Distribution Annual Report, Form PHMSA F7100.1-1 due on March 15 of each year.

(1) Each operator of a natural gas distribution system shall calculate the annual pipeline safety and regulatory program total to be paid to the Commission by multiplying the $1.00 [~~$0.75~~] fee by the number of services listed in Part B, Section 3, of Form PHMSA F7100.1-1, due on March 15 of each year.

(2) (No change.)

(3) Each operator of a natural gas distribution system shall recover, by a surcharge to its existing rates, the amount the operator paid to the Commission under paragraph (1) of this subsection. The surcharge:

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

(D) shall not exceed $1.00 [~~$0.75~~] per service or service line; and

(E) (No change.)

(4) - (6) (No change.)

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

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

Filed with the Office of the Secretary of State on August 6, 2013.

TRD-201303249
Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 475-1295

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CHAPTER 15. ALTERNATIVE FUELS RESEARCH AND EDUCATION DIVISION

The Railroad Commission of Texas (Commission) proposes the repeal of Chapter 15, Subchapter A, §§15.1, 15.3, 15.5, 15.30, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.75, 15.80, 15.85, 15.90, 15.95, and 15.100; Subchapter B, §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.152, 15.155, 15.160, and 15.165; and Subchapter C, §§15.201, 15.205, 15.210, 15.215, 15.220, 15.225, 15.230, 15.235, 15.240, and 15.245; and proposes new §§15.1 - 15.13, relating to Purpose; Definitions; Establishment and Duration; Availability of Funds; Eligibility; Application; Conditions of Receipt of Rebate or Incentive; Selection of Equipment and Installer; Rebate or Incentive Amount, Minimum Efficiency Factor, or Performance Standard; Verification, Safety, Disallowance, and Refund; Assignment of Rebate or Incentive; Compliance; and Complaints. The Commission also proposes to change the title of Chapter 15 to "Alternative Fuels Programs."

The Commission proposes the repeals and new rules to reflect statutory changes made by House Bill 7 (HB 7), 83rd Legislature (2013, Regular Session), which repealed Texas Natural Resources Code, Chapter 113, Subchapter I, and moved the authority for this program to Texas Natural Resources Code, Chapter 81, §81.0681, which reads (in part): "The commission shall adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state."

Proposed new Chapter 15 will have no subchapters.

The Commission proposes to repeal all the rules in current Subchapter A. These rules concern administration of the Texas LP-gas delivery fee, the AFRED dedicated fund, and the Propane Alternative Fuels Advisory Committee. HB 7 repealed these activities effective June 14, 2013.

The Commission proposes to amend, renumber, and readopt the rules in Subchapter B. These changes are proposed to update statutory references consistent with HB 7. Except as discussed below, most of the wording in the current rules in Subchapter B is retained in the concurrently proposed new rules.

Specifically, in current §15.101, proposed as new §15.1, regarding Purpose, wording is added consistent with §81.0681(a) to describe the types of rebate and incentive programs which may be established under this chapter.

Further, the wording of current §15.105(2), regarding the definition of "applicant," is changed in proposed new §15.2(4), and the definition of "consumer" is not retained in the proposed new rule. The revised definition of applicant consolidates both terms and clarifies that, for the purposes of this chapter, an applicant is a person who has submitted a complete and timely application and who, if such application is approved, will be the legal owner of eligible equipment installed in an eligible installation. The wording of current §15.105(4), regarding the definition of "available funds," is changed in proposed new §15.2(6) to delete the reference to the former AFRED dedicated fund. Proposed definitions for "AED," "AFRED," "Commission," "Director," and "LP-Gas Operations" have the same meanings as defined in current §15.41, which is proposed for repeal.

In current §15.115, proposed as new §15.4, the references to the 50 percent limitation and the former dedicated fund are deleted.

In current §15.120, proposed as new §15.5, regarding Eligibility, wording is added to track §81.0681(a) by requiring applicants to document that the installation for which application is made is or has the potential to be effective in improving the air quality, energy security, or economy of the state in order to be considered eligible for a rebate or incentive under this program.

In current §15.140(b)(6), proposed as new §15.9(b)(6), wording is changed to track §81.0681(a) by listing improvements in air quality, energy security, and the economy of the state as matters the Commission may consider when setting rebate and incentive amounts, and performance standards.

Current §15.152 and §15.165, relating to limitation on water heater rebate advertising, and penalties, respectively, are proposed for repeal and do not have concurrent new rules.

The remaining proposed new rules retain the identical wording as the current rule or include only nonsubstantive changes, such as removing references to a subchapter or correcting a rule number in a citation.

The Commission proposes to repeal all the rules in current Subchapter C. These rules are no longer necessary. They have not been used since 2003. They will be superseded by any new rules the Commission determines are necessary to implement Texas Natural Resources Code, §81.0681.

Dan Kelly, Director, AFRED, has determined that for the first five years that the proposed repeals and new rules will be in effect, there will be no fiscal implications for state or local governments as a result of enforcing or administering the repeals and new rules. The proposed rules will have no additional fiscal impacts on state or local government beyond those resulting from the enactment of HB 7.

Mr. Kelly has also determined that for each year of the first five years the proposed repeals and new rules are in effect, the public benefit anticipated as a result of enforcing or administering the repeals and new rules will be to conform the rules of the Commission's alternative fuels programs to HB 7. There is no anticipated economic cost to persons to comply with the new rules as proposed, since participation in the rebate and incentive program or other Commission marketing, advertising, or informational program is voluntary.

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

The 80th Legislature (2007) adopted HB 3430, which amended Chapter 2006 of the Texas Government Code. As amended, Texas Government Code, §2006.002, relating to Adoption of Rules with Adverse Economic Effect, requires that as a part of the rulemaking process, a state agency prepare an Economic Impact Statement that assesses the potential impact of a proposed rule on small businesses and micro-businesses, and a Regulatory Flexibility Analysis that considers alternative methods of achieving the purpose of the rule if the proposed rule will have an adverse economic effect on small businesses or micro-businesses.

Mr. Kelly has determined that the proposed repeals and new rules will not have an adverse economic effect on small businesses or micro-businesses because participation in the rebate and incentive program or other Commission marketing, advertising, or informational program is voluntary and therefore the analysis described in Texas Government Code, §2006.002, is not required. Mr. Kelly has determined that none of the proposed new rules meet the statutory definition of a major environmental rule as set forth in Texas Government Code, §2001.0225; therefore, a regulatory analysis conducted pursuant to that section is not required.

Comments on the proposal may be submitted to Rules Coordinator, Office of General Counsel, Railroad Commission of Texas, P.O. Box 12967, Austin, Texas 78711-2967; online at www.rrc.state.tx.us/rules/commentform.php; or by electronic mail to rulescoordinator@rrc.state.tx.us. Comments will be accepted until 12:00 p.m. (noon) on Monday, September 23, 2013, to allow the public additional time to comment. The Commission finds that this comment period is reasonable; the proposal, as well as an online comment form, will be available on the Commission's web site no later than the day after the Commission approves publication of the proposal, giving interested persons additional time to review, analyze, draft, and submit comments. The Commission encourages all interested persons to submit comments no later than the deadline. The Commission cannot guarantee that comments submitted after the deadline will be considered. For further information, call Mr. Kelly at (512) 463-7291. The status of Commission rulemakings in progress is available at www.rrc.state.tx.us/rules/proposed.php.

SUBCHAPTER A. GENERAL RULES

16 TAC §§15.1, 15.3, 15.5, 15.30, 15.41, 15.45, 15.50, 15.55, 15.60, 15.65, 15.70, 15.75, 15.80, 15.85, 15.90, 15.95, 15.100

(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 Railroad Commission of Texas or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission proposes the repeals under the Texas Natural Resources Code, §81.0681(a), which requires the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state; §81.0681(b)(2), which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §81.0681(b)(6), which authorizes the Commission to perform other functions the Commission determines are necessary to add a program established by the Commission for the purpose of promoting the use of liquefied petroleum gas, natural gas, or other alternative fuels.

Statutory authority: Texas Natural Resources Code, §81.0681.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81.

Issued in Austin, Texas on August 6, 2013.

§15.1. Purpose.
§15.3. General Provisions.
§15.5. AFRED Forms.
§15.30. Propane Alternative Fuels Advisory Committee.
§15.41. Definitions.
§15.45. Registration of Odorizers, Odorizer Agents, Importers and Importer Agents.
§15.50. Fee on Delivery of Odorized LPG.
§15.55. Report and Remittance of Fees.
§15.60. Exemptions.
§15.65. Odorizer or Importer Refunds.
§15.70. Commission Refund.
§15.75. Penalty for Failure To Report as Required.
§15.80. Civil Penalties.
§15.85. Records.
§15.90. Power of Entry; Audits and Investigations.
§15.95. Procedure for Compliance with or Challenge to Audit Results.
§15.100. Interpretation and Application.

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

Filed with the Office of the Secretary of State on August 6, 2013.

TRD-201303250
Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 475-1295

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SUBCHAPTER B. ALTERNATIVE FUELS CONSUMER REBATE PROGRAM

16 TAC §§15.101, 15.105, 15.110, 15.115, 15.120, 15.125, 15.130, 15.135, 15.140, 15.145, 15.150, 15.152, 15.155, 15.160, 15.165

(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 Railroad Commission of Texas or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission proposes the repeals under the Texas Natural Resources Code, §81.0681(a), which requires the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state; §81.0681(b)(2), which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §81.0681(b)(6), which authorizes the Commission

to perform other functions the Commission determines are necessary to add a program established by the Commission for the purpose of promoting the use of liquefied petroleum gas, natural gas, or other alternative fuels.

Statutory authority: Texas Natural Resources Code, §81.0681.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81.

Issued in Austin, Texas on August 6, 2013.

§15.101. Purpose.
§15.105. Definitions.
§15.110. Establishment; Duration.
§15.115. Availability of Funds.
§15.120. Eligibility.
§15.125. Application.
§15.130. Conditions of Receipt of Rebate.
§15.135. Selection of Equipment and Installer.
§15.140. Rebate Amount; Minimum Efficiency Factor or Performance Standard.
§15.145. Verification; Safety; Disallowance; Refund.
§15.150. Assignment of Rebate.
§15.152. Limitation on Water Heater Rebate Advertising.
§15.155. Compliance.
§15.160. Complaints.
§15.165. Penalties.

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

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Cristina Martinez Self
Rules Attorney, Office of General Counsel
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SUBCHAPTER C. MEDIA REBATE PROGRAM

16 TAC §§15.201, 15.205, 15.210, 15.215, 15.220, 15.225, 15.230, 15.235, 15.240, 15.245

(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 Railroad Commission of Texas or in the Texas Register office, James Earl Rudder Building, 1019 Brazos Street, Austin, Texas.)

The Commission proposes the repeals under the Texas Natural Resources Code, §81.0681(a), which requires the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state; §81.0681(b)(2), which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §81.0681(b)(6), which authorizes the Commission to perform other functions the Commission determines are necessary to add a program established by the Commission for the purpose of promoting the use of liquefied petroleum gas, natural gas, or other alternative fuels.

Statutory authority: Texas Natural Resources Code, §81.0681.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81.

Issued in Austin, Texas on August 6, 2013.

§15.201. Purpose.
§15.205. Definitions.
§15.210. Establishment; Duration.
§15.215. Eligibility.
§15.220. Application.
§15.225. Rebate Percentage and Amount.
§15.230. Verification; Basis of Rebate Calculation.
§15.235. Compliance.
§15.240. Complaints.
§15.245. Penalties.

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

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Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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CHAPTER 15. ALTERNATIVE FUELS PROGRAMS

16 TAC §§15.1 - 15.13

The Commission proposes the new sections under the Texas Natural Resources Code, §81.0681(a), which requires the Commission to adopt all necessary rules relating to activities regarding the use of alternative fuels that are or have the potential to be effective in improving the air quality, energy security, or economy of this state; §81.0681(b)(2), which authorizes the Commission to research, develop, and implement marketing, advertising, and informational programs relating to alternative fuels to make alternative fuels more understandable and readily available to consumers; and §81.0681(b)(6), which authorizes the Commission to perform other functions the Commission determines are necessary to add a program established by the Commission for the purpose of promoting the use of liquefied petroleum gas, natural gas, or other alternative fuels.

Statutory authority: Texas Natural Resources Code, §81.0681.

Cross-reference to statute: Texas Natural Resources Code, Chapter 81.

Issued in Austin, Texas on August 6, 2013.

§15.1. Purpose.

The purpose of this chapter is to establish for purchasers of eligible appliances and equipment rebate and incentive programs that are or have the potential to be effective in improving the air quality, energy security, or economy of this state. This chapter outlines the eligibility requirements for equipment and applicants; application requirements; administrative procedures; and other program terms.

§15.2. Definitions.

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

(1) AED--The Alternative Energy Division.

(2) AFRED--The organizational unit of the AED that administers the commission's alternative fuels research, marketing, and public education programs.

(3) Alternative fuel--Propane, compressed natural gas, or liquefied natural gas.

(4) Applicant--A person who has submitted a complete and timely application and who, if the application is approved, will be the legal owner of eligible equipment installed in an eligible installation.

(5) Application--That set of forms prescribed by the commission for the purpose of applying for and/or assigning a rebate or incentive and participating in the rebate and incentive program as a dealer or equipment supplier, including all required supporting documentation.

(6) Available funds--Money available in the Oil and Gas Regulation and Cleanup Account No. 5155-General Revenue Dedicated, or its successor, in the state treasury, and funds available from gifts and grants related to rebate and incentive programs for eligible equipment.

(7) Commission--The Railroad Commission of Texas.

(8) Director--The director of AFRED or the director's delegate.

(9) Eligible equipment--An appliance, vehicle, or equipment that operates on an alternative fuel, is approved by AFRED, and that is or has the potential to be effective in improving the air quality, energy security, or economy of this state.

(10) Eligible installation--An installation of eligible equipment that takes place on property owned by the applicant and located in this state and that occurs no earlier than the effective date of this chapter and no later than the date of termination of the program established under this chapter.

(11) Installation date--The date on which alternative fuel service for eligible equipment is established.

(12) Dealer--A person who:

(A) has been issued a current Category E LP-gas license, a current Category 3 CNG license, or a current Category 35 LNG license from the LP-Gas Operations section of AED or is an active company representative or operations supervisor on file with the LP-Gas Operations section; and

(B) operates or manages a retail business, including any branch outlet or outlets, delivering an alternative fuel; and

(C) has completed and submitted the form prescribed by the commission for dealer participation in the rebate and incentive program; and

(D) is a regular supplier or a potential regular supplier of an alternative fuel to an applicant.

(13) Equipment supplier--A person who:

(A) has been issued a current Category L or other applicable LP-gas license, a Category 2 or other applicable CNG license, or a Category 45 or other applicable LNG license from the LP-Gas Operations section of AED or is an active company representative or operations supervisor on file with the LP-Gas Operations section; and

(B) operates or manages a retail business, including any branch outlet or outlets, selling, leasing or servicing eligible equipment; and

(C) has completed and submitted the form prescribed by the commission for participation as an equipment supplier in a rebate or incentive program; and

(D) is a regular supplier or a potential regular supplier of eligible equipment to an applicant.

(14) LP-Gas Operations--The organizational unit of the AED that administers the LP-gas safety program, including licensing, truck registration, installation approvals, complaint and accident investigations, inspections of stationary installations and vehicles, and code enforcement.

(15) Safety inspection--An on-site inspection, including any necessary pressure tests, of an operating eligible installation by a dealer, a dealer's designated agent, an equipment supplier, or an equipment supplier's designated agent for the purpose of verifying that the alternative fuel system, including all equipment, is or was installed in compliance with this chapter and with all applicable commission LP-gas, CNG, or LNG safety rules and is in safe operating condition.

§15.3. Establishment and Duration.

The rebate and incentive program is hereby established on the effective date of this chapter. The commission may terminate this program at any time.

§15.4. Availability of Funds.

If funds become unavailable during a program year, the commission may carry over applications until the next program year.

§15.5. Eligibility.

(a) To be eligible for a rebate or incentive under this program, an applicant must document, using forms prescribed by the commission for the purpose, that:

(1) an eligible installation has been performed;

(2) the eligible installation for which application is made is or has the potential to be effective in improving the air quality, energy security, or economy of the state; and

(3) a safety inspection of the eligible installation has been performed.

(b) Installations performed on motor vehicles, travel trailers, mobile homes or manufactured homes that are not in permanent use in this state are not eligible for rebates or incentives under this program.

(c) No more than one rebate or incentive may be paid for each eligible installation.

(d) An applicant may apply for a rebate or incentive for any number of eligible installations.

(e) The commission may limit the total amount of rebates or incentives that may be paid to any applicant.

§15.6. Application.

(a) Forms. Application for a rebate or incentive shall be made on forms prescribed for that purpose by the commission. The application consists of a form verifying the equipment for which the rebate or incentive is being sought. The form may require, for example, the make, model, and serial number of the eligible equipment installed or being replaced; the date and physical address of the installation; the applicant's name, address, and telephone number; and the participating dealer's or equipment supplier's name, address, telephone number, and

Railroad Commission license number. The form requires the signature of the applicant and the Company Representative and, for certain rebate or incentive amounts, the applicant's tax identification number, social security number, or any other identification number as determined by the Comptroller of Public Accounts. The required documentation must show that the equipment for which the rebate or incentive is being sought is installed and operating in the State of Texas in compliance with the commission requirements.

(b) Payment. AFRED may approve payment of a rebate or incentive to an applicant subject to the availability of funds. Applicants have no legal right or other entitlement to receive rebates or incentives under this program, and receipt of a complete and correct application does not bind AFRED to approve payment of a rebate or incentive to any applicant.

(c) Priority. Applications shall be considered on a first-come, first-served basis according to the receipt dates of complete and correct applications. Priority for payment shall be determined by the installation dates recorded on complete and correct applications.

(d) Allocation of payment to fiscal year. The installation date shall determine the fiscal year appropriation from which a rebate or incentive is paid. The commission may obligate or reserve funds to pay a rebate or incentive from funds of a fiscal year other than that in which the installation date occurs.

(e) Acceptance. Applications will be accepted no earlier than the effective date of this rule and no later than the date of termination of the program. An application for a rebate or incentive on domestic equipment, such as an appliance, must be received by AFRED no later than 30 days following the date of the eligible installation to be eligible for a rebate or incentive. An application for a rebate or incentive on a motor vehicle, industrial lift truck, or other industrial equipment must be received by AFRED no later than 60 days following the date of the eligible installation to be eligible for a rebate or incentive. Applications may be mailed to the Railroad Commission of Texas, Alternative Energy Division, P.O. Box 12967, Austin, Texas 78711-2967, or hand-delivered to the Commission at 1701 North Congress Avenue, Austin, Texas 78701. Applications may also be scanned and submitted electronically or submitted by facsimile transmission (FAX).

(f) Installation date. Applications must pertain to eligible installations made not earlier than the effective date of this rule and not later than the program termination date. The installation date is the date that determines whether funds are available and the rebate or incentive amount that is in effect.

(g) Completeness. Applicants must furnish completely and correctly all information required on the official rebate or incentive application. No application may be considered complete until all required information is correct and all forms and required supporting documentation are received by AFRED.

(h) Incomplete applications. Applicants have 30 days from the date AFRED sends notice to correct any errors or omissions on the application. If a complete, correct application is not received by AFRED within 30 days after notice has been sent, the application shall be void.

§15.7. Conditions of Receipt of Rebate or Incentive.

The application forms prescribed by the commission shall include conditions that the applicant agrees:

(1) to practice environmentally sound operating principles;

(2) not to modify the equipment for a period of five years from the date of installation in any way that would materially impair the equipment's performance with respect to energy conservation, energy efficiency or air quality;

(3) not to remove the equipment from this state;

(4) not to remove eligible equipment permanently from service for a period of five years from the date of installation; and

(5) either to allow commission inspection of the installation or to respond completely and accurately to a commission verification survey or questionnaire, or both, pursuant to §15.10 of this title (relating to Verification, Safety, Disallowance, and Refund).

§15.8. Selection of Equipment and Installer.

Selection of eligible equipment and an installer is solely the responsibility of the applicant. The commission will not recommend equipment, dealers or installers.

§15.9. Rebate or Incentive Amount, Minimum Efficiency Factor, or Performance Standard.

(a) The commission shall establish the rebate or incentive amount and may establish a minimum energy efficiency factor or other performance standard, as applicable, for an eligible installation. The commission may change this amount or performance standard at any time. If the commission changes the rebate or incentive amount or performance standard, an applicant whose application is approved will receive the amount that is in effect on the installation date of the eligible installation.

(b) In setting the amount of the rebate or incentive or the performance standard, the commission may consider any or all of the following:

(1) availability of funds;

(2) the effectiveness of the program in increasing alternative fuel use;

(3) dealer participation;

(4) consumer acceptance;

(5) administrative cost; and

(6) air quality, energy security, or economic benefits.

§15.10. Verification, Safety, Disallowance, and Refund.

(a) Upon reasonable notice and at any reasonable time, an inspector, employee or agent of the commission may enter premises where an eligible installation has taken place, to verify compliance with the requirements of the rebate or incentive program and/or commission safety rules. The commission may perform such inspection prior to approving payment of a rebate or incentive.

(b) Either in addition to or instead of verifying compliance by inspection of premises where an eligible installation has taken place, the commission may verify compliance by surveys or questionnaires conducted by telephone, mail or electronic media. The commission may direct the surveys or questionnaires for any particular eligible installation to the dealer, the applicant or both.

(c) No rebate or incentive will be paid for any installation found to be out of compliance. If an installation found to be out of compliance is not brought into compliance within 30 days, the rebate or incentive will be disallowed.

(d) If an installation is found not to be in compliance after payment of a rebate or incentive, the applicant shall have 30 days to bring the installation into compliance. If the installation is not brought into compliance at the end of 30 days, the applicant shall refund the full amount of the rebate or incentive to the commission.

§15.11. Assignment of Rebate or Incentive.

AFRED may authorize payment of a rebate or incentive to a dealer or equipment supplier only by assignment from an applicant. Rebate or incentive amounts assigned shall be those in effect on the installation date of eligible equipment. An applicant may apply to assign a rebate or incentive to a dealer or equipment supplier by completing and submitting the form prescribed for that purpose.

§15.12. Compliance.

(a) An applicant, dealer or equipment supplier may be suspended from or declared ineligible to participate in the rebate and incentive program if, in the judgment of the AFRED director, the applicant, dealer or equipment supplier has submitted false information or otherwise violated a rule in this chapter.

(b) Within 30 days after the AFRED director mails a notice of suspension or ineligibility to an applicant, dealer or equipment supplier, the applicant, dealer or equipment supplier may appeal the suspension or declaration of ineligibility in writing to the commission. Actions taken by the commission with respect to such appeals are final.

§15.13. Complaints.

(a) Any person may file a complaint about an applicant, a dealer or another person regarding alleged violations of rules in this chapter. Complaints should be sent in writing to the director at the address set forth in §15.6(e) of this title (relating to Application).

(b) Complaints that an installation does not comply with the commission's LP-gas, CNG, or LNG safety rules should be sent in writing to the director of LP-Gas Operations at the same address.

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

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Cristina Martinez Self
Rules Attorney, Office of General Counsel
Railroad Commission of Texas
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For further information, please call: (512) 475-1295

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PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) proposes amendments to §25.29, relating to Disconnection of Service, and §25.483, relating to Disconnection of Service. The amendments are proposed pursuant to House Bill 1772, of the 83rd Texas Legislature, Regular Session, enacted in 2013. The purposes of the amendments are to update the responsibilities of retail electric providers and vertically integrated electric utilities to provide notice when electric power to a non-submetered master metered multifamily property is disconnected for non-payment and to establish a mechanism by which a municipality may provide the commission with the contact information of the municipality's authorized representative for such notice of service disconnection. Project Number 41614 is assigned to this proceeding.

David Smithson, Retail Market Analyst, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state and local governments as a result of enforcing or administering the proposed sections.

Mr. Smithson has determined that for each year of the first five years the proposed sections are in effect, the primary public benefits anticipated as a result of enforcement of the proposed sections will be better communication with municipalities to provide notice of impending disconnections of power to non-submetered master metered multifamily properties for nonpayment. Mr. Smithson has determined that for each year of the first five years the proposed sections are in effect the economic cost to persons required to comply with the proposed sections will be limited to the requirement for sellers of retail electric power, specifically retail electric providers and vertically integrated electric utilities, to notify municipalities of pending disconnection of non-submetered master metered multifamily properties if the property is located in a municipality and the municipality establishes a representative to receive the notice.

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

Mr. Smithson has determined that there will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing these sections. Therefore, no regulatory flexibility analysis is required.

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the Administrative Procedure Act, Texas Government Code §2001.029, on Monday, September 9, 2013 at 10:00 a.m. at the commission's offices located in the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 10 days of publication in the *Texas Register.* If requested, notice of a public hearing will be posted under this proceeding, Project Number 41614.

Comments on the proposed sections should be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Friday, September 6, 2013. Sixteen copies of comments are required to be filed pursuant to §22.71(c). Comments should be organized in a manner consistent with the organization of the rule. All comments should refer to Project Number 41614.

SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.29

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 1772, of the 83rd Texas Legislature, Regular Session, that enacted in part new PURA §17.202 and §17.203. The new PURA §17.202 requires a retail electric provider or vertically integrated utility to send a written notice to a municipality before the retail electric provider or vertically integrated utility disconnects electric service to a non-submetered master metered multifamily property for nonpayment if certain conditions apply. The

new PURA §17.203 in part requires the commission to develop, by rule, a mechanism by which a municipality may provide the commission with the contact information of the municipality's authorized representative for receiving notice of electric service disconnection to a non-submetered master metered multifamily property for nonpayment.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and House Bill 1772, of the 83rd Texas Legislature, Regular Session, that enacted in part new PURA §17.202 and §17.203.

§25.29. Disconnection of Service.

(a) - (k) (No change.)

(l) Electric service disconnection of a non-submetered master metered multifamily property.

(1) In this subsection, "non-submetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service that is master metered but not submetered.

(2) An electric utility in an area where customer choice has not been introduced shall send a written notice of service disconnection to a municipality before disconnecting service to a non-submetered master metered multifamily property for nonpayment if:

(A) the property is located in the municipality; and

(B) the municipality establishes an authorized representative to receive the notice as described by paragraph (3) of this subsection.

(3) No later than January 1st of every year, a municipality wishing to receive notice of disconnection of electric service to a non-submetered master metered multifamily property shall provide the commission with the contact information for the municipality's authorized representative referenced by paragraph (2) of this subsection by filing that person's name, telephone number, and email address in P.U.C. Project Number 41614.

(4) After January 1st, but no later than January 30th of every year, the commission shall place onto its public website the contact information received from every municipality pursuant to paragraph (3) of this subsection.

(5) The electric utility shall email the written notice required by this subsection to the municipality's authorized representative not later than the 10th day before the date electric service is scheduled for disconnection.

(6) The customer safeguards provided by this subsection are in addition to safeguards provided by other law or agency rules.

(7) This subsection does not prohibit a municipality or the commission from adopting customer safeguards that exceed the safeguards provided by this chapter.

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

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER R. CUSTOMER PROTECTION RULES FOR RETAIL ELECTRIC SERVICE

16 TAC §25.483

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides authority to the commission to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically House Bill 1772, of the 83rd Texas Legislature, Regular Session, that enacted in part new PURA §17.202 and §17.203. The new PURA §17.202 requires a retail electric provider or vertically integrated utility to send a written notice to a municipality before the retail electric provider or vertically integrated utility disconnects electric service to a non-submetered master metered multifamily property for nonpayment if certain conditions apply. The new PURA §17.203 in part requires the commission to develop, by rule, a mechanism by which a municipality may provide the commission with the contact information of the municipality's authorized representative for receiving notice of electric service disconnection to a non-submetered master metered multifamily property for nonpayment.

Cross Reference to Statutes: Public Utility Regulatory Act §14.002 and House Bill 1772, of the 83rd Texas Legislature, Regular Session, that enacted in part new PURA §17.202 and §17.203.

§25.483. Disconnection of Service.

(a) - (n) (No change.)

(o) Electric service disconnection of a non-submetered master metered multifamily property.

(1) In this subsection, "non-submetered master metered multifamily property" means an apartment, a leased or owner-occupied condominium, or one or more buildings containing at least 10 dwellings that receive electric utility service that is master metered but not submetered.

(2) A REP shall send a written notice of service disconnection to a municipality before disconnecting service to a non-submetered master metered multifamily property for nonpayment if:

(A) the property is located in the municipality; and

(B) the municipality establishes an authorized representative to receive the notice as described by paragraph (3) of this subsection.

(3) No later than January 1st of every year, a municipality wishing to receive notice of disconnection of electric service to a non-submetered master metered multifamily property shall provide the commission with the contact information for the municipality's authorized representative referenced by paragraph (2) of this subsection by filing that person's name, telephone number, and email address in P.U.C. Project Number 41614.

(4) After January 1st, but no later than January 30th of every year, the commission shall place onto its public website the contact

information received from every municipality pursuant to paragraph (3) of this subsection.

(5) The retail electric provider shall email the written notice required by this subsection to the municipality's authorized representative not later than the 10th day before the date electric service is scheduled for disconnection.

(6) The customer safeguards provided by this subchapter are in addition to safeguards provided by other law or agency rules.

(7) This subsection does not prohibit a municipality or the commission from adopting customer safeguards that exceed the safeguards provided by this chapter.

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

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Rules Coordinator
Public Utility Commission of Texas
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For further information, please call: (512) 936-7223

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SUBCHAPTER B. CUSTOMER SERVICE AND PROTECTION

16 TAC §25.43

The Public Utility Commission of Texas (commission) proposes an amendment to §25.43, relating to Provider of Last Resort (POLR), for the limited purposes of allowing a Large Service Provider (LSP) to request the commission designate another REP that is affiliated with the LSP and meets certain criteria to provide POLR service on behalf of the LSP, delete dated language, and make minor grammatical changes. These amendments constitute competition rules subject to judicial review as specified in PURA §39.001(e). Project Number 41277 is assigned to this proceeding.

Cliff Crouch, Retail Market Analyst, Competitive Markets Division, has determined that for each year of the first five-year period the proposed section is in effect, there will be no fiscal implications for state or local government as a result of enforcing or administering the amendments.

Mr. Crouch has determined that for each year of the first five years that the proposed section is in effect the public benefit anticipated as a result of enforcing the section will be that LSPs will realize efficiencies associated with providing POLR service through an approved affiliate and this will result in POLR customers benefitting by receiving more consistent POLR service throughout the ERCOT service area.

No adverse economic effect is anticipated on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with this section as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested pursuant to the APA, Texas Government Code §2001.029, in the Commissioners' Hearing Room located on the 7th floor of the William B. Travis Building, 1701 North Congress Avenue, Austin, Texas 78701 on Wednesday, October 9, 2013 at 10:00 a.m. The request for a public hearing must be received by Monday, September 30, 2013.

Initial comments on the proposed section may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Monday, September 30, 2013. Reply comments may be submitted by Monday, October 14, 2013. Sixteen copies of comments and reply comments on the proposed section is required to be filed pursuant to §22.71(c) of this title. Initial and reply comments should be organized in a manner consistent with the organization of the amendments. All comments should refer to Project Number 41277.

The amendment is proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; §39.101, which requires the commission to ensure that retail customer protections are established that entitle a customer to safe, reliable, and reasonably priced electricity, and other protections; and §39.106, which requires that the commission designate POLRs.

Cross Reference to Statutes: PURA §§14.002, 39.101, and 39.106.

§25.43. Provider of Last Resort (POLR).

(a) (No change.)

(b) Application. The provisions of this section relating to the selection of REPs providing POLR service apply to all REPs that are serving retail customers in transmission and distribution utility (TDU) service areas. This section does not apply when an electric cooperative or a municipally owned utility (MOU) designates a POLR provider for its certificated service area. However, this section is applicable when an electric cooperative delegates its authority to the commission in accordance with subsection (r) [~~(q)~~] of this section to select a POLR provider for the electric cooperative's service area. All filings made with the commission pursuant to this section, including filings subject to a claim of confidentiality, shall be filed with the commission's Filing Clerk in accordance with the commission's Procedural Rules, Chapter 22, Subchapter E, of this title (relating to Pleadings and other Documents).

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

(1) Affiliate--As defined in §25.107 of this title (relating to Certification of Retail Electric Providers (REPs)).

(2) [~~(1)~~] Basic firm service--Electric service that is not subject to interruption for economic reasons and that does not include value-added options offered in the competitive market. Basic firm service excludes, among other competitively offered options, emergency or back-up service, and stand-by service. For purposes of this definition, the phrase "interruption for economic reasons" does not mean disconnection for non-payment.

(3) [~~(2)~~] Billing cycle--A period bounded by a start date and stop date that REPs and TDUs use to determine when a customer used electric service.

(4) [~~(3)~~] Billing month--Generally a calendar accounting period (approximately 30 days) for recording revenue, which may or may not coincide with the period a customer's consumption is recorded through the customer's meter.

(5) [~~(4)~~] Business day--As defined by the ERCOT Protocols.

(6) [~~(5)~~] Large non-residential customer--A non-residential customer who had a peak demand in the previous 12-month period at or above one megawatt (MW).

(7) [~~(6)~~] Large service provider (LSP)--A REP that is designated to provide POLR service pursuant to subsection (j) of this section.

(8) [~~(7)~~] Market-based product--For purposes of this section, a rate for residential customers that is derived by applying a positive or negative multiplier to the rate described in subsection (m)(2) [~~(1)(2)~~] of this section is not a market-based product.

(9) [~~(8)~~] Mass transition--The transfer of customers as represented by ESI IDs from a REP to one or more POLR providers pursuant to a transaction initiated by the independent organization that carries the mass transition (TS) code or other code designated by the independent organization.

(10) [~~(9)~~] Medium non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of 50 kilowatt (kW) or greater, but less than 1,000 kW.

(11) [~~(10)~~] POLR area--The service area of a TDU in an area where customer choice is in effect.

(12) [~~(11)~~] POLR provider--A volunteer retail electric provider (VREP) or LSP that may be required to provide POLR service pursuant to this section.

(13) [~~(12)~~] Residential customer--A retail customer classified as residential by the applicable TDU tariff or, in the absence of classification under a tariff, a retail customer who purchases electricity for personal, family, or household purposes.

(14) [~~(13)~~] Transitioned customer--A customer as represented by ESI IDs that is served by a POLR provider as a result of a mass transition under this section.

(15) [~~(14)~~] Small non-residential customer--A non-residential retail customer who had a peak demand in the previous 12-month period of less than 50 kW.

(16) [~~(15)~~] Voluntary retail electric provider (VREP)--A REP that has volunteered to provide POLR service pursuant to subsection (i) of this section.

(d) POLR service.

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

(6) Each LSP's customer billing for residential customers taking POLR service under a rate prescribed by subsection (m)(2) [~~(1)(2)~~] of this section shall contain notice to the customer that other competitive products or services may be available from the LSP or another REP. The notice shall also include contact information for the LSP, and the Power to Choose website, and shall include a notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to an [a] LSP, a description of the purpose and nature of POLR service, and explaining that more information on competitive markets can be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839).

(e) Standards of service.

(1) An LSP designated to serve a class in a given POLR area shall serve any eligible customer requesting POLR service or assigned to the LSP pursuant to a mass transition in accordance with the Standard Terms of Service in subsection (f)(1) of this section for the provider customer's class. However, in lieu of providing terms of service to a transitioned customer under subsection (f) of this section and under a rate prescribed by subsection (m)(2) [~~(1)(2)~~] of this section an LSP may at its discretion serve the customer pursuant to a market-based month-to-month product, provided it serves all transitioned customers in the same class and POLR area pursuant to the product.

(2) (No change.)

(3) An LSP that has received commission approval to designate one of its affiliates to provide POLR service on behalf of the LSP pursuant to subsection (k) of this section shall retain responsibility for the provision of POLR service by the LSP affiliate and remains liable for violations of applicable laws and commission rules for all POLR service activities conducted on its behalf by the LSP affiliate.

(f) Customer information.

(1) The Standard Terms of Service prescribed in subparagraphs (A) - (D) of this paragraph apply to POLR service provided by an LSP under a rate prescribed by subsection (m)(2) [~~(1)(2)~~] of this section.

(A) - (D) (No change.)

(2) An LSP providing service under a rate prescribed by subsection (m)(2) [~~(1)(2)~~] of this section shall provide each new customer the applicable Standard Terms of Service. Such Standard Terms of Service shall be updated as required under §25.475(f) of this title (relating to General Retail Electric Provider Requirements and Information Disclosures to Residential and Small Commercial Customers).

(g) General description of POLR service provider selection process.

(1) All REPs shall provide information to the commission in accordance with subsection (h)(1) of this section. Based on this information, the commission's designated representative shall designate REPs that are eligible to serve as POLR providers in areas of the state in which customer choice is in effect, except that the commission shall not designate POLR providers in the service areas of MOUs or electric cooperatives unless an electric cooperative has delegated to the commission its authority to designate the POLR provider, in accordance with subsection (r) [~~(q)~~] of this section.

(2) (No change.)

(h) REP eligibility to serve as a POLR provider. In each even-numbered year, the commission shall determine the eligibility of certified REPs to serve as POLR providers for a term scheduled to commence in January of the next year. POLR providers [~~On a schedule to be determined by the commission, POLR providers shall be designated to complete the 2009-2010 period pursuant to the requirements of this section. REPs designated to provide service as of February 26, 2009 may continue providing such service pursuant to the requirements of this section as they existed prior to the 2009 re-adoption of this section, until such time as new POLR providers are required to provide service pursuant to the current requirements of this section. POLRs~~] may serve

customers on a market-based, month-to-month rate and provide notice pursuant to the provisions of this section as of this section's effective date.

(1) All REPs shall provide information to the commission necessary to establish their eligibility to serve as a POLR provider for the next term[~~, except that for the 2009-2010 term, the information already provided for that term shall serve this purpose. Starting with the 2011-2012 term~~] REPs shall file, by July 10th, of each even-numbered year, by service area, information on the classes of customers they provide service to, and for each customer class, the number of ESI IDs the REP serves and the retail sales in megawatt-hours for the annual period ending March 31 of the current year. As part of that filing, a REP may request that the commission designate one of its affiliates to provide POLR service on its behalf pursuant to subsection (k) of this section in the event that the REP is designated as an LSP. The independent organization shall provide to the commission the total number of ESI ID and total MWh data for each class. All REPs shall also provide information on their technical capability and financial ability to provide service to additional customers in a mass transition. The commission's determination regarding eligibility of a REP to serve as POLR provider under the provisions of this section shall not be considered confidential information.

(2) - (5) (No change.)

(i) (No change.)

(j) LSPs. This subsection governs the selection and service of REPs as LSPs.

(1) (No change.)

(2) In each POLR area, for each customer class, the commission shall designate up to 15 LSPs. The eligible REPs that have the greatest market share based upon retail sales in megawatt-hours, by customer class and POLR area shall be designated as LSPs. Commission staff shall designate the LSPs by October 15th of each even-numbered year, based upon the data submitted to the commission under subsection (h) of this section. Designation as a VREP does not affect a REP's eligibility to also serve as an [~~a~~] LSP.

(3) (No change.)

(4) An LSP serving transitioned residential and small non-residential customers under a rate prescribed by subsection (m)(2) [~~(l)(2)~~] of this section shall move such customers to a market-based month-to-month product, with pricing for such product to be effective no later than either the 61st day of service by the LSP or beginning with the customer's next billing cycle date following the 60th day of service by the LSP. For each transition event, all such transitioned customers in the same class and POLR area must be served pursuant to the same product terms, except for those customers specified in subparagraph (B) of this paragraph.

(A) The notice required by §25.475(d) of this title to inform the customers of the change to a market-based month-to-month product may be included with the notice required by subsection (t)(3) [~~(s)(3)~~] of this section or may be provided 14 days in advance of the change. If the §25.475(d) notice is included with the notice required by subsection (t)(3) [~~(s)(3)~~] of this section, the LSP may state that either or both the terms of service document and EFL for the market-based month-to-month product shall be provided at a later time, but no later than 14 days before their effective date.

(B) (No change.)

(5) (No change.)

(k) Designation of an LSP affiliate to provide POLR service on behalf of an LSP.

(1) An LSP may request the commission designate an LSP affiliate to provide POLR service on behalf of the LSP either with the LSP's filing under subsection (h) of this section or as a separate filing in the current term project. The filing shall be made at least 30 days prior to the date when the LSP affiliate is to begin providing POLR service on behalf of the LSP. To be eligible to provide POLR service on behalf of an LSP, the LSP affiliate must have an executed delivery service agreement with the service area TDU and meet the requirements of subsection (h)(2) of this section, with the exception of subsection (h)(2)(B), (C), (D), and (E) of this section as related to serving customers in the applicable customer class.

(2) The request shall include the name and certificate number of the LSP affiliate, information demonstrating the affiliation and certified agreement from an officer of the LSP affiliate that the LSP affiliate agrees to provide POLR service on behalf of the LSP.

(3) Commission staff shall make an initial determination of the eligibility of the LSP affiliate to provide POLR service on behalf of an LSP and publish their names. The LSP or LSP affiliate may challenge commission staff's eligibility determination within five business days of the notice of eligibility by submitting to commission staff additional evidence of its capability to provide POLR service on behalf of the LSP. Commission staff shall reassess the LSP affiliate's eligibility and notify the LSP and LSP affiliate of any change in eligibility status within 10 business days of the receipt of the additional documentation. If the LSP or LSP affiliate does not agree with staff's determination of eligibility, either or both may then appeal the determination to the commission through a contested case. The LSP shall provide POLR service during the pendency of the contested case.

(4) ERCOT or a TDU may challenge an LSP affiliate's eligibility to provide POLR service on behalf of an LSP. If ERCOT or a TDU has reason to believe that an LSP affiliate is not eligible or is not performing POLR responsibilities on behalf of an LSP, ERCOT or the TDU shall make a filing with the commission detailing the basis for its concerns and shall provide a copy of the filing to the LSP and the LSP affiliate that are the subject of the filing. If the filing contains confidential information, ERCOT or the TDU shall file it in accordance with §25.71 of this title (relating to General Procedures, Requirements and Penalties). Commission staff shall review the filing and if commission staff concludes that the LSP affiliate should not be allowed to provide POLR service on behalf of the LSP, it shall request that the LSP affiliate demonstrate that it has the capability. The commission staff shall review the LSP affiliate's filing and may initiate a proceeding with the commission to disqualify the LSP affiliate from providing POLR service. The LSP affiliate may continue providing service to existing POLR ESI IDs during the pendency of the proceeding; however, the LSP shall immediately assume responsibility to provide service under this section to customers who request POLR service, or are transferred to the POLR provider, individually or through a mass transition, during the pendency of the proceeding.

(5) Designation of an affiliate to provide POLR service on behalf of an LSP shall not change the number of ESI IDs served or the retail sales in megawatt-hours for the LSP for the reporting period nor does such designation relieve the LSP of its POLR service obligations in the event that the LSP affiliate fails to provide POLR service in accordance with the commission rules.

(6) The designated LSP affiliate shall provide POLR service and all reports as required by the commission's rules on behalf of the LSP.

(7) The methodology used by a designated LSP affiliate to calculate POLR rates shall be consistent with the methodology used to calculate LSP POLR rates in subsection (m) of this section.

(8) If the commission staff determines that an LSP affiliate designated to provide POLR service on behalf of an LSP fails to meet the POLR service requirements, the obligation to provide POLR service shall revert back from the LSP affiliate to the LSP. The LSP will then be responsible for providing POLR service to ESI IDs that had been served by the LSP affiliate as well as any new POLR service.

(9) An LSP may elect to reassume provisioning of POLR service from the LSP affiliate by filing a reversion notice with the commission and notifying ERCOT at least 30 days in advance.

(l) [~~(k)~~] Mass transition of customers to POLR providers. The transfer of customers to POLR providers shall be consistent with this subsection.

(1) ERCOT shall first transfer customers to VREPs, up to the number of ESI IDs that each VREP has offered to serve for each customer class in the POLR area. ERCOT shall use the VREP list to assign ESI IDs to the VREPs in a non-discriminatory manner, before assigning customers to the LSPs. A VREP shall not be assigned more ESI IDs than it has indicated it is willing to serve pursuant to subsection (i) of this section. To ensure non-discriminatory assignment of ESI IDs to the VREPs, ERCOT shall:

(A) Sort ESI IDs by POLR area;

(B) Sort ESI IDs by customer class;

(C) Sort ESI IDs numerically;

(D) Sort VREPs numerically by randomly generated number; and

(E) Assign ESI IDs in numerical order to VREPs, in the order determined in subparagraph (D) of this paragraph, in accordance with the number of ESI IDs each VREP indicated a willingness to serve pursuant to subsection (i) of this section. If the number of ESI IDs is less than the total that the VREPs indicated that they are willing to serve, each VREP shall be assigned a proportionate number of ESI IDs, as calculated by dividing the number that each VREP indicated it was willing to serve by the total that all VREPs indicated they were willing to serve, multiplying the result by the total number of ESI IDs being transferred to the VREPs, and rounding to a whole number.

(2) If the number of ESI IDs exceeds the amount the VREPs are designated to serve, ERCOT shall assign remaining ESI IDs to LSPs in a non-discriminatory fashion, in accordance with their percentage of market share based upon retail sales in megawatt-hours, on a random basis within a class and POLR area, except that a VREP that is also an LSP that volunteers to serve at least 1% of its market share for a class of customers in a POLR area shall be exempt from the LSP allocation up to 1% of the class and POLR area. To ensure non-discriminatory assignment of ESI IDs to the LSPs, ERCOT shall:

(A) Sort the ESI IDs in excess of the allocation to VREPs, by POLR area;

(B) Sort ESI IDs in excess of the allocation to VREPs, by customer class;

(C) Sort ESI IDs in excess of the allocation to VREPs, numerically;

(D) Sort LSPs, except LSPs that volunteered to serve 1% of their market share as a VREP, numerically by MWhs served;

(E) Assign ESI IDs that represent no more than 1% of the total market for that POLR area and customer class less the ESI IDs assigned to VREPs that volunteered to serve at least 1% of their market share for each POLR area and customer class in numerical order to LSPs designated in subparagraph (D) of this paragraph, in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs;

(F) Sort LSPs, including any LSPs previously excluded under subparagraph (D) of this paragraph; and

(G) Assign all remaining ESI IDs in numerical order to LSPs in proportion to the percentage of MWhs served by each LSP to the total MWhs served by all LSPs.

(3) Each mass transition shall be treated as a separate event.

(m) [~~(l)~~] Rates applicable to POLR service.

(1) A VREP shall provide service to customers using a market-based, month-to-month product. The VREP shall use the same market-based, month-to-month product for all customers in a mass transition that are in the same class and POLR area.

(2) Subparagraphs (A) - (C) of this paragraph establish the maximum rate for POLR service charged by an LSP. An LSP may charge a rate less than the maximum rate if it charges the lower rate to all customers in a mass transition that are in the same class and POLR area.

(A) Residential customers. The LSP rate for the residential customer class shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, reliability unit commitment (RUC) capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge shall be $0.06 per kWh.

(iii) LSP energy charge shall be the sum over the billing period of the actual hourly Real-Time Settlement Point Prices (RTSPPs) for the customer's load zone that is multiplied by the number of kWhs the customer used during that hour and that is further multiplied by 120%.

(iv) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

(v) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vi) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the

preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(B) Small and medium non-residential customers. The LSP rate for the small and medium non-residential customer classes shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and kW used, where appropriate.

(ii) LSP customer charge shall be $0.025 per kWh.

(iii) LSP demand charge shall be $2.00 per kW, per month, for customers that have a demand meter, and $50.00 per month for customers that do not have a demand meter.

(iv) LSP energy charge shall be the sum over the billing period of the actual hourly RTSPPs, for the customer's load zone that is multiplied by number of kWhs the customer used during that hour and that is further multiplied by 125%.

(v) "Actual hourly RTSPP" is an hourly rate based on a simple average of the actual interval RTSPPs over the hour.

(vi) "Number of kWhs the customer used" is based either on interval data or on an allocation of the customer's total actual usage to the hour based on a ratio of the sum of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the hour to the total of the ERCOT backcasted profile interval usage data for the customer's profile type and weather zone over the customer's entire billing period.

(vii) For each billing period, if the sum over the billing period of the actual hourly RTSPP for a customer multiplied by the number of kWhs the customer used during that hour falls below the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period, then the LSP energy charge shall be the simple average of the RTSPPs for the load zone located partially or wholly in the customer's TDU service territory that had the highest simple average price over the 12-month period ending September 1 of the preceding year multiplied by the number of kWhs the customer used during the customer's billing period multiplied by 125%. This methodology shall apply until the commission issues an order suspending or modifying the operation of the floor after conducting an investigation.

(C) Large non-residential customers. The LSP rate for the large non-residential customer class shall be determined by the following formula: LSP rate (in $ per kWh) = (Non-bypassable charges + LSP customer charge + LSP demand charge + LSP energy charge) / kWh used Where:

(i) Non-bypassable charges shall be all TDU charges and credits for the appropriate customer class in the applicable service territory, and other charges including ERCOT administrative charges, nodal fees or surcharges, RUC capacity short charges attributable to LSP load, and applicable taxes from various taxing or regulatory authorities, multiplied by the level of kWh and KW used, where appropriate.

(ii) LSP customer charge shall be $2,897.00 per month.

(iii) LSP demand charge shall be $6.00 per kW, per month.

(iv) LSP energy charge shall be the appropriate RTSPP, determined on the basis of 15-minute intervals, for the customer multiplied by 125%, multiplied by the level of kilowatt-hours used. The energy charge shall have a floor of $7.25 per MWh.

(3) If in response to a complaint or upon its own investigation, the commission determines that an [~~a~~] LSP failed to charge the appropriate rate prescribed by paragraph (2) of this subsection, and as a result overcharged its customers, the LSP shall issue refunds to the specific customers who were overcharged.

(4) On a showing of good cause, the commission may permit the LSP to adjust the rate prescribed by paragraph (2) of this subsection, if necessary to ensure that the rate is sufficient to allow the LSP to recover its costs of providing service. Notwithstanding any other commission rule to the contrary, such rates may be adjusted on an interim basis for good cause shown and after at least 10 business days' notice and an opportunity for hearing on the request for interim relief. Any adjusted rate shall be applicable to all LSPs charging the rate prescribed by paragraph (2) of this subsection to the specific customer class, within the POLR area that is subject to the adjustment.

(5) For transitioned customers, the customer and demand charges associated with the rate prescribed by paragraph (3) of this subsection shall be pro-rated for partial month usage if a large non-residential customer switches from the LSP to a REP of choice.

(n) [~~(m)~~] Challenges to customer assignments. A POLR provider is not obligated to serve a customer within a customer class or a POLR area for which the REP is not designated as a POLR provider, after a successful challenge of the customer assignment. A POLR provider shall use the ERCOT market variance resolution tool to challenge a customer class assignment with the TDU. The TDU shall make the final determination based upon historical usage data and not premise type. If the customer class assignment is changed and a different POLR provider for the customer is determined appropriate, the customer shall then be served by the appropriate POLR provider. Back dated transactions may be used to correct the POLR assignment.

(o) [~~(n)~~] Limitation on liability. The POLR providers shall make reasonable provisions to provide service under this section to customers who request POLR service, or are transferred to the POLR provider, individually or through a mass transition; however, liabilities not excused by reason of force majeure or otherwise shall be limited to direct, actual damages.

(1) Neither the customer nor the POLR provider shall be liable to the other for consequential, incidental, punitive, exemplary, or indirect damages. These limitations apply without regard to the cause of any liability or damage.

(2) In no event shall ERCOT or a POLR provider be liable for damages to any REP, whether under tort, contract or any other theory of legal liability, for transitioning or attempting to transition a customer from such REP to the POLR provider to carry out this section, or for marketing, offering or providing competitive retail electric service to a customer taking service under this section from the POLR provider.

(p) [~~(o)~~] REP obligations in a transition of customers to POLR service.

(1) A customer may initiate service with an LSP by requesting such service at the rate prescribed by subsection (m)(2) [~~(1)(2)~~] of this section with any LSP that is designated to serve the requesting customer's customer class within the requesting customer's service area. An LSP cannot refuse a customer's request to make arrangements for POLR service, except as otherwise permitted under this title.

(2) The POLR provider is responsible for obtaining resources and services needed to serve a customer once it has been notified that it is serving that customer. The customer is responsible for charges for service under this section at the rate in effect at that time.

(3) If a REP terminates service to a customer, or transitions a customer to a POLR provider, the REP is financially responsible for the resources and services used to serve the customer until it notifies the independent organization of the termination or transition of the service and the transfer to the POLR provider is complete.

(4) The POLR provider is financially responsible for all costs of providing electricity to customers from the time the transfer or initiation of service is complete until such time as the customer ceases taking service under this section.

(5) A defaulting REP whose customers are subject to a mass transition event shall return the customers' deposits within seven calendar days of the initiation of the transition.

(6) ERCOT shall create a single standard file format and a standard set of customer billing contact data elements that, in the event of a mass transition, shall be used by the exiting REP and the POLRs to send and receive customer billing contact information. The process, as developed by ERCOT shall be tested on a periodic basis. All REPs shall submit timely, accurate, and complete files, as required by ERCOT in a mass transition event, as well as for periodic testing. The commission shall establish a procedure for the verification of customer information submitted by REPs to ERCOT. ERCOT shall notify the commission if any REP fails to comply with the reporting requirements in this subsection.

(7) When customers are to be transitioned or assigned to a POLR provider, the POLR provider may request usage and demand data, and customer contact information including email, telephone number, and address from the appropriate TDU and from ERCOT, once the transition to the POLR provider has been initiated. Customer proprietary information provided to a POLR provider in accordance with this section shall be treated as confidential and shall only be used for mass transition related purposes.

(8) Information from the TDU and ERCOT to the POLR providers shall be provided in Texas SET format when Texas SET transactions are available. However, the TDU or ERCOT may supplement the information to the POLR providers in other formats to expedite the transition. The transfer of information in accordance with this section shall not constitute a violation of the customer protection rules that address confidentiality.

(9) A POLR provider may require a deposit from a customer that has been transitioned to the POLR provider to continue to serve the customer. Despite the lack of a deposit, the POLR provider is obligated to serve the customer transitioned or assigned to it, beginning on the service initiation date of the transition or assignment, and continuing until such time as any disconnection request is effectuated by the TDU. A POLR provider may make the request for deposit before it begins serving the customer, but the POLR provider shall begin providing service to the customer even if the service initiation date is before it receives the deposit - if any deposit is required. A POLR provider shall not disconnect the customer until the appropriate time period to submit the deposit has elapsed. For the large non-residential customer class, a POLR provider may require a deposit to be provided in three calendar days. For the residential customer class, the POLR provider may require a deposit to be provided after 15 calendar days of service if the customer received 10 days' notice that a deposit was required. For all other customer classes, the POLR provider may require a deposit to be provided in 10 calendar days. The POLR provider may waive the deposit requirement at the customer's request if deposits are waived in a non-discriminatory fashion. If the POLR provider obtains sufficient data, it shall determine whether a residential customer has satisfactory credit based on the criteria the POLR provider routinely applies to its other residential customers. If the customer has satisfactory credit, the POLR provider shall not request a deposit from the residential customer.

(A) At the time of a mass transition, the Executive Director or staff designated by the Executive Director shall distribute available proceeds from an irrevocable stand-by letter of credit in accordance with the priorities established in §25.107(f)(6) of this title. These funds shall first be used to provide deposit payment assistance for transitioned customers enrolled in the rate reduction program pursuant to §25.454 of this title (relating to Rate Reduction Program). The Executive Director or staff designee shall, at the time of a transition event, determine the reasonable deposit amount up to $400 per customer ESI ID, unless good cause exists to increase the level of the reasonable deposit amount above $400. Such reasonable deposit amount may take into account factors such as typical residential usage and current retail residential prices, and, if fully funded, shall satisfy in full the customers' initial deposit obligation to the VREP or LSP.

(B) The Executive Director or the staff designee shall distribute available proceeds pursuant to §25.107(f)(6) of this title to VREPs proportionate to the number of customers they received in the mass transition, who at the time of the transition are enrolled in the rate reduction program pursuant to §25.454 of this title, up to the reasonable deposit amount set by the Executive Director or staff designee. If funds remain available after distribution to the VREPs, the remaining funds shall be distributed to the appropriate LSPs by dividing the amount remaining by the number of low income customers allocated to LSPs, up to the reasonable deposit amount set by the Executive Director or staff designee.

(C) If the funds distributed in accordance with §25.107(f)(6) of this title do not equal the reasonable deposit amount determined, the VREP and LSP may request from the customer payment of the difference between the reasonable deposit amount and the amount distributed. Such difference shall be collected in accordance with §25.478(e)(3) of this title (relating to Credit Requirements and Deposits) that allows an eligible customer to pay its deposit in two equal installments provided that:

(i) The amount distributed shall be considered part of the first installment and the VREP or LSP shall not request an additional first deposit installment amount if the amount distributed is at least 50% of the reasonable deposit amount; and

(ii) A VREP or LSP may not request payment of any remaining difference between the reasonable deposit amount and the distributed deposit amount sooner than 40 days after the transition date.

(D) Notwithstanding §25.478(d) of this title, 90 days after the transition date, the VREP or LSP may request payment of an amount that results in the total deposit held being equal to what the VREP or LSP would otherwise have charged a customer in the same customer class and service area in accordance with §25.478(e) of this title, at the time of the transition.

(10) On the occurrence of one or more of the following events, ERCOT shall initiate a mass transition to POLR providers, of all of the customers served by a REP:

(A) Termination of the Load Serving Entity (LSE) or Qualified Scheduling Entity (QSE) Agreement for a REP with ERCOT;

(B) Issuance of a commission order recognizing that a REP is in default under the TDU Tariff for Retail Delivery Service;

(C) Issuance of a commission order de-certifying a REP;

(D) Issuance of a commission order requiring a mass transition to POLR providers;

(E) Issuance of a judicial order requiring a mass transition to POLR providers; and

(F) At the request of a REP, for the mass transition of all of that REP's customers.

(11) A REP shall not use the mass transition process in this section as a means to cease providing service to some customers, while retaining other customers. A REP's improper use of the mass transition process may lead to de-certification of the REP.

(12) ERCOT may provide procedures for the mass transition process, consistent with this section.

(13) A mass transition under this section shall not override or supersede a switch request made by a customer to switch an ESI ID to a new REP of choice, if the request was made before a mass transition is initiated. If a switch request has been made but is scheduled for any date after the next available switch date, the switch shall be made on the next available switch date.

(14) Customers who are mass transitioned shall be identified for a period of 60 calendar days. The identification shall terminate at the first completed switch or at the end of the 60-day period, whichever is first. If necessary, ERCOT system changes or new transactions shall be implemented no later than 14 months from the effective date of this section to communicate that a customer was acquired in a mass transition and is not charged the out-of-cycle meter read pursuant to paragraph (16) of this subsection. To the extent possible, the systems changes should be designed to ensure that the 60-day period following a mass transition, when a customer switches away from a POLR provider, the switch transaction is processed as an unprotected, out-of-cycle switch, regardless of how the switch was submitted.

(15) In the event of a transition to a POLR provider or away from a POLR provider to a REP of choice, the switch notification notice detailed in §25.474(l) of this title (relating to Selection of Retail Electric Provider) is not required.

(16) In a mass transition event, the ERCOT initiated transactions shall request an out-of-cycle meter read for the associated ESI IDs for a date two calendar days after the calendar date ERCOT initiates such transactions to the TDU. If an ESI ID does not have the capability to be read in a fashion other than a physical meter read, the out-of-cycle meter read may be estimated. An estimated meter read for the purpose of a mass transition to a POLR provider shall not be considered a break in a series of consecutive months of estimates, but shall not be considered a month in a series of consecutive estimates performed by the TDU. A TDU shall create a regulatory asset for the TDU fees associated with a mass transition of customers to a POLR provider pursuant to this subsection. Upon review of reasonableness and necessity, a reasonable level of amortization of such regulatory asset shall be included as a recoverable cost in the TDU's rates in its next rate case or such other rate recovery proceeding as deemed necessary. The TDU shall not bill as a discretionary charge, the costs included in this regulatory asset, which shall consist of the following:

(A) fees for out-of-cycle meter reads associated with the mass transition of customers to a POLR provider; and

(B) fees for the first out-of-cycle meter read provided to a customer who transfers away from a POLR provider, when the out-of-cycle meter read is performed within 60 calendar days of the date of the mass transition and the customer is identified as a transitioned customer.

(17) In the event the TDU estimates a meter read for the purpose of a mass transition, the TDU shall perform a true-up evaluation of each ESI ID after an actual meter reading is obtained. Within 10 days after the actual meter reading is obtained, the TDU shall calculate the actual average kWh usage per day for the time period from the most previous actual meter reading occurring prior to the estimate for the purpose of a mass transition to the most current actual meter reading occurring after the estimate for the purpose of mass transition. If the average daily estimated usage sent to the exiting REP is more than 50% greater than or less than the average actual kWh usage per day, the TDU shall promptly cancel and re-bill both the exiting REP and the POLR using the average actually daily usage.

(q) [~~(p)~~] Termination of POLR service provider status.

(1) The commission may revoke a REP's POLR status after notice and opportunity for hearing:

(A) If the POLR provider fails to maintain REP certification;

(B) If the POLR provider fails to provide service in a manner consistent with this section;

(C) The POLR provider fails to maintain appropriate financial qualifications; or

(D) For other good cause.

(2) If an LSP defaults or has its status revoked before the end of its term, after a review of the eligibility criteria, the commission staff designee shall, as soon as practicable, designate the next eligible REP, if any, as an LSP, based on the criteria in subsection (j) of this section.

(3) At the end of the POLR service term, the outgoing LSP shall continue to serve customers who have not selected another REP.

(r) [~~(q)~~] Electric cooperative delegation of authority. An electric cooperative that has adopted customer choice may select to delegate to the commission its authority to select POLR providers under PURA §41.053(c) in its certificated service area in accordance with this section. After notice and opportunity for comment, the commission shall, at its option, accept or reject such delegation of authority. If the commission accepts the delegation of authority, the following conditions shall apply:

(1) The board of directors shall provide the commission with a copy of a board resolution authorizing such delegation of authority;

(2) The delegation of authority shall be made at least 30 calendar days prior to the time the commission issues a publication of notice of eligibility;

(3) The delegation of authority shall be for a minimum period corresponding to the period for which the solicitation shall be made;

(4) The electric cooperative wishing to delegate its authority to designate an continuous provider shall also provide the commission with the authority to apply the selection criteria and procedures described in this section in selecting the POLR providers within the electric cooperative's certificated service area; and

(5) If there are no competitive REPs offering service in the electric cooperative certificated area, the commission shall automatically reject the delegation of authority.

(s) [~~(r)~~] Reporting requirements. Each LSP that serves customers under a rate prescribed by subsection (m)(2) [~~(l)(2)~~] of this section shall file the following information with the commission on a quarterly basis beginning January of each year in a project established by the commission for the receipt of such information. Each quarterly report shall be filed within 30 calendar days of the end of the quarter.

(1) For each month of the reporting quarter, each LSP shall report the total number of new customers acquired by the LSP under this section and the following information regarding these customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers from whom a deposit was requested pursuant to the provisions of §25.478 of this title, and the average amount of deposit requested;

(C) The number of customers from whom a deposit was received, including those who entered into deferred payment plans for the deposit, and the average amount of the deposit;

(D) The number of customers whose service was physically disconnected pursuant to the provisions of §25.483 of this title (relating to Disconnection of Service) for failure to pay a required deposit; and

(E) Any explanatory data or narrative necessary to account for customers that were not included in either subparagraph (C) or (D) of this paragraph.

(2) For each month of the reporting quarter each LSP shall report the total number of customers to whom a disconnection notice was issued pursuant to the provisions of §25.483 of this title and the following information regarding those customers:

(A) The number of customers eligible for the rate reduction program pursuant to §25.454 of this title;

(B) The number of customers who entered into a deferred payment plan, as defined by §25.480(j) of this title (relating to Bill Payment and Adjustments) with the LSP;

(C) The number of customers whose service was physically disconnected pursuant to §25.483 of this title;

(D) The average amount owed to the LSP by each disconnected customer at the time of disconnection; and

(E) Any explanatory data or narrative necessary to account for customers that are not included in either subparagraph (B) or (C) of this paragraph.

(3) For the entirety of the reporting quarter, each LSP shall report, for each customer that received POLR service, the TDU and customer class associated with the customer's ESI ID, the number of days the customer received POLR service, and whether the customer is currently the LSP's customer.

(t) [~~(s)~~] Notice of transition to POLR service to customers. When a customer is moved to POLR service, the customer shall be provided notice of the transition by ERCOT, the REP transitioning the customer, and the POLR provider. The ERCOT notice shall be provided within two days of the time ERCOT and the transitioning REP know that the customer shall be transitioned and customer contact information is available. If ERCOT cannot provide notice to customers within two days, it shall provide notice as soon as practicable. The POLR provider shall provide the notice required by paragraph (3) of this subsection to commission staff at least 48 hours before it is provided to customers, and shall provide the notice to transitioning customers as soon as practicable. The POLR provider shall email the notice to the commission staff members designated for receipt of the notice.

(1) ERCOT notice methods shall include a post-card, containing the official commission seal with language and format approved by the commission. ERCOT shall notify transitioned customers with an automated phone-call and email to the extent the information to contact the customer is available pursuant to subsection (p)(6) [~~(o)(6)~~] of this section. ERCOT shall study the effectiveness of the notice methods used and report the results to the commission.

(2) Notice by the REP from which the customer is transferred shall include:

(A) The reason for the transition;

(B) A contact number for the REP;

(C) A statement that the customer shall receive a separate notice from the POLR provider that shall disclose the date the POLR provider shall begin serving the customer;

(D) Either the customer's deposit plus accrued interest, or a statement that the deposit shall be returned within seven days of the transition;

(E) A statement that the customer can leave the assigned service by choosing a competitive product or service offered by the POLR provider, or another competitive REP, as well as the following statement: "If you would like to see offers from different retail electric providers, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(F) For residential customers, notice from the commission in the form of a bill insert or a bill message with the header "An Important Message from the Public Utility Commission Regarding Your Electric Service" addressing why the customer has been transitioned to another REP, the continuity of service purpose, the option to choose a different competitive provider, and information on competitive markets to be found at www.powertochoose.org, or toll-free at 1-866-PWR-4-TEX (1-866-797-4839);

(G) If applicable, a description of the activities that the REP shall use to collect any outstanding payments, including the use of consumer reporting agencies, debt collection agencies, small claims court, and other remedies allowed by law, if the customer does not pay or make acceptable payment arrangements with the REP; and

(H) Notice to the customer that after being transitioned to POLR service, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(3) Notice by the POLR provider shall include:

(A) The date the POLR provider began or shall begin serving the customer and a contact number for the POLR provider;

(B) A description of the POLR provider's rate for service. In the case of a notice from an LSP that applies the pricing of subsection (m)(2) [~~(l)(2)~~] of this section, a statement that the price is generally higher than available competitive prices, that the price is un-

predictable, and that the exact rate for each billing period shall not be determined until the time the bill is prepared;

(C) The deposit requirements of the POLR provider and any applicable deposit waiver provisions and a statement that, if the customer chooses a different competitive product or service offered by the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, a deposit may be required;

(D) A statement that the additional competitive products or services may be available through the POLR provider, a REP affiliated with the POLR provider, or another competitive REP, as well as the following statement: "If you would like to choose a different retail electric provider, please access www.powertochoose.org, or call toll-free 1-866-PWR-4-TEX (1-866-797-4839) for a list of providers in your area;"

(E) The applicable Terms of Service and Electricity Facts Label (EFL); and

(F) For residential customers that are served by an LSP under a rate prescribed by subsection (m)(2) [~~(l)(2)~~] of this section, a notice to the customer that after being transitioned to service from a POLR provider, the customer may accelerate a switch to another REP by requesting a special or out-of-cycle meter read.

(u) [~~(t)~~] Market notice of transition to POLR service. ERCOT shall notify all affected Market Participants and the Retail Market Subcommittee (RMS) email listserv of a mass transition event within the same day of an initial mass-transition call after the call has taken place. The notification shall include the exiting REP's name, total number of ESI IDs, and estimated load.

(v) [~~(u)~~] Disconnection by a POLR provider. The POLR provider must comply with the applicable customer protection rules as provided for under Subchapter R of this chapter, except as otherwise stated in this section. To ensure continuity of service, service under this section shall begin when the customer's transition to the POLR provider is complete. A customer deposit is not a prerequisite for the initiation of service under this section. Once service has been initiated, a customer deposit may be required to prevent disconnection. Disconnection for failure to pay a deposit may not occur until after the proper notice and after that appropriate payment period detailed in §25.478 of this title has elapsed, except where otherwise noted in this section.

(w) [~~(v)~~] Deposit payment assistance. Customers enrolled in the rate reduction program pursuant to §25.454 of this title shall receive POLR deposit payment assistance when proceeds are available in accordance with §25.107(f)(6) of this title.

(1) Using the most recent Low-Income Discount Administrator (LIDA) enrolled customer list, the Executive Director or staff designee shall work with ERCOT to determine the number of customer ESI IDs enrolled on the rate reduction program that shall be assigned to each VREP, and if necessary, each LSP.

(2) The commission staff designee shall distribute the deposit payment assistance monies to the appropriate POLRs on behalf of customers as soon as practicable.

(3) The Executive Director or staff designee shall use best efforts to provide written notice to the appropriate POLRs of the following on or before the second calendar day after the transition:

(A) a list of the ESI IDs enrolled on the rate reduction program that have been or shall be transitioned to the applicable POLR; and

(B) the amount of deposit payment assistance that shall be provided on behalf of a POLR customer enrolled on the rate reduction program.

(4) Amounts credited as deposit payment assistance pursuant to this section shall be refunded to the customer in accordance with §25.478(j) of this title.

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

Filed with the Office of the Secretary of State on August 9, 2013.

TRD-201303333
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 936-7223

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CHAPTER 26. SUBSTANTIVE RULES APPLICABLE TO TELECOMMUNICATIONS SERVICE PROVIDERS
SUBCHAPTER P. TEXAS UNIVERSAL SERVICE FUND

16 TAC §26.412, §26.413

The Public Utility Commission of Texas (commission) proposes amendments to §26.412, relating to Lifeline Service Program, and §26.413, relating to Link Up Service Program. The proposed amendments will amend commission substantive rules relating to Lifeline to conform to changes made by the Federal Communications Commission (FCC) to the federal Lifeline rule. Project Number 41024 is assigned to this proceeding.

Jay Stone, Program Administrator in the Operations Division, has determined that for each year of the first five-year period the proposed sections are in effect there will be no fiscal implications for state or local government as a result of enforcing or administering the sections.

Jay Stone has also determined that for each year of the first five years the proposed sections are in effect, the public benefit anticipated as a result of enforcing the sections, will be compliance with the federal Lifeline rules. There will be no adverse economic effect on small businesses or micro-businesses as a result of enforcing this section. Therefore, no regulatory flexibility analysis is required. There is no anticipated economic cost to persons who are required to comply with the sections as proposed.

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

The commission staff will conduct a public hearing on this rulemaking, if requested, pursuant to the Administrative Procedure Act, Texas government Code §2001.029, at the commission's offices located in the William B. Travis building, 1701 North Congress Avenue, Austin, Texas 78701. The request for a public hearing must be received within 21 days after publication.

Comments on the proposed sections may be submitted to the Filing Clerk, Public Utility Commission of Texas, 1701 North Congress Avenue, P.O. Box 13326, Austin, Texas 78711-3326, by Friday, September 13, 2013. Sixteen copies of comments to the proposed sections are required to be filed pursuant to §22.71(c) of this title. Comments should be organized in a manner consistent with the organization of the amended rule. All comments should refer to Project Number 41024.

The amendments are proposed under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (Vernon 2007 and Supp. 2012) (PURA), which provides the Public Utility Commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction, and specifically PURA §§17.004, 55.015, and 56.021.

Cross Reference to Statutes: Public Utility Regulatory §14.002.

§26.412. Lifeline Service Program.

(a) (No change.)

(b) Applicability This section applies to the following providers of local exchange telephone service collectively referred to in this section as Lifeline providers:

(1) ETC--A carrier designated as such by a state commission pursuant to 47 C.F.R. §54.201 and §26.418 of this title (relating to Designation of Common Carriers as Eligible Telecommunications Carriers to Receive Federal Universal Service Funds) or a carrier designated as an ETC by the FCC pursuant to 47 C.F.R. §54.201.

(2) (No change.)

(3) Resale ETP (R-ETP)--A certificated provider that provides local exchange telephone service solely through the resale of an incumbent local exchange carrier's service and that has been designated as a R-ETP [~~an ETP~~] as defined by §26.419 of this title (relating to Telecommunication Resale Providers Designation as Eligible Telecommunications Providers to Receive Texas Universal Service Funds (TUSF) for Lifeline Service).

(4) (No change.)

(c) Definitions.

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

(5) Eligible resident of Tribal lands--A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on [~~or near~~] a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a "reservation" is defined as any federally recognized Indian tribe's reservation, pueblo, or colony as referenced in 47 C.F.R §54.400.

(6) Income--As defined in 47 C.F.R. §54.400[~~(f)~~] includes all income actually received by all members of the household. This includes salary before deductions for taxes, public assistance benefits, social security payments, pensions, unemployment compensation, veteran's benefits, inheritances, alimony, child support payments, worker's compensation benefits, gifts, lottery winnings, and the like. The only exceptions are student financial aid, military housing and cost-of-living allowances, irregular income from occasional small jobs such as baby-sitting or lawn mowing, and the like.

(d) Customer Eligibility Requirements. A customer is eligible for Lifeline Service if they meet one of the criteria of paragraph (1), (2), or (3) of this subsection as determined by the Low-Income Discount Administrator (LIDA) [~~LIDA~~]. Nothing in this section shall prohibit a customer otherwise eligible to receive Lifeline Service from obtaining and using telecommunications equipment or services designed to aid such customer in utilizing qualifying telecommunications services.

(1) (No change.)

(2) A customer who receives benefits from or has a child that resides in the customer's household who receives benefits from any of the following programs qualifies for Lifeline Services: Medicaid, Supplemental Nutrition Assistance Program (SNAP) [~~Food Stamps~~], Supplemental Security Income (SSI), Federal Public Housing Assistance, Low Income Home Energy Assistance Program (LIHEAP), or health benefits coverage under the State Child Health Plan (CHIP) under Chapter 62, Health and Safety Code, National School Lunch Program--Free Lunch Program, Temporary Assistance for Needy Families (TANF); or

(3) A customer is an eligible resident of tribal lands as defined in subsection (c)(5) of this section. In addition to the programs listed in paragraph (2) of this subsection, residents of tribal lands may qualify if they are in one of the programs listed in 47 C.F.R. §54.409(b).

(e) Lifeline Service Program. Each Lifeline provider shall provide Lifeline Service as provided by this section. Lifeline Service is a non-transferable retail local exchange telephone service offering available to qualifying low-income customers. Lifeline Service shall be provided according to the following requirements:

(1) Designated Lifeline services. Lifeline providers shall offer the services or functionalities enumerated in 47 C.F.R. §54.101[~~(a)(1)-(9)~~] (relating to Supported Services for Rural, Insular and High Cost Areas).

(2) (No change.)

(3) Disconnection of service.

(A) Disconnection. A certificated provider of local exchange service shall be prohibited from disconnecting basic network services listed in PURA §58.051 to a customer who receives Lifeline Service because of nonpayment by the customer of charges for other services billed by the provider, including interexchange telecommunications service.

(B) A certificated provider of local exchange service may block a lifeline service customer's access to all interexchange telecommunications service except toll-free numbers when the customer owes an outstanding amount for that service. The provider shall remove the block without additional cost to the customer on payment of outstanding amount.

[~~(A) Disconnection prohibition. Lifeline providers may not disconnect Lifeline Service for non-payment of toll charges.~~]

(C) [~~(B)~~] Discontinuance of Lifeline Discounts for customers automatically enrolled. The eligibility period for automatically enrolled customers is the length of their enrollment in HHSC benefits plus a period of 60 days for renewal. Automatically enrolled customers will have an opportunity to renew their HHSC benefits or self-enroll [~~self enroll~~] with the LIDA upon the expiration of their automatic enrollment.

(D) [~~(C)~~] Discontinuance of Lifeline discounts for customers who have self-enrolled. Individuals not receiving benefits through HHSC programs, but who have met Lifeline income qualifications in subsection (d) of this section, are eligible to receive the Lifeline discount for seven months, which includes a period of 60 days during which the customer may renew their eligibility with the LIDA for an additional seven months.

(4) Number Portability. Consistent with 47 C.F.R. §52.33[~~(a)(1)(C)~~], Lifeline providers may not charge Lifeline customers a monthly number-portability charge.

(5) - (7) (No change.)

(f) Lifeline support and recovery of support amounts.

(1) Lifeline discount amounts. All Lifeline providers shall provide the following Lifeline discounts to all eligible Lifeline customers so long as the total of all the Lifeline discounts combined does not result in a rate of less than zero for a customer's basic local service. Should the total of all Lifeline discounts result in a rate of less than zero on a customer's bill, the Lifeline provider shall only provide a Lifeline discount amount up to the price a customer is charged for basic local service.[:]

[(A) Waiver of the monthly subscriber line charge (SLC)--Lifeline providers shall grant a waiver of the monthly SLC at the rate tariffed by the incumbent local exchange carrier serving the area of the qualifying low-income customer. If the ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the Incumbent Local Exchange Carrier (ILEC) serving the area of the qualifying low-income customer.]

(A) [(B)] Federally approved [$1.75] reduction--Up to the federal monthly basic Lifeline support amount outlined in 47 C.F.R. 54.403. [A Lifeline Provider shall give qualifying low-income customer a federally approved reduction of $1.75 in the monthly amount of intrastate charges paid pursuant to 47 C.F.R. §54.403 (relating to Lifeline Support Amount).]

(B) Additional federal Lifeline reduction for an eligible customer who is a resident of Tribal Lands, as defined in 47 C.F.R. §54.400, up to the federal monthly Lifeline amount outlined in 47 C.F.R. §54.403.

(C) State reduction [Additional state reduction with federal matching]--A Lifeline provider shall give a qualifying low-income customer an additional state-approved reduction of up to a maximum of $3.50 in the monthly amount of intrastate charges.

[(D) Federal match of state reduction--A Lifeline provider shall provide a further federally approved reduction equal to one-half the amount of the state-mandated reduction in subparagraph (C) of this paragraph up to a maximum of $1.75.]

[(E) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).]

(D) [(F)] [Additional] Texas High Cost Universal Service Plan (THCUSP) Incumbent Local Exchange Carrier (ILEC) [ILEC] Area Discount--

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

(ii) - (iii) (No change.)

(iv) A THCUSP ILEC shall file with the commission tariffs implementing a THCUSP ILEC Area Discount at the time it files for a rate increase. The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding rate increase [Rate Increase].

(v) (No change.)

[(vi) The effective date of a THCUSP ILEC Area Discount shall have the same effective date as the corresponding Rate Increase.]

(E) [(G)] [Additional] Small and Rural Incumbent Local Exchange Company Universal Service Plan (SRILEC USP) Area Discount--

(i) Beginning January 1, 2014, all Lifeline providers operating in the service areas of those incumbent local exchange carriers that participate in the SRILEC USP [Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan (SRILEC USP ILEC)] shall provide an increase in the Lifeline service discount up to equal to 25% of any actual increase by a SRILEC USP ILEC to its residential basic network service rate that occurs in a SRILEC USP ILEC's regulated exchanges and is consistent with §26.404 of this title (relating to Small and Rural Incumbent Local Exchange Company (ILEC) Universal Service Plan).

(ii) A SRILEC shall file with the commission tariffs implementing a SRILEC USP Area Discount at the time it files for a rate increase. The effective date of a SRILEC USP Area Discount shall have the same effective date as the corresponding rate increase.

(iii) A CLEC Lifeline provider operating in the service area of a SRILEC shall file with the commission tariffs or price lists implementing the appropriate SRILEC USP Area Discount.

(2) Lifeline support amounts. The following Lifeline providers shall receive support amounts for the Lifeline discounts outlined in paragraph (1) of this subsection. Note: A Lifeline provider shall not receive a support amount greater than the amount it provided to each qualifying Lifeline customer.[:]

(A) ETC--Pursuant to 47 C.F.R. §54.403[(a)], the federal Lifeline support an ETC shall receive is:

(i) Federally approved support amount pursuant to 47 C.F.R. §54.403.

(ii) Additional federal Lifeline reduction for an eligible resident of Tribal Lands, as defined in 47 C.F.R. §54.400 - up to the federal monthly Lifeline amount outlined in 47 C.F.R. §54.403.

[(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service.]

[(ii) Additional federal Lifeline support in the amount of $1.75 per month.]

[(iii) Additional federal Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month.]

[(iv) Additional federal Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e).]

(B) ETP--

(i) State support of up to a maximum of $3.50.

(ii) THCUSP ILEC Area support--Amount calculated pursuant to paragraph (1)(D) of this subsection.

(iii) SRILEC USP support--Amount calculated pursuant to paragraph (1)(E) of this subsection.

[(i) An ETP shall receive state support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection.]

[(ii) An ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.]

(iv) [(iii)] If an ETP has been designated as an ETC, then the certificated provider shall also receive support amounts prescribed by subparagraph (A) of this paragraph.

(C) Resale ETP--A resale ETP shall receive Lifeline Service support up to or equal to the following state and federal amounts as long as the Lifeline Service was not purchased as a wholesale offering from the ILEC. Any Lifeline Service purchased as a wholesale offering from the ILEC includes the Lifeline Discount and is therefore not eligible to receive an additional discount. The TUSF [Texas Universal Service Fund (TUSF)], regardless of whether the Lifeline Service Discount is state or federally mandated, will provide the [all] Lifeline Service support so long as the total of all the Lifeline discounts combined does not result in a rate of less than zero for a customer's basic local service. Should the total of all Lifeline discounts result in a rate of less than zero on a customer's bill, the Lifeline provider shall only provide a Lifeline discount amount up to the price a customer is charged for basic local service.

(i) Federally approved support amount pursuant to 47 C.F.R. §54.403.

(ii) Additional federal Lifeline reduction for an eligible resident of Tribal Lands, as defined in 47 C.F.R. §54.400--up to the federal monthly Lifeline amount outlined in 47 C.F.R. §54.403.

(iii) State support of up to a maximum of $3.50.

(iv) THCUSP Area support--Amount calculated pursuant to paragraph (1)(D) of this subsection.

(v) SRILEC USP support--Amount calculated pursuant to paragraph (1)(E) of this subsection.

[(i) The tariffed rate in effect for the primary residential SLC of the incumbent local exchange carrier serving the area in which the qualifying low-income consumer receives service. If the Resale ETP does not charge the SLC, it shall reduce its lowest tariffed residential rate for supported services by the amount of the SLC tariffed by the ILEC serving the area of the qualifying low-income customer;]

[(ii) Additional federally mandated Lifeline support in the amount of $1.75 per month;]

[(iii) Additional federally mandated Lifeline support in an amount equal to one-half the amount of any state-mandated Lifeline support or Lifeline support otherwise provided by the carrier, up to a maximum of $1.75 per month;]

[(iv) Additional federally mandated Lifeline support of up to $25 per month for Lifeline service provided to an eligible resident of Tribal lands, as defined in 47 C.F.R. §54.400(e);]

[(v) A resale ETP shall receive state-mandated support of up to a maximum of $3.50 which is eligible for federal matching as described in paragraph (1)(C) of this subsection; and]

[(vi) A Resale ETP operating in the service areas of the THCUSP ILECs shall receive additional state support equal to the discount prescribed by paragraph (1)(F) of this subsection.]

(D) Non-ETP/ETC--A Non-ETP/ETC is not eligible to receive any state or federal [federally mandated] Lifeline support.

(g) Obligations of the customer and the Lifeline provider.

(1) Obligations of the customer.

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

(D) The LIDA shall provide a self-enrollment form by direct mail at the customer's request.

(E) [(D)] Opportunity for contest.

(i) A customer who believes that their self-enrollment application has been erroneously denied may request in writing that LIDA review the application, and the customer may submit additional information as proof of eligibility.

(ii) A customer who is dissatisfied with LIDA's action following a request for review under clause (i) of this subparagraph may request in writing that an informal hearing be conducted by the commission staff.

(iii) A customer dissatisfied with the determination after an informal hearing under clause (ii) of this subparagraph may file a formal complaint pursuant to §22.242(e) of this title (relating to Complaints).

(2) Obligations of Lifeline providers.

(A) A Lifeline provider shall only provide Lifeline Service to all eligible customers identified by the LIDA within its service area in accordance with this section.

(i) - *(ii)* (No change.)

(iii) Monthly, all ETCs, ETPs, RETPs, and certificated providers providing telephone service in Texas must provide a file of its residential customers in a format and date determined by LIDA, for Lifeline processing.

(iv) [(iii)] Upon receipt of the monthly update provided by the LIDA, a Lifeline provider shall begin reduced billing for those qualifying low-income customers subscribing to services within 30 days.

(v) [(iv)] [The LIDA shall provide a self-enrollment form by direct mail at the customer's request.] The LIDA shall maintain customers' self-enrollment forms and provide a database of self-enrolling customers to all Lifeline providers.

(B) (No change.)

(C) Reporting requirements. Lifeline providers providing Lifeline Service pursuant to this section shall report information as required by the commission or the TUSF administrator, including but not limited to the following information:

(i) Initial reporting requirements. Lifeline providers shall provide the commission and the TUSF administrator with information demonstrating that it [its Lifeline Service plan] meets the requirements of this section.

(ii) (No change.)

(iii) Quarterly reporting requirements, non-ETP certificated Lifeline providers shall report to the commission its Lifeline activity as required. Certificated non-ETPs shall use the *Report of Lifeline Service Provided by Non-ETP's* form located on the PUC website to provide this information.

(iv) [~~(iii)~~] Other reporting requirements. Lifeline providers shall report any other information required by the commission or the TUSF administrator, including any information necessary to assess contributions to and disbursements from the TUSF. [~~Non-ETP Lifeline providers may be required to report certain information to the commission but will not be required to submit information to the TUSF administrator since they have elected not to receive any type of Lifeline support.~~]

(v) [~~(iv)~~] ETPs shall file the following information with the administrator of the Federal Lifeline Program. Non-ETP Lifeline providers are exempt from this requirement.

(I) information demonstrating that the ETP's Lifeline Service plan meets the criteria set forth in 47 C.F.R. Subpart E (relating to Universal Service Support for Low-Income Consumers);

(II) the number of qualifying low-income customers served by the ETP;

(III) the amount of state assistance; and

(IV) other information required by the administrator of the Federal Lifeline Program.

(D) Notice Requirement. A Lifeline provider shall provide the following notices of Lifeline Service:

(i) (No change.)

(ii) An annual bill message-advising customers of the availability of Lifeline Service. In any instance where the Lifeline provider provides bilingual (English and Spanish) information in its annual bill messages, the Lifeline provider must also provide its notice regarding Lifeline Service in a bilingual format. All Lifeline providers are required to file a copy of the annual bill message in the designated project at the commission;

(iii) - (iv) (No change.)

(E) (No change.)

§26.413. Link Up for Tribal Lands [~~Service Program~~].

(a) Scope and purpose. Through this section, the commission seeks to extend Link Up Service to all qualifying customers who are a resident of Tribal lands as defined in 47 C.F.R. 54.400 and define the responsibilities of participating telecommunications carriers and qualified customers.

(b) (No change.)

(c) Definitions.

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

(3) Eligible resident of Tribal lands--A "qualifying low-income customer," as defined in paragraph (1) of this subsection, living on a reservation. Pursuant to the Alaska Native Claims Settlement Act (85 Stat. 688), a "reservation" is defined as any federally recognized Indian tribe's reservation, pueblo, or colony.

(d) Link Up for Tribal Lands [~~Service Program~~]. This is a program certified by the Federal Communications Commission (FCC), pursuant to 47 C.F.R. §54.411, that provides a qualifying low-income customer with the following assistance:

(1) Services.

(A) A qualifying low-income customer shall receive a reduction in the participating telecommunications carrier's customary charge for commencing telecommunications service for a primary single line connection at the customer's principal place of residence. The reduction shall be 100 percent [~~half~~] of the customary charge or $100 [~~$30~~], whichever is less.

(B) (No change.)

(2) (No change.)

(3) Limitation on receipt. A participating telecommunications carrier's Link Up for Tribal Lands [~~Service~~] shall allow a qualifying low-income customer to receive the benefit of Link Up [~~Service~~] on subsequent occasions only for a principal place of residence with an address different from the residence address at which the Link Up for Tribal Lands [~~Service~~] was provided previously.

(e) Obligations of the customer. Qualified low-income customers who want Link Up for Tribal Lands [~~-up~~] and do not have telephone service must initiate a request for service from a participating telecommunications carrier providing local service in their area.

(f) Obligations of the participating telecommunications carrier. Participating telecommunications carriers shall provide Linkup for Tribal Lands [~~Service~~] to all qualifying low-income customers in accordance with this section.

(1) Tariff requirement. Each participating telecommunications carrier shall file a tariff to implement Link Up for Tribal Lands [~~Service~~], or revise its existing tariff for compliance with this section and with applicable law.

[~~(2) Reporting requirements. Participating telecommunications carriers shall file the following information with the administrator of the Federal Lifeline/Link-up Program.~~]

[~~(A) the number of qualifying low-income customers served by the participating telecommunications carrier;~~]

[~~(B) the annual certification for ETCs;~~]

[~~(C) the amount of revenues the participating telecommunication carrier forgoes in reducing their customary charge for providing telecommunications service; and~~]

[~~(D) the amount of revenue the participating telecommunications carrier forgoes for providing a deferred schedule for payment of the charges assessed for commencing service for which customer does not pay interest.~~]

(2) [~~(3)~~] Notice of Link Up for Tribal Lands [~~Linkup Services~~]. A participating telecommunications carrier shall publicize the availability of Link Up for Tribal Lands [~~Link-up service~~] in a manner reasonably designed to reach those likely to qualify for the service.

(3) [~~(4)~~] Confidentiality agreements. The confidentiality agreement executed by participating telecommunications carriers with HHSC for Lifeline Service also extends to Link Up for Tribal Lands [~~Linkup Service~~].

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

Filed with the Office of the Secretary of State on August 9, 2013.

TRD-201303339

Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 936-7223

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER A. PROCUREMENT

16 TAC §401.105

The Texas Lottery Commission (Commission) proposes new 16 TAC §401.105, concerning Major Procurement Approval Authority and Responsibilities. The new rule is proposed to implement changes to Government Code, Chapter 466, made pursuant to Section 3 of Tex. H.B. 2197, 83rd Leg., R.S. 2013. Specifically, Section 3 of H.B. 2197 amended Government Code, Chapter 466, by adding new §466.1005 Procurements, which allows the Commission to make any purchases, leases, or contracts necessary for the purpose of carrying out the requirements of Chapter 466. Furthermore, new Government Code §466.1005 also requires the Commission to review and approve all major procurements as defined by Commission rule. It also allows the Commission to delegate to the Executive Director the authority to approve procurements other than major procurements. Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Proposed new §401.105 outlines the procedure for approval authority of the major procurements before the Commission. The proposed new section identifies what constitutes a major procurement. The proposed new section also delegates all approval authority not reserved by the Commission to the Executive Director, and discusses authority to execute contracts for the agency. Lastly, the proposed new section describes contract planning updates provided to the Commission.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed new section will be in effect, there are no foreseeable implications related to cost or revenues to the state as a result of the proposed new section. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the new section as proposed. Furthermore, an Economic Impact Statement and Regularity Flexibility Analysis is not required because the new section will not have an economic effect on small businesses as defined in Texas Government Code §2006.0012(2).

Mike Fernandez, Director of Administration, has determined that for each year of the first five years the proposed new section will be in effect the public benefit anticipated from these changes will be to provide greater clarity to the public regarding major contract approval procedures before the Commission.

The Commission requests comments on the proposed new section from any interested person. Comments on the proposed new section may be submitted to Lea Burnett, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at www.legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new section is proposed under the authority of Texas Government Code §466.015, which provides the Commission with the authority to adopt rules governing the operation of the lottery. The new section is also proposed under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the commission's jurisdiction.

This proposal is intended to implement Sections 3 and 45 of H.B. 2197, 83rd Legislature, Regular Session, 2013.

The following statutes are affected by this proposal: Texas Government Code §§466.1005 and 466.101.

§401.105. Major Procurement Approval Authority and Responsibilities.

(a) Purpose. The purpose of this rule is to establish the approval authority and responsibilities for all formal procurements.

(b) Applicability. This rule applies to all formal procurements made by the agency.

(c) Definitions. As used in this section, the following terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Contract--A written agreement between the agency and a vendor for goods or services. As used in this section, "contract" includes letters of agreement, interagency agreements with other government entities, and other documents in which state funds allocated to the agency are exchanged for the delivery of goods or services.

(2) Formal Procurement--A formal competitive solicitation, for the purchase or lease of goods and/or services expected to exceed $25,000, conducted in order to receive at least three sealed competitive bids or proposals pursuant to the issuance of an IFB, RFP, RFQ, or another statewide contract process, respectively.

(3) Value--The agency adopts by reference the determination of contract value set forth in the State of Texas Contract Management Guide. The determination of contract value shall be based on the original term of the contract, including any renewal periods. The agency shall base its determination of the proposed length of and compensation during the original term and the renewal periods of the contract on best business practices, state fiscal standards and applicable law, procedures and regulations.

(d) Major Procurement. Any formal procurement for goods or services that has a cumulative contract value equal to or greater than ten (10) million dollars is a major procurement.

(e) Approval Authority.

(1) Texas Lottery Commission Approval. The executive director or his/her designee shall present all major procurements to the Texas Lottery Commission for review and approval. After a vendor is selected and a contract has been fully negotiated, the Texas Lottery Commission shall provide final approval of the contract with the selected vendor.

(2) Agency Approval. The Texas Lottery Commission delegates authority to the executive director (or his/her designee) to approve all contracts and purchase orders not defined as major procurements in subsection (d) of this section.

(f) Authority to Execute Contracts. The Texas Lottery Commission delegates authority to the executive director to execute all contracts for the agency. This authority may be delegated by the executive director.

(g) Contract Planning.

(1) The agency will present the status of certain contracts to the Texas Lottery Commission annually for informational purposes. The report will be presented at the beginning of each fiscal year.

(2) As deemed necessary by the executive director or his/her designee, updates to the status of certain contracts may be provided to the Texas Lottery Commission periodically throughout the fiscal year for informational purposes.

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

Filed with the Office of the Secretary of State on August 5, 2013.

TRD-201303221
Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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SUBCHAPTER C. PRACTICE AND PROCEDURE

16 TAC §401.203

The Texas Lottery Commission (Commission) proposes amendments to 16 Tex. Admin. Code §401.203, Contested Cases. The purpose of the proposed amendments is to implement changes to Government Code Chapter 466 made pursuant to Section 6 of Tex. H.B. 2197, 83rd Leg., R.S. (2013). Specifically, Section 6 of H.B. 2197 amended Government Code Section 466.160(c) by deleting the provision that Government Code Chapter 2001 (Administrative Procedure Act) does not apply to lottery retailer license summary suspension hearings and providing that a hearing under this Section is subject to Section 2001.058(e). Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there are no foreseeable implications related to cost or revenues to the state as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regularity Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code section 2006.0012(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be that licensed retailers will have the procedural rights provided in Government Code Chapter 2001.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Stephen White, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under section 466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under section 467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The proposed amendments implement changes to Chapter 466 of the Texas Government Code.

§401.203. Contested Cases.

(a) A contested case proceeding is initiated when a case is filed at the State Office of Administrative Hearings. It includes a request for relief from actions initiated by the agency to deny, revoke, or suspend licenses administered by the agency, including preliminary [~~with the exception of~~] summary suspension proceedings described in subsection (b) of this section.

(b) If the Lottery Operations Director summarily suspends a license:

(1) the Lottery Operations Director will notify the licensee in writing by registered or certified mail, return receipt requested, that the license has been summarily suspended and will state the reasons for the action. That notification shall also state the date, time, and place for a preliminary suspension hearing on the summary suspension, which date shall not be later than ten days after the date of the preliminary summary suspension, unless the parties agree to a later date;

(2) at the preliminary suspension hearing, the licensee must show cause by a preponderance of the evidence why the license should not remain suspended pending a final hearing on the suspension or revocation of the license;

(3) the preliminary suspension hearing will be held by the assigned administrative law judge and shall be governed by Texas Government Code, Chapter 466, (in Lottery cases); Texas Occupations Code, Chapter 2001, (in Bingo cases); Texas Government Code, Chapter 2001; Title 1 of the Texas Administrative Code; and these Rules. [~~the principles of fundamental fairness; and~~]

(4) An order issued after a preliminary suspension hearing, continuing a summary suspension pending a final contested case hearing, is not a final order. [~~the final hearing will be held pursuant to the procedures for a contested case.~~]

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

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Bob Biard
General Counsel
Texas Lottery Commission
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For further information, please call: (512) 344-5012

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16 TAC §401.211

The Texas Lottery Commission (Commission) proposes amendments to 16 Tex. Admin. Code §401.211, Law Governing Contested Cases. The purpose of the proposed amendments is to implement changes to Government Code Chapter 466 made pursuant to Section 6 of Tex. H.B. 2197, 83rd Leg., R.S. (2013). Specifically, Section 6 of H.B. 2197 amended Government Code Section 466.160(c) by deleting the provision that Government Code Chapter 2001 (Administrative Procedure Act) does not apply to lottery retailer license summary suspension hearings and providing that a hearing under this Section is subject to Section 2001.058(e). Section 45 of H.B. 2197 provides that not later than January 1, 2014, the Texas Lottery Commission shall adopt all rules, policies, and procedures required by the changes in law made by this Act.

Kathy Pyka, Controller, has determined that for each year of the first five years the proposed amendments will be in effect, there are no foreseeable implications related to cost or revenues to the state as a result of the proposed amendments. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic costs to persons required to comply with the amendments as proposed. Furthermore, an Economic Impact Statement and Regularity Flexibility Analysis is not required because the amendments will not have an economic effect on small businesses as defined in Texas Government Code section 2006.0012(2).

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the proposed amendments will be in effect, the anticipated public benefit will be that licensed retailers will have the procedural rights provided in Government Code Chapter 2001.

The Commission requests comments on the proposed amendments from any interested person. Comments on the proposed amendments may be submitted to Stephen White, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The amendments are proposed under section 466.015 of the Texas Government Code, which authorizes the Commission to adopt rules governing the operation of the lottery, and under section 467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

The proposed amendments implement changes to Chapter 466 of the Texas Government Code.

§401.211. Law Governing Contested Cases.

Contested case hearings[~~, with the exception of summary suspension proceedings,~~] will be governed by the Texas Government Code, Chapter 466, (in Lottery cases); Texas Occupations Code, Chapter 2001, (in Bingo cases); Texas Government Code, Chapter 2001; Title 1 of the Texas Administrative Code; and these Rules. [~~Summary Suspension proceedings described in 16 Texas Administrative Code §401.203(b) will be governed by Texas Government Code Chapter 466.~~]

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

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Bob Biard
General Counsel
Texas Lottery Commission
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CHAPTER 403. GENERAL ADMINISTRATION

16 TAC §403.102

The Texas Lottery Commission (Commission) proposes new 16 Tex. Admin. Code §403.102, Items Mailed to the Commission. The purpose of the proposed new rule is to establish a standard approach to determine when items are mailed to the Commission. Several statutes and Commission rules impose deadlines by which certain items must be mailed to the Commission. The Commission generally relies on postmarks or other similar indicators to determine when a particular item was mailed. Recently, however, the Commission has begun receiving an increasing number of items that lack legible postmarks or other similar indicators. For such items, the proposed new rule would permit the Commission to assign a mailed-on-date based on when the item was actually received by the Commission. Under the proposed new rule, if the Commission receives an item with no legible postmark date or other similar indicator, the item will be considered to have been sent seven (7) calendar days before the Commission received the item. A similar approach is currently taken in certain charitable bingo administrative rules. *See, e.g.,* 16 Tex. Admin. Code §402.404(e)(1) and §402.411(d)(3). The proposed new rule will apply this approach agency wide.

Kathy Pyka, Controller, has determined that for each year of the first five years the new rule will be in effect, there will be no significant fiscal impact for state or local governments as a result of the new rule. There will be no adverse effect on small businesses, micro businesses, or local or state employment. There will be no additional economic cost to persons required to comply with the new rule as proposed. Furthermore, an Economic Impact Statement and Regulatory Flexibility Analysis is not required because the new rule will not have an economic effect on small businesses as defined in section 2006.001(2) of the Texas Government Code.

Michael Anger, Director of Lottery Operations, has determined that for each year of the first five years the new rule will be in effect, the anticipated public benefit will be the more uniform and efficient enforcement of applicable statutes and rules that impose deadlines by which items must be mailed to the Commission.

The Commission requests comments on the new rule from any interested person. Comments on the new rule may be submitted to James Person, Assistant General Counsel, by mail at Texas Lottery Commission, P.O. Box 16630, Austin, Texas 78761-6630; by facsimile at (512) 344-5189; or by email at legal.input@lottery.state.tx.us. Comments must be received within 30 days after publication of this proposal in order to be considered.

The new rule is proposed under section 467.102 of the Texas Government Code, which authorizes the Commission to adopt rules for the enforcement and administration of Chapter 467 and the laws under the Commission's jurisdiction.

The new rule implements Chapters 466 and 467 of the Texas Government Code and Chapter 2001 of the Texas Occupations Code.

§403.102. Items Mailed to the Commission.

Unless otherwise provided by law or rule, any claim, ticket, application, fee, request for credit, letter, or other item mailed or otherwise sent to the Commission shall be considered to have been sent:

(1) on the item's United States Postal Service postmark date, United States Postal Service postage meter date, or carrier-indicated date of delivery to the common delivery carrier; or

(2) seven (7) calendar days before the Commission received the item, if there is no legible United States Postal Service postmark date, United States Postal Service postage meter date, or carrier-indicated date of delivery to the common delivery carrier.

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

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Bob Biard
General Counsel
Texas Lottery Commission
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TITLE 19. EDUCATION

PART 1. TEXAS HIGHER EDUCATION COORDINATING BOARD

CHAPTER 4. RULES APPLYING TO ALL PUBLIC INSTITUTIONS OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER D. DUAL CREDIT PARTNERSHIPS BETWEEN SECONDARY SCHOOLS AND TEXAS PUBLIC COLLEGES

19 TAC §4.82, §4.85

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §4.82 and §4.85, concerning dual credit requirements. The amendments to §4.82 and §4.85(c) and (i) were adopted on an emergency basis at the July 25, 2013, Coordinating Board meeting; and published in the *Texas Register* on August 16, 2013 (38 TexReg 5143). The amendments are now being published for proposal to allow for a 30-day comment period.

The amendments to §4.82 add a reference to Texas Education Code, §28.009(b) and delete the reference to Texas Education Code, §61.076(J) in defining where in statute the Coordinating Board is given authority to regulate dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools.

The amendments to §4.85 add provisions that specify the STAAR end-of-course assessment dual credit enrollment eligibility requirements for eleventh grade dual credit and eleventh and twelfth grade workforce education dual credit students. The amendments add language to define the criteria for demonstrating outstanding academic performance as a condition of eligibility for students to enroll in dual credit courses prior to the eleventh or twelfth grade. Language was also added to specify the procedural requirements for enrollment in dual credit beyond the standard limit of two courses per term and the 15 semester credit hour limit on dual credit enrollment for students who have demonstrated outstanding academic performance. A provision has also been added limiting the number of dual credit courses in which a student may enroll at a community college, if the community college does not have a service area that includes the student's high school, to three courses per academic year. Additionally, a provision was added that restricted the dual credit courses for which a college could claim state funding to core curriculum, career and technical education, and foreign language courses.

Dr. Stacey Silverman, Interim Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years the amendments are in effect, there will be no fiscal implications for state or local governments as a result of amending the sections.

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to accurately reflect current statute in rules pertaining to the regulation of dual credit partnerships between public two-year associate degree-granting institutions and public universities with secondary schools. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Dr. Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas, 78711 or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 28, §28.009(b) and Chapter 130, §130.001(b)(3) - (4), which provides the Coordinating Board with the authority to adopt rules to administer the sections.

The amendments affect the implementation of Texas Education Code, Chapter 28.

§4.82. Authority.

Texas Education Code, §§28.009(b), 29.182, 29.184, 61.027, [61.076(J),] 130.001(b)(3) - (4), 130.008, 130.090, and 135.06(d) provide the Board with the authority to regulate dual credit partnerships between public two-year associate degree-granting institutions [institution] and public universities with secondary schools.

§4.85. Dual Credit Requirements.

(a) (No change.)

(b) Student Eligibility.

(1) (No change.)

(2) An eleventh grade high school student is also eligible to enroll in dual credit courses under the following conditions:[;]

(A) a student achieves a minimum designated Level 2 final phase-in score on the Algebra II end-of-course assessment and/or the English II reading and English II writing end-of-course assess-

ments, [score of 2200 on Mathematics and/or a score of 2200 on English Language Arts with a writing subsection score of at least 3 on the tenth grade TAKS] relevant to the courses to be attempted. An eligible high school student who has enrolled in dual credit courses in the eleventh grade under this provision shall not be required to demonstrate further evidence of eligibility to enroll in dual credit courses in the twelfth grade; or

(B) - (C) (No change.)

(3) A high school student is eligible to enroll in workforce education dual credit courses in the eleventh and/or twelfth grade if the student demonstrates that he or she has achieved the designated minimum final phase-in score on the Algebra I end-of-course assessment and/or the English II reading and English II writing end-of-course assessments relevant to the courses to be attempted [the minimum high school passing standard on the Mathematics section and/or the English/Language Arts section on the tenth or eleventh grade TAKS].

(A) (No change.)

(B) A student who is exempt from taking TAKS or STAAR end-of-course assessments may be otherwise evaluated by an institution to determine eligibility for enrolling in workforce education dual credit courses.

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

(6) To be eligible for enrollment in a dual credit course offered by a public college, students must have at least junior year high school standing. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability (as evidenced by achieving or exceeding the minimum TSI college readiness standards on [grade-point average,] PSAT/NMSQT [scores], PLAN, SAT, ACT, or TSI Assessment [or other assessment indicators]) may be approved by the principal of the high school and the chief academic officer of the college. Students with less than junior year high school standing must demonstrate eligibility as outlined under paragraph [subsection (b)](1) of this subsection [section].

(7) High school students shall not be enrolled in more than two dual credit courses per semester. Exceptions to this requirement for students with demonstrated outstanding academic performance and capability (as evidenced by grade-point average, ACT or SAT scores, or other assessment indicators) may be approved by the principal of the high school and the chief academic officer of the college to a maximum of 15 semester credit hours.

(A) Institutions of higher education must have established, written policies in place prior to approving a student to enroll in more than two dual credit courses per semester.

(B) A student enrolling in more than two dual credit courses in a semester must pass all courses during that semester with a grade of C or better to continue to enroll in more than two dual credit courses in following semesters.

(C) This provision does not apply to students enrolled in approved early college high school programs.

(8) - (9) (No change.)

(c) Location of Class. Dual credit courses may be taught on the college campus or on the high school campus. For dual credit courses taught exclusively to high school students on the high school campus and for dual credit courses taught electronically, public colleges shall comply with applicable rules and procedures for offering courses at a distance in Subchapters P and Q of this chapter (relating to Approval of Distance Education Courses and Programs for Public Institutions and Approval of Off-Campus and Self-Supporting Courses and Programs for Public Institutions) [§§4.101 - 4.108 of this title (relating to Distance Education and Off-Campus Instruction)]. In addition, dual credit courses taught electronically shall comply with the Board's adopted Principles of Good Practice for Courses Offered Electronically.

(1) A student may not enroll in more than three courses per academic year at a community college if the community college does not have a service area that includes the student's high school, except to the extent approved by the Commissioner of Texas Education Agency.

(2) This provision does not apply to students enrolled in approved early college high school programs.

(d) Composition of Class. Dual credit courses may be composed of dual credit students only or of dual and college credit students. Exceptions for a mixed class, which would also include high school credit-only students, may be allowed only under one of the following conditions:

(1) If the course involved is required for completion under the State Board of Education [Recommended or Distinguished Achievement] High School Program graduation requirements, and the high school involved is otherwise unable to offer such a course.

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

(e) - (h) (No change.)

(i) Funding.

(1) The state funding for dual credit courses will be available to both public school districts and colleges based on the current funding rules of the State Board of Education and the Board.

(2) The college may only claim funding for [all] students getting college credit in core curriculum, career and technical education, and foreign language dual credit courses.

(3) This provision does not apply to students enrolled in approved early college high school programs.

(4) [(3)] All public colleges, universities, and health-related institutions may waive all or part of tuition and fees for a Texas high school student enrolled in a course for which the student may receive dual course credit.

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

Filed with the Office of the Secretary of State on August 8, 2013.

TRD-201303301
Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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CHAPTER 5. RULES APPLYING TO PUBLIC UNIVERSITIES, HEALTH-RELATED INSTITUTIONS, AND/OR SELECTED PUBLIC COLLEGES OF HIGHER EDUCATION IN TEXAS

SUBCHAPTER B. ROLE AND MISSION, TABLES OF PROGRAMS, COURSE INVENTORIES

19 TAC §§5.21 - 5.25

The Texas Higher Education Coordinating Board (Coordinating Board) proposes amendments to §§5.21 - 5.25, concerning role and mission, tables of programs, and course inventories. Some of these amendments were adopted on an emergency basis at the July 25, 2013, Coordinating Board meeting; and published in the *Texas Register* on August 16, 2013 (38 TexReg 5146). The amendments are now being published for proposal to allow for a 30-day comment period.

The intent of the amendments is to incorporate into existing rules changes and provisions enacted by Senate Bill 215, 83rd Texas Legislature, Regular Session. Revisions were made to the definitions for Preliminary Authority, Mission Statement, Program Inventory, Role and Mission or Role and Scope, Table of Programs, and Texas Classification of Instructional Programs (CIP) coding. Terminology was amended to reflect the legislative revisions allowing institutions to submit changes to their mission statements and requiring institutions to notify the Board of their intent to plan for a new degree program rather then obtain Board approval. Rule revisions specify that when submitting notification to the Board of intent to request the addition of a new program, institutions must include information to describe the proposed program by name and CIP code. Revisions to the rules eliminate the requirement to submit data regarding the graduation rate of existing undergraduate and graduate degree programs when institutions notify the Board of their intent to request new programs. Rule revisions also require public universities to identify any course included in the common course numbering system approved by the Board that has been added to or removed from the institution's list of courses.

Dr. Stacey Silverman, Interim Assistant Commissioner for Workforce, Academic Affairs and Research, has determined that for the first five years that the amendments are in effect, there will be no fiscal implications for state or local governments as a result of amending these sections.

Dr. Silverman has also determined that for the first five years the amendments are in effect, the public benefits anticipated as a result of administering the sections will be to streamline procedures for notification of intent to plan for new degrees and to bring greater efficiency to the procedures for the approval of new degree programs. There is no effect on small businesses. There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no impact on local employment.

Comments on the proposed amendments may be submitted by mail to Dr. Stacey Silverman, Interim Assistant Commissioner, Texas Higher Education Coordinating Board, P.O. Box 12788, Austin, Texas 78711; or via email at WAARcomments@thecb.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

The amendments are proposed under the Texas Education Code, Chapter 61, §61.027 and §61.0512, which provides the Coordinating Board with the authority to adopt rules to administer the sections.

The amendments affect the implementation of Texas Education Code, Chapter 61.

§5.21. Purpose.

The purpose of this subchapter is to implement rules regarding the [~~development of the~~] role and mission for each public institution of higher education in Texas and for submission [~~periodic review~~] of the role and mission statements, and the table of programs, and periodic review of all degree and certificate programs offered by a public institution of higher education. Section 5.24(a) of this title (relating to Submission [~~Criteria and Approval~~] of Mission Statements and Tables of Programs) applies to selected Public Colleges.

§5.22. Authority.

The authority for this subchapter is found in Texas Education Code, §§61.002(a) and (b), 61.027, 61.051(a-5), 61.0512, and 130.0012 [~~§§130.0012, 61.002(a) and (b) and Texas Education Code, §61.051(d) and (e)~~].

§5.23. Definitions.

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

(1) Preliminary Authority--Authorization [~~Permission~~] from the State of Texas to propose new degree programs in a given disciplinary area at a given level of instruction. The Table of Programs, defined in paragraph (8) of this section, prescribes the academic areas and levels that are recognized [~~approved~~] by the Board as being appropriate for an institution's existing role and mission.

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

(4) Mission Statement--A narrative description of the general mission of each institution prepared by the institution and approved by its Board of Regents [~~and the Board~~]. The statement should address the fundamental purpose of the institution with respect to its teaching, research, and public service responsibilities. The institution's special concerns for quality and access, liberal arts, admissions, career-oriented programming, extension and articulation with community colleges and public schools, traditional and nontraditional education, and similar issues also may be described. The mission statement must be consistent with the [~~approved~~] Table of Programs and any statutory mission description.

(5) (No change.)

(6) Program Inventory--The official list of all [~~approved~~] degree and certificate programs approved for a public community college, university or health-related institution.

(7) Role and Mission or Role and Scope--Equivalent phrases used to refer to the overall purpose of an institution, including its role within the overall system of Texas higher education. The [~~Board-approved~~] role and mission documents for a university or health-related institution are its Mission Statement and Table of Programs.

(8) Table of Programs--A list of the university and health-related institution [~~A table that describes the range of~~] degree and certificate programs currently authorized [~~for an institution~~] using the Texas Classification of Instructional Programs (CIP) [~~CIP classification~~] system. For each category and degree program level, authorization shall be designated by a code. The codes shall indicate whether or not degree programs in a particular subject matter category have been authorized [~~approved~~] for the institution and whether or not they fall within its approved mission.

(9) Texas Classification of Instructional Programs (CIP) Coding [~~CIP Classification~~] System--The Texas adaptation of the federal Classification of Instructional Programs taxonomy developed

by the National Center for Education Statistics and used nationally to classify instructional programs and report educational data.

(10) - (11) (No change.)

§5.24. Submission [Criteria and Approval] of Mission Statements and Tables of Programs.

(a) When submitting a notification of its intent [In reviewing a request for preliminary authority] to add a degree program (baccalaureate, master's, and doctoral) to the institution's Table of Programs, an institution of higher education shall submit information to the Board including the title of the proposed program, level, and Classification of Instructional Program (CIP) Code. [the Commissioner shall consider:]

[(1) a demonstrated need for a future program in terms of present and future vocational needs of the state and the nation;]

[(2) whether the proposed addition would complement and strengthen existing programs at the institution;]

[(3) whether a future program would unnecessarily duplicate other programs within the region, state, or nation; and]

[(4) whether a critical mass of students and faculty is likely to be available to allow the program to be offered at a high level of quality and to become self-sufficient on the basis of state funding.]

[(b) In reviewing a request for preliminary authority to add a doctoral program to the institution's Table of Programs, the Commissioner shall consider the criteria set out in subsection (a) of this section and the following additional criteria:]

[(1) a demonstrated regional, state, or national unmet need for doctoral graduates in the field, or an unmet need for a doctoral program with a unique approach to the field;]

[(2) evidence that existing doctoral programs in the state cannot accommodate additional students (or accessibility to these programs is restricted), or that expanding existing programs is not feasible or would not best serve the state;]

[(3) if appropriate to the discipline, the institution has self-sustaining baccalaureate- and master's-level programs in the field and/or programs in related and supporting areas;]

[(4) the program has the potential to obtain state or national prominence and the institution has the demonstrable capacity, or is uniquely suited, to offer the program and achieve that targeted prominence;]

[(5) demonstrated current excellence of the institution's existing undergraduate and graduate degree programs and how this excellence shall be maintained with the development and addition of a high quality doctoral program; measures of excellence include the number of graduates and six-year baccalaureate graduation rates which should equal or exceed the most recent annual statewide average six-year baccalaureate graduation rate as defined in Subchapter C, §5.46(15) of this chapter (relating to Criteria for New Doctoral Programs). If the graduation rate is below this state average, preliminary authority may still be considered if the institution meets at least two of the following three criteria:]

[(A) The percent of change in the ratio of baccalaureate degrees awarded to the total undergraduate enrollment is at or above the statewide percent of change over the most recent three years, and the institution has had an increase in productivity over the most recent three years.]

[(B) The percent of change in the total number of baccalaureate degrees awarded is at or above the statewide percent of change for the most recent three years, and the institution has had an increase in productivity over the most recent three years.]

[(C) The percent of change in the number of baccalaureate degrees awarded to "at risk" students as defined in Chapter 13, Subchapter I, §13.150 of this title (relating to Definitions) is at or above the state percent of change for the most recent three years, and the institution has had an increase in productivity over the most recent three years.]

[(6) satisfactory placement rates for graduates of the institution's current doctoral programs, with comparison to peer group placement rates when available;]

[(7) how the program will address Closing The Gaps by 2015;]

[(8) institutional resources to develop and sustain a high-quality program; and]

[(9) where appropriate, a demonstration of plans for external accreditation, licensing, or other applicable professional recognition of the program.]

(b) [(c)] Review [and Approval] Process.

(1) As provided by Texas Education Code, §61.051(a-5) and §61.052 [§61.051(e), at least every four years] the Board shall review the role and mission statements, the table of programs, and all degree and certificate programs offered by each public senior university or health related institution. [Requests for preliminary authority for new degree programs shall be presented as part of this review.] The review shall include the participation of the institution's board of regents.

[(2) The review process shall be determined by the Commissioner, but shall include a review of low-producing degree programs at the institution.]

(2) [(3)] The Board of Regents shall approve or re-approve institutional [the] mission statements. The Board of Regents shall provide the Coordinating Board with a copy of its current institutional mission statements after any change has been approved by the Board of Regents. [statement. Each institution shall be given an opportunity to be heard by the Board about these matters.]

(3) [(4)] Notification of planning for a new degree program [Preliminary authority] is not required if a degree program meets all of the following conditions:

(A) The proposed program has institutional and Board of Regents approval.

(B) The proposed program is a non-doctoral program.

(C) The proposed program is a non-engineering program (i.e., not classified under CIP code 14).

(D) The program would be offered by a university or health-related institution.

[(5) All other requests for preliminary authority shall be made using the standard preliminary authority request form and shall be approved or denied by the Commissioner.]

[(6) An institution may appeal decisions regarding preliminary authority to the Board at one of its quarterly meetings.]

[(7) Outside the normal review process described in paragraph (1) of this subsection, an institution may request of the Board an amendment to its authorized role and mission and/or preliminary authority for additional degree programs at any time the Commissioner determines that compelling circumstances warrant.]

[(8) After approval or re-approval requests for new programs and administrative changes shall be considered in the context of the approved role and mission for the institution.]

[(9) The Commissioner may approve minor changes to the mission statement of an institution during the period between the reviews referenced in paragraph (1) of this subsection.]

§5.25. Course Approvals at Public Universities.

(a) Each institution [Under the provisions of Texas Education Code, §61.052 (a) and (b), institutions] shall report its course offerings and changes to its course offerings following procedures established by the Commissioner. The report must specifically identify any course included in the common course numbering system approved by the Board that has been added to or removed from the institution's list of courses, beginning with course lists submitted for the 2014-2015 academic year.

(b) Institutions may not offer courses at levels or in programs not approved by the Board.[,]

[(c) The Commissioner may order the deletion or consolidation of any courses so submitted after giving due notice with reasons for that action and after providing a hearing if one is requested by the governing board of the institution.]

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

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Bill Franz
General Counsel
Texas Higher Education Coordinating Board
Proposed date of adoption: October 24, 2013
For further information, please call: (512) 427-6114

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TITLE 22. EXAMINING BOARDS

PART 15. TEXAS STATE BOARD OF PHARMACY

CHAPTER 291. PHARMACIES

SUBCHAPTER A. ALL CLASSES OF PHARMACIES

22 TAC §291.6

The Texas State Board of Pharmacy proposes amendments to §291.6 concerning Pharmacy License Fees. The proposed amendments to §291.6, if adopted, raise pharmacy license fees to generate revenue to support the Fiscal Year 2014-2015 budget.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments to §291.6 are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2014 = $289,416

FY2015 = $434,000

FY2016 = $434,000

FY2017 = $434,000

FY2018 = $434,000

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §291.6 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual.

Economic cost to persons who are required to comply with the amended rule will be an increase for a two-year license of $127 for an initial license and $124 for the renewal of a license.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, fax (512) 305-8008. Comments must be received by 5:00 p.m., October 25, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, 568 and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment are Texas Pharmacy Act, Chapters 551 - 566, 568 and 569, Texas Occupations Code.

§291.6. Pharmacy License Fees.

(a) Initial License Fee.

(1) The fee for an initial license shall be $500 [$381] for the initial registration period and for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) $15 [$13] surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) $15 [$12] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(b) Biennial License Renewal. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacy licenses provided under the Act §561.002.

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacy license shall be $500 [$381] for processing the application and issuance of the pharmacy license as authorized by the Act §554.006.

(2) In addition, the following fees shall be collected:

(A) $15 [$13] surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act §564.051;

(B) $15 [$12] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Duplicate or Amended Certificates. The fee for issuance of an amended pharmacy license renewal certificate shall be $20.

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

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TRD-201303341
Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 305-8028

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CHAPTER 295. PHARMACISTS

22 TAC §295.5

The Texas State Board of Pharmacy proposes amendments to §295.5 concerning Pharmacist License or Renewal Fees. The proposed amendments to §295.5, if adopted, will raise pharmacist license fees to generate revenue to support the agency's Fiscal Year 2014-2015 budget.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments to §295.5 are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2014 = $688,586

FY2015 = $1,125,060

FY2016 = $1,125,060

FY2017 = $1,125,060

FY2018 = $1,125,060

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §295.5 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to persons who are required to comply with the amended rule will be an increase for the two-year license of $71 for an initial license and $68 for the renewal of a license.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, fax (512) 305-8008. Comments must be received by 5:00 p.m., October 25, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, 568 and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment are Texas Pharmacy Act, Chapters 551 - 566, 568 and 569, Texas Occupations Code.

§295.5. Pharmacist License or Renewal Fees.

(a) Biennial Registration. The Texas State Board of Pharmacy shall require biennial renewal of all pharmacist licenses provided under the Pharmacy Act, §559.002.

(b) Initial License Fee.

(1) The fee for the initial license shall be $281 [~~$215~~] for a two year registration and for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) $13 [~~$11~~] surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) $5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, and Occupations Code.

(3) New pharmacist licenses shall be assigned an expiration date and initial fee shall be prorated based on the assigned expiration date.

(c) Renewal Fee.

(1) The fee for biennial renewal of a pharmacist license shall be $281 [~~$215~~] for processing the application and issuance of the pharmacist license as authorized by the Act, §554.006.

(2) In addition, the following fees shall be collected:

(A) $13 [~~$11~~] surcharge to fund a program to aid impaired pharmacists and pharmacy students as authorized by the Act, §564.051;

(B) $5 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(d) Exemption from fee. The license of a pharmacist who has been licensed by the Texas State Board of Pharmacy for at least 50 years or who is at least 72 years old shall be renewed without payment of a fee provided such pharmacist is not actively practicing pharmacy. The renewal certificate of such pharmacist issued by the board shall reflect an inactive status. A person whose license is renewed pursuant to this subsection may not engage in the active practice of pharmacy without first paying the renewal fee as set out in subsection (b) of this section.

(e) Duplicate or Amended Certificates.

(1) The fee for issuance of an amended pharmacist's license renewal certificate shall be $20.

(2) The fee for issuance of an amended license to practice pharmacy (wall certificate) only, or renewal certificate and wall certificate shall be $35.

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

Filed with the Office of the Secretary of State on August 12, 2013.

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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CHAPTER 297. PHARMACY TECHNICIANS AND PHARMACY TECHNICIAN TRAINEES

22 TAC §297.4

The Texas State Board of Pharmacy proposes amendments to §297.4 concerning Fees. The proposed amendments to §297.4, if adopted, will raise pharmacy technician and pharmacy technician trainee fees to generate revenue to support the Fiscal Year 2014-2015 budget.

Gay Dodson, R.Ph., Executive Director/Secretary, has determined that, for the first five-year period the amendments are in effect, there will be fiscal implications for state government as a result of enforcing or administering the amended rule as follows:

Revenue Increase

FY2014 = $395,016

FY2015 = $592,500

FY2016 = $592,500

FY2017 = $592,500

FY2018 = $592,500

There are no anticipated fiscal implications for local government.

Ms. Dodson has determined that, for each year of the first five-year period the amendments to §297.4 will be in effect, the public benefit anticipated as a result of enforcing the rule will be assuring that the Texas State Board of Pharmacy is adequately funded to carry out its mission. The effect on large, small or micro-businesses (pharmacies) will be the same as the economic cost to an individual, if the pharmacy chooses to pay the fee for the individual.

Economic cost to pharmacy technicians required to comply with the amended rule will be an increase for a two-year registration of $28 for an initial registration and $25 for a renewal registration. The economic cost for pharmacy technician trainees will be an increase for a two-year registration of $15.

Comments on the proposed amendments may be submitted to Allison Benz, R.Ph., M.S., Director of Professional Services, Texas State Board of Pharmacy, 333 Guadalupe Street, Suite 3-600, Austin, Texas 78701, fax (512) 305-8008. Comments must be received by 5:00 p.m., October 25, 2013.

The amendments are proposed under §551.002 and §554.051 of the Texas Pharmacy Act (Chapters 551 - 566, 568 and 569, Texas Occupations Code). The Board interprets §551.002 as authorizing the agency to protect the public through the effective control and regulation of the practice of pharmacy. The Board interprets §554.051(a) as authorizing the agency to adopt rules for the proper administration and enforcement of the Act.

The statutes affected by this amendment are Texas Pharmacy Act, Chapters 551 - 566, 568 and 569, Texas Occupations Code.

§297.4. Fees.

(a) Pharmacy technician trainee. The fee for registration shall be $62 [~~$47~~] and is composed of the following fees:

(1) $55 [~~$40~~] for processing the application and issuance of the pharmacy technician trainee registration as authorized by the Act, §568.005;

(2) $2 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(3) $5 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(b) Pharmacy technician.

(1) Biennial Registration. The board shall require biennial renewal of all pharmacy technician registrations provided under Chapter 568 of the Act.

(2) Initial Registration Fee. The fee for initial registration shall be $96 [~~$75~~] for a two year registration and is composed of the following fees:

(A) $91 [~~$67~~] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) $3 surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $2 [~~$5~~] surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(3) Renewal Fee. The fee for biennial renewal of a pharmacy technician registration shall be $96 [~~$71~~] and is composed of the following:

(A) $91 [~~$67~~] for processing the application and issuance of the pharmacy technician registration as authorized by the Act, §568.005;

(B) $3 [~~$2~~] surcharge to fund TexasOnline as authorized by Chapter 2054, Subchapter I, Government Code; and

(C) $2 surcharge to fund the Office of Patient Protection as authorized by Chapter 101, Subchapter G, Occupations Code.

(c) Duplicate or Amended Certificates. The fee for issuance of a duplicate or amended pharmacy technician trainee registration certificate or pharmacy technician registration renewal certificate shall be $20.

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

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Gay Dodson, R.Ph.
Executive Director/Secretary
Texas State Board of Pharmacy
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For further information, please call: (512) 305-8028

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PART 18. TEXAS STATE BOARD OF PODIATRIC MEDICAL EXAMINERS

CHAPTER 371. EXAMINATION AND LICENSURE

22 TAC §371.3

The Texas State Board of Podiatric Medical Examiners proposes amendments to §371.3 regarding Fees. The changes to §371.3 are being proposed to cover the contingent revenue as stipulated by the 83rd Texas Legislature which requires the board to assess or increase fees sufficient to generate during the FY 2014-2015 biennium $93,942 in excess of $1,010,000 (Object Code 3562), contained in the Comptroller of Public Accounts' Biennial Revenue Estimate for fiscal years 2014 and 2015. Texas Occupations Code §202.153, Fees, states that the board by rule shall establish fees in amounts reasonable and necessary to cover the cost of administering this chapter.

Hemant Makan, Executive Director, has determined that for each year of the first five years the rule is in effect, there will be no fiscal implications for state or local government as a result of adopting the section.

Mr. Makan has also determined that for each year of the first five years the rule is in effect, the public benefit anticipated as a result of adopting the changes for §371.3 will be to retain licensure and enforcement staff to ensure public safety and to ensure the complete funding of the agency's operations. There will be no effect on small or micro-businesses. The minimal cost to persons (i.e., licensees) who are required to comply with the change to §371.3 will be $50.00.

Comments on or about the emergency changes may be submitted to Hemant Makan, Executive Director, Texas State Board of Podiatric Medical Examiners, P.O. Box 12216, Austin, TX 78711-2216, Hemant.Makan@tsbpme.texas.gov.

The amendments are being proposed under Texas Occupations Code §202.151, which provides the Texas State Board of Podiatric Medical Examiners with the authority to adopt reasonable or necessary rules and bylaws consistent with the law regulating the practice of podiatry, the laws of this state, and the law of the United States to govern its proceedings and activities, the regulation of the practice of podiatry and the enforcement of the law regulating the practice of podiatry.

The proposed amendment to §371.3 implements Texas Occupations Code §202.153, Fees.

§371.3. Fees.

(a) The fees set by the Board and collected by the Board must be sufficient to meet the expenses of administering the Podiatric Medical Practice Act, subsequent amendments, and the applicable rules and regulations.

(b) Fees are as follows:

(1) Examination--$250 plus $39 fee for HB 660 (criminal history record information)

(2) Re-Examination--$250 plus $39 fee for HB 660 (criminal history record information)

(3) Temporary License--$125

(4) Extended Temporary License--$50

(5) Temporary Faculty License--$40

(6) Provisional License--$125

(7) Initial Licensing Fee--$524 [~~$474~~] (i.e. $514 plus $5 TXOL fee, [~~$469~~] plus $5 "Initial" Office of Patient Protection fee for Texas Occupations Code (TOC) §202.301 and TOC §101.307 [~~HB 2985 - 78th Session~~])

(8) Annual Renewal--$520 [~~$470~~] (i.e. $514 plus $5 TXOL fee, [~~$469~~] plus $1 "Renewal" Office of Patient Protection fee for TOC §202.301 and TOC §101.307) [~~HB 2985 - 78th Session~~]

(9) Renewal Penalty--as specified in Texas Occupations Code, §202.301(d)

(10) Non certified podiatric technician registration--$35

(11) Non certified podiatric technician renewal--$35

(12) Hyperbaric Oxygen Certificate--$25

(13) Nitrous Oxide Registration--$25

(14) Duplicate License--$50

(15) Copies of Public Records--The charges to any person requesting copies of any public record of the Board will be the charge established by the appropriate state authority. The Board may reduce or waive these charges at the discretion of the Executive Director if there is a public benefit.

(16) Statute and Rule Notebook--provided at cost to the agency

(17) Duplicate Certificate--$10

(18) HB 660 (criminal history record information)--$39

(19) Recovery Fee--An additional $100 charge may be applied for processing special requests exceeding standard application/service costs (e.g. examination rescheduling, excessive/amended document reviews, obtaining legal/court documentation, criminal history evaluation letters, etc.).

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

Filed with the Office of the Secretary of State on August 12, 2013.

TRD-201303360
Hemant Makan
Executive Director
Texas State Board of Podiatric Medical Examiners
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 305-7002

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

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, on behalf of the Department of State Health Services (department), proposes amendments to §§169.81

- 169.84, concerning the standards for allowable methods of euthanasia for animals in the custody of an animal shelter.

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."

The amendment to §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.

The amendment to §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.*

FISCAL NOTE

Janna Zumbrun, Assistant Commissioner, Disease Control and Prevention Services, has determined that for each year of the first five years that the sections will be in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the sections as proposed.

SMALL AND MICRO-BUSINESS ECONOMIC IMPACT STATEMENT AND REGULATORY FLEXIBILITY ANALYSIS

Ms. Zumbrun has also determined that there will be no effect on small businesses or micro-businesses required to comply with the sections as proposed. This was determined by interpretation of the rules that animal shelters are not operated by small businesses and micro-businesses.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated economic costs to persons who are required to comply with the sections as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

In addition, Ms. Zumbrun has also determined that for each year of the first five years the sections are in effect, the public will benefit from adoption of the sections. The public benefit anticipated as a result of clarifying language in the sections will be to promote more humane euthanasia of animals in the custody of an animal shelter and to promote public health and safety.

REGULATORY ANALYSIS

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

TAKINGS IMPACT ASSESSMENT

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

PUBLIC COMMENT

Comments on the proposal may be submitted to Tom Sidwa, DVM, MPH, Department of State Health Services, Infectious Disease Prevention Section, Zoonosis Control Branch, Mail Code 1956, P.O. Box 149347, Austin, Texas 78714-9347 or by email to Tom.Sidwa@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The 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 amendments affect Health and Safety Code, Chapters 821 and 1001; and Government Code, Chapters 531 and 2001.

§169.81. Purpose.

The purpose of this subchapter [~~these sections~~] is to set minimum standards for allowable methods of euthanasia for an animal(s) in the custody of an animal shelter, in accordance with the Texas Health and Safety Code, Chapter 821.

§169.82. Definitions [~~Definition~~].

The following words and terms, when used in this subchapter, shall have the following meanings, unless the context clearly indicates otherwise. [~~In this chapter, animal shelter, unless the context clearly indicates otherwise, means a facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.~~]

(1) Animal shelter--A facility that collects, impounds, or keeps stray, homeless, abandoned, or unwanted animals.

(2) Department--The Department of State Health Services.

§169.83. Animal Identification and Owner Notification.

Prior to euthanasia, each animal should first be scanned for microchip identification and searched for identification tattoos; at a minimum, the abdomen, inner thighs, and inside ear flaps should be searched for tattoos. If identification is located on an animal or the animal is wearing a tag(s), reasonable efforts to locate and notify the animal's owner shall be made and documented prior to euthanasia.

§169.84. Allowable Methods of Euthanasia.

(a) Only sodium pentobarbital [~~or commercially compressed carbon monoxide gas~~] may be used to euthanize a dog or cat in the custody of an animal shelter.

(b) When sodium pentobarbital is used to euthanize a dog or cat [~~an animal~~], the following requirements apply.

[~~(1) Persons administering sodium pentobarbital must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.~~]

(1) [~~(2)~~] The preferential route [~~routes~~] of administration [~~injections~~] of sodium pentobarbital is intravenous injection by hypodermic needle. Other routes considered to be acceptable are[~~, listed in the order of preference, shall be~~]:

[~~(A) intravenous injection by hypodermic needle;~~]

(A) [~~(B)~~] intraperitoneal injection by hypodermic needle; or

(B) [~~(C)~~] intra-organ, limited to intraosseous, intracardiac, intrahepatic, intrasplenic, and intrarenal, injection by hypodermic needle.

(2) [~~(3)~~] Any injection must be administered using a new, undamaged sterilized hypodermic needle of a size suitable for the size and species of the animal.

(3) [~~(4)~~] Injection shall be conducted in an area out of public view and out of the view of another animal, except when euthanizing unweaned/nursing animals with their mother; when euthanizing a mother animal with her offspring, the mother animal shall be euthanized first immediately followed by euthanasia of her offspring. Additionally[~~; additionally~~], the carcass(es) [~~carcass~~] of any animal(s) shall be removed from the euthanasia area prior to a live animal(s) entering that area.

(4) [~~(5)~~] The area used for injection shall be in a quiet location and have sufficient lighting to allow for visual accuracy during the injection process.

(5) [~~(6)~~] A dose of sodium pentobarbital appropriate for the animal's weight shall be administered to that animal through the route most appropriate for that animal.

(6) [~~(7)~~] Each animal given sodium pentobarbital by intraperitoneal injection must be given 3 to 4 times the intravenous dose.

(7) [~~(8)~~] Each animal given sodium pentobarbital by intraperitoneal injection shall be placed in a quiet, darkened area and, except when euthanizing unweaned/nursing animals with their mother, separated from physical contact with any other animal(s) during the dying process. When euthanizing a mother animal with her offspring, the mother animal shall be euthanized first immediately followed by euthanasia of her offspring.

(8) [~~(9)~~] Intra-organ [~~Intracardiac~~] injection shall [~~may~~] not be used unless the animal is [~~heavily sedated,~~] unconscious[~~,~~] or anesthetized so that the animal is unable to feel pain.

(9) [~~(10)~~] The carcass of any animal(s) euthanized by sodium pentobarbital must be stored and disposed of in a manner that minimizes the potential for scavenging by animals or humans.

(c) Any animal other than a dog or cat, including birds and reptiles, in the custody of an animal shelter shall be humanely euthanized only in accordance with the methods, recommendations, and procedures of the American Veterinary Medical Association (AVMA) in the latest edition of the *AVMA Guidelines for the Euthanasia of Animals* applicable to that species of animal.

(d) [~~(c)~~] When commercially compressed carbon monoxide gas is used to euthanize an animal(s), the following requirements apply.

(1) It must be performed in a commercially manufactured carbon monoxide chamber or one designed and constructed, at a minimum, to equal the effectiveness of a commercially manufactured chamber.

(2) The chamber must be located outdoors or in a well-ventilated room.

(3) The chamber must be airtight and equipped with the following:

(A) an exhaust fan for indoor chambers which is capable of evacuating all gas from the chamber prior to the chamber being opened and is connected by a gas-type duct to the outdoors;

(B) a gas flow regulator and flow meter for the canister;

(C) a gas concentration gauge;

(D) an accurate temperature gauge for monitoring the interior of the chamber;

(E) if located indoors, a carbon monoxide monitor on the exterior of the chamber that is connected to an audible alarm system, which will sound in the room containing the chamber;

(F) explosion-proof electrical equipment if equipment is exposed to carbon monoxide;

(G) a view-port with either internal lighting or external lighting sufficient to allow visual surveillance of any animal(s) within the chamber; and

(H) if designed to euthanize more than one animal at a time, independent sections or cages to separate individual animals.

(4) The gas concentration process must achieve at least a 6% carbon monoxide gas concentration not to exceed 10% due to flammability and explosiveness throughout the chamber within 5 minutes after the introduction of carbon monoxide into the chamber is initiated.

(5) The ambient temperature inside the chamber should not exceed 85 degrees Fahrenheit (29.4 degrees Celsius) when it contains a live animal(s). For an outdoor chamber, achievement may be facilitated by use of the chamber during early morning.

(6) All equipment, as specified in paragraph (3)(A) - (H) of this subsection, must be in proper working order and used at all times during the operation of the chamber.

(7) An animal(s) must be left in the chamber with a continuous gas supply for a minimum of 15 minutes [~~not be removed from the chamber until at least 5 minutes after cessation of respiratory movement~~].

(8) The chamber must be thoroughly vented prior to removing any carcasses.

(9) The chamber must be thoroughly cleaned after the completion of each cycle. Chamber surfaces must be constructed and maintained so they are impervious to moisture and can be readily sanitized.

[~~(10) Persons operating the chamber must be thoroughly trained in the proper methods and techniques for euthanizing animals. A person has until the 120th day following the date of initial employment to complete this training.~~]

(10) [~~(11)~~] Operation, maintenance, and safety instructions and guidelines must be displayed prominently in the area containing the chamber.

(11) [~~(12)~~] Carbon monoxide shall not be used to euthanize any animal reasonably presumed to be less than 16 weeks of age. Carbon monoxide shall also not be used to euthanize any animal that could be anticipated to have decreased respiratory function, such as the elderly, sick, injured, or pregnant. Such animals may be resistant to the effects of carbon monoxide and the time required to achieve death in these animals may be significantly increased. In animals with decreased respiratory function, carbon monoxide levels rise slowly, making it more likely that these animals will experience elevated levels of stress.

(12) [~~(13)~~] Only compatible animals of the same species may be placed in the chamber simultaneously.

(13) [~~(14)~~] No live animal(s) may be placed in the chamber with a dead animal(s).

(e) Prior to using any method of euthanasia, all available measures should be taken to minimize the fear, anxiety, and distress of the animal scheduled for euthanasia.

[~~(d) Any animal other than cats and dogs, including birds and reptiles, in the custody of an animal shelter shall be humanely euthanized only in accordance with the methods, recommendations, and procedures prepared by the American Veterinary Medical Association (AVMA) and set forth in the *AVMA Guidelines on Euthanasia* (June 2007) applicable to each species of animal.~~]

(f) [~~(e)~~] When using any of the allowable methods of euthanasia, each animal must be monitored between the time euthanasia procedures have commenced and the time death occurs, and the animal's body must not be disposed of until death is confirmed by examination of the animal for cessation of vital signs.

(g) As specified under the Texas Health and Safety Code, §821.055, a person (excluding licensed veterinarians) may not euthanize any animal in the custody of an animal shelter unless the person has successfully completed a training course in the proper methods and techniques for euthanizing animals not later than three years before the date the person euthanizes the animal. The training course must be pre-approved by the department. A person has until the 120th day following the date of initial employment to complete this training.

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

Filed with the Office of the Secretary of State on August 6, 2013.

TRD-201303247
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 776-6972

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CHAPTER 181. VITAL STATISTICS
SUBCHAPTER B. VITAL RECORDS

25 TAC §181.22

The Executive Commissioner of the Health and Human Services Commission, on behalf of the Department of State Health Services (department), proposes an amendment to §181.22, concerning the waiver of a fee for a certified record.

BACKGROUND AND PURPOSE

Health and Safety Code, §191.0045, authorizes the Executive Commissioner of the Health and Human Services Commission to adopt administrative rules that prescribe a schedule of fees for vital statistics services performed by the Bureau of Vital Statistics (the bureau) of the department. This statute also requires a local registrar or county clerk who issues a certified copy of a birth record to charge the same fee as the bureau.

Section 181.22 currently prescribes fees for the production of certified copies of birth records. Under 37 TAC §15.182, Department of Public Safety (DPS), an individual who applies for an Election Identification Certificate (EIC) issued by the DPS pursuant to Transportation Code, Chapter 521A, may be required to produce an original or certified copy of a birth record. The cost of a certified birth record may impose a barrier to a person who is required to produce a certified copy for the purpose of obtaining an EIC.

The proposed amendment waives the fees charged under §181.22 for a certified copy of a birth record for an individual

who requires a certified copy in order to obtain an EIC. The waiver applies to an individual who requests a certified copy from the department, a local registrar, or a county clerk.

The DPS reports that, as of the publication date of this proposed amendment, fewer than twenty individuals statewide have requested an EIC. Accordingly, the department believes that the proposed amendment will not negatively affect fees and charges otherwise assessed and collected by local registrars and county clerks under §181.22.

SECTION-BY-SECTION SUMMARY

The amendment to §181.22 stipulates the requirements for waiver of fees associated with obtaining an election identification certificate pursuant to the Transportation Code, Chapter 521A.

FISCAL NOTE

Geraldine Harris, Unit Director of the Vital Statistics Unit, has determined that, due to the low number of individuals who have requested an EIC from the DPS, for each year of the first five years that the section is in effect, there will be no fiscal implications to state or local governments as a result of enforcing and administering the section as proposed.

SMALL AND MICRO-BUSINESS IMPACT ANALYSIS

Ms. Harris has also determined that there will be no adverse economic costs to small businesses or micro-businesses required to comply with the section as proposed. This was determined by interpretation of the rule that small businesses and micro-businesses will not be required to alter their business practices in order to comply with the section.

ECONOMIC COSTS TO PERSONS AND IMPACT ON LOCAL EMPLOYMENT

There are no anticipated costs to persons who are required to comply with the section as proposed. There is no anticipated negative impact on local employment.

PUBLIC BENEFIT

Additionally, Ms. Harris has also determined that for each year of the first five years the section is in effect, the public will benefit from the adoption of this amendment because it allows a person who does not have a birth certificate to obtain one at little or no cost for the purpose of securing an EIC to vote.

REGULATORY ANALYSIS

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

TAKING IMPACT ASSESSMENT

The department 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 Government Code, §2007.043.

PUBLIC COMMENT

Comments on the proposal may be submitted to Marc Connelly, Deputy General Counsel, Department of State Health Services, Mail Code 1919, P.O. Box 149347, Austin, Texas 78714-9347, telephone (512) 776-6683, or marc.connelly@dshs.state.tx.us. Comments will be accepted for 30 days following publication of the proposal in the *Texas Register.*

LEGAL CERTIFICATION

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

STATUTORY AUTHORITY

The amendment is proposed under Health and Safety Code §191.0045, which authorizes the bureau of vital statistics to charge fees for the preparation and issuance of certified copies of a birth record and prescribe a schedule of fees, and §191.002, which authorizes rules necessary for the effective administration of Vital Statistics Records; 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.

The amendment affects Health and Safety Code, Chapters 191 and 1001; and Government Code, Chapter 531.

§181.22. Fees Charged for Vital Records Services.

(a) - (s) (No change.)

(t) The fee for a certified record that otherwise is required under this section is waived for an applicant who represents that the certified record is required for the purpose of obtaining an election identification certificate issued pursuant to Transportation Code, Chapter 521A.

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

Filed with the Office of the Secretary of State on August 12, 2013.

TRD-201303362
Lisa Hernandez
General Counsel
Department of State Health Services
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 776-6972

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TITLE 34. PUBLIC FINANCE

PART 1. COMPTROLLER OF PUBLIC ACCOUNTS

CHAPTER 3. TAX ADMINISTRATION

SUBCHAPTER O. STATE SALES AND USE TAX

34 TAC §3.281

The Comptroller of Public Accounts proposes an amendment to §3.281, concerning records required; information required. This section is being amended to implement provisions of Senate Bill 934, 82nd Legislature, 2011, and Senate Bill 1, 82nd Legislature, First Called Session, 2011.

Subsection (b)(1) is amended, and new subsection (b)(4) is added, to implement Section 14 of Senate Bill 934, 82nd Legislature, 2011. Section 14 amended Tax Code, §151.025(a) to require all sellers, and other persons storing, using, or consuming a taxable item purchased from a seller, to keep records of all gross receipts and to keep records showing all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction during each reporting period. The following paragraph is renumbered accordingly.

Subsection (c) is amended to implement Sections 17 and 18 of Senate Bill 934, 82nd Legislature, 2011. Section 17 amended Tax Code, §151.707(b) to apply subsection (b) to all offenses described under Tax Code, §151.707(a). Section 18 amended Tax Code, Chapter 151, Subchapter L, to add §151.7075. This new section creates a criminal penalty for knowingly failing to produce records that are required to be kept under Tax Code, §151.025, and that document a taxpayer's sale of beer, wine, or malt liquor, cigarettes, or cigars and tobacco products that the taxpayer obtained using a resale certificate, when such records are requested by the comptroller under Tax Code, §151.023.

Subsection (c) is further amended to implement Section 4.02 of Senate Bill 1, 82nd Legislature, First Called Session, 2011, which amended Tax Code, §111.0041 to require taxpayers to keep and produce contemporaneous records.

Subsection (e) is amended to implement Section 4.02 of Senate Bill 1, 82nd Legislature, First Called Session, 2011, which amended Tax Code, §111.0041 to require taxpayers to keep records for a minimum of four years and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller, or in which an administrative hearing or judicial proceeding is pending.

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 for taxpayers their record requirements under the Tax Code. 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 Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, 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 amendment is proposed under Tax Code, §111.002 and §111.0022, which provide 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, as well as taxes, fees, or other charges which the comptroller administers under other law.

The amendment implements Tax Code, §§151.025, 111.0041, 151.707, and 151.7075.

§3.281. Records Required; Information Required.

(a) Persons who must keep records.

(1) Sellers of taxable items and purchasers who store, use, or consume taxable items in this state shall keep books, papers, and records in the form that the comptroller requires.

(2) Examples of persons who are required to keep records include the following:

(A) a person who sells, leases, or rents tangible personal property;

(B) a person who performs taxable labor, such as fabricating, processing, and producing tangible personal property;

(C) a person who performs taxable services that are listed in Tax Code, §151.0101; or

(D) a person who purchases taxable items.

(b) Records required.

(1) Records must reflect the total gross receipts from all sales, rentals, leases, taxable services, and taxable labor. Examples include, but are not limited to, receipts, shipping manifests, invoices, and other pertinent papers from each rental, lease, taxable service, and each taxable labor transaction that occurs during each reporting period.

(2) Records must reflect total purchases of taxable items. Examples include, but are not limited to, receipts, shipping manifests, invoices, and other pertinent papers of all purchases of taxable items from every source that are made during each reporting period.

(3) Additional records must be kept to substantiate any claimed deductions or exclusions authorized by law. Examples include, but are not limited to, receipts, shipping manifests, invoices, exemption certificates, resale certificates, and other pertinent papers that substantiate each claimed deduction or exclusion.

(4) Records must reflect all sales and use tax, and any money represented to be sales and use tax, received or collected on each sale, rental, lease, or service transaction. Examples include, but are not limited to, sales receipts, invoices, or other equivalent records, including electronically stored images of such documents, showing all sales and use tax received or collected during each reporting period.

(5) [~~(4)~~] Records may be written, kept on microfilm, stored on data processing equipment, or may be in any form that the comptroller may readily examine.

(c) Failure to keep or to provide accurate records. If a person who is required to keep records under subsection (a) of this section fails to keep accurate contemporaneous records of gross receipts, gross purchases, deductions, [~~and~~] exclusions, and taxes received or collected, or if a person fails to produce such records when requested by the comptroller during an audit or investigation, the comptroller may take actions that include, but are not limited to, the following:

(1) estimate the person's tax liability based on any available information that includes, but is not limited to, records of suppliers;

(2) use a sample and projection auditing method to calculate the person's tax liability. For further information, see §3.282 of this title (relating to Auditing Taxpayer Records);

(3) suspend the person's permit;

(4) file criminal charges as provided in [~~against a person who intentionally and knowingly alters or fails to keep records. For~~

~~further information, see~~] §3.305 of this title (relating to Criminal Offenses and Penalties); and

(5) take other action as authorized by law to enforce compliance with the Tax Code.

(d) Information required.

(1) The comptroller may require any person subject to the Limited Sales and Use Tax Act to furnish information necessary to:

(A) identify any person applying for a permit or any person required to file a return;

(B) determine the amount of bond required to commence or continue business;

(C) determine possible successor liability; and

(D) determine the amount of tax the person is required to remit.

(2) The information required may include, but is not limited to, the following:

(A) name of the actual owner of the business;

(B) name of each partner in a partnership;

(C) names of officers and directors of corporations and other organizations;

(D) all trade names under which the owner operates;

(E) mailing address and actual locations of all business outlets;

(F) license numbers, title numbers, and other identification of business vehicles;

(G) identification numbers assigned by other governmental agencies, including social security numbers, federal employers identification numbers, and drivers license numbers;

(H) names of suppliers, banks, and other persons with whom the taxpayer transacts business;

(I) names and last known addresses of former owners of the business.

(e) Retention. A person who is required to keep records under subsection (a) of this section must keep those records for a minimum of four years from the date on which the record is made, and throughout any period in which any tax, penalty, or interest may be assessed, collected, or refunded by the comptroller or in which an administrative hearing or judicial proceeding is pending, unless the comptroller authorizes in writing a shorter retention period. A person must keep exemption and resale certificates for a minimum of four years following the completion of the last sale that is covered by the certificate.

(f) The comptroller, the attorney general, or the authorized representative of either of them [~~or the comptroller's authorized representative~~] may examine, copy, and photograph any records of any person who is required to keep records under subsection (a) of this section, to verify the accuracy of any return or to determine any tax liability. However, during an audit, an auditor for the comptroller should obtain permission from a taxpayer to copy or photograph records that are proprietary in nature, unless the comptroller reasonably believes that the taxpayer may have committed fraud or taken action to evade taxes. If the taxpayer does not grant the auditor permission to copy or photograph records, and the comptroller believes that the records are necessary to determine the tax liability of the taxpayer, then the comptroller may obtain records through other means under authority granted by Tax Code, §111.0043.

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

Filed with the Office of the Secretary of State on August 7, 2013.

TRD-201303281
Ashley Harden
General Counsel
Comptroller of Public Accounts
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 475-0387

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TITLE 37. PUBLIC SAFETY AND CORRECTIONS

PART 13. TEXAS COMMISSION ON FIRE PROTECTION

CHAPTER 421. STANDARDS FOR CERTIFICATION

37 TAC §421.5

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 421, Standards for Certification, §421.5, concerning Definitions.

The purpose of the proposed amendments is to define various Instructor titles and define other groups or associations referred to in commission rules.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is clear and concise definitions regarding Instructors and it will serve as a guide for anyone interested in the duties and responsibilities of the various titles. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§421.5. Definitions.

The following words and terms, when used in the Standards Manual [~~this standards manual~~], shall have the following meanings, unless the context clearly indicates otherwise.

(1) Admission to employment--An entry level full-time employee of a local government entity in one of the categories of fire protection personnel.

(2) Appointment--The designation or assignment of a person to a discipline regulated by the commission. The types of appointments are:

(A) permanent appointment--the designation or assignment of certified fire protection personnel or certified part time fire protection employees to a particular discipline (See Texas Government Code, §419.032); and

(B) probationary or temporary appointment--the designation or assignment of an individual to a particular discipline, except for head of a fire department, for which the individual has passed the commission's certification and has met the medical requirement of §423.1(c) of this title (relating to Minimum Standards for Structure Fire Protection Personnel), if applicable, but has not yet been certified. (See Texas Government Code, §419.032.)

(3) Approved training--Any training used for a higher level of certification must be approved by the commission and assigned to either the A-List or the B-List. The training submission must be in a manner specified by the commission and contain all information requested by the commission. The commission will not grant credit twice for the same subject content or course. Inclusion on the A-List or B-List does not preclude the course approval process as stated elsewhere in the Standards Manual.

(4) Assigned/work--A fire protection personnel or a part-time fire protection employee shall be considered "assigned/working" in a position, any time the individual is receiving compensation and performing the duties that are regulated by the commission [~~certification~~] and has been permanently appointed, as defined in this section, to the particular discipline.

(5) Assistant fire chief--The officer occupying the first position subordinate to the head of a fire department.

(6) Auxiliary fire fighter--A volunteer fire fighter.

(7) Benefits--Benefits shall include, but are not limited to, inclusion in group insurance plans (such as health, life, and disability) or pension plans, stipends, free water usage, and reimbursed travel expenses (such as meals, mileage, and lodging).

(8) Chief Training Officer--The individual, by whatever title he or she may be called, who coordinates the activities of a certified training facility.

(9) Class hour--Defined as not less than 50 minutes of instruction, also defined as a contact hour; a standard for certification of fire protection personnel.

(10) Code--The official legislation creating the commission.

(11) College credits--Credits earned for studies satisfactorily completed at an institution of higher education accredited by an agency recognized by the U.S. Secretary of Education and including National Fire Academy (NFA) open learning program colleges, or courses recommended for college credit by the American Council on Education (ACE) or delivered through the National Emergency Training Center (both EMI and NFA) programs. A course of study satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide that is primarily related to Fire Service, Emergency Medicine, Emergency Management, or Public Administration is defined as applicable for Fire Science college credit, and is acceptable for higher levels of certification. A criminal justice course related to fire and or arson investigation that is satisfactorily completed and identified on an official transcript from a college or in the ACE National Guide may be used to qualify for Master Arson Investigator certification.

(12) Commission--Texas Commission on Fire Protection.

(13) Commission-recognized training--A curriculum or training program which carries written approval from the commission, or credit hours that appear on an official transcript from an accredited college or university, or any fire service training received from a nationally recognized source, i.e., the National Fire Academy.

(14) Compensation--Compensation is to include wages, salaries, and "per call" payments (for attending drills, meetings or answering emergencies).

(15) Expired--Any certification that has not been renewed on or before the end of the certification period.

(16) Federal fire fighter--A person as defined in the Texas Government Code, §419.084(h).

(17) Fire chief--The head of a fire department.

(18) Fire department--A department of a local government that is staffed by one or more fire protection personnel or part-time fire protection employees.

(19) Fire protection personnel--Any person who is a permanent full-time employee of a fire department or governmental entity and who is appointed duties in one of the following categories/disciplines: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others employed in related positions necessarily or customarily appertaining thereto.

(20) Fire suppression duties--Engaging in the controlling or extinguishment of a fire of any type or performing activities which are required for and directly related to the control and extinguishment of fires or standing by on the employer's premises or apparatus or nearby in a state of readiness to perform these duties.

(21) Full-time--An officer or employee is considered full-time if the employee works an average of 40 hours a week or averages 40 hours per week or more during a work cycle in a calendar year. For the purposes of this definition paid leave will be considered time worked.

(22) Government entity--The local authority having jurisdiction as employer of full-time fire protection personnel in a state agency, incorporated city, village, town or county, education institution or political subdivision.

(23) High school--A school accredited as a high school by the Texas Education Agency or equivalent accreditation agency from another jurisdiction.

(24) Immediately dangerous to life or health (IDLH)--An atmosphere that poses an immediate threat to life, would cause irreversible adverse health effects, or would impair an individual's ability to escape from a dangerous atmosphere.

(25) Incipient stage fire--A fire which is in the initial or beginning stage and which can be controlled or extinguished by portable fire extinguishers, Class II standpipe or small hose systems without the need for protective clothing or breathing apparatus.

(26) Instructor:

(A) Lead Instructor--Oversees the presentation of an entire course and assures that course objectives are met in accordance with the applicable curriculum or course material. The lead instructor should have sufficient experience in presenting all units of the course so as to be capable of last-minute substitution for other instructors.

(B) Instructor (also Unit Instructor for wildland courses)--Responsible for the successful presentation of one or more areas of instruction within a course, and should be experienced in the lesson content they are presenting.

(C) Guest Instructor--An individual who may or may not hold Instructor certification but whose special knowledge, skill, and expertise in a particular subject area may enhance the effectiveness of the training in a course. Guest instructors shall teach under the endorsement of the lead instructor.

(27) [~~(26)~~] Interior structural fire fighting--The physical activity of fire suppression, rescue or both, inside of buildings or enclosed structures which are involved in a fire situation beyond the incipient stage. (See 29 CFR §1910.155.)

[~~(27) Lead instructor--An individual qualified as an instructor to deliver fire protection training.~~]

(28) Municipality--Any incorporated city, village, or town of this state and any county or political subdivision or district in this state. Municipal pertains to a municipality as defined in this section.

(29) National Fire Academy semester credit hours--The number of hours credited for attendance of National Fire Academy courses is determined as recommended in the most recent edition of the "National Guide to Educational Credit for Training Programs," American Council on Education (ACE).

(30) National Fire Protection Association (NFPA)--An organization established to provide and advocate consensus codes and standards, research, training, and education for fire protection.

(31) National Wildfire Coordinating Group (NWCG)--An operational group designed to establish, implement, maintain, and communicate policy, standards, guidelines, and qualifications for wildland fire program management among participating agencies.

(32) [~~(30)~~] Non-self-serving affidavit--A sworn document executed by someone other than the individual seeking certification.

(33) [~~(31)~~] Participating volunteer fire fighter--An individual who voluntarily seeks certification and regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(34) [~~(32)~~] Participating volunteer fire service organization--A fire department that voluntarily seeks regulation by the commission under the Texas Government Code, Chapter 419, Subchapter D.

(35) [~~(33)~~] Part-time fire protection employee--An individual who is appointed as a part-time fire protection employee and who receives compensation, including benefits and reimbursement for expenses. A part-time fire protection employee is not full-time as defined in this section.

(36) [~~(34)~~] Personal alert safety system (PASS)--Devices that are certified as being compliant with NFPA 1982, and that automatically activates an alarm signal (which can also be manually activated) to alert and assist others in locating a fire fighter or emergency services person who is in danger.

(37) [~~(35)~~] Political subdivision--A political subdivision of the State of Texas that includes, but is not limited to the following:

(A) city;

(B) county;

(C) school district;

(D) junior college district;

(E) levee improvement district;

(F) drainage district;

(G) irrigation district;

(H) water improvement district;

(I) water control and improvement district;

(J) water control and preservation district;

(K) freshwater supply district;

(L) navigation district;

(M) conservation and reclamation district;

(N) soil conservation district;

(O) communication district;

(P) public health district;

(Q) river authority;

(R) municipal utility district;

(S) transit authority;

(T) hospital district;

(U) emergency services district;

(V) rural fire prevention district; and

(W) any other governmental entity that:

(i) embraces a geographical area with a defined boundary;

(ii) exists for the purpose of discharging functions of the government; and

(iii) possesses authority for subordinate self-government through officers selected by it.

(38) [~~(36)~~] Reciprocity for IFSAC seals--Valid documentation of accreditation from the International Fire Service Accreditation Congress used for commission certification may only be used for obtaining an initial certification.

(39) [~~(37)~~] Recognition of training--A document issued by the commission stating that an individual has completed the training requirements of a specific phase level of the Basic Fire Suppression Curriculum.

(40) [~~(38)~~] School--Any school, college, university, academy, or local training program which offers fire service training and included within its meaning the combination of course curriculum, instructors, and facilities.

(41) [~~(39)~~] Structural fire protection personnel--Any person who is a permanent full-time employee of a government entity who engages in fire fighting activities involving structures and may perform other emergency activities typically associated with fire fighting activities such as rescue, emergency medical response, confined space rescue, hazardous materials response, and wildland fire fighting.

(42) [~~(40)~~] Trainee--An individual who is participating in a commission approved training program.

(43) [~~(41)~~] Volunteer fire protection personnel--Any person who has met the requirements for membership in a volunteer fire service organization, who is assigned duties in one of the following categories: fire suppression, fire inspection, fire and arson investigation, marine fire fighting, aircraft rescue fire fighting, fire training, fire education, fire administration and others in related positions necessarily or customarily appertaining thereto.

(44) [~~(42)~~] Volunteer fire service organization--A volunteer fire department or organization not under mandatory regulation by the commission.

(45) [~~(43)~~] Years of experience--For purposes of higher levels of certification or fire service instructor certification:

(A) Except as provided in subparagraph (B) of this paragraph, years of experience is defined as full years of full-time, part-time or volunteer fire service while holding:

(i) a commission certification as a full-time, or part-time employee of a government entity, a member in a volunteer fire service organization, and/or an employee of a regulated non-governmental fire department; or

(ii) a State Firemen's and Fire Marshals' Association advanced fire fighter certification and have successfully completed, as a minimum, the requirements for an Emergency Care Attendant (ECA) as specified by the Department of State Health Services (DSHS), or its successor agency, or its equivalent; or

(iii) an equivalent certification as a full-time fire protection personnel of a governmental entity from another jurisdiction, including the military, or while a member in a volunteer fire service organization from another jurisdiction, and have, as a minimum, the requirements for an ECA as specified by the DSHS, or its successor agency, or its equivalent; or

(iv) for fire service instructor eligibility only, a State Firemen's and Fire Marshals' Association Level II Instructor Certification, received prior to June 1, 2008 or Instructor I received on or after June 1, 2008 or an equivalent instructor certification from the DSHS or the Texas Commission on Law Enforcement. Documentation of at least three years of experience as a volunteer in the fire service shall be in the form of a non self-serving sworn affidavit.

(B) For fire service personnel certified as required in subparagraph (A) of this paragraph on or before October 31, 1998, years of experience includes the time from the date of employment or membership to date of certification not to exceed one year.

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

Filed with the Office of the Secretary of State on August 6, 2013.

TRD-201303238
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 936-3813

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CHAPTER 423. FIRE SUPPRESSION

SUBCHAPTER A. MINIMUM STANDARDS FOR STRUCTURE FIRE PROTECTION PERSONNEL CERTIFICATION

37 TAC §423.3

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 423, Fire Suppression, Subchapter A, Minimum Standards for Structure Fire Protection Personnel Certification, §423.3, concerning Minimum Standards for Basic Structure Fire Protection Personnel Certification.

The purpose of the proposed amendments is to correct an incorrect reference to another section of this chapter and minor grammatical changes.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is more clear and concise rules regarding the minimum requirements for basic structure fire protection personnel certification. There will be no effect on micro businesses, small businesses or persons required to comply with the amended section as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§423.3. Minimum Standards for Basic Structure Fire Protection Personnel Certification.

(a) In order to become certified as basic structure fire protection personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as a Fire Fighter I, Fire Fighter II, Hazardous Materials Awareness Level Personnel; and

(A) Hazardous Materials Operations Level Responders including the Mission-Specific Competencies for Personal Protective Equipment and Product Control under the current edition; or

(B) NFPA 472 Hazardous Materials Operations prior to the 2008 edition; and

(C) must meet the medical requirements outlined in §423.1(c) [~~§423.1(b)~~] of this title (relating to Minimum Standards for Structure Fire Protection Personnel); or

(2) complete a commission [~~Commission~~]approved basic structure fire suppression program, meet the medical requirements out-

lined in §423.1(c) of this title [§423.1(b)], and successfully pass the commission [Commission] examination(s) as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved basic structure fire suppression program shall consist of one or any combination of the following:

(A) completion of a commission [Commission]approved Basic Fire Suppression Curriculum, as specified in Chapter 1 of the commission's [Commission's] Certification Curriculum Manual; or

(B) completion of an out-of-state, and/or military training program deemed equivalent to the commission [Commission]approved Basic Fire Suppression Curriculum; or

(C) documentation of the receipt of an advanced certificate or training records from the State Firemen's and Fire Marshals' Association of Texas, that is deemed equivalent to a commission [Commission]approved Basic Fire Suppression Curriculum.

(b) A basic fire suppression program may be submitted to the commission [Commission] for approval by another jurisdiction as required in Texas Government Code, §419.032(d), Appointment of Fire Protection Personnel. These programs include out-of-state and military programs, and shall be deemed equivalent by the commission [Commission] if the subjects taught, subject content, and total hours of training meet or exceed those contained in Chapter 1 of the commission's [Commission's] Certification Curriculum Manual.

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

Filed with the Office of the Secretary of State on August 6, 2013.

TRD-201303237
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 936-3813

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CHAPTER 455. MINIMUM STANDARDS FOR WILDLAND FIRE PROTECTION CERTIFICATION

37 TAC §§455.3, 455.5, 455.7

The Texas Commission on Fire Protection (the commission) proposes amendments to Chapter 455, Minimum Standards for Wildland Fire Protection Certification, §455.3, concerning Minimum Standards for Basic Wildland Fire Protection Certification; §455.5, concerning Minimum Standards for Intermediate Wildland Fire Protection Certification; and §455.7, concerning Examination Requirements.

The purpose of the proposed amendments is to correct an incorrect title of a commission curriculum, to delete obsolete language, and to amend the minimum requirements for Intermediate Wildland Fire Protection Certification by the commission.

Tim Rutland, Interim Executive Director, has determined that for each year of the first five year period the proposed amendments are in effect, there will be no fiscal impact on state or local governments.

Mr. Rutland has also determined that for each year of the first five years the proposed amendments are in effect, the public benefit from the passage is more clear and concise rules regarding the minimum requirements for obtaining Intermediate Wildland Fire Protection certification from the commission. There will be no effect on micro businesses, small businesses or persons required to comply with the amended sections as proposed; therefore, no regular flexibility analysis is required.

Comments regarding the proposed amendments may be submitted, in writing, within 30 days following the publication of this notice in the *Texas Register* to Tim Rutland, Interim Executive Director, Texas Commission on Fire Protection, P.O. Box 2286, Austin, Texas 78768 or e-mailed to info@tcfp.texas.gov. Comments will be reviewed and discussed at a future commission meeting.

The amendments are proposed under Texas Government Code, Chapter 419, §419.008, which provides the commission the authority to propose rules for the administration of its powers and duties; and §419.032, which provides the commission the authority to adopt rules regarding qualifications and competencies for appointment of fire protection personnel.

The proposed amendments implement Texas Government Code §419.008 and §419.032.

§455.3. Minimum Standards for Basic Wildland Fire Protection Certification.

In order to be certified as Basic Wildland Fire Protection [fire protection] personnel, an individual must:

(1) possess valid documentation of accreditation from the International Fire Service Accreditation Congress as Wildland Fire Fighter Level I; or

(2) complete a commission [commission]approved Basic Wildland Fire Protection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Basic Wildland Fire Protection training program shall consist of one of the following:

(A) completion of the commission [commission]approved Basic Wildland Fire Fighter [Protection] Curriculum, as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the following [Texas Forest Service/]National Wildfire Coordinating Group (NWCG) courses:

(i) S-130: Firefighter Training

(ii) S-190: Introduction to Wildland Fire Behavior

(iii) L-180: Human Factors on the Fireline

(iv) I-100: Introduction to the Incident Command System, or an equivalent basic incident command system course such as NIMS IS-100

(3) The commission examination requirement is waived for individuals who have completed the training requirements in paragraph (2)(A) or (B) of this section and apply for certification by August 31, 2013. After this date, individuals must successfully pass the commission examination prior to applying for certification.

§455.5. Minimum Standards for Intermediate Wildland Fire Protection Certification.

[(a)] In order to be certified as Intermediate Wildland Fire Protection personnel, an individual must:

(1) hold Basic Wildland Fire Protection certification issued by the commission;[,] and

(2) complete the associated position task book as adopted by the National Wildfire Coordinating Group (NWCG) 310-1. Proof of completion of the position task book must be from the Texas Intrastate Fire Mutual Aid System (TIFMAS) (e.g. task book approval form or TIFMAS card); and

(3) individuals who hold Structure Fire Protection certification issued by the commission must complete a commission approved Intermediate Wildland Fire Protection program and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification). An approved Intermediate Wildland Fire Protection training program shall consist of one of the following:

(A) completion of the commission approved Intermediate Wildland Fire Fighter Curriculum, as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the NWCG course G-131: Wildland Training (FFT1) for Structural Fire Fighters; or

(C) completion of the NWCG courses S-131 and S-133; or

[(2) individuals who hold Structure Fire Protection certification issued by the commission must complete the Texas Forest Service/National Wildfire Coordinating Group course G-131: Wildland Training (FFT1) for Structural Firefighters or the Texas Forest Service/National Wildfire Coordinating Group courses S-131 and S-133, including the associated position task book as adopted by the Texas Forest Service/NWCG 310-1/NFPA 1051 latest edition, and successfully pass the commission examination as specified in Chapter 439 of this title (relating to Examinations for Certification), or]

(4) [(3)] individuals who hold a State Firemen's [Fireman's] and Fire Marshals' [Marshal's] Association Advanced Accredited certification issued prior to January 1, 2012, or a State Firemen's [Fireman's] and Fire Marshals' [Marshal's] Association Firefighter II certification issued on or after January 1, 2012, must complete a commission approved Intermediate Wildland Fire Protection program [the Texas Forest Service/National Wildfire Coordinating Group course G-131: Wildland Training (FFT1) for Structural Firefighters or the Texas Forest Service/National Wildfire Coordinating Group courses S-131 and S-133, including the associated position task book as adopted by the Texas Forest Service/NWCG 310-1/NFPA 1051 latest edition,] and successfully pass the [a] commission examination which includes both Basic Structure Fire Protection and Intermediate Wildland Fire Protection, as specified in Chapter 439 of this title. An approved Intermediate Wildland Fire Protection training program shall consist of one of the following:

(A) completion of the commission approved Intermediate Wildland Fire Fighter Curriculum, as specified in the applicable chapter of the commission's Certification Curriculum Manual; or

(B) completion of the NWCG course G-131: Wildland Training (FFT1) for Structural Fire Fighters; or

(C) completion of the NWCG courses S-131 and S-133.

[(b) The commission examination requirement is waived for individuals in subsection (a)(2) of this section who have completed the training requirement and apply for certification by August 31, 2013. After this date, individuals must successfully pass the commission examination prior to applying for certification.]

[(c) The application processing fee for the initial examination is waived for individuals in subsection (a)(3) of this section who have completed the training requirement and submit the application for the commission examination by August 31, 2013. After this date, the application processing fee for examinations will be required.]

[(d) The application processing fee for the certification is not waived for individuals in subsection (c) of this section.]

§455.7. Examination Requirements.

(a) Examination requirements of Chapter 439 of this title (relating to Examinations for Certification) must be met in order to receive Wildland Fire Protection Certification.

(b) Persons seeking a commission certification referenced in this chapter who do not currently hold a certification issued by the commission [Texas Commission on Fire Protection] must meet all requirements regarding application for initial certification.

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

Filed with the Office of the Secretary of State on August 6, 2013.

TRD-201303236
Tim Rutland
Interim Executive Director
Texas Commission on Fire Protection
Earliest possible date of adoption: September 22, 2013
For further information, please call: (512) 936-3813

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WITHDRAWN RULES

Withdrawn Rules include proposed rules and emergency rules. A state agency may specify that a rule is withdrawn immediately or on a later date after filing the notice with the Texas Register. A proposed rule is withdrawn six months after the date of publication of the proposed rule in the Texas Register if a state agency has failed by that time to adopt, adopt as amended, or withdraw the proposed rule. Adopted rules may not be withdrawn. (Government Code, §2001.027)

TITLE 4. AGRICULTURE

PART 1. TEXAS DEPARTMENT OF AGRICULTURE

CHAPTER 20. COTTON PEST CONTROL

SUBCHAPTER D. REGULATION OF VOLUNTEER AND OTHER NONCOMMERCIAL COTTON; HOSTABLE COTTON FEE

4 TAC §20.30, §20.31

The Texas Department of Agriculture withdraws the proposed amendments to §20.30 and §20.31 which appeared in the June 21, 2013, issue of the *Texas Register* (38 TexReg 3877).

Filed with the Office of the Secretary of State on August 7, 2013.

TRD-201303294
Dolores Alvarado Hibbs
General Counsel
Texas Department of Agriculture
Effective date: August 7, 2013
For further information, please call: (512) 463-4075

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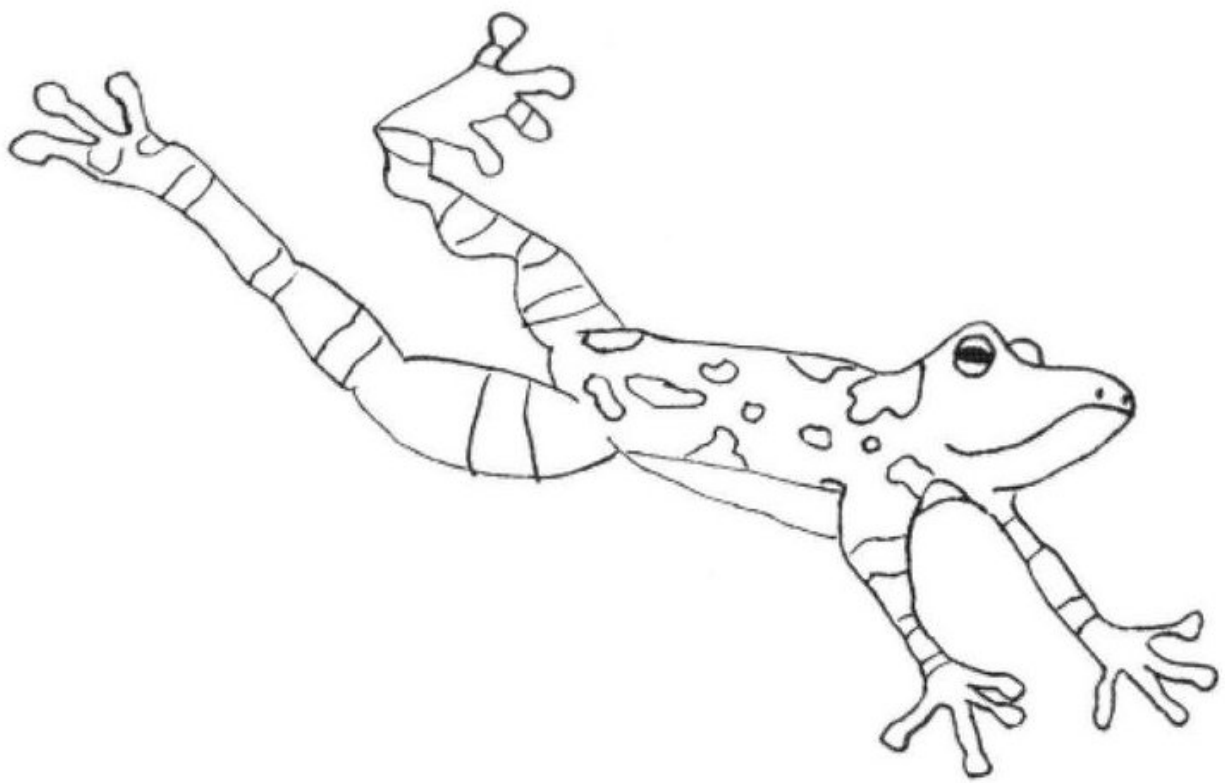

Adopted rules include new rules, amendments to existing rules, and repeals of existing rules. A rule adopted by a state agency takes effect 20 days after the date on which it is filed with the Secretary of State unless a later date is required by statute or specified in the rule (Government Code, §2001.036). 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 15. TEXAS HEALTH AND HUMAN SERVICES COMMISSION

CHAPTER 352. MEDICAID AND CHILDREN'S HEALTH INSURANCE PROGRAM PROVIDER ENROLLMENT

1 TAC §352.17

The Texas Health and Human Service Commission (HHSC) adopts amended §352.17, concerning Out-of-State Medicaid Provider Eligibility, with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4067). The text of the rule will be republished.

Background and Justification

Senate Bill 1401, 83rd Texas Legislature, Regular Session, 2013, amended Subchapter B, Chapter 531, Government Code, by adding §531.066 to authorize enrollment of laboratories as in-state providers in the Texas Medicaid program, regardless of where the facility is located and under certain conditions. The provisions of this amendment contemplate that the overwhelming majority of the requests for reimbursement from out-of-state laboratories will be for the analysis of samples taken in-state and shipped to an out-of-state facility for analysis. The amendment does not contemplate reimbursement for laboratory tests taken at laboratories located outside of Texas. The amendment to §352.17 as adopted will implement §531.066 of the Government Code.

Comments

The 30-day comment period ended July 28, 2013. During this period, HHSC received comments regarding the amended rule from Brown McCarroll, LLP, Sequenom, Inc., and State Representative Eddie Rodriguez. A summary of comments related to the proposed amended rule and HHSC's responses follow.

Comment: Two commenters requested that proposed language in §352.17(h)(2) reading "employs at least 1,000 people working at a site located within the state of Texas" be revised to align with the legislative intent of S.B. 1401. The revised language should read "employ at least 1,000 persons at places of employment located in this state".

Response: HHSC agrees with the recommendation and modified subsection (h)(2) to reflect the recommended language.

Comment: One commenter recommended that the rule further define the term "affiliate" for the purposes of this rule to include a relationship between an out-of-state and an in-state laboratory governed by a written agreement.

Response: HHSC acknowledges the comment, but no changes were made to the rule as the proposed definition of "affiliate" is inconsistent with the legislative intent.

Comment: One commenter recommended that HHSC reduce the number of employees located in places of employment in the state required by the rule

Response: HHSC acknowledges the comment, but no changes were made to the rule, as the 1,000-employee limit is mandated in Government Code §531.066.

Statutory Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; and Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas.

§352.17. Out-of-State Medicaid Provider Eligibility.

(a) This section applies only to an out-of-state Medicaid applicant or re-enrolling provider. An applicant or re-enrolling provider is considered out-of-state if:

(1) the physical address where services are or will be rendered is located outside the Texas state border and within the United States;

(2) the physical address where the services or products originate or will originate is located outside the Texas state border and within the United States when providing services, products, equipment, or supplies to a Medicaid recipient in the state of Texas; or

(3) the physical address where services are or will be rendered is located within the Texas state border, but:

(A) the applicant or re-enrolling provider maintains all patient records, billing records, or both, outside the Texas state border; and

(B) the applicant or re-enrolling provider is unable to produce the originals or exact copies of the patient records or billing records, or both, from the location within the Texas state border where services are rendered.

(b) An applicant or re-enrolling provider that is considered out-of-state under subsection (a) of this section is ineligible to participate in Medicaid unless HHSC or its designee approves the applicant or re-enrolling provider for enrollment on the basis of a determination that the applicant or re-enrolling provider has provided, is providing, or will provide services under one or more of the following criteria:

(1) The services are medically necessary emergency services provided to a recipient who is located outside the Texas state border, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year.

(2) The services are medically necessary services provided to a recipient who is located outside the Texas state border, and in the expert opinion of the recipient's attending physician or other provider, the recipient's health would be or would have been endangered if the recipient were required to travel to Texas, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee, not to exceed one year.

(3) The services are medically necessary services that are more readily available to a recipient in the state where the recipient is located, in which case the enrollment will be time-limited for an appropriate period as determined by HHSC or its designee.

(4) The services are medically necessary to a recipient who is eligible on the basis of participation in an adoption assistance or foster care program administered by the Texas Department of Family and Protective Services under Title IV-E of the Social Security Act, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee.

(5) The services are medically necessary and have been prior authorized by HHSC or its designee, and documented medical justification indicating the reasons the recipient must obtain medical care outside Texas is furnished to HHSC or its designee before providing the services and before payment, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee.

(6) The services are medically necessary and it is the customary or general practice of recipients in a particular locality within Texas to obtain services from the out-of-state provider, if the provider is located in the United States and within 50 miles driving distance from the Texas state border, or as otherwise demonstrated on a case-by-case basis.

(A) Enrollment under this paragraph may be time-limited for an appropriate period as determined by HHSC or its designee.

(B) An out-of-state provider does not meet the criterion in this paragraph merely on the basis of having established business relationships with one or more providers that participate in Medicaid.

(7) The services are medically necessary services to one or more dually eligible recipients (i.e., recipients who are enrolled in both Medicare and Medicaid) and the out-of-state provider may be considered for reimbursement of co-payments, deductibles, and co-insurance, in which case the enrollment may be time-limited for an appropriate period as determined by HHSC or its designee, and the enrollment will be restricted to receiving reimbursement only for the Medicaid-covered portion of Medicare crossover claims.

(8) The services are provided by a pharmacy that is a distributor of a drug that is classified by the U.S. Food and Drug Administration (FDA) as a limited distribution drug.

(c) An out-of-state provider that applies for enrollment in Medicaid must submit documentation along with the enrollment application to demonstrate that the provider meets one or more of the criteria in subsection (b) of this section. The provider must submit any additional requested information to HHSC or its designee before enrollment may be approved.

(d) If HHSC or its designee determines that an out-of-state provider meets one or more of the criteria in subsection (b) of this section, the provider must meet all other applicable enrollment eligibility requirements, including those specified in Chapter 371 of this title (relating to Medicaid and Other Health and Human Services Fraud and Abuse Program Integrity) before enrollment may be approved.

(e) Other applicable requirements.

(1) An out-of-state provider that is enrolled pursuant to subsections (b) - (d) of this section must follow all other applicable Medicaid participation requirements identified by HHSC or its designee for each service provided. Other applicable requirements that must be followed may include:

(A) service benefits and limitations;

(B) documentation procedures;

(C) obtaining prior authorization for the service whenever required; and

(D) claims filing deadlines as specified in §354.1003 of this title (relating to Time Limits for Submitted Claims).

(2) Certain out-of-state providers are not entitled to utilize the extended 365-day claim filing deadline provided in §354.1003(a)(5)(H) of this title that is otherwise available to out-of-state providers, and must comply with the same claims filing deadlines that apply to in-state providers under that section. Those out-of-state providers are:

(A) providers that are approved for enrollment under the criterion specified in subsection (b)(6) of this section, where the specific basis for approval is that the provider is located within 50 miles driving distance from the Texas state border; and

(B) providers that are approved for enrollment under the criterion specified in subsection (b)(7) of this section regarding dually eligible recipients.

(f) An out-of-state provider that is enrolled pursuant to subsections (b) - (d) of this section must:

(1) comply with the terms of the Medicaid provider agreement;

(2) provide services in compliance with all applicable federal, state, and local laws and regulations related to licensure and certification in the state where the out-of-state provider is located; and

(3) comply with all state and federal laws and regulations relating to Medicaid.

(g) HHSC or its designee determines the basis and amount of reimbursement for medical services provided outside Texas and within the United States in accordance with Chapter 355 of this title (relating to Reimbursement Rates).

(h) A laboratory may participate as an in-state provider under any program administered by a health and human services agency, including HHSC, that involves laboratory services, regardless of the location where any specific service is performed or where the laboratory's facilities are located if:

(1) the laboratory or an entity that is a parent, subsidiary, or other affiliate of the laboratory maintains laboratory operations in Texas;

(2) the laboratory and each entity that is a parent, subsidiary, or other affiliate of the laboratory, individually or collectively, employ at least 1,000 persons at places of employment located in this state; and

(3) the laboratory is otherwise qualified to provide the services under the program and is not prohibited from participating as a provider under any benefits programs administered by a health and human services agency, including HHSC, based on conduct that constitutes fraud, waste, or abuse.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Texas Health and Human Services Commission
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CHAPTER 353. MEDICAID MANAGED CARE SUBCHAPTER J. OUTPATIENT PHARMACY SERVICES

1 TAC §§353.903, 353.905, 353.907, 353.913

The Texas Health and Human Services Commission (HHSC) adopts amended §§353.903, 353.905, 353.907, and 353.913, concerning outpatient pharmacy services in the Medicaid managed care program. Sections 353.907 and 353.913 are adopted without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4069) and will not be republished. Sections 353.903 and 353.905 are adopted with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4069). The text of the rules will be republished.

Background and Justification

The amendments are adopted to comply with legislation passed by the 83rd Legislature that impact the outpatient pharmacy benefits requirements for Medicaid and Children's Health Insurance Program (CHIP) managed care organizations.

Senate Bill (S.B.) 1106, 83rd Legislature, Regular Session, 2013, requires Medicaid and CHIP Managed Care Organizations (MCOs) to increase the level of transparency by requiring MCOs to disclose to its network pharmacy providers the sources used in calculating the maximum allowable cost (MAC) list for that provider. It also allows pharmacies to challenge a MAC price, update MAC prices every seven days, and provides a process for a pharmacy to readily access its MAC prices.

S.B. 644, 83rd Legislature, Regular Session, 2013, requires Medicaid and CHIP MCOs to accept standard prior authorization (PA) forms developed by the Texas Department of Insurance (TDI) when submitted by prescribing providers for pharmacy services.

Additionally, the adopted rules clarify the definition of covered outpatient drugs; update references; clarify that the MCO's subcontractors are also required to comply with Subchapter J of Chapter 353; and make technical corrections.

Comments

During the public comment period, HHSC received comments from the Texas Pharmacy Business Council, the Texas Association of Health Plans, and H-E-B Grocery Company. A summary of the comments and responses follow.

Comment: One commenter noted that the proposed preamble included a description of S.B. 1106 that incorrectly indicated that MCOs are required to notify pharmacies of MAC price changes weekly. The commenter stated that the bill requires MCOs to review and update MAC prices every seven days.

Response: HHSC agrees that SB 1106 requires MCOs to review and update MAC prices every seven days. No change was made to the rules in response to this comment.

Comment: One commenter noted that the "Statutory Authority" section of the proposed preamble included references to Government Code §533.005(a)(23)(K) and stated that it requires pharmacies to disclose how they set their MAC prices. The commenter stated that the Government Code reference requires MCOs to disclose how they set their MAC prices.

Response: HHSC agrees in part as S.B. 1106 requires the MCO to disclose the sources used to determine the MAC pricing for the maximum allowable cost list specific to each provider. HHSC updated the description of the Government Code provision in the preamble to accurately describe the bill's requirement for MCOs. No change was made to the rules in response to this comment.

Comment: A commenter indicated that the definition of "maximum allowable cost" in §353.903 states that a MAC reimbursement limit is set by a MCO when Medicaid and CHIP MAC unit prices will actually be set by the pharmacy benefit manager (PBM) subcontracted with the MCO. The commenter provided suggested changes to the definition of MAC.

Response: HHSC agrees in part and has amended the definition in §353.903 to specify that the unit price is set by a MCO, or its subcontractor, and to clarify that the prices are meant for reimbursement of therapeutically equivalent multi-source drugs.

Comment: One commenter noted that §353.905 requires MCOs to comply with §533.005(a)(23)(K) and (a-2) of the Government Code "with respect to MAC lists." This section of law includes MAC requirements that are not specific to a list. The commenter recommended that "with respect to MAC lists" be deleted.

Response: The section of the Government Code being referenced, per S.B. 1106, is specific to maximum allowable costs. HHSC updated §353.905 to reference the broader state law that covers pharmacy benefits in Medicaid managed care, which include the MAC requirements.

Comment: One commenter recommended that HHSC explicitly state in §353.905(j) that subcontractors include PBMs.

Response: HHSC appreciates the comment, but respectfully disagrees. MCOs are contractually required to ensure all of their subcontractors follow the HHSC contract and Texas Administrative Code Medicaid and CHIP rule requirements. In §353.903, HHSC defines PBMs to mean the entity administering pharmacy benefits on behalf of a MCOs. Therefore, it is not necessary to specifically reference PBMs in §353.905. No change was made to the rules in response to this comment.

Comment: One commenter noted that S.B. 1106 requires MCOs/PBMs to provide a process for pharmacies to readily access the MAC list and recommended that additional language be added to the preamble to express legislative intent that MCOs/PBMs use internet portals or other on-demand processes to allow pharmacies access to the MAC list.

Response: HHSC agrees, but intends to enforce this requirement contractually by requiring MCOs to use a website or other internet process to provide pharmacies easy access to MAC lists. No change was made to the rules in response to this comment.

Comment: One commenter noted that the current definition of Network Provider is written as if a pharmacy contracts with the MCO when in reality pharmacies contract with the PBM or third party administrator.

Response: MCOs are contractually required to ensure all of their subcontractors follow the HHSC contract and Texas Administrative Code Medicaid and CHIP rule requirements. HHSC defines PBMs to mean the entity administering pharmacy benefits on behalf of a MCOs. It is not necessary to specifically reference PBMs in §353.903(6). No change was made to the rules in response to this comment.

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; Texas Government Code §533.005(a)(23)(K) and (a-2), which requires MCOs to disclose how they set their maximum allowable costs (MAC) for drugs; and Texas Insurance Code §1369.252(d), which requires Medicaid and CHIP MCOs to use a standardized form developed by TDI.

§353.903. Definitions.

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

(1) Clinical edit--A process for verifying that a member's medical condition matches the clinical criteria for a prescribed drug.

(2) Clinical edit prior authorization (clinical edit PA)--A prior authorization that is granted by a health care managed care organization (health care MCO) prior to dispensing a covered outpatient drug with a clinical edit.

(3) Covered outpatient drug--A drug or biological product included on the formulary and provided in an outpatient setting.

(4) Formulary--The list of covered outpatient drugs for the Texas Medicaid program.

(5) Maximum allowable cost--The highest unit price set by a health care MCO, or its subcontractor, for reimbursement of therapeutically equivalent multi-source drugs.

(6) Network provider--A pharmacy provider who has entered into a contract with the health care MCO to provide outpatient drug benefits to Medicaid enrollees.

(7) Non-preferred drug--A covered outpatient drug on the preferred drug list (PDL) that has been designated as non-preferred.

(8) Pharmacy benefits manager (PBM)--An entity that administers the Medicaid outpatient drug benefit on behalf of a health care MCO.

(9) Preferred drug--A covered outpatient drug on the PDL that has been designated as preferred because it has been evaluated to be safe, clinically effective, and cost-effective compared to other drugs in the same therapeutic drug class on the market.

(10) Preferred drug list (PDL)--The list of covered outpatient drugs reviewed by the Pharmaceutical and Therapeutics (P & T) Committee. Reviewed drugs are recommended by the P & T Committee as either preferred or non-preferred and HHSC establishes the final designation.

(11) Preferred drug list prior authorization (PDL PA)--A prior authorization that is granted by a health care MCO prior to dispensing a non-preferred drug.

(12) Prior authorization (PA)--A positive determination made by a health care MCO that a prescription for a covered outpatient drug meets the criteria to be reimbursed by the health care MCO.

§353.905. Managed Care Organization Requirements.

(a) A health care managed care organization (health care MCO) must adopt and exclusively use the Health and Human Services Commission's (HHSC's) Medicaid formulary and preferred drug list.

(b) A health care MCO is not authorized to negotiate rebates for covered outpatient drugs with drug manufacturers, or to receive confidential drug pricing regarding covered outpatient drugs from drug manufacturers.

(c) A health care MCO cannot pay claims submitted by a pharmacy provider who is under sanction or exclusion from the Medicaid or CHIP Programs.

(d) Except as provided in subsection (e) of this section, a health care MCO must enter into a network provider agreement with any pharmacy provider that meets the health care MCO's credentialing requirements, and agrees to the health care MCO's financial terms and other reasonable administrative and professional terms.

(e) A health care MCO can enter into selective pharmacy provider agreements for specialty drugs, as defined in §354.1853 of this title (relating to Specialty Drugs), subject to the following limitations:

(1) A health care MCO is prohibited from entering into an exclusive contract for specialty drugs with a pharmacy owned in full or part by a pharmacy benefits manager contracted with the health care MCO.

(2) The selective contracting agreement cannot require the pharmacy provider to contract exclusively with the health care MCO.

(3) A health care MCO cannot require a member to obtain a specialty drug from a mail-order pharmacy.

(f) A health care MCO must allow pharmacy providers to fill prescriptions for covered outpatient drugs ordered by any licensed prescriber regardless of the prescriber's network participation.

(g) A health care MCO must pay claims in accordance with Texas Insurance Code §843.339, relating to prescription drug claims payment requirements.

(h) A health care MCO must comply with §533.005(a)(23), (a-1), and (a-2) of the Government Code related to outpatient pharmacy benefit requirements in Medicaid managed care.

(i) A health care MCO must comply with the rules in Chapter 354, Subchapter F (relating to Pharmacy Services) of this title with the exception of:

(1) Section 354.1867 (relating to Refills);

(2) Section 354.1873 (relating to Freedom of Choice);

(3) Section 354.1877 (relating to Quantity Limitations); and

(4) Division 6 (relating to Pharmacy Claims).

(j) A health care MCO must require its subcontractors to comply with the requirements of this subchapter when providing outpatient pharmacy benefits through Medicaid managed care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 354. MEDICAID HEALTH SERVICES

SUBCHAPTER D. TEXAS HEALTHCARE TRANSFORMATION AND QUALITY IMPROVEMENT PROGRAM

The Texas Health and Human Services Commission (HHSC) adopts amendments to §§354.1601, 354.1602, 354.1611, 354.1613, 354.1621, 354.1622, 354.1632, 354.1633, and 354.1634, concerning the Texas Healthcare Transformation and Quality Improvement Program, and new §354.1635, concerning RHP Plan Modification. Sections 354.1601, 354.1602, 354.1613, 354.1621, 354.1622, 354.1632, 354.1633, and 354.1634 are adopted without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4072) and will not be republished. Sections 354.1611 and 354.1635 are adopted with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4072). The text of the rules will be republished.

BACKGROUND AND JUSTIFICATION

In December 2011, HHSC received approval from the federal Centers for Medicare and Medicaid Services (CMS) for the Texas Healthcare Transformation and Quality Improvement Program, a §1115 demonstration Waiver (Waiver). In addition to expanding Medicaid managed care, the Waiver created two new supplemental funding pools: the Uncompensated Care (UC) pool and the Delivery System Reform Incentive Payment (DSRIP) pool. The DSRIP program provides funding to hundreds of providers within the state, referred to in the Waiver as performing providers, to propose and implement projects intended to transform the healthcare delivery system to increase quality and efficiency. These performing providers organized themselves into Regional Healthcare Partnerships (RHPs) throughout the state to develop regional plans (RHP plans) that include these DSRIP projects.

The administrative rules for the DSRIP program first became effective in October 2012 and reflected the joint understanding of the program as negotiated between HHSC and CMS. That understanding is largely described in the Program Funding and Mechanics (PFM) Protocol. Using those policies, the RHPs created and submitted RHP plans to HHSC and CMS for approval. From the 20 RHPs, about 1300 different DSRIP projects were proposed from hundreds of performing providers.

HHSC and CMS continued to refine the DSRIP program given their experience. Changes were necessary to enable timely initial approval of most DSRIP projects while allowing CMS and HHSC additional time to review projects for full four-year approval. As such, HHSC and CMS negotiated additional requirements for the DSRIP program and included such requirements in the PFM Protocol in April 2013. These rule amendments reflect those PFM Protocol changes as well as clarifications of existing policies. Additionally, new §354.1635, concerning RHP Plan Modification, describes the process and requirements for adding three-year DSRIP projects. Stakeholders were emailed the proposed new rule as well a narrative description of the modification process. HHSC received multiple comments on this aspect of the proposed rules.

COMMENTS

HHSC received written comments from 2 individuals and the following entities (listed in alphabetical order):

Baptist Hospitals of Southeast Texas

Christus Health

Golden Plains Community Hospital

Guadalupe Regional Medical Center

Harris Health System

Hill Country MHDD Centers

Hospital Corporation of America

Huntsville Memorial Hospital

MD Anderson Cancer Center

Memorial Hermann Health System

Midland Memorial Hospital

Odessa Regional Medical Center

Rice Medical Center

Sierra Providence Health Network

University Medical Center of El Paso

Vanguard Health Systems

Yoakum Community Hospital

A summary of the comments and the responses follow. They are grouped by comments on the amendments to existing rule sections and the new section concerning RHP Plan Modification.

Comments concerning amendments to existing rule sections:

Comment: Some commenters believe HHSC should not adopt the proposed change to §354.1611(d) because it would prevent any cross-regional participation, effectively negating the rule as it was intended.

Response: The change to §354.1611(d) was not meant to affect a change in the meaning of the rule. Instead, it was intended to clarify what was initially meant by "allocation." In order to maintain the initial meaning of this provision, while also clarifying the language, HHSC made further alterations. However, this provision continues to operate as it did prior to this clarification.

Comment: Some commenters requested that HHSC clarify the parameters for the metrics upon which each DSRIP project will be measured by the outside monitor as part of the mid-point assessment as described in §354.1622(g).

Response: The language in §354.1622(g) reflects the revised PFM Protocol language regarding the mid-point assessment.

While this list outlines the elements that the assessment must include, HHSC is required to submit a more specific proposal to CMS later this year regarding the detailed approach to the mid-point assessment. Those details have not been developed yet, but HHSC will share them with DSRIP stakeholders for comment before they are finalized. No change was made in response to this comment.

Comment: Some commenters requested that HHSC should clarify §354.1633 so that providers will not be held accountable for meeting improvement targets until Category 3 project targets are finalized.

Response: The language in §354.1633(c)(3) states that "Unless otherwise approved by HHSC and CMS, a performer must utilize a methodology prescribed by HHSC and CMS for setting an outcome improvement target for the fourth and fifth demonstration years." This is consistent with the language in the revised PFM Protocol, which states that CMS and HHSC will determine a standard methodology for Category 3 improvement target achievement levels by October 1, 2013. Once that standard methodology is established and each project either accepts that methodology or proposes an alternative methodology, the provider will be held accountable for reaching those targets in demonstration years 4 and 5, which go from October 1, 2014 to September 30, 2016. No change was made to the rule in response to this comment.

Comments concerning new §354.1635:

Comment: Some commenters requested that HHSC should not have access to unused DSRIP funds from RHPs who ultimately are unable to utilize their third, fourth, and fifth demonstration year RHP allocations until other RHPs have the opportunity to utilize those allocations.

Response: HHSC disagrees with this comment. HHSC, in cooperation with the Department of State Health Services, is developing a series of DSRIP project proposals to present to CMS. The proposals will address statewide health issues that HHSC believes are worthwhile to elevate the health of the state as a whole. In the event that CMS does not approve of the concept of statewide initiatives in DSRIP, RHPs that have utilized their full allocation will then have access to all of the allocations that went unused in other RHPs. HHSC will make every effort to inform the RHPs of the amount of DSRIP funding available to them in a timely manner. No change was made to the rule in response to this comment.

Comment: Some commenters requested that HHSC should clarify what is meant by "significant benefit to the Medicaid and indigent populations" in §354.1635(c)(1)(E).

Response: CMS has not set a minimum threshold for the percent of each project's benefit that must go toward the Medicaid and indigent populations. But from experience with the initial round of DSRIP projects, HHSC knows that this is a factor CMS considers in determining whether certain projects are approvable (such as those delivering high-cost specialty services) and also in determining whether each project's monetary valuation is approvable. Based on this experience, every project should focus on improving healthcare delivery for these populations. HHSC does not plan to put a hard percentage in rule because there are many different kinds of projects, but one figure for providers to consider is that approximately 40 percent of the Texas population either is enrolled in Medicaid or is low-income uninsured. No change was made to the rule in response to this comment.

Comment: One commenter requested that HHSC more clearly describe what is meant by "immediate implementation upon approval" in §354.1635(c)(1)(B).

Response: HHSC agrees with this comment and has specified what is meant by "immediate implementation." Instead of saying that a project must be ready for "immediate implementation upon approval," HHSC is requiring that all three-year DSRIP projects contain at least one implementation milestone in the third demonstration year (otherwise known as the first year of the three-year DSRIP project).

Comment: Some commenters requested that HHSC should be required to comply with DSRIP program guidelines in its use of DSRIP funds for the third, fourth and fifth demonstration years.

Response: While HHSC is not certain which DSRIP program guidelines this comment references, any state initiatives performed under the DSRIP program will be required to meet the objectives of the DSRIP program and will require federal approval like other DSRIP projects. HHSC will ensure that there is an opportunity for public comment on any state priority initiatives prior to them being submitted to CMS, similar to the public meetings required in each region for regionally-based projects. No change was made to the rule in response to this comment.

Comment: Some commenters requested that HHSC provide stakeholders with the list of HHSC proposed DSRIP projects and allow for public comment.

Response: HHSC intends to share the state-proposed DSRIP projects and will accept comments from stakeholders. No change was made to the rule in response to this comment.

DIVISION 1. GENERAL

1 TAC §354.1601, §354.1602

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 2. REGIONAL HEALTHCARE PARTNERSHIPS

1 TAC §354.1611, §354.1613

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§354.1611. Organization.

(a) Each Regional Healthcare Partnership (RHP) has geographic boundaries as prescribed by HHSC.

(b) An RHP is composed of one anchor and other participants, which may include IGT entities, performers, and other regional stakeholders. A single entity may act in multiple roles.

(c) An IGT entity may participate in more than one RHP contingent upon HHSC approval.

(d) A performer may only participate in DSRIP in the RHP where it is physically located. However, a physician group practice affiliated with an academic health science center, major cancer hospital, or children's hospital may participate in DSRIP in another region if it receives a DSRIP allocation from that region.

(e) Only providers participating in an RHP are eligible to receive a UC payment, although exceptions may be approved by CMS on a case by case basis.

(f) Each RHP is categorized into a tier as follows:

(1) Tier 1 consists of any RHP that contains at least 15% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas.

(2) Tier 2 consists of any RHP that contains at least 7% and less than 15% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas.

(3) Tier 3 consists of any RHP that contains at least 3% and less than 7% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas.

(4) Tier 4 consists of any RHP that:

(A) contains less than 3% of the state's total population under 200% of the federal poverty level as determined by the 2006-2010 American Community Survey for Texas;

(B) does not have a public hospital; or

(C) has one or more public hospitals that, when combined, provide less than 1% of the region's uncompensated care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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DIVISION 3. RHP PLAN CONTENTS AND APPROVAL

1 TAC §354.1621, §354.1622

STATUTORY AUTHORITY

The amendments are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

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DIVISION 4. DSRIP

1 TAC §§354.1632 - 354.1635

STATUTORY AUTHORITY

The amendment and new rule are adopted under Texas Government Code, §531.0055, which provides the Executive Commissioner of HHSC with rulemaking authority; and Texas Human Resources Code, §32.021 and Texas Government Code, §531.021, which authorize HHSC to administer the federal medical assistance (Medicaid) program in Texas.

§354.1635. RHP Plan Modification.

(a) The plan modification process begins once all RHP plans receive initial CMS approval as described in §354.1622(e) of this subchapter (relating to RHP Plan Assessment). This process allows for RHPs and the State to utilize unclaimed RHP allocations.

(b) If an RHP does not utilize its entire allocation for the second demonstration year, the remaining allocation can be utilized by HHSC for state initiatives. These initiatives must be accomplished through the DSRIP program.

(c) If an RHP does not utilize its entire allocation for the third, fourth, and fifth demonstration year, that RHP may propose three-year DSRIP projects.

(1) Each RHP must submit a list of all DSRIP projects from which the three-year DSRIP projects are selected.

(A) Each three-year DSRIP project on the list must be chosen from a subset of the RHP Planning Protocol as determined by HHSC.

(B) Each three-year DSRIP project on the list must include at least one implementation milestone in the third demonstration year.

(C) An RHP must prioritize the three-year DSRIP projects based on regional needs except that the listed projects must alternate by affiliated IGT entity.

(D) Each three-year DSRIP project must identify, and have written confirmation, of the IGT source.

(E) Each three-year DSRIP project must demonstrate significant benefit to the Medicaid and indigent populations.

(F) An RHP must hold a public meeting to consider the list of three-year DSRIP projects prior to submitting the list to HHSC. When submitting the list to HHSC, the RHP must also submit:

(i) a description of the processes used to engage potential performers, public stakeholders, and consumers;

(ii) a description of the regional approach for evaluating and prioritizing DSRIP projects;

(iii) a list of DSRIP project that were considered by the RHP but not included on the list, regardless of whether or not those DSRIP projects had an identified source of IGT.

(2) Based on the amount of RHP allocation remaining for each RHP after CMS provides final valuation approvals, some three-year DSRIP projects on the priority list will be reviewed for addition to the RHP plan.

(d) If an RHP is unable to utilize the remaining allocation in accordance with subsection (c) of this section, the remaining allocation may be utilized by HHSC.

(e) If DSRIP funds are still available following HHSC action in subsection (d) of this section, the remaining funds are redistributed to the RHPs that utilized their full RHP allocation. The funds are proportionately allocated to RHPs based on their share of the original allocation as described in §354.1634(b) of this division (relating to Waiver Pool Allocation and Valuation). The process for determining allocations to providers within an RHP will be the same as described in §354.1634(g) of this division. To receive redistributed funds, an RHP must continue to meet the broad hospital and minimal safety net hospital participation levels as described in §354.1634(d)(2)(C) and (D) of this division.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2013.

TRD-201303352
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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CHAPTER 355. REIMBURSEMENT RATES
SUBCHAPTER A. COST DETERMINATION PROCESS

1 TAC §355.112

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.112, concerning Attendant Compensation Rate Enhancement, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4082) and will not be republished.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, is adopting an amendment to §355.112 to simplify Attendant Compensation Rate Enhancement reporting requirements for day habilitation services in the Home and Community-based Services (HCS), Texas Home Living (TxHmL), and Intermediate Care Facilities for Individuals with an Intellectual Disability or Related Conditions (ICF/IID) programs. The adopted amendment also incorporates changes to reflect person first respectful language.

HHSC is reducing reporting challenges for HCS, TxHmL, and ICF/IID providers contracting with non-related parties to provide day habilitation by allowing these providers to report their total contracted day habilitation costs on a single cost report item. HHSC will allocate a standard percentage of these costs (50 percent) to attendant compensation for purposes of determining compliance with Attendant Compensation Rate Enhancement spending requirements. The standard percentage was developed through analysis of day habilitation costs reported by providers who provide day habilitation in-house or through a contract with a related party.

In addition, HHSC amended §355.112 to incorporate person first respectful language in compliance with Texas Government Code §531.0227 as added by House Bill 1481, 82nd Texas Legislature, Regular Session, 2011.

Finally, Section 1, S.B. 45, 83rd Legislature, Regular Session, 2013 requires the Department of Aging and Disability Services (DADS) to add supported employment and employment assistance to the Community-Based Alternatives (CBA) program and Medically Dependent Children Program (MDCP). It also adds employment assistance to Community Living Assistance and Support Services (CLASS). Because CBA and CLASS are included among the programs eligible to participate in the Attendant Compensation Rate Enhancement (the Enhancement Program) and because the Enhancement Program is intended to give providers incentives to increase compensation levels for employees providing direct assistance to individuals with Activities of Daily Living and Instrumental Activities of Daily Living such as supported employment and employment assistance direct care workers, HHSC amended §355.112 to add supported employment and employment assistance direct care workers as individuals that are considered to be attendants for purposes of the enhancement.

Comments

The 30-day comment period ended July 28, 2013. During this period, HHSC received no comments.

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 the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER C. REIMBURSEMENT METHODOLOGY FOR NURSING FACILITIES

1 TAC §355.307

The Texas Health and Human Services Commission (HHSC) adopts an amendment to §355.307, concerning Reimbursement Setting Methodology, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4092) and will not be republished.

Background and Justification

This amendment is adopted to comply with the 2014-15 General Appropriations Act, Senate Bill (S.B.) 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services Commission, Rider 69) which requires HHSC to develop and implement a Medicaid reimbursement methodology for the pediatric long term care facility rate class that includes the existing facility-specific prospective cost-based interim reimbursement rate and adds an annual cost-based retrospective cost settlement process. An annual settlement payment will only be made for fiscal years in which the average daily census for the facility in that year was less than the average daily census of the prior fiscal year, except that no settlement shall be made for fiscal years in which the average daily census for the facility exceeded 85 percent or for fiscal years in which the facility's Medicaid revenues exceeded its Medicaid allowable costs.

Comments

The 30-day comment period ended July 28, 2013. During this period, HHSC received written comments from the following entity.

Coalition for Nurses in Advanced Practice

A summary of the comments and HHSC's response follows.

Comments: 1 TAC §355.307(b)(3)(F)(i) and (G)(i) to be revised to include prescribing by an advanced practice registered nurse or physician assistant.

Response: The change to the reimbursement methodology for the pediatric long term care facility rate class is in response to legislative direction provided through the 2014-15 General Appropriations Act, Senate Bill (S.B.) 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services Commission, Rider 69). HHSC believes that there has not been sufficient notice of or opportunity for comment to enable HHSC to implement the methodology change suggested by this commenter at this time, but is taking this suggestion under consideration for future rule-change proposals. The rule was not changed in response to this comment.

Statutory Authority

The amendment is adopted under the Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; the Texas Human Resource Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; the Texas Government Code §531.021(b)(2), which provides HHSC with the authority to propose and adopt rules governing the determination of Medicaid reimbursements; and the 2014-15 General Appropriations Act, S.B. 1, 83rd Legislature, Regular Session, 2013 (Article II, Health and Human Services Commission, Rider 69), which requires HHSC to develop an annual cost-based retrospective cost settlement process.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER E. COMMUNITY CARE FOR AGED AND DISABLED

1 TAC §355.503, §355.507

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.503, concerning Reimbursement Methodology for the Community-Based Alternatives Waiver Program and the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care Programs, and §355.507, concerning Reimbursement Methodology for the Medically Dependent Children Program, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4097) and will not be republished.

Background and Justification

These rules establish the reimbursement methodologies for the Community-Based Alternatives (CBA), the Integrated Care Management-Home and Community Support Services and Assisted Living/Residential Care, and the Medically Dependent Children Program (MDCP) waiver programs administered by the Department of Aging and Disability Services (DADS). HHSC, under its authority and responsibility to administer and implement rates, is adopting amendments to these rules to add reimbursement methodologies for supported employment and employment assistance.

These amendments are adopted to comply with Section 1, S.B. 45, 83rd Legislature, Regular Session, 2013, which requires DADS to add supported employment and employment assistance to the CBA and MDCP programs. Because S.B. 45 is effective September 1, 2013, DADS plans to add supported

employment and employment assistance MDCP, as soon as possible pending required federal approval with the option of the amendment being effective September 1, 2013. DADS will not add supported employment and employment assistance to CBA, rather these services will be provided under the HHSC Star+Plus program, effective September 1, 2014.

The amendments also update cross references and remove unnecessary language.

Comments

The 30-day comment period ended July 28, 2013. During this period, HHSC received no comments.

Statutory Authority

The amendments are adopted under Texas Government Code §531.033, which authorizes the Executive Commissioner of HHSC to adopt rules necessary to carry out the commission's duties; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance payments under the Texas Human Resources Code Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. REIMBURSEMENT METHODOLOGY FOR 24-HOUR CHILD CARE FACILITIES

1 TAC §355.7103

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.7103, concerning Rate-Setting Methodology for 24-Hour Residential Child-Care Reimbursements, without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4101) and will not be republished.

Background and Justification

HHSC, under its authority and responsibility to administer and implement rates, is adopting amendments to §355.7103 to reference the uniform cost report excusal rules and to outline how the 24-Hour Residential Child-Care (24 RCC) rates effective September 1, 2013, will be determined.

Cost Report Excusals

Normally, all providers are expected to submit a cost report; however, there are circumstances when a provider automatically may be excused from submission of a cost report. Section 355.7103(f)(4) specifies the cost report excusal requirements for the 24 RCC program. In 2012, uniform cost report excusal requirements for all programs, including 24 RCC, were incorporated into §355.105, General Reporting and Documentation Requirements, Methods, and Procedures. The cost report excusal requirements for 24 RCC in §355.7103 are now obsolete and are deleted by this rule action.

Payment Rates to be Effective September 1, 2013

The amendment adjusts payment rates for the 24 RCC program to comply with the 2014-15 General Appropriations Act (Article II, Health and Human Services, 83rd Legislature, Regular Session, 2013), which appropriated general revenue funds for provider rate increases for this program.

Comments

The 30-day comment period ended July 28, 2013. During this period, HHSC received no comments.

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 the Commission's duties; Texas Government Code §531.055, which authorizes the Executive Commissioner to adopt rules for the operation and provision of health and human services by the health and human services agencies and to adopt or approve rates of payment required by law to be adopted or approved by a health and human services agency; Human Resources Code §40.4004(c) and (d), which authorize the Executive Commissioner to consider fully all written and oral submissions to the DFPS Council about a proposed rule; and Texas Family Code §264.101(d), which authorizes the Executive Commissioner of HHSC to adopt rules establishing criteria and guidelines for the payment of foster care.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER J. PURCHASED HEALTH SERVICES
DIVISION 4. MEDICAID HOSPITAL SERVICES

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8052, concerning Inpatient Hospital Reimbursement, and §355.8060, concerning Reimbursement Methodology for Freestanding Psychiatric Facilities, and the repeal of §355.8054 and §355.8055, concerning Children's Hospital Reimbursement Methodology and Reimbursement Methodol-

ogy for Rural and Certain Other Hospitals. The amendments to §355.8052 and §355.8060 are adopted with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4107). The text of the rules will be republished. The repeal of §355.8054 and §355.8055 are adopted without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4107) and will not be republished.

Background and Justification

These rules describe various reimbursement methodologies for inpatient hospital reimbursement. The amendments and repeals were proposed to comply with the 2014-2015 General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, 83rd Legislature, Regular Session, 2013, HHSC Riders 38, 51, and 71). Specifically these rider sections directed HHSC to:

- rebase rural hospital rates by implementing a facility-specific prospective full cost standard dollar amount (SDA) based on historical costs, trended forward for inflation and limited by a floor and a ceiling. The rider also specifies the definition of a rural hospital and a phase-down for hospitals that met the definition of rural hospital in the previous biennium but no longer meet the definition. (Rider 38)

- expand initiatives to pay more appropriate outlier payments and to adjust inpatient hospital reimbursement for labor and delivery services provided to adults at children's hospitals. (Rider 51.b.(17) and (19))

- implement an All Patient Refined Diagnostic Related Group prospective payment system for inpatient services provided by a children's hospital, trended forward for inflation. (Rider 71)

To accomplish these legislative objectives and to achieve the savings directed in the cost containment rider, HHSC proposed the following changes for services provided beginning September 1, 2013:

- Consolidate the inpatient reimbursement methodologies for urban, children's and rural hospitals under one rule at §355.8052, concerning Inpatient Hospital Reimbursement. As a result of this consolidation, HHSC proposed to repeal §355.8054, concerning Children's Hospital Reimbursement Methodology, and §355.8055, concerning Reimbursement Methodology for Rural and Certain Other Hospitals, since they are no longer needed. Also, §355.8060, concerning Reimbursement Methodology for Freestanding Psychiatric Facilities, is amended to add language regarding the payment of children's freestanding psychiatric facilities in accordance with Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) payment principles. This language is being added because the repeal of §355.8054 will eliminate TEFRA-related language referenced in the rule.

- Amend §355.8052 to describe a new SDA methodology for reimbursing children's hospitals using a statewide base SDA with add-ons for geographic wage differences and for teaching medical education; and for reimbursing rural hospitals using a facility-specific SDA limited by a floor and a ceiling. Language was added to describe how new children's and rural facilities will be reimbursed under this new SDA methodology, and the transition of hospitals located in Rockwall County from rural to urban hospitals.

- Amend §355.8052 to reimburse for labor and delivery services provided to adults at children's hospitals at the same rates used for urban hospitals without add-on rates.

- Amend §355.8052 to reduce all outlier payments by 10 percent except for outlier payments made to children's hospitals.

- Amend §355.8052 to add a revised definition of rural hospitals.

- Amend §355.8052 to revise the formula for the determination of the payment of a day outlier or a cost outlier. This revision is intended to ensure that the payment for a day outlier will not exceed the amount of the calculated cost outlier. The proposed rule changes also included other technical corrections, numbering revisions and non-substantive changes to make the rule more readable and understandable.

Comments

During the public comment period HHSC received oral and written comments from the following entities (listed in alphabetical order):

Children's Hospital Association of Texas (CHAT)

CHRISTUS Health

El Paso Children's Hospital

Lake Pointe Medical Center

Teaching Hospitals of Texas (THOT)

Tenet Healthcare Corporation

Texas Association of Voluntary Hospitals (TAVH)

Texas Hospital Association (THA)

Texas Health Resources

A summary of the comments and HHSC's responses to the comments, grouped by topic, follow:

Add on for newly constructed children's hospitals

Comment: Commenters expressed concern that the rule fails to recognize the cost of construction and start-up expenses for newly constructed children's hospitals. The commenters requested special consideration in the form of an add-on for these costs, or some alternative approach to compensating newly-constructed children's hospitals for these costs.

Response: Medicaid allowable construction and start-up costs are reflected in the hospital Medicare/Medicaid cost reports used to determine the base children's hospital SDA. A review of available partial year Medicare/Medicaid cost report data from the most recently newly constructed children's hospital showed that the base children's hospital SDA significantly exceeds that SDA that would be calculated using that cost report. HHSC recognizes that newly constructed children's hospitals have unique concerns and worked extensively with stakeholders during the comment period to develop a reimbursement methodology for new children's hospitals that would meet both the state's need to determine economic and efficient reimbursements for Medicaid services and new children's hospitals' needs for adequate Medicaid reimbursement Language describing agreed upon reimbursement options for new children's hospitals was added to §355.8052(e)(2).

Comment: Commenters stated that the proposal that children's hospitals that are new to the Medicaid program (and as a result do not have a cost report available upon which to base a teaching medical education add-on) not receive a teaching medical education add-on until the beginning of the state fiscal year after a cost report is received would result in significant underpayments to new children's hospitals.

Response: HHSC agrees that the proposed SDA methodology for new children's teaching hospitals did not reflect allowable costs associated with the hospital's medical education program. In response to these comments, HHSC worked with the hospitals and their associations to develop a more suitable SDA methodology. The rule will allow children's hospitals that are teaching hospitals to choose from two different SDA options reflecting different teaching medical education add-on methodologies. Language describing reimbursement options for new children's hospitals was added to §355.8052(e)(2).

Reimbursement Rates for Urban Hospitals

Comment: Many commenters expressed concern that the proposed rule amendments would result in changes to existing reimbursement rates for urban hospitals and changes to the APR-DRG weights.

Response: The amendments to §355.8052 will not impact current urban hospital rates. Base urban SDAs and APR-DRG weights are intended to remain unchanged until the next urban hospital rate rebasing. No changes were made to the rule in response to these comments.

Universal Mean Calculation

Comment: One commenter expressed concern that the universal mean calculation language in the proposed rule was ambiguous and should be clarified.

Response: HHSC has clarified language relating to the universal mean throughout the rule, including in §355.8052(b)(38), (c)(1), and (h)(3) in response to this comment.

TEFRA Target Cap

Comment: A commenter indicated that TEFRA target cap language should not be deleted because the TEFRA target cap will still be used in various rate calculations.

Response: HHSC has added a definition of the TEFRA target cap to the adopted rule at §355.8052(b)(33) and language relating to the use of the TEFRA target cap in §355.8052(b)(6), and (j) in response to this comment.

Adjustment to relative weights

Comment: Some commenters stated that relative weights need to be adjusted with the next rebasing.

Response: Relative weight adjustment is part of the rebasing process. No rule change is being made in response to this comment.

Cost Outlier Reduction

Comment: A commenter opposed the proposed ten percent reduction to the cost outlier payment calculation and limiting the payment for a day outlier so that it will not exceed the amount of the calculated cost outlier.

Response: HHSC received direction from the legislature to reduce the outlier payments as a cost containment measure. The cap on day outliers will only limit the payment if the calculated day outlier payment is greater than the actual cost of the claim. The cap on the day outlier payment will have a minimal impact on the overall outlier payments. No rule change is being made in response to this comment.

Comment: A commenter opposed the rule change pertaining to the final outlier determination.

Response: HHSC received direction from the legislature to reduce the outlier payments as a cost containment measure. No rule change is being made in response to this comment.

Base Year Definition

Comment: A commenter recommended that HHSC consider using 2012 as the base year for children's hospital inpatient payments.

Response: The rule defines "base year" as a state fiscal year (September through August) to be determined by HHSC *(see* §355.8052(b)(4)) and does not specify which year will be used for children's hospital inpatient payments. HHSC understands that the commenter is requesting that 2012 data be used to calculate SDAs for children's hospitals that will be in effect beginning in state fiscal year 2014. However, the 2012 data needed to calculate children's hospital SDAs was not available in time to calculate those rates for 2014. No rule change is being made in response to this comment.

Inflation Factor for Children's Hospitals

Comment: Two commenters recommended that §355.8052 be amended to reflect inflation adjustments for both state fiscal years 2014 and 2015. The commenter indicated that this amendment would be in compliance with Rider 71 which requires application of the inflation factor update to children's hospitals for both 2014 and 2015.

Response: HHSC agrees with this comment and has modified §355.8052(e)(2) to indicate that an inflation factor update will be applied for 2015.

Labor and Delivery Services

Comment: A commenter stated that §355.8052 (e)(2)(B), that says that the final SDA is equal to the "final base SDA for urban hospitals without add-ons," is confusing because the rule does not contain a definition of final base SDA.

Response: HHSC agrees that this section of the rule may be confusing as proposed. HHSC revised §355.8052(e)(2)(B) to clarify that the final SDA for labor and delivery services provided to adults in a children's hospital is calculated as described in subsection (c)(3) of the rule. That subsection describes the calculation of the base SDA for urban hospitals.

Comment: A commenter recommended that when limiting reimbursement for labor and delivery services provided to adults in a children's hospital, that adult be defined as an individual age 21 and older.

Response: HHSC agrees that the term "adults" in §355.8052(e)(2)(C) must be defined, however, HHSC believes that age 18 is the appropriate age at which hospitals should be reimbursed the non-children's hospital labor and delivery rate, not age 21. Adults 18 and over do not require the specialized labor and delivery services provided by children's hospitals. Language defining an adult for this purpose has been added to §355.8052(e)(2)(B).

Comment: A commenter recommended that specific labor and delivery APR-DRGs codes be added to the rule language.

Response: Labor and delivery codes subject to the limitations described in §355.8052(e)(2)(B) will be described in the Texas Medicaid Provider Procedures Manual. No rule change is being made in response to this comment.

Comment: A commenter recommended that the rate for labor and delivery services provided to adults in a children's hospital be the sum of the base SDA for an urban hospital plus the children's hospital's wage index add-on and teaching medical education add-on, inflated in 2014 and 2015.

Response: HHSC agrees with the commenter that the rate for labor and delivery services provided to adults in a children's hospital should include a geographic wage add-on. To remain in compliance with legislative direction to eliminate reimbursement differences between children's and non-children's hospitals for labor and delivery services provided to adults in children's hospitals, HHSC has modified the rule at §355.8052(e)(2)(C) to add the urban hospital wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service to the base SDA for urban hospitals without add-ons. HHSC does not agree that the rate should include a teaching medical education add-on because it is not a given that had the service had been provided in an urban hospital, the urban hospital would have been a teaching hospital. No rule change is being made in response to this part of the comment.

Alternate methodologies for the phase down for hospitals in Rockwall County

Comment: Commenters have proposed a different reimbursement methodology for the proposed phase down from rural to urban. Commenters are proposing for state fiscal year 2014 that 75% of the rural rate be blended with 25% of the urban rate; in state fiscal year 2015 that 50% of the rural rate be blended with 50% of the urban rate in 2015; and in state fiscal year 2016 that 100% of the urban rate be used.

Response: HHSC believes that the two year phase in from the rule is appropriate because a hospital should be able to adjust its business practices in response to the change in reimbursement within that time frame. A longer transition period would not reflect an economic and efficient use of taxpayer dollars. The rule was not changed in response to this comment.

Comment: A commenter suggested that the phase down from a rural to an urban classification for Hospitals in Rockwall County is not long enough, and that HHSC should extend the phase down to a longer time period so that the hospitals can secure an Intergovernmental Transfer (IGT) funding source so that they can participate in Uncompensated Care (UC) and Delivery System Reform Incentive Payments (DSRIP).

Response: HHSC believes that the two year phase in provides adequate time for the affected hospitals to secure an IGT funding source for UC and DSRIP. The rule was not changed in response to this comment.

Definition of State-Owned Teaching Hospital

Comment: A commenter recommended that the definition of "state-owned teaching hospital" not be deleted to avoid confusion as to the definition of such hospitals.

Response: HHSC agrees with the commenter and a definition of a "state-owned teaching hospital" was added to §355.8052(b)(30).

HHSC made the following additional changes that were not as a result of a comment but were made to provide clarification or correct errors:

- The acronym "HHSC" was added to §355.8052(a).

- The definition of "base year claims" in §355.8052(b)(5) was expanded to indicate that separate sets of base year claims are compiled for children's hospitals, rural hospitals and urban hospitals for the purposes of rate setting and rebasing.

- Language clarifying which impact file is used to update add-on information was added to §355.8052(b)(17), (d)(1)(A), and (d)(3).

- A definition of "interim payment" was added to §355.8052(b)(20).

- The definition of "interim rate" in §355.8052(b)(21) was expanded to exclude the application of TEFRA target caps.

- The term "urban" was added to the definition of "medical education add-on" in §355.8052(b)(23).

- A definition of a "new hospital" was added to §355.8052(b)(25).

- The definition of "teaching medical education add-on" was expanded in §355.8052(b)(32) to indicate that a children's hospital can qualify for this add-on if it has a program approved by the Accreditation Council for Graduate Medical Education (ACGME).

- Language was added to §355.8052(e)(2)(E) describing how a blended SDA for children's hospitals will be calculated for state fiscal year 2014.

- A new subsection (j) was added to §355.8052 to describe the cost settlement process and its application in the reimbursement methodologies described in this rule.

- A new subsection (k) was added to §355.8052 to describe how out-of-state children's hospitals are reimbursed.

1 TAC §355.8052, §355.8060

Legal Authority

The amendments are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

§355.8052. Inpatient Hospital Reimbursement.

(a) Introduction. The Texas Health and Human Services Commission (HHSC) uses the methodology described in this section to calculate reimbursement for a covered inpatient hospital service.

(b) Definitions.

(1) Adjudicated--The approval or denial of an inpatient hospital claim by HHSC.

(2) Add-on--An amount that is added to the base SDA to reflect high-cost functions and services or regional cost differences.

(3) Base standard dollar amount (base SDA)--A standardized payment amount calculated by HHSC, as described in subsection (d) of this section, for the costs incurred by prospectively-paid hospitals in Texas for furnishing covered inpatient hospital services.

(4) Base year--For the purpose of this section, the base year is a state fiscal year (September through August) to be determined by HHSC.

(5) Base year claims--All Medicaid traditional fee-for-service (FFS) and Primary Care Case Management (PCCM) inpatient hospital claims for reimbursement filed by a hospital that:

(A) had a date of admission occurring within the base year;

(B) were adjudicated and approved for payment during the base year and the six-month grace period that immediately followed the base year, except for such claims that had zero inpatient days;

(C) were not claims for patients who are covered by Medicare;

(D) were not Medicaid spend-down claims;

(E) were not claims associated with military hospitals, out-of-state hospitals, state owned teaching hospitals, and freestanding psychiatric hospitals.

(F) Individual sets of base year claims are compiled for children's hospitals, rural hospitals, and urban hospitals for the purposes of rate setting and rebasing.

(6) Base year cost per claim--The cost for a base year claim that would have been paid to a hospital if HHSC reimbursed the hospital under methods and procedures used in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA), without the application of the TEFRA target cap for all hospitals except children's and state-owned teaching hospitals.

(7) Children's hospital--A Medicaid hospital designated by Medicare as a children's hospital.

(8) Cost outlier payment adjustment--A payment adjustment for a claim with extraordinarily high costs.

(9) Cost outlier threshold--One factor used in determining the cost outlier payment adjustment.

(10) Day outlier payment adjustment--A payment adjustment for a claim with an extended length of stay.

(11) Day outlier threshold--One factor used in determining the day outlier payment adjustment.

(12) Diagnosis-related group (DRG)--The classification of medical diagnoses as defined in the 3M™ All Patient Refined Diagnosis Related Group (APR-DRG) system or as otherwise specified by HHSC.

(13) Final settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year end cost report performed by HHSC within six months after HHSC receives the cost report audited by a Medicare intermediary or HHSC.

(14) Final standard dollar amount (final SDA)--The rate assigned to a hospital after HHSC applies the add-ons and other adjustments described in this section.

(15) Geographic wage add-on--An adjustment to a hospital's base SDA to reflect geographical differences in hospital wage levels. Hospital geographical areas correspond to the Core-Based Statistical Areas (CBSAs) established by the federal Office of Management and Budget in 2003.

(16) HHSC--The Texas Health and Human Services Commission or its designee.

(17) Impact file--The Inpatient Prospective Payment System (IPPS) Final Rule Impact File that contains data elements by provider used by the Centers for Medicare and Medicaid Services (CMS) in calculating Medicare rates and impacts. The impact file is publicly available on the CMS website.

(18) Inflation update factor--Cost of living index based on the annual CMS Prospective Payment System Hospital Market Basket Index.

(19) In-state children's hospital--A hospital located within Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(20) Interim payment--An initial payment made to a hospital that is later settled to Medicaid-allowable costs, for hospitals reimbursed under methods and procedures in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(21) Interim rate--The ratio of Medicaid allowed inpatient costs to Medicaid allowed inpatient charges filed on a hospital's Medicare/Medicaid cost report, expressed as a percentage. The interim rate established during a cost report settlement for an urban hospital or a rural hospital reimbursed under this section excludes the application of TEFRA target caps and the resulting incentive and penalty payments.

(22) Mean length of stay (MLOS)--One factor used in determining the payment amount calculated for each DRG; for each DRG, the average number of days that a patient stays in the hospital.

(23) Medical education add-on--An adjustment to the base SDA for an urban teaching hospital to reflect higher patient care costs relative to non-teaching urban hospitals.

(24) Military hospital--A hospital operated by the armed forces of the United States.

(25) New Hospital--A hospital that was enrolled as a Medicaid provider after the end of the base year and has no base year claims data.

(26) Out-of-state children's hospital--A hospital located outside of Texas that is recognized by Medicare as a children's hospital and is exempted by Medicare from the Medicare prospective payment system.

(27) Rebasing--Calculation of the base year cost per claim for each Medicaid inpatient hospital.

(28) Relative weight--The weighting factor HHSC assigns to a DRG representing the time and resources associated with providing services for that DRG.

(29) Rural hospitals--A hospital in a county with 60,000 or fewer persons based on the 2010 decennial census, a hospital designated by Medicare as a Critical Access Hospital (CAH), a Sole Community Hospital (SCH), or a Rural Referral Center (RRC).

(30) State-owned teaching hospital--The following hospitals: University of Texas Medical Branch (UTMB); University of Texas Health Center Tyler; and M.D. Anderson Hospital.

(31) Teaching hospital--A hospital for which CMS has calculated and assigned a percentage Medicare education adjustment factor under 42 CFR §412.105.

(32) Teaching medical education add-on--An adjustment to the base SDA for a children's teaching hospital with a program approved by the Accreditation Council for Graduate Medical Education (ACGME) to reflect higher patient care costs relative to non-teaching children's hospitals.

(33) TEFRA target cap--A limit set under the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) and applied to a hospital's cost settlement under methods and procedures in the Tax Equity and

Fiscal Responsibility Act of 1982 (TEFRA). TEFRA target cap is not applied to services provided to patients under age 21, and incentive and penalty payments associated with this limit are not applicable to those services.

(34) Tentative settlement--Reconciliation of cost in the Medicare/Medicaid hospital fiscal year-end cost report performed by HHSC within six months after HHSC receives an acceptable cost report filed by a hospital.

(35) Texas provider identifier--A unique number assigned to a provider of Medicaid services in Texas.

(36) Trauma add-on--An adjustment to the base SDA for a trauma hospital to reflect the higher costs of obtaining and maintaining a trauma facility designation, as well as the direct costs of providing trauma services, relative to non-trauma hospitals or to hospitals with lower trauma facility designations.

(37) Trauma hospital--An inpatient hospital that meets the Texas Department of State Health Services criteria for a Level I, II, III, or IV trauma facility designation under 25 Texas Administrative Code §157.125 (relating to Requirements for Trauma Facility Designation).

(38) Universal mean--Average base year cost per claim for all urban hospitals.

(39) Urban hospital--Hospital located in a metropolitan statistical area and not fitting the definition of rural hospitals, children's hospitals, state-owned teaching hospitals, or freestanding psychiatric hospitals.

(c) Base urban and children's hospital standard dollar amount (SDA) calculations. HHSC will use the methodologies described in this subsection to determine two separate average statewide base SDAs: one for children's hospitals and one for urban hospitals. For each category of hospital:

(1) HHSC calculates the average base year cost per claim as follows:

(A) Use the sum of the base year costs per claim for each hospital.

(B) Sum the amount for all hospitals' base year costs from subparagraph (A) of this paragraph.

(C) For children's hospitals subtract an amount equal to the estimated outlier payment amount for the base year claims for all children's hospitals from subparagraph (B) of this paragraph.

(D) To derive the average base year cost per claim:

(i) for urban hospitals, divide the result from subparagraph (B) of this paragraph by the total number of base year claims; and

(ii) for children's hospitals, divide the result from subparagraph (C) of this paragraph by the total number of base year claims.

(E) The result from subparagraph (D)(i) of this paragraph is the universal mean that is used in calculations described in subsections (g) and (h) of this section.

(2) From the amount determined in paragraph (1)(B) of this subsection for urban hospitals and paragraph (1)(C) of this subsection for children's hospitals, HHSC sets aside an amount to recognize high-cost hospital functions, services and regional wage differences. In determining the amount to set aside, HHSC considers factors including other funding available to reimburse high-cost hospital functions and services, available data sources, historical costs, Medicare practices, and feedback from hospital industry experts.

(A) The costs remaining after HHSC sets aside the amount for high-cost hospital functions and services will be used to determine the base SDA.

(B) The costs HHSC sets aside will determine the funds available for distribution to hospitals that are eligible for one or more add-ons as described in subsection (d) of this section.

(3) HHSC divides the amount in paragraph (2)(A) of this subsection by the total number of base year claims to derive the base SDA.

(d) Add-ons.

(1) A children's hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(i) For claims with dates of admission beginning September 1, 2013, and continuing until the next rebasing, the geographic wage add-on for children's hospitals will be calculated based on the impact file in effect on September 1, 2011.

(ii) Subsequent add-ons will be based on the impact file available at the time of rebasing.

(B) Teaching medical education add-on, as described in paragraph (5) of this subsection.

(2) An urban hospital may receive increases to the base SDA for any of the following:

(A) Geographic wage add-on, as described in paragraph (4) of this subsection.

(B) Medical education add-on, as described in paragraph (6) of this subsection.

(C) Trauma add-on, as described in paragraph (7) of this subsection.

(3) Add-on amounts will be determined or adjusted based on the following:

(A) Impact files.

(i) HHSC will use the impact file in effect at the last rebasing to calculate add-ons for new hospitals, except as otherwise specified in this section; and

(ii) HHSC will use the most recent finalized impact file from the current Hospital Inpatient Prospective Payment System (PPS) final rule available at the time of rebasing to calculate add-ons.

(B) If a hospital becomes eligible for the geographic wage reclassification under Medicare during the fiscal year, the hospital will become eligible for the adjustment upon the next rebasing.

(C) If a hospital becomes eligible for the teaching medical education add-on, medical education add-on, or trauma add-on during the fiscal year, the hospital will receive an increased final SDA to include these newly eligible add-ons, effective for claims that have a date of admission occurring on or after the first day of the next state fiscal year.

(D) If an eligible children's hospital is new to the Medicaid program and a cost report is not available, the teaching medical education add-on will be calculated at the beginning of the state fiscal year after a cost report is received.

(4) Geographic wage add-on.

(A) Wage index. To determine a children's or urban hospital's geographic wage add-on, HHSC first calculates a wage index for Texas as follows:

(i) HHSC identifies the Medicare wage index factor for each Core Based Statistical Area (CBSA) in Texas.

(ii) HHSC identifies the lowest Medicare wage index factor in Texas.

(iii) HHSC divides the Medicare wage index factor for each CBSA by the lowest Medicare wage index factor identified in clause (ii) of this subparagraph and subtracts one from each resulting quotient to arrive at a percentage.

(iv) HHSC uses the result of the calculations in clause (iii) of this subparagraph to calculate each CBSA's add-on amount described in subparagraph (C) of this paragraph.

(B) County assignment. HHSC will initially assign a hospital to a CBSA based on the county in which the hospital is located. A hospital that has been approved for geographic reclassification under Medicare may request that HHSC recognize its Medicare CBSA reclassification, under the process described in paragraph (8) of this subsection.

(C) Add-on amount.

(i) HHSC calculates 62 percent of the base SDA to derive the labor-related portion of that rate, consistent with the Medicare labor-related percentage.

(ii) To determine the geographic wage add-on amount for each CBSA, HHSC multiplies the wage index factor determined in subparagraph (A)(iv) of this paragraph for that CBSA by the percentage labor share of the base SDA calculated in clause (i) of this subparagraph.

(5) Teaching medical education add-on.

(A) Eligibility. A teaching hospital that is a children's hospital is eligible for the teaching medical education add-on. Each children's hospital is required to confirm, under the process described in paragraph (8) of this subsection, that HHSC's determination of the hospital's eligibility for the add-on is correct.

(B) Add-on amount. HHSC calculates the teaching medical education add-on amounts as follows:

(i) For each children's hospital, identify the total hospital medical education cost from each hospital cost report or reports that cross over the base year.

(ii) For each children's hospital, sum the amounts identified in clause (i) of this subparagraph to calculate the total medical education cost.

(iii) For each children's hospital, calculate the average medical education cost by dividing the amount from clause (ii) of this subparagraph by the number of cost reports that cross over the base year.

(iv) Sum the average medical education cost per hospital to determine a total average medical education cost for all hospitals.

(v) For each children's hospital, divide the average medical education cost for the hospital from clause (iii) of this subparagraph by the total average medical education cost for all hospitals from clause (iv) of this subparagraph to calculate a percentage for the hospital.

(vi) Divide the total average medical education cost for all hospitals from clause (iv) of this subparagraph by the total base year cost for all children's hospitals from subsection (c)(1)(B) of this section to determine the overall teaching percentage of Medicaid cost.

(vii) For each children's hospital, multiply the percentage from clause (v) of this subparagraph by the percentage from clause (vi) of this subparagraph to determine the teaching percentage for the hospital.

(viii) For each children's hospital, multiply the hospital's teaching percentage by the base SDA amount to determine the teaching medical education add on amount.

(6) Medical education add-on.

(A) Eligibility. A teaching hospital that is an urban hospital is eligible for the medical education add-on. Each hospital is required to confirm, under the process described in paragraph (8) of this subsection, that HHSC's determination of the hospital's eligibility and Medicare education adjustment factor for the add-on is correct.

(B) Add-on amount. HHSC multiplies the base SDA by the hospital's Medicare education adjustment factor to determine the hospital's medical education add-on amount.

(7) Trauma add-on.

(A) Eligibility.

(i) To be eligible for the trauma add-on, a hospital must be designated as a trauma hospital by the Texas Department of State Health Services and be eligible to receive an allocation from the trauma facilities and emergency medical services account under Chapter 780, Health and Safety Code.

(ii) HHSC initially uses the trauma level designation associated with the physical address of a hospital's TPI. A hospital may request that HHSC, under the process described in paragraph (8) of this subsection, use a higher trauma level designation associated with a physical address other than the hospital's TPI address.

(B) Add-on amount. To determine the trauma add-on amount, HHSC multiplies the base SDA:

(i) by 12.8 percent for hospitals with Level 1 trauma designation;

(ii) by 8.2 percent for hospitals with Level 2 trauma designation;

(iii) by 1.4 percent for hospitals with Level 3 trauma designation; or

(iv) by 0.9 percent for hospitals with Level 4 trauma designation.

(C) Reconciliation with other reimbursement for uncompensated trauma care. Subject to the General Appropriations Act and other applicable law:

(i) If a hospital's allocation from the trauma facilities and emergency medical services account administered under Chapter 780, Health and Safety Code, is greater than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the Department of State Health Services will pay the hospital the difference between the two amounts at the time funds are disbursed from that account to eligible trauma hospitals.

(ii) If a hospital's allocation from the trauma facilities and emergency medical services account is less than the total trauma add-on amount estimated to be paid to the hospital under this section during the state fiscal year, the hospital will not receive a pay-

ment from the trauma facilities and emergency medical services account.

(8) Add-on status verification.

(A) Notification. HHSC will determine a hospital's initial add-on status by reference to the impact file and the Texas Department of State Health Services' list of trauma-designated hospitals. HHSC will notify the hospital of the CBSA to which the hospital is assigned, the Medicare education adjustment factor assigned to the hospital for urban hospitals, the trauma level designation assigned to the hospital, the Medicare teaching hospital designation for children's hospitals, as applicable and any other related information determined relevant by HHSC. HHSC may post the information on HHSC's website, send the information through the established Medicaid notification procedures used by HHSC's fiscal intermediary, send through other direct mailing, or provide the information to the hospital associations to disseminate to their member hospitals.

(B) HHSC will calculate a hospital's final SDA using the add-on status initially determined by HHSC unless, within 14 calendar days after the date of the notification, HHSC receives notification, in writing by regular mail, hand delivery or special mail delivery, from the hospital (in a format determined by HHSC) that any add-on status determined by HHSC is incorrect and:

(i) the hospital provides documentation of its eligibility for a different trauma designation, medical education percentage, or teaching hospital designation; or

(ii) the hospital provides documentation that it is approved by Medicare for reclassification to a different CBSA.

(C) If a hospital fails to notify HHSC within 14 calendar days after the date of the notification that the add-on status as initially determined by HHSC includes one or more add-ons for which the hospital is not eligible, resulting in an overpayment, HHSC will recoup such overpayment and will prospectively reduce the SDA accordingly.

(e) Final urban and children's hospital SDA calculations.

(1) HHSC calculates an urban hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) Multiply the SDA determined in subparagraph (A) of this paragraph by the hospital's total relative weight of base year claims as calculated in subsection (g)(1) of this section.

(C) Sum the amount calculated in subparagraph (B) of this paragraph for all urban hospitals.

(D) Divide the total funds appropriated for reimbursing inpatient urban hospital services under this section by the amount determined in subparagraph (C) of this paragraph.

(E) Multiply the SDA determined for each hospital in subparagraph (A) of this paragraph by the percentage determined in subparagraph (D) of this paragraph.

(F) For new urban hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus any add-ons for which the hospital is eligible, multiplied by the percentage determined in subparagraph (D) of this paragraph.

(2) HHSC calculates a children's hospital's final SDA as follows:

(A) Add all add-on amounts for which the hospital is eligible to the base SDA.

(B) For labor and delivery services provided to adults age eighteen or greater in a children's hospital, the final SDA is equal to the base SDA for urban hospitals without add-ons, calculated as described in subsection (c)(3) of this section plus the urban hospital wage add-on for an urban hospital located in the same CBSA as the children's hospital providing the service.

(C) For new children's hospitals that are not teaching hospitals for which HHSC has no base year claim data, the final SDA is the base SDA plus the hospital's geographic wage add-on. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(D) For new children's hospitals that qualify for the teaching medical education add-on described in subsection (b)(31) of this section for which HHSC has no base year claim data, the final SDA is calculated based on one of the following options until rebasing is performed with base year claim data for the hospital. A new children's hospital must notify the HHSC Rate Analysis Department of its selected option within 60 days from the date the hospital is notified of its provider activation by HHSC's fiscal intermediary. If notice of the option is not received, HHSC will assign the hospital the SDA calculated as described in clause (i) of this subparagraph. The SDA calculated based on the selected option will be effective retroactive to the first day of the provider's enrollment.

(i) Children's hospital base SDA plus the applicable geographic wage add-on and the minimum teaching add-on for existing children's hospitals. No settlement of costs is required for services reimbursed under this option. The SDA will be in effective for the hospital for three years or until the next rebasing when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(ii) Children's base SDA plus the applicable geographic wage add-on and the maximum teaching add-on for existing children's hospitals. A cost settlement is required for services reimbursed under this option. The SDA will be in effect for the hospital for three years or until the next rebasing when a new SDA will be determined. The SDA will be inflated from the base year to the current period at the time of enrollment or to state fiscal year 2015, whichever is earlier.

(E) For state fiscal year 2014 only, HHSC will calculate a blended SDA for children's hospitals, other than those described in subparagraphs (C) and (D) of this paragraph, as follows:

(i) Calculate a full-cost SDA by dividing the hospital's total base year cost determined in subsection (c)(1)(A) of this section by the number of claims in the base year;

(ii) Multiply the result of clause (i) of this subparagraph by 0.50;

(iii) Multiply the hospital's final base SDA from subparagraph (A) of this paragraph by 0.50;

(iv) Sum the results of the calculations described in clauses (ii) and (iii) of this subparagraph.

(v) The resulting blended SDA determined in clause (iv) of this subparagraph will be adjusted by the inflation update factor from the base year to state fiscal year 2014.

(F) For state fiscal year 2015, the final SDA determined in subparagraphs (A), (C) and (D) of this paragraph will be adjusted by the inflation update factor from the base year to state fiscal year 2015. This SDA will remain in effect until the next rebasing.

(3) For military and out-of-state hospitals, the final SDA is the urban hospital base SDA multiplied by the percentage determined in paragraph (1)(D) of this subsection.

(f) Final rural hospital SDA calculation.

(1) HHSC calculates a rural hospital's final SDA as follows:

(A) Calculate a hospital-specific full-cost SDA by dividing each hospital's base year cost, calculated as described in subsection (c)(1)(A) of this section, by the number of claims in the base year;

(B) Adjust the result from subparagraph (A) of this paragraph by multiplying the specific-specific full-cost SDA by the inflation update factor to obtain an adjusted hospital-specific SDA;

(C) Calculate an SDA floor based on 1.5 standard deviations below the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph;

(D) Calculate an SDA ceiling based on 2.0 standard deviations above the average adjusted hospital-specific SDA from subparagraph (B) of this paragraph for all rural hospitals with more than 50 claims as calculated in subparagraph (B) of this paragraph;

(E) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA floor from subparagraph (C) of this paragraph. If the adjusted hospital-specific SDA is less than the SDA floor, the hospital is assigned the SDA floor amount as the final SDA;

(F) Compare the adjusted hospital-specific SDA for each hospital from subparagraph (B) of this paragraph to the SDA ceiling from subparagraph (D) of this paragraph. If the adjusted hospital-specific SDA is more than the SDA ceiling, the hospital is assigned the SDA ceiling amount as the final SDA;

(G) Assign the adjusted hospital-specific SDA as the final SDA to each hospital not described in subparagraphs (E) and (F) of this paragraph.

(2) HHSC calculates a new rural hospital's final SDA as follows:

(A) For new rural hospitals for which HHSC has no base year claim data, the final SDA is the mean rural SDA, calculated by dividing the sum of the SDA amounts from paragraph (1) of this subsection by the number of hospitals in the group.

(B) The mean rural SDA remains in effect until the next rebasing using the steps outlined in paragraph (1)(A) - (G) of this subsection, using the SDA floor and SDA ceiling in effect for the fiscal year.

(3) For hospitals in Rockwall County:

(A) For state fiscal year 2014 only, for each hospital, HHSC will calculate a blended SDA as follows:

(i) Calculate a final SDA as described in paragraph (1) of this subsection;

(ii) Multiply the result of clause (i) of this subparagraph by 0.67;

(iii) Calculate a final urban SDA as described in subsection (e)(1) of this section.

(iv) Multiply the hospital's final urban SDA from clause (iii) of this subparagraph by 0.33;

(v) Sum the results of the calculations described in clauses (ii) and (iv) of this subparagraph.

(B) For state fiscal year 2015 only, for each hospital, HHSC will calculate a blended SDA as follows:

(i) Calculate a final SDA as described in paragraph (1) of this subsection;

(ii) Multiply the result of clause (i) of this subparagraph by 0.33;

(iii) Calculate a final urban SDA as described in subsection (e)(1) of this section.

(iv) Multiply the hospital's final urban SDA from clause (iii) of this subparagraph by 0.67;

(v) Sum the results of the calculations described in clauses (ii) and (iv) of this subparagraph.

(C) For state fiscal year 2016 and thereafter, hospitals in Rockwall County will be classified as urban hospitals and will receive the final SDA as calculated in subsection (e)(1) of this section.

(g) DRG statistical calculations. HHSC recalibrates the relative weights, MLOS and day outlier threshold whenever the base SDAs for urban hospitals are recalculated. The relative weights, MLOS, and day outlier thresholds are calculated using data from urban hospitals and apply to all hospitals. The relative weights that were implemented for urban hospitals on September 1, 2012, apply to all hospitals until the next rebasing.

(1) Recalibration of relative weights. HHSC calculates a relative weight for each DRG as follows:

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the base year costs per claim as determined in subsection (c) of this section;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG; and

(iii) divides the result in clause (ii) of this subparagraph by the universal mean, resulting in the relative weight for the DRG.

(2) Recalibration of the MLOS. HHSC calculates the MLOS for each DRG as follows:

(A) Base year claims are grouped by DRG.

(B) For each DRG, HHSC:

(i) sums the number of days billed for all base year claims;

(ii) divides the result in clause (i) of this subparagraph by the number of claims in the DRG, resulting in the MLOS for the DRG.

(3) Recalibration of day outlier thresholds. HHSC calculates a day outlier threshold for each DRG as follows:

(A) Calculate for all claims the standard deviations from the MLOS in paragraph (2) of this subsection.

(B) Remove each claim with a length of stay (number of days billed by a hospital) greater than or equal to three standard deviations above or below the MLOS. The remaining claims are those with a length of stay less than three standard deviations above or below the MLOS.

(C) Sum the number of days billed by all hospitals for a DRG for the remaining claims in subparagraph (B) of this paragraph.

(D) Divide the result in subparagraph (C) of this paragraph by the number of remaining claims in subparagraph (B) of this paragraph.

(E) Calculate one standard deviation for the result in subparagraph (D) of this paragraph.

(F) Multiply the result in subparagraph (E) of this paragraph by two and add that to the result in subparagraph (D) of this paragraph, resulting in the day outlier threshold for the DRG.

(4) If a DRG has fewer than five base year claims, HHSC will use National Claim Statistics to assign:

(A) a national relative weight recalibrated to a relative weight calculated in paragraph (1) of this subsection; and

(B) an MLOS and a day outlier as described in paragraphs (2) and (3) of this subsection.

(h) Reimbursements.

(1) Calculating the payment amount. HHSC reimburses a hospital a prospective payment for covered inpatient hospital services by multiplying the hospital's final SDA as calculated in subsection (e) or (f) of this section as appropriate by the relative weight for the DRG assigned to the adjudicated claim. The resulting amount is the payment amount to the hospital.

(2) The prospective payment as described in paragraph (1) of this subsection is considered full payment for covered inpatient hospital services. A hospital's request for payment in an amount higher than the prospective payment will be denied.

(3) Day and cost outlier adjustments. HHSC pays a day outlier or a cost outlier for medically necessary inpatient services provided to clients under age 21 in all Medicaid participating hospitals that are reimbursed under the prospective payment system. If a patient age 20 is admitted to and remains in a hospital past his or her 21st birthday, inpatient days and hospital charges after the patient reaches age 21 are included in calculating the amount of any day outlier or cost outlier payment adjustment.

(A) Day outlier payment adjustment. HHSC calculates a day outlier payment adjustment for each claim as follows:

(i) Determine whether the number of medically necessary days allowed for a claim exceeds:

(I) the MLOS by more than two days; and

(II) the DRG day outlier threshold as calculated in subsection (g)(3) of this section.

(ii) If clause (i) of this subparagraph is true, subtract the DRG day outlier threshold from the number of medically necessary days allowed for the claim.

(iii) Multiply the DRG relative weight by the final SDA.

(iv) Divide the result in clause (iii) of this subparagraph by the DRG MLOS described in subsection (g)(2) of this section, to arrive at the DRG per diem amount.

(v) Multiply the number of days in clause (ii) of this subparagraph by the result in clause (iv) of this subparagraph.

(vi) Multiply the result in clause (v) of this subparagraph by 60 percent.

(vii) Multiply the allowed charges by the current interim rate to determine the cost.

(viii) Subtract the DRG payment amount calculated in clause (iii) of this subparagraph from the cost calculated in clause (vii) of this subparagraph.

(ix) The day outlier amount is the lesser of the amount in clause (vi) of this subparagraph or the amount in clause (viii) of this subparagraph.

(x) For urban and rural hospitals, multiply the amount in clause (ix) of this subparagraph by 90 percent to determine the final day outlier amount. For children's hospitals the amount in clause (ix) of this subparagraph is the final day outlier amount.

(B) Cost outlier payment adjustment. HHSC makes a cost outlier payment adjustment for an extraordinarily high-cost claim as follows:

(i) To establish a cost outlier, the cost outlier threshold must be determined by first selecting the lesser of the universal mean of base year claims multiplied by 11.14 or the hospital's final SDA multiplied by 11.14.

(ii) Multiply the full DRG prospective payment by 1.5.

(iii) The cost outlier threshold is the greater of clause (i) or (ii) of this subparagraph.

(iv) Subtract the cost outlier threshold from the amount of reimbursement for the claim established under cost reimbursement principles described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(v) Multiply the result in clause (iv) of this subparagraph by 60 percent to determine the amount of the cost outlier payment.

(vi) For urban and rural hospitals, multiply the amount in clause (v) of this subparagraph by 90 percent to determine the final cost outlier amount. For children's hospitals the amount in clause (v) of this subparagraph is the final cost outlier amount.

(C) Final outlier determination:

(i) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero, HHSC pays the higher of the two amounts.

(ii) If the amount calculated in subparagraph (A)(ix) of this paragraph is greater than zero and the amount calculated in subparagraph (B)(vi) of this paragraph is less than or equal to zero, HHSC pays the day outlier amount.

(iii) If the amount calculated in subparagraph (B)(vi) of this paragraph is greater than zero and the amount calculated in subparagraph (A)(ix) of this paragraph is less than or equal to zero, HHSC pays the cost outlier amount.

(iv) If the amount calculated in subparagraph (A)(ix) of this paragraph and the amount calculated in subparagraph (B)(vi) of this paragraph are both less than or equal to zero HHSC will not pay an outlier for the admission.

(D) If the hospital claim resulted in a downgrade of the DRG related to reimbursement denials or reductions for preventable adverse events, the outlier payment will be determined by the lesser of the calculated outlier payment for the non-downgraded DRG or the downgraded DRG.

(4) A hospital may submit a claim to HHSC before a patient is discharged, but only the first claim for that patient will be reimbursed the prospective payment described in paragraph (1) of this subsection. Subsequent claims for that stay are paid zero dollars. When the patient is discharged and the hospital submits a final claim to ensure accurate calculation for potential outlier payments for clients younger than age 21, HHSC recoups the first prospective payment and issues a final payment in accordance with paragraphs (1) and (3) of this subsection.

(5) Patient transfers and split billing. If a patient is transferred, HHSC establishes payment amounts as specified in subparagraphs (A) - (D) of this paragraph. HHSC manually reviews transfers for medical necessity and payment.

(A) If the patient is transferred from a hospital to a nursing facility, HHSC pays the transferring hospital the total payment amount of the patient's DRG.

(B) If the patient is transferred from one hospital (transferring hospital) to another hospital (discharging hospital), HHSC pays the discharging hospital the total payment amount of the patient's DRG. HHSC calculates a DRG per diem and a payment amount for the transferring hospital as follows:

(i) Multiply the DRG relative weight by the final SDA.

(ii) Divide the result in clause (i) of this subparagraph by the DRG MLOS described in subsection (g)(2) of this section, to arrive at the DRG per diem amount.

(iii) To arrive at the transferring hospital's payment amount:

(I) for a patient age 21 or older, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS, the transferring hospital's number of medically necessary days allowed for the claim, or 30 days; or

(II) for a patient under age 21, multiply the result in clause (ii) of this subparagraph by the lesser of the DRG MLOS or the transferring hospital's number of medically necessary days allowed for the claim.

(C) HHSC makes payments to multiple hospitals transferring the same patient by applying the per diem formula in subparagraph (B) of this paragraph to all the transferring hospitals and the total DRG payment amount to the discharging hospital.

(D) HHSC performs a post-payment review to determine if the hospital that provided the most significant amount of care received the total DRG payment. If the review reveals that the hospital that provided the most significant amount of care did not receive the total DRG payment, an adjustment is initiated to reverse the payment amounts. The transferring hospital is paid the total DRG payment amount and the discharging hospital is paid the DRG per diem.

(i) Cost reports. Each hospital must submit an initial cost report at periodic intervals as prescribed by Medicare or as otherwise prescribed by HHSC.

(1) Each hospital must send a copy of all cost reports audited and amended by a Medicare intermediary to HHSC within 30 days after the hospital's receipt of the cost report. Failure to submit copies or respond to inquiries on the status of the Medicare cost report will result in provider vendor hold.

(2) HHSC uses data from these reports in rebasing rate years to recalculate base SDAs, to calculate interim rates and to complete cost settlements.

(j) Cost Settlement.

(1) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)) for children's and state owned teaching hospitals.

(2) Notwithstanding the process described in paragraph (1) of this subsection, HHSC uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(3) HHSC may select a new base year period for calculating the TEFRA target cap at least every three years.

(4) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the hospital's target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(5) For a new children's hospital, the base year for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the date the hospital is designated by Medicare as a children's hospital. For each cost reporting period after the hospital's base year, an increase in the TEFRA target cap will be applied as described in paragraph (4) of this subsection, until the TEFRA target cap is recalculated as described in paragraph (3) of this subsection.

(6) After a Medicaid participating hospital is designated by Medicare as a children's hospital, the hospital must submit written notification to HHSC's provider enrollment contact, including documents verifying its status as a Medicare children's hospital. Upon receipt of the written notification from the hospital, HHSC will convert the hospital to the reimbursement methodology described in this subsection retroactive to the effective date of designation by Medicare.

(k) Out-of-state children's hospitals. HHSC calculates the prospective payment rate for an out-of-state children's hospital as follows:

(1) HHSC determines the overall average cost per discharge for all in-state children's hospitals by:

(A) Summing the Medicaid allowed cost from tentative or final cost report settlements for the base year; and

(B) Dividing the result in subparagraph (A) of this paragraph by the number of in-state children's hospitals' base year claims described in subsection (c)(1)(D)(ii) of this section.

(2) HHSC determines the average relative weight for all of in-state children's hospitals' base year claims described in subsection (c)(1)(D)(ii) of this section by:

(A) Assigning a relative weight to each claim pursuant to subsection (g)(1)(B)(iii) of this section;

(B) Summing the relative weights for all claims; and

(C) Dividing by the number of claims.

(3) The result in paragraph (1) of this subsection is divided by the result in paragraph (2) of this subsection to arrive at the adjusted cost per discharge.

(4) The adjusted cost per discharge in paragraph (3) of this subsection is the payment rate used for payment of claims.

(5) HHSC reimburses each out-of-state children's hospital a prospective payment for covered inpatient hospital services. The payment amount is determined by multiplying the result in paragraph (4) of this subsection by the relative weight for the Diagnosis Related Group (DRG) assigned to the adjudicated claim.

(l) Merged hospitals.

(1) When two or more Medicaid participating hospitals merge to become one participating provider and the participating provider is recognized by Medicare, the participating provider must submit written notification to HHSC's provider enrollment contact, including documents verifying the merger status with Medicare.

(2) HHSC will assign to the merged entity the final SDA assigned to the hospital associated with the surviving TPI and will reprocess all claims for the merged entity back to the date of the merger or the first day of the fiscal year, whichever is later.

(3) HHSC will not recalculate the final SDA of a hospital acquired in an acquisition or buyout unless the acquisition or buyout resulted in the purchased or acquired hospital becoming part of another Medicaid participating provider. HHSC will continue to reimburse the acquired hospital based on the final SDA assigned before the acquisition or buyout.

(m) Adjustments. HHSC may adjust a hospital's final SDA in accordance with §355.201 of this title (relating to Establishment and Adjustment of Reimbursement Rates by the Health and Human Services Commission).

(n) Additional data. HHSC may require a hospital to provide additional data in a format and at a time specified by HHSC. Failure to submit additional data as specified by HHSC may result in a provider vendor hold until the requested information is provided.

§355.8060. Reimbursement Methodology for Freestanding Psychiatric Facilities.

(a) Introduction. HHSC uses the methodology described in this section to calculate a per diem reimbursement for covered inpatient hospital services in freestanding psychiatric facilities.

(b) Reimbursement to freestanding psychiatric facilities. HHSC reimburses freestanding psychiatric facilities using a prospective facility-specific per diem rate. The per diem rate will be determined based on the Medicare base per diem for inpatient psychiatric facilities with facility-based adjustments for wages, rural location, and length of stay as determined by Medicare, to the extent possible within available funds. HHSC or its designee will not cost settle for services provided to recipients admitted as inpatients to freestanding psychiatric facilities reimbursed under the prospective payment system. The freestanding psychiatric facility inpatient per diem rates are for Medicaid clients under 21 years of age. Per diem rates will be increased only if the Texas Legislature appropriates funds for this specific purpose.

(c) Reimbursement to children's freestanding psychiatric facilities. An in-state freestanding psychiatric facility that serves primarily individuals under the age of 21 will be exempt from the freestanding psychiatric facility prospective payment system methodology described in subsection (b) of this section and instead be reimbursed under methods and procedures described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) described in subsection (d) of this section, if the facility meets the following requirements:

(1) After a Medicaid participating freestanding psychiatric facility is recognized by Medicare as a freestanding psychiatric facility, it must request of HHSC or its designee that the facility be reimbursed as a children's psychiatric hospital. The hospital must submit its request on or after September 1, 2008, in writing, to HHSC or its designee's provider enrollment contact and include documentation showing that during the previous two hospital fiscal years, at least 95 percent of the hospital's total inpatient days were for services to individuals under the age of 21. HHSC will cost settle the annual cost report for the hospital fiscal year in which the request was submitted.

(2) After a freestanding psychiatric facility has been recognized by HHSC as a children's psychiatric hospital, it must annually submit documentation with its annual cost report to HHSC or its designee responsible for receiving submitted cost reports for continued recognition as a children's psychiatric hospital. The documentation must show that at least 95 percent of its total inpatient days were for services to individuals under the age of 21. A hospital that does not meet this 95 percent threshold based on its annual cost report will be reimbursed based on the prospective facility-specific per diem rate described in subsection (b) of this section, effective the first day of the hospital fiscal year following the cost reporting period in which the hospital did not meet the 95 percent threshold.

(d) Children's psychiatric hospital TEFRA reimbursement.

(1) HHSC or its designee reimburses in-state children's psychiatric hospitals under methods and procedures described in the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA).

(2) Interim payments are determined by multiplying a hospital's charges allowed under Medicaid by the interim rate effective on the date of admission. The interim rate is derived from the hospital's most recent tentative or final Medicaid cost report settlement.

(3) The amount and frequency of interim payments will be subject to the availability of funds appropriated for that purpose. Interim payments are subject to settlement at both tentative and final audit of a hospital's cost report.

(4) Cost Settlement.

(A) The cost settlement process is limited by the TEFRA target cap set pursuant to the Social Security Act §1886(b) (42 U.S.C. §1395ww(b)).

(B) Notwithstanding the process in subparagraph (A) of this paragraph, HHSC or its designee uses each hospital's final audited cost report, which covers a fiscal year ending during a base year period, for calculating the TEFRA target cap for a hospital.

(C) HHSC or its designee selects a new base year period for calculating the TEFRA target cap at least every three years.

(D) HHSC increases a hospital's TEFRA target cap in years in which the target cap is not reset under this paragraph, by multiplying the target cap by the CMS Prospective Payment System Hospital Market Basket Index adjusted to the hospital's fiscal year.

(E) For a newly recognized children's psychiatric hospital, the base year period for calculating the TEFRA target cap is the hospital's first full 12-month cost reporting period occurring after the effective date of recognition. For each cost reporting period after the hospital's base year period, an increase in the TEFRA target cap will be applied as described in subparagraph (D) of this paragraph, until the TEFRA target cap is recalculated in subparagraph (C) of this paragraph.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2013.

TRD-201303357
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Effective date: September 1, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 424-6900

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1 TAC §355.8054, §355.8055

Legal Authority

The repeals are adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201303358
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

♦ ♦ ♦

1 TAC §355.8061

The Texas Health and Human Services Commission (HHSC) adopts amendments to §355.8061, concerning Outpatient Hospital Reimbursement, with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4118). The text of the rule will be republished.

Background and Justification

This rule describes the reimbursement methodology for hospital outpatient services. The amendments are adopted to comply with the 2014-2015 General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, 83rd Legislature, Regular Session, 2013, HHSC Rider 51.b(4) and (5)) to effectively monitor and reduce costs. Specifically these rider sections directed HHSC to: (1) continue to adjust outpatient Medicaid payments to a fee schedule that is a prospective payment system and that maximizes bundling of outpatient services, including hospital imaging rates, and (2) expand efforts to develop more appropriate emergency department hospital rates for non-emergency related visits.

To accomplish these legislative objectives and to achieve the savings directed in this cost containment rider, HHSC is adopting the following changes to reimbursement for outpatient services provided beginning September 1, 2013:

- Reduce outpatient allowable charges and freeze outpatient interim rates until a fee schedule is implemented that maximizes bundling of outpatient services. The reduction to allowable charges does not apply to children's hospitals, rural hospitals or state-owned hospitals.

- Phase in the reduction to outpatient allowable charges for hospitals in Rockwall County over a two-year period. This transition period is intended to mitigate the impact to those hospitals of the change in designation for Rockwall County from "rural" to "urban" that resulted following the 2010 census.

- Freeze outpatient interim rates after the implementation of the reduction with exceptions for new hospitals and for adjustments that would result in lower costs to the state.

- Reduce outpatient hospital imaging rates that are above 125% of Medicaid acute care imaging rates for adults to 125% of Medicaid acute care imaging rates for adults.

- Allow for the determination of non-urgent emergency department payments to be based on a percentage of the Medicaid acute care physician office visit amount for adults. Beginning September 1, 2013, for all hospitals except rural hospitals, non-urgent emergency department services will be reimbursed at 125% of the physician office visit fee for adults. Rural hospitals will continue to have these non-urgent visits reimbursed based on 60% of the percentage of allowable charges for urgent visits to ensure access to these services in rural areas of the State. Hospitals in Rockwall County will be transitioned to the physician office visit fee after the 2014-2015 biennium.

The adopted rule also includes technical corrections, numbering revisions, and non-substantive changes to make the rule more readable and understandable.

Comments

During the public comment period, HHSC received oral and written comments from the following entities (listed in alphabetical order):

Baptist Health System

Children's Hospital Association of Texas (CHAT)

Christus Health

Hospital Corporation of America (HCA)

Lake Pointe Medical Center

Teaching Hospitals of Texas (THOT)

Tenet Healthcare Corporation

Texas Association of Voluntary Hospitals (TAVH)

Texas Hospital Association (THA)

Texas Organization of Rural and Community Hospitals (TORCH)

A summary of the comments and HHSC's responses to the comments, grouped by topic, follow:

General Comments

Comment: Many commenters stated that Texas hospitals are reimbursed well below cost for the provision of outpatient hospital services and requested that the reductions to rates contemplated in the proposed rule not be implemented.

Response: The changes to the outpatient hospital reimbursement methodology included in the proposed rule are in response to legislative direction provided through the various cost containment initiatives described in the 2014-2015 General Appropriations Act (Article II, Health and Human Services Commission, S.B. 1, 83rd Legislature, Regular Session, 2013, HHSC Rider 51). HHSC appropriations for the 2014-2015 biennium reflect the reduced funding associated with these initiatives and HHSC must implement the initiatives to comply with legislative direction

and to remain within its appropriations for the biennium. The rule was not changed in response to these comments.

Alternate methodologies for calculating reimbursement rates

Comment: Commenters suggested that HHSC use other options to obtain needed savings such as using the Healthcare Effectiveness Data and Information Set (HEDIS) standards to adjust managed care payments based on outpatient utilization. A commenter stated that the agency should achieve the required savings through controlling utilization of services in managed care arrangements and not through provider rate reductions. The same commenter believes this recommended approach is in compliance with Rider 51.b(18) which directs the agency to "develop dynamic premium development process for managed care organizations that has an ongoing methodology for reducing inappropriate utilization, improving outcomes, reducing unnecessary spending, and increasing efficiency." The same commenter stated that this option would also be in compliance with Rider 51.b(1) which specifies that the agency is to "(i)mplement payment reform and quality based payment adjustments in fee-for-service and in managed care premiums."

Response: HHSC believes that there has not been sufficient notice of or opportunity for comment to enable HHSC to implement the methodology suggested by this commenter at this time, but is taking this suggestion under consideration for future rule-change proposals. The rule was not changed in response to this comment.

Cost Settlement

Comment: Several commenters stated that the freezing of the outpatient rate through the removal of the upward cost settlement and only applying the downward cost settlement which results in lower costs to the state is not appropriate and creates a hybrid system that does not take into account the upward and downward fluctuations in outpatient services that occur over the years.

Response: The current cost-based outpatient system has proven to be inflationary over time with little cost containment built into the reimbursement methodology. In response to legislative direction to continue to adjust outpatient payments to a fee schedule that is prospective and that maximizes bundling of outpatient services and to achieve the savings required for the 2014-2015 biennium, outpatient rates will be reduced effective September 1, 2013. In an attempt to sustain this cost reduction beyond September 1, 2013, and to change the current inflationary features of the payment system, a freeze on increases to outpatient interim rates and the resulting payments is necessary. When a revised bundled outpatient payment system is implemented, the needed cost containment features will be included and cost settlement will not be a feature of the new prospective payment system. The rule was not changed in response to this comment.

Comment: Commenters indicated that imaging claims should be removed from the determination of the interim rate since those services are now being reimbursed under a fee schedule. To not remove these claims reduces the cost-to-charge ratio applied to all outpatient claims resulting in a lower interim rate being locked in due to the freeze. One commenter recommended that HHSC mitigate the impact of a hospital's cost report year end and inclusion of imaging services that may be contained in such reports by removing all imaging cost centers' Medicaid outpatient revenues and costs from the calculation of the interim rate that HHSC uses for the period August 31, 2013, and thereafter.

Response: Hospital outpatient imaging reimbursement was placed on a fee schedule on September 1, 2011, and is not cost settled. While there may be an impact to hospitals due to this situation, the inflationary aspect of outpatient services has surpassed any impact resulting from this change that occurred two years ago. The legislative directive was to achieve savings and provide for cost containment in the reimbursement of outpatient services until a revised bundled outpatient system could be implemented. The rule was not changed in response to this comment.

Emergency Department Flat Rate

Comment: A commenter expressed concern about the emergency department reduction for non-emergent visits. While the proposed rule exempts rural hospitals from the reduction to the flat rate, the commenter would also like rural hospitals to be exempt from the current reduction to 60% of what HHSC pays if the claim were emergent.

Response: The methodology to pay 60% of the percent of allowable charges has been in place since September 1, 2011, and has applied to all rural hospitals since its inception. To remove this reduction would result in a fiscal impact to the state, would not be in compliance with legislative direction to achieve savings, and would remove the incentive for rural hospitals to encourage services be delivered in other settings outside of the emergency department. The rule was not changed in response to this comment.

Comment: A commenter associated with a children's hospital expressed concern about the flat fee for outpatient emergency department services that are determined to be "non-urgent." The commenter stated that children's hospitals provide both trauma services and emergency services in situations that are life threatening or involve imminent danger to a child's health and that emergency departments at children's hospitals must be organized, equipped and staffed to address a range of eventualities 24 hours a day, 7 days a week. The commenter recommended that the implementation of the payment reduction be delayed for one year to give HHSC time to consider and develop alternate approaches to reducing the costs to Medicaid of non-urgent care provided in the emergency room. They believe HHSC should develop emergency room payment policies as part of a coordinated and systematic approach that addresses other factors that affect non-urgent emergency department use, such as availability of primary care, physician participation in Medicaid, adequacy of primary and specialty networks in Medicaid managed care organizations, physician incentive programs, and co-payments for non-emergent emergency department use. The commenters belief is that it is premature and inappropriate to cut hospital emergency department rates before the 1115 projects funded by local communities and the federal government are implemented, the Affordable Care Act payment increase has been implemented and given time to take effect, and before the other policy options that are HHSC's responsibility are considered and implemented. Because of an ongoing policy dispute with the Centers for Medicare and Medicaid Services, the commenter recommends exempting children's hospitals from the proposed payment reduction in a manner similar to rural hospitals.

Response: This change was proposed to achieve the savings directed by the Legislature under Rider 51 and to further incentivize hospitals to continue to develop strategies for the delivery of care outside of the emergency department for non-emergency services. The rule was not changed in response to this comment.

Comment: Several commenters raised concerns that emergency department non-urgent rates should not be further reduced because there is an inadequate physician network in managed care; there are limited alternatives to the emergency room in rural areas and for after hours care; the wrong party was being penalized and there were no disincentives for people to use other alternative care settings; and there is a limited ability for hospitals to change the behavior of persons that show up at the emergency room.

Response: HHSC recognizes that some of the concerns raised may impact rural hospitals disproportionately and have exempted them from this further reduction. For other hospitals this reduction was proposed to achieve the savings directed by the Legislature and to further incentivize hospitals to continue to develop strategies for the delivery of care outside of the emergency department for non-emergency services. The rule was not changed in response to this comment.

Alternate methodologies for the phase down for hospitals in Rockwall County

Comment: Commenters have proposed a different reimbursement methodology for the proposed phase down from rural to urban. Commenters are proposing for state fiscal year 2014 that 75% of the rural rate be blended with 25% of the urban rate; in state fiscal year 2015 that 50% of the rural rate be blended with 50% of the urban rate in 2015; and in state fiscal year 2016 that 100% of the urban rate be used.

Response: HHSC believes that the two year phase in from the rule is appropriate because a hospital should be able to adjust its business practices in response to the change in reimbursement within that time frame. A longer transition period would not reflect an economic and efficient use of taxpayer dollars. The rule was not changed in response to this comment.

Comment: A commenter suggested that the phase down from a rural to an urban classification for hospitals in Rockwall County is not long enough, and that HHSC should extend the phase down to a longer time period so that the hospitals can secure an Intergovernmental Transfer (IGT) funding source in order to participate in Uncompensated Care (UC) and Delivery System Reform Incentive Payments (DSRIP).

Response: HHSC believes that the two year phase in provides adequate time for the affected hospitals to secure an IGT funding source for UC and DSRIP. The rule was not changed in response to this comment.

High Volume Hospital Definition

Comment: A commenter stated that HHSC defines a high volume provider as a Medicaid provider receiving at least $200,000 in Medicaid outpatient payments during calendar year 2004. The commenter is concerned that using a calendar year from nine years ago may not represent a hospital's current Medicaid volume due to changes in hospital operations, market dynamics and demographic changes of the hospital and the service area of the hospital. The commenter recommends HHSC update the Medicaid high volume determination based on a more current year. They also recommend HHSC use calendar year 2011 to determine a hospital's qualification as a high volume provider.

Response: The proposed changes to this rule were in response to legislative initiatives to contain costs. HHSC believes that changing this high volume threshold based on newer data would result in a fiscal impact increase that was not included in these legislative rider initiatives and no additional funds were received for this purpose. The rule was not changed in response to this comment.

Outpatient Hospital Imaging

Comment: A commenter noted that Rider 61 of the 82nd legislative session directed HHSC to implement cost containment initiatives that would achieve savings of $450 million in general revenue. One of the cost containment initiatives implemented was to move hospital outpatient imaging services from a cost based reimbursement methodology to an imaging fee schedule methodology effective September 1, 2011. In the Health and Human Services Consolidated Budget for the 2014-2015 biennium, HHSC indicates the current estimated savings from this initiative are $62.1 million and the targeted savings for this initiative were $28.6 million. With this action HHSC has achieved greater savings than anticipated from the movement of imaging services to a fee schedule methodology. The commenter then states that in the proposed outpatient rule, HHSC is proposing to further reduce hospital outpatient imaging services' reimbursement to the lower of a percentage of the Medicare fee schedule amount or 125% of the Medicaid adult acute care fee for a similar service, with many of the imaging services' reimbursement reduced dramatically (upwards of 90%) if this rule is implemented.

Response: The intent of this change is to more closely align imaging services reimbursement in a hospital setting to the reimbursement in other settings, while recognizing that there are additional costs related to delivering this service in a hospital setting. The reduction of outpatient hospital imaging rates that are above 125% of the Medicaid acute care imaging rates for adults to 125% of Medicaid acute care imaging rates for adults was approved by the Legislature as a cost containment initiative. The rule was not changed in response to this comment.

Comment: A commenter requested clarification as to whether the imaging rule change is intended to limit imaging fees for both children and adults to 125% of the Medicaid acute care imaging rates for adults.

Response: The imaging rule change is intended to limit imaging fees for both children and adults to 125% of the Medicaid acute care imaging rates for adults. Clarifying language was added to subsection (d) in response to this comment.

HHSC made additional changes that were not as a result of a comment but were made to provide clarification or correct errors. In particular, HHSC added language to subsection (b)(1)(C) to clarify that the percentage of allowable charges described in subsections (b)(1)(A)(i) and (b)(1)(B)(i) for children's hospitals is contingent upon approval by the Legislative Budget Board and the Governor. As well, HHSC added clarifying language regarding cost settlements to subsection (b)(2)(D) of the rule.

Legal Authority

The amendment is adopted under Texas Government Code §531.033, which provides the Executive Commissioner of HHSC with broad rulemaking authority; Texas Human Resources Code §32.021 and Texas Government Code §531.021(a), which provide HHSC with the authority to administer the federal medical assistance (Medicaid) program in Texas; and Texas Government Code §531.021(b), which establishes HHSC as the agency responsible for adopting reasonable rules governing the determination of fees, charges, and rates for medical assistance (Medicaid) payments under Texas Human Resources Code Chapter 32.

§355.8061. Outpatient Hospital Reimbursement.

(a) Introduction. The Health and Human Services Commission (HHSC) or its designee reimburses outpatient hospital services under the reimbursement methodology described in this section. Except as described in subsections (c) and (d) of this section, HHSC will reimburse for outpatient hospital services based on a percentage of allowable charges and an outpatient interim rate.

(b) Interim reimbursement.

(1) HHSC will determine a percentage of allowable charges, which are charges for covered Medicaid services determined through claims adjudication.

(A) For high volume providers that received Medicaid outpatient payments equaling at least $200,000 during calendar year 2004.

(i) For children's hospitals, state-owned hospitals, and rural hospitals as defined in §355.8052 of this division (relating to Inpatient Hospital Reimbursement), the percentage of allowable charges is 76.03 percent, except as described in subparagraph (C) of this paragraph.

(ii) For providers in Rockwall County.

(I) For state fiscal year 2014, the percentage of allowable charges is 74.69 percent.

(II) For state fiscal year 2015, the percentage of allowable charges is 73.34 percent.

(III) For state fiscal year 2016 and thereafter, the percentage of allowable charges is 72.00 percent.

(iii) For all other providers, the percentage of allowable charges is 72.00 percent.

(B) For all providers not considered high volume providers as determined in paragraph (1)(A) of this subsection.

(i) For children's hospitals, state-owned hospitals, and rural hospitals as defined in §355.8052 of this division, the percentage of allowable charges is 72.27 percent, except as described in subparagraph (C) of this paragraph.

(ii) For providers in Rockwall County.

(I) For state fiscal year 2014, the percentage of allowable charges is 70.99 percent.

(II) For state fiscal year 2015, the percentage of allowable charges is 69.72 percent.

(III) For state fiscal year 2016 and thereafter, the percentage of allowable charges is 68.44 percent.

(iii) For all other providers, the percentage of allowable charges is 68.44 percent.

(C) For children's hospitals:

(i) The percentage of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are subject to the prior written approval of the Legislative Budget Board and the Governor, as required by the 2014-2015 General Appropriations Act (Article II, Health and Human Services Comm., S.B. 1, 83rd Leg., Regular Session, 2013, Rider 83 and Special Provisions Relating to All Health and Human Services Agencies, Section 44, Rate Limitations and Reporting Requirements).

(ii) If the percentages of allowable charges described in subparagraphs (A)(i) and (B)(i) of this paragraph are not approved as described in clause (i) of this subparagraph, the percentages of allowable charges described in subparagraphs (A)(iii) and (B)(iii) of this paragraph apply.

(D) For outpatient emergency department (ED) services that do not qualify as emergency visits, which are listed in the Texas Medicaid Provider Procedures Manual and other updates on the claims administrator's website, HHSC will reimburse:

(i) rural hospitals, as defined in §355.8052 of this division, 60 percent of the amount determined in subparagraph (A) or (B) of this paragraph;

(ii) hospitals in Rockwall County:

(I) for state fiscal year 2014 and 2015, 60 percent of the amount determined in subparagraphs (A) or (B) of this paragraph;

(II) for state fiscal year 2016 and thereafter, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults; and

(iii) all other hospitals, a flat fee set at a percentage of the Medicaid acute care physician office visit amount for adults.

(2) HHSC will determine an outpatient interim rate for each hospital, which is the ratio of Medicaid allowable outpatient costs to Medicaid allowable outpatient charges derived from the hospital's Medicaid cost report.

(A) For a hospital with at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is the rate in effect on August 31, 2013, except the hospital will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(B) For a new hospital that does not have at least one tentative cost report settlement completed prior to September 1, 2013, the interim rate is 50 percent until the interim rate is adjusted as follows:

(i) If the hospital files a short-period cost report for its first cost report, the hospital will be assigned the interim rate calculated upon completion of the hospital's first tentative cost report settlement.

(ii) The hospital will be assigned the interim rate calculated upon completion of the hospital's first full-year tentative cost report settlement.

(iii) The hospital will retain the interim rate calculated as described in clause (ii) of this subparagraph, except it will be assigned the interim rate calculated upon completion of any future cost report settlement if that interim rate is lower.

(C) Interim claim reimbursement is determined by multiplying the amount of a hospital's outpatient allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection by the outpatient interim rate in effect on the date of service.

(D) Cost settlement. Interim claim reimbursement determined in subparagraph (C) of this paragraph will be cost-settled at both tentative and final audit of a hospital's cost report. The calculation of allowable costs will be determined based on the amount of allowable charges after applying any reductions to allowable charges made under paragraph (1) of this subsection.

(i) Interim payments for claims with a date of service prior to September 1, 2013, will be cost settled.

(ii) Interim payments for claims with a date of service on or after September 1, 2013, will be included in the cost report

interim rate calculation, but will not be adjusted due to cost settlement unless the settlement calculation indicates an overpayment.

(iii) HHSC will calculate an interim rate at tentative and final cost settlement for the purposes described in subparagraph (B) of this paragraph.

(iv) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year exceeded the allowable costs for those services, HHSC will recoup the amount paid to the hospital in excess of allowable costs.

(v) If a hospital's interim claim reimbursement for all outpatient services, excluding imaging, clinical lab and outpatient emergency department services that do not qualify as emergency visits, for the hospital's fiscal year was less than the allowable costs for those services, HHSC will not make additional payments through cost settlement to the hospital for service dates on or after September 1, 2013.

(c) Outpatient hospital surgery. Outpatient hospital non-emergency surgery is reimbursed in accordance with the methodology for ambulatory surgical centers as described in §355.8121 of this subchapter (relating to Reimbursement).

(d) Outpatient hospital imaging. Outpatient hospital imaging services are not reimbursed under the outpatient reimbursement methodology described in subsection (b) of this section. Outpatient hospital imaging services are reimbursed according to an outpatient hospital imaging service fee schedule that is based on a percentage of the Medicare fee schedule for similar services. If a resulting fee for a service provided to any Medicaid beneficiary is greater than 125 percent of the Medicaid adult acute care fee for a similar service, the fee is reduced to 125 percent of the Medicaid adult acute care fee.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2013.

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Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
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For further information, please call: (512) 424-6900

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TITLE 16. ECONOMIC REGULATION

PART 2. PUBLIC UTILITY COMMISSION OF TEXAS

CHAPTER 25. SUBSTANTIVE RULES APPLICABLE TO ELECTRIC SERVICE PROVIDERS

The Public Utility Commission of Texas (commission) adopts new §25.133, relating to Non-Standard Metering Service, and amendments to §25.214, relating to Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities (Tariff for Retail Delivery Service), with changes to the proposed text as published in the March 1, 2013, issue of the *Texas Register* (38 TexReg 1328). The adopted sections require a transmission and distribution utility (TDU) with an advanced metering system (AMS) deployment plan to provide a service through which a customer may choose to have electric service metered through an alternative to the standard advanced meter. The adopted sections also require the TDU to obtain and retain written customer acknowledgement regarding the negative consequences arising from choosing non-standard metering service, and to separately charge for the costs associated with the service. The adopted sections constitute competition rules subject to judicial review as specified in Public Utility Regulatory Act (PURA) §39.001(e). The sections are adopted under Project Number 41111.

A public hearing on the new and amended sections was held at commission offices on April 19, 2013, at 11:00 a.m. Representatives from Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (TX ROSE/TLSC) provided comments at the hearing. In addition, comments at the hearing were provided by the following: Catherine Wilson, Thelma Taormina, Nick Taormina, Devvy Kidd, David Tuckfield, John Ryan, Dr. Laura Pressley, John Marler, David Allen, A.K. Muir, Martin Kralik, Carl Young, John Hancock, Q. Coleman, Bill Biesel, Beth Biesel, Mark Summerlin, Sonia Borgialli, Sheila Hemphill, Michelle Guy, Terry Guy, Bobby Reed, Coleman Hemphill, Dr. Ivette Lozano and Russell Ramsland (collectively, Public Commenters). To the extent that these comments differ from the submitted written comments, such comments are summarized separately below.

The commission received written comments on the proposed sections from the Retail Electric Provider Coalition (REP Coalition); the Steering Committee of Cities Served by Oncor (Cities); Texas Ratepayers Organization to Save Energy and Texas Legal Services Center (TX ROSE/TLSC); City of Houston (Houston); AEP Texas Central Company, AEP Texas North Company, CenterPoint Energy Houston Electric, LLC, Oncor Electric Delivery Company LLC, Texas-New Mexico Power Company, and Sharyland Utilities, L.P. (TDUs); Mr. H. Ragland; Mr. David Allen; and Texas Energy Association for Marketers (TEAM) and Direct Energy.

The REP Coalition was composed of the Alliance for Retail Markets (ARM); Reliant Energy Retail Services; the Texas Energy Association of Marketers (TEAM); and TXU Energy Retail Company LLC. Members of ARM participating in this proceeding were: Champion Energy Services, LLC; Constellation NewEnergy Inc.; Direct Energy, LP; Gexa Energy, LP; Green Mountain Energy Company; Liberty Power; Noble Americas Energy Solutions LLC; and Texas Power. Members of TEAM participating in this proceeding are: Accent Energy d/b/a IGS Energy, Cirro Energy, Just Energy, Spark Energy, StarTex Power, Stream Energy, TriEagle Energy, and TruSmart Energy.

General Comments

TDUs stated that the proposed new rule strikes a fair and reasonable balance between the interests of the customers who wish not to have an advanced meter and the interests of the other stakeholders, including customers who choose to have an advanced meter. TLSC/Texas ROSE commented that the proposed new rule recognizes a customer's right to choose to opt-out of the AMS. This is a positive step in recognizing the individual needs of customers and providing options to serve those needs and will serve the public interest, according to TLSC/Texas ROSE. They also recommended that the commis-

sion remove the AMS surcharges from customers who choose to take alternative metering service under this rule.

Houston expressed its opposition to new §25.133. Its opposition is primarily because of the potential impact on electric reliability in the Houston area, which it considers to be a public safety issue for the city. Houston stated that offering such a program may diminish the reliability benefits of the intelligent grid. It asked that the commission reconsider implementing rules that allow retail customers to choose an alternative to a fully functioning advanced meter. Houston explained that the widespread power outages caused by Hurricane Ike in September 2008 made improving reliability and outage preparedness prominent on Houston's long-term agenda. Houston stressed that the installation of a fully functioning intelligent grid is central to its initiative. This was an initiative pursued in cooperation with CenterPoint Energy. The TDUs, Cities, and Houston agreed that a widespread or ubiquitous deployment of advanced metering systems provides benefits to all customers, including those without an advanced meter, and helped utilities to identify outages and expedite repairs. The TDUs agreed with Cities that all customers should pay AMS surcharges, including those who choose to decline advanced metering, because all customers will benefit from reduced outage events and restoration times. Houston requested that the commission consider an exemption from this new rule for those utilities that have substantially completed deployment pursuant to the utility's deployment plan as approved by the commission. Within Houston, advanced meter deployment is considered complete.

The TDUs stated that an AMS also facilitates the offering of time-of-use pricing products offered by REPs. They added that those who have advanced meters also benefit from lower commodity prices that will be achieved by broad implementation of time-of-use pricing and the corresponding decline in energy consumption during peak periods.

Houston commented that only a negligible number of customers persist in declining advanced meter installation less than 0.002% approximately 40 customers out of more than 2.2 million customers of CenterPoint Energy. It stated that if a program offering an alternative to advanced metering were applied to all customers, it could significantly undermine the overall success of advanced meter deployment in Houston. Houston commented that it anticipates an overall increase in the number of advanced meter opt-out customers if all are given an option to select an alternative to an advanced meter. It believes that any proposed AMS alternative program must proceed on a case-by-case basis in areas where advanced meter deployments are considered complete. Any such program should be designed and executed based on the specific needs of the utility, its customers, and other affected parties. Commission rules should provide for this flexibility and should ensure cost neutrality for the remaining advanced meter customers.

Commission Response

The commission agrees with TLSC/Texas ROSE that adopting this new rule is in the public interest. Although the commission does not share the health and privacy concerns with advanced meters expressed by some commenters, the commission concludes that it is appropriate to address these concerns by giving customers the right not to be served by advanced meters. The commission agrees with the TDUs that the new rule strikes a fair and reasonable balance between the interests of the customers who wish to decline advanced meters and the interests of the other stakeholders, including customers served by advanced meters. Therefore, the commission adopts a new rule that will allow a customer to take non-standard metering service. As the TDUs, Cities, and Houston state, a widespread deployment of AMS provides benefits to all customers, including those without advanced meters. The commission agrees with Houston that the new rule should ensure cost neutrality for the remaining advanced meter customers.

The commission declines to eliminate the AMS surcharges for customers who choose to take non-standard metering service under this new rule, as recommended by TLSC/Texas ROSE. First, PURA §39.107(h) provides that the AMS surcharge is non-bypassable, and therefore the commission does not have the authority to remove customers' obligation to pay the AMS surcharges. Furthermore, even customers who decline advanced metering benefit from the deployment of advanced meters, as the technology enables the utility to manage its entire system more efficiently. The commission further agrees with Cities and TDUs that customers without advanced meters benefit from AMS through shorter durations of being without power during outages that affect more than one customer and emergency events.

The commission acknowledges the comments from Houston regarding the adverse effects opt-out customers have on reliability and outage management. These effects will vary in relation to the number of customers who choose to have non-standard metering service. If few customers choose non-standard metering service, the effects will be small. These adverse effects support the new rule's requirement that customers who choose non-standard metering pay for all of the costs of that service.

TLSC/Texas ROSE argued that low-income customers should be exempt from paying fees for declining an advanced meter, or should receive a low-income discount on the associated fees. They added that the utility should have the ability to recover costs of customers declining an advanced meter from shareholders. TDUs disagreed with TLSC/Texas ROSE because providing a discount to low-income customers would require other customers to pay more. The TDUs stated that this would be contrary to the commission's goal of requiring customers who decline an advanced meter to pay the costs associated with that choice.

Commission Response

The commission disagrees with TLSC/Texas ROSE that low-income customers should be exempt from paying fees, or receive a discount on the fees, when choosing non-standard metering service. As the TDUs commented, implementing the TLSC/Texas ROSE request would result in shifting those costs onto other non-standard metering customers or customers who receive service through advanced meters.

TLSC/Texas ROSE commented that the proposed new rule, as currently written, does not require a customer outreach campaign. They stated that in areas where advanced meters have not been deployed, all customers should be provided the opportunity in advance to decline installation of an advanced meter. This notification would reduce costs because no additional field trips would be needed. TLSC/Texas ROSE added that customer education should include an explanation of the AMS, how it differs from the traditional system, what alternatives a customer would have to an advanced meter, and the corresponding costs. TLSC/Texas ROSE recommended that social and mass media be used to provide customer outreach. TLSC/Texas ROSE explained that REP and TDU websites should be required to in-

clude information about the ability to decline an advanced meter, but should not be the only source of information to customers.

The REP Coalition and the TDUs disagreed with TLSC/Texas ROSE that a customer outreach campaign for the right to decline advanced metering is required, because it would negatively impact the benefits of universal deployment of AMS. Thus, the commission should not encourage customers to decline advanced metering, nor require the TDUs to engage in a customer outreach campaign. The REP Coalition also responded that further customer outreach related to declining advanced metering is unnecessary. They noted that interested customers are well aware that the issue is under review by the commission by virtue of Project Number 40190 and the commission's request for written public comment, and public forums on the topic have been well attended. The REP Coalition clarified that both TDUs and REPs will incur costs and expend resources to implement the program. The new rule and amendments to the tariff address a TDU's recovery of those costs through commission-approved rates and a REP may choose to address the increased cost of doing business attributable to an opt-out program through institution of a fee.

Commission Response

The commission declines to adopt a customer outreach campaign as recommended by TLSC/Texas ROSE. PURA §39.107(i) provides that it is the intent of the Legislature that AMS "be deployed as rapidly as possible to allow customers to better manage energy use and control costs, and to facilitate demand response initiatives." Demand response can lower costs to customers who decrease their usage during peak demand which has the potential to play a part in helping to ensure adequate resources in Texas' growing economy. A customer outreach campaign to inform customers of alternative metering service that undermines these over-arching goals would be an unwarranted expense.

The commission posed the following questions:

(1) Are there any circumstances, such as premises where an advanced meter has not been deployed, where a customer should not have to pay the onetime fee or should pay a reduced onetime fee under proposed subsection (e)?

Cities, REP Coalition, TLSC/Texas ROSE, and Mr. Ragland commented that a onetime fee was not always appropriate. David Allen stated that under this scenario, the customer should not be charged the onetime fee if an advanced meter has not been deployed. Cities stated there are certain situations where it is reasonable to exempt certain customers from the onetime fee. Specifically, if the utility did not incur a cost for physically altering the existing meter arrangement, such as by disabling data transmitting technology or providing a non-standard meter, then the onetime fee is unnecessary.

Similarly, TLSC/Texas ROSE stated that there are circumstances where the TDU is not required to perform any additional work or the incremental cost of installation would be less than the inclusive onetime fee. The REP Coalition commented that the new rule should not limit the TDU's ability to assess a lower one-time fee when circumstances warrant such rate treatment and it is deemed reasonable such as when an advanced meter has not been installed and the TDU does not incur up-front non-recurring costs in providing the service.

The TDUs stated that it is incorrect to assume that by leaving an existing meter in place, the TDU will not incur any installation expense and therefore the opt-out customer should not be assessed any costs. The TDUs maintained that costs will be incurred regardless of whether an advanced meter has been deployed at the premises. TDUs stated that they will also incur back office costs associated with the process. These costs may include a truck roll for existing analog meter inspection and testing, as well as a truck roll for installation once the opt-out customer vacates the premises. The TDUs requested that the commission reject requests to eliminate the onetime fee. The TDUs noted that these same principles apply to the proposals for a reduced onetime fee for customers who currently have an analog meter. The TDUs stated that the proposed new rule properly allows the utility to file a tariff that covers the actual costs incurred by the utility.

Cities disagreed with the TDUs. They responded that forcing a customer to pay for installation of a non-standard meter or re-installation of an advanced meter after a move-out (potentially years in advance) does not make sense and generates free cash for a TDU that has not yet, and may not for some time, incurred the cost underlying the fee. Cities maintained that including these charges in the onetime fee is inconsistent with cost causation principles.

Mr. Ragland stated that a customer who is currently being serviced by a properly working non-standard meter should be allowed to keep the existing meter, decline the advanced meter, and bypass the onetime fee. TLSC/Texas ROSE commented that a customer, not the TDUs, should have the discretion to choose how it receives opt-out service and the cost should vary depending upon that choice. The TDUs disagreed, stating that if a meter has not already been deployed, the TDU has sole discretion to either leave the existing meter or remove the meter and install a non-transmitting advanced meter. The TDU will therefore incur installation and back office costs at the time of the opt-out, or when the customer vacates the premises. Opt-out customers should pay the costs they cause the utility to incur.

TLSC/Texas ROSE commented that the argument could be made that customers should not have to pay a onetime fee because an opt-out provision should have been provided from the beginning. TLSC/Texas ROSE stated that issues should have been identified early on in the process and built into the deployment plans and that the commission should have withheld approval of major expenditures until all major issues were verified and resolved.

Commission Response

The commission does not agree with TLSC/Texas ROSE that issues in this proceeding should have been addressed during development of the advanced metering rule, §25.130. During a process that lasted several years and which included public hearings, workshops, and four contested cases for deployment plan approval and cost recovery, the issues being addressed in this rulemaking were not raised. Each of the four contested cases were settled, with no party objecting to the commission's final order requiring full deployment of advanced meters and cost recovery from all customers in the customer classes receiving advanced meters. Furthermore, the commission evaluated health and privacy concerns subsequently raised against advanced meters and concluded that the concerns are unwarranted. Through this rule, the commission is creating a new discretionary service to give customers the right to be served using non-standard metering service.

The commission agrees with Cities that a customer choosing to take service under this new rule should not be charged the cost of the potential, future installation of an advanced meter if an advanced meter has not been installed for the customer. The initial installation of an advanced meter for a customer not choosing non-standard metering service is not being direct-billed to that customer but is instead being recovered through the AMS surcharge, and a customer choosing non-standard metering service should be treated comparably in that regard. However, a customer choosing non-standard metering service that requires removal of an advanced meter should have to pay for the eventual, second installation of an advanced meter rather than having the cost of that second installation spread to other customers. The commission therefore has modified the rules accordingly.

(2) For the recurring monthly fee for AMS Alternative Service under section 6.1.2.1 of the Tariff for Retail Delivery Service, should the fee be prorated so that the customer pays for the portion of the first month in which service under the AMS Alternative Service is provided and for the portion of the last month in which service under the AMS Alternative Service is provided?

Cities and TLSC/Texas ROSE commented that it is appropriate to prorate the proposed monthly AMS Alternative Service fee. Cities stated that customers receiving AMS Alternative Service should only pay for the time period that the customer actually received such service and therefore prorating the monthly fee was fair and consistent with cost-based rates. TLSC/Texas ROSE agreed that the fee should be prorated if the commission determines that it is appropriate to charge the monthly fee.

The REP Coalition and the TDUs disagreed with Cities and TLSC/Texas ROSE. The TDUs stated that since the recurring costs are primarily driven by the time and expense incurred to read the opt-out customer's meter, these expenses will be incurred by the utility and passed on through the recurring fee regardless of the length of the billing cycle. It is incorrect to assume that the length of the billing period affects the monthly opt-out fee. The TDUs maintained that the TDU will bear the full array of costs associated with the opt-out regardless of whether the customer takes service for a few days or the whole month. The TDUs agreed in principle with Cities that billing should be consistent with cost-based rate making, but stated that billing for the full extent of the fee is the best implementation of this principle. The TDUs stated that the fee should therefore not be prorated.

Similarly, the REP Coalition commented that since the monthly AMS Alternative Service fee proposed is designed to recover costs associated with the TDU reading the customer's non-standard meter and managing that meter data, it is unclear how the charges could be prorated since the associated activities would occur each month regardless.

Commission Response

The commission declines to adopt changes as proposed by TLSC/Texas ROSE and Cities. The commission agrees that the REP Coalition and the TDUs are correct, and the recurring costs are primarily driven by the time and expense incurred to read the opt-out customer's meter. These expenses will be incurred by the utility regardless of the length of the billing cycle. The commission agrees with the TDUs that the utility will bear the full array of costs associated with the opt-out customer regardless of whether the customer takes service for a few days or the whole month. The commission agrees with the TDUs that billing for the full extent of the fee is the best implementation of standard ratemaking principles.

(3) Should the TDU, rather than the REP, be primarily responsible for interacting with a customer concerning service using a non-transmitting meter, including providing the notification required by proposed §25.133(c)(1)(A), obtaining the acknowledgement required by proposed §25.133(c)(1)(B), and informing the customer of the access requirements described in proposed §25.133(d)(3)?

Cities and REP Coalition recommended that the TDU be the primary point of contact with the customer. TLSC/Texas ROSE and TDUs argued that the REP should have primary responsibility.

Cities and the REP Coalition recommended that the TDU rather than the REP be primarily responsible for interacting with a customer concerning service using a non-standard meter. Cities noted that this approach is consistent with the traditional TDU ownership model regarding meters and commented that TDUs are familiar with their own tariffs and are better positioned to communicate any costs associated with non-standard meter service. Cities also stated that competitive issues may arise if REPs are responsible for interacting with customers regarding non-standard meters, including highlighting the increased wait time to switch proposed under subsection (c)(1)(A)(ii).

Similarly, the REP Coalition stated that the customer should communicate and interact with the entity that is in the best position to answer questions and facilitate the customer's opt-out request, which it maintained is the TDU. The REP Coalition noted that the TDU should be required to fulfill customer communication and interface related to the technical aspects involving metering equipment and service performance. The TDU has traditionally been and remains the best suited contact for issues relating to advanced metering and each deployment plan includes funds for customer education. Customers may already view the TDU as their point of contact for information on advanced metering. The REP Coalition commented that the TDU is the entity performing the physical activities required to effectuate an opt-out request and inserting the REP in the process would create confusion and result in inefficiencies. The REP

Coalition noted that the current tariff supports allowing the customer to communicate with the TDU directly regarding the installation of non-standard facilities. The tariff sets a precedent for designating the TDU as the point of contact for opt-out inquiries and supports requiring the TDU to directly bill the customer the onetime fee required to effectuate an opt-out request.

The REP Coalition went further in reply comments, stating that the TDU is required to provide metering services within its service area to those customers for whom ERCOT does not require an interval data recorder meter, and the provision of such metering services entails the TDU's ownership of the customer's meter as reflected in the AMS surcharge. Since the TDU owns and provisions the advanced meter, it is the appropriate entity to convey technical, rate, and other information to the customer relating to the disablement of the communications functionality and required meter access. For example, the TDU can better explain how the de-activation of an advanced meter's communication functionality serves to eliminate radio frequencies and/or electromagnetic fields to and from the meter, the nature of associated costs and charges, as well as the operational differences between advanced meters and the alternative meter options. REPs do not have detailed and well-informed information

regarding these matters. Further, upon completion of deployment, advanced meters will be the standard meter for residential customers and any opt-out request will constitute a non-standard metering request. The REP Coalition noted that the TDU's tariff places the burden on the TDU for non-standard metering requests and the collection of any associated costs or charges. The REP Coalition stated that the TDU should be the initial and final contact with regards to a customer's opt-out request.

The TDUs and TLSC/Texas ROSE disagreed and stated that the REPs are the best contact for primary customer interaction. TLSC/Texas ROSE commented that under the current customer protection rules, the REP is responsible for communicating with customers and has the appropriate customer service staff able to communicate the customer's preference to the TDU as it does with any other discretionary service.

The TDUs requested that the commission reject Cities' and the REP Coalition's proposals. The TDUs commented that the REP has pre-existing, direct relationships with customers and informational responsibilities, so therefore the REP should be primarily responsible for interacting with opt-out customers. The TDUs stated that this imposes no additional undue burden on the REPs and that implementing the opt-out provisions would be no different than administering and communicating the TDU move-in provisions as is current market practice. The TDUs stated that the REP Coalition's argument that TDUs should assume opt-out communication and billing responsibilities is inconsistent with the position commonly taken by REPs in other proceedings, namely that only REPs should be entrusted to communicate with their customers. As an example, the TDUs cited Project Number 41061 in which the REPs stated in regards to demand response that the "REPs are best positioned to deliver these types of programs [. . .] because the REP has the direct customer relationship, with insights into the customer's wants and needs." Additionally, the TDUs countered that the TDUs do not have a traditional role with respect to opting out of meters, because residential customers have never before had the right to opt out of using the utility's standard meter. Therefore, there is no precedent for the TDU assuming responsibility.

In response to Cities, the TDUs stated that no matter who communicates the opt-out fee to the customer, the fee will be adopted in the TDU's tariff and therefore is set and nonnegotiable. The fee will be fixed regardless of who communicates the charge to the customer. The TDUs commented that the REPs should be primarily responsible for interacting with the customer regardless of the type of meter at a customer's premises, as the REP has a pre-existing direct relationship with the customer and is aware of the customer's contract and service agreements. The TDU would not be able to explain to the customer potential impacts of opting out, such as possible effects on the customer's electric service plan choice, termination fees, or penalties. Additionally, REPs already regularly quote TDU tariff fees and charges to the customer.

The REP Coalition agreed that the REP should be required to fulfill communication and service requirements impacting the customer's retail product choice and retail service contract. The customer might have to choose an alternative product before an opt-out request can be completed. The REP Coalition proposed conforming language amendments to proposed subsection (c), clarifying the allocation of communication, interface, and administration responsibilities appropriately between the REP and TDU. Cities responded that the REP Coalition's proposal to split communication responsibilities between the REP and the TDU appears reasonable and strikes a reasonable balance between competing concerns. The TDUs and TLSC/Texas ROSE disagreed. TLSC/Texas ROSE stated that the REP Coalition's proposed amendments would be both cumbersome and time consuming, allowing for a customer to be bounced back and forth between the TDU and REP. TLSC/Texas ROSE maintained that the REP should be the initial point of contact for opt-out service.

The TDUs noted the REP Coalition's concession that the customer must still communicate with the REP before seeking to opt-out in any event. The TDUs stated that it would be more efficient and less confusing to the customers if the REPs are required to make the necessary disclosures and to obtain acknowledgement. The bifurcated approach advocated by Cities and the REP Coalition would confuse and frustrate customers, causing multiple phone calls to each entity as questions arise. The TDUs commented that the convoluted communication mechanism proposed by the REP Coalition for processing opt-out requests illustrates the complications of trying to divide the responsibilities. The TDUs requested that the commission adopt the simple process prescribed by the proposed rule. The REP Coalition maintained that the REP should only bear the responsibility to convey information to the customer regarding compatibility of an opt-out request and the customer's current retail product or service, and to work with the customer to resolve any related issues. The TDU is the appropriate entity to be primarily responsible for interacting with the customers, and the proposed rule should allocate responsibility in a manner consistent with the roles the TDU and REP serve in effectuating a customer's opt-out request. The REP Coalition agreed with the TDUs that it is the REP's responsibility to communicate any customer contract or product concerns.

Commission Response

The commission adopts language to make the TDU primarily responsible for working with customers who take service under this rule. While commission policy has generally made the REP the primary market interface for customers, the commission disagrees with the TDUs that the REP should be primarily responsible for handling issues relating to this service. Although the TDUs correctly pointed out that there are instances where the REP relationship with the customer has been acknowledged in commission rules, the commission notes there have been several exceptions. These exceptions relate to metering *(e.g.,* deployment, education, installation, troubleshooting), construction service under the tariff, administration for critical care and chronic condition customers, and meter tampering. In each of those instances, the commission has found that it is appropriate for the TDU to have primary responsibility for interfacing with the customer. Construction service under the tariff and the meter tampering rule include requirements for the TDU to directly bill the customer. The commission agrees with Cities and the REP Coalition that requiring the TDU to have primary responsibility is consistent with the TDU's ownership of the meters. The TDUs are familiar with their own tariffs and are better positioned to communicate the costs associated with this non-standard service. The commission also agrees with the REP Coalition that the TDUs are better able to communicate with customers about the technical aspects involving metering equipment and service performance. The commission agrees that concerned customers may already view the TDU as their point of contact for information on metering. The commission agrees with the REP Coalition that the current tariff supports allowing the customer to communicate with the TDU directly regarding the installation of non-standard facilities. The existing language in the tariff for construc-

tion service and metering and other services set a precedent for designating the TDU as the primary point of contact for non-standard metering service, and supports requiring the TDU to directly bill the customer the onetime fee. This is addressed further in §25.133(e).

REPs will address questions about the impact of non-standard metering service on their customers' electric service contracts. And if the REPs receive calls regarding technical aspects of the provision of non-standard metering service from their customers, they can refer the customers to the TDU.

The REP Coalition recommended that if an affirmative written acknowledgement from the customer is required, the TDU should be the party to obtain the acknowledgement, as it would trigger modification to the TDU's metering equipment. The REP Coalition reiterated that the tariff sets a precedent for requiring the TDU to directly bill the customer the onetime fee required to effectuate an opt-out request. The REP Coalition maintained that the onetime fee could be billed by the TDU directly to customers similar to the market mechanism for construction charges, but if the REP were required to bill the customer instead, it should be adequately protected from risk of nonpayment.

Commission Response

The commission finds that an affirmative, written acknowledgement from the customer shall be required. The TDU shall be the party required to obtain and retain the signed acknowledgement from the customer. This requirement is addressed in §25.133(c).

The TDUs stated that they have no objections to the commission adopting a mechanism providing REPs any protections when collecting onetime or monthly opt-out fees from customers. The TDUs noted that a REP could protect itself from nonpayment of the onetime fee by waiting to notify the utility of the customer's opt-out request until after the customer tenders payment. The TDUs disagreed, however, that the utility should be the billing agent. The TDUs stated that the same arguments used to justify making the REP the point of contact for communications purposes with the customer also support making the REP the billing and collections agent with respect to the onetime and monthly opt-out fees. The TDUs noted that the REPs have existing billing arrangements with the customers, whereas the TDUs do not and that any construction charges are generally onetime collections handled through a manually intensive process. TLSC/Texas ROSE disagreed that the TDU should directly bill the opt-out customer the onetime service fee. The proposal would cause additional administrative expenses and confuse customers who expect to receive their bills from the REP.

Commission Response

The commission finds that the TDU should be responsible for billing the customer directly for the onetime fee. This is discussed below, and rule language is added in §25.133(c).

Public Hearing

A public hearing was requested by Texas Eagle Forum. The commission held a public hearing on Friday, April 19, 2013. Public Commenters commented on a number of issues not specific to the rule at the public hearing. These issues included customer choice, constitutional freedoms, personal testimonials regarding experiences with TDUs, Texas sovereignty, health concerns, privacy, and damage to consumer appliances. Hearing comments that relate to particular rule language are included in the summary for the applicable rule provision.

Public Commenters voiced their opposition to the installation of advanced meters and the continued implementation of Smart Grid technologies, and asked that the Texas state government protect its citizens from any rules or regulations stemming from the United Nations' Agenda 21. Beth Biesel stated that the deployment of advanced meters was not mandatory. Ms. Biesel stated that the TDUs are regulated monopolies. By failing to provide flexibility or options for customers and requiring fees to be paid by those customers declining advanced meters is incompatible with the free market model. Ms. Biesel pointed out that other new technology, such as cell phones, were developed and deployed in a free market exchange, and initially only wealthy or tech savvy chose to purchase a cell phone. She stated that the cost of new technology tends to decrease over time, and more customers subsequently adopt it. She added that no one was forced to buy a cell phone, nor was anyone penalized for not buying one.

Ms. Biesel also urged the commission to keep the Texas electric grid separate and independent.

Public Commenters provided anecdotal information related to the negative health effects they attribute to the installation of advanced meters. David Tuckfield, representing the petitioners in Project Number 40404 (Petitioners), commented that the commission should conduct a study on the health effects of advanced metering and provide the public with information regarding health and safety.

The Petitioners stated that the costs incurred by a TDU to implement the proposed new rule should not be borne only by the customers who choose to receive service using non-standard meters because a customer's decision to maintain an analog meter is not simply a preference, but may be a medical necessity because of disabilities. Russell Ramsland stated that health concerns by themselves should dictate that declining installation of an advanced meter be made available at no cost. Coleman Hemphill expressed the same position.

Bill Biesel stated that he owns various warehouses and retail buildings in the Dallas/Fort Worth area and leases them to tenants. Mr. Biesel stated he would like to decline installation of advanced meters on his properties because he does not want to expose his business to potential liabilities in the form of negative health effects.

Public Commenters voiced concerns regarding their privacy and the security of meter data. David Allen stated that a meter that has had its data transmission capabilities disabled still collects data and can be activated at any time. Mr. Allen also stated that an analog meter should be made available on request to ensure that no data transmission could take place. Mr. Biesel also stated his concern about the loss of private data by his tenants, including unspecified intellectual property, and feared such loss would expose his business to potential liability.

Public Commenters stated that there were numerous instances where people had suffered damage to appliances upon installation of an advanced meter. Mr. Allen stated that the disconnect relay in an advanced meter can be activated which could damage appliances. An analog meter should be made available on request to ensure that inadvertent power disconnections do not take place.

Commission Response

The commission acknowledges the comments made by Public Commenters, Mr. Biesel, Ms. Biesel, Mr. Tuckfield, Mr. Allen,

Mr. Ramsland, Mr. Hemphill, and the Petitioners. The commission evaluated health, privacy, and operational concerns against advanced meters and concluded that the concerns are unwarranted. However, through this rulemaking the commission is giving customers the right to choose metering service that does not require use of advanced meters. As with other non-standard services, customers choosing this non-standard metering service will be required to pay the costs for the service.

Section 25.133

Subsection (a) Purpose

TEAM and Direct Energy raised the issue of the applicability to commercial customers. They stated that customer classes were not specified in the published rule, and therefore the rule and tariff changes would apply to all customers who have advanced meters. TEAM and Direct Energy expressed concern that the application of the rule would be overly broad and could lead to unintended consequences, such as potential ERCOT settlement issues and market distortions.

TEAM and Direct Energy argued that commercial customers have other avenues available to them to alleviate their concerns with advanced meters. TEAM and Direct Energy stated that commercial customers also have additional premises construction and property configuration options that could be used to alleviate any concerns with proximity of the meter to certain portions of premises. Further, commercial customers have the ability today to obtain a meter other than an AMS meter as installed by the utility through the competitive metering process under §25.311.

TEAM and Direct Energy commented that the rule does not appear to contemplate the ability of a customer who chooses a non-standard meter to be settled on 15-minute data. Because of this, TEAM and Direct Energy believe the provisions of the proposed rule changes should not apply to non-residential customers. Without the 15-minute data, premises will be settled on an estimated profile of usage. Estimated profiles of usage are not appropriate for commercial customers whose actual usage may be much different than the profile, depending on the nature and type of business. Commercial customers generally receive electric service based on their usage, and advanced metering services allow their service to be provided on the most efficient basis possible using real 15-minute data.

Mr. Pratt responded that the term commercial is applied to virtually any location with less use than a residence, such as with outdoor security lights, barns, and other separate structures on a homeowner's property that have separate meters. As such, Mr. Pratt argued that homeowners with electric service that is partly classified as commercial, or non-residential, would be greatly impacted by TEAM's and Direct Energy's recommendation. Moreover, Mr. Pratt argued, business owners will be able to judge for themselves what is in their best interest.

Commission Response

The commission agrees with Mr. Pratt that homeowners with electric service who may be partly classified as commercial or non-residential would be put at a disadvantage by the recommendations made by TEAM and Direct Energy. TEAM and Direct are correct that the non-standard metering service provided for under the new rule will not be settled using the customer's actual usage each 15 minutes. The commission does not believe that the potential for ERCOT settlement issues raised by TEAM and Direct requires non-residential customers be exempt from this rule. Although suboptimal, some commercial customers have for years been served by non-advanced meters and therefore settled by ERCOT using averaged load profiles. As indicated by the comments of Bill Biesel, persons concerned with smart meters include owners of commercial facilities such as warehouses and retail buildings. The commission therefore declines to adopt the recommendation put forth by TEAM and Direct.

Cities stated that all customers should continue to pay the fixed AMS surcharge, even those opting for non-standard meter service. Cities argued that deployment of advanced meters and the resulting Smart Grid technologies allow the TDUs to better manage reliability and respond more quickly to outages. This benefits all customers, and it is only fair that all customers carry those costs. Cities noted that the rule as proposed appropriately does not exempt customers who will choose non-standard meters from paying the surcharge. The TDUs agreed with Cities. TDUs added that advanced metering customers also benefit from the potential for lower commodity prices that can be achieved through broad implementation of time-of-use pricing, and the corresponding decline in peak period consumption.

Commission Response

The commission agrees with TDUs and Cities that all customers should continue to pay the fixed AMS surcharge, even those opting for non-standard metering service, as required by PURA. Under PURA §39.107, the "commission shall establish a *non-bypassable* surcharge for an electric utility or transmission and distribution utility to use to recover reasonable and necessary costs incurred in deploying advanced metering and metering information networks." (Emphasis added.) Furthermore, AMS benefits customers not served by advanced meters. AMS allows a TDU to better manage system reliability and respond more quickly to an outage in the case where a customer without an advanced meter is situated close to customers with advanced meters and is affected by the same outage.

Section 25.133

Subsection (b) Definitions

TLSC/Texas ROSE stated that the proposed new rule should articulate what alternative options would be available to customers in place of advanced meters. They suggested that more than one option should be offered, including customer retention of the analog meter rather than being limited to the TDU provisioning a non-standard advanced meter. They pointed out that providing customers with options is consistent with a competitive market and should be encouraged. Mr. Ragland stated that the customer should be allowed to choose not to have the existing analog meter replaced with an advanced meter. Public Commenters agreed. Mr. Pratt recommended that a customer be allowed to choose an analog meter, not merely a digital non-communicating meter. Mr. Pratt expressed concern with customers being overcharged as a result of advanced meters, and that merely turning off the communication functions of a digital meter may not protect customers from being overcharged. TLSC/Texas ROSE stated that the costs incurred in providing alternate metering services should vary depending on the circumstances, and that customers who decline advanced metering, and not the TDUs, should have the discretion to choose how they will receive service, including using analog meters.

Commission Response

The commission agrees with Public Commenters, Mr. Pratt, and TLSC/Texas ROSE that more than one option should be offered under this rule. The commission therefore adopts a rule that offers four options to customers. None of the four options will transmit 15-minute data. These options will allow the customer to receive service metered through either (1) an advanced meter that has the radio communications disabled; (2) if applicable, the existing meter if the TDU determines that it meets applicable accuracy standards; (3) an analog meter, if commercially available to the TDU and if determined by the TDU to be accurate; or (4), a digital, non-communicating meter.

Section 25.133

Subsection (b)(2)

The REP Coalition proposed changing the term "non-transmitting meter" to "non-advanced meter." They stated that this would capture both the disabling of the advanced meter's communications capability and the absence of transmitted meter data for settlement purposes. The REP Coalition added that the modification appears to be consistent with the purpose and intent of the proposed rule. They recommended revising the definition to be less prescriptive, because the proposed rule as a whole adequately covers what is intended.

The TDUs disagreed, arguing that the current language provided a clear definition for a "non-transmitting meter" and the TDUs' obligations regarding such a meter. They stated that changing the term to "non-advanced meter" would be a misnomer for advanced meters whose wireless communications capabilities have been disabled or removed. TDUs commented that if the meter's communications capability is disabled, it logically follows that the meter is not transmitting meter data for settlement purposes. Moreover, they explained that some of the TDUs intend to remove all analog meters and replace them with non-transmitting meters.

TLSC/Texas ROSE and Public Commenters' argued that a disabled advanced meter should not be the only option available to a customer that wants to opt out. They urged the commission to allow customers to keep their analog meter if it is still on the premises, or choose from other options such as a digital non-communicating meter, in addition to the non-transmitting advanced meter as proposed in the rule.

Commission Response

The commission has changed the term "non-transmitting meter" to "non-standard meter," which more accurately reflects the four non-standard metering options available under the adopted rule.

Section 25.133

Subsection (c) Participation

The REP Coalition and Cities restated their position that the TDU should be primarily responsible for communicating with customers regarding requests for non-standard metering service. TLSC/Texas ROSE and TDUs disagreed, and reiterated their support for the REP responsibilities as described in the proposed rule.

Commission Response

As explained above, the commission agrees with the REP Coalition and Cities that the TDU should be primarily responsible for communicating with customers regarding this service. The commission therefore declines to adopt the recommendations made by TLSC/Texas ROSE and the TDUs.

Section 25.133

Subsection (c)(1)(A)

The TDUs commented that the notification requirements under this provision will not impose any material, additional burden on the REP because the majority of the conditions listed and included in the acknowledgement apply to the TDU's advanced meter and the discretionary services relating to the non-standard meter. The REP Coalition disagreed, and argued that the customer's informed request to decline installation of an advanced meter after the receipt of pertinent information and payment of the onetime fee should serve as the customer's affirmation to receive electric service through a non-standard meter. The REP Coalition stated that the TDU is allowed cost recovery under the proposed rule so it is better positioned to recover the costs associated with administering the process.

The REP Coalition argued that existing processes should be leveraged, and suggested that TDUs and REPs could use ERCOT's existing MarkeTrak process to handle customer requests. The REP Coalition provided proposed language to this effect, and described a detailed alternative to the proposed rule process. First, all customers would contact the TDU if they had questions about non-standard meters and/or desired to affirmatively request an alternative to an advanced meter. The TDU would notify the customer of the information listed in proposed subsection (c)(1)(A). If the customer chooses to affirmatively request a non-standard meter after receipt of this information, the TDU would initiate a standard market process *(e.g.,* MarkeTrak) to notify the REP of the customer's request. TDUs responded that these fees would be approved by the commission and included in the tariff, so the REP should be able to explain those fees, just as it does with other fees today.

Second, the REP Coalition proposed that the REP would then have ten days from the date of notification by the TDU to attempt to work with the customer to transition them to a different retail product or service in the event the customer is currently enrolled in a product or service that relies on an advanced meter. If the REP is unable to transition the customer within the ten day period, the REP will notify the TDU that the request cannot move forward. Otherwise, the default action by the TDU is to move the request forward. TDUs responded that under this scenario, the TDU would have to issue the MarkeTrak notice and then monitor the process for up to ten days to see if the REP replies.

If the TDU is not contacted by the REP within ten days, the TDU would be required to assume that the opt-out request was approved by the REP. The TDUs said this is problematic, and that assumptions should not be made about the customer's opt-out request.

Third, the REP Coalition proposed that for the requests that can move forward, they support the 30-day timeline proposed in subsection (d)(1). Once the request to have a non-standard meter is completed, the TDU would be required to provide notice to the customer and the REP that a non-standard meter has been activated at the customer's premises.

Lastly, the REP Coalition commented that to address the requests that do not move forward because of the customer's current enrollment in a product or service that relies on an advanced meter, the rule should direct the TDU to inform the customer that the request could not move forward and advise the customer to contact the REP for further details. The rule should also state that the customer may submit a new request after the issue is resolved.

The TDUs maintained that the mechanism proposed by the REP Coalition illustrates the complications of trying to divide the communication responsibilities between TDUs and REPs.

Commission Response

For the reasons discussed above, the commission believes that the TDU is the appropriate party to serve as the primary point of contact for customers wishing to decline an advanced meter. Once the TDU has obtained the signed written acknowledgement and onetime fee from the customer, the TDU shall notify the REP through market notice procedures of the customer's choice to decline an advanced meter. The TDU shall not commence the opt-out process until it receives both the signed written acknowledgement and the onetime fee. For a customer for whom the TDU has not installed an advanced meter, the commission has included a deadline of 60 days for the customer to provide the signed written acknowledgement and onetime fee.

The commission agrees with the REP Coalition that the rule needs to address retail electric product compatibility with non-standard metering service. The commission has therefore added §25.133(f), which provides that if a customer is on a retail electric product that is not compatible with non-standard metering service, the REP must transition the customer to a product that is compatible with non-standard metering service.

Section 25.133

Subsection (c)(1)(B)

The REP Coalition recommended that the acknowledgement requirement in this paragraph be deleted, or alternatively, the TDU be required to obtain the acknowledgement. They argued that obtaining this written acknowledgement will be difficult from an administrative standpoint and may delay completion of an opt-out request because of the customer's own dilatory action. Further, it is unnecessary because the receipt of payment from the customer would serve as the customer's affirmation to obtain a non-standard meter. The REP Coalition stressed that placing this responsibility on the TDU would avoid the complexities that would otherwise ensue if the customer switches REPs in the middle of the opt-out process.

The REP Coalition added that given the TDU is allowed cost recovery under the proposed rule, it is better positioned to recover the costs associated with administering this potentially time and resource-intensive step in the opt-out process.

The TDUs disagreed with this suggestion. They argued that the written and executed acknowledgement adds value in at least two ways. First, it ensures that each customer has been informed of the disadvantages associated with opting out. Second, it provides a written record of the customer's decision to opt out, which can be used not only to trigger the meter switch, but also defend against later allegations that the customer did not opt out and therefore should not be charged the monthly fee. TDUs commented that it was unclear from the REPs why this process would be administratively difficult, and that any delay in effectuating the opt-out as a result of not receiving the customer acknowledgment would not hurt the REP. The TDUs also pointed out that only the REP knows the information required as to whether the customer is currently enrolled in a product or service requiring an advanced meter as a condition of enrollment.

Commission Response

The commission agrees with the TDUs that a written acknowledgement adds value. A customer who chooses to opt-out may experience substantial disadvantages resulting from that choice. These include but are not limited to the potential for longer restoration times in the event of an outage, inability to choose retail services that depend on advanced meters such as prepaid service, increased discretionary service charges to account for the truck roll necessary for moving-in and moving-out of premises and for switching, and longer switch times. Given these disadvantages, it is reasonable to require a written acknowledgement. A written acknowledgement will ensure that the customer has been informed of, and has acknowledged, the disadvantages associated with opting-out. A written acknowledgement will also create a clear record of the customer's choice to opt-out. In order to ensure that the written acknowledgement is available, the commission has added a requirement that the acknowledgement be retained by the TDU for at least two years after the non-standard meter is removed from the premises. In addition, to ensure that the written acknowledgement conveys sufficient information and is consistent throughout TDU service areas, the commission may adopt a form for the written acknowledgement.

The commission agrees with the REP Coalition that the TDU is in the best position to obtain and retain the customer's written acknowledgement. Under this rule, the TDU will continue to provide service for the customer regardless of whether the customer switches REPs and therefore the written acknowledgement can be readily located and provided by the TDU if it is needed long after the non-standard metering service is initiated. If the REP were required to obtain and retain the written acknowledgement, there would be logistical challenges and costs if the customer switched REPs and the written acknowledgement needed to be located and provided long after the non-standard metering service is initiated.

Section 25.133

Subsection (d)(1) TDU Installation and meter reading obligations

The REP Coalition recommended deleting this provision.

Commission Response

The commission agrees with the REP Coalition and deletes this language accordingly.

Section 25.133

Subsection (d)(3)

TLSC/Texas ROSE again stated the proposed new rule does not provide enough alternatives for those wishing to avoid having an advanced meter. This subsection requires the TDUs to read a non-standard meter monthly but does not include other options such as the customer reading the meter, which would lower the costs of providing an alternative to advanced metering.

Mr. Allen suggested that if a customer could enter their electric usage data into a web page, no meter reading charge would be needed. He explained that his coworker in Austin County read her own meter for 30 years, each month sending in the readings on a prepaid post card from the power company. He stated that a TDU should be able to create a data entry webpage to enable analog meter customers to enter their monthly meter readings and this would save both the TDU and customers millions of dollars in meter reading charges.

Ms. Biesel commented that declining an advanced meter does not necessarily require a meter reader because the TDUs could transmit electric consumption over existing phone lines or power lines. She stated that this method would also be more secure

than wireless transmissions and eliminate RF exposure. She added that she was aware of landline technology being removed from a house when an advanced meter had been installed. The TDUs opposed the recommendations to allow customers who decline an advanced meter to read their own meters and report their usage, and cautioned against the unintended consequences. They explained that accurate consumption is necessary to ensure system costs are paid fairly by all customers. The TDUs stated that, while they do not believe that the customers who desire to decline advanced meters are dishonest, allowing the self-reporting of usage would encourage dishonest people to decline advanced meters so that they could underreport their usage. This would also enable meter tampering to occur because a customer without an advanced meter would be able to evade detection by meter readers that have been trained by the TDU to detect instances of meter tampering during the monthly meter reading.

Commission Response

The commission declines to adopt the recommendation that customers be able to read their own meters and self-report their electricity consumption. The commission believes that the commenters advocating for the option to receive non-standard metering service are motivated by health, privacy, and operational concerns about smart meters. Furthermore, although customers receiving non-standard metering service should pay all of the costs for that service, they should not have to pay unnecessary costs for that service. Allowing self-reporting of usage could perversely encourage a practice of declining advanced meters in order to underreport electricity usage. In addition, customers could inadvertently fail to timely report their electricity consumption or unintentionally misstate their consumption through mistakes in writing down the meter consumption numbers. Although such problems would be addressed later, the price of electricity varies substantially over time, and therefore the errors would have to be corrected using estimates of consumption for all of the numerous 15-minute intervals affected by the errors. As a result of these errors and estimates, a non-standard metering service customer who had delays or other errors in meter consumption numbers will be undercharged or overcharged for service, even after correction of the errors through estimates. The effects of the error will be spread to other customers. As a result, other customers would be forced to pay for the delays or other mistakes of these customers. In addition, even without errors or intentional under-reporting, some cost shifting will occur from non-standard metering service because averaged load profiles will have to be used because 15-minute consumption data will not exist for these customers. Allowing non-standard metering service customers to self-report their usage would exacerbate this cost shifting. Therefore, the commission declines to allow non-standard metering service customers to self-report their consumption.

Section 25.133

Subsection (e) Cost Recovery

Utility Direct Bill Proposal

The REP Coalition reiterated its position that requests for a non-standard meter should be handled in the manner that customer requests for non-standard services are currently handled by the TDU. They argued that the TDU has the ability to directly bill the customer the construction charges relating to the request for non-standard service. The onetime fee that is required by the proposed rule to have a non-standard meter should be treated as a construction charge, with billing to occur directly from the TDU to the customer using existing market processes.

The REP Coalition stated that requiring the TDU to directly bill and collect the onetime fee from the customer is the best way to protect against the risk of nonpayment of such a fee. The REP should not be required to bear the entire risk of nonpayment of the onetime fee, because of the potentially significant amount of the fee and the possibility that many customers charged the fee may not feel compelled to pay it. Treating the onetime fee as a discretionary service charge for electric service will allow a REP to compel payment of the fee through potential service disconnection, but a customer could request a non-standard meter and then switch to another REP to avoid paying the onetime fee, resulting in bad debt for the unpaid REP.

The REP Coalition suggested two ways for the REP to address the risk of nonpayment. The first way is for a REP to require the customer to remit full payment of the one-time fee before the opt-out request proceeds. The second is if the REP elects not to require the up-front and full payment of the fee, it could place a switch-hold on the customer's account until the onetime fee is paid in full. This would be subject to informing the customer of the REP's right to apply a switch-hold before allowing the customer's request to decline an advanced meter to proceed. The TDUs also commented that the REP could require the payment of the fee upfront.

If the determination is made that the TDU should not be required to directly bill the customer the onetime fee, the REP Coalition asserted that the commission should adequately protect REPs from the risk of nonpayment. Any monthly charge for a non-standard meter should be treated as a discretionary service charge for electric service, regardless of whether the TDU or REP is designated as the entity responsible for billing the onetime fee.

The REP Coalition pointed out that if the REP were required to bill the onetime fee, a REP would need to design and implement new internal processes to ensure the removal of the TDU charge from its bill to the customer, provided that the customer has prepaid the amount. This second alternative would require the development of new market processes to create a switch hold category designed specifically for requests to decline advanced meter installation.

The REP Coalition summarized that the complexity and costs associated with either option are precisely why the TDU should bill and collect the onetime fee for a non-standard meter, consistent with the handling of construction charges in the tariff.

TLSC/Texas ROSE and TDUs did not support the REP Coalition's recommendation. TLSC/Texas ROSE responded that this proposal would cause additional administrative expense, increasing the costs customers would bear to receive opt-out services. It also could result in confusion from the customer who expects the bill to come from the customer's REP. TDUs commented that the same reasons that justify making the REP the point of contact for communications also support making the REP the billing and collection agent. The TDUs pointed out that the REPs have existing billing arrangements with their customers, whereas the TDUs do not. They also pointed out that comparing opt-out to construction charges is not apples to apples because construction charges are generally onetime charges that are handled through a manually intensive process. In contrast, TDUs argued, the REPs have well-developed processes for billing customers.

Commission Response

The commission agrees with the REP Coalition that the installation of a non-standard meter under this rule is a non-standard, onetime service and should be handled by the TDU. As pointed out by the REP Coalition, the onetime fee that is required by the proposed rule to have a non-standard meter should be treated as a construction charge, with billing to occur directly from the TDU to the customer using existing market processes. Requiring the REP to assess the fee from the customer would require each REP in the market to invest in system and process changes, even if the REP never has a customer that chooses non-standard metering service. The commission adopts language accordingly to require the TDU to bill this fee to customers. The REP shall bill the customer for the recurring monthly fee for non-standard metering service, like other recurring charges for ongoing service.

Proceeding to Set Fees

TDUs commented that the fees to be charged to customers should be approved administratively. Cities, TLSC/Texas ROSE, and the REP Coalition commented that costs could vary depending on the circumstances. TLSC/Texas ROSE stated that any recurring fees proposed by a utility should be supported in advance by evidence of the reasonable and necessary costs, and that the proposal should also include alternatives for the customer and alternatives for cost recovery. They stated that all customers should be treated equally whether they choose to decline an advanced meter before or after its installation. Cities recommended that the commission require the TDUs to file the supporting calculations for developing the fees or revisions to the fees. They commented that the proposed rule is unclear about what information the utilities must file to establish the opt-out fees to ensure that they are appropriately supported by costs. Cities opposed tariff approval without commission action. Cities also did not support the concept of the TDUs using an administrative review process to change the onetime opt-out fee and the monthly opt-out fee because it is inconsistent with §22.33(b). The rule requires the docketing of a proposed tariff if the commission receives a motion to intervene by a third party or if a proposed revision of an existing tariff will increase the utility's revenues or the customer's bill. Cities also cited §22.32, which states that such a filing does not qualify for administrative review unless the docket has been referred to the State Office of Administrative Hearings, at least 30 days have passed since the completion of all notice requirements, the matter has been fully stipulated by the parties so that there are no issues of law or fact in dispute, and the administrative law judge finds that no hearing or commission action is necessary.

Cities pointed out that in the AMS implementation dockets, utilities provided estimates of savings and benefits resulting from the deployment of advanced meters, such as meter reading savings, ad valorem tax savings, as well as other savings. Cities suggested that if recurring charges for non-standard meter service exceed the relevant components of the operating savings credited to AMS surcharge recovery, TDUs may over-recover costs. Thus, utilities should provide sufficient information regarding the savings embedded in AMS surcharge recovery at the same time that they present their proposals for non-standard meter service. This will demonstrate that the combined charges do not result in TDUs double recovering operating costs.

TLSC/Texas ROSE recommended that the proposed rule include language so that rates for declining an advanced meter are set in a public rate hearing. This would ensure that the reasonableness and necessity of costs the TDUs use to determine their recommended fees. They argued that customers have the right to a hearing to contest a rate proposed by a utility, and the proposed new rule should be amended to replace the phrase "compliance tariff" with "rate filing."

The TDUs agreed that onetime and recurring monthly fees should be based on costs incurred by TDUs for a customer to decline an advanced meter, but took issue with having the fees determined through contested hearings. They argued that the process would give rise to rate case expenses, which would be allocated to those who decline an advanced meter in the form of a surcharge added to the monthly recurring fees.

The TDUs also argued that contested cases would deny the commission and TDUs the flexibility to change the fees associated with declining advanced metering services. The TDUs stated that maintaining this flexibility is important because the costs of maintaining a manual data entry system or installing an automated system (in the event a large number of customers wish to decline advanced metering) are fixed, while the amount allocated to those customers who decline advanced metering services would be a variable cost, depending on how many make that choice. The TDUs explained that conducting a cost-of-service study and undertaking a contested case each time it wanted to reallocate fixed costs would take a considerable amount of time before rates could be changed to reflect the new customer counts. The TDUs proposed as a solution to instead use good faith estimates of costs in filing compliance tariffs, and that existing remedies can be used in the event that the true costs incurred by a TDU necessitate a challenge to its compliance Tariff.

The TDUs suggested that language could be added to define when and how a TDU can change the onetime, up-front fee and the monthly fee. TDUs pointed out that it is currently unknown how many customers will take advantage of the alternative service. Moreover, the number of opt-out customers may change from month to month. The TDUs stated that it is important that they have a mechanism to change the onetime, up-front fee and the monthly fee to ensure that the costs incurred by those who decline an advanced meter are borne solely by them, without undertaking a full tariff revision process and its attendant delays.

The REP Coalition stated that it did not oppose the TDUs' proposal to update the onetime fee and recurring monthly charge approved in the compliance tariff required under the rule provided that the REPs are given reasonable notice (i.e. 45 days) of any revisions to the onetime fee and recurring monthly charge. The REP Coalition stated it supported this if the rates are expressed as specific dollar amounts, rather than "as calculated" amounts that may vary from customer to customer, as the TDUs currently use for certain discretionary services in the tariff.

Commission Response

The procedures that will be used for the commission to approve the fees will depend on whether there are disputed issues. If there are no disputed issues, the fees can be approved by the commission without the need for a hearing. In order to minimize the possibility of disputed issues, the TDUs should make reasonable proposals that are fully supported with testimony and documentation, and the commission has included language in the rule to this effect. If there are disputed issues, the commission anticipates that it may preside over the hearings rather than refer the disputes to the State Office of Administrative Hearings, in order to reduce the time necessary to approve the fees. Under PURA, a TDU has the right to seek changes to the fees if the TDU determines that the fees do not accurately reflect the costs

of the service. To more explicitly provide for recovery of all such costs, the commission has added language to the rule allowing the fixed costs not related to the initiation of non-standard metering service to be allocated between the onetime and monthly fees, and recovered through the monthly fee over a shortened period of time. In addition, the commission has added language to the rule allowing the TDU to recover through the fees the reasonable rate cases expenses that it incurs for the proceedings to set the fees.

The commission agrees with the REP Coalition that changes made to the fees pursuant to this rule should include a 45-day notice period to account for changes to the recurring monthly charge and adds language to this effect.

Installation Costs for Advanced Meters

Cities argued that the TDUs should not charge customers in advance the cost of re-installing the advanced meter when the customer who declined the advanced meter vacates the premises. They stated that it is unclear when the customer will vacate the premises. It could be a period of years before they vacate, and if the customer owns the residence, the decision to decline an advanced meter may be permanent. Cities stated that requiring advance payment for reversing the decision to decline an advanced meter would generate free cash for a TDU because the TDU has not yet incurred the cost underlying the fee and this would be inconsistent with cost causation. Public Commenters did not support the proposed cost structure in this subsection. Mr. Allen stated that customers have been billed monthly surcharges for years to pay for the advanced meters and customers should not be charged again to remove them.

The REP Coalition stated that advanced meters will constitute the standard meter and the objective of the approved deployment plans is ubiquitous deployment. A customer's request for non-advanced meter is a request for a non-standard meter. A customer today may directly request delivery service utilizing non-standard facilities from a TDU under §5.7.5 of the tariff, subject to the operational feasibility of installing or constructing those facilities and the requirement that the customer pay the cost of those facilities directly to the TDU. In addition, §5.7.8 of the tariff allows a customer to directly request a TDU to remove a meter under similar operational restrictions and payment requirements.

Commission Response

The commission agrees with the REP Coalition that the objective of the approved deployment plans is ubiquitous deployment. The commission agrees with Public Commenters, Cities, and Mr. Allen that a customer taking service under this rule should not be charged the cost of the potential, future installation of an advanced meter if an advanced meter has not been installed for the customer. The initial installation of an advanced meter for a customer not choosing non-standard metering service is not being direct-billed to that customer but is instead being recovered through the AMS surcharge, and a customer choosing non-standard metering service should be treated comparably in that regard. However, a customer choosing non-standard metering service that requires removal of an advanced meter should have to pay for the eventual, second installation of an advanced meter rather than having the cost of that second installation spread to other customers.

Section 25.133

Subsection (f) Effective Date for Non-Standard Metering Service

The TDUs commented that when the new rule is adopted, all market participants will need time to establish processes for communication of requests, billing, and other back-office functions. They provided language clarifying that provisions of this rule shall not become effective until the 180th day after the date on which the final rule is published in the *Texas Register.* TLSC/Texas ROSE responded that the rule should take effect in less than 180 days after the rule is promulgated. They stated that the TDUs should make rate filings within 30 days of the effective date of the rule, and that the alternate metering service commence within 45 days of commission adoption of the associated service fees.

The REP Coalition agreed with the TDUs that all market participants will need time to establish processes to handle customer requests. Regarding the effective date, they did not have an opinion on whether it should be 180 days after publication in the *Texas Register.* They suggested that the effective date should be calculated based on several factors. These include the reasonable estimate of the time it will take for market processes to be developed to handle customer requests; the time for the commission to review and approve the TDUs' compliance tariffs relating to opt out service; and the need for a 45-day notice period from the date of compliance tariff approval to allow REPs adequate time to implement any new charges assessed by the TDU to a REP. The REP Coalition indicated it would like to work with commission staff and other parties to determine the most appropriate effective date once the opt out process is finalized.

Commission Response

The commission agrees with the REP Coalition's statement that certain factors should be considered to determine the appropriate implementation date for non-standard metering service and has added a new subsection (g) to address that implementation date. Under the Administrative Procedure Act, a rule generally takes effect 20 days after the date on which it is filed in the office of the Secretary of State. Therefore, TDUs will be required to file compliance tariffs no later than 25 days after the effective date of the new rule and TDUs will be required to begin offering non-standard metering service pursuant to the new rule the later of 160 days from the effective date of the new rule or 45 days after notice of the approved rates to REPs.

§25.214 Pro-forma Retail Delivery Tariff

Subsection (d)

One-Time Fee

Cities stated that the new rule appropriately incorporated the principle of cost neutrality to customers who do not select non-standard meters. Cities stated that all customers should continue to pay the fixed AMS surcharge, even those opting for non-standard meters. The rule as currently proposed relies upon PURA §39.107(h) and §25.130(k) of the commission's rules. The TDUs stated that no broader public interest is served by an individual customer's decision to decline an advanced meter, so the costs should be borne solely by the customer who causes the costs to be incurred. Cities agreed with the TDUs in that regard, and stated that the option for a customer to select a non-standard meter should be cost neutral to those customers who do not select them.

Public Commenters argued that they should not be charged to opt-out because they did not want the advanced meter in the first place. Mr. Ragland commented that by leaving the existing meter (non-advanced meter) in place, the TDU will not incur any

installation expense, and therefore he should not be assessed the onetime fee. He added that this option will help minimize costs for both customers and the TDUs. Mr. Biesel stated that his business should not be penalized for not participating in the advanced meter program because it was not mandatory. He opined that because the cost of deployment has been socialized, then declining advanced metering should also be socialized. Mr. Allen stated that customers have already been billed monthly surcharges for years to pay for the advanced meters and customers should not be charged to have an alternative meter. Ms. Biesel commented that being charged a fee to decline an advanced meter is discriminatory because only the wealthy will be able to afford it. She stated that it would be challenging for people who are elderly, disabled, or on a limited or fixed income to pay the costs of declining an advanced meter. She pointed out that many of these classes of people are the ones who are potentially the most vulnerable to health-related issues. Ms. Biesel also argued that imposing a charge to decline installation of an advanced meter could be considered as discriminatory against minorities because those who have been requesting it have been referred to as a "discreet [sic], small number of people."

The TDUs stated that the new rule allows customers to elect non-standard meters if they choose, but also requires them to bear the full costs of their choice. This avoids the forced subsidization that would occur if the costs caused by customers who decline an advanced meter were spread among all customers. The TDUs argued that the new rule is appropriate by requiring those who decline advanced metering to pay the full cost incurred by the TDU because of the customer's decision. The TDUs stated that nearly all the stakeholders filing comments endorse the principle that customers with advanced meters should not subsidize those who make the choice to decline the advanced meters.

Commission Response

As discussed previously, through PURA the Legislature has established a policy of promoting the deployment of advanced meters and requiring all customers in the customer classes for which advanced meters are deployed to pay the costs for the advanced meters. Even customers who choose not to be served by advanced meters benefit from the advanced meters through increased reliability and lower electricity prices. For a TDU that has deployed advanced meters, service through a meter that is not an advanced meter is a non-standard service and, like other non-standard discretionary services, a customer requesting the service should pay all of the costs for that service rather than shifting any of those costs to customers receiving the standard service.

A TDU will incur fixed and variable costs to provide non-standard metering service. One of the most challenging aspects of implementing non-standard metering service will be setting the fees to ensure that the TDU's fixed costs to provide the service are recovered only from the customers who choose the service. The commission anticipates that customers choosing the service will be largely limited to a subset of the customers who have resisted advanced meters and for whom TDUs therefore did not install advanced meters pending the resolution of how to serve these customers. The commission anticipates that some customers on a TDU's "do not install" list will decide not to opt-out of standard metering service, once they are responsible for the onetime and monthly fees required for non-standard metering service. In addition, the commission anticipates that the number of customers receiving the service will decline over time, as concerns about advanced meters diminish; the benefits of advanced meters become more apparent; and new customers move into locations served by non-standard meters and the meters are replaced with advanced meters.

The conundrum that the commission will face in initially approving the onetime and recurring monthly fees includes balancing the following factors: the difficulty of setting the fees so that they will recover the TDU's fixed costs of providing the service when the number of customers who will choose the service is unknown; the level of the fees are dependent on the number of customers choosing the service (i.e., the fewer the customers the higher the fees); the number of customers choosing the service will depend on the level of the fees; and the number of customers receiving the service is likely to decline over time.

The recovery of 25% of the fixed costs not related to the initiation of non-standard metering service *(e.g.,* billing software costs) through the onetime fee with the remaining fixed costs of this type recovered over a three-year period may be appropriate. In any event, consideration of the various factors will be fact-specific to the particular TDU whose fees the commission is setting. The commission has therefore modified §25.133(e) to permit allocation of fixed costs not related to the initiation of non-standard metering service between the onetime and monthly fees, and permit recovery of such fixed costs through the monthly fee over a shortened period of time. If the number of customers choosing the service is less than estimated, it may be necessary for the utility to request revision of the fees. In deciding whether to choose non-standard metering service, customers need to be aware that the fees may increase over time. Therefore, the commission has modified §25.133(c)(1)(A) to require that the written acknowledgement to the customer disclose this risk.

Discretionary Service Charges

The REP Coalition stated that the TDUs' implementation of a program for non-standard meter service will also require the establishment of charges for certain existing discretionary services *(e.g.,* move-in) that are separate from the charges assessed for the performance of those same services at premises with advanced meters.

The REP Coalition stated that discretionary service charges applicable to premises with non-standard meters must take into account the costs the TDU incurs to perform those services *(e.g.,* the cost of "rolling a truck"). They stated that customers at premises with advanced meters should not subsidize the provision of those discretionary services to or on behalf of customers who choose an alternative to advanced metering through the discretionary service charges paid by customers with advanced meters.

Commission Response

The commission agrees with the REP Coalition. The commission has therefore modified §25.133(e) to make this clear.

All comments, including any not specifically referenced herein, were fully considered by the commission. The commission has modified the rules to clarify its intent.

SUBCHAPTER F. METERING

16 TAC §25.133

The sections are adopted under the Public Utility Regulatory Act, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001,

which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and PURA §39.107(h), which requires the commission to establish a non-bypassable surcharge for an electric utility or transmission and distribution to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and non-residential customers other than those required by the independent system operator to have an interval data recorder meter.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, and 39.107(h).

§25.133. Non-Standard Metering Service.

(a) Purpose. This section allows a customer whose standard meter is an advanced meter to choose to receive electric service through a non-standard meter and authorizes a transmission and distribution utility (TDU) to assess fees to recover the costs associated with this section from a customer who elects such a meter.

(b) Definitions. As used in this section, the following terms have the following meanings, unless the context indicates otherwise:

(1) Advanced meter--As defined in §25.130 of this title (relating to Advanced Metering).

(2) Non-standard meter--A meter that does not function as an advanced meter.

(c) Initiation and termination of non-standard metering service.

(1) Initiation of non-standard metering service.

(A) This subparagraph applies to a TDU that, on the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section, has completed deployment of advanced meters except for customers for whom the TDU did not install advanced meters because of the requests of the customers. The TDU shall serve on such a customer by certified mail return receipt requested notice consistent with subparagraph (D) of this paragraph within 30 days of the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section.

(B) This subparagraph applies to a TDU that has not completed deployment of advanced meters.

(i) This clause applies to a customer for whom the TDU has not, on the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section, installed an advanced meter because of the request of the customer. The TDU shall serve on such a customer by certified mail return receipt requested notice consistent with subparagraph (D) of this paragraph within 30 days of the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section.

(ii) This clause applies to a customer for whom, after the date that the TDU begins offering non-standard metering service pursuant to subsection (g) of this section, the TDU attempts to install an advanced meter as part of its advanced meter deployment plan but the customer requests non-standard metering service. The TDU shall promptly serve on such a customer by certified mail return receipt requested notice consistent with subparagraph (D) of this paragraph.

(C) For circumstances not addressed by subparagraph (A) or (B) of this paragraph in which a customer requests from the TDU non-standard metering service, the TDU shall provide notice consistent with subparagraph (D) of this paragraph within seven days of the customer's request, using an appropriate means of service.

(D) Pursuant to subparagraphs (A) - (C) of this paragraph, a TDU shall notify a customer of the following through a written acknowledgement.

(i) The customer will be required to pay the costs associated with the initiation of non-standard metering service and the ongoing costs associated with the manual reading of the meter, and other fees and charges that may be assessed by the TDU that are associated with the non-standard metering service;

(ii) The current one-time fees and monthly fee for non-standard metering service;

(iii) The customer may be required to wait up to 45 days to switch the customer's retail electric provider (REP), and may experience longer restoration times in case of a service interruption or outage;

(iv) The customer may be required by the customer's REP to choose a different product or service before initiation of the non-standard metering service, subject to any applicable charges or fees required under the customer's existing contract, if the customer is currently enrolled in a product or service that relies on an advanced meter; and

(v) For a customer that does not currently have an advanced meter, the date (60 days after service of the notice) by which the customer must provide a signed, written acknowledgement and payment of the one-time fee to the TDU prescribed by subsection (e)(3) of this section. If the signed, written acknowledgement and payment are not received within 60 days, the TDU will install an advanced meter on the customer's premises.

(E) The TDU shall retain the signed, written acknowledgement for at least two years after the non-standard meter is removed from the premises. The commission may adopt a form for the written acknowledgement.

(F) A TDU shall offer non-standard metering through the following means:

(i) disabling communications technology in an advanced meter if feasible;

(ii) if applicable, allowing the customer to continue to receive metering service using the existing meter if the TDU determines that it meets applicable accuracy standards;

(iii) if commercially available, an analog meter that meets applicable meter accuracy standards; and

(iv) a digital, non-communicating meter.

(G) The TDU shall not initiate the process to provide non-standard metering service before it has received the customer's payment and signed, written acknowledgement. The TDU shall initiate the approved standard market process to notify the customer's REP within three days of the TDU's receipt of the customer's payment and signed, written acknowledgement. Within 30 days of receipt of the payment of the one-time fee and the signed written acknowledgement from the customer, the TDU, using the approved standard market process,

shall notify the customer's REP of the date the non-standard metering service was initiated.

(2) Termination of non-standard metering service. A customer receiving non-standard metering service may terminate that service by notifying the customer's TDU. The customer shall remain responsible for all costs related to non-standard metering service.

(d) Other TDU obligations.

(1) When a TDU completes a move-out transaction for a customer who was receiving non-standard metering service, the TDU shall install and/or activate an advanced meter at the premises.

(2) A TDU shall read a non-standard meter monthly. In order for the TDU to maintain a non-standard meter at the customer's premises, the customer must provide the TDU with sufficient access to properly operate and maintain the meter, including reading and testing the meter.

(e) Cost recovery and compliance tariffs. All costs incurred by a TDU to implement this section shall be borne only by customers who choose non-standard metering service. A customer receiving non-standard metering service shall be charged a one-time fee and a recurring monthly fee.

(1) Not later than 25 days after the effective date of this section, each TDU shall file a compliance tariff that is fully supported with testimony and documentation. The compliance tariff shall include onetime fees and a monthly fee for non-standard metering service and shall also include the fees for other discretionary services performed by the TDU that are affected by the customer's selection of non-standard metering service. Each TDU shall be allowed to recover the reasonable rate case expenses that it incurs under this subsection as part of the one-time fee, the monthly fee, or both. The compliance tariff filing shall describe the extent to which the back-office costs that are new and fixed vary depending on the number of customers receiving non-standard metering service. Unless otherwise ordered, the TDU shall serve notice of the approved rates and the effective date of the approved rates within five working days of the presiding officer's final decision, to REPs that are authorized by the registration agent to provide service in the TDU's distribution service area. Notice under this paragraph may be served by email and, consistent with subsection (g) of this section, shall be served at least 45 days before the TDU begins offering non-standard metering service.

(2) A TDU may apply to change the fees approved pursuant to paragraph (1) of this subsection. The application must be fully supported with testimony and documentation. Each TDU shall be allowed to recover the reasonable rate case expenses that it incurs under this subsection as part of the one-time fee, the monthly fee, or both. Unless otherwise ordered, the TDU shall serve notice of the approved rates and the effective date of the approved rates within five working days of the presiding officer's final decision, to REPs that are authorized by the registration agent to provide service in the TDU's distribution service area. Notice under this paragraph may be served by email and, if possible, shall be served at least 45 days before the effective date of the rates.

(3) A TDU shall have a single recurring monthly fee for non-standard metering service and several one-time fees, one of which shall apply to the customer depending on the customer's circumstances. A one-time fee shall be charged to a customer that does not have an advanced meter at the customer's premises and will continue receiving metering service through the meter currently at the premises. For a customer that currently has an advanced meter at the premises, the fee shall vary depending on the type of meter that is installed to provide non-standard metering service, and the fee shall include the cost to remove the advanced meter and subsequently re-install an advanced meter once non-standard metering service is terminated. The one-time fee shall recover costs to initiate non-standard metering service. The monthly fee shall recover ongoing costs to provide non-standard metering service, including costs for meter reading and billing. Fixed costs not related to the initiation of non-standard metering service may be allocated between the one-time and monthly fees, and recovered through the monthly fee over a shortened period of time.

(f) Retail electric product compatibility. After receipt of the notice prescribed by subsection (c)(1)(D) of this section, if the customer's current product is not compatible with non-standard metering service, the customer's REP shall work with the customer to either promptly transition the customer to a product that is compatible with non-standard metering service or transfer the customer to another REP, subject to any applicable charges or fees required under the customer's existing contract. If the customer is unresponsive, the REP may transition the customer without the customer's affirmative consent to a market-based, month-to-month product that is compatible with non-standard metering service. Alternatively, if the customer is unresponsive the REP may transfer the customer to another REP pursuant to §25.493 (relating to Acquisition and Transfer of Customers from One Retail Electric Provider or Another) so long as the new REP serves the customer using a market-based, month-to-month product with a rate (excluding charges for non-standard metering service or other discretionary services) no higher than one of the tests prescribed by §25.498(c)(15)(A) - (C) of this title (relating to Prepaid Service). The REP shall promptly provide the customer notice that the customer has been transferred to a new product and, if applicable, to a new REP, and shall also promptly provide the new Terms of Service and Electricity Facts Label.

(g) Implementation. A TDU shall begin offering non-standard metering service pursuant to this section the later of 160 days from the effective date of this section or 45 days after the notice to REPs prescribed by subsection (e)(1) of this section.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2013.

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Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
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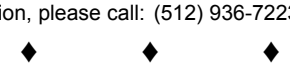
Proposal publication date: March 1, 2013
For further information, please call: (512) 936-7223



SUBCHAPTER I. TRANSMISSION AND DISTRIBUTION

DIVISION 2. TRANSMISSION AND DISTRIBUTION APPLICABLE TO ALL ELECTRIC UTILITIES

16 TAC §25.214

(Editor's note: In accordance with Texas Government Code, §2002.014, which permits the omission of material which is "cumbersome, expensive, or otherwise inexpedient," the figure in 16 TAC §25.214(d) is not included in the print version of the Texas Register.

The figure is available in the on-line version of the August 23, 2013, issue of the Texas Register.)

The sections are adopted under the Public Utility Regulatory Act, Texas, Texas Utilities Code Annotated §14.002 (West 2007 and Supp. 2012), which provides the commission with the authority to make and enforce rules reasonably required in the exercise of its powers and jurisdiction; and specifically §14.001, which provides the commission with the general power to regulate and supervise the business of each public utility within its jurisdiction and to do anything specifically designated or implied by PURA that is necessary and convenient to the exercise of that power and jurisdiction; §32.101, which requires an electric utility to file its tariff with each regulatory authority; §36.003, which requires that each rate be just and reasonable and not unreasonably preferential, prejudicial, or discriminatory; §38.001, which requires an electric utility to furnish service, instrumentalities, and facilities that are safe, adequate, efficient, and reasonable; and PURA §39.107(h), which requires the commission to establish a non-bypassable surcharge for an electric utility or transmission and distribution to use to recover reasonable and necessary costs incurred in deploying advanced metering and meter information networks to residential customers and nonresidential customers other than those required by the independent system operator to have an interval data recorder meter.

Cross Reference to Statutes: Public Utility Regulatory Act §§14.001, 14.002, 32.101, 36.003, 38.001, and 39.107(h).

§25.214. Terms and Conditions of Retail Delivery Service Provided by Investor Owned Transmission and Distribution Utilities.

(a) Purpose. The purpose of this section is to implement Public Utility Regulatory Act (PURA) §39.203 as it relates to the establishment of non-discriminatory terms and conditions of retail delivery service, including delivery service to a Retail Customer at transmission voltage, provided by a transmission and distribution utility (TDU), and to standardize the terms of service among TDUs. A TDU shall provide retail delivery service in accordance with the terms and conditions set forth in this section to those Retail Customers participating in the pilot project pursuant to PURA §39.104 on and after June 1, 2001, and to all Retail Customers on and after January 1, 2002. By clearly stating these terms and conditions, this section seeks to facilitate competition in the sale of electricity to Retail Customers and to ensure reliability of the delivery systems, customer safeguards, and services.

(b) Application. This section, which includes the pro-forma tariff set forth in subsection (d) of this section, governs the terms and conditions of retail delivery service by all TDUs in Texas. The terms and conditions contained herein do not apply to the provision of transmission service by non-ERCOT utilities to retail customers.

(c) Tariff. Each TDU in Texas shall file with the commission a tariff to govern its retail delivery service using the pro-forma tariff in subsection (d) of this section. The provisions of this tariff are requirements that shall be complied with and offered to all REPs and Retail Customers unless otherwise specified. TDUs may add to or modify only Chapters 2 and 6 of the tariff, reflecting individual utility characteristics and rates, in accordance with commission rules and procedures to change a tariff; however the only modifications the TDU may make to 6.1.2.1 are to insert the commission-approved rates. Additionally, in Company specific discretionary service filings, Company shall propose timelines for discretionary services to the extent applicable and practical. Chapters 1, 3, 4, and 5 of the pro-forma tariff shall be used exactly as written. These chapters can be changed only through the rulemaking process. If any provision in Chapter 2 or 6 conflicts with another provision of Chapters 1, 3, 4, and 5, the provision found in Chapters 1, 3, 4, and 5 shall apply, unless otherwise specified in Chapters 1, 3, 4, and 5.

(d) Proforma Retail Delivery Tariff. Tariff for Retail Delivery Service
Figure: 16 TAC §25.214(d)

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Adriana A. Gonzales
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For further information, please call: (512) 936-7223

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PART 9. TEXAS LOTTERY COMMISSION

CHAPTER 401. ADMINISTRATION OF STATE LOTTERY ACT

SUBCHAPTER D. LOTTERY GAME RULES

16 TAC §401.315

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.315 "Mega Millions" On-Line Game Rule. The amendments are adopted without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4124). The purpose of the amendments is to change the Mega Millions game matrix and the Megaplier add-on game feature, with sales for the changed game beginning on or around October 19, 2013, and the first drawing for the changed game occurring on or around October 22 (subject to change by the executive director and/or the Mega Millions Party Lotteries). Accordingly, at the time of this proposal, the anticipated effective date of these amendments will be October 19, 2013. Specifically, the new matrix will consist of two fields: the first field is a field of seventy-five (75) numbers; and the second field is a field of fifteen (15) numbers. A player must select five numbers from the first field of numbers 1 through 75 and one number from the second field of numbers from 1 through 15 in each play or allow number selection by a random number generator operated by the terminal referred to as Quick Pick. The Megaplier add-on feature allows Mega Millions players--for an additional wager of $1 per play--to multiply their non-Grand/Jackpot prizes by 2, 3, 4 or 5 times, depending on the multiplier number selected in a random drawing before every Mega Millions drawing. The amendments also change the annual payment option for Grand/Jackpot prizewinners from twenty-six (26) equal annual payments to thirty (30) graduated annual payments as defined in the Mega Millions Finance and Operations Procedures.

A public comment hearing was held on Wednesday, July 17, 2013 at 10:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received no written comments from any individuals during the public comment period.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery, and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Chapter 466 of the Texas Government Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2013.

TRD-201303220
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: October 19, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 344-5012

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16 TAC §401.320

The Texas Lottery Commission (Commission) adopts amendments to 16 TAC §401.320, "All or Nothing" On-Line Game Rule. The amendments are adopted with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4128). The changes to the text are the replacement of the term "top prize winners" with "top prize winning plays" each place it appears in §401.320(g)(1)(A). These changes clarify the calculation of the pari-mutuel prize. The purpose of the amendments is to establish a liability cap of $5 million for the top prize in the game. Under the prior Rule language, the top prize was a guaranteed amount of $250,000. Under the adopted amendments, in any drawing where the number of top prize winning plays is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and the liability cap of $5 million will be divided equally by the number of top prize winning plays. The practice of setting a liability cap is a common lottery industry practice for games that offer fixed prizes.

A public comment hearing was held on Wednesday, July 17, 2013 at 11:00 a.m., at 611 E. 6th Street, Austin, Texas 78701. No members of the public were present at the hearing. The Commission received two written comments from individuals during the public comment period, set forth below.

Comment: "I strongly suggest you give players the option of selecting which of the four drawings to play. As it stands, my plays will be effective at the next drawing, but there will be times when I want to skip drawings. For example, it will be best for my circumstances if my plays are effective for the 10:12 p.m. drawing rather than the first drawing after I purchase a ticket. Having to wait until after the 6 p.m. drawing to purchase an All or Nothing ticket could be impractical."

Agency Response: The Commission has received similar feedback regarding the multi-draw functionality for the All or Nothing game, and staff is considering this change and will evaluate a future rule change to address this suggestion.

Comment: "I hope in 'reconfiguring' of the game you make the prizes better for matching more or less numbers. The incentive I had to play was the chance for a $250,000 payout and not sharing it. I think that lowers the game to the level of the Cash Five, which possibly has more of a chance of winning, but multiple winners have to split the pot. What a disappointment. Now the All or Nothing game will follow the same rules for the top prize. I can't believe when you invented this new game that someone didn't see the realization of more than 1 or more winners per game for the top prize. I do not want to play All or Nothing anymore and my husband and I spend an average of $1000.00 a week on it and all the other games combined, except Cash Five. The lottery is a great revenue for the state and I think you should reconsider your decision. Most people will view it now as you have altered the game, making it harder to win and will not play."

Agency Response: The Commission disagrees with this comment. The odds of winning the top prize on the All or Nothing game have not changed as a result of this rule proposal. The rule proposal does not cause the All or Nothing game to follow the same rules for payment of the top prize as the Cash Five game does. The top prize for the All or Nothing game is only paid on a pari-mutuel basis when the number of top prize winning plays in a drawing is greater than twenty (20). If there are twenty (20) top prize winning plays or less in a drawing, each top prize winning play will be eligible for $250,000 as the top prize payment amount.

The amendments are adopted under Texas Government Code §466.015, which authorizes the Commission to adopt rules governing the operation of the lottery; and under the authority of Texas Government Code §467.102, which provides the Commission with the authority to adopt rules for the enforcement and administration of the laws under the Commission's jurisdiction.

This adoption implements Chapter 466 of the Texas Government Code.

§401.320. "All or Nothing" On-Line Game Rule.

(a) "All or Nothing." The executive director is authorized to conduct a game known as "All or Nothing." The executive director may issue further directives for the conduct of "All or Nothing" that are consistent with this rule. In the case of conflict, this rule takes precedence over §401.304 of this title (relating to On-Line Game Rules (General)).

(b) Object of the Game. The object of the game is to either select as many or as few numbers that match the 12 numbers drawn in the drawing. If a player matches more than 7 (seven) or fewer than 5 (five) numbers drawn in the drawing, the player wins a prize. (See the prize schedule chart in subsection (g) of this section.) If the player matches all 12 numbers drawn in the drawing, or does not match any numbers drawn in the drawing, the player wins the Top Prize. If more than one ticket has been sold in which a player has matched all or none of the numbers drawn in the drawing, each player possessing such ticket shall win the Top Prize.

(c) Definitions. When used in this rule, the following words and terms shall have the following meanings, unless the context clearly indicates otherwise.

(1) Play--The selection of twelve different numbers from 1 through 24 for one opportunity to win in "All or Nothing" and the purchase of a ticket evidencing that selection.

(2) Playboard--A field of 24 numbers on a playslip for use in selecting numbers for an "All or Nothing" play.

(3) Playslip--An optically readable card issued by the commission for use in selecting numbers for one or more "All or Nothing" plays.

(d) Plays and tickets.

(1) A ticket may be sold only by an on-line retailer and only at the location listed on the retailer's license. A ticket sold by a person other than an on-line retailer is not valid.

(2) The price of an individual play is $2.

(3) A player may complete up to five playboards on a single playslip.

(4) A player may use a single playslip to purchase the same play(s) for up to 24 consecutive drawings, to begin with the next drawing after the purchase.

(5) A person may select numbers for a play either:

(A) by using a playslip to select numbers;

(B) by selecting a Quick Pick and allowing a random number generator operated by the terminal to select numbers; or

(C) by requesting a retailer to manually enter numbers.

(6) Playslips must be completed manually. A ticket generated from a playslip that was not completed manually is not valid.

(7) An on-line retailer may accept a request to manually enter selections or to make Quick Pick selections only if the request is made in person. A retailer shall not accept telephone or mail-in or other requests not made in person to manually enter selected numbers.

(8) An on-line retailer shall issue a ticket as evidence of one or more plays. A ticket must show the numbers selected for each play, the number of plays, the draw date(s) and time(s) for which the plays were purchased, the cost of the ticket and the security and transaction serial numbers. Tickets must be printed on official Texas Lottery paper stock.

(9) A playslip, or any document other than a ticket issued as described in paragraph (8) of this subsection, has no monetary value and is not evidence of a play.

(10) It shall be the exclusive responsibility of the player to verify the accuracy of the player's selection(s) and other data printed on the ticket.

(11) An unsigned winning ticket is payable to the holder or bearer of the ticket if the ticket meets all applicable validation requirements. Neither the commission nor its sales agents shall be responsible for lost or stolen tickets.

(12) The executive director may authorize promotions in connection with the "All or Nothing" On-Line game. Current promotions will be posted on the commission's web site, and published in the *"In Addition"* section of the *Texas Register*.

(e) Drawings.

(1) "All or Nothing" drawings will be held four times a day, (at 10:00 a.m., 12:27 p.m., 6:00 p.m., and 10:12 p.m.) six days a week (Monday through Saturday). The executive director may change the drawing schedule, if, in the executive director's sole discretion, it is deemed necessary or expedient.

(2) Twelve different numbers from 1 through 24 shall be drawn at each "All or Nothing" drawing.

(3) Numbers drawn must be certified by the commission in accordance with the commission's drawing procedures.

(4) The numbers selected in a drawing shall be used to determine all winners for that drawing.

(5) A drawing will not be invalidated based on the financial liability of the lottery.

(f) Announcement of incentive or bonus program. The executive director shall announce each incentive or bonus program prior to its commencement. The announcement shall specify the beginning and ending time, if applicable, of the incentive or bonus program and the value for the award.

(g) Prizes.

(1) The Top Prize.

(A) Each person who holds a valid ticket for a play matching (in any order) the twelve numbers drawn in a drawing, or matching none of the twelve numbers drawn in a drawing is entitled to a top prize in the amount of $250,000; provided that, in any drawing where the number of top prize winning plays is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of $5 million will be divided equally by the number of top prize winning plays. For purposes of prize calculation with respect to the pari-mutuel prize, the calculation shall be rounded down so that prizes shall be paid in multiples of one dollar. Any part of the top pari-mutuel prize for a drawing that is not paid in prizes (breakage) shall be applied to offset prize expense. All other prizes are in amounts for matching or non-matching selections as shown in the following chart. All prizes are paid in cash.
Figure: 16 TAC §401.320(g)(1)(A)

(B) All payments shall be made upon completion of Commission validation procedures.

(C) A claim for any prize of $600 or more must be presented at a Texas Lottery claim center.

(2) A person may win only one prize per play per drawing. A player who holds a valid ticket for a winning play is entitled to the highest prize for that play.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2013.

TRD-201303219
Bob Biard
General Counsel
Texas Lottery Commission
Effective date: August 25, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 344-5012

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TITLE 19. EDUCATION

PART 2. TEXAS EDUCATION AGENCY

CHAPTER 74. CURRICULUM REQUIREMENTS

The State Board of Education (SBOE) adopts amendments to §§74.62-74.64 and §§74.72-74.74, concerning curriculum requirements. The sections are adopted with changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3238). The sections establish graduation requirements for high school programs in 19 TAC Chapter 74, Subchapter F, Graduation Requirements, Beginning

with School Year 2007-2008, and Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013. The adopted amendments add a course option for students to satisfy the fourth mathematics credit requirements under the Recommended High School Program and the Distinguished Achievement Program.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. While HB 3 removed SBOE authority to designate a specific course or a specific number of credits in the enrichment curriculum as requirements for the Recommended High School Program, the SBOE retained authority in the foundation and enrichment curriculum for the Minimum High School Program and the Distinguished Achievement Program.

In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments were implemented beginning with the 2010-2011 school year. The amendments also allowed three career and technical education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

A discussion item regarding revisions to the high school graduation requirements and course options that might satisfy the fourth mathematics and the fourth science credit requirements under the Recommended High School Program and the Distinguished Achievement Program was presented to the Committee of the Full Board during its January 2013 meeting. At the April 2013 meeting, the SBOE approved proposed amendments to 19 TAC Chapter 74, Subchapters F and G, for first reading and filing authorization. The proposed amendments included the addition of certain CTE courses along with a technology applications and a mathematics course that would satisfy the fourth mathematics and fourth science graduation requirements under the Recommended High School Program and the Distinguished Achievement Program. The amendments also proposed additional courses to satisfy the third mathematics graduation requirement under the Minimum High School Program.

At the July 2013 meeting, the SBOE took action to approve proposed amendments to 19 TAC Chapter 74, Subchapters F and G, for second reading and final adoption. The following changes were made since published as proposed.

The proposal approved by the SBOE in April 2013 included an amendment to 19 TAC §74.64, Distinguished Achievement High School Program--Advanced High School Program, that listed Advanced Quantitative Reasoning as a course that would satisfy the fourth mathematics credit. While this course is an option for high school programs under 19 TAC Chapter 74, Subchapter G, it is not an option for high school programs under Subchapter F and was inadvertently listed as one of the courses in 19 TAC §74.64(b)(2)(A). As a result, the SBOE approved a technical correction at its July 2013 meeting to remove Advanced Quantitative Reasoning from the list of courses that will satisfy the fourth mathematics credit for the Distinguished Achievement Program under 19 TAC Chapter 74, Subchapter F.

The proposal as approved by the SBOE in April 2013 also included the addition of a new mathematics course, an amended technology applications course, and two new CTE courses to satisfy the mathematics credit requirements of each graduation program in 19 TAC Chapter 74, Subchapters F and G. The April 2013 SBOE proposal also included the addition of two amended CTE courses and one new CTE course to satisfy the science credit requirements of the Recommended High School Program and the Distinguished Achievement Program in 19 TAC Chapter 74, Subchapters F and G. These proposed amendments were made in conjunction with related proposals to add and amend courses in 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics; 19 TAC Chapter 126, Texas Essential Knowledge and Skills for Technology Applications; and 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education.

During its July 2013 meeting, the SBOE postponed adoption of the proposed new mathematics course in 19 TAC Chapter 111, the repeal of a technology applications course in 19 TAC Chapter 126, and the amended and new CTE courses in 19 TAC Chapter 130 in response to public comment and in order to allow more time for review and consideration of the courses. As a result, the SBOE approved changes to 19 TAC Chapter 74, Subchapters F and G, at adoption to remove the postponed courses as follows.

Discrete Mathematics, Principles of Engineering, and Digital Electronics were removed as options to satisfy mathematics graduation requirements in subsection (b)(2) of 19 TAC §§74.62-74.64 and §§74.72-74.74. Veterinary Medical Applications, Advanced Environmental Technology, and Human Body Systems were removed as options to satisfy science graduation requirements in subsection (b)(3) of 19 TAC §§74.63, 74.64, 74.73, and 74.74.

At the July 2013 meeting, however, the SBOE did approve the amendment to the technology applications course in 19 TAC Chapter 126, Robotics Programming and Design, to satisfy mathematics graduation credit.

The SBOE is scheduled to consider adoption of the postponed courses at its September 2013 meeting.

The 83rd Texas Legislature, Regular Session, 2013, passed House Bill 5, amending the Texas Education Code, §28.025, to change the high school graduation programs from the current minimum, recommended, and advanced high school programs to one foundation high school program with endorsements to increase flexibility in graduation requirements for students. The SBOE conducted a work session in August 2013 and will consider rulemaking for the new graduation program in September 2013 to prepare for implementation in the 2014-2015 school year.

The adopted amendments to 19 TAC Chapter 74, Subchapters F and G, have no new procedural and reporting implications.

The adopted amendments have no new locally maintained paperwork requirements.

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.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendments by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2014-2015 school year. The earlier effective date will enable districts to plan for future course offerings and schedule students in courses appropriately. The effective date for the amendments is 20 days after filing as adopted.

Following is a summary of the public comments received and the corresponding responses regarding the proposed amendments to 19 TAC Chapter 74, Subchapters F and G.

Comment: One administrator expressed concern about the proposal to allow Advanced Environmental Technology and Human Body Systems to satisfy science graduation requirements. The commenter stated that both courses are designed to serve as capstone courses for specific programs of study within a CTE pathway. The commenter expressed concern that if a student does not take the recommended pathway prerequisites, then the student would not be successful in the capstone course.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: The Texas Science Education Leadership Association recommended that the SBOE reject the proposal to allow Advanced Environmental Technology to satisfy a science graduation requirement because the course offers a low level of rigor compared to science courses and includes content that is already covered in biology.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: Six teachers expressed support for allowing Digital Electronics to satisfy a mathematics graduation requirement.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator stated that allowing Digital Electronics and Principles of Engineering to satisfy mathematics graduation requirements would limit students' ability to take the courses as electives.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator stated that more work should be done to determine what courses can satisfy mathematics and science graduation requirements rather than just searching current courses and trying to make them fit.

Response: The SBOE disagreed and determined that the courses recommended to satisfy mathematics and science graduation requirements had been appropriately reviewed. In response to other comments, the SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator expressed concern that school districts had not received a crosswalk comparing the CTE courses proposed to satisfy mathematics or science requirements and the existing TEKS for fourth-credit mathematics and science courses.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: Three teachers expressed support for allowing Human Body Systems to satisfy a science graduation requirement.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: The Texas Science Education Leadership Association recommended that the SBOE reject the proposal to allow Human Body Systems to satisfy a science graduation requirement because the course lacks rigor and repeats concepts already addressed in the Anatomy and Physiology course.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator recommended that the Project Lead the Way innovative course Engineering Design and Development be used to satisfy a science graduation requirement.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One community member stated that the SBOE has other options within CTE such as Accounting I, Accounting II, and Financial Analysis for courses that could satisfy a mathematics graduation requirement.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator recommended that new CTE courses such as industrial or financial/business mathematics be developed to meet the demand for fourth-credit mathematics courses.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator recommended that the CTE course Revenue, Taxation, and Regulation be allowed to satisfy the fourth mathematics graduation requirement.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: Four teachers expressed support for the proposal to allow Principles of Engineering to satisfy a mathematics credit for graduation.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: Fourteen teachers, one administrator, and two community members recommended allowing Principles of Engineering to satisfy a science graduation requirement rather than a fourth-credit mathematics requirement as the course is more aligned with physics than with higher-level mathematics.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One teacher and one administrator expressed concern with the proposal to allow Principles of Engineering to satisfy a fourth-credit mathematics requirement because the course is a foundation-level course, typically for freshmen and sophomores.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: Two administrators recommended that Principles of Engineering be used as a fourth-credit science course by teaching and coding it as Engineering Problems and Solutions.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator inquired whether students who have previously taken Principles of Engineering before this proposal is adopted would be able to earn mathematics or science credit retroactively.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: Four administrators expressed concern that classifying Principles of Engineering as a mathematics or science course could potentially change the qualifications for teachers of the course and limit the number of teachers eligible to teach the course.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator stated that it seemed inappropriate that Project Lead the Way requested that schools express support for their courses by submitting public comments to the SBOE.

Response: This comment is outside the scope of the proposed rulemaking.

Comment: One teacher expressed support for allowing the Project Lead the Way courses to satisfy mathematics or science graduation requirements.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One teacher inquired why the technology applications course Robotics Programming and Design is recommended to satisfy the fourth mathematics credit requirement, but the CTE course Robotics and Animation is not.

Response: The SBOE provided the following clarification. The technology applications robotics course was determined to be better aligned with expectations for a fourth-credit mathematics requirement than the CTE robotics course. The SBOE took action to allow the technology applications course Robotics Programming and Design as an option to satisfy mathematics graduation requirements.

Comment: One administrator expressed concern with allowing Veterinary Medical Applications to satisfy a fourth-credit science requirement. The commenter added that such a decision would disrupt the coherent sequence many districts have already developed for the Agriculture, Food, and Natural Resource career cluster courses by limiting the elective credits available in this cluster.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: Two administrators expressed concern that Veterinary Medical Applications is not aligned to the demands of a fourth-credit science course but instead with Veterinarian Technician Level One Certification.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One administrator expressed concern with allowing Veterinary Medical Applications to satisfy a fourth-credit science requirement because Advanced Animal Science is already a fourth-credit science CTE course.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: One teacher stated that the Veterinary Medical Applications course does not contain enough science content to be considered for a full science credit. The commenter added that only four of the student expectations were related to science and that the 40% laboratory or field investigations requirement would be difficult to fulfill.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

Comment: The Texas Science Education Leadership Association recommended that the SBOE make revisions to the Veterinary Medical Applications course in order to add additional science content to the course.

Response: The SBOE postponed action related to CTE graduation requirements to a future date.

SUBCHAPTER F. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2007-2008

19 TAC §§74.62 - 74.64

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorized the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

§74.62. Minimum High School Program.

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Three of the credits must consist of English I, II, and III (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages). The final credit may be selected from the following courses:

(A) English IV;

(B) Research/Technical Writing;

(C) Creative/Imaginative Writing;

(D) Practical Writing Skills;

(E) Literary Genres;

(F) Business English;

(G) Journalism;

(H) Advanced Placement (AP) English Language and Composition; and

(I) AP English Literature and Composition.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry. The final credit may be selected from the following courses:

(A) Algebra II;

(B) Precalculus;

(C) Mathematical Models with Applications;

(D) Independent Study in Mathematics;

(E) AP Statistics;

(F) AP Calculus AB;

(G) AP Calculus BC;

(H) AP Computer Science;

(I) International Baccalaureate (IB) Mathematical Studies Standard Level;

(J) IB Mathematics Standard Level;

(K) IB Mathematics Higher Level;

(L) IB Further Mathematics Standard Level;

(M) Mathematical Applications in Agriculture, Food, and Natural Resources;

(N) Engineering Mathematics;

(O) Statistics and Risk Management; and

(P) Robotics Programming and Design.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute Chemistry or Physics for IPC and then must use the second of these two courses as the academic elective credit identified in subsection (b)(6) of this section.

(4) Social studies--two and one-half credits. One and one-half of the credits must consist of United States History Studies Since Reconstruction (one credit) and United States Government (one-half credit). The final credit may be selected from the following courses:

(A) World History Studies; and

(B) World Geography Studies.

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or any science course approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(8) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(9) Fine arts--one credit, beginning with school year 2010-2011. A student entering Grade 9 beginning with the 2010-2011 school year must complete one credit in fine arts. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV; and

(E) Principles and Elements of Floral Design.

(c) Elective Courses--seven and one-half credits. The credits must be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements).

(d) Elective courses, beginning with school year 2010-2011. A student entering Grade 9 beginning with the 2010-2011 school year must complete six and one-half credits of electives in addition to one credit in fine arts. The credits must be selected from the list of courses specified in §74.61(j) of this title.

§74.63. Recommended High School Program.

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be Mathematical Models with Applications and must be successfully completed prior to Algebra II.

(B) The fourth credit may be selected from the following courses after successful completion of Algebra I, Geometry, and Algebra II:

(i) Precalculus;

(ii) Independent Study in Mathematics;

(iii) Advanced Placement (AP) Statistics;

(iv) AP Calculus AB;

(v) AP Calculus BC;

(vi) AP Computer Science;

(vii) International Baccalaureate (IB) Mathematical Studies Standard Level;

(viii) IB Mathematics Standard Level;

(ix) IB Mathematics Higher Level;

(x) IB Further Mathematics Standard Level;

(xi) Robotics Programming and Design; and

(xii) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

(i) Engineering Mathematics;

(ii) Mathematical Applications in Agriculture, Food, and Natural Resources; and

(iii) Statistics and Risk Management.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics).

(A) The additional credit may be Integrated Physics and Chemistry (IPC) and must be successfully completed prior to chemistry and physics.

(B) The fourth credit may be selected from the following laboratory-based courses:

(i) Aquatic Science;

(ii) Astronomy;

(iii) Earth and Space Science;

(iv) Environmental Systems;

(v) AP Biology;

(vi) AP Chemistry;

(vii) AP Physics B;

(viii) AP Physics C;

(ix) AP Environmental Science;

(x) IB Biology;

(xi) IB Chemistry;

(xii) IB Physics;

(xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

(i) Scientific Research and Design;

(ii) Anatomy and Physiology;

(iii) Engineering Design and Problem Solving;

(iv) Medical Microbiology;

(v) Pathophysiology;

(vi) Advanced Animal Science;

(vii) Advanced Biotechnology;

(viii) Advanced Plant and Soil Science;

(ix) Food Science; and

(x) Forensic Science.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--two credits. The credits must consist of any two levels in the same language.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(8) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(9) Fine arts--one credit. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV; and

(E) Principles and Elements of Floral Design.

(c) Elective Courses--five and one-half credits. The credits may be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.64. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core Courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages).

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:

(i) Precalculus;

(ii) Independent Study in Mathematics;

(iii) Advanced Placement (AP) Statistics;

(iv) AP Calculus AB;

(v) AP Calculus BC;

(vi) AP Computer Science;

(vii) International Baccalaureate (IB) Mathematical Studies Standard Level;

(viii) IB Mathematics Standard Level;

(ix) IB Mathematics Higher Level;

(x) IB Further Mathematics Standard Level;

(xi) Robotics Programming and Design; and

(xii) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

(i) Engineering Mathematics; and

(ii) Statistics and Risk Management.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, AP Physics, or IB Physics).

(A) The fourth credit may be selected from the following laboratory-based courses:

(i) Aquatic Science;

(ii) Astronomy;

(iii) Earth and Space Science;

(iv) Environmental Systems;

(v) AP Biology;

(vi) AP Chemistry;

(vii) AP Physics B;

(viii) AP Physics C;

(ix) AP Environmental Science;

(x) IB Biology;

(xi) IB Chemistry;

(xii) IB Physics;

(xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

(i) Scientific Research and Design;

(ii) Anatomy and Physiology;

(iii) Engineering Design and Problem Solving;

(iv) Medical Microbiology;

(v) Pathophysiology;

(vi) Advanced Animal Science;

(vii) Advanced Biotechnology;

(viii) Advanced Plant and Soil Science;

(ix) Food Science; and

(x) Forensic Science.

(4) Social studies--three and one-half credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since Reconstruction (one credit), and United States Government (one-half credit).

(5) Economics, with emphasis on the free enterprise system and its benefits--one-half credit. The credit must consist of Economics with Emphasis on the Free Enterprise System and Its Benefits.

(6) Languages other than English--three credits. The credits must consist of any three levels in the same language.

(7) Physical education--one credit.

(A) The required credit may be from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially-sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially-sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Stu-

dents certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Distinguished Achievement Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(8) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(9) Fine arts--one credit. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV; and

(E) Principles and Elements of Floral Design.

(c) Elective Courses--four and one-half credits. The credits may be selected from the list of courses specified in §74.61(j) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data where a student receives:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation. The PSAT/NMSQT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2013.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER G. GRADUATION REQUIREMENTS, BEGINNING WITH SCHOOL YEAR 2012-2013

19 TAC §§74.72 - 74.74

The amendments are adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorized the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendments implement the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

§74.72. Minimum High School Program.

(a) Credits. A student must earn at least 22 credits to complete the Minimum High School Program.

(b) Core courses. A student must demonstrate proficiency in the following.

(1) English language arts--four credits. Three of the credits must consist of English I, II, and III. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.) The final credit may be selected from one full credit or a combination of two half credits from the following courses:

(A) English IV;

(B) Research and Technical Writing;

(C) Creative Writing;

(D) Practical Writing Skills;

(E) Literary Genres;

(F) Business English;

(G) Journalism;

(H) Advanced Placement (AP) English Language and Composition; and

(I) AP English Literature and Composition.

(2) Mathematics--three credits. Two of the credits must consist of Algebra I and Geometry.

(A) The final credit may be Algebra II. A student may not combine a half credit of Algebra II with a half credit from another mathematics course to satisfy the final mathematics credit requirement.

(B) The final credit may be selected from one full credit or a combination of two half credits from the following courses:

(i) Precalculus;

(ii) Mathematical Models with Applications;

(iii) Independent Study in Mathematics;

(iv) Advanced Quantitative Reasoning;

(v) AP Statistics;

(vi) AP Calculus AB;

(vii) AP Calculus BC;

(viii) AP Computer Science;

(ix) International Baccalaureate (IB) Mathematical Studies Standard Level;

(x) IB Mathematics Standard Level;

(xi) IB Mathematics Higher Level;

(xii) IB Further Mathematics Standard Level;

(xiii) Mathematical Applications in Agriculture, Food, and Natural Resources;

(xiv) Engineering Mathematics;

(xv) Statistics and Risk Management; and

(xvi) Robotics Programming and Design.

(3) Science--two credits. The credits must consist of Biology and Integrated Physics and Chemistry (IPC). A student may substitute a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), or a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics) and then must use the second of these two courses as the academic elective credit identified in subsection (b)(5) of this section.

(4) Social studies--three credits. Two of the credits must consist of United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit). The final credit may be selected from the following courses:

(A) World History Studies; and

(B) World Geography Studies.

(5) Academic elective--one credit. The credit must be selected from World History Studies, World Geography Studies, or science course(s) approved by the State Board of Education (SBOE) for science credit as found in Chapter 112 of this title (relating to Texas Essential Knowledge and Skills for Science). If a student elects to replace IPC with either Chemistry or Physics as described in subsection (b)(3) of this section, the academic elective must be the other of these two science courses. A student may not combine a half credit of either World History Studies or World Geography Studies with a half credit from another academic elective course to satisfy the academic elective credit requirement.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV;

(E) Principles and Elements of Floral Design;

(F) Digital Art and Animation; and

(G) 3-D Modeling and Animation.

(c) Elective courses--six and one-half credits. The credits must be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Substitutions. No substitutions are allowed in the Minimum High School Program, except as specified in this chapter.

§74.73. Recommended High School Program.

(a) Credits. A student must earn at least 26 credits to complete the Recommended High School Program.

(b) Core courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.)

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The additional credit may be Mathematical Models with Applications and must be successfully completed prior to Algebra II.

(B) The fourth credit may be selected from the following courses:

(i) Precalculus;

(ii) Independent Study in Mathematics;

(iii) Advanced Quantitative Reasoning;

(iv) Advanced Placement (AP) Statistics;

(v) AP Calculus AB;

(vi) AP Calculus BC;

(vii) AP Computer Science;

(viii) International Baccalaureate (IB) Mathematical Studies Standard Level;

(ix) IB Mathematics Standard Level;

(x) IB Mathematics Higher Level;

(xi) IB Further Mathematics Standard Level;

(xii) Robotics Programming and Design; and

(xiii) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

(i) Engineering Mathematics;

(ii) Mathematical Applications in Agriculture, Food, and Natural Resources; and

(iii) Statistics and Risk Management.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chem-

istry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, Principles of Technology, AP Physics, or IB Physics).

(A) The additional credit may be Integrated Physics and Chemistry (IPC) and must be successfully completed prior to chemistry and physics.

(B) The fourth credit may be selected from the following laboratory-based courses:

(i) Aquatic Science;

(ii) Astronomy;

(iii) Earth and Space Science;

(iv) Environmental Systems;

(v) AP Biology;

(vi) AP Chemistry;

(vii) AP Physics B;

(viii) AP Physics C;

(ix) AP Environmental Science;

(x) IB Biology;

(xi) IB Chemistry;

(xii) IB Physics;

(xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(C) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

(i) Scientific Research and Design;

(ii) Anatomy and Physiology;

(iii) Engineering Design and Problem Solving;

(iv) Medical Microbiology;

(v) Pathophysiology;

(vi) Advanced Animal Science;

(vii) Advanced Biotechnology;

(viii) Advanced Plant and Soil Science;

(ix) Food Science; and

(x) Forensic Science.

(4) Social studies--four credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit).

(5) Languages other than English--two credits. The credits must consist of any two levels in the same language.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Recommended High School Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination

regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code, Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV;

(E) Principles and Elements of Floral Design;

(F) Digital Art and Animation; and

(G) 3-D Modeling and Animation.

(c) Elective courses--five and one-half credits. The credits may be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). All students who wish to complete the Recommended High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school. A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Substitutions. No substitutions are allowed in the Recommended High School Program, except as specified in this chapter.

§74.74. Distinguished Achievement High School Program--Advanced High School Program.

(a) Credits. A student must earn at least 26 credits to complete the Distinguished Achievement High School Program.

(b) Core courses. A student must demonstrate proficiency in the following:

(1) English language arts--four credits. The credits must consist of English I, II, III, and IV. (Students with limited English proficiency who are at the beginning or intermediate level of English language proficiency, as defined by §74.4(d) of this title (relating to English Language Proficiency Standards), may satisfy the English I and English II graduation requirements by successfully completing English I for Speakers of Other Languages and English II for Speakers of Other Languages.)

(2) Mathematics--four credits. Three of the credits must consist of Algebra I, Algebra II, and Geometry.

(A) The fourth credit may be selected from the following courses after successful completion of Algebra I, Algebra II, and Geometry:

(i) Precalculus;

(ii) Independent Study in Mathematics;

(iii) Advanced Quantitative Reasoning;

(iv) Advanced Placement (AP) Statistics;

(v) AP Calculus AB;

(vi) AP Calculus BC;

(vii) AP Computer Science;

(viii) International Baccalaureate (IB) Mathematical Studies Standard Level;

(ix) IB Mathematics Standard Level;

(x) IB Mathematics Higher Level;

(xi) IB Further Mathematics Standard Level;

(xii) Robotics Programming and Design; and

(xiii) pursuant to the Texas Education Code (TEC), §28.025(b-5), a mathematics course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The Texas Education Agency (TEA) shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following courses and may be taken after the successful completion of Algebra I and Geometry and either after the successful completion of or concurrently with Algebra II:

(i) Engineering Mathematics; and

(ii) Statistics and Risk Management.

(3) Science--four credits. Three of the credits must consist of a biology credit (Biology, AP Biology, or IB Biology), a chemistry credit (Chemistry, AP Chemistry, or IB Chemistry), and a physics credit (Physics, AP Physics, or IB Physics).

(A) The fourth credit may be selected from the following laboratory-based courses:

(i) Aquatic Science;

(ii) Astronomy;

(iii) Earth and Space Science;

(iv) Environmental Systems;

(v) AP Biology;

(vi) AP Chemistry;

(vii) AP Physics B;

(viii) AP Physics C;

(ix) AP Environmental Science;

(x) IB Biology;

(xi) IB Chemistry;

(xii) IB Physics;

(xiii) IB Environmental Systems; and

(xiv) pursuant to the TEC, §28.025(b-5), a science course endorsed by an institution of higher education as a course for which the institution would award course credit or as a prerequisite for a course for which the institution would award course credit. The TEA shall maintain a current list of courses approved under this clause.

(B) The additional credit may be selected from the following laboratory-based courses and may be taken after the successful completion of biology and chemistry and either after the successful completion of or concurrently with physics:

(i) Scientific Research and Design;

(ii) Anatomy and Physiology;

(iii) Engineering Design and Problem Solving;

(iv) Medical Microbiology;

(v) Pathophysiology;

(vi) Advanced Animal Science;

(vii) Advanced Biotechnology;

(viii) Advanced Plant and Soil Science;

(ix) Food Science; and

(x) Forensic Science.

(4) Social studies--four credits. The credits must consist of World History Studies (one credit), World Geography Studies (one credit), United States History Studies Since 1877 (one credit), United States Government (one-half credit), and Economics with Emphasis on the Free Enterprise System and Its Benefits (one-half credit).

(5) Languages other than English--three credits. The credits must consist of any three levels in the same language.

(6) Physical education--one credit.

(A) The required credit may be selected from any combination of the following one-half to one credit courses:

(i) Foundations of Personal Fitness;

(ii) Adventure/Outdoor Education;

(iii) Aerobic Activities; and

(iv) Team or Individual Sports.

(B) In accordance with local district policy, credit for any of the courses listed in subparagraph (A) of this paragraph may be earned through participation in the following activities:

(i) Athletics;

(ii) Junior Reserve Officer Training Corps (JROTC); and

(iii) appropriate private or commercially sponsored physical activity programs conducted on or off campus. The district must apply to the commissioner of education for approval of such programs, which may be substituted for state graduation credit in physical education. Such approval may be granted under the following conditions.

(I) Olympic-level participation and/or competition includes a minimum of 15 hours per week of highly intensive, professional, supervised training. The training facility, instructors, and the activities involved in the program must be certified by the superintendent to be of exceptional quality. Students qualifying and participating at this level may be dismissed from school one hour per day. Students dismissed may not miss any class other than physical education.

(II) Private or commercially sponsored physical activities include those certified by the superintendent to be of high quality and well supervised by appropriately trained instructors. Student participation of at least five hours per week must be required. Students certified to participate at this level may not be dismissed from any part of the regular school day.

(C) In accordance with local district policy, up to one credit for any one of the courses listed in subparagraph (A) of this paragraph may be earned through participation in any of the following activities:

(i) Drill Team;

(ii) Marching Band; and

(iii) Cheerleading.

(D) All substitution activities allowed in subparagraphs (B) and (C) of this paragraph must include at least 100 minutes per five-day school week of moderate to vigorous physical activity.

(E) Credit may not be earned for any course identified in subparagraph (A) of this paragraph more than once. No more than four substitution credits may be earned through any combination of substitutions allowed in subparagraphs (B) and (C) of this paragraph.

(F) If a student is unable to comply with all of the requirements for a physical education course due to a physical limitation certified by a licensed medical practitioner, a modification to a physical education course does not prohibit the student from earning a Distinguished Achievement Program diploma. A student with a physical limitation must still demonstrate proficiency in the relevant knowledge and skills in a physical education course that do not require physical activity.

(G) A student who is unable to participate in physical activity due to disability or illness may substitute an academic elective credit (English language arts, mathematics, science, or social studies) for the physical education credit requirement. The determination regarding a student's ability to participate in physical activity will be made by:

(i) the student's admission, review, and dismissal (ARD) committee if the student receives special education services under the Texas Education Code (TEC), Chapter 29, Subchapter A;

(ii) the committee established for the student under Section 504, Rehabilitation Act of 1973 (29 United States Code, §794) if the student does not receive special education services under the TEC, Chapter 29, Subchapter A, but is covered by the Rehabilitation Act of 1973; or

(iii) a committee established by the school district of persons with appropriate knowledge regarding the student if each of the committees described by clauses (i) and (ii) of this subparagraph is inapplicable. This committee shall follow the same procedures required of an ARD or a Section 504 committee.

(7) Speech--one-half credit. The credit may be selected from the following courses:

(A) Communication Applications; and

(B) Professional Communications.

(8) Fine arts--one credit. The credit may be selected from the following courses:

(A) Art, Level I, II, III, or IV;

(B) Dance, Level I, II, III, or IV;

(C) Music, Level I, II, III, or IV;

(D) Theatre, Level I, II, III, or IV;

(E) Principles and Elements of Floral Design;

(F) Digital Art and Animation; and

(G) 3-D Modeling and Animation.

(c) Elective courses--four and one-half credits. The credits may be selected from the list of courses specified in §74.71(h) of this title (relating to High School Graduation Requirements). All students who wish to complete the Distinguished Achievement High School Program are encouraged to study each of the four foundation curriculum areas (English language arts, mathematics, science, and social studies) every year in high school. A student may not combine a half credit of a course for which there is an end-of-course assessment with another elective credit course to satisfy an elective credit requirement.

(d) Advanced measures. A student also must achieve any combination of four of the following advanced measures. Original research/projects may not be used for more than two of the four advanced measures. The measures must focus on demonstrated student performance at the college or professional level. Student performance on advanced measures must be assessed through an external review process. The student may choose from the following options:

(1) original research/project that is:

(A) judged by a panel of professionals in the field that is the focus of the project; or

(B) conducted under the direction of mentor(s) and reported to an appropriate audience; and

(C) related to the required curriculum set forth in §74.1 of this title (relating to Essential Knowledge and Skills);

(2) test data showing a student has earned:

(A) a score of three or above on the College Board advanced placement examination;

(B) a score of four or above on an International Baccalaureate examination; or

(C) a score on the Preliminary SAT/National Merit Scholarship Qualifying Test (PSAT/NMSQT) that qualifies the student for recognition as a commended scholar or higher by the College Board and National Merit Scholarship Corporation, as part of the National Hispanic Recognition Program (NHRP) of the College Board or as part of the National Achievement Scholarship Program of the National Merit Scholarship Corporation. The PSAT/NMSQT score shall count as only one advanced measure regardless of the number of honors received by the student; or

(3) college academic courses, including those taken for dual credit, and advanced technical credit courses, including locally articulated courses, with a grade of 3.0 or higher.

(e) Substitutions. No substitutions are allowed in the Distinguished Achievement High School Program, except as specified in this chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 5, 2013.

TRD-201303229

Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
Effective date: August 25, 2013
Proposal publication date: May 24, 2013
For further information, please call: (512) 475-1497

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CHAPTER 75. CURRICULUM
SUBCHAPTER AA. COMMISSIONER'S RULES CONCERNING DRIVER EDUCATION STANDARDS OF OPERATION FOR PUBLIC SCHOOLS, EDUCATION SERVICE CENTERS, AND COLLEGES OR UNIVERSITIES

19 TAC §75.1014

The Texas Education Agency (TEA) adopts an amendment to §75.1014, concerning driver education. The amendment is adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3465) and will not be republished. The section establishes procedures for student certification and transfers. The adopted amendment reduces the fee for the DE-964E certificate to $1.00.

Section 75.1014, adopted effective January 1, 2000, establishes in rule the procedures relating to student certification and transfers for public schools, education service centers, and colleges or universities that provide driver education programs. The rule also establishes that the TEA shall charge a fee of $2.00 for each DE-964E certificate, which is used to certify completion of an approved driver education course and is a government record.

During the recent sunset review of the TEA, the Sunset Advisory Commission recommended that fees collected by the TEA for driver education course completion certificates should be set by rule at a level necessary to recover program costs.

The adopted amendment to 19 TAC §75.1014 reduces the fee the TEA charges for each DE-964E certificate from $2.00 to $1.00 to align the revenue collected from the fee with the costs to operate the program.

In a separate adoption, the TEA adopts amendments to driver training rules in 19 TAC Chapter 176, Driver Training Schools, Subchapter AA, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driver Education Schools, and Subchapter BB, Commissioner's Rules on Minimum Standards for Operation of Licensed Texas Driving Safety Schools and Course Providers, to reduce the fee for course completion certificates for driver education courses and driving safety courses to $1.00.

The adopted amendment has no procedural or reporting implications. The adopted amendment has no locally maintained paperwork requirements.

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 June 7, 2013, and ended July 8, 2013. No public comments were received.

The amendment is adopted under the Texas Education Code (TEC), §7.021(b)(9), which authorizes the agency to develop a program of instruction in driver education and traffic safety as provided by TEC, §29.902. TEC, §29.902, authorizes the agency to charge a fee for a driver education and traffic safety course in an amount determined by the agency to be comparable to the fee charged by a driver education school that holds a license under TEC, Chapter 1001.

The amendment implements the TEC, §7.021(b)(9) and §29.902.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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CHAPTER 126. TEXAS ESSENTIAL KNOWLEDGE AND SKILLS FOR TECHNOLOGY APPLICATIONS
SUBCHAPTER C. HIGH SCHOOL

19 TAC §126.40

The State Board of Education (SBOE) adopts an amendment to §126.40, concerning Texas essential knowledge and skills (TEKS) for technology applications. The amendment is adopted without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3254) and will not be republished. Section 126.40 establishes technology applications TEKS for Robotics Programming and Design. The adoption amends §126.40 so that the Robotics Programming and Design course can be added as an option to satisfy mathematics graduation requirements.

The 81st Texas Legislature, 2009, passed House Bill (HB) 3, amending the Texas Education Code, §28.025, to increase flexibility in graduation requirements for students. In January 2010, the SBOE adopted amendments to 19 TAC Chapter 74, Subchapter F, to incorporate changes to high school graduation programs in light of the graduation requirements from HB 3. The amendments also allowed three career and technical education (CTE) courses to count for the fourth mathematics credit for the Recommended High School Program and two CTE courses to count for the fourth mathematics credit under the Distinguished Achievement Program. The SBOE approved changes allowing five new CTE courses to count for the fourth science credit under the Recommended High School Program and Distinguished Achievement Program. Additionally, changes were adopted allowing the Professional Communications course to satisfy the speech graduation requirement and the Principles and Elements of Floral Design course to satisfy the fine arts graduation credit.

The amendments to 19 TAC Chapter 74, Subchapter G, Graduation Requirements, Beginning with School Year 2012-2013, adopted by the SBOE in January 2012, included changes to update the graduation requirements to align with legislation passed by the 82nd Texas Legislature, 2011; allowed additional courses to satisfy certain graduation requirements; and provided additional clarification regarding requirements.

A discussion item regarding revisions to the high school graduation requirements and additional course options that might satisfy the fourth mathematics and the fourth science credit requirements under the Recommended High School Program and the Distinguished Achievement Program was presented to the Committee of the Full Board during its January 2013 meeting. The SBOE directed staff to prepare proposed revisions to 19 TAC Chapter 126, Subchapter C. The proposed revisions, approved for first reading and filing authorization at the April 2013 meeting, included the repeal of 19 TAC §126.37, Discrete Mathematics (One-Half to One Credit), Beginning with School Year 2012-2013, and amendment to §126.40, Robotics Programming and Design (One-Half to One Credit), Beginning with School Year 2012-2013.

At the July 2013 meeting, the SBOE postponed final action on the proposed repeal of §126.37. Also at its July 2013 meeting the SBOE postponed final action on a proposed new mathematics course in 19 TAC Chapter 111, Texas Essential Knowledge and Skills for Mathematics, and on amended and new CTE courses in 19 TAC Chapter 130, Texas Essential Knowledge and Skills for Career and Technical Education. The SBOE did, however, take action at the July 2013 meeting to approve the proposed amendment to §126.40 for second reading and final adoption. The amendment will allow Robotics Programming and Design to be added as an option to satisfy the third mathematics graduation requirement under the Minimum High School Program and the fourth mathematics graduation requirement under the Recommended High School Program and the Distinguished Achievement Program in 19 TAC Chapter 74, Subchapters F and G.

The adopted amendment has no new procedural and reporting implications. The adopted amendment has no new locally maintained paperwork requirements.

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.

In accordance with the Texas Education Code, §7.102(f), the SBOE approved the amendment by a vote of two-thirds of its members to specify an effective date earlier than the beginning of the 2014-2015 school year. The earlier effective date will enable districts to plan for future course offerings and schedule students in courses appropriately. The effective date for the amendment is 20 days after filing as adopted.

No public comments were received on the proposal.

The amendment is adopted under the Texas Education Code, §7.102(c)(4), which authorizes the SBOE to establish curriculum and graduation requirements; §28.002, which authorizes the SBOE to identify by rule the essential knowledge and skills of each subject of the required curriculum that all students should be able to demonstrate and that will be used in evaluating instructional materials; and §28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013, which authorizes the SBOE to determine by rule curriculum requirements for the minimum, recommended, and advanced high school programs that are consistent with the required curriculum under §28.002.

The amendment implements the Texas Education Code, §§7.102(c)(4), 28.002, and 28.025, as that section existed before amendment by House Bill 5, 83rd Texas Legislature, Regular Session, 2013.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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CHAPTER 176. DRIVER TRAINING SCHOOLS

The Texas Education Agency (TEA) adopts amendments to §176.1020 and §176.1118, concerning driver training. The amendments are adopted without changes to the proposed text as published in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3472) and will not be republished. Section 176.1020 addresses standards for operation of licensed Texas driver education schools. Section 176.1118 addresses standards for operation of licensed Texas driving safety schools and course providers. The adopted amendments reduce the fees for course completion certificates for driver education courses and driving safety courses to $1.00.

Section 176.1020, adopted effective December 29, 2010, and amended effective August 27, 2012, establishes in rule provisions relating to application fees and other charges for the operation of licensed Texas driver education schools. The rule specifies that the fee for a driver education course completion certificate is $2.00 and the fee for an adult driver education course completion certificate is $3.00.

Section 176.1118, adopted effective December 30, 2001, and last amended effective November 21, 2005, establishes in rule provisions relating to application fees and other charges for the operation of licensed Texas driving safety schools and for course providers. The rule specifies that the fee for a driving safety or specialized driving safety course completion certificate is $1.70.

During the recent sunset review of the TEA, the Sunset Advisory Commission recommended that fees collected by the TEA for driver education and driving safety course completion certificates should be set by rule at a level necessary to recover program costs.

The adopted amendments to 19 TAC §176.1020 and §176.1118 reduce the fees that the TEA charges for each course completion certificate to align the revenue collected from these fees with the costs to operate the programs. The fee for each driver education, adult driver education, and driving safety course completion certificate is reduced to $1.00.

In a separate adoption, the TEA adopts an amendment to 19 TAC Chapter 75, Curriculum, Subchapter AA, Commissioner's Rules Concerning Driver Education Standards of Operation for Public Schools, Education Service Centers, and Colleges or Universities, §75.1014, Procedures for Student Certification and Transfers, to correspond with the reduction of the driver education course completion certificate fee.

The adopted amendments have no procedural or reporting implications. The adopted amendments have no locally maintained paperwork requirements.

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 June 7, 2013, and ended July 8, 2013. No public comments were received.

SUBCHAPTER AA. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVER EDUCATION SCHOOLS

19 TAC §176.1020

The amendment is adopted under the Texas Education Code (TEC), §1001.055(c), which authorizes the agency to charge a fee for driver education certificates and certificate numbers.

The amendment implements the TEC, §§1001.052, 1001.053, and 1001.055.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 9, 2013.

TRD-201303335
Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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For further information, please call: (512) 475-1497

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SUBCHAPTER BB. COMMISSIONER'S RULES ON MINIMUM STANDARDS FOR OPERATION OF LICENSED TEXAS DRIVING SAFETY SCHOOLS AND COURSE PROVIDERS

19 TAC §176.1118

The amendment is adopted under the Texas Education Code (TEC), §1001.055(c), which authorizes the agency to charge a fee for driver education certificates and certificate numbers.

The amendment implements the TEC, §§1001.052, 1001.053, and 1001.055.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Cristina De La Fuente-Valadez
Director, Rulemaking
Texas Education Agency
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Proposal publication date: June 7, 2013
For further information, please call: (512) 475-1497

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TITLE 22. EXAMINING BOARDS

PART 24. TEXAS BOARD OF VETERINARY MEDICAL EXAMINERS

CHAPTER 573. RULES OF PROFESSIONAL CONDUCT

SUBCHAPTER B. SUPERVISION OF PERSONNEL

22 TAC §573.10

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.10, concerning Supervision of Non-Licensed Persons, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3274). The section will not be republished.

The adopted amendment to §573.10 removes the term "chiropractor" to clarify that the provision does not refer or pertain only to licensed chiropractors. The necessity for this amendment arises from a conflict between the Veterinary Licensing Act, Texas Occupations Code, which requires that the Board adopt rules to ensure that alternate therapies, including chiropractic treatments, are performed only by a veterinarian or under the supervision of a veterinarian, and the Texas Chiropractic Act, Texas Occupations Code, which limits the use of "chiropractor" and "chiropractic" to licensed chiropractors performing musculoskeletal manipulation exclusively on humans. The Board intends the adopted amendment to prevent §573.10 from being interpreted to state that licensed chiropractors have the legal right to advertise or practice on animals under their chiropractic license. The Board does not regulate the use of the words "chiropractic" or "chiropractor" or define the scope of practice for a licensed chiropractor--those are the exclusive jurisdiction of the Texas Board of Chiropractic Examiners. The Board intends the amended rule only to fulfill the rulemaking requirements of the Veterinary Licensing Act by defining the level of supervision and liability that a veterinarian must assume when he or she refers musculoskeletal manipulation treatments to a person who is not licensed to practice veterinary medicine. The Board does not intend the amendment to substantively change the meaning of the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public and ensure that alternate therapies, including chiropractic treatment, are performed only by a veterinarian or under the supervision of a veterinarian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TRD-201303320
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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22 TAC §573.14

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.14, concerning Alternate Therapies--Chiropractic and Other Forms of Musculoskeletal Manipulation, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3276). The section will not be republished.

The Board adopts the amendment to §573.14 to clarify that the rule only applies to musculoskeletal manipulation performed on animals and is in no way intended to regulate chiropractic treatments that licensed chiropractors perform on humans. The necessity for the adopted amendment arises from a conflict between the Veterinary Licensing Act, Texas Occupations Code, which requires that the Board adopt rules to ensure that alternate therapies including chiropractic treatment are performed only by a veterinarian or under the supervision of a veterinarian, and the Texas Chiropractic Act, Texas Occupations Code, which limits the use of "chiropractor" and "chiropractic" to licensed chiropractors performing musculoskeletal manipulation exclusively on humans. The Board adopts amendments to prevent §573.14 from being interpreted to state that licensed chiropractors have the legal right to advertise or practice on animals under their chiropractic license. The Board does not regulate the use of the words "chiropractic" or "chiropractor" nor define the scope of practice for a licensed chiropractor--those are the exclusive jurisdiction of the Texas Board of Chiropractic Examiners. The Board does not intend the amendment to substantively change the meaning of the rule.

The Board also amends §573.14 to utilize the term "non-veterinarian employee," which is defined in an amendment to §573.80, also adopted elsewhere in this issue of the *Texas Register.* The Board adopts these amendments to clarify and standardize the terminology used across all of Chapter 573 and thereby eliminate confusion regarding and potential conflict in the usage of "employee" in various parts of the chapter. The Board does not intend this amendment to §573.14 to substantively change the meaning of the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and

maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public and ensure that alternate therapies, including chiropractic treatment, are performed only by a veterinarian or under the supervision of a veterinarian.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
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Texas Board of Veterinary Medical Examiners
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Proposal publication date: May 24, 2013
For further information, please call: (512) 305-7563

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22 TAC §573.19

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.19, concerning Dentistry, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3277). The section will not be republished.

The adopted amendment adds the term "non-veterinarian employee," which is defined in an amendment to §573.80 that the Board has adopted elsewhere in this issue of the *Texas Register.* The Board intends the amendment to §573.19 to clarify and standardize the terminology used across all of Chapter 573 to eliminate confusion and potential conflict in the usage of "employee" in various parts of the chapter. The Board does not intend the amendment to substantively change the meaning of the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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For further information, please call: (512) 305-7563

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SUBCHAPTER C. RESPONSIBILITIES TO CLIENTS

22 TAC §573.20

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.20, concerning Responsibility for Acceptance of Medical Care, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3278). The section will not be republished.

The Board adopts the amendment to clarify the Board's interpretation of §801.351 of the Veterinary Licensing Act (VLA), Texas Occupations Code, which requires that a veterinarian establish a veterinarian-client-patient relationship (VCPR) prior to practicing veterinary medicine. To establish a VCPR under §801.351 of the VLA, a veterinarian must attain sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition by either examining the animal or making medically appropriate and timely visits to the premises on which the animal is kept. The Board interprets §801.351(b)(2) of the VLA, which allows a veterinarian to attain sufficient knowledge of an animal by visiting the premises on which the animal is kept, to apply only to animals that are members of a herd. Thus, the Board interprets §801.351 of the VLA to require that a veterinarian individually and personally examine all animals that are not members of a herd prior to practicing veterinary medicine on them. The adopted amendment is not a change to either Board policy or to the Board's interpretation of §801.351 of the VLA.

For animals that are members of a herd, the Board interprets §801.351 of the VLA to require that a veterinarian only visit the premises on which the animal is kept before he or she can legally practice veterinary medicine on all members of the herd residing on the premises. The practice of veterinary medicine is defined broadly under §801.002(5) of the VLA to include any "diagnosis, treatment, correction, change, manipulation, relief or prevention of animal disease, deformity, defect, injury or physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique." Hence, after visiting the premises on which a herd of animals is kept, a licensed veterinarian can perform any act of veterinary medicine on any or all members of the herd, including diagnosing the entire herd, prescribing and dispensing prescription drugs and controlled substances to the whole herd, prescribing and administering rabies vaccines to each member of the herd, and performing surgery on any member of the herd. For ease of reference, establishing a VCPR and practicing veterinary medicine on a herd in this manner will hereinafter be referred to as "herd medicine."

Under the Board's interpretation of §801.351 of the VLA, a veterinarian can practice any form of veterinary medicine on any member of the herd without ever having examined any member of the herd individually. While there is a risk of missed symptoms when a veterinarian does not perform individual examinations, the Board nonetheless found that the efficiency and lower costs associated with herd medicine outweigh the risks to public health and safety in the context of herds of food-production animals, lab animals, zoo animals, and large animals--animals that do not live in as close contact with humans as companion animals.

On the other hand, in the context of cats and dogs--which live in close proximity with humans but also interact with other animals and the environment outside the human home and are therefore more likely to carry and transmit zoonotic disease to hu-

mans--the Board found significant risks inherent in the practice of herd medicine. In the absence of an individual examination, a veterinarian can miss symptoms, resulting in misdiagnosis and improper treatment that create an opportunity for the spread of zoonotic disease. The Board therefore found that in the context of cats and dogs, herd medicine presents an unreasonable and intolerable risk to public health and safety.

In the context of animals that train and compete as individuals such as racehorses or show cattle, the Board found that herd medicine allows too much room for diversion and misuse of performance-enhancing drugs. If herd medicine applied to animals that train and compete individually, a veterinarian could legally prescribe a drug to a whole barn of racehorses or show cattle after merely visiting the facility and determining that the drug was medically necessary for some of the animals housed there, without determining whether the drug was medically necessary for each individual competing animal.

The Board therefore believes that it is important to limit the species of animals that can be considered members of a herd. In conjunction with the amendment to §573.20, the Board has also adopted an amendment to §573.80 elsewhere in this issue of the *Texas Register,* defining the term "herd" that is used in §573.20 to be "a group of animals of the same species, managed as a group and confined to a specific geographic location" but may not include "dogs, cats, any animal in individual training, or any animal that competes as an individual." For animals like dogs, cats, racehorses and show cattle that are not included within this definition of "herd," the Board believes that merely visiting the premises on which an animal is kept does not provide the veterinarian sufficient information about the non-herd animals to make a diagnosis of an individual animal's medical condition and thus does not provide adequate protection for the public. For example, the Board does not believe that a veterinarian can obtain sufficient information about a single cat or dog by merely visiting the home or shelter in which it lives. The adopted amendment therefore states that a veterinarian can establish a VCPR by visiting the premises on which the animal is kept only if the animal is a member of a herd. Neither the adopted amendment to §573.20, nor the adopted amendment to §573.80 published elsewhere in this issue of the *Texas Register,* represent changes to either Board policy or to the Board's interpretation of §801.351 of the VLA.

The Board received two comments within the 30-day comment period, one from a D.V.M., an individual licensed veterinarian, and one from a group, the Association of Shelter Veterinarians.

One individual D.V.M. commented that the Board was unreasonable in excluding dogs and cats from the species that can be considered a herd for purposes of establishing a VCPR because (1) other mammals that live with humans, such as ferrets, are not excluded from being treated as a herd, (2) other animals that humans have as pets, such as horses, are not excluded from being treated as a herd, (3) other mammals that carry zoonotic diseases, such as cattle and horses, can be treated as a herd by a veterinarian, and (4) dogs and cats naturally live in communal groups, like cattle and horses, and therefore are naturally herd animals. The Board excluded cats and dogs from the animals subject to a herd VCPR under §801.351 of the VLA because cats and dogs are different from all other animals in that they are the most common animals that live with people in their homes but go outside the home where they can encounter other animals and disease vectors in the surrounding environment that they can then transmit to humans. Cats and dogs thus pose the greatest threat as far as spreading zoonotic disease or otherwise harming the public of Texas.

The Board's exclusion of cats and dogs from herd animals for purposes of establishing a VCPR under §801.351 of the VLA parallels other parts of Texas law that recognize cats and dogs as presenting a greater threat to public health and safety than other animals. For example, cats and dogs are the only animals that Texas law requires to receive rabies vaccinations, under Texas Health and Safety Code §826.021. Texas law does not require rabies vaccines for ferrets or livestock, including horses, even though all of these animals can contract rabies. In enacting the rabies vaccination requirements, the Texas Legislature determined that there is cause for particular concern about the spread of zoonotic disease from cats and dogs to people. In requiring individual examinations for cats and dogs, the Board is in keeping with Texas law, requiring a higher standard of physical examination for cats and dogs in order to prevent the spread of zoonotic disease.

In the individual's comment in response to the proposed amendment to §573.20, the commenter also stated that authorities on the field of shelter medicine assert that principles of herd medicine should apply in shelters because the animals are closely confined as a group and therefore can spread disease easily among themselves. The commenter further stated that if the Board explicitly determines that veterinarians may not practice herd medicine in shelters, it will adversely impact the health of animals in Texas shelters. As an initial matter, the Board's interpretation of §801.351 of the VLA is unchanged--the Board has never interpreted §801.351 of the VLA as allowing veterinarians to create a VCPR with cats or dogs merely by visiting the premises on which the animals are kept, so this clarifying amendment to the rule should not have any impact on legal veterinary practice in the shelters of Texas.

While no-kill animal shelters have become a favorite cause of animal rights proponents in recent years, the primary public purpose of animal shelters is to remove sick, injured, unwanted and abandoned animals from contact with the public because such animals present a risk to the public health. If dogs and cats in a shelter were considered a herd for purposes of a veterinarian establishing VCPR, the effect would be that an animal could enter a public shelter, receive rabies vaccinations, prescription and controlled drugs, and even undergo surgery, all without a veterinarian ever individually examining the animal. Without an individual examination, a veterinarian does not have the opportunity to notice subtle symptoms of diseases, defects or injuries that could go unnoticed by a lay person not trained and licensed to practice veterinary medicine, creating the opportunity for the spread of zoonotic disease. For example, if an animal in a shelter is immunocompromised by an injury or illness that goes undiagnosed because the animal is not examined by a veterinarian, the animal could have an inadequate immune reaction to the rabies vaccine, leaving the animal insufficiently protected against rabies infection and capable of contracting and spreading the disease to any human that adopted the animal, despite the fact that the animal's vaccination records would make it appear to be protected against rabies. With regard to prescription drugs and controlled substances, a veterinarian practicing herd medicine on cats and dogs in the shelter context could prescribe drugs to all the animals in the shelter at once without determining through individual examination which animals actually needed the drugs, creating the opportunity for diversion of controlled substances and overuse of prescription drugs such as antibiotics. Moreover, without an examination from a veterinarian, an animal could go

through the shelter and be adopted by a member of the public with undiagnosed zoonotic diseases as mild as ringworm and scabies, or as severe as rabies. In all of these ways, allowing a veterinarian to establish VCPR without an examination of the dogs and cats in shelters would undermine the most basic purpose of a shelter: to protect the public health and safety from abandoned, diseased and injured animals. For these reasons, the Board did not make any change to the rule in response to the individual's comments.

The Board also received a comment from the Association of Shelter Veterinarians (ASV), a group that represents 750 veterinarians nationwide. ASV commented that there should be a separate standard of care for veterinarians working in shelters that allows veterinarians to treat dogs and cats in shelters as herds by administering "core vaccines" without a veterinarian individually examining each animal, because the costs associated with hiring veterinarians to perform individual examinations when the animals arrive at the shelter are prohibitive for shelters. In its comment, ASV recognized that the Board does not allow a separate standard of care for shelter veterinarians. Instead, the Board requires under §573.22, relating to Professional Standard of Care, that all licensed veterinarians uphold the same standard of care as other veterinarians in their community or similar communities, without regard to the specific industry or clinic environment in which they provide veterinary care. Indeed, maintaining the standard of care is particularly important in the shelter context, given the vital role of shelters in protecting the public from abandoned, diseased and injured animals. Anything less than standard veterinary care in the shelter context will only serve to defeat the fundamental public purpose of a shelter by exposing the animal-adopting public to diseased and injured animals that have received inadequate veterinary care.

With regard to ASV's comment that non-veterinarian shelter employees and volunteers should be able to administer "core vaccines" without a veterinarian examining each animal, ASV does not define what it means by "core vaccines." If "core vaccines" include the rabies vaccine, which state law requires that a veterinarian administer, allowing a veterinarian to treat dogs and cats at a shelter as a herd for purposes of establishing VCPR would allow the animals to be vaccinated for rabies without an individual examination by the veterinarian, as long as the veterinarian was present on the premises at the time of vaccination. As was discussed above in response to the individual's comment, the risks associated with forgoing an individual examination by a veterinarian, and as a result vaccinating an undiagnosed immunocompromised animal, present an untenable threat to public health.

If ASV intends "core vaccines" to refer only to over-the-counter vaccines, which any animal owner can buy and use on their animals without veterinarian involvement under §801.004(1) of the VLA, the Board believes that the solution lies in local government defining the ownership of animals in shelters. Because the VLA and the Board's jurisdiction do not extend to owners or designated caretakers, if a local government passes laws or ordinances declaring that the local government itself is the owner or designated caretaker of animals in its shelter beginning at the time of intake, the shelter would be able to acquire and administer over-the-counter vaccines to its animals like any other owner or designated caretaker in Texas, without the need for veterinary involvement. It is important to note that even with the change in ownership or designated caretaker status, the exclusion of dogs and cats from herds for purposes of establishing a VCPR will still require a veterinarian to individually examine each animal at the shelter before the veterinarian could prescribe or administer a rabies vaccination or a prescription for a drug or controlled substance. In this way, shelters could administer over-the-counter vaccinations to animals at the time of intake at the shelter, while still avoiding risks that come with the administration of rabies vaccinations, prescription drugs, and controlled substances to animals that have not received an individual examination and diagnosis from a veterinarian. However, this change in ownership designation is one that local governments must make themselves, as it is outside the jurisdiction or control of the Board. For the foregoing reasons, the Board did not make changes in response to the comments from ASV.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 9, 2013.

TRD-201303323
Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
Effective date: August 29, 2013
Proposal publication date: May 24, 2013
For further information, please call: (512) 305-7563

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SUBCHAPTER G. OTHER PROVISIONS

22 TAC §573.70

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.70, concerning Reporting of Criminal Activity, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3279). The section will not be republished.

The Board adopts the amendment to §573.70 to clarify that a licensee must inform the Board when he or she is either charged with a felony or charged with a misdemeanor that is associated with the practice of veterinary medicine. Since only felony charges receive indictments, the adopted amendment replaces "indictment" with "charged" to encompass all means that prosecutors may employ in bringing criminal charges. The adopted amendment is not intended to require veterinarians to report arrests. Moreover, the Board does not intend the amendment as a change to the Board's policy or interpretation regarding when licensees must report convictions, but rather as a means to clear up confusion that some licensees have expressed over the previous wording of the rule.

No comments were received regarding adoption of the amendment.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the

chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the Board shall adopt rules to protect the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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Proposal publication date: May 24, 2013
For further information, please call: (512) 305-7563

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22 TAC §573.80

The Texas Board of Veterinary Medical Examiners (Board) adopts an amendment to §573.80, concerning Definitions, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3280). The section will not be republished.

The Board adopts the amendment to clarify and standardize the definitions of the terms "non-veterinarian employee" and "herd," as used throughout Chapter 573. With regard to the definition of "non-veterinarian employee," the Board adopts the definition to clarify that the Board does not use the United States Internal Revenue Service (IRS) definitions of "employee" and "independent contractor" in its rules. Instead, the Board's definition of "non-veterinarian employee" requires that the non-veterinarian employee is paid directly by the veterinarian, rather than being paid directly by the client, regardless of whether the non-veterinarian employee is an employee or an independent contractor under IRS rules. The Board's intent in adopting this amendment is to make the definition of "non-veterinarian employee" more expansive than the IRS definition of employee.

With regard to the definition of "herd," the Board adopts the definition to clarify the Board's long-standing interpretation and understanding of the term "herd" as used in the regulation of veterinary medicine to denote when it is appropriate to treat a group of animals as a group, rather than examining and treating each member of the group individually. The term "herd" as defined in §573.80 is used in §573.20, concerning Responsibility for Acceptance of Medical Care, for which the Board has also adopted an amendment, published elsewhere in this issue of the *Texas Register,* to clarify the Board's interpretation of §801.351 of the Veterinary Licensing Act (VLA), Texas Occupations Code, which requires that a veterinarian establish a veterinarian-client-patient relationship (VCPR) prior to practicing veterinary medicine. The adopted amendment to the definition of "herd" in §573.80 is not a change to either Board policy or to the Board's interpretation of §801.351 of the VLA.

To establish a VCPR under §801.351 of the VLA, a veterinarian must attain sufficient knowledge of the animal to initiate at least a general or preliminary diagnosis of the animal's medical condition by either examining the animal or making medically appropriate and timely visits to the premises on which the animal is kept. The Board interprets §801.351(b)(2) of the VLA, which allows a veterinarian to attain sufficient knowledge of an animal by visiting the premises on which the animal is kept, to apply only to animals that are members of a herd. For animals that are members of a herd, the Board interprets §801.351 of the VLA to require that a veterinarian only visit the premises on which the animal is kept before he or she can legally practice veterinary medicine on all members of the herd residing on the premises. The practice of veterinary medicine is defined broadly under §801.002(5) of the VLA to include any "diagnosis, treatment, correction, change, manipulation, relief or prevention of animal disease, deformity, defect, injury or physical condition, including the prescription or administration of a drug, biologic, anesthetic, apparatus, or other therapeutic or diagnostic substance or technique." Hence, after simply visiting the premises on which a herd of animals is kept, a licensed veterinarian can perform any act of veterinary medicine on any or all members of the herd, including diagnosing the entire herd, prescribing and dispensing prescription drugs and controlled substances to the whole herd, prescribing and administering rabies vaccines to each member of the herd, and performing surgery on any member of the herd. For ease of reference, establishing a VCPR and practicing veterinary medicine on a herd in this manner will hereinafter be referred to as "herd medicine."

Under the Board's interpretation of §801.351 of the VLA, a veterinarian can practice any form of veterinary medicine on any member of the herd without ever having examined any member of the herd individually. While there is a risk of missed symptoms when a veterinarian does not perform individual examinations, the Board nonetheless found that the efficiency and lower costs associated with herd medicine outweigh the risks to public health and safety in the context of herds of food-production animals, lab animals, zoo animals, and large animals that do not live in as close contact with humans as companion animals.

On the other hand, in the context of cats and dogs--which live in close proximity with humans but also interact with other animals and the environment outside the human home and are therefore more likely to carry and transmit zoonotic disease to humans--the Board found significant risks inherent in the practice of herd medicine. In the absence of an individual examination, a veterinarian can miss symptoms, resulting in misdiagnosis and improper treatment that create an opportunity for the spread of zoonotic disease. The Board therefore found that in the context of cats and dogs, herd medicine presents an unreasonable and intolerable risk to public health and safety.

In the context of animals that train and compete as individuals such as racehorses or show cattle, the Board found that herd medicine allows too much room for diversion and misuse of performance-enhancing drugs. If herd medicine applied to animals that train and compete individually, a veterinarian could legally prescribe a drug to a whole barn of racehorses or show cattle after merely visiting the facility and determining that the drug was medically necessary for some of the animals housed there, without determining whether the drug was medically necessary for each individual competing animal.

The Board therefore believes that it is important to limit the species of animals that can be considered members of a herd. The adopted amendment to §573.80 defines "herd" as "a group of animals of the same species, managed as a group and confined to a specific geographic location" but may not include "dogs, cats, any animal in individual training, or any animal that competes as an individual." For animals like dogs, cats, racehorses and show cattle that are not included within

this definition of "herd," the Board believes that merely visiting the premises on which an animal is kept does not provide the veterinarian sufficient information about the non-herd animals to make a diagnosis of an individual animal's medical condition and thus does not provide adequate protection for the public. For example, the Board does not believe that a veterinarian can obtain sufficient information about a single cat or dog by merely visiting the home or shelter in which it lives. The adopted amendment therefore states that a veterinarian can establish a VCPR by visiting the premises on which the animal is kept only if the animal is a member of a herd. The adopted amendment to §573.80 does not represent a change to either Board policy or to the Board's interpretation of §801.351 of the VLA.

The Board received two comments within the 30-day comment period, one from a D.V.M., an individual licensed veterinarian, and one from a group, the Association of Shelter Veterinarians.

One individual commented that the Board was unreasonable in excluding dogs and cats from the species that can be considered a herd for purposes of establishing a VCPR because (1) other mammals that live with humans, such as ferrets, are not excluded from being treated as a herd, (2) other animals that humans have as pets, such as horses, are not excluded from being treated as a herd, (3) other mammals that carry zoonotic diseases, such as cattle and horses, can be treated as a herd by a veterinarian, and (4) dogs and cats naturally live in communal groups, like cattle and horses, and therefore are naturally herd animals. The Board excluded cats and dogs from the animals subject to a herd VCPR under §801.351 of the VLA because cats and dogs are different from all other animals in that they are the most common animals that live with people in their homes but go outside the home where they can encounter other animals and disease vectors in the surrounding environment that they can then transmit to humans. Cats and dogs thus pose the greatest threat as far as spreading zoonotic disease or otherwise harming the public of Texas.

The Board's exclusion of cats and dogs from herd animals for purposes of establishing a VCPR under §801.351 of the VLA parallels other parts of Texas law that recognize cats and dogs as presenting a greater threat to public health and safety than other animals. For example, cats and dogs are the only animals that Texas law requires to receive rabies vaccinations, under Texas Health and Safety Code §826.021. Texas law does not require rabies vaccines for ferrets or livestock, including horses, even though all of these animals can contract rabies. In enacting the rabies vaccination requirements, the Texas Legislature determined that there is cause for particular concern about the spread of zoonotic disease from cats and dogs to people. In requiring individual examinations for cats and dogs, the Board is in keeping with Texas law, requiring a higher standard of physical examination for cats and dogs in order to prevent the spread of zoonotic disease.

In the individual's comment in response to the proposed amendment to §573.80, the commenter also stated that authorities on the field of shelter medicine assert that principles of herd medicine should apply in shelters because the animals are closely confined as a group and therefore can spread disease easily among themselves. The commenter further stated that if the Board explicitly determines that veterinarians may not practice herd medicine in shelters, it will adversely impact the health of animals in Texas shelters. As an initial matter, the Board's interpretation of §801.351 of the VLA is unchanged--the Board has never interpreted §801.351 of the VLA as allowing veterinarians to create a VCPR with cats or dogs merely by visiting the premises on which the animals are kept, so this clarifying amendment to the rule should not have any impact on legal veterinary practice in the shelters of Texas.

While no-kill animal shelters have become a favorite cause of animal rights proponents in recent years, the primary public purpose of animal shelters is to remove sick, injured, unwanted and abandoned animals from contact with the public because such animals present a risk to the public health. If dogs and cats in a shelter were considered a herd for purposes of a veterinarian establishing VCPR, the effect would be that an animal could enter a public shelter, receive rabies vaccinations, prescription and controlled drugs, and even undergo surgery, all without a veterinarian ever individually examining the animal. Without an individual examination, a veterinarian does not have the opportunity to notice subtle symptoms of diseases, defects or injuries that could go unnoticed by a lay person not trained and licensed to practice veterinary medicine, creating the opportunity for the spread of zoonotic disease. For example, if an animal in a shelter is immunocompromised by an injury or illness that goes undiagnosed because the animal is not examined by a veterinarian, the animal could have an inadequate immune reaction to the rabies vaccine, leaving the animal insufficiently protected against rabies infection and capable of contracting and spreading the disease to any human that adopted the animal, despite the fact that the animal's vaccination records would make it appear to be protected against rabies. With regard to prescription drugs and controlled substances, a veterinarian practicing herd medicine on cats and dogs in the shelter context could prescribe drugs to all the animals in the shelter at once without determining through individual examination which animals actually needed the drugs, creating the opportunity for diversion of controlled substances and overuse of prescription drugs such as antibiotics. Moreover, without an examination from a veterinarian, an animal could go through the shelter and be adopted by a member of the public with undiagnosed zoonotic diseases as mild as ringworm and scabies, or as severe as rabies. In all of these ways, allowing a veterinarian to establish VCPR without an examination for the dogs and cats in shelters would undermine the most basic purpose of a shelter: to protect the public health and safety from abandoned, diseased and injured animals. For these reasons, the Board did not make any change to the rule in response to the individual's comments.

The Board also received a comment from the Association of Shelter Veterinarians (ASV), a group that represents 750 veterinarians nationwide. ASV commented that there should be a separate standard of care for veterinarians working in shelters that allows veterinarians to treat dogs and cats in shelters as herds by administering "core vaccines" without a veterinarian individually examining each animal, because the costs associated with hiring veterinarians to perform individual examinations when the animals arrive at the shelter are prohibitive for shelters. In its comment, ASV recognized that the Board does not allow a separate standard of care for shelter veterinarians. Instead, the Board requires under §573.22, relating to Professional Standard of Care, that all licensed veterinarians uphold the same standard of care as other veterinarians in their community or similar communities, without regard to the specific industry or clinic environment in which they provide veterinary care. Indeed, maintaining the standard of care is particularly important in the shelter context, given the vital role of shelters in protecting the public from abandoned, diseased and injured animals. Anything less than standard veterinary care in the shelter context will only serve to

defeat the fundamental public purpose of a shelter by exposing the animal-adopting public to diseased and injured animals that have received inadequate veterinary care.

With regard to ASV's comment that non-veterinarian shelter employees and volunteers should be able to administer "core vaccines" without a veterinarian examining each animal, ASV does not define what it means by "core vaccines." If "core vaccines" include the rabies vaccine, which state law requires that a veterinarian administer, allowing a veterinarian to treat dogs and cats at a shelter as a herd for purposes of establishing VCPR would allow the animals to be vaccinated for rabies without an individual examination by the veterinarian, as long as the veterinarian was present on the premises at the time of vaccination. As was discussed above in response to the individual's comment, the risks associated with forgoing an individual examination by a veterinarian, and as a result vaccinating an undiagnosed immunocompromised animal, present an untenable threat to public health.

If ASV intends "core vaccines" to refer only to over-the-counter vaccines, which any animal owner can buy and use on their animals without veterinarian involvement under §801.004(1) of the VLA, the Board believes that the solution lies in local government defining the ownership of animals in shelters. Because the VLA and the Board's jurisdiction do not extend to owners or designated caretakers, if a local government passes laws or ordinances declaring that the local government itself is the owner or designated caretaker of animals in its shelter beginning at the time of intake, the shelter would be able to acquire and administer over-the-counter vaccines to its animals like any other owner or designated caretaker in Texas, without the need for veterinary involvement. It is important to note that even with the change in ownership or designated caretaker status, the exclusion of dogs and cats from herds for purposes of establishing a VCPR will still require a veterinarian to individually examine each animal at the shelter before the veterinarian could prescribe or administer a rabies vaccination or a prescription for a drug or controlled substance. In this way, shelters could administer over-the-counter vaccinations to animals at the time of intake at the shelter, while still avoiding risks that come with the administration of rabies vaccinations, prescription drugs, and controlled substances to animals that have not received an individual examination and diagnosis from a veterinarian. However, this change in ownership designation is one that local governments must make themselves, as it is outside the jurisdiction or control of the Board. For the foregoing reasons, the Board did not make changes in response to the comments from ASV.

The amendment is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter; §801.151(b), which states that the Board may adopt rules of professional conduct appropriate to establish and maintain a high standard of integrity, skills, and practice in the veterinary medicine profession; and §801.151(c), which states that the board shall adopt rules to protect the public.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 9, 2013.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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CHAPTER 575. PRACTICE AND PROCEDURE

22 TAC §575.38

The Texas Board of Veterinary Medical Examiners (Board) adopts new §575.38, concerning Proceeding for the Modification or Termination of Agreed Orders and Disciplinary Orders, without changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3281). The section will not be republished.

The Board adopts §575.38 to create a procedure whereby a licensee who is subject to ongoing discipline under a board order can request to have the order terminated or modified. The procedure adopted in §575.38 allows a licensee to request an informal conference with the Board's Enforcement Committee and present evidence that the agreed order should be terminated or modified. If the Enforcement Committee finds that modification or termination is appropriate, the Enforcement Committee will issue an agreed order for the licensee to consider. As with other agreed orders issued by the Enforcement Committee, the full Board reviews the agreed modification or termination order and either approves, modifies or denies it. If the Enforcement Committee finds that modification or termination is inappropriate, or if the licensee fails to sign an agreed order, or if the full Board denies an agreed order recommended by the Enforcement Committee, the licensee is not entitled to a contested case hearing before the State Office of Administrative Hearings. Under the adopted rule, a licensee can only request modification or termination of an agreed order once per year. The Board intends these procedures to allow a means for the Board to evaluate a licensee's request for modification or termination of an agreed order, without overtaxing the limited resources of the Board.

No comments were received regarding adoption of the new rule.

The new rule is adopted under the authority of the Veterinary Licensing Act, Occupations Code, §801.151(a), which states that the Board may adopt rules necessary to administer the chapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Loris Jones
Executive Assistant
Texas Board of Veterinary Medical Examiners
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For further information, please call: (512) 305-7563

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PART 29. TEXAS BOARD OF PROFESSIONAL LAND SURVEYING

CHAPTER 661. GENERAL RULES OF PROCEDURES AND PRACTICES
SUBCHAPTER A. THE BOARD

22 TAC §§661.1 - 661.3, 661.5, 661.7 - 661.11

The Texas Board of Professional Land Surveying (Board) adopts amendments to §§661.1 - 661.3, 661.5, and 661.7 - 661.11, concerning the Board. Sections 661.1 - 661.3 and §§661.7 - 661.11 are adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 583). Section 661.5 is adopted with changes to the proposed text as published.

The amendments establish the capitalized terms, "Board" and "Executive Director" as the consistent references within the Board rules to the Texas Board of Professional Land Surveying and make minor non-substantive grammatical corrections.

The amendment to §661.5 clarifies a reference to "same" to mean a reference to the Board seal that the Executive Director will maintain for the Board and affix to the Board's official documents. The amendment also clarifies a second reference to "same" to mean a reference to the necessary equipment, supplies, and assistance that the Board will pay for and furnish to the Executive Director.

One comment was received concerning §661.5, suggesting that the words "and stenographic assistance" be deleted. The Board agreed with the comment as "stenographic assistance" is outdated and removed the word "stenographic" from the rule.

No comments were received regarding the proposed amendments to the remaining sections.

The amendments are adopted under Texas Occupations Code §§1071.002, 1071.055, 1071.101, 1071.102, 1071.151, 1071.152, and 1071.153; and Texas Government Code §2001.004.

§661.5. Executive Director.

The Executive Director shall conduct and care for all correspondence in the name of the Board. The Executive Director shall maintain all records prescribed by law. The Executive Director shall keep a record of all meetings and maintain a proper account of all business of the Board. The Executive Director shall be the custodian of the official seal and affix the seal to all certificates and other official documents upon the orders of the Board. The Executive Director shall check and certify all bills and check all vouchers (claims) and shall approve same, if appropriate, and shall perform such other duties as directed by the Board. The Board shall furnish the Executive Director the necessary equipment, supplies, and assistance, paying for these items directly on vouchers (claims) handled as prescribed herein and by law.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2013.

TRD-201303306
Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Effective date: August 28, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 239-5263

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SUBCHAPTER B. MEETINGS

22 TAC §661.23, §661.24

The Texas Board of Professional Land Surveying (Board) adopts the amendments to §661.23 and §661.24, concerning Meetings. Section 661.23 is adopted with changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 584). Section 661.24 is adopted without changes to the proposed text as published.

The adopted amendments establish the capitalized terms "Board" and "Executive Director" as the consistent references within the Board rules to the Texas Board of Professional Land Surveying.

The adopted amendment of §661.23 changes to active voice the requirement that the Executive Director send notice of the Board's meetings a week in advance.

One comment was received concerning §661.23 suggesting that "mail notice of all meetings out" be replaced with "provide notice of all meetings" in the first full paragraph. The Board agreed with this suggestion because meeting notice can be sent by means other than mail, such as email, saving the agency money.

No comments were received regarding proposed amendments to §661.24.

The amendments are adopted under Texas Occupations Code §§1071.058, 1071.101, and 1071.151.

§661.23. Notice of Meetings.

Notice of meetings shall be published and posted in compliance with law. The Executive Director shall provide notice of all meetings to each member at his/her last known address at least one week prior to said meeting.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2013.

TRD-201303307
Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Effective date: August 28, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 239-5263

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SUBCHAPTER C. DEFINITIONS OF TERMS

22 TAC §661.31, §661.33

The Texas Board of Professional Land Surveying (Board) adopts amendments to §661.31 and §661.33, concerning Definitions of Terms. Section 661.31 is adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 585). Section 661.33 is adopted with changes to the proposed text as published.

The amendments establish the capitalized term "Board" as the consistent reference within the Board rules to the Texas Board of Professional Land Surveying.

Amendments to §661.31 clarify several terms used within the Board's rules, add certain terms not previously defined, and promote uniformity of application and interpretation of defined terms.

The Board renamed §661.33 as Easement Depiction, and the amendment clarifies that in general, a person registered or licensed by the Board, in preparing an exhibit that depicts a proposed easement, is subject to all Board rules. The amended rule is intended to apply to all exhibits prepared by a registered professional land surveyor regardless of whether monumentation is placed on the ground. The amended rule also provides exceptions to the stated general rule. The amendment eliminates ascertainment of the easement area by the general public because the Board believes this is not a precise or attainable standard. The amendment also reiterates the meaning of the term "construction estimate" defined in §661.31(4) and places it in context within this rule pertaining to the Board's expectations concerning easements.

Comments were received regarding proposed amendments to §661.31 suggesting that "corner" and an accompanying definition be added. The Board disagreed with the comments but did agree to add "in accordance with subsection (b) of this section" to the last sentence of §663.17(c).

A comment was received regarding §661.33(c) saying that the use of "construction estimate" was redundant because it was also in the definitions. The Board disagreed saying that in §661.31, "construction estimate" is defined, but in §661.33 "construction estimate" is an exception to that rule.

The amendments are adopted under Texas Occupations Code §§1071.004, 1071.058, 1071.101 and 1071.151.

§661.33. Easement Depiction.

(a) An easement depiction prepared by any person registered or licensed under the Act shall adhere to all rules promulgated by the Board except where:

(1) the easement area can be clearly ascertained without reference to a metes and bounds description of the easement; and

(2) the easement does not bisect or protrude into the tract (leaving non-easement areas on opposite sides of the easement strip).

(b) An easement's legal description or plat depiction meets the requirements of the exception to this rule when the easement:

(1) is a blanket easement; or

(2) the easement:

(A) is within a tract of land or lot depicted in a recorded subdivision plat;

(B) can be clearly defined and located without a metes and bounds description; and

(C) is adjoining to a platted boundary line.

(c) A "construction estimate", as used in §1071.004 of the Act, means a depiction of a possible easement route for planning purposes.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2013.

TRD-201303308

Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
Effective date: August 28, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 239-5263

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SUBCHAPTER D. APPLICATIONS, EXAMINATIONS, AND LICENSING

22 TAC §§661.41 - 661.47, 661.50 - 661.52, 661.55 - 661.57

The Texas Board of Professional Land Surveying (Board) adopts amendments to §§661.41 - 661.47, 661.50 - 661.52, and 661.55 - 661.57, concerning Applications, Examinations, and Licensing. Sections 661.44, 661.47, 661.51, 661.52, and 661.56 are adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 586). Sections 661.41 - 661.43, 661.45, 661.46, 661.50, 661.55, and 661.57 are adopted with changes to the proposed text as published.

The amendments adopted make minor non-substantive corrections to formatting and capitalization and in some cases change wording from passive to active voice. They establish the capitalized terms "Board" and "Executive Director" as the consistent references within the Board rules to the Texas Board of Professional Land Surveying. In several sections, amendments insert the word "land" before the word "surveying" to clarify this term as opposed to marine surveying, traffic surveying, or other endeavors where the generic term "surveying" may be in use.

The amendments make a minor correction to eliminate a superfluous period that appears before the term "pdf" in §661.41 and clarify that the written experience record and sample survey reports submitted by the applicant will be maintained by the Board as part of its permanent files.

Amended §661.42 updates the reference to the correct current name of the Public Information Act (formerly the "Open Records Act"). The amendments also eliminate outdated charges for providing specific categories of public information and install longevity and flexibility in the rule by clarifying that the charges for providing copies of public information will be calculated pursuant to the state guidelines in effect at the time of a records request.

Amended §661.45 is written to state more clearly that calculators are permitted for use during land surveyor examinations.

Amended §661.46 requires a seal which is defined in Board rules. The amendment eliminates the term "Stamps" in its title because the Act does not require a land surveyor to obtain a stamp. The amended rule adds the requirement for an applicant who receives a certificate of registration/licensure to affix his/her seal and signature to an oath which affirms the professional's commitment to place the interest of the public above all others and to follow the Board's Act and Rules in the practice of land surveying. The amendment would also require a registrant at time of annual renewal to affirm the oath. The Board believes that the new annual emphasis reminding each registrant and license holder of his/her professional responsibility to the public and requiring a personal pledge to follow the Board Act and Rules in the practice of land surveying will encourage and enhance high standards of conduct and ethics among land surveyors.

Amended §661.47 clarifies that the Board's determination of whether a reciprocal jurisdiction's licensing standards are substantially equivalent to those in Texas shall be based on a review of the standards of the foreign jurisdiction in effect at the time the license applicant was licensed in the reciprocal state. The amendments would reduce the length of the examination required of a reciprocal applicant. The Board believes that an examination not to exceed four (4) hours is adequate to assess competence of a reciprocal applicant, and this change makes the rule compatible with §1071.259 of the Act.

Amended §661.50 replaces the designation "Surveyor Intern" and its acronym "SI" with the more accurate and consistently-used designation "Surveyor In Training" and its acronym "SIT," which is referenced in other Board rules. The amendments make clear that each individual SIT who passes the NCEES exam pertaining to fundamentals of land surveying after January 1, 1993 is required to obtain specified experience described in the rule.

Amended §661.52 inserts the word "Surveyor" to make consistent the term "Inactive Surveyor" as used throughout the rule. The amendments remove the distinction between a surveyor who has chosen to be on Inactive status for less than or more than one year. The amendments also give greater authority to the Board's Executive Director in deciding whether the application, fee, and professional education requirements warrant a return to active status in a particular case or whether the Board should consider the matter.

Amendments adopted to §661.55 create consistency in the use of the term "Firm" to describe various business entities that may offer professional land surveying services. The amendments also more closely track the language of the enabling statute in prohibiting a Firm from offering land surveying services until the Firm applies for and receives a Firm Registration certificate. The amendments detail the necessary contents of the Firm Registration application form. The amendments reduce the requirement that a person registered under the Act ensure that a Firm employing the person comply with all applicable Board rules and instead adopt that a person registered under the Act ensure that the employing Firm complies with the filing requirements for a Firm Registration certificate. The adopted amendments reduce the span of time within which a person registered under the Act and employed by a Firm must notify the Board of leaving Firm employment. The Board is authorized to obtain the identification of the registered professional land surveyor who is responsible for the business entity land surveying practice, and the adopted amendments include an oath to be signed and sworn by a responsible party on behalf of the Firm that pledges: 1) the Firm's affirmation to place the interests of the public above all others in its practice of professional land surveying; and 2) the Firm's commitment to adhere to the Professional Land Surveying Practices Act and Board rules.

Amendments to §661.56 rename the section as "Land Surveying Firm Renewal and Expiration" to more clearly describe the topics addressed in the rule.

Amendments to §661.57 are designed to offer detail to Firms beyond the registration requirements. The amendments more closely track the language of the enabling statute in prohibiting a Firm from offering land surveying services until the Firm applies for and receives a Firm Registration certificate. The amendments specify that the Firm Registration Number must be contained with any offer to provide land surveying services. The amendments provide that a full-time active license holder must be in the employ of the Firm, must perform or supervise work that requires a license, including work performed in branch offices, and must affix his/her seal and signature to the Firm's land survey products. The amendments state a requirement that a Firm shall cooperate with any Board investigation concerning complaints against a land surveyor employed by the Firm.

Public comments regarding §661.41(b)(1) suggested changing the requirement that documents "shall remain in the permanent files of the Board" to be maintained pursuant to the state record retention policy. The Board agreed with this suggestion and approved changing the last sentence of that paragraph.

Comments received for §661.43(a) pointed out that this subparagraph has two references to "personal knowledge." The second reference strikes out "personal." The Board agreed that to be consistent with the Professional Land Surveying Practices Act, the rule should use the phrase "personal knowledge" and therefore the second mention of "personal" in this subsection should be restored.

Comments were also received for §661.55(c) saying that the requirement of a licensee to inform the Board within 24 hours of leaving a firm was harsh. The Board discussed different scenarios that would make it difficult for a licensee to meet this requirement. The Board approved restoring the notification requirement to five business days rather than 24 hours.

The amendments are adopted under Texas Occupations Code §§1071.004, 1071.058, 1071.101, 1071.151, 1071.152, 1071.155, 1071.1526, 1071.252, 1071.253, 1071.258, 1071.259, 1071.263, 1071.351, 1071.352, and 1071.353.

§661.41. Applications.

(a) An applicant qualified by law who wishes to take an examination for certification or for registration to practice professional land surveying and/or state land surveying in Texas shall be furnished duplicate application forms, one to be returned to the office of the Board, the other to be retained by the applicant. Applications received by the Board shall be examined by the Executive Director for conformity with the rules and regulations governing applications as established by the Board. Applications accompanied by proper fees and in the form prescribed by the Board shall be entered in the records of the Board. Applications not accompanied by proper fees or not conforming to the rules and regulations shall be returned to the applicant. Each applicant shall be required to furnish all information requested on the application form. The application form shall contain general information regarding the applicant, a recent passport type photograph, other registration and memberships, references and qualifications, formal education information with certified transcripts of college work, personal surveying experience, and instructions for filing the form.

(b) The application shall be neatly typed or lettered and all questions must be answered. If the answer is negative, the applicant shall use the word "no" or "none." It is the applicant's responsibility to see that certified transcripts of college work and any other information required or requested by the Board are received in the office of the Board on or before July 15 or January 15 in order for the applicant's file to be considered for the ensuing examination. Experience time will be counted only up to the date of the filing of the application with fee. Applications will not be considered if essential information is lacking.

(1) It is important that the experience record of the applicant be completed in detail giving character of work performed, particularly with respect to percentage of time engaged in boundary land surveying as opposed to engineering surveying, title of position, employer, amount of time, and responsibility in each engagement listed. Experience in responsible charge will be counted only if under the direct supervision of a registered professional land surveyor. Give total

time in actual land boundary surveying in each engagement. If the space provided in the forms is not sufficient, the applicant may attach as many sheets as necessary. If the experience is of the character that it cannot be described properly in the tabulated form, the applicant may submit a complete narrative account of his/her education, professional, or business career. All documents filed with the application shall be maintained by the Board pursuant to the state's record retention schedule.

(2) Accompanying this application shall be two sample survey reports (sketch, map or plat) completed under the direction of a Registered Professional Land Surveyor. Submissions should be paper copies and also digital copies on a CD, DVD, or USB accessible medium. Each survey report should be on a single piece of paper not to exceed 24" x 36". The digital copy should be in pdf or similar format. Each survey report should include a certification and a list of all documents reviewed in preparation of the survey. However, a signature and seal are not necessary. One survey should be an urban type survey (residential or commercial platted property) with the other being a rural type survey (metes and bounds). Each report will be evaluated for compliance with the existing Act and Rules. All documents filed with the application shall remain in the permanent files of the Board.

(c) Application files are considered initiated the date the application is received with fee. If an application is not received within 90 days after date of receipt of reference forms and required information, that file will be closed and the applicant so notified at his/her last known address. If the applicant does not take the examination within one year from the date the application is approved, the file will be closed, and for further consideration by the Board, the applicant will be required to file a complete new application with fee and references.

(d) No credit will be considered for experience obtained in violation of the Professional Land Surveying Practices Act or any applicable prior Act governing the surveying profession. Only that experience obtained in regular full-time employment, or as otherwise specifically allowed in the Act and Rules, will be considered in evaluating an applicant's record.

(e) Certificate Requirements for Surveyors-In-Training in Other States, Territories or Possessions of the United States. An individual is eligible to be certified as a surveyor-in-training in Texas upon:

(1) Successfully passing the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals of land surveying exam; and

(2) Obtaining certification as a surveyor-in-training by a state, territory or possession of the United States other than Texas.

(f) The Texas certification as a surveyor-in-training is valid for eight years from the date the surveyor-in-training certificate was issued by the original issuing state, territory or possession of the United States.

(g) The Board will recognize degrees conferred by the Accreditation Board for Engineering and Technology (ABET), the Southern Association of Colleges (SAC) and the Applied Science Accreditation Commission (ASAC) or their equivalent.

(h) Degrees not accredited by ABET/SAC/ASAC must be evaluated by an organization approved by the Board and shall be done at the expense of the applicant. The Board will consider recognizing degrees on a case-by-case basis upon submission of the evaluation.

(i) All foreign language documentation submitted must be accompanied by certified translations.

(j) Applicants must speak and write the English language. Proficiency in English may be evidenced by possession of an accredited bachelor degree taught exclusively in English, or passage of the Test of English as a Foreign Language (TOEFL) with a score of at least 550 and passage of the Test of Spoken English (TSE) with a score of at least 45, or other evidence such as significant academic or work experience in English acceptable to the Board.

§661.42. Fees.

(a) All fees are payable by cashier's check or money order and are not refundable.

(b) In addition to the application fee, an examination fee not to exceed the examination cost and fees for administering the exam is required.

(c) New registrants will be required to pay a prorated part of the annual licensing fee according to their date of registration or licensure.

(d) In compliance with the Public Information Act, the Texas Board of Professional Land Surveyors will recover the costs of providing copies of public information according to current state guidelines and/or requirements.

§661.43. References.

(a) All references shall be chosen carefully for their personal knowledge of the applicant's experience and qualifications. All applicants shall submit to the Board the names and complete addresses, including zip codes, of not less than three references unrelated to the applicant. Such reference shall be registered or licensed surveyors and have personal knowledge of the applicant's surveying experience and qualifications.

(b) No member of the Board will be accepted as a reference unless the Board member is the registered professional land surveyor with the most knowledge of the applicant's experience. The Board prefers that when an applicant is employed by an organization that includes registered professional land surveyors, the applicant use only one reference from a registered professional land surveyor who is associated with him in such organization. The Board reserves the right to ask for additional references.

§661.45. Examinations.

(a) Registered professional land surveyor examinations shall be written and so designed to aid the Board in determining the applicant's knowledge of land surveying, mathematics, land surveying laws, and his/her general fitness to practice the profession as outlined in the Professional Land Surveying Practices Act. The applicant will be notified at least 10 days in advance of the date, time, duration and place of the examination. If an applicant fails to appear for two successive examinations, the applicant's file will be closed and will not be reopened without the filing of a new application and fee.

(b) Calculators will be permitted to be used during any examination. Only Board approved calculators will be permitted for use during examinations. No communication/imaging device of any type will be permitted, including but not limited to pagers and cellular phones. Devices or materials that might compromise the security of the examination or the examination process are not permitted in the examination room.

(c) An applicant repeating the examination will be required to repeat only those portions of the examination on which the applicant made less than a passing grade.

(d) Licensed state land surveyors' examinations shall be written and so designed to test the applicant's knowledge of the history,

files, and functions of the General Land Office, survey construction, legal aspects pertaining to state interest in vacancies, excesses, and unpatented lands, and familiarity with other state interests in surface and subsurface rights as covered by existing law.

(e) The licensed state land surveyor examination will be in two four-hour sections and each part graded independently. If an applicant fails either part, that applicant will be required to file an updated application with fee and repeat the entire examination.

(f) The contents of all examination materials are confidential. Any registrant and/or applicant who take an action with the intent to compromise the confidentiality of the examination is subject to disciplinary sanction, administrative penalties, or both. Each candidate will be required to sign a statement that they will neither copy nor divulge any examination problem or solution, and that any violation thereof will be sufficient grounds for invalidating the candidate's examination. In assessing an appropriate penalty or sanction, the Board may do any one or more of the following:

(1) Impose the penalties and sanctions set out in the Act;

(2) Disqualify the applicant from taking future examinations for a period of three years;

(3) Disqualify the applicant from taking future examinations until the applicant successfully completes a Board-approved study of professional ethics;

(4) Disqualify the applicant from further consideration for certification or registration;

(5) Invalidate the candidate's examination.

(g) Examination candidates who have been called into active U.S. military duty or who are re-assigned military personnel and will not be available to sit for an examination may request the examination cycle be postponed and any paid examination fees encumbered toward a future examination date. Such candidates shall submit adequate documentation, including copies of orders, and a request to postpone the examination to the Board. The candidate shall notify the Board of their availability to resume the examination cycle within 60 days of release from active duty or when they are deployed to a location that will proctor the examination.

(h) Beginning January 1, 2011, any applicant who is unsuccessful in three attempts to pass any part of a SIT or RPLS examination shall not have an application approved for a subsequent taking of the same examination for a period of one year from the date of notice of failure of the third exam. Applications submitted subsequent to the one year waiting period shall include documented evidence satisfactory to the Board that the applicant has acquired additional education and experience indicative that the applicant would better be able to pass a subsequent examination. This rule applies to all SIT and RPLS examinations administered by the Board, both past and future.

§661.46. Seal and Oath.

(a) At the time the applicant receives a certificate of registration/licensure, the applicant will secure a seal of the type specified by the Board.

(b) At the time an applicant receives a certificate of registration/licensure, before he/she can offer land surveying services, they shall sign and affix their seal to the following oath: I, _____, Registered Professional Land Surveyor, Certificate Number_____, hereby affirm that I will place the interest of the public above all others in my practice of Professional Land Surveying and I will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board.

(c) At the time a registrant renews their certificate of registration/licensure, he/she shall affirm the oath in subsection (b) of this section.

§661.50. Surveyor In Training (SIT) Experience Requirements.

The following standards are to be used in evaluating the two years of experience (although some forms provided by the Board may allow an experience breakdown in hours, it is the intent of the Board that the required experience be obtained over a minimum time period of two calendar years) required for the Surveyor in Training, hereinafter referred to as Surveyor In Training (SIT), under the direct supervision of a designated Registered Professional Land Surveyor (RPLS) acceptable to the Board:

(1) All experience must be obtained under the direction and guidance of one or more registered professional land surveyors designated by the SIT. The Board will be notified in writing of the name or names of the designated RPLS prior to the beginning of the internship. If during the internship any designated RPLS changes, the SIT must notify the Board that a new RPLS has been designated by the SIT and the date of change.

(2) The two years of experience are to be obtained in the area of boundary surveying and boundary determination only. This minimum of two years begins with the date the applicant passes the National Council of Examiners for Engineering and Surveying (NCEES) fundamentals of land surveying portion of the examination. Since only boundary related surveying experience will be accepted, the actual time to complete the internship may take longer than two calendar years. Adequate documentation of the conditions of employment as well as the experience gained therein will be required. Regardless of the total number of acceptable hours of experience gained in this manner, a minimum total time of 4,000 hours of experience extended over a minimum of two calendar years will still be required.

(3) The required experience is divided into two possible types of experience, which are as follows:

(A) Office experience. The required office experience will consist of at least three months of acceptable experience within each of the following categories, herein referred to as "acceptable office experience" for a minimum of one year:

(i) Research of county records and records search;

(ii) Legal principles, boundary reconciliation, and deed sketches;

(iii) Computations/traverse accuracy analysis;

(iv) Documentation/description/monumentation/preparation of final surveys. A detailed outline of the SIT's required experience will be furnished to the Board by the SIT. All two years of the experience requirement may be obtained as office experience.

(B) Field experience. The remaining acceptable experience, if not within the previously listed office experience categories, must be within the categories following:

(i) Field accuracies and tolerances;

(ii) Field traverse notes;

(iii) Monument search based on deed sketches.

(4) The SIT is solely responsible for the documentation necessary to verify the acceptable completion of the required experience. The Board will furnish a form, which will be completed by the SIT and signed by both the SIT and the designated RPLS for verification. This form will require the SIT to describe the specific experience that he/she has obtained during the internship within the cate-

gories listed in paragraph (3)(A) of this section. In addition, the SIT is to keep a log of the boundary surveying projects and the specific experience obtained for each project.

(5) The SIT must notify the designated RPLS in writing that the SIT will be using the RPLS for verification of the required experience.

(6) The designated RPLS will agree in writing to the Board to provide the required experience for the SIT and to provide the required supervision and experience verification.

(7) The designated RPLS will conduct periodic reviews of the SIT's performance so that any problems with the required experience can be corrected prior to completion of the time period.

(8) Only one RPLS is required to be designated for the two-year period if all the experience is obtained under that RPLS. Additional RPLSs will not be required unless the direct supervision of the SIT changes during the period or the SIT is under several RPLSs' supervision.

(9) The SIT experience requirements listed previously will be required for any SIT who passes the NCEES fundamentals of land surveying portion of the examination on or after January 1, 1993.

§661.52. Inactive Status.

(a) A Surveyor whose registration is in good standing may apply for Inactive Surveyor registration status on a form prescribed by the Board.

(b) An Inactive Surveyor may not practice professional land surveying. If an Inactive Surveyor engages in the practice of professional land surveying, the Inactive Surveyor's registration may be suspended or revoked and he/she may be fined as allowed by the Professional Land Surveying Practices Act.

(c) An Inactive Surveyor shall not use their seal during any period that the registration is Inactive.

(d) An Inactive Surveyor shall pay an annual fee as prescribed by the Board.

(e) In order to return the registration to active status, an Inactive Surveyor who has been Inactive must meet the following requirements:

(1) The Surveyor must apply on a form prescribed by the Board. The Board will review the form. After receipt of a complete application, the Board will make a decision on the application at its next scheduled meeting.

(2) The Surveyor must pay the full renewal fee as prescribed by the Board.

(3) The Surveyor must fulfill the continuing professional educational requirement as specified in the Act for the previous year.

(4) Once the application, fee, and proof of continuing professional education have been received by the Board Office, the Executive Director may approve and the registration will be Active. At the discretion of the Executive Director, he/she may refer the application to the Board for consideration.

§661.55. Registration of Land Surveying Firms.

(a) A Firm shall not offer land surveying services until the Firm applies for and receives a Firm Registration Certificate with the Board, which identifies:

(1) The business and legal names and addresses of the association, partnership, or corporation;

(2) The names and license numbers of all persons registered or licensed under this Act employed by the association, partnership, or corporation.

(b) A person registered or licensed under the Act shall ensure that any Firm employing them complies with the filing requirements set forth in subsection (a) of this section.

(c) A person registered or licensed under the Act and employed by a Firm shall notify the Board in writing within five (5) business days prior to leaving employment or no later than five (5) business days after leaving employment.

(d) The Board may refuse to issue or renew and may suspend or revoke the registration of a firm and may impose an administrative penalty against the owner of a firm for a violation of this chapter by an employee, agent, or other representative of the entity, including a registered professional land surveyor employed by the entity at the time of the violation.

(e) The Board may refer to the Texas Attorney General for appropriate action any person registered or licensed under the Act or any Firm offering surveying services that fails to comply with this section.

(f) A nonrefundable fee, as established by the Board, will be submitted with the registration form.

(g) At the time the firm receives a certificate of registration, before it can offer land surveying services, a responsible party on behalf of the firm shall sign the following: I, _____, on behalf of _____, Business Entity Certificate Number_____, hereby affirm that this Business Entity will always place the interest of the public above all others in our practice of Professional Land Surveying and this Business Entity will adhere to the Texas Professional Land Surveying Practices Act and General Rules of Procedures and Practices adopted by the Board.

§661.57. Land Surveying Firms Compliance.

A Firm shall not offer to perform or perform land surveying services for the public unless registered with the Board pursuant to the requirements of §661.55 of this title (relating to Registration of Land Surveying Firms).

(1) A Firm shall not offer land surveying services to the public unless the offer of services contains the Certificate of Registration firm number.

(2) A Firm shall designate a surveyor of record for the primary and for each branch office. The surveyor of record must be an active license holder who is employed full-time by the Firm and shall perform or directly supervise all survey work and activities that require a license. The surveyor of record shall not be designated as the surveyor of record for more than one primary or branch office.

(3) An active license holder who is a sole practitioner shall satisfy the requirement of the regular, full-time employee.

(4) No surveying services are to be offered to or performed for the public in Texas by a Firm while that Firm does not have a current Certificate of Registration.

(5) A Firm that offers or is engaged in the practice of surveying in Texas and is not registered with the Board or has previously been registered with the Board and whose registration has expired shall be considered to be in violation of the Act and Board rules and will be subject to administrative penalties as set forth in §1071.451 and §1071.452 of the Act and §661.99 of this title (relating to Sanctions and Penalty Schedule).

(6) The Board may revoke a certificate of registration that was obtained in violation of the Act and/or Board rules including, but

not limited to, fraudulent or misleading information submitted in the application or lack of employee relationship with the designated professional surveyor for the Firm.

(7) If a Firm has notified the Board that it is no longer offering service to the public or performing surveying services for the public, including the absence of a regular, full-time employee who is an active professional surveyor licensed in Texas, the Certificate of Registration will expire.

(8) In addition to any other penalty provided in this section, the Board shall have the power to fine, refuse to issue or renew and/or revoke the registration of a firm where one or more of its officers, directors, partners, members, or managers have been found guilty of any conduct which would constitute a violation of the Board's Act or Rules.

(9) A Firm shall cooperate in Board investigations concerning complaints against a current or former Registered Professional Land Surveyor or Licensed State Land Surveyor employed by the Firm, by making all files and other pertinent records available to the surveyor so that he or she may respond to the complaint.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2013.

TRD-201303310
Tony Estrada
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Texas Board of Professional Land Surveying
Effective date: August 28, 2013
Proposal publication date: February 8, 2013
For further information, please call: (512) 239-5263

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22 TAC §661.58

The Texas Board of Professional Land Surveying (Board) adopts the repeal of §661.58, concerning Texas Guaranteed Student Loan Corporation Defaulters, without changes to the proposal text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 593).

The repeal allows the Board to move the rule to Chapter 665 and adopt it as new §665.10. The Board believes that the repealed rule was misplaced among the rule sections that address Applications, Examinations, and Licensing.

There were no public comments received regarding the proposal.

The repeal is adopted under Texas Occupations Code §1071.151; and Texas Education Code §57.491.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 8, 2013.

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Tony Estrada
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SUBCHAPTER E. CONTESTED CASES

22 TAC §§661.60, 661.62 - 661.65, 661.67, 661.86 - 661.88, 661.97, 661.99, 661.100, 661.102

The Texas Board of Professional Land Surveying (Board) adopts amendments to §§661.60, 661.62 - 661.65, 661.67, 661.86 - 661.88, 661.97, 661.99, 661.100, and 661.102, concerning Contested Cases. Sections 661.62 - 661.65, 661.67, 661.87, 661.88, 661.99, and 661.102, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 593). Sections 661.60, 661.86, 661.97, and 661.100 are adopted with changes to the proposed text as published.

The amendments make minor, non-substantive corrections to capitalization.

The amendment to §661.60 clarifies that a failure to fully comply with Board requests, inquiries, decisions, and orders will result in a separate and distinct offense that may result in penalties as provided both in the Act and in Board rules.

The amendment to §661.62 more emphatically states that a filed complaint later withdrawn by the complainant will not affect an existing investigation or the actions of the Executive Director with respect to the complaint. The adopted amendment also provides for greater involvement of the Board's Complaint Review Panel, the make-up of which is included in the amendment, in decisions to dismiss complaints when an investigation fails to substantiate alleged violations of the Professional Land Surveying Practices Act ("Act") or Board rules. The adopted amendment streamlines the rules by eliminating the statement reiterating §1071.402(g) of the Act. The adopted amendment eliminates certain subsections as duplicative of provisions in the Administrative Procedure Act which may be amended from time to time by the Legislature. The adopted amendment adds precision in the various acts that the Board may take after the Board reviews a proposal for decision submitted by State Office of Administrative Hearings.

The amendment to §661.63 institutes a sixty-day period following a Board no-violation dismissal of a complaint within which a license holder who was the subject of the complaint may request in writing that the Board find the complaint to be frivolous. The amendment creates a requirement that the written request for a finding of frivolous complaint contain a reasoned justification to illustrate that the complaint was made for the purpose of harassment and demonstrates no harm to any person.

The amendment to §661.86 clarifies that an administrative law judge holds the hearing in a contested case and makes findings of fact and conclusions of law. The administrative law judge issues a Proposal for Decision which is then reviewed and subject to Final Decision and Order by the Board.

The amendment to §661.97 clarifies that a Texas registered land surveyor or firm receiving a land surveying disciplinary action in another jurisdiction has an obligation to report the action to the Board within 30 days of the action becoming final. The amend-

ment is less definitive than the current rule about the effect of the final action from another jurisdiction on the Board's disciplinary action in this state. While the Board believes it is important to receive notice of a surveying regulatory agency disciplinary action from another jurisdiction that concerns a Texas land surveyor or firm, the adopted rule makes clear that the final action in the other jurisdiction may or may not constitute evidence of a violation in this state.

The amendment to §661.99 renames the rule as Sanctions and Penalty Schedule. The Board believes that each and every rule it has promulgated is for the protection of the public and is in furtherance of its statutory duty as directed by the Texas Legislature. Consequently, the Board has determined that the violation of any Board rule may result in a reprimand and the imposition of a $1,500 penalty and adopts this general penalty for any rule violation. The rule, however, acknowledges that the Executive Director or the Board may base final decisions regarding disciplinary action on considerations listed in §1071.451 of the Professional Land Surveying Practices Act and final decisions may vary from the Sanctions and Penalty Schedule depending upon the circumstances.

There were no public comments received regarding the proposal.

The amendments are adopted under Texas Occupations Code §§1071.151, 1071.203, 1071.401, 1071.402, 1071.403, 1071.4035, 1071.404, 1071.451, 1071.452, 1071.453, 1071.454, 1071.455, 1071.456, 1071.457, 1071.458, 1071.459, 1071.501, 1071.502, 1071.503 and 1071.504; and Texas Government Code §§2001.058, 2001.141, and 2001.142.

§661.60. Responsibility to the Board.

(a) A registrant/licensee/SIT/Firm whose registration/license/certification is current or has expired but is renewable under the Texas Professional Land Surveying Practices Act and Board rules, is subject to all provisions of the Act and Board rules. A registrant/licensee/SIT/Firm shall respond fully and truthfully to all Board inquiries and furnish all maps, plats, surveys or other information or documentation requested by the Board within 30 days of such registrant's, licensee's, SIT's or Firm's receipt of a Board inquiry or request concerning matters under the jurisdiction of the Board. An inquiry or request shall be deemed received on the earlier of:

(1) The date actually received as reflected by a delivery receipt from the United States Postal Service or a private courier; or

(2) Two days after the Board request or inquiry is deposited in a postage paid envelope in the United States Mail addressed to the registrant, licensee, SIT or Firm at his/her last address reflected in the records of the Board.

(b) Any registrant, licensee, SIT or Firm subject to Board decisions or orders shall fully comply with the final decisions and orders within any time periods which might be specified in such decisions or orders. Failure to timely, fully and truthfully respond to Board inquiries, failure to furnish requested information, or failure to timely and fully comply with Board decisions and orders, shall constitute separate offenses or misconduct subject to such penalties as may be imposed by the Board as provided under the Act and Rules.

(c) The registrant/licensee/SIT/Firm is required to cooperate with all investigations of the Board, including but not limited to site inspections, records review and allowing interviews with employees regarding compliance with the Act and Rules.

§661.86. Final Decisions and Orders.

(a) All final decisions, recommendations, and orders of the Board shall be in writing and shall be signed by the Board Chair. Based on the findings of fact, conclusions of law, and proposal for decision, the Board by order may determine that:

(1) a violation occurred, and impose an administrative penalty or other sanction authorized by law; or

(2) a violation did not occur.

(b) Parties shall be notified of any decision or order. A copy of the decision, recommendation, or order shall be delivered or mailed to the party and to his/her attorney of record. The notice of the decision must inform the person of the person's right to a hearing on the occurrence of the violation, the amount of the penalty, or both.

§661.97. Action in Another Jurisdiction.

A Texas registered land surveyor or firm who receives a disciplinary action relative to the practice of land surveying in another jurisdiction shall report such final disciplinary action to the Texas Board within 30 days. An authenticated copy of the order, adjudication, decision, or evidence of other final action by or on behalf of the regulatory authority in another jurisdiction, which serves substantially the same function as the Texas Board, may be conclusive evidence of such violation, and may be sufficient to support disciplinary action in this state.

§661.100. Probation Guidelines.

(a) In addition to or in lieu of an action to revoke, suspend, reprimand, refuse to renew or assess a penalty the Board may initiate an action, which will result in the affected registrant or licensee being placed on probationary status. The following factors may be considered in making a decision regarding probation:

(1) Type and severity of violation;

(2) Economic harm;

(3) History of violations;

(4) Efforts to correct the violation;

(5) Action premeditated or intentional;

(6) Motive;

(7) Attempted concealment of violation;

(8) The likelihood of future misconduct as shown by:

(A) Degree of remorse;

(B) Remedial procedures to prevent future violations; and

(C) Rehabilitative motivation or potential.

(9) Any other relevant circumstances or facts.

(b) If the Board determines that probation is appropriate to deter future violations of the Act and Board rules by the Respondent, probation shall be administered consistently under the following guidelines:

(1) For violations with greater potential to jeopardize public health, safety, welfare, or property, the term of the probation may not be less than one year or more than five years; and

(2) For violations with less potential to jeopardize public health, safety, welfare, or property, the term of the probation may not be less than six months or more than one year.

(c) The Board may prescribe conditions of probation on a case-by-case basis depending on the severity of the violation that will include reporting requirements, restrictions on practice, site inspections,

and/or continuing education requirements as applicable as described in this subsection. The Board reserves the right to reconsider the terms of probation based upon any extenuating circumstances.

(d) The Board will determine the reporting requirements for each probation and will include a list of Board probation requirements and schedule for completion of those requirements in which the Board may require the license holder to submit documentation including, but not limited to, survey plats, client lists, job assignments, proof of continuing education participation, restricted practice reports, and other documents concerning the probation to demonstrate compliance with the conditions of probation. As a condition of probation, the license holder shall accept that schedule deadlines are final.

(e) The Board will receive and date stamp documentation on the day received and track compliance with probation requirements for each probated suspension. The Board shall honor postmarks for date of submittal; however, if not received by the required deadline, the license holder shall have the burden of proof to demonstrate documentation was submitted by the schedule deadline.

(f) As a condition of probation, the Board may require the license holder to obtain continuing education in addition to the minimum requirements of §664.3 of this title (relating to Numerical Requirements for Continuing Education) and may prescribe formal classroom study, workshops, seminars, and other specific forms of continuing education.

(g) Failure to comply with probation requirements shall result in revocation of probation and reinstatement of the original sanction.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Tony Estrada
Executive Director
Texas Board of Professional Land Surveying
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For further information, please call: (512) 239-5263

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22 TAC §§661.69, 661.70, 661.72, 661.73, 661.75, 661.77 - 661.80, 661.82 - 661.85, 661.91, 661.93

The Texas Board of Professional Land Surveying (Board) adopts the repeal of §§661.69, 661.70, 661.72, 661.73, 661.75, 661.77 - 661.80, 661.82 - 661.85, 661.91, and 661.93, concerning Contested Cases, without changes to the proposal as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 598).

The repeals render the Board's rules more consistent with current law. Texas Government Code Chapter 2001, the Administrative Procedure Act, and State Office of Administrative Hearings rules set forth in the Texas Administrative Code govern the form and procedure for notice, motions, amendment of pleadings, hearing procedures, depositions, subpoenas, the record, and appeals in a pending proceeding. Board rules on these topics are either outdated or do not add any useful requirements to the aforementioned sources of law and administrative procedure that govern contested case hearings.

There were no public comments received regarding the proposal.

The repeals are adopted under Texas Occupations Code §1071.151; Texas Government Code §§2001.051, 2001.052, 2001.056, 2001.057, 2001.058, 2001.060, 2001.081 - 2001.086, 2001.088, 2001.089, 2001.090, 2001.094 - 2001.103, 2001.144, 2001.145, 2001.146 and 2001.171 - 2001.178; and 1 TAC §§155.101, 155.103, 155.153, 155.155, 155.251, 155.301, 155.306, 155.307, 155.401, 155.503, 155.505, and 155.507.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §§663.1, 663.3 - 663.6, 663.8 - 663.10

The Texas Board of Professional Land Surveying (Board) adopts amendments to §§663.1, 663.3 - 663.6, and 663.8 - 663.10, concerning General Practice Standards. Sections 663.1, 663.3 - 663.6, 663.8, and 663.10 are adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 599). Section 663.9 is adopted with changes to the proposed rule text as published.

The amendments make minor, non-substantive corrections to capitalization.

The amendment to §663.1 clarifies that the standards of responsibility set forth in Chapter 663 are standards for a land surveyor's responsibility to be exercised in the performance of his/her professional practice. The amendments remove the aspirational suggestion that the professional practice of land surveying "should" be conducted with the highest degree of moral and ethical standards and replace the term "should" with the more definitive and obligatory "shall." The Board believes that this change will clarify its high expectations and enhance the regulated community's commitment to a higher level of professional responsibility and practice. The amendments group together aspirational statements and statements of the Board's intent and interpretation of the rules and make clear that rule violations may result in a variety of disciplinary actions. The amendment also requires a Firm offering land surveying services to notify service recipients of the Board's contact information by various alternative methods so that complaints, if any, can be directed to the Board.

The amendment to §663.3 adds, in addition to a client or employer, the category "the public" as having an expectation of careful, responsible, and competent performance of professional land surveying services. The amendments reorganize the phrase "by education or experience" to closer proximity with the reference to services which a land surveyor is offering to provide. This amendment is intended to make clear that a judgment about qualifications to provide services should be based upon a land surveyor's education or experience to provide such services.

The amendment to §663.4 adds, in addition to a client or employer, the category "the public" as having an expectation of a professional land surveyor avoiding conflicts of interest. This amendment emphasizes that a professional land surveyor must protect the confidentiality of professional communications and land survey products. It also eliminates mere suggestion of action and creates an obligation to act in the event a land surveyor confronts a conflict of interest that would impair his/her independent judgment during contemplated employment, employment, or the performance of services.

Because of the frequency of complaints about the problem that this section addresses, the amendment of §663.5 adds emphasis to the Board's expectation that a professional land surveyor will avoid allowing any person who is not registered or licensed under the Professional Land Surveying Practices Act to exert control over the performance of professional land surveying services.

The amendment to §663.6 states in active voice the Board's expectation that a professional land surveyor will reasonably assist the Board in preventing and exposing, when a surveyor has personal knowledge, the unauthorized practice of land surveying.

The amendment to §663.8 removes the aspirational "should" in the opening paragraph and replaces it with "shall," creating consistency with the paragraphs that follow and confirming the Board's expectation that a professional land surveyor will abide by state and local code and ordinance provisions.

The amendment to §663.9 restates the meaning and significance of a land surveyor's use of his/her seal and signature on documents and clarifies that when using these, he/she is making certain representations to the public and is accepting professional responsibility for the work. The amendment adds the requirement that a surveyor or the Firm shall retain records relating to the preparation of a land survey pursuant to the time period established by the land surveyors' statute of repose set forth in the Texas Civil Practice and Remedies Code.

The amendment to §663.10 makes minor corrections to grammar and more precisely identifies the referenced "disciplinary rules" as provisions and requirements set forth within the Board rules.

Public comments were received concerning §663.9(c) suggesting that the phrase within the subsection "using his seal" be changed to "using his/her seal." In its discussion, the Board also noted that "personal knowledge" should be changed simply to "knowledge." These changes were approved by the Board.

No public comments were received regarding the other sections.

The amendments are adopted under Texas Occupations Code §§1071.002, 1071.151, 1071.157, 1071.251, 1071.351, 1071.401 and 1071.504; and Texas Civil Practice and Remedies Code §16.011.

§663.9. Professional Conduct.

(a) The surveyor shall not offer or promise to pay or deliver, directly or indirectly, any commission, political contribution, gift, favor, gratuity, or reward as an inducement to secure any specific surveying work or assignment; provided, however, this rule shall not prevent a professional surveyor from offering or accepting referral fees or from discounting fees for services performed, with full disclosure to all interested parties. Further provided, however, a surveyor may pay a duly licensed employment agency its fee or commission for securing surveying employment in a salaried position.

(b) The surveyor shall not make, publish, or cause to be made or published, any representation or statement concerning his/her professional qualifications or those of his/her partners, associates, Firm, or organization which is in any way misleading, or tends to mislead the recipient thereof, or the public concerning his/her surveying education, experience, specialization, or any other surveying qualification.

(c) The surveyor, in using his/her seal, signature, or professional identification on documents, plats, maps, reports, plans, or other land surveying services or products, is representing to the public that the surveyor whose identification appears thereon has knowledge thereof and accepts professional responsibility therefor.

(d) The surveyor and/or the survey Firm shall maintain in a retrievable format all records and files pertaining to the preparation of a land survey document for a minimum of ten (10) years from the date of the document pursuant to §16.011 of the Texas Civil Practice and Remedies Code.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 663. STANDARDS OF RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER A. GENERAL PRACTICE STANDARDS

22 TAC §663.2, §663.7

The Texas Board of Professional Land Surveying (Board) adopts the repeal of §663.2 and §663.7, concerning General Practice Standards, without changes to the proposal as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 607).

The adopted repeal of §663.2 is a matter of reorganization; and the repeal of §663.7 is adopted to eliminate redundancies.

The repeal of §663.2 is necessary because the Board believes that the substance of the rule should be part of §663.1. The adopted amendments to §663.1 will contain the substance of repealed §663.2. The reorganization groups together statements of the Board's expectations with regard to ethical standards and the intent of the general practice standards expressed in the

rules. The Board adopts the repeal of §663.7, because the section is duplicative of other provisions in the Board rules.

No public comments were received regarding the proposal.

The repeals are adopted under Texas Occupations Code §§1071.002, 1071.151, 1071.401.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 663. STANDARDS OF PROFESSIONAL RESPONSIBILITY AND RULES OF CONDUCT

SUBCHAPTER B. PROFESSIONAL AND TECHNICAL STANDARDS

22 TAC §§663.13 - 663.20

The Texas Board of Professional Land Surveying (Board) adopts amendments to §663.13 and §§663.15 - 663.20; and new §663.14, concerning Professional and Technical Standards. Sections 663.13 - 663.16 and §§663.18 - 663.20 are adopted without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 602). Section 663.17 is adopted with changes to the proposed text as published.

The amendments make minor, non-substantive corrections to capitalization and formatting.

The amendment to §663.13 inserts the word "land" before the word "surveying," to clarify this term as opposed to marine surveying, traffic surveying, or other endeavors where the generic term "surveying" may be in use. The amendment clarifies that the Board considers any survey which delineates, segregates, separates, or partitions any interest in real property to be subject to the standards of the Board rules except when such a document is prepared as a subdivision plat as provided in amended §663.16.

The Board adopts new §663.14. The language for the new section is similar to the language in existing §663.20. The new section states that the Board will consider an applicant's or a registrant's criminal convictions as they may relate to the practice of professional land surveying. This section does not include §663.20(d), which lists specific crimes that the Board believes are related to land surveying, because this list will be reevaluated and likely expanded as the Board works to create its Guidelines pursuant to §53.025 of the Texas Occupations Code. The section also increases the fee for responding to a request for a history evaluation to determine a person's eligibility for registration from fifty dollars ($50) to one hundred dollars ($100).

The amendment to §663.15 renames the rule as Precision and Accuracy. The amended rule is adopted to eliminate specific positional tolerance requirements which were determined by surveying means and methods that the Board now considers outmoded. The amendment acknowledges that more current methods and equipment, such as GPS, for example, are presently employed by land surveyors to attain accuracy and precision in measurement.

The amendment to §663.16 is to more clearly state the specific principles a land surveyor shall rely upon, and specific actions a land surveyor shall take, in delineating a boundary line or reporting a boundary location based on opinion when physical monumentation is absent.

The amendment to §663.17 is to clarify the requirement of sufficiency of monuments that a land surveyor sets. The amended rule adds the requirement of an adequate quantity of monuments that the Board expects a land surveyor to leave as physical monuments on which the public can reasonably rely in identifying the property or premises being surveyed. The amendments also emphasize the importance of a land surveyor selecting monumentation that is adequate to withstand the forces of nature in the location where it is placed. The rule amendments eliminate redundant terms all of which are considered to constitute property or boundary corners. The amendments eliminate redundant requirements contained in other rules or clarified by definitions contained in the Board's rules. The amendments require any metes and bounds description to be tied by relative position to a boundary corner identified in a recorded document which describes the property to be affected by the easement.

The amendment to §663.18 is adopted to highlight the significance of the land surveyor's certification and emphasize its proper handling and use. The amendments state the expectation that the land surveyor will maintain control and possession of his/her seal. The amendments require personal use of the professional's seal and signature and specify that such certifications should be applied only to final land surveying documents. The amendments require that a land surveyor's preliminary documents bear no seal or signature and state on the face that the document is not to be recorded or relied upon as a final document. The amendments remove the requirement that a surveyor's certification be used only when the surveyor has personal factual knowledge. This change acknowledges that there are instances when the surveyor may have to rely on other authoritative sources of information.

The amendment to §663.19 is adopted to rename the rule as Survey Drawing/Written Description/Report. The amended section is adopted to make adjustments because the term "report" has now, with the rule amendments, been defined in the Board's definitions of terms. The amendment also recognizes updated technologies utilized by land surveyors and expands the requirement of placing a Firm name and registration number on a survey drawing where appropriate.

The amendment to §663.20 deletes all of the existing text, because the majority of the text has been adopted as new §663.14. The amendment renames the section "Subdivision Plat" and adds new text that states the Board considers any survey which delineates, segregates, separates, or partitions any interest in real property to be subject to the standards of the Board rules except when such a document is prepared as a subdivision plat delineating the perimeter boundary. In such case, the amendment provides that the surveyor must abide by state codes and any pertinent local codes or ordinances.

Public comments were received regarding §663.15 saying that the Board needed to include tolerances in the rule text because the language was vague otherwise. The Board felt the change to this rule was necessary to account for modern technology used in the field, such as GPS. The surveyor, based on the equipment being used, should determine the appropriate tolerance. The Board rejected the suggestions.

Comments were also received regarding §663.17. The proposed suggestions in the public comment regarding the addition of "Easements shall be monumented as described in subsection (b) of this section" and "If the surveyor chooses to monument the easement or is directed to do so by his/her clients, such monumentation shall be in compliance with subsection (b) of this section" are addressed in §663.17(a) and therefore redundant. Subsection (a) describes the monument set by a registered professional land surveyor and when the monument is required. The Board rejected the suggestion.

Comments were received regarding proposed amendments to §661.31 suggesting that "corner" and an accompanying definition be added. The Board disagreed with the comments but did agree to add "in accordance with subsection (b) of this section" to the last sentence of §663.17(c).

Comments were also received for §663.19 suggested that course references noted on the survey drawing should identify the monumented line to a record-bearing or established geodetic system for directional control. The Board rejected this suggestion.

The amendments and new section are adopted under Texas Occupations Code §§53.022, 53.023, 53.025, and 1071.151.

§663.17. Monumentation.

(a) All monuments set by registered professional land surveyors shall be set at sufficient depth to retain a stable and distinctive location and be of sufficient size to withstand the deteriorating forces of nature and shall be of such material that in the land surveyor's judgment will best achieve this goal.

(b) When delineating a property or boundary line as an integral portion of a survey (survey being defined in the Act, §1071.002(6) or (8)), the land surveyor shall set, or leave as found, an adequate quantity of monuments of a stable and reasonably permanent nature to represent or reference the property or boundary corners. All survey markers shall be shown and described with sufficient evidence of the location of such markers on the land surveyors' drawing, written description or report.

(c) All metes and bounds descriptions prepared as an exhibit to be used in easements shall be tied to corners of record related to the boundary of the affected tract in accordance with subsection (b) of this section.

(d) Where practical, all monuments set by a Professional Land Surveyor to delineate or witness a boundary corner shall be marked in a way that is traceable to the responsible registrant or associated employer.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 664. CONTINUING EDUCATION

22 TAC §664.4

The Texas Board of Professional Land Surveying (Board) adopts amendments to §664.4, concerning Continuing Education, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 608).

The amendments make minor, non-substantive corrections to capitalization and grammar. The amendments also add professional development categories providing service and activities that the Board may accept and approve for continuing education credit.

No public comments were received regarding the proposal.

The amendments are adopted under Texas Occupations Code §1071.151 and §1071.301.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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CHAPTER 665. EXAMINATION ADVISORY COMMITTEES

22 TAC §§665.1 - 665.6, 665.8 - 665.10

The Texas Board of Professional Land Surveying (Board) adopts amendments to §§665.1 - 665.6, 665.8, and 665.9; and new §665.10, concerning Examination Advisory Committees, without changes to the proposed text as published in the February 8, 2013, issue of the *Texas Register* (38 TexReg 609).

The amendments make minor, non-substantive corrections to capitalization and grammar.

The amendment to §665.3 removes the limitation providing that an advisory committee member is not eligible to serve more than two consecutive terms.

The amendment to §665.4 states explicitly that a simple majority of the membership of a committee constitutes a quorum. The adopted amendment clarifies that grounds for removal from the committee, because of absences from more than half of the committee and subcommittee meetings in a calendar year or absences from three consecutive meetings, are qualified to state

that the grounds for removal do not apply unless the described absences are without cause.

The Board adopts new §665.10, concerning Texas Guaranteed Student Loan Corporation Defaulters. The new section is a matter of reorganization and restores the rule that is currently located at §661.58 of the Board's rules. Pursuant to statute, the rule provides that student loan defaulters identified by the Texas Guaranteed Student Loan Corporation are precluded from having their professional land surveying license renewed under certain circumstances.

No public comments were received regarding the proposal.

The amendments and new section are adopted under Texas Occupations Code §1071.151 and §1071.552; and Texas Education Code §57.491.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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TITLE 25. HEALTH SERVICES

PART 1. DEPARTMENT OF STATE HEALTH SERVICES

CHAPTER 39. PRIMARY HEALTH CARE SERVICES PROGRAM

SUBCHAPTER A. PRIMARY HEALTH CARE SERVICES PROGRAM

25 TAC §§39.1 - 39.4, 39.6 - 39.9, 39.11

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §§39.1 - 39.4, 39.6 - 39.9, and 39.11, concerning the provision of primary health care services in Texas. The amendments to §§39.1 - 39.3 and 39.6 are adopted with changes to the text as published in the June 21, 2013, issue of the *Texas Register* (38 TexReg 3883). Sections 39.4, 39.7 - 39.9, and 39.11 are adopted without changes and, therefore, the sections will not be republished.

BACKGROUND AND PURPOSE

Health and Safety Code, Chapter 31, authorizes the department to establish a program to provide primary health care services in Texas. The current Primary Health Care Services Program provides access to primary health care services for individuals with incomes at or below 150% of the Federal Poverty Level residing in Texas who are unable to access the same care through other funding sources or programs.

The amendments are necessary to implement an anticipated increased legislative appropriation in the 2014-2015 General Appropriations Bill, Senate Bill 1, 83rd Legislature, Regular Session, 2013. The expanded Primary Health Care Services Program will emphasize primary and preventive care to women age 18 and above and will expand access to services by increasing the income eligibility to 200% of the Federal Poverty Level.

SECTION-BY-SECTION SUMMARY

Amendments to §39.1(b) rephrases the rule to state, "The Department of State Health Services seeks to fund local project that utilize early intervention and prevention of health problems with emphasis on primary and preventive services to women," to add clarity to the section and establish the added services to the new Primary Health Care expanded program requirements.

Section 39.2 is amended for consistency by removing immunizations from the examples of primary health care services provided in the definition of "Primary Health Care Services." The primary health care services that were deleted in the proposed publication are reinstated in the adoption rule text in the definitions of "Other benefit" and "Primary Health Care Services."

Changes are made to §39.3 to remove redundancies in the criteria for determining unmet needs.

An amendment to §39.4(a) removes language regarding the provision of services by the department to clarify that the department does not provide direct services. Language regarding eligible individuals receiving services close to their home is also removed, as ensuring geographic coverage is included in §39.3.

Section 39.6 is amended to reflect the income eligibility increase from individuals at or below 150 percent of the Federal Poverty Level to those at or below 200 percent Federal Poverty Level.

An amendment to §39.7 allows program recipients 30 days instead of 14 days to notify providers of changes in eligibility.

An amendment to §39.8 replaces the word "Act" with the name "Primary Health Care Services Program."

An amendment to §39.9 clarifies that the department does not provide direct services and therefore contractors, not the department, may deny, modify, suspend, or terminate services if the recipient/applicant is no longer eligible or provided false or incomplete information.

An amendment to §39.11(c) references Health and Safety Code, Chapter 31, and the Primary Health Care Services Policy Manual regarding providers' reporting requirements for the purpose of consistency.

COMMENT

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 associations including the Texas Association of Community Health Centers, Inc., and The Texas Podiatric Medical Association. The commenters were not against the rules in their entirety; however, the commenters suggested recommendations for change as discussed in the summary of comments.

Comment: Regarding the introduction in §39.1(b), one commenter suggested adding in "utilize early intervention and prevention of health problems" after "The Department of State Health Services seeks to fund local projects that emphasize primary and preventive services to women." The commenter

requested this change so that the rules would recognize that the current program, which serves men also, will continue, with an added focus on services for women.

Response: The commission agrees and has revised §39.1(b) to state "The Department of State Health Services seeks to fund local projects that utilize early intervention and prevention of health problems with emphasis on primary and preventive services to women."

Comment: In §39.1(b), another commenter stated that proposed revisions to this section of the rules would limit funding to projects that "emphasize primary and preventive services to women." The commenter stated that revisions would likely decrease or eliminate altogether the important health care services that are provided to podiatrists currently provided to male recipients. Additionally, the department does not have legal authority under current law to require that the program emphasize "services to women" to the exclusion of other eligible recipients.

Response: The current rule text in §39.1(a) states: "The purpose of this subchapter is to establish a system of primary health care services for eligible individuals as prescribed by Health and Safety Code, Chapter 31." The commission agrees that the department does not have the legal authority to exclude male recipients as "eligible individuals" in the Health and Safety Code, Chapter 31. The department has moved the phrase "utilize early intervention and prevention of health problems" to clarify the proposed addition of "emphasize primary and preventive services to women," to §39.1(b). The clarification and additional language is to establish new services specific to women under the expanded Primary Health Care Program, not to exclude males.

Comment: In §39.2(7)(A)(iii), renumbered as clause (v), one commenter suggested the addition of "unless the services, copay or deductible is not covered by the program." The commenter requested this change to allow for coverage of the deductible and copay in the instance in which services are covered by insurance but high deductibles and copays create a barrier for clients.

Response: The commission does not have the statutory authority under Health and Safety Code, Chapter 31, to make this change. No change was made as a result of the comment.

Comment: In regards to §39.2(7)(C), one commenter suggested deleting this provision or more specifically limiting the provision to those situations where services under the program may be the subject of a cause of action. The commenter asserted that the provision in its current form could be an eligibility barrier.

Response: The commission does not have the statutory authority under Health and Safety Code, Chapter 31, to make this change. No change was made as a result of the comment.

Comment: Concerning podiatry services being deleted from §39.2(8), one commenter stated that the Act, Health and Safety Code, §31.002(a)(4)(N), enumerates "podiatry services" as being included in the definition of "Primary Health Care Services." The proposed revision to the rule deletes "podiatry services" as a specific health care service which is currently listed under the definition section of "Primary Health Care Services." The commenter was concerned that this proposed revision/deletion would be in direct conflict with the language in the Act and will likely decrease or eliminate altogether the important health care services that podiatrists currently provide to eligible recipients.

Response: The proposed rule text in §39.2(8) published in the *Texas Register* deleted specific primary health care services listed in Health and Safety Code, §31.002(a)(4)(N), including "podiatry services," due to the anticipated passage of House Bill (HB) 3687, in the 83rd Legislature, Regular Session, 2013. Because HB 3687 did not pass during the legislative session, the services have been reinstated in §39.2(8), including "podiatry services."

Comment: In §39.3(b)(4), one commenter suggested the addition of "identified by the community" after "key health indicators," in order to add needed focus to the regulations.

Response: The commission agrees and added the text "identified by the department with the assistance of the community." This will allow the community to assist the department in identifying key health indicators.

Comment: In §39.6(c), one commenter suggested adding the phrase "assure that each individual is" to the preceding sentence and deleting the words "be" in the subsequent list in §39.6(c)(1) and (2).

Response: The commission agrees and made the suggested changes for grammatical consistency.

Comment: In §39.10(b), one commenter suggested changing the phrase "by the department" to "to the department" for consistency with changes made to §39.9.

Response: The commission disagrees because a rule that was not published as a proposed rule in the *Texas Register* cannot be amended in the adoption rulemaking process. 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 agencies' legal authority.

STATUTORY AUTHORITY

The amendments are authorized by Health and Safety Code, §31.004, which requires the department to adopt rules necessary to administer the Primary Health Care Services 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.

§39.1. Introduction.

(a) The purpose of this subchapter is to establish a system of primary health care services for eligible individuals as prescribed by Health and Safety Code, Chapter 31. The rules in this subchapter do not apply to any subsequent subchapter.

(b) The Department of State Health Services seeks to fund local projects that utilize early intervention and prevention of health problems with emphasis on primary and preventive services to women. Access to appropriate levels of health care can reduce health expenditures, mortality, morbidity, and improve individual productivity, health status, and economic growth.

§39.2. Definitions.

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

(1) Act--The Texas Primary Health Care Services Act, Health and Safety Code, Chapter 31.

(2) Applicant--An individual and/or family applying to receive primary health care services.

(3) Commission--The Texas Health and Human Services Commission.

(4) Commissioner--The Commissioner of Health.

(5) Department--The Department of State Health Services.

(6) Eligible individual--An eligible recipient of primary health care services under the Act.

(7) Other benefit--A benefit, other than a benefit provided under the Act, to which an individual is entitled for payment of the costs of primary health care services, including:

(A) benefits available from:

(i) an insurance policy, group health plan, or prepaid medical care plan;

(ii) Title XVIII or Title XIX of the Social Security Act;

(iii) the Veterans Administration;

(iv) the Civilian Health and Medical Program of the Uniformed Services; and

(v) workers compensation or any other compulsory employer's insurance program.

(B) a public program created by federal or state law, or by an ordinance or rule of a municipality or political subdivision of the state, except those benefits created by the establishment of a city or county hospital, a joint city-county hospital, a county hospital authority, a hospital district, or by the facilities of a publicly supported medical school; or

(C) benefits resulting from a cause of action for medical, facility, or medical transportation expenses, or a settlement or judgment based on the cause of action, if the expenses are related to the need for services provided by the Act.

(8) Primary Health Care Services--May include the following:

(A) diagnosis and treatment;

(B) emergency medical services;

(C) family planning services;

(D) preventive health services;

(E) health education;

(F) laboratory, x-ray, nuclear medicine, or other appropriate diagnostic services;

(G) nutrition services;

(H) health screening;

(I) home health care;

(J) dental care;

(K) transportation;

(L) prescription drugs and devices and durable supplies;

(M) environmental health services;

(N) podiatry services; and

(O) social services.

(9) Program--The primary health care services program created by the Act.

(10) Provider--An entity that, through a grant or a contract with the department, delivers primary health care services that are purchased by the department for the purposes of the Act.

(11) Recipient--An individual receiving primary health care services under the Act.

(12) Request for proposal--A solicitation providing guidance and instructions issued by the department to entities interested in submitting applications to provide primary health care services under the Act.

(13) Services--Primary health care services.

(14) Texas resident--An individual who is physically present within the geographic boundaries of the state, and who:

(A) intends to remain within the state, whether permanently or for an indefinite period;

(B) does not claim residency in any other state or country;

(C) is under 18 years of age, and at least one of his/her parents, managing conservator, or guardian is a bona fide resident of Texas;

(D) is a person residing in Texas and his/her legally dependent spouse is a bona fide resident of Texas; or

(E) is an adult residing in Texas whose legal guardian is a bona fide resident of Texas.

§39.3. General Program Requirements.

(a) Because budgetary limitations exist, all program providers shall offer at least the following priority services:

(1) diagnosis and treatment;

(2) emergency medical services;

(3) family planning services;

(4) preventive health services;

(5) health education; and

(6) laboratory, x-ray, nuclear medicine, or other appropriate diagnostic services.

(b) The department, through approved providers, shall provide for the delivery of primary health care services to those populations that demonstrate unmet needs due to the inaccessibility and/or unavailability of primary health care services. Unmet needs may be determined by, but are not limited to, the following criteria:

(1) geographic area;

(2) demography;

(3) socioeconomic conditions;

(4) key health indicators identified by the department with the assistance of the community; and

(5) health resources available in the community.

(c) The department may deliver services directly to eligible individuals if existing private or public providers or other resources in the service area are unavailable or unable to provide those services, as evidenced by the applications received during the Request for Proposals process. The department shall make determinations that providers or

resources are unavailable or unable to provide services in accordance with Health and Safety Code, §31.005.

(d) Individuals eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service shall receive prescription drug benefits according to Medicare regulations and procedures. Individuals who are not eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service shall receive covered prescription drugs dispensed by pharmacy providers according to this chapter.

§39.6. Eligibility Requirements and Provision of Services to Recipients.

(a) Individuals covered under the Primary Health Care Services Program are those who are not eligible for other benefits. Individuals eligible for prescription drug benefits under Medicare, Part D, who reside in areas of the state served by program providers that offer prescription drugs as a primary health care service may be eligible for other program services, and for prescription drugs not covered by Medicare, Part D.

(b) Nothing in this section shall preclude a system of integrated eligibility with the commission.

(c) In accordance with program policy, providers shall assure that each individual is:

(1) in financial need based on a family income that does not exceed 200% of the current Federal Poverty Level guidelines; and

(2) a Texas resident.

(d) In accordance with program policy, providers:

(1) shall assist applicants in completing the eligibility screening process and shall provide coverage if the applicant is potentially eligible for program services;

(2) may collect co-payments from eligible individuals who receive primary health care services; and

(3) shall provide services to potentially eligible individuals who require immediate medical attention on a presumptive eligibility basis.

(e) Subsection (d)(4) of this section notwithstanding, no otherwise eligible individual unable to pay a co-payment may be denied services.

(f) If funds are available, the program may pay co-payments required under federal regulations for eligible individuals receiving prescription drug benefits under Medicare, Part D, if the eligible individual resides in an area of the state served by a program provider that offers prescription drugs as a benefit under the primary health care service program.

(g) No eligible individual or person legally responsible for an eligible individual shall be required to make a pre-treatment payment.

(h) An individual found ineligible for program services may reapply at any time.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 9, 2013.

TRD-201303338

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Proposal publication date: June 21, 2013
For further information, please call: (512) 776-6972

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CHAPTER 73. LABORATORIES

25 TAC §73.54, §73.55

The Executive Commissioner of the Health and Human Services Commission (commission), on behalf of the Department of State Health Services (department), adopts amendments to §73.54 and §73.55, concerning the Fee Schedule for Clinical Testing and Newborn Screening and the Fee Schedule for Chemical Analyses. The amendments to §73.54 and §74.55 are adopted with changes to the proposed text as published in the June 14, 2013, issue of the *Texas Register* (38 TexReg 3743).

BACKGROUND AND PURPOSE

The adopted amendments are necessary to clarify the type of testing offered and the fees for laboratory services - specifically, fee schedules for clinical testing, newborn screening and chemical analyses. These amendments removed low volume tests and those performed at Women's Health Laboratory (WHL), added new tests and renamed the tests to more accurately reflect the actual procedure, and also adjusted test pricing, as described herein. A "low volume test," for purposes of this preamble, is one: that was ordered less than 100 times in 2011; that is not considered a core public health test by the department; and that is readily available from commercial laboratories. In addition, §73.54 was reorganized by removing the language previously at subsection (c), which relates to tests performed on clinical specimens at the department's WHL, since that laboratory permanently closed on August 31, 2012. Some services offered exclusively at WHL in the rules, such as pap smears and cytology, were eliminated through this rulemaking adoption while some of the other tests (e.g., routine clinical tests and tuberculosis testing) will be performed at the remaining two department laboratories - South Texas Laboratory (STL) and the Austin laboratory. The WHL submitters were notified as to which department laboratory will perform their testing as of September 1, 2012. Those few clinical tests which will no longer be offered by the department under this rulemaking adoption are available at commercial laboratories. The amended fee changes reflect the department's current costs for providing the services.

Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011, requires that the department: (1) develop, document and implement procedures for setting fees for laboratory services, including updating and implementing a documented cost allocation methodology that determines reasonable costs for the provision of laboratory tests; and (2) analyze the department's costs and update the fee schedule as needed in accordance with Texas Health and Safety Code, §12.032(c). In the much larger rulemaking action last year (adopted October, 2012), the Laboratory Services Section (LSS) developed and documented a cost accounting methodology and determined the costs for each test performed. The methodology for developing cost per test included calculating the specific costs of performing the test or analysis and the administrative and overhead cost necessary to operate the state laboratories in question. It is these figures together which determined the revised fee amount for each of the

tests in these fee schedules. In order to determine the specific cost for each test or analysis, the LSS performed a work load unit study for every procedure or test offered by the laboratory. A work load unit was defined as a measurement of staff time, consumables and testing reagents required to perform each procedure from the time the sample enters the laboratory until the time the results are reported. More than 3,000 procedures performed by the department's laboratory were included in this analysis. These procedures translated to approximately 700 different tests listed in the department fee schedule. In the current rulemaking amendments, this same approach was employed on a much smaller number of tests. These proposed fee changes reflect the department's current costs for providing the services at issue.

The adopted amendments comport with Texas Health and Safety Code, §12.031, §12.032, §12.0122, and Senate Bill (SB) 80, 82nd Legislature, Regular Session, 2011, that allow the department to charge fees to a person who receives public health services from the department, and which is necessary for the department to recover costs for performing laboratory services.

SECTION-BY-SECTION SUMMARY

Section 73.54(a)(1)(A)(ii) was amended by adding a new test Amino Acid Dietary Monitoring priced at $16.61.

Previous §73.54(a)(1)(B)(i) and (iii) were amended by deleting two low volume tests, Antibody identification and Antibody titer, respectively, and by renumbering the remaining clauses in this subparagraph to account for the removal of these two tests. These low-volume tests were deleted to make more efficient use of laboratory staff and to lower operational costs.

Previous §73.54(a)(1)(C)(iii) was amended by deleting clause (iii), Phenylketonuria (PKU) full gene sequencing. This low-volume test was deleted to make more efficient use of laboratory staff and to lower operational costs. The section was further amended by renumbering the remaining clauses in this subparagraph to account for the removal of this test.

Section 73.54(a)(2)(A)(i) was amended by updating the name of the test to "Aerobic isolation from clinical specimen" to more accurately identify the test and by updating the fee from $367.67 to $303.92. The reduced fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Section 73.54(a)(2)(A)(iii) was amended by updating the name of the test to "Anaerobic isolation from clinical specimen" to more accurately identify the test and by updating the fee from $197.10 to $118.39. The reduced fee is the cost of isolation only; identification is covered in the existing fee schedule under clause (vi), definitive identification section.

Previous §73.54(a)(2)(A) was amended by deleting clause (v) "Cholera, culture confirmation--$32.73," and the remaining clauses were renumbered accordingly. The more accurate name and placement of the test is in clause (vi), definitive identification section.

In §73.54(a)(2)(A)(vi), the word "and" was moved from subclause (XIV) to subclause (XV) for clarity.

Previous §73.54(a)(2)(A)(vii) was renumbered as clause (vi) due to the deletion of (v).

Previous §73.54(a)(2)(A)(vii)(IV) was amended by updating the name of the test to *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* detection by real-time polymerase chain reaction (PCR) to more accurately identify the test, and by correcting the price. This increase in price is necessary because an error was found in the original cost calculation (as revised in the recently-concluded rulemaking action pertaining to the entire LSS fee schedule) and needs to be corrected. The fee for the test increased from $32.11 to $213.79, with the latter amount being necessary to recoup the department's actual costs as called for in the cost calculation formula. The remaining clauses were renumbered accordingly.

Previous §73.54(a)(2)(A)(vii) was amended by inserting a new subclause (VII) for tests performed for Gonorrhea/Chlamydia (GC/CT) and by renumbering the remaining subclauses accordingly.

Previous §73.54(a)(2)(A)(vii) was further amended at existing subclause (XI) by updating the name of the test to Neisseria to more accurately identify the test and allow for typing of other species and by updating the fee from $390.52 to $141.84. This reduction in fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Previous §73.54(a)(2)(A)(vii) was further amended by inserting a new subclause (XVI) regarding a Vibrio test, at a price of $228.15.

Previous §73.54(a)(2)(A)(xi)(I), renumbered to (x)(I) was amended by decreasing the price from $138.64 to $91.58. This reduction in fee is the cost of isolation only; identification is covered in the existing fee schedule under the definitive identification section.

Section 73.54(a)(2)(B)(ii) was amended by inserting a new subclause (IV) regarding Lewisite metabolites in urine (2-chlorvinylarsonous acid (CVAA) and 2-chlorovinylarsonic acid (CVAOA), liquid chromatography, inductively coupled plasma mass spectrometry (LC-ICP-MS)), at a cost of $157.59. The subclauses were renumbered accordingly. Also, periods were added for punctuation in §73.54(a)(2)(B)(ii) and (ii)(II).

Section 73.54(a)(2)(C)(i)(I)(-e-) was amended by lowering the price to account for the implementation of a new technology which has reduced the cost of performing the test. The price for this test, Nucleic acid amplification for *Mycobacterium tuberculosis (M. tuberculosis)* complex, was decreased from $197.41 to $166.70.

Section 73.54(a)(2)(C)(v) was amended by the addition of two new subclauses: (IV) MGIT drug susceptibility test, primary panel; and (V) MGIT PZA susceptibility test, priced at $115.05 and $77.17, respectively.

Previous §73.54(a)(2)(E)(ii), (vii), (xiv)(I) and (xvi) were amended by deleting the following low-volume tests: (ii) *Aspergillus;* (vii) Fungus; and (xiv)(I) HIV 1,2, plus 0 screen; and (xvi) Legionella. These tests were deleted to make more efficient use of laboratory staff and to lower operational costs. Further amendments were made by renumbering the remaining clauses accordingly.

Previous §73.54(a)(2)(E)(v), (ix), (x), (xix), (xxiii), (xxiv), (xxviii), and (xxx) were renumbered as (iv), (vii), (viii), (xvi), (xx), (xxi), (xxv), and (xxvii) and were amended by changing the price to reflect new technology: (iv) cytomegalovirus (CMV): (I) IgG was reduced from $399.97 to $23.23; (II) IgM was reduced from $161.02 to $24.26; (vii) Hepatitis A: (I) IgM was reduced from $317.74 to $44.04; (II) total was reduced from $219.60 to $34.45; (viii) Hepatitis B: (I) core antibody was reduced from

$143.90 to $36.06; (II) core IgM antibody was reduced from $295.64 to $44.75; (III) surface antibody (Ab) was reduced from $103.84 to $28.34; (IV) surface antigen (Ag) was reduced from $51.45 to $18.47; (xvi) Mumps: (I) epidemic parotitis IgG was reduced from $154.46 to $22.62; (xx) Rubella: (I) IgM was reduced from $329.37 to $24.77; (II) Screen was reduced from $24.13 to $22.33; (xxi) Rubeola: (II) screen (IgG) was reduced from $165.16 to $21.35; (xxv) Toxoplasmosis was reduced from $357.49 to $23.23; and (xxvii) *Varicella zoster* virus (VZV) was reduced from $345.63 to $19.70.

New §73.54(a)(2)(E)(xii) was amended by the addition of a new subclause (II) that is necessary for a new test for HIV Combo Ag/AB EIA, priced at $7.90. Previous §73.54(a)(2)(E)(xxi), renumbered as (xviii), was amended by lowering the price for QuantiFeron (tuberculosis serology) from $84.45 to $53.66 to reflect the implementation of new technology which has lowered the cost of performing the test.

Previous §73.54(a)(2)(E)(xxvi), renumbered as (xxiii), was amended by correcting the spelling of the test name "Strongyloides."

Previous §73.54(a)(2)(E)(xxvii), renumbered as (xxiv), was further amended by adding a new test to subclause (IV), Screening, IgG at a price of $7.57.

In §73.54(a)(2)(F)(ii)(IV), a new test for the West Nile virus was added, priced at $57.87.

Section 73.54(a)(2)(F)(v)(I) was amended by updating the name of the test to Supplemental Cell Culture to more accurately identify the test.

In §73.54(a)(2)(F)(vi) was amended by the addition of a new test for Dengue, real-time PCR, at a price of $215.52. Further amendments were made by renumbering the remaining clauses accordingly.

Previous §73.54(a)(2)(F)(x) was amended by reorganizing all tests related to influenza under a new subclause to improve readability and achieve consistency of format. Previous §73.54(a)(2)(F)(x) and (xi) were renumbered as §73.54(a)(2)(F)(xi)(I) and (II). New §73.54(a)(2)(F)(xi)(III) added a new test for Influenza pyrosequencing for antiviral resistance for the amount of $13.11. Previous §73.54(a)(2)(F)(xii) was renumbered as §73.54(a)(2)(F)(xi)(IV). Previous §73.54(a)(2)(F)(xiii) was renumbered as §73.54(a)(2)(F)(xii). New §73.54(a)(2)(F)(xiii), (xiv) and (xv) were added, a new test for Measles, real-time PCR for the amount of $126.83, Mumps, real-time PCR for the amount of $127.83 and a new test for Respiratory viral panel, PCR, for the amount of $167.13.

Previous §73.54(a)(2)(F)(xv)(I), renumbered as (xvii)(I), was amended by updating the name of the test to "Viral isolation, clinical" to more accurately identify the test.

New §73.54(b)(1)(D) and (G) were added - (D) Gram Stain, priced at $8.06, and (G) Urine culture, priced at $11.59. Existing subparagraphs in this paragraph were renumbered accordingly.

New §73.54(b)(2)(A) added a new test for Alanine Amino Transferase (ALT), priced at $1.34. New §73.54(b)(2)(F) added a new test for Bilirubin, direct priced at $1.69. New 73.54(b)(2)(H) added a new test for Bilirubin, total and direct profile priced at $2.44. New §73.54(b)(2)(R)(i) added a new test, Glucose, priced at $1.34. Subsequent subparagraphs and clauses were renumbered accordingly.

Previous §73.54(b)(2)(M), (V), and (BB), renumbered as (P), (Y), and (EE), were amended by changing the names of the tests for better clarity. Subparagraph (P) "Electrolyte panel--includes anion gap (calculated), CO2, chloride, potassium and sodium" was renamed "Electrolyte panel--includes CO2, chloride, potassium and sodium." Subpargraph (Y) "Lipid profile panel--includes, cholesterol, HDL, and triglycerides" was renamed "Lipid profile panel--includes, cholesterol, HDL, LDL, and triglycerides." Subparagraph (EE) "Renal function panel--includes albumin, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN" was renamed "Renal function panel--includes albumin, glucose, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN."

New §73.54(b)(3) added tests related to emergency preparedness with subparagraphs (A) - (D): (A) Biological Threat reference culture--$198.28; (B) Definitive identification: (i) *Bacillus anthracis*--$145.72; (ii) Brucella species--$214.30; (iii) Burkholderia--$221.62; (iv) Francisella tularensis--$107.07; (v) *Yersinia pestis*--$313.47; and (vi) Unknown biological threat agent--$220.08; (C) Food Samples: (i) *Bacillus anthracis*--$23.77; (ii) Brucella Species--$25.77; (iii) E.Coli 0157:H7--$7.15; (iv) Francisella--$17.20; (v) Listeria--$21.30; (vi) Salmonella--$19.05; (vii) *Yersinia pestis*--$313.47; (D) PCR: (i) *Bacillus anthracis*--$58.41; (ii) Brucella--$58.41; (iii) Burkholderia--$58.41; (iv) *Francisella tularensis*--$58.41; (v) Influenza--$51.26; (vi) Influenza A--$53.63; (vii) Influenza A/H5--$125.00; (viii) Multiple Agent Panel--$169.39; (ix) Ricin--$150.00; and (x) *Yersinia pestis*--$58.41. The term "Yersinia pestis" was italicized in subsection (b)(3)(D)(x) in order to be consistent throughout the rule text. Previous §73.54(b)(3) - (7) were renumbered as §73.54(b)(4) - (8).

Previous §73.54(b)(3)(F), renumbered as (b)(4)(F), was amended by adding a new test Peripheral Smear Review, priced at $7.59. Existing subparagraph (F) was relettered as (G).

Previous §73.54(b)(5)(A)(iii)(I) and (II), renumbered as (b)(6)(A)(iii)(I) and (II), were updated to reflect new pricing: (I) conventional susceptibility (each drug) was reduced from $36.45 to $14.06, and (II) MGIT susceptibility (each drug) was reduced from $92.69 to $43.47. New §73.54(b)(6)(A)(iii)(III) and (iv) added new tests (III) MGIT susceptibility (each Drug) PZA, priced at $92.69, and (iv) for the Identification of AFB isolate, DNA probe, priced at $44.63. Previous §73.54(b)(5)(A)(iv) and (v) were renumbered as §73.54(b)(6)(A)(v) and (vi) respectively. New §73.54(b)(7) added a new test at subparagraph (F), Thyroxine (T4), free, priced at $10.89. Section 73.54(b)(6)(H) added a new test to the subparagraph, Thyroid Hormone (T3) uptake for $23.67, with subsequent renumbering. New §73.54(b)(8)(D) and (G) added new tests, (D) Random urine/creatinine profile for $6.44 and (G) Urine Microscopic analysis for $5.54. Subsequent subparagraphs were renumbered accordingly. Section 73.54(b)(7)(F) and (H) are renamed for better clarity. Subparagraph (F) "Thyroxin (T4), free, prenatal" was renamed to "Thyroxine (T4), total." Subparagraph (H) "Tri-iodothyronine (T3), uptake, total, prenatal" was renamed to subparagraph (J) "Tri-iodothyronine (T3), free."

Section 73.54 was reorganized by deleting subsection (c), which relates to tests performed on clinical specimens at the department's WHL, since that laboratory was permanently closed on August 31, 2012. Some services offered exclusively at WHL in the rules, such as pap smears and cytology, were eliminated through this rulemaking process while some of the other tests would be performed at the remaining two department laborato-

ries, STL and the Austin laboratory (e.g., routine clinical tests and tuberculosis testing). Those clinical tests, which would no longer be offered by the department under these amendments, are readily available at commercial laboratories. Subsequent subsections were renumbered accordingly.

Previous §73.54(d)(4)(A)(iv) was amended by adding a new test for *Cronobacter sakazakii,* priced at $115.17. New §73.54(d)(4)(A)(v)(II) was amended by adding a new test for Non-0157 STEC, priced at $295.02 and by reorganizing all tests related to *Escherichia coli* under a new clause (v) to improve readability and achieve consistency of format. Previous §73.54(d)(4)(A)(iv) and (v) were renumbered as §73.54(c)(4)(A)(v)(I) and (III).

Previous §73.54(d)(8)(A) was amended by adding a new test for West Nile Virus (WNV), mosquitoes, PCR, priced at $57.87 in new §73.54(c)(8)(A)(v).

Previous §73.54(d)(9) was reorganized by deleting §73.54(d)(9)(A), (B) and (F) which are low volume tests. These low-volume tests were deleted to make more efficient use of laboratory staff and to lower operational costs. Previous §73.54(d)(9)(C), (D) and (E) were renumbered as §73.54(c)(9)(A), (B) and (C) respectively.

New §73.54(e)(4) was amended by adding a new specimen processing and storage service, with an associated fee of $25.

Section 73.55(2) was amended by removing the phrase "including bottled water" to accurately reflect the testing. New §73.55(2)(C)(xiii) added trihalomethanes, EPA method 551.1, priced at $43.91. The subsequent clause was renumbered accordingly. A typographical error was made in the proposed rules package for (xiv) volatile organic compounds VOCs by GC-MS, EPA method 542.2--$55.12. The correct EPA method should be 524.2. The correction to the EPA method has been made in this adoption to read "(xiv) volatile organic compounds VOCs by GC-MS, EPA method 524.2--$55.12."

Section 73.55(3)(A)(x) added a new test for gluten, priced at $92.11, and previous §73.55(3)(A)(x) - (xx) were renumbered as §73.55(3)(A)(xi) - (xxi) respectively.

Section 73.55(3)(B)(ii)(I) was amended to update pricing for mercury, EPA method 245.1 and EPA SW-846 methods 7470A and 7471B from $192.35 to $37.90. New pricing reflects increase in volume which reduces operational cost and increases efficiency.

Section 73.55(4)(A)(iii)(I) was amended by updating the pricing for mercury, sediment, EPA SW-846 method 7471B from $194.22 to $37.90. New pricing reflects increase in volume which reduces operational cost and increases efficiency.

Section 73.55(5)(A)(i) was amended by updating the pricing for fillets from $34.56 to $19.98. Section 73.55(5)(B)(ii)(I) was amended by updating pricing for mercury, EPA method 7471B from $192.35 to $37.90. New pricing reflects increase in volume which reduces operational cost and increases efficiency.

Section 73.55(6)(B)(ii)(II) corrected the price for the single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C for non-potable water. The fee increased from $67.49 to $114.04. This increase in price is necessary because a clerical error was found in the previous rule text. The actual cost to perform the test is $114.04. This is the price that is listed on the published fee schedule on the department's Laboratory website. The error in the rule text was clerical and must be corrected to ensure that the Laboratory recoups the department's actual costs as called for in the cost calculation formula.

New §73.55(9)(G) added a new composite sample storage service and associated fee of $19.23.

The following revisions were made in §73.54 as follows: the word "and" was moved from subclause (XIV) to subclause (XV) for clarity in subsection (a)(2)(A)(vi); periods were added for punctuation in subsection (a)(2)(B)(ii) and (ii)(XI); and the term "Yersinia pestis" was italicized in subsection (b)(3)(D)(x) in order to be consistent throughout the rule text.

In §73.55(2)(C), a typographical error was made in the proposed rules publication in clause (xiv) volatile organic compounds VOCs by GC-MS, EPA method 542.2--$55.12. The correct EPA method was revised to "524.2" instead of "542.2."

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 under Texas Health and Safety Code, §12.031 and §12.032, which allow the department to charge fees to a person who receives public health services from the department; §12.034, which requires the department to establish collection procedures; §12.035, which requires the department to deposit all money collected for fees and charges under §12.032 and §12.033 in the state treasury to the credit of the department's public health service fee fund; and §12.0122, which allows the department to enter into a contract for laboratory services; and Texas Government Code, §531.0055, and Texas Health and Safety Code, §1001.075, which authorize the Executive Commissioner of the Health and Human Services Commission to adopt rules and policies necessary for the operation and provision of health and human services by the department and for the administration of Texas Health and Safety Code, Chapter 1001.

§73.54. Fee Schedule for Clinical Testing and Newborn Screening.

(a) Tests performed on clinical specimens, Austin Laboratory.

(1) Biochemistry and genetics.

(A) Newborn screening.

(i) Newborn screening panel--$33.60. (Fees are based on the newborn screening specimen collection kit which is a department approved, bar-coded, FDA approved medical specimen collection device that includes a filter paper collection device, parent information sheet, specimen storage and use information, parent disclosure request form, demographic information sheet, and specimen collection directions with protective wrap-around cover for the specimen that should be used to submit a newborn's blood specimen for the first or second screen, repeat or follow-up testing and which includes the cost of screening.)

(ii) Amino Acid Dietary Monitoring--$16.61.

(iii) Phenylalanine/tyrosine--$16.61.

(B) Clinical chemistry.

(i) Antibody screen--$20.51.

(ii) Blood typing ABO--$20.51.

(iii) Cholesterol--$4.07.

(iv) Glucose:

(I) glucose fasting--$3.96;

(II) glucose post prandial (1 hour)--$3.96;

(III) glucose post prandial (2 hour)--$7.91;

(IV) glucose random--$3.96;

(V) glucose tolerance test 1 hour--$7.91;

(VI) glucose tolerance test 2 hour--$11.87; and

(VII) glucose tolerance test 3 hour--$15.82.

(v) Hematocrit--$6.62.

(vi) Hemoglobin--$1.53.

(vii) Hemoglobin electrophoresis--$3.98.

(viii) High-density lipoprotein (HDL)--$7.14.

(ix) Lead--$3.47.

(x) Lipid panel (consists of cholesterol, triglycerides, high density lipoprotein (HDL), and low density lipoprotein (LDL))--$10.57.

(xi) Red blood cell antigens, other than ABO or Rh(D)--$260.70.

(xii) RH typing--$20.51.

(C) DNA Analysis.

(i) Cystic fibrosis mutation panel--$147.22.

(ii) Hemoglobin (Hb) DNA:

(I) HbS, HbC, HbE, HbD or HbO-Arab--$186.84;

(II) common beta-thalassemia mutation--$213.21; and

(III) beta-globin gene sequencing--$783.42.

(iii) Galactosemia common mutation panel--$383.21.

(iv) Medium chain acyl-CoA dehydrogenase deficiency (MCAD), common mutation panel--$280.79.

(v) Very long chain acyl-CoA dehydrogenase deficiency (VLCAD), full gene sequencing--$1596.93.

(2) Microbiology.

(A) Bacteriology. Charges for bacteriology testing will be based upon the actual testing performed as determined by suspect organisms, specimen type and clinical history provided.

(i) Aerobic isolation from clinical specimen--$303.92.

(ii) Anaerobic identification, pure culture--$146.70.

(iii) Anaerobic isolation from clinical specimen--$118.39.

(iv) Bacteriology pulsed field gel electrophoresis (PFGE)--$112.67.

(v) Culture, stool--$158.07.

(vi) Definitive identification:

(I) bacillus--$175.88;

(II) group B streptococcus (Beta strep)--$113.70;

(III) *Bordetella*--$147.77;

(IV) *Bordetella pertussis, Parapertussis,* and *Bordetella holmesii* detection by real-time polymerase chain reaction (PCR)--$213.79;

(V) *Campylobacter*--$165.44;

(VI) enteric bacteria--$243.97;

(VII) Gonorrhea/Chlamydia (GC/CT):

(-a-) GC/CT, amplified RNA probe--$20.28;

(-b-) GC culture confirmation by amplified or direct probe--$37.66; and

(-c-) GC screen--$44.54.

(VIII) gram negative rod--$261.00;

(IX) gram positive rod--$226.12;

(X) *Haemophilus*--$242.23;

(XI) *Legionella*--$265.57;

(XII) *Neisseria*--$141.84;

(XIII) pertussis--$287.98;

(XIV) *Staphylococcus*--$188.88;

(XV) *Streptococcus*--$258.91; and

(XVI) Vibrio--$228.15.

(vii) Enteric bacteria:

(I) culture confirmation--$158.53;

(II) *Shigella* serotyping--$120.38; and

(III) *Salmonella* serotyping--$86.63.

(viii) Enterohaemorrhagic *Escherichia Coli* (EHEC), shiga-like toxin assay--$38.60.

(ix) *Escherichia coli (E.coli)* O157:H7, culture confirmation--$26.64.

(x) *Haemophilus*:

(I) culture confirmation, serological--$91.58; and

(II) isolation from clinical specimen--$100.18.

(xi) *Neisseria meningitides,* serotyping--$167.48.

(xii) Shiga toxin producing *E.coli.* PCR--$36.60.

(xiii) Toxic shock syndrome toxin I assay (TSST 1)--$125.25.

(xiv) *Vibrio cholera,* serotyping--$32.73.

(B) Emergency preparedness.

(i) Biological threat agent analysis.

(I) Definitive identification:

(-a-) *Bacillus anthracis*--$420.73;
(-b-) Brucella species--$669.70;
(-c-) *Burkholderia pseudomallei*--$519.72;
(-d-) *Francisella tularensis*--$534.55; and
(-e-) *Yersinia pestis*--$485.23.

(II) Culture:
(-a-) all aerobes--$153.51; and
(-b-) Botulinum (human)--$231.82.

(III) Toxin Assay, Botulinum--$235.57.

(IV) PCR:
(-a-) *Bacillus anthraci*--$69.16;
(-b-) *Brucella abortus*--$164.20;
(-c-) *Burkholderia pseudomallei*--$50.88;
(-d-) *Coxiella burnetii*--$229.31;
(-e-) *Francisella tularensis*--$165.95;
(-f-) Orthopox--$124.27;
(-g-) Vaccinia--$165.78;
(-h-) Variola--$165.78;
(-i-) Varicella zoster virus--$221.72;
(-j-) *Yersinia pestis*--$51.36; and
(-k-) Unknown biological threat agent--$273.36.

(ii) Chemical Threat agent Analysis.

(I) Abrine/ricinine, LC/MS-MS--$62.25.

(II) Arsenic/selenium in urine, ICP-DRC (Dynamic reaction cell)-MS--$176.62.

(III) Cyanide in blood, gas chromatography/mass spectrometry (GC/MS)--$287.05.

(IV) Lewisite metabolites in urine (2-chlorvinylarsonous acid (CVAA) and 2-chlorovinylarsonic acid (CVAOA), liquid chromatography, inductively coupled plasma mass spectrometry (LC-ICP-MS)--$157.59.

(V) Metabolic Toxin Panel (monochloroacetate and monofluoro acetate in urine, LC/MS-MS)--$93.38.

(VI) Metals in blood (mercury, lead, cadmium), inductively coupled plasma mass spectrometry (ICP/MS)--$194.64.

(VII) Metals in urine (antimony, barium, beryllium, cadmium, cesium, cobalt, lead, molybdenum, platinum, titanium, tungsten, uranium), ICP/MS--$173.25.

(VIII) Organophosphorus nerve agent, LC/MS-MS--$81.28.

(IX) Tetramine, gas chromatography/mass selective detector (GC/MSD)--$183.05.

(X) Tetranitormethane metabolite in urine (4-hydroxy-2-nitrophenylacetic acid (HNPAA)), liquid chromatography, tandem mass spectrometry (LC/MS-MS)--$62.21.

(XI) Volatile organic compounds in blood, GC/MS--$124.85.

(C) Mycobacteriology/mycology.

(i) Acid fast bacilli (AFB).

(I) Clinical specimen, AFB isolation and identification.
(-a-) Blood culture--$138.97.
(-b-) Culture, other than blood--$32.04.
(-c-) Direct detection by high-performance liquid chromatography (HPLC)--$124.90.
(-d-) Identification of AFB isolate.
(-1-) HPLC--$66.26;
(-2-) Accuprobe--$81.40;
(-3-) biochemical, basic--$132.35; and
(-4-) biochemical, complex--$472.84.
(-e-) Nucleic acid amplification for *Mycobacterium tuberculosis (M. tuberculosis)* complex--$166.70.
(-f-) Specimen concentration--$5.38.
(-g-) Smear--$11.59.

(II) Referred AFB isolate identification.
(-a-) Identification, including HPLC--$133.88.
(-b-) Biochemical identification:
(-1-) basic--$132.35; and
(-2-) complex--$472.84.
(-c-) Isolate identification, Accuprobe--$81.40.

(ii) Actinomycete, Aerobic:

(I) Identification--$106.96; and

(II) HPLC--$138.05.

(iii) Fungi isolate identification:

(I) yeast--$90.34;

(II) mold--$65.98; and

(III) mold by Accuprobe--$81.40.

(iv) Mycobacterium Kansasii, Drug susceptibility, agar proportion drug, Rifampin--$185.96.

(v) Mycobacterium tuberculosis (M. tuberculosis) complex drug susceptibility.

(I) AGAR proportion drugs.
(-a-) Capreomycin--$30.41.
(-b-) Ethambutol--$30.41.
(-c-) Ethionamide--$30.41.
(-d-) Isoniazid--$30.41.
(-e-) Kanamycin--$30.41.
(-f-) Ofloxaxin--$30.41.
(-g-) Rifabutin--$30.41.
(-h-) Rifampin--$30.41.
(-i-) Streptomycin--$30.41.

(II) Primary drug, BACTEC.
(-a-) Ethambutol--$37.40.
(-b-) Isoniazid--$37.40.
(-c-) Rifampin--$37.40.
(-d-) Pyrazinamide (PZA)--$98.76.

(III) Secondary drug, BACTEC.
(-a-) Ethionamide--$23.24.
(-b-) Kanamycin--$23.24.
(-c-) Ofloxacin--$23.24.
(-d-) Rifabutin--$23.24.
(-e-) Streptomycin--$23.24.

(IV) MGIT drug susceptibility test, primary panel--$115.05.

(V) MGIT PZA susceptibility test--$77.17.

(D) Parasitology.

(i) Blood parasite examination, thick and thin Giemsa--$181.79.

(ii) Fecal ova and parasite examination, concentration and trichrome stain--$67.41.

(iii) Malaria identification, (PCR)--$141.79.

(iv) Miscellaneous Parasite examination:

(I) acid fast stain--$74.17;

(II) chromotrope stain--$140.55;

(III) Giemsa stain--$177.55;

(IV) tissue preparation--$73.55;

(V) trichrome stain--$96.98; and

(VI) wet mount--$73.55.

(v) Parasite identification, PCR--$141.79.

(vi) Pinworm examination--$37.50.

(vii) Urine ova and parasite exam--$56.36.

(viii) Worm identification:

(I) simple--$46.44; and

(II) complex--$120.08.

(E) Serology.

(i) Arbovirus:

(I) Immunoglobulin G (IgG) (includes: Dengue, St. Louis Encephalitis, West Nile Virus)--$147.78;

(II) Immunoglobulin M (IgM) (includes: Dengue, St. Louis Encephalitis, West Nile Virus)--$82.45; and

(III) PCR West Nile Virus (WNV)--$57.87.

(ii) *Brucella*--$74.52.

(iii) Cat scratch fever *(Bartonella)*--$171.30.

(iv) Cytomegalovirus (CMV):

(I) IgG--$23.23; and

(II) IgM--$24.26.

(v) *Ehrlichia* indirect fluorescent antibody (IFA)--$174.20.

(vi) Hantavirus IgG/IgM--$362.05.

(vii) Hepatitis A:

(I) IgM--$44.04; and

(II) total--$34.45.

(viii) Hepatitis B:

(I) core antibody--$36.06;

(II) core IgM antibody--$44.75;

(III) surface antibody (Ab)--$28.34; and

(IV) surface antigen (Ag)--$18.47.

(ix) Hepatitis BeAb--$109.20.

(x) Hepatitis BeAg--$195.14.

(xi) Hepatitis C (HCV)--$25.68.

(xii) Human immunodeficiency virus (HIV):

(I) serum, multi spot--$40.74; and

(II) HIV Combo Ag/Ab EIA--$7.90.

(xiii) Human immunodeficiency virus-1 (HIV-1):

(I) enzyme immunoassay (EIA) Dried Blood Spots (DBS)--$14.32;

(II) enzyme immunoassay (EIA) oral fluid--$69.99;

(III) Nucleic acid amplification test (NAAT)--$7.79;

(IV) western blot serum--$277.23;

(V) western blot DBS--$277.23; and

(VI) western blot oral--$324.71.

(xiv) Lyme *(Borrelia)* IgG/IgM Panel--$706.25.

(xv) Measles, mumps, rubella - *Varicella zoster* virus (MMR-VZV) Magnetic Immunoassay (MIA)--$345.63.

(xvi) Mumps:

(I) epidemic parotitis IgG--$22.62; and

(II) epidemic parotitis IgM--$251.96.

(xvii) Q-Fever--$234.97.

(xviii) QuantiFERON (tuberculosis serology)--$53.66.

(xix) *Rickettsia* panel (includes: Rocky Mountain spotted fever and typhus)--$134.14.

(xx) Rubella:

(I) IgM--$24.77; and

(II) screen--$22.33.

(xxi) Rubeola:

(I) IgM--$210.24; and

(II) screen (IgG)--$21.35.

(xxii) Schistosoma enzyme immunoassay (EIA)--$134.49.

(xxiii) Strongyloides enzyme immunoassay (EIA)--$73.45.

(xxiv) Syphilis:

(I) Confirmation fluorescent treponemal antibody absorbed (FTA-ABS)--$80.20;

(II) Confirmation particle agglutination (TP-PA)--$27.02;

(III) Rapid plasma reagin (RPR):

(-a-) screen (qualitative)--$2.89; and

(-b-) titer (quantitative)--$12.88; and

(IV) Screening, IgG--$7.57.

(xxv) Toxoplasmosis--$23.23.

(xxvi) Tularemia *(Francisella tularensis)*--$54.53.

(xxvii) *Varicella zoster* virus (VZV)--$19.70.

(xxviii) *Yersinia pestis* (Plague), serum--$237.18.

(F) Virology.

(i) Adenoviruses, PCR--$304.38.

(ii) Arbovirus identification, PCR:

(I) Eastern Equine Encephalitis (EEE)--$60.39;

(II) St. Louis Encephalitis (SLE)--$60.18;

(III) Western Equine Encephalitis (WEE)--$60.41; and

(IV) West Nile virus--$57.87.

(iii) Arbovirus identification, direct fluorescent antibody (DFA)--$152.93.

(iv) Coxsackievirus, DFA--$84.37.

(v) Culture:

(I) Supplemental Cell Culture--$135.46; and

(II) reference--$96.66.

(vi) Dengue, real-time PCR--$215.52.

(vii) Echovirus, DFA--$115.80.

(viii) Electron microscopy (includes observation, electron microscopy and photography)--$527.91.

(ix) Enterovirus:

(I) DFA--$162.96; and

(II) PCR--$393.27.

(x) *Herpes simplex virus* 1 and 2, identification, DFA--$96.52.

(xi) Influenza.

(I) Influenza A/B identification, DFA--$54.02.

(II) Influenza surveillance with culture--$248.00.

(III) Influenza pyrosequencing for antiviral resistance--$13.11.

(IV) Influenza surveillance without culture (typing, PCR)--$131.32.

(xii) Norovirus (Norwalk-like virus) PCR--$55.77.

(xiii) Measles, real-time PCR--$126.83.

(xiv) Mumps, real-time PCR--$127.83.

(xv) Respiratory viral panel, PCR--$167.13.

(xvi) Rotovirus, PCR--$55.75.

(xvii) Viral agent:

(I) Viral isolation, clinical--$172.70;

(II) indirect fluorescent antibody (IFA) detection, other--$147.83; and

(III) indirect fluorescent antibody (IFA) detection, respiratory--$95.34.

(xviii) Viral molecular sequencing--$400.65.

(xix) Virus detection hemadsorption--$42.18.

(xx) Virus isolation, mouse inoculation--$1029.50.

(xxi) Virus typing, hemaglutination inhibition--$67.49.

(b) Tests performed on clinical specimens, South Texas Laboratory. Specimens that must be sent to a reference lab for testing will be billed at the reference laboratory price plus a $3.00 handling fee.

(1) Bacteriology.

(A) Aerobic isolation, definitive identification, *Streptococcus* screen--$9.94.

(B) Fecal occult blood--$3.94.

(C) Fecal white blood cell (WBC) smear--$11.67.

(D) Gram Stain--$8.06.

(E) KOH exam except for skin, hair nails--$7.85.

(F) Wet mount, vaginal--$9.14.

(G) Urine culture--$11.59.

(2) Clinical Chemistry.

(A) Alanine Amino Transferase (ALT)--$1.34.

(B) Albumin, serum, urine or other source--$1.27.

(C) Alkaline phosphatase--$1.37.

(D) Amylase, serum--$7.37.

(E) Aspartate aminotransferase (AST)--$1.32.

(F) Bilirubin, direct--$1.69.

(G) Bilirubin, total--$1.30.

(H) Bilirubin, total and direct profile--$2.44.

(I) Blood urea nitrogen (BUN)--$1.48.

(J) Calcium--$1.64.

(K) Carbon dioxide (CO2)--$1.35.

(L) Chloride, serum--$1.35.

(M) Cholesterol:

(i) total--$1.36;

(ii) High-density lipoprotein (HDL)--$1.37; and

(iii) Low-density lipoprotein (LDL)--$2.20.

(N) Creatine kinase (CK) assay--$2.79.

(O) Creatinine assay--$1.30.

(P) Electrolyte panel--includes CO2, chloride, potassium, and sodium--$2.83.

(Q) Gamma-glutamyl transferase (GGT)--$3.90.

(R) Glucose:

(i) Glucose--$1.34;

(ii) Glucose tolerance test, 2 hour--$1.37; and

(iii) postprandial, 0 and 2 hours--$1.34.

(S) Hepatic function panel--includes Alanine phosphatase (ALT), albumin, alkaline phosphatase, AST, bilirubin (direct and total), and protein (total)--$2.47.

(T) Hemoglobin A1C--$10.37.

(U) Iron binding capacity, total--$8.55.

(V) Iron, total--$7.08.

(W) Lactic acid dehydrogenase (LDH)--$8.17.

(X) Lipase--$20.43.

(Y) Lipid profile panel--includes cholesterol, HDL, LDL, and triglycerides--$8.84.

(Z) Magnesium--$7.82.

(AA) Metabolic panels:

(i) basic panel--includes calcium, carbon dioxide (CO2), chloride, creatinine, glucose, potassium, sodium and blood urea nitrogen (BUN)--$3.65; and

(ii) comprehensive panel--includes alanine amino transferase (ALT), albumin, alkaline phosphatase, AST, bilirubin (total), calcium, CO2, chloride, creatinine, glucose, potassium, protein (total), sodium, and BUN--$6.39.

(BB) Phosphorus--$11.56.

(CC) Potassium--$1.35.

(DD) Protein, total--$1.41.

(EE) Renal function panel--includes albumin, glucose, calcium, CO2, chloride, creatinine, phosphate, potassium, sodium, and BUN--$18.13.

(FF) Sodium--$1.35.

(GG) Triglycerides--$1.36.

(HH) Tuberculosis panel--includes-ALT, alkaline phosphatase, AST, bilirubin (total), cholesterol, creatinine, GGT, BUN, and uric acid (blood)--$10.36.

(II) Uric acid--$4.07.

(3) Emergency Preparedness.

(A) Biological Threat reference culture--$198.28.

(B) Definitive identification.

(i) *Bacillus anthracis*--$145.72.

(ii) Brucella species--$214.30.

(iii) Burkholderia--$221.62.

(iv) Francisella tularensis--$107.07.

(v) *Yersinia pestis*--$313.47.

(vi) Unknown biological threat agent--$220.08.

(C) Food samples.

(i) *Bacillus anthracis*--$23.77.

(ii) Brucella Species--$25.77.

(iii) *E.Coli* 0157:H7--$7.15.

(iv) Francisella--$17.20.

(v) Listeria--$21.30.

(vi) Salmonella--$19.05.

(vii) *Yersinia pestis*--$313.47.

(D) PCR.

(i) *Bacillus anthracis*--$58.41.

(ii) Brucella--$58.41.

(iii) Burkholderia--$58.41.

(iv) *Francisella tularensis*--$58.41.

(v) Influenza--$51.26;

(vi) Influenza A--$53.63;

(vii) Influenza A/H5--$125.00;

(viii) Multiple Agent Panel--$169.39;

(ix) Ricin--$150.00; and

(x) *Yersinia pestis*--$58.41.

(4) Hematology.

(A) CBC (complete blood count) with smear review--$9.11.

(B) CBC complete, automated with differential--$1.51.

(C) Differential, manual--$9.89.

(D) Hematocrit--$6.01.

(E) Hemoglobin, total--$6.01.

(F) Peripheral Smear Review--$7.59.

(G) Sedimentation rate--$11.38.

(5) Immunology.

(A) Pregnancy test:

(i) serum--$4.40; and

(ii) urine--$4.24.

(B) Rheumatoid factor--$4.73.

(6) Microbiology.

(A) Mycobacteriology, Acid fast bacillus (AFB).

(i) Concentration--$4.31.

(ii) Culture, any source--$49.89.

(iii) Drug susceptibility studies:

(I) conventional susceptibility (each drug)--$14.06;

(II) MGIT susceptibility (each drug)--$43.47; and

(III) MGIT susceptibility (each drug) PZA--$92.69.

(iv) Identification of AFB isolate, DNA probe--$44.63.

(v) Identification, referred isolates, DNA probe--$44.63.

(vi) Smear only--$5.09.

(B) Parasitology, ova and parasites (concentration and trichrome stain)--$67.17.

(C) Serology, syphilis.

(i) Rapid plasma reagin (RPR):

(I) screen (qualitative)--$7.99; and

(II) titer (quantitative)--$7.99.

(ii) Confirmation particle agglutination (TP-PA)--$9.30.

(D) Wet mount, vaginal--$9.14.

(7) Special chemistry.

(A) Ferritin--$22.31.

(B) Follicle simulating hormone (FSH)--$15.10.

(C) Leuteinizing hormone (LH)--$17.83.

(D) Prolactin--$18.07.

(E) Prostate specific antigen (PSA), total--$27.90.

(F) Thyroxine (T4), free--$10.89.

(G) Thyroxine (T4), total--$35.53.

(H) Thyroid Hormone (T3) uptake--$23.67.

(I) Thyroid stimulating hormone (TSH), prenatal--$9.41.

(J) Tri-iodothyronine (T3), free--$19.10.

(8) Urinalysis.

(A) Creatinine clearance test--$12.00.

(B) Protein, total, 24 hour--$5.82.

(C) Microscopy with urinalysis (UA)--$32.25.

(D) Random Urine/Creatinine Profile--$6.44.

(E) Urinalysis, no reflex--$5.24.

(F) Urine microalbumin, random--$5.69.

(G) Urine Microscopic Analysis--$5.54.

(c) Non-clinical testing, Austin Laboratory.

(1) *Legionella,* culture--$265.48.

(2) Bat identification--$3.52.

(3) Entomology:

(A) insect identification--$20.86;

(B) mosquito identification for surveillance--$17.66; and

(C) mosquito larvae identification--$6.04.

(4) Food.

(A) Bacterial identification.

(i) Bacillis:

(I) identification--$101.16; and

(II) enumeration, most probable number (MPN)--$245.53.

(ii) *Campylobacter* identification--$145.40.

(iii) *Clostridium perfringens* identification--$217.06.

(iv) *Cronobacter sakazakii*--$115.17.

(v) *Escherichia coli.*

(I) *E.coli* 0157 identification--$121.52.

(II) Non-0157 STEC--$295.02.

(III) *E.coli* enumeration (MPN)--$180.97.

(vi) *Listeria* identification--$150.75.

(vii) *Salmonella* identification--$66.07.

(viii) *Shigella* identification--$119.40.

(ix) *Staphyloccus* identification--$127.28.

(x) *Yersinia* identification--$62.48.

(B) *Staphylococcus* enterotoxin detection--$90.80.

(C) Yeast and mold enumeration (MPN)--$128.50.

(D) Standard plate count--$67.38.

(5) Milk and dairy.

(A) Aflatoxin--$65.63.

(B) Bacterial counts:

(i) coliform count, milk--$33.97;

(ii) coliform count, containers--$41.28;

(iii) standard plate count, milk--$22.14; and

(iv) standard plate count, container--$44.33.

(C) Dairy water--$16.19.

(D) Freezing point--$26.59.

(E) Growth inhibitors.

(i) Charm SL-6 beta-lactam test--$81.14.

(ii) Charm SLBL beta-lactam test--$58.91.

(iii) Charm II sulfonamide test--$51.69.

(iv) Charm II tetracycline test--$55.15.

(v) Delvo test--$25.60.

(F) Phosphatase--$37.82.

(G) Somatic cell counts.

(i) Direct microscope somatic cell count (DMSC):

(I) bovine (cow)--$50.83; and

(II) caprine (goat)--$58.54.

(ii) Optical somatic cell count (OSCC):

(I) bovine (cow)--$51.05; and

(II) caprine (goat)--$51.05.

(6) *Yersinia pestis* (plague), Nobuto--$8.57.

(7) Shellfish.

(A) Bay water--$25.76.

(B) Brevetoxin identification--$242.95.

(C) *E.coli,* identification and enumeration (MPN)--$151.43.

(D) Standard plate count--$67.38.

(E) *Vibrio* identification--$211.47.

(F) *Vibrio* identification and enumeration (MPN)--$478.70.

(8) Virology.

(A) Arbovirus:

(i) culture from mosquito--$44.25;

(ii) Eastern Equine Encephalitis (EEE), mosquitoes, PCR--$60.39;

(iii) St. Louis Encephalitis (SLE), mosquitoes, PCR--$60.18;

(iv) Western Equine Encephalitis (WEE), mosquitoes, PCR--$60.41; and

(v) West Nile Virus (WNV), mosquitoes, PCR--$57.87.

(B) Rabies:

(i) detection, DFA--$72.99;

(ii) detection, DFA, cell culture--$158.77;

(iii) molecular typing--$181.05; and

(iv) monoclonal typing--$31.19.

(9) Water.

(A) Heterotrophic plate count (HPC) bacteria in water (Simplate)--$84.86.

(B) Potable water--$16.19.

(C) Surface water, (MPN) (Quanti-tray)--$257.66.

(d) Non-clinical testing, South Texas Laboratory, Water bacteriology, potable water--$8.82.

(e) Service charges.

(1) Restocking fee for NBS specimen collection kit--$50.00.

(2) Thermometer calibration--$12.23.

(3) Shipping and handling fees:

(A) AFB--$50.20;

(B) Arbovirus reference sample--$96.66; and

(C) CDC reference virus isolation--$23.00.

(4) Specimen processing and storage--$25.00.

§73.55. Fee Schedule for Chemical Analyses.
Fees for chemical analyses and physical testing.

(1) Analysis of volatile organic compounds in air (charcoal tubes), National Institute for Occupational Safety and Health NIOSH method--$127.24.

(2) The following fees apply to analysis of drinking water samples.

(A) Inorganic parameters.

(i) Individual tests:

(I) alkalinity, total and phenolphthalein, Standard Methods (SM), 19th edition, 2320B--$17.44;

(II) ammonia, SM, 20th edition, 4500-NH3H--$33.20;

(III) bromate, Environmental Protection Agency (EPA) method 300.1--$248.10;

(IV) bromide, EPA method 300.0--$233.31;

(V) carbon, total organic, SM, 20th edition, 5310C--$161.36;

(VI) chlorate, EPA method 300.0--$233.31;

(VII) chloride, EPA method 300.0--$15.11;

(VIII) chlorine, SM, 20th edition, 4500-Cl F--$54.42;

(IX) chlorine dioxide, SM, 20th edition, 4500-ClO2 B--$54.42;

(X) chlorite, EPA method 300.0--$233.31;

(XI) chlorite, EPA method 300.1--$248.10;

(XII) chloramines, SM, 20th edition, 4500-ClO2 D--$54.42;

(XIII) color, SM, 19th edition, 2120B--$97.06;

(XIV) specific conductance, SM, 19th edition, 2510B--$16.42;

(XV) cyanide, total, QuickChem 10-204-00-1-X--$135.47;

(XVI) fluoride, EPA method 300.0--$15.03;

(XVII) nitrate and nitrite as nitrogen, EPA method 353.2--$8.49;

(XVIII) nitrate as nitrogen, EPA method 353.2--$8.49;

(XIX) nitrite as nitrogen, EPA method 353.2--$8.49;

(XX) odor, SM, 20th edition, 2150B--$51.93;

(XXI) perchlorate, EPA method 314.0--$1008.60;

(XXII) pH, SM, 19th edition, 4500H--$4.15;

(XXIII) phenolics, total recoverable, EPA method 420.4--$114.49;

(XXIV) silica, dissolved, SM, 20th edition, 4500SiO, E--$20.25;

(XXV) solids, total dissolved, determined, SM, 20th edition, 2540C--$14.65;

(XXVI) sulfate, EPA method 300.0--$15.11; and

(XXVII) turbidity, EPA method 180.1--$136.28.

(ii) Routine water mineral group, EPA methods 300.0, and 353.2, and SM, 19th edition, 2320B, 2510B, 4500-HB and 2540C--$106.39.

(B) Metals analysis. A preparation fee applies to all drinking water samples analyzed by inductively coupled plasma (ICP) or by inductively coupled plasma-mass spectrometry (ICP-MS) with turbidity greater than or equal to 1 Nephelometric Turbidity Unit (NTU) or that contains visible particles. The total analysis cost includes the per-element or per-group fee and any required sample preparation fee.

(i) Sample preparation fee, total recoverable metals digestion, EPA method 200.2--$20.29.

(ii) Per-element analysis fees:

(I) mercury, EPA method 245.1--$18.41;

(II) single ICP, EPA method 200.7--$7.73; and

(III) single ICP-MS, EPA method 200.8--$6.88.

(iii) Group fees:

(I) all metals drinking water group, EPA methods 200.7, 200.8, and 245.1 and SM 19th edition 2340B--$152.43;

(II) ICP/ICP-MS metals drinking water group, EPA methods 200.7 and 200.8 and SM 19th edition 2340B--$81.33;

(III) total hardness, SM, 19th edition 2340B--$10.58; and

(IV) reagent water metal suitability group, EPA methods 200.7 and 200.8--$41.80.

(C) Organic compounds:

(i) chlorinated pesticides and polychlorinated biphenyls (PCBs) in drinking water, EPA method 508.1--$150.22;

(ii) chlorophenoxy herbicides, EPA method 515.4--$313.25;

(iii) diquat and paraquat EPA method 549.2--$72.09;

(iv) ethylene dibromide (EDB) and dibromochloropropane (DBCP), EPA method 504.1--$75.67;

(v) endothall, EPA method 548.1--$265.63;

(vi) glyphosate, EPA method 547--$39.40;

(vii) haloacetic acids, EPA method 552.2--$53.72;

(viii) carbamates insecticides, EPA 531--$57.01;

(ix) PCB SOC6, EPA method 508A--$1045.02;

(x) synthetic organic contaminants group 5, EPA methods 508.1 and 525.2--$205.41;

(xi) semi-volatile organic compounds by GC-MS, EPA method 525.2--$111.74;

(xii) trihalomethanes, EPA methods 502.2 or 524.2--$50.13;

(xiii) trihalomethanes, EPA method 551.1--$43.91; and

(xiv) volatile organic compounds VOCs by GC-MS, EPA method 524.2--$55.12.

(D) Radiochemicals:

(i) gross alpha and beta, EPA method 900.0--$170.73;

(ii) gross alpha or beta, EPA method 900.0--$170.73;

(iii) gamma emitting isotopes, EPA method 901.1--$36.53;

(iv) radium-226, SM, 19th edition, 7500 RaC--$43.24;

(v) radium-228, SM, 19th edition, 7500 RaD--$101.74;

(vi) strontium-89 or 90, EPA method 905.0--$152.89;

(vii) tritium, EPA method 906.0--$73.19;

(viii) uranium isotopes, SM, 19th edition, 7500 UC--$104.81; and

(ix) composite/storage fee--$19.23.

(3) The following fees apply to the analysis of food and food products.

(A) Inorganic analyses:

(i) added water, Association of Analytical Communities (AOAC) calculation--$5.34;

(ii) benzoate, AOAC method 980.17--$82.71;

(iii) BRIX, AOAC method 932.14--$23.04;

(iv) cereal, U.S. Department of Agriculture (USDA) method CRL--$72.97;

(v) deterioration, canned products, AOAC chart--$9.91;

(vi) fat, paly screen, AOAC method 964.12--$61.61;

(vii) fat, soxhlet extraction, USDA method Fat-1--$106.80;

(viii) filth, AOAC method 941.16--$40.82;

(ix) food coloring, AOAC method 988.13--$131.63;

(x) gluten--$92.11;

(xi) insect identification, Food and Drug Administration (FDA) Technical Bulletin #2--$88.92;

(xii) meat protein, AOAC calculation--$5.34;

(xiii) moisture (total water), USDA M01 method--$63.00;

(xiv) pH of food products, USDA PHM--$43.12;

(xv) phosphate determination-(tri-poly-phosphate), USDA PHS1--$65.36;

(xvi) protein, total, USDA PRO1--$81.14;

(xvii) salt, USDA SLT--$85.81;

(xviii) soy protein concentrate, USDA SOY1 method--$53.21;

(xix) soya, USDA SOY1 method--$53.21;

(xx) sulfite AOAC 980.17--$28.27; and

(xxi) water activity, AOAC method 978.18--$33.22.

(B) Metals analyses. A sample preparation fee applies to all food samples analyzed by ICP or ICP-MS techniques. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total analysis fee includes the sample preparation fees and the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fee--total recoverable metals digestion, EPA methods 200.2, 200.3, or SW-846 method 3050B--$22.88.

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 methods 7470A and 7471B--$37.90;

(II) single metal, ICP, EPA 200.7 or EPA SW-846 method 6010C--$443.10; and

(III) single metal, ICP-MS, EPA method 200.8, and EPA SW-846 method 6020A--$91.24.

(4) The following fees apply to the analysis of soil and solids.

(A) Metals analysis. A sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total cost of the analysis will be the sample preparation fees plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees. Determination of leachable metals in solid samples will require a solid leachate sample preparation procedure, as well as analysis of the leachate using non-potable water analytical methods. The total cost of the analysis will be the solid leachate sample preparation fee plus the required non-potable water preparation fee(s) and the per-element test(s).

(i) Sample preparation fee--acid digestion of sediments, sludges, and soils, EPA SW-846 Method 3050B--$84.92.

(ii) Solid leachate for metals--$273.88.

(iii) Per-element fee:

(I) mercury, sediment, EPA SW-846 method 7471B--$37.90;

(II) single metal, ICP, EPA SW-846 method 6010C--$443.10; and

(III) single metal, ICP-MS, EPA SW-846 method 6020A--$56.74.

(B) Radiochemistry. Except for gamma emitting isotopes and tritium, a sample preparation fee applies to the analysis of all solid (soil, sediment, etc.) samples. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(i) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(ii) Americium isotopes, DOE CHEM-TP-A.20--$59.23.

(iii) Gross alpha and beta, SM, 19th edition, 7110B--$54.91.

(iv) Gross alpha or beta SM, 19th edition, 7110B--$54.91.

(v) Gamma emitting isotopes, Ga-01-R--$65.56.

(vi) Plutonium isotopes, DOE CHEM-TP-A.20--$36.63.

(vii) Radium-226 SM, 19th edition, 7500 RaC modified--$58.79.

(viii) Radium-228 SM, 19th edition, 7500 RaD modified--$118.00.

(ix) Strontium-89 or 90, EPA method 905.0 modified--$198.64.

(x) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(xi) Tritium, EPA 520/5-86-006 H-01--$57.55.

(xii) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(5) The following fees apply to the analysis of tissue and vegetation samples. A tissue preparation (homogenization) fee applies to all seafood tissue samples analyzed for metals. The total analysis cost includes the tissue preparation fee, any analyte specific sample preparation fee, and the per-element or per-group test fee.

(A) Tissue preparation fees:

(i) fillets--$19.98; and

(ii) whole fish and crabs--$46.08.

(B) Metals analyses. A sample preparation fee applies to all tissue samples analyzed by ICP or ICP-MS. The total analysis cost includes the per-element or per-group fee plus any required sample preparation fee:

(i) sample preparation fee--total recoverable metals digestion, EPA method 200.3--$22.88;

(ii) per-element fees:

(I) mercury, EPA method 7471B--$37.90;

(II) single metal, ICP, EPA 200.7 or EPA SW-846 methods 6010C--$443.10; and

(III) single metal, ICP-MS, EPA method 200.8, EPA SW-846 method 6020A--$91.24.

(C) Radiochemistry. Except for gamma emitting isotopes and tritium, a sample preparation fee applies to the analysis of all tissue and vegetation samples. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(i) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(ii) Americium isotopes, DOE CHEM-TP-A.20--$59.23.

(iii) Gamma emitting isotopes, Ga-01-R--$76.47.

(iv) Gross alpha and beta, SM, 19th edition, 7110B--$54.91.

(v) Gross alpha or beta, SM, 19th edition, 7110B--$54.91.

(vi) Plutonium isotopes, DOE CHEM-TP-A.20--$36.63.

(vii) Radium-226, SM, 19th edition, RaC modified--$58.79.

(viii) Radium-228, SM 19th edition, RaD modified--$118.00.

(ix) Strontium-89 or 90, EPA method 905.0 modified--$198.64.

(x) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(xi) Tritium EPA Method 520/5-86-006 H-01--$57.55.

(xii) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(6) The following fees apply to the analysis of non-potable water.

(A) Inorganic parameters:

(i) odor, SM, 20th edition, 2150B--$51.93; and

(ii) phenolics, total recoverable, EPA method 420.4--$114.49.

(B) Metals analysis. The following sample preparation fees apply to the analysis of non-potable water samples. A sample requiring both ICP and ICP-MS techniques will require two sample preparations. The total cost of the analysis will be the required sample preparation fee(s) plus the per-element fee. The fee for analysis of multiple metals by a single method includes a single sample preparation fee and the appropriate per-element fees.

(i) Sample preparation fees:

(I) total recoverable metals digestion, EPA method 200.2 and EPA SW-846 methods 3005A, 3010A, and 3020A--$29.92; and

(II) filtration (dissolved metals), EPA SW-846 method 3005A--$22.36.

(ii) Per-element fees:

(I) mercury, EPA method 245.1 and EPA SW-846 method 7470A--$28.10;

(II) single metal, ICP, EPA method 200.7 and EPA SW-846 method 6010C--$114.04; and

(III) single metal, ICP-MS, EPA method 200.8, and EPA SW-846 method 6020A--$67.49.

(C) Radiochemistry. A sample preparation fee applies to the analysis of non-potable water samples for americium isotopes, plutonium isotopes, and thorium isotopes. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(i) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(ii) Americium isotopes, DOE CHEM-TP-A.20--$59.23.

(iii) Gamma emitting isotopes, Ga-01-R--$36.53.

(iv) Gross alpha and beta, EPA method 900.0--$170.73.

(v) Gross alpha or beta, EPA method 900.0--$170.73.

(vi) Plutonium isotopes, DOE CHEM-TP-A.20--$36.63.

(vii) Radium-226, SM, 19th edition 7500 RaC--$113.23.

(viii) Radium-228, SM 19th edition, 7500 RaD--$101.74.

(ix) Strontium-89 or 90, EPA method 905.0--$152.89.

(x) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(xi) Tritium, EPA method 906.0--$73.19.

(xii) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(7) The following fees apply to the analysis of a wipe, filter or cartridge. Radiochemistry. Except for gamma emitting isotopes and tritium, a sample preparation fee applies to the analysis of all wipe, filter or cartridge samples. The total cost for the analysis will be the sample preparation fee plus the analytical method fee.

(A) Sample preparation, DOE CHEM-TP-A.20--$75.34.

(B) Americium isotopes DOE CHEM-TP-A.20--$59.23.

(C) Gamma emitting isotopes, Ga-01-R--$28.84.

(D) Gross and beta, EPA method 900.0--$9.66.

(E) Gross or beta, EPA method 900.0--$9.66.

(F) Plutonium, DOE CHEM-TP-A.20--$36.63.

(G) Radium-226, SM, 19th edition, RaC modified--$58.79.

(H) Radium-228, SM, 19th edition, RaD modified--$118.00.

(I) Strontium-89 or 90 EPA method 905.0 modified--$198.64.

(J) Thorium isotopes, DOE CHEM-TP-A.20--$56.42.

(K) Tritium, EPA 906.0 modified--$73.19.

(L) Uranium isotopes, DOE CHEM-TP-A.20--$47.54.

(8) Identification of feces and urine stains:

(A) identification of feces stains, AOAC method 981.22--$103.63; and

(B) identification of urine stains, AOAC methods 963.28, and 959.14--$86.78.

(9) Additional charges.

(A) Analysis of trip and field blank samples will be billed at the same rate as the requested sample analysis.

(B) If the submitter requires specific samples within their batch to be analyzed and reported as laboratory fortified matrix (FM) or matrix spike (MS), and laboratory fortified matrix duplicate (LFMD) or matrix spike duplicate (MSD), a fee for two additional samples will be charged.

(C) A fee of $8 per sample will be charged for samples submitted but not analyzed at the submitter's request, including samples on hold, and then voided.

(D) The preparation fee (or 20% of the analysis fee if there is no separate preparation fee) will be charged for any sample prepared but not analyzed at the client's request.

(E) A fee equal to 3% of the analysis fee will be charged for a summary of the quality control data routinely generated during the analysis. This summary may include data for method blanks, duplicate, matrix spike recovery, laboratory control samples, and surrogate recovery.

(F) Additional copies of reports and raw data packages will be provided at a cost of $0.10 per page for each request in excess of 50 pages. An additional fee of $15.00 will be charged for each hour in excess of one hour to prepare the request.

(G) Composite storage fee--$19.23.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Lisa Hernandez
General Counsel
Department of State Health Services
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For further information, please call: (512) 776-6972

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TITLE 40. SOCIAL SERVICES AND ASSISTANCE

PART 1. DEPARTMENT OF AGING AND DISABILITY SERVICES

CHAPTER 49. CONTRACTING FOR COMMUNITY CARE SERVICES

SUBCHAPTER G. PERSONAL ATTENDANT WAGES

40 TAC §§49.71 - 49.73

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Aging and Disability Services (DADS), adopts new §49.71, concerning personal attendants; §49.72, concerning financial management services agencies; and §49.73, concerning enforcement of personal attendant wages, in Chapter 49, Contracting for Community Care Services, with changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4174).

The purpose of the new sections is to implement the 2014-15 General Appropriations Act (Article II, Special Provisions, Senate Bill 1, 83rd Legislature, Regular Session, 2013) by requiring certain community services contractors to pay personal attendants base wages of at least a specified amount. Specifically, persons providing the following services must be paid the required base wages: primary home care, family care, or community attendant services; day activity and health services; Community Care for the Aged and Disabled--Title XX Residential Care; personal assistance services in the Community Based Alternatives (CBA) Program; flexible family support and respite services in the Medically Dependent Children (MDCP) Program; and personal attendant services in the Client Managed Personal Attendant Services (CMPAS) Program.

The required base wage levels are $7.50 per hour effective September 1, 2013, and $7.86 per hour effective September 1, 2014. The rules will require contractors to notify attendants of the required wages and pay at least these amounts for base wages. Financial management services agencies will be required to ensure that employers using the consumer directed services option pay personal attendants in accordance with the rules. The rules also address the methods DADS will use to oversee compliance and the actions and sanctions that may be imposed for noncompliance.

The agency added a definition of "personal attendant" in §49.71(a) that identifies the specific services a person must provide to be considered a "personal attendant," rather than simply listing the programs to which the rules apply. The agency determined this clarification was necessary to ensure contractors know which service providers must receive the required base wages. The definition also clarifies that a personal attendant may contract with a contractor and does not have to be employed by the contractor. The agency also changed the section to apply the base wage requirements to service providers in the CBA Program and the MDCP Program on the effective date of the rule, not September 1, 2014. The rates paid to contractors in those programs are based on an assumption that personal attendants can be paid at least the required wages; therefore, the agency has decided not to delay the requirement to pay those wages. In addition, personal attendant services in the CMPAS Program were added to the list of services that a personal attendant provides. Contractors in the CMPAS Program will receive a rate increase and must pay the required base wages.

The agency added §49.71(d) to ensure that persons who are employed by or contract with DADS contractors as personal attendants will be paid the required base wages.

The agency deleted §49.71(f) because the agency decided that a requirement to obtain and maintain documentation signed by every personal attendant was administratively burdensome. This does not, however, relieve a contractor from the obligation to pay the required base wages or to notify personal attendants that the contractor must pay the required base wages.

The agency changed §49.72, which imposes requirements on financial management service agencies, to identify the specific services to which it applies and to clarify that the base wages must be paid by an employer in the CBA, MDCP, or CMPAS Program on the effective date of the rule. These changes are consistent with the changes made to §49.71 and are made for the same reasons.

The agency changed §49.73(a) to delete references to documentation that would have been required by §49.71(f) because that subsection has been deleted.

The agency changed §49.73(c) to provide that the corrective actions a contractor may be required to take include ensuring payments to an employee in the consumer directed services option when there has been a failure to pay required base wage levels. The agency determined this was necessary because it has a contract with the financial management service agency, not the employer, under the consumer directed services option.

DADS received written comments from the Texas Association for Home Care and Hospice (TAHC&H). A summary of the comments and the responses follows.

Comment: The commenter expressed concern that legislative appropriations will not cover the cost of providing the required base wage levels for personal attendants in all programs governed by the rules. The commenter noted that in some programs the rates paid to contractors assume personal attendants are paid a wage higher than the required base wages, but the attendants are actually paid less than the required base wages. The commenter supports increased funding to ensure attendants in all programs are paid the required base wages.

Response: The agency believes the rules reflect the legislative intent and appropriations. With the increased rates scheduled to take effect when the rules become effective, all programs governed by the rules will have rates that assume personal attendants can be paid at least the required base wages. The agency made no change to the rules in response to the comment.

Comment: The commenter stated that the requirements to notify personal attendants of required base wage levels and to maintain signed documentation of the notification are unnec-

essary and administratively burdensome. The commenter recommended deleting the notification and documentation requirements.

Response: The agency does not agree that the requirements to notify personal attendants of required base wage levels are unnecessary and unduly burdensome. Therefore, the agency declines to make changes regarding the notification requirement. The agency agrees, however, that the requirement to maintain signed documentation from attendants that they have been informed of required base wage levels presents an unwarranted burden. Accordingly, the agency has deleted §49.71(f), which requires the documentation, and the reference to that subsection in §49.73.

The new sections are adopted under Texas Government Code, §531.0005, which provides that the HHSC executive commissioner shall adopt rules for the operation and provision of services by the health and human services agencies, including DADS; Texas Government Code, §531.021, which provides HHSC with the authority to administer federal funds and plan and direct the Medicaid program in each agency that operates a portion of the Medicaid program; and Texas Human Resources Code, §161.021, which provides that the Aging and Disability Services Council shall study and make recommendations to the HHSC executive commissioner and the DADS commissioner regarding rules governing the delivery of services to persons who are served or regulated by DADS.

§49.71. Personal Attendants.

(a) In this subchapter, "personal attendant" means a person who is employed by or contracts with a contractor to provide:

(1) primary home care, family care, or community attendant services;

(2) day activity and health services;

(3) Community Care for the Aged and Disabled--Title XX Residential Care;

(4) personal assistance services in the Community Based Alternatives Program;

(5) flexible family support or respite services in the Medically Dependent Children Program; or

(6) personal attendant services in the Client Managed Personal Attendant Services Program.

(b) A contractor must pay a personal attendant a base wage of at least $7.50 per hour. Effective September 1, 2014, a contractor must pay a personal attendant a base wage of at least $7.86 per hour.

(c) A contractor required to pay the wages described in subsection (b) of this section must:

(1) no later than September 15, 2013, notify a person who is a personal attendant on September 1, 2013, that the contractor is required to pay the wages described in subsection (b) of this section; and

(2) notify a person who becomes employed or contracts as a personal attendant after September 1, 2013, no later than three days after the person accepts the offer of employment or enters into the contract, that the contractor is required to pay the wages described in subsection (b) of this section.

(d) If a person is employed by or contracts with a subcontractor of a contractor to provide the services listed in subsection (a) of this section, the contractor must ensure that the subcontractor complies with subsections (b) and (c) of this section as if the subcontractor were the contractor.

§49.72. Financial Management Services Agencies.

(a) This section applies to the following services:

(1) primary home care, family care, and community attendant services;

(2) personal assistance services in the Community Based Alternatives Program;

(3) flexible family support and respite services in the Medically Dependent Children Program; and

(4) personal attendant services in the Client Managed Personal Attendant Services Program.

(b) A contractor that has a contract as a financial management services agency must ensure that an employer using the consumer directed services option pays an employee who provides a service listed in subsection (a) of this section a base wage of at least $7.50 per hour. Effective September 1, 2014, a contractor that has a contract as a financial management services agency must ensure that an employer using the consumer directed services option pays an employee who provides a service listed in subsection (a) of this section a base wage of at least $7.86 per hour.

§49.73. Enforcement of Personal Attendant Wages.

(a) DADS may monitor compliance with this subchapter in response to a complaint and through routine fiscal and compliance monitoring, as described in §49.52 and §49.53 of this chapter (relating to Fiscal Monitoring and Compliance Monitoring), including reviewing payroll records and financial management records.

(b) If DADS determines that a contractor has not complied with this subchapter, DADS may take an action described in §49.11(d) of this chapter (relating to Contracting Requirements) or impose a sanction described in §49.61(b) of this chapter (relating to Sanctions).

(c) Corrective action required by DADS in accordance with subsection (b) of this section may include the contractor paying or ensuring payment to a personal attendant, or an employee in the consumer directed services option, who was not paid the wages required by §49.71(b) of this subchapter (relating to Personal Attendants) or §49.72 of this subchapter (relating to Financial Management Services Agencies) the difference between the amount required and the amount paid to the personal attendant or employee.

(d) DADS may refer a contractor to the Health and Human Services Commission Office of Inspector General based on failure to comply with this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 9, 2013.

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Kenneth L. Owens
General Counsel
Department of Aging and Disability Services
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For further information, please call: (512) 438-3734

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PART 2. DEPARTMENT OF ASSISTIVE AND REHABILITATIVE SERVICES

CHAPTER 108. DIVISION FOR EARLY CHILDHOOD INTERVENTION SERVICES

The Texas Health and Human Services Commission (HHSC), on behalf of the Texas Department of Assistive and Rehabilitative Services (DARS), adopts amendments, repeals, and new rules for DARS rules in Chapter 108, Division for Early Childhood Intervention Services (ECI). DARS adopts amendments to Subchapter A, General Rules; Subchapter B, Procedural Safeguards and Due Process Procedures; Subchapter C, Staff Qualifications; Subchapter G, Referral, Pre-Enrollment, and Developmental Screening; Subchapter J, Individualized Family Service Plan (IFSP); Subchapter K, Service Delivery; and Subchapter L, Transition. DARS also adopts the repeals of Subchapter H, Eligibility; Subchapter I, Evaluation and Assessment; Subchapter M, Child and Family Outcomes; Subchapter O, Public Outreach; and Subchapter P, Contract Requirements. Additionally, DARS adopts new Subchapter F, Public Outreach; new Subchapter H, Eligibility, Evaluation, and Assessment; new Subchapter M, Child and Family Outcomes; and new Subchapter P, Contract Requirements. Specifically, DARS adopts amendments to §§108.103, 108.203, 108.209, 108.309, 108.313, 108.315, 108.317, 108.701, 108.707, 108.709, 108.1001, 108.1003, 108.1007, 108.1009, 108.1015, 108.1019, 108.1103, 108.1105, 108.1111, 108.1211, and 108.1217. DARS adopts the repeals of §§108.801, 108.803, 108.804, 108.805, 108.807, 108.901, 108.903,108.905, 108.907, 108.909, 108.911, 109.913, 108.915, 108.917, 108.1013, 108.1017, 108.1021, 108.1301, 108.1303, 108.1501, 108.1502, 108.1503, 108.1505, 108.1507, 108.1509, 108.1511, 108.1513, 108.1515, 108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, and 108.1617. DARS adopts new §§108.202, 108.204, 108.206, 108.310, 108.601, 108.603, 108.605, 108.607, 108.609, 108.611, 108.613, 108.615, 108.617, 108.706, 108.801, 108.803, 108.805, 108.807, 108.809, 108.811, 108.813, 108.815, 108.817, 108.819, 108.821, 108.823, 108.825, 108.827, 108.829, 108.831, 108.833, 108.1013, 108.1016, 108.1106, 108.1108, 108.1301, 108.1303, 108.1307, 108.1309, 108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, 108.1617, 108.1619, 108.1621, 108.1623, and 108.1625. DARS adopts §§108.313, 108.317, 108.701, 108.709, 108.805, 108.809, 108.813, 108.815, 108.817, 108.821, 108.827, 108.833, 108.1009, 108.1013, 108.1015, 108.1016, 108.1019, 108.1105, 108.1211, 108.1217 and 108.1605 with changes to the proposed text as published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3295). The text of the rules will be republished. The other new sections, amendments and repeals are adopted without changes and will not be republished.

The repeals and new rules with regard to Subchapters H, I, M, O, and P are being adopted as the result of the review that DARS conducted on these subchapters in accordance with Texas Government Code, §2001.039, which requires rule review every four years. Elsewhere in this issue of the *Texas Register,* DARS contemporaneously adopts the rule review of Subchapters H, I, M, O, and P in Chapter 108.

BACKGROUND AND PURPOSE

The purpose of the adopted changes to Chapter 108 is to increase clarity for DARS ECI contractors and families receiving ECI services and to modify certain requirements for ECI contractors. With regard to the rule review of Subchapters H, I, M, O, and P, DARS determined that the reason for originally adopting the rules continues to exist. However, DARS determined that these subchapters needed language revisions and extensive reorganization, including renumbering, to be consistent with DARS' rules style and format, to align rules with statutes and current operations, and to delete rules that are no longer necessary.

SECTION-BY-SECTION SUMMARY

DARS adopts amendments, repeals, and new rules in the following subchapters for the reasons stated below.

Subchapter A, General Rules: §108.103, Definitions: The adopted amendments add a definition of Assessment and move the content of the definitions of Assessment from current §108.901 in order to reflect that the term is used throughout the chapter and emphasize federal language relating to assessment, as directed by the U.S. Department of Education; add a definition of Comprehensive Needs Assessment and move the content of the definitions from current §108.901 to reflect that the term is used throughout the chapter; clarify the definition of Early Childhood Intervention Services; add a definition of Evaluation and move the content of definitions from current §108.901 to reflect that the term is used throughout the chapter; clarify the definitions of IFSP Team and Interdisciplinary Team to include requirements in 34 CFR §303.24 relating to Multidisciplinary, as directed by the U.S. Department of Education; clarify the definition of Routine Caregiver; delete the definition of Comprehensive Evaluation because the term is outdated; transfer the content of the definition of Public Outreach to new Subchapter F, Public Outreach, to reflect the term is only used in that subchapter; and add a new definition of Native Language, to reflect 34 CFR §303.25, as directed by the U.S. Department of Education.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS adopts amendments to §108.203, Responsibilities, and §108.209, Parent Rights, in the IFSP Process, to clarify language related to use of native language. Subchapter B, Procedural Safeguards and Due Process Procedures: DARS adopts new §108.202, Procedural Safeguards, to clarify the purpose of procedural safeguards.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS adopts new §108.204, Prior Written Notice, to clarify the purpose of prior written notice.

Subchapter B, Procedural Safeguards and Due Process Procedures: DARS adopts new §108.206, Written Parental Consent, to clarify the purpose of written parental consent.

Subchapter C, Staff Qualifications: DARS adopts an amendment to §108.309, Minimum Requirements for All Direct Service Staff, to move requirements relating to criminal background checks from §108.309(b). The content of §108.309(b) will be moved to new §108.310, Criminal Background Checks.

Subchapter C, Staff Qualifications: DARS adopts amendments to §108.313, Early Intervention Specialist (EIS), to provide an allowance of 40 clock hours of training in lieu of the 3 hours of college credit for the early intervention specialist qualifications; and to clarify the type of coursework considered to be early childhood development.

Subchapter C, Staff Qualifications: DARS adopts amendments to §108.315, Service Coordinator, to update terminology related to native language.

Subchapter C, Staff Qualifications: DARS adopts amendments to §108.317, Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families, for technical corrections.

Subchapter C, Staff Qualifications: DARS adopts new §108.310, Criminal Background Checks, to align restrictions related to criminal convictions that would prevent a person from having direct contact with ECI families with the restrictions required by Medicaid and the Texas Department of Family and Protective Services Division for Child Care Licensing; and to provide for a risk assessment option for certain criminal convictions.

DARS adopts the repeal of current Subchapter O, Public Outreach, in its entirety and further adopts the content be moved to new Subchapter F, Public Outreach, for improved flow and readability.

Subchapter F, Public Outreach: DARS adopts new §108.601, Purpose, to establish the purpose of the subchapter.

Subchapter F, Public Outreach: DARS adopts new §108.603, Legal Authority, to establish the legal authority for the subchapter.

Subchapter F, Public Outreach: DARS adopts new §108.605, Definitions, to add the content from current §108.1502, Definitions, that was proposed for repeal; and to move the definition of Public Outreach from current §108.103(33) because this term is only used in the public outreach subchapter.

Subchapter F, Public Outreach: DARS adopts new §108.607, Public Outreach, to move content from current §108.1501, Public Outreach, that was proposed for repeal; and to emphasize the requirement that contractors must use language provided by DARS when communicating with primary referral sources, parents of infants and toddlers with disabilities, and the general public.

Subchapter F, Public Outreach: DARS adopts new §108.609, Child Find, to move content from current §108.1503, Child Find, that was proposed for repeal; add the purpose of child find; correct the federal citation; and clarify language.

Subchapter F, Public Outreach: DARS adopts new §108.611, Public Awareness, to move content from current §108.1505, Public Awareness, that was proposed for repeal; add the purpose of public awareness; and clarify language.

Subchapter F, Public Outreach: DARS adopts new §108.613, Publications, to move content from current §108.1507, Publications, that was proposed for repeal.

Subchapter F, Public Outreach: DARS adopts new §108.615, Interagency Coordination, to move the content from current §108.1509, Interagency Coordination with Texas Education Agency, §108.1511, Interagency Coordination with Head Start and Early Head Start, §108.1513, Interagency Coordination with the Texas Department of Family and Protective Services (DFPS), and §108.1515, Interagency Coordination with Local Agencies, that were proposed for repeal; to add the purpose of interagency coordination; and to specify the requirement that the contractor identify systemic issues with interagency coordination efforts.

Subchapter F, Public Outreach: DARS adopts new §108.617, Public Outreach, Planning and Evaluation, to describe the requirements for general planning and evaluating public outreach efforts necessary to strategically implement federal public outreach requirements.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS adopts amendments to §108.701, Referral Requirements, to clarify language; and to add language that emphasizes the federal requirement that the state education agency (SEA) and the local educational agencies (LEA) be notified of children who are potentially eligible for special education services, as directed by the U.S. Department of Education. The contractor must notify the LEA, and DARS will coordinate the notification to the SEA, when a child who is referred fewer than 45 days before his or her third birthday is potentially eligible for special education services.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS adopts new §108.706, Child Referred with an Out-of-State IFSP, to establish requirements for determining eligibility and establishing a new IFSP for children who move to Texas with an out-of-state IFSP.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS adopts amendments to §108.707, Pre-Enrollment Activities, to clarify language and emphasize the requirement that pre-enrollment activities be conducted in the parent's native language, as defined by federal law.

Subchapter G, Referral, Pre-enrollment, and Developmental Screening: DARS adopts amendments to §108.709, Optional Developmental Screenings, for clarity.

DARS adopts the repeal of current Subchapter H, Eligibility, and Subchapter I, Evaluation and Assessment, in their entireties. Specifically, DARS adopts the repeal of §108.801, Definitions; §108.803, Eligibility; §108.804, Eligibility Statement; §108.805, Initial Eligibility Statement; §108.807, Continuing Eligibility Criteria; §108.901, Definitions; §108.903, Evaluations; §108.905, Determination of Hearing and Auditory Status; §108.907, Determination of Vision Status; §108.909, Comprehensive Needs Assessment; §108.911, Ongoing Assessment; §108.913 Identifying Nutritional Needs; §108.915, Identifying Assistive Technology Needs; and §108.917, Autism Screening.

DARS adopts new Subchapter H, Eligibility, Evaluation, and Assessment, which combines the content of current Subchapter H, Eligibility, and current Subchapter I, Evaluation and Assessment, for improved clarity and readability.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.801, Purpose, to add the purpose of subchapter.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.803, Legal Authority, to add the legal authority for the subchapter.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.805, Definitions, to define the term Adjusted Age.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.807, Eligibility, to move some of the content from current §108.803, Eligibility, and to specify that a child must meet Texas eligibility requirements to receive early childhood intervention services.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.809, Initial Eligibility Criteria, to move some content from current §108.803, Eligibility, and §108.805, Initial Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.811, Eligibility Determination Based on Medi-

cal Diagnosed Condition That Has a High Probability of Resulting in a Developmental Delay, to move some content from current §108.805, Initial Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.813, Assessment of Hearing and Auditory Status, to move content from current §108.905, Determination of Hearing and Auditory Status; and to improve quality assessments of hearing and auditory status by removing the option to conduct a hearing screening in lieu of an analysis of the evaluation protocol results.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.815, Assessment of Vision Status, to move content of current §108.907, Determination of Vision Status; and to improve quality assessments of vision status by removing the option to conduct a vision screening in lieu of an analysis of the evaluation protocol results.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.817, Eligibility Determination Based on Developmental Delay, to move content from current §108.803, Eligibility; §108.805; Eligibility Criteria; and §108.903, Evaluations; and to emphasize federal regulations relating to evaluations, as directed by the U.S. Department of Education.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.819, Adjustment for Children Born Prematurely, to move some content of current §108.803, Eligibility.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.821, Qualitative Determination of Developmental Delay, to move some content of current §108.805, Initial Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.823, Continuing Eligibility Criteria, to move some content of current §108.807, Continuing Eligibility Criteria.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.825, Eligibility Statement, to move the content of current §108.804, Eligibility Statement.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.827, Needs Assessment, to move the content of current §108.909, Comprehensive Needs Assessment, and §108.911, Ongoing Assessment; and to emphasize federal regulation, as directed by the U.S. Department of Education.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.829, Review of Nutrition Status, to move the content of current §108.913, Identifying Nutritional Needs.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.831, Assistive Technology, to move the content of current §108.915, Identifying Assistive Technology Needs.

Subchapter H, Eligibility, Evaluation, and Assessment: DARS adopts new §108.833, Autism Screening, to move the content of current §108.917, Autism Screening.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts an amendment to §108.1001, Definitions, to add new definition of Periodic Review.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts amendments to §108.1003, IFSP, to clarify the requirement that the IFSP must address the developmental needs of the child and the case management needs of the family as identified in comprehensive needs assessment; clarify and streamline language; and update the requirement that the contractor give the family a copy of the IFSP, in accordance with federal regulations.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts amendments to §108.1007, Interim IFSP, to emphasize that the evaluation, comprehensive needs assessment, and the IFSP must be completed within federal timelines.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts amendments to §108.1009, Participants in Initial and Annual Meetings to Evaluate the IFSP, to make a technical correction.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts amendments to §108.1015, Content of the IFSP, to list the required IFSP elements; emphasize the requirement to monitor specialized skills training and child progress; establish requirements for documenting that early childhood intervention services will be provided with a routine caregiver; clarify and streamline language; and add requirements for IFSP documentation when the contractor assigns a new service coordinator.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts amendments to §108.1019, Annual Meeting to Evaluate the IFSP, to strengthen the requirements for the annual meeting to evaluate the IFSP to include a current description of the child, including health, vision, hearing and nutrition status, as well as present level of development related to the three annual child outcome ratings described in §108.1301, Child Outcomes.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts the repeal of §108.1021, Partial Review of the IFSP, because this process is no longer necessary. The requirements for IFSP documentation when the contractor assigns a new service coordinator is moved to §108.1015, Content of the IFSP.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts the repeals of §108.1013, Participants in Periodic Reviews, and §108.1017, Complete Periodic Review. DARS adopts new §108.1013, Periodic Reviews, to combine and expand on the contents of current §108.1013, Participants in Periodic Reviews, and current §108.1017, Complete Periodic Review; and to clarify that a change of service coordinator does not require a periodic review.

Subchapter J, Individualized Family Service Plan (IFSP): DARS adopts new §108.1016, Planning for Services to be Delivered with the Routine Caregiver, to establish requirements related to planning for services to be delivered with a routine caregiver.

Subchapter K, Service Delivery: DARS adopts amendments to §108.1103, Early Childhood Intervention Services Delivery, to clarify that only qualified staff are authorized to provide early childhood intervention services; and to clarify that the contractor must assign a service coordinator and an interdisciplinary team to the child and family throughout the child's enrollment.

Subchapter K, Service Delivery: DARS adopts amendments to §108.1105, Capacity to Provide Early Childhood Intervention Services, to make technical corrections.

Subchapter K, Service Delivery: DARS adopts amendments to §108.1111, Service Delivery Documentation Requirements, to clarify documentation requirements.

Subchapter K, Service Delivery: DARS adopts new §108.1106, Routine Caregiver, to establish requirements for delivering services with the routine caregiver.

Subchapter K, Service Delivery: DARS adopts new §108.1108, State Funded Respite Services, to establish requirements for providing state funded respite services.

Subchapter L, Transition: DARS adopts amendments to §108.1211, LEA Notification of Potentially Eligible for Special Education Services, to emphasize the requirement that DARS will coordinate the notification to the state education agency when ECI-referred toddlers are potentially eligible for special education services.

Subchapter L, Transition: DARS adopts amendments to §108.1217, LEA Transition Conference, to emphasize that a face-to-face meeting with the parent and the service coordinator is required by federal regulation for the LEA transition conference.

DARS adopts the repeal of current Subchapter M, Child and Family Outcomes, in its entirety and further adopts new Subchapter M, Child and Family Outcomes, to improve readability.

Specifically, DARS adopts the repeal of Subchapter M, Child and Family Outcomes, §108.1301 Child Outcomes; and §108.1303, Family Outcomes.

DARS adopts new Subchapter M, Child and Family Outcomes: §108.1301, Purpose, to establish the purpose of the subchapter; §108.1303, Legal Authority, to establish the legal authority for the subchapter; §108.1307, Child Outcomes, to move content of current §108.1301, Child Outcomes; and §108.1309, Family Outcomes, to move content of current §108.1303, Family Outcomes.

DARS adopts the repeal of current Subchapter O, Public Outreach, in its entirety, and further adopts the content be moved to new Subchapter F, Public Outreach, for improved flow and readability. Specifically, DARS adopts the repeal of Subchapter O, Public Outreach, §108.1501, Public Outreach; §108.1502, Definitions; §108.1503, Child Find; §108.1505, Public Awareness; §108.1507, Publications; §108.1509, Interagency Coordination with Texas Education Agency; §108.1511, Interagency Coordination with Head Start; §108.1513, Interagency Coordination with the Texas Department of Family and Protective Services (DFPS); and §108.1515, Interagency Coordination with Local Agencies.

DARS adopts the repeal of current Subchapter P, Contract Requirements, in its entirety and further adopts new Subchapter P, Contract Requirements, to improve readability and modify certain program requirements. Specifically, DARS adopts the repeal of §108.1601, Definitions; §108.1603, Application and Program Requirements for Early Childhood Intervention Services; §108.1605, Contract Award; §108.1607, Contract; §108.1609, Performance Management; §108.1611, Remedial Contract Actions; §108.1613, Financial Management and Recordkeeping Requirements; §108.1615, Data Collection and Reporting; and §108.1617, Local Reporting.

Subchapter P, Contract Requirements: DARS adopts new §108.1601, Purpose, to establish the purpose of the subchapter.

Subchapter P, Contract Requirements: DARS adopts new §108.1603, Legal Authority, to establish the legal authority for the subchapter.

Subchapter P, Contract Requirements: DARS adopts new §108.1605, Definitions, to move the content of current §108.1601, Definitions; to add definitions for Applicant, Application, Competition, Contract, Proposal, Respondent, Solicitation, and Subrecipient; and to make technical changes.

Subchapter P, Contract Requirements: DARS adopts new §108.1607, Application and Program Requirements for Early Childhood Intervention Services, to move the content from current §108.1603, Application and Program Requirements for Early Childhood Intervention Services; and clarify that requirements also apply to proposals; and make technical corrections.

Subchapter P, Contract Requirements: DARS adopts new §108.1609, Contract Award, to move content from current §108.1605, Contract Award; specify the protest options if a respondent believes DARS has violated laws in awarding the contract; and make technical corrections.

Subchapter P, Contract Requirements: DARS adopts new §108.1611, Contract, to move content from current §108.1607, Contract; and make technical corrections.

Subchapter P, Contract Requirements: DARS adopts new §108.1613, Performance Management, to move content from current §108.609, Performance Management; and make technical corrections.

Subchapter P, Contract Requirements: DARS adopts new §108.1615, Remedial Contract Actions, to move content of current §108.1611, Remedial Contract Actions; and make technical corrections.

Subchapter P, Contract Requirements: DARS adopts new §108.1617, Transition of Contractors, to establish requirements related to ensuring a functional transition for ECI children and families when a DARS ECI contract is terminated.

Subchapter P, Contract Requirements: DARS adopts new §108.1619 to establish requirements for renewing a DARS ECI contract.

Subchapter P, Contract Requirements: DARS adopts new §108.1621, Financial Management and Recordkeeping Requirements, to move the content of current §108.1613, Financial Management and Recordkeeping Requirements; and to emphasize federal requirements related to IDEA as payor of last resort and coordination of funding sources, as directed by the U.S. Department of Education.

Subchapter P, Contract Requirements: DARS adopts new §108.1623, Data Collection and Reporting, to move content of current §108.1615, Data Collection and Reporting; and make technical corrections.

Subchapter P, Contract Requirements: DARS adopts new §108.1625, Local Reporting, to move content of current §108.1617, Local Reporting.

COMMENTS

DARS is revising §§108.313, 108.317, 108.701, 108.709, 108.817, 108.827, 108.1015, 108.1016, 108.1019, 108.1105, and 108.1605 for clarification and to make technical corrections.

DARS received guidance from U.S. Department of Education related to Subchapter L. Transition. DARS is revising §108.1211 and §108.1217 to clarify the intent of the federal regulations.

DARS received several comments regarding the proposed rules during the comment period. A summary of the comments and the agency's responses follow.

Comment: DARS received general comments from one parent supporting the ECI program.

Comment: DARS received comments from one parent and contractor staff in support of revisions to §108.103(37), Routine Caregiver.

Response: DARS adopts §108.103(37), Routine Caregiver as proposed. DARS will provide further clarification and guidance outside of the rulemaking process.

Comment: DARS received comments from the Texas Academy of Physician Assistants and the Coalition for Nurses in Advanced Practice requesting these professional disciplines be added to sections that reference a child's "physician".

Response: DARS respectfully acknowledges the scope of practice of Physician Assistants and Advanced Practice Nurses. DARS partially agrees to these revisions. In reference to §108.709(d), DARS agrees to revise §108.709 to reflect "a health care provider acting within their scope of practice". In reference to §108.813, DARS partially agrees. DARS agrees to revise §108.813(b) to reflect the child's "primary health care provider", which includes both Physician Assistants and Advanced Practice Nurses. DARS disagrees with revising §108.813(c), as a medical physician is required by 19 TAC §89.1040. In reference to §108.815, DARS partially agrees. DARS agrees to revise §108.815(b) to reflect the child's "primary health care provider", which includes both Physician Assistants and Advanced Practice Nurses. DARS disagrees with revising §108.815(d), as the professional authorized to complete the Texas Education Agency form is determined by the Texas Education Agency(TEA). As TEA rules and requirements are updated to include more health care professionals, DARS will update §108.813 and §108.815. DARS agrees to revise §108.833(d)(3) and §108.833(e)(2) to reflect the child's "primary health care provider", which includes both Physician Assistants and Advanced Practice Nurses. In addition, DARS adopts technical changes in §108.833.

Comment: A DARS contractor requested that both weeks and months be included in the definition of adjusted age.

Response: DARS agrees to revise §108.805 to include both weeks and months in the definition of adjusted age.

Comment: A DARS contractor requested clarification that qualitative determination of delay is a method of determining developmental delay and not a separate category of eligibility.

Response: DARS agrees to restructure §108.809(3) and revise the title of §108.821 to clarify the intent that qualitative determination of delay is a method of determining developmental delay.

Comment: DARS contractor staff provided comments related to proposed requirements for autism screening. The comments varied widely and did not support the proposed revisions nor provide clear direction for policy change. The proposed rules related to autism screening are not consistent with the requirements for Texas Health Steps or any other state program. Therefore, DARS withdraws the portion of proposed rules related to requiring screening for autism during eligibility determination and at 16 months of age. DARS adopts rules requiring screening for autism after enrollment and at 18 months of age, consistent with current requirements.

SUBCHAPTER A. GENERAL RULES

40 TAC §108.103

STATUTORY AUTHORITY

The adopted amendment is authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendment is adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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SUBCHAPTER B. PROCEDURAL SAFEGUARDS AND DUE PROCESS PROCEDURES

40 TAC §§108.202 - 108.204, 108.206, 108.209

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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SUBCHAPTER C. STAFF QUALIFICATIONS

40 TAC §§108.309, 108.310, 108.313, 108.315, 108.317

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.313. Early Intervention Specialist (EIS).

(a) The contractor must comply with DARS ECI requirements related to minimum qualifications for an EIS. An EIS must either:

(1) be registered as an EIS before September 1, 2011; or

(2) hold a bachelor's degree which includes a minimum of 18 hours of semester course credit relevant to early childhood intervention including three hours of semester course credit in early childhood development or early childhood special education.

(A) Forty clock hours of continuing education in early childhood development or early childhood special education completed within five years prior to employment with ECI may substitute for the three hour semester course credit requirement in early childhood development or early childhood special education.

(B) Coursework or previous training in early childhood development is required to ensure that an EIS understands the development of infants and toddlers because the provision of SST for which an EIS is solely responsible depends on significant knowledge of typical child development. Therefore, the content of the coursework or training must relate to the growth, development, and education of the young child and may include courses or training in:

(i) child growth and development;

(ii) child psychology or child and adolescent psychology;

(iii) children with special needs; or

(iv) typical language development.

(b) The contractor must comply with DARS ECI requirements related to continuing education for an EIS. An EIS must complete:

(1) a minimum of ten contact hours of approved continuing education each year; and

(2) an additional three contact hours of continuing education in ethics every two years.

(c) The contractor must comply with DARS ECI requirements related to supervision of an EIS.

(1) The contractor must provide an EIS documented supervision as defined in §108.309(e) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by DARS ECI.

(2) An EIS supervisor must:

(A) have two years of experience providing ECI services, or two years of experience supervising staff who provide other early childhood intervention services to children and families; and

(B) be an active EIS or hold a bachelor's degree or graduate degree from an accredited university with a specialization in:

(i) child development, special education, psychology, social work, sociology, nursing, rehabilitation counseling, human development, or related field; or

(ii) an unrelated field and have at least 18 hours of semester course credit in child development.

(d) EIS Active Status and EIS Inactive Status.

(1) Only an EIS with active status is allowed to provide early childhood intervention services to children and families. An EIS goes on inactive status when the EIS fails to submit the required documentation by the designated deadline or when the EIS is no longer employed by a contractor. An EIS on inactive status may not perform activities requiring the EIS active status. EIS active status is considered reinstated after the information is entered into the EIS Registry and is approved by DARS ECI. An EIS may return to active status from inactive status by submitting 10 contact hours of continuing education for every year of inactive status. An EIS returning to active status must submit documentation of three contact hours of ethics training within the last two years.

(2) An EIS who has been on inactive status for longer than 24 months must complete the orientation training.

(e) The contractor must comply with DARS ECI requirements related to ethics for an EIS. An EIS who violates any of the standards of conduct in §108.319 of this title (relating to EIS Code of Ethics) is subject to the contractor's disciplinary procedures. Additionally, the contractor must complete an EIS Code of Ethics Incident Report and send a copy to DARS ECI.

§108.317. Staff Who Do Not Hold a License or EIS Credential and Provide Early Childhood Intervention Services to Children and Families.

(a) The contractor must comply with DARS ECI requirements related to minimum qualifications of direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must hold a high school diploma or certificate recognized by the state as an equivalent of a high school diploma and:

(1) have completed two years of documented paid experience providing services to children and families; or

(2) provide behavioral intervention services according to a structured plan supervised by one of the following:

(A) Board Certified Behavior Analyst; or

(B) one of the following who is trained in Positive Behavior Supports or Applied Behavior Analysis:

(i) Licensed Psychologist licensed by the Texas State Board of Examiners of Psychologists;

(ii) Licensed Psychological Associate (LPA) licensed by the Texas State Board of Examiners of Psychologists;

(iii) Licensed Professional Counselor (LPC) licensed by the Texas State Board of Examiners of Professional Counselors;

(iv) Licensed Clinical Social Worker (LCSW) licensed by the Texas State Board of Social Work Examiners; or

(v) Licensed Marriage and Family Therapist (LMFT) licensed by the Texas State Board of Examiners of Marriage and Family Therapists.

(b) The contractor must comply with DARS ECI requirements related to continuing education of direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must complete:

(1) a minimum of ten contact hours of approved continuing education each year; and

(2) an additional three contact hours of training in ethics every two years.

(c) The contractor must comply with DARS ECI requirements related to supervision of direct service staff members who do not hold a license or EIS credential.

(1) The contractor must provide a direct service staff member who does not hold a license or EIS credential documented supervision as defined in §108.309(e) of this title (relating to Minimum Requirements for All Direct Service Staff) as required by DARS ECI.

(2) An ECI staff member who has two years of experience providing early childhood intervention services is qualified to supervise a direct service staff member who does not hold a license or EIS credential.

(d) The contractor must comply with DARS ECI requirements related to ethics for direct service staff members who do not hold a license or EIS credential. A direct service staff member who does not hold a license or EIS credential must meet the rules of conduct and ethics established in §108.319 of this title (relating to EIS Code of Ethics).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER F. PUBLIC OUTREACH

40 TAC §§108.601, 108.603, 108.605, 108.607, 108.609, 108.611, 108.613, 108.615, 108.617

STATUTORY AUTHORITY

The new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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SUBCHAPTER G. REFERRAL, PRE-ENROLLMENT, AND DEVELOPMENTAL SCREENING

40 TAC §§108.701, 108.706, 108.707, 108.709

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.701. Referral Requirements.

(a) The contractor must:

(1) accept referrals for children less than 36 months of age;

(2) document in the child's record the referral date, source, and reason for referral; and

(3) contact the family in a timely manner after receiving the referral.

(b) The contractor must follow all requirements described in this chapter when a referral is received 45 days or more before the child's third birthday.

(c) In accordance with 34 CFR §303.209(b)(iii) and §108.1207(h) (relating to Transition Planning), when a referral is received less than 45 days before the child's third birthday, the contractor is not required to conduct pre-enrollment procedures, an evaluation, an assessment, or an initial IFSP meeting. In accordance with 34 CFR §303.209, with written parental consent, if the toddler is potentially eligible for special education services:

(1) the contractor must notify the LEA; and

(2) DARS coordinates the notification to the State Education Agency.

§108.709. Optional Developmental Screenings.

(a) Developmental screenings are only used to determine the need for further evaluation. The contractor must:

(1) use developmental screening tools that are approved by DARS ECI; and

(2) train providers administering the screening tool according to the parameters required by the selected tool.

(b) The parent has the right to decide whether to proceed to a comprehensive evaluation after a developmental screening or request a comprehensive evaluation instead of a developmental screening at any time.

(c) If the results of a child's developmental screening do not indicate a developmental concern, the contractor must:

(1) provide written documentation to the parent that further evaluation is not recommended;

(2) offer the parent a comprehensive evaluation; and

(3) conduct a comprehensive evaluation if requested by the parent.

(d) The contractor must coordinate with the Texas Department of Family and Protective Services (DFPS) to accept referrals for children under 36 months of age who are in the conservatorship of DFPS, involved in a substantiated case of child abuse or neglect, identified as being affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure, or suspected of having a disability or developmental delay.

(1) If the contractor receives a completed developmental screening from a health care provider acting within their scope of practice indicating a child in the conservatorship of DFPS has a developmental delay, the contractor must offer a comprehensive evaluation to determine eligibility for early childhood intervention services.

(2) If the contractor receives a referral on a child who has not been placed in the conservatorship of DFPS, but who is involved in a substantiated case of child abuse or neglect, the contractor must offer a developmental screening to determine the need for a comprehensive evaluation or proceed to a comprehensive evaluation without a developmental screening.

(3) If the contractor receives a referral on a child who is identified as being affected by illegal substance abuse, or withdrawal symptoms resulting from prenatal drug exposure, the contractor must offer a developmental screening to determine the need for a comprehensive evaluation. The contractor may use professional judgment to proceed to comprehensive evaluation without first conducting a developmental screening.

(4) If the contractor receives a referral from DFPS due to suspected disability or developmental delay, the contractor follows their local procedures for accepting referrals, screening, and evaluating when the child is:

(A) not in the conservatorship of DFPS;

(B) not involved in a substantiated case of child abuse or neglect; and

(C) not identified as being affected by illegal substance abuse or withdrawal symptoms resulting from prenatal drug exposure.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER H. ELIGIBILITY

40 TAC §§108.801, 108.803 - 108.805, 108.807

STATUTORY AUTHORITY

The repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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SUBCHAPTER H. ELIGIBILITY, EVALUATION, AND ASSESSMENT

40 TAC §§108.801, 108.803, 108.805, 108.807, 108.809, 108.811, 108.813, 108.815, 108.817, 108.819, 108.821, 108.823, 108.825, 108.827, 108.829, 108.831, 108.833

STATUTORY AUTHORITY

The new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.805. Definitions.

The following words and terms, when used in this subchapter, will have the following meanings, unless the context clearly indicates otherwise. Adjusted Age--The chronological age of a child minus the number of weeks or months of prematurity.

§108.809. Initial Eligibility Criteria.

A child must be under 36 months of age and meet initial eligibility criteria to receive early childhood intervention services. Initial eligibility is established by:

(1) documentation of a medically diagnosed condition that has a high probability of resulting in developmental delay;

(2) an auditory or visual impairment as defined by the Texas Education Agency rule at 19 TAC §89.1040 (relating to Eligibility Criteria); or

(3) a developmental delay. Each developmental area must be evaluated as defined in 34 CFR §303.321. Developmental delay is determined based on:

(A) an evaluation based on a standardized tool designated by DARS indicating a delay of at least 25% in one or more of the following developmental areas: communication; cognitive; gross motor; fine motor; social emotional; or adaptive; or

(B) an evaluation based on a standardized tool designated by DARS indicating a delay of at least 33% if the child's only delay is in expressive language; or

(C) a qualitative determination of delay, as indicated by responses or patterns that are disordered or qualitatively different from what is expected for the child's age, and significantly interfere with the child's ability to function in the environment. When the interdisciplinary team determines there is evidence that the results of the standardized tool do not accurately reflect the child's development, eligibility must be established using a supplemental protocol designated by DARS ECI. A child must meet the same eligibility standards in subparagraph (A) or (B) of this paragraph on the designated tool to qualify for a qualitative determination of delay.

§108.813. Assessment of Hearing and Auditory Status.

(a) As part of evaluation the interdisciplinary team must review the current hearing and auditory status for every child through an analysis of the evaluation protocol results, or other screening tool if the child is eligible based on a medical diagnosis or vision impairment, to determine any need for further hearing assessment.

(b) The contractor must refer a child to a licensed audiologist if the child has been identified as having a need for further hearing assessment and the child has not had a hearing assessment within six months of the hearing needs identification. If necessary to access a licensed audiologist, the contractor may refer the child to their primary health care provider. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives an audiological assessment that indicates the child has an auditory impairment, the contractor must refer the child within five business days:

(1) to an otologist, an otolaryngologist, or an otorhinolaryngologist for an otological examination. An otological examination may be completed by any licensed medical physician when an otologist is not available. The child's record must include documentation that an otologist, an otolaryngologist, or an otorhinolaryngologist was not available to complete the examination; and

(2) to the LEA to complete the communication evaluation and participate in the eligibility determination process as part of the interdisciplinary team. The contractor must also refer to the LEA any child who uses amplification.

§108.815. Assessment of Vision Status.

(a) As part of evaluation the interdisciplinary team must review the current vision status for every child through an analysis of the evaluation protocol results, or other screening tool if the child is eligible based on a medical diagnosis or hearing impairment, to determine the need for further vision assessment.

(b) The contractor must refer a child to an ophthalmologist or optometrist if the child has been identified as having a need for further vision assessment and the child has not had a vision assessment within nine months of the vision needs identification. If necessary to access an ophthalmologist or optometrist, the contractor may refer the child to their primary health care provider. The referral must be made:

(1) within five working days; and

(2) with parental consent.

(c) If the contractor receives a medical eye examination report that indicates vision impairment, the contractor must refer the child to the LEA and to the local office of the DARS Division for Blind Services, with parental consent and within five days of receiving the report.

(d) The referral must be accompanied by a form containing elements required by the Texas Education Agency completed by an ophthalmologist or an optometrist, or a medical physician when an ophthalmologist or optometrist is not available.

§108.817. Eligibility Determination Based on Developmental Delay.

(a) The contractor must:

(1) comply with all requirements in 34 CFR §303.21(b) (relating to Procedures for Evaluation of the Child);

(2) maintain all test protocols and other documentation used to determine eligibility and continuing eligibility in the child's record;

(3) provide prior written notice to the parent when the child is determined to be ineligible for early childhood intervention services; and

(4) ensure that evaluations are conducted by qualified personnel.

(b) The parent and at least two professionals from different disciplines must conduct the evaluation to determine initial and continuing eligibility based on developmental delay as defined by §108.809(3) of this title (relating to Initial Eligibility Criteria). Service coordination is not considered a discipline for evaluation. The evaluation procedures must include:

(1) administration of the standardized tool designated by DARS ECI;

(2) taking the child's history, including interviewing the parent;

(3) identifying the child's level of functioning in each of the developmental areas in 34 CFR §303.21(a)(1);

(4) gathering information from other sources such as family members, other caregivers, medical providers, social workers, and educators, if necessary, to understand the full scope of the child's unique strengths and needs;

(5) reviewing medical, educational, and other records; and

(6) in addition to 34 CFR §303.21(b), determining the most appropriate setting, circumstances, time of day, and participants for the evaluation in order to capture the most accurate picture of the child's ability to function in his or her natural environment.

(c) The contractor must consider other evaluations and assessments performed by outside entities when requested by the family.

(1) The contractor must determine whether outside evaluations and assessments:

(A) are consistent with DARS ECI policies;

(B) reflect the child's current status; and

(C) have implications for IFSP development.

(2) If the family does not allow full access to those records or to those entities or does not consent to or does not cooperate in evaluations or assessments to verify their findings, the contractor may discount or disregard the other evaluations and assessments performed by outside entities.

(d) Evaluation must be based on informed clinical opinion.

§108.821. Qualitative Determination of Developmental Delay.

(a) When the results of the evaluation, using the standardized tool designated by DARS ECI, do not accurately reflect the child's development or ability to function in the natural environment, the interdisciplinary team documents this in the child's record and proceeds to a qualitative determination of developmental delay.

(b) The interdisciplinary team must use the supplemental protocol designated by DARS ECI to determine qualitative delay.

§108.827. Needs Assessment.

(a) The interdisciplinary team, to include the service coordinator, must complete a comprehensive needs assessment initially and annually to:

(1) determine and document the eligible child's need for early childhood intervention services;

(2) identify the child's unique strengths and needs;

(3) identify the family's resources, concerns, and priorities;

(4) identify the appropriate early childhood intervention services; and

(5) inform the development of the IFSP.

(b) The assessment of the child must include:

(1) a review of the results of the child's evaluation;

(2) personal observation of the child; and

(3) the identification of the child's needs in each of the developmental areas listed in 34 CFR §303.21(a)(1).

(c) The contractor must offer to conduct a family-directed assessment and comply with all requirements in 34 CFR §303.321(c) (relating to Procedures for assessment of the child and family). A family-directed assessment must be conducted by the interdisciplinary team in order to identify the family's resources, priorities, and concerns and the supports and services necessary to enhance the family's capacity to meet the developmental needs of the child. The family-directed assessment must:

(1) be voluntary on the part of each family member participating in the assessment;

(2) be based on information obtained through the assessment tool and also through an interview with those family members participating in the assessment; and

(3) include the family's description of its resources, priorities, and concerns related to enhancing the child's development.

(d) Providers must assess and document the child's progress and needs of the family on an ongoing basis.

§108.833. Autism Screening.

(a) Autism screening is not required if the child has been screened for autism by another entity or has been identified as having autism.

(b) The contractor does not diagnose autism.

(c) If an enrolled child is 18 months or older, the interdisciplinary team must determine if the child:

(1) has a family history of autism;

(2) has lost previously acquired speech or social skills; or

(3) exhibits a language or cognitive delay or unusual communication patterns combined with a social, emotional or behavioral concern, including repetitive or stereotypical behaviors.

(d) If the interdisciplinary team identifies any of the issues in subsection (c) of this section, a member of the team must:

(1) explain to the family the importance of early screening for autism;

(2) request and obtain written consent for the screening;

(3) complete the Modified Checklist for Autism in Toddlers (M-CHAT) if the child is not screened by the child's licensed health care provider or is unable to receive the screening from the child's licensed health care provider in a timely manner; and

(4) complete the M-CHAT follow-up interview for a child who does not pass the M-CHAT screening.

(e) The contractor must make appropriate referrals if needs are identified. This could include:

(1) a referral to appropriate clinicians for a child who does not pass both the M-CHAT and the follow-up interview; and

(2) the provision of case management to assist the parent with having an autism screening done by the child's licensed health care provider if they do not consent to a screening by the contractor.

(f) The use of the M-CHAT screening does not take the place of the appropriate evaluation of the child required under this subchapter.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER I. EVALUATION AND ASSESSMENT

40 TAC §§108.901, 108.903, 108.905, 108.907, 108.909, 108.911, 108.913, 108.915, 108.917

STATUTORY AUTHORITY

The repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation

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SUBCHAPTER J. INDIVIDUALIZED FAMILY SERVICE PLAN (IFSP)

40 TAC §§108.1001, 108.1003, 108.1007, 108.1009, 108.1013, 108.1015, 108.1016, 108.1019

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.1009. Participants in Initial and Annual Meetings to Evaluate the IFSP.

(a) The initial IFSP meeting and each annual meeting to evaluate the IFSP must be conducted by the IFSP team as defined in 34 CFR §303.343(a) (relating to IFSP Team meeting and periodic review).

(b) The initial IFSP meeting and the annual meeting to evaluate the IFSP must be conducted face-to-face with at a minimum, the parent and at least two professionals from different disciplines or professions.

(1) At least one of the two ECI professionals must be a service coordinator.

(2) At least one of the two ECI professionals must be an LPHA.

(3) At least one ECI professional attending the meeting must have been involved in conducting the evaluation. This may be the service coordinator, the LPHA, or a third professional. If the LPHA attending the IFSP meeting is not an LPHA who conducted the evaluation, the contractor must document how the most recent observations and conclusions of the LPHA who conducted the evaluation were communicated to the LPHA attending the initial IFSP meeting and incorporated into the IFSP.

(4) Other team members may participate by other means acceptable to the team.

(5) The annual meeting to evaluate the IFSP may be conducted by means other than a face-to-face meeting if:

(A) approved by the parent; and

(B) the contractor has a plan approved by DARS for conducting annual meetings to evaluate the IFSP by means other than a face-to-face meeting when appropriate for the child and family and approved by the parent in which case the contractor must document how the most recent observations and conclusions of the LPHA conducting the re-evaluation were communicated and incorporated into the IFSP.

(6) Parents must be informed of their choice regarding how the annual meeting is conducted.

(c) With parental consent, the contractor must also invite to the initial IFSP meeting and annual meetings to evaluate the IFSP:

(1) Early Head Start and Migrant Head Start staff members, if the family is jointly served; and

(2) representatives from other agencies serving or providing case management to the child or family including STAR, STAR+PLUS, or STAR Health Medicaid managed care.

§108.1013. Periodic Reviews.

(a) Each periodic review must be conducted by individuals that meet the requirements in 34 CFR §303.343(b) (relating to IFSP Team meetings and periodic reviews) and completed in compliance with 34 CFR §303.342(b) (relating to Procedures for IFSP development, review, and evaluation). The periodic review may be carried out by a meeting or by another means that is acceptable to the parents and other participants.

(b) Additionally, the child's record must contain documentation of all IFSP team members' participation in the periodic review. Participation in the periodic review may be accomplished by a team member attending the meeting, face-to-face or by telephone, or by providing input and information in advance of the meeting. If a team member participates by means other than a face-to-face meeting, he or she must provide their most recent observations and conclusions about the child to the service coordinator. He or she must document in the child's record how this information was communicated to the service coordinator. If the team member is an LPHA who is not providing ongoing services to the child, he or she must have assessed the child within the previous 30 days.

(c) A periodic review is required every 6 months at a minimum.

(d) Additional periodic reviews of the IFSP are conducted more frequently than six-month intervals if requested by the parent or other IFSP team members.

(e) The periodic review of the IFSP consists of the following actions, which must be documented in the child's record and provided to the parent:

(1) a review of the IFSP outcomes;

(2) a description of the child's current functional abilities and progress toward meeting each outcome;

(3) a review of the current needs of the child and family;

(4) the development of new outcomes or the modification of existing outcomes, as appropriate, which must be dated and attached to the IFSP; and

(5) the reasons for any modification to the plan or the rationale for not changing the plan.

(f) If the IFSP team adds transition steps and services as part of the periodic review, the team must follow the requirements in §108.1207(d) of this chapter (relating to Transition Planning).

(g) If the team determines that changes to the type, intensity, or frequency of services are required:

(1) the team completes a DARS required IFSP Services Page and provides a copy to the parent;

(2) the team must document the rationale for:

(A) a change in intensity or frequency of a service;

(B) the addition of a new service; or

(C) the discontinuation of a service; and

(3) the contractor must continue to provide all planned early childhood intervention services not affected by the change while the IFSP team develops the IFSP revision and gathers all required signatures.

(h) If services remain the same, the documentation must describe the rationale for making no changes and for recommending continued services.

(i) If new outcomes are developed, the documentation must be provided to the parent.

(j) A change of service coordinator does not require a periodic review.

§108.1015. Content of the IFSP.

(a) The IFSP team must develop a written IFSP containing all requirements in 20 USC §1436(d) and 34 CFR §303.344 (relating to Content of an IFSP). The IFSP must include the standardized IFSP Services Pages and the required elements designated by DARS ECI, including:

(1) a description of the child's present levels of development, including:

(A) information about the child's participation in the family's typical routines and activities;

(B) the child's strengths;

(C) the child's developmental needs; and

(D) the family's concerns and priorities.

(2) a description of the case management needs of the family;

(3) measurable outcomes that:

(A) address the child's and family's needs which were identified during pre-enrollment, evaluation, and assessment; and

(B) are intended to enhance the child's functional developmental skills and ability to participate in everyday family and community routines and activities;

(4) services to:

(A) address the outcomes in the IFSP;

(B) enhance the child's functional abilities, behaviors and routines; and

(C) strengthen the capacity of the family to meet the child's unique needs;

(5) the discipline of each provider for every service planned; and

(6) the name of the service coordinator.

(b) If the team determines that Specialized Skills Training (SST) is necessary, the team must ensure interdisciplinary monitoring of the SST and of child progress in accordance with §108.501 of this chapter (relating to Specialized Skills Training (Developmental Services)) by planning in the IFSP:

(1) regularly occurring service by the LPHA; or

(2) re-assessment by the LPHA at least every six months.

(c) If the IFSP team determines co-visits are necessary, the IFSP team must:

(1) list each service on the IFSP; and

(2) document in the IFSP a justification of how the child and family, will receive greater benefit from the services being provided at the same time.

(d) If providing services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver.

(e) If the IFSP team determines group services are necessary:

(1) the group services must be planned in an IFSP that also contains individual IFSP services; and

(2) the planned group services must be documented in the child's IFSP.

(f) If the IFSP team determines that an IFSP outcome cannot be achieved satisfactorily in a natural environment, the IFSP must contain a justification as to why an early childhood intervention service will be provided in a setting other than a natural environment, as determined appropriate by the parent and the rest of the IFSP team.

(g) The contents of the IFSP must be fully explained to the parent.

(h) The contractor must obtain the parent's signature on the IFSP services page. The parent's signature on the IFSP services page serves as written parental consent to provide the IFSP services. The written parental consent is valid for up to one year or until the IFSP team changes the type, intensity, or frequency of services. The contractor must not provide IFSP services without current written parental consent.

(i) The contractor must obtain, on the IFSP services page, the dated signatures of every member of the IFSP team as defined in §108.103(24) of this chapter (relating to Definitions).

(j) The contractor must provide the parent a copy of the signed IFSP.

(k) Any time the contractor assigns a new service coordinator, the following must be documented and attached to the IFSP:

(1) the name of the new service coordinator;

(2) the date of the change; and

(3) the date the family was notified of the change and the method of notification.

§108.1016. Planning for Services to be Delivered with the Routine Caregiver.

If delivering services with the participation of the routine caregiver in the absence of the parent is necessary, the IFSP team must:

(1) document in the IFSP a justification of how the child will benefit from delivering the specified services with the routine caregiver as required in §108.1015(d) of this title (relating to Content of the IFSP);

(2) document the names of the routine caregivers in the child's record;

(3) obtain written parental consent before releasing personally identifiable information to the routine caregiver; and

(4) obtain written authorization from the parent to provide early childhood intervention services with the routine caregiver.

§108.1019. Annual Meeting to Evaluate the IFSP.

(a) The annual meeting to evaluate the IFSP is done following determination of continuing eligibility. In addition to all requirements in 34 CFR §303.342 (relating to Procedures for IFSP development, review, and evaluation), the documentation of an Annual Meeting to Evaluate the IFSP must meet the requirements for Complete Review and include a documented team discussion of:

(1) a current description of the child including:

(A) reviews of the current evaluations and other information available from ongoing assessment of the child and family needs;

(B) health, vision, hearing, and nutritional status; and

(C) present level of development related to the three annual child outcome ratings found in §108.1301 of this chapter (relating to Child Outcomes);

(2) progress toward achieving the IFSP outcomes; and

(3) any needed modification of the outcomes and early childhood intervention services.

(b) Services provided under an IFSP that has not been evaluated and is not based on a current evaluation and current assessment of needs are not fully approved ECI services.

(1) If the contractor is at fault, DARS may disallow and recoup expenditures.

(2) If the parent has not consented to or has not cooperated with the re-determination of eligibility, the contractor must follow the procedures in §108.807 of this title (relating to Eligibility).

(3) If the parent fails to consent or fails to cooperate in necessary re-evaluations or re-assessments, no developmental delay or needs may be legitimately determined. The contractor must send prior written notice that the child has no documented current delay or no documented current needs at least 14 days before the contractor discontinues services on the IFSP, unless the parent:

(A) immediately consents to and cooperates with all necessary evaluations and assessments; and

(B) consents to all or part of a new IFSP.

(c) The parent retains procedural safeguards including the rights to use local and state complaint processes, request mediation, or request an administrative hearing pursuant to §101.1107 of this title (relating to Administrative Hearings Concerning Individual Child Rights).

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
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Proposal publication date: May 24, 2013
For further information, please call: (512) 424-4050

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40 TAC §§108.1013, 108.1017, 108.1021

STATUTORY AUTHORITY

The repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER K. SERVICE DELIVERY

40 TAC §§108.1103, 108.1105, 108.1106, 108.1108, 108.1111

STATUTORY AUTHORITY

The adopted amendments and new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments and new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.1105. Capacity to Provide Early Childhood Intervention Services.

The contractor must have the capacity to provide all early childhood intervention services in 34 CFR §303.13 (relating to Early intervention services.) and additional early childhood intervention services described in this chapter. These services are:

(1) Assistive Technology Device and Service--As defined in 34 CFR §303.13(b)(1).

(2) Audiology Services--As defined in 34 CFR §303.13(b)(2), plus services provided by local educational agency

personnel, including sign language and cued language services as defined in 34 CFR §303.13(b)(12).

(3) Behavioral Intervention--Services delivered through a structured plan to strengthen developmental skills while specifically addressing severely challenging behaviors as determined by the IFSP team. The behavior plan is developed by the IFSP team (that includes the plan supervisor) to:

(A) identify goals;

(B) conduct a functional assessment to determine the motivation for the behavior;

(C) develop a hypothesis;

(D) design support plans; and

(E) implement, monitor, and evaluate outcomes.

(4) Counseling--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Counseling is provided when the nature and quality of the parent-child relationship interferes significantly with the ECI child's development. Counseling focuses on the parent-child relationship or other critical care-giving relationships and help the child meet developmental outcomes.

(5) Family Education and Training--As family training, counseling, and home visits are defined in 34 CFR §303.13(b)(3). Family education and training is provided when the family needs information about general parenting techniques and/or environmental concerns. Information provided follows a specific scope and sequence. Information may be based on general child care, developmental education, or other specific curriculum.

(6) Health Services--As defined in 34 CFR §303.16.

(7) Medical Services--As defined in 34 CFR §303.13(b)(5).

(8) Nursing Services--As defined in 34 CFR §303.13(b)(6).

(9) Nutrition Services--As defined in 34 CFR §303.13(b)(7).

(10) Occupational Therapy--As defined in 34 CFR §303.13(b)(8).

(11) Physical Therapy--As defined in 34 CFR §303.13(b)(9).

(12) Psychological Services--As defined in 34 CFR §303.13(b)(10).

(13) Re-assessment--A specific type of assessment (§108.103(1) of this title (relating to Definitions)) service, planned on the IFSP, in which a team member gathers and documents information regarding the child's functional progress on IFSP outcomes, and considers whether any modifications to the IFSP should be recommended.

(14) Service Coordination--As defined in 34 CFR §303.13(b)(11) and includes all requirements in 34 CFR §303.34 (relating to service coordination services (case management)).

(15) Social Work Services--As defined in 34 CFR §303.13(b)(13).

(16) Specialized Skills Training--As defined in Subchapter E of this chapter (relating to Specialized Skills Training) plus the provision of special instruction as defined in 34 CFR §303.13(b)(14).

(17) Speech-Language Pathology Services--As defined in 34 CFR §303.13(b)(15) and can include sign language and cued language services as defined in 34 CFR §303.34(12).

(18) Targeted Case Management--As defined in Subchapter D of this chapter (relating to Case Management for Infants and Toddlers With Developmental Disabilities).

(19) Transportation and Related Costs--As defined in 34 CFR §303.13(b)(16).

(20) Vision Services--As defined in 34 CFR §303.13(b)(17) plus services provided by local educational agency personnel.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER L. TRANSITION

40 TAC §108.1211, §108.1217

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.1211. LEA Notification of Potentially Eligible for Special Education Services.

(a) The contractor must notify the LEA if a child enrolled in early childhood intervention services is potentially eligible for preschool special education services. If the IFSP team determines the child is potentially eligible for special education services, the contractor must send the LEA for the area in which the child resides the LEA Notification of Potentially Eligible for Special Education Services, which contains the child's limited personally identifiable information as defined in §108.1203(5) of this title (relating to Definitions). DARS will coordinate the notification of children potentially eligible for special education services to the State Education Agency, in compliance with 34 CFR §303.209(b).

(b) Parental consent is not required for the contractor to send LEA Notification of Potentially Eligible for Special Education Services, but the parent may opt out of LEA notification as described in §108.1213 of this title (relating to LEA Notification Opt Out). Informed written parental consent is required before sending information other than the child's limited personally identifiable information to the LEA.

(c) If the parent does not notify the contractor of their decision to opt out of the LEA Notification of Potentially Eligible for Special

Education Services, the contractor must send the LEA for the area in which the child resides:

(1) the LEA Notification of Potentially Eligible for Special Education Services not fewer than 90 days before the child's third birthday and document the date in the child's IFSP; or

(2) a late LEA Notification of Potentially Eligible for Special Education Services for any child aged 33-36 months whom the IFSP team determines is potentially eligible for special education services. The contractor must comply with all reporting requirements in §108.1215 of this title (relating to Reporting Late LEA Notifications of Potentially Eligible for Special Education Services).

(d) To assist the LEA in determining eligibility, the contractor, with written parental consent, must send the LEA the most recent:

(1) evaluations;

(2) assessments; and

(3) IFSPs.

§108.1217. LEA Transition Conference.

(a) The IFSP team determines whether a child is potentially eligible for special education services. The IFSP team's decision regarding potentially eligible for special education services is documented in the child's record.

(b) If the parent gives approval to convene the LEA Transition Conference, the contractor must:

(1) meet the requirements in 34 CFR §303.342(d) and (e) and §303.343(a), which requires:

(A) the face-to-face attendance of the parent and the service coordinator; and

(B) at least one other ECI profession who is a member of the IFSP team who may participate through other means as permitted in 34 CFR §303.343(a)(2);

(2) invite the LEA representative 14 days in advance;

(3) conduct the LEA Transition Conference at least 90 days before the child's third birthday. At the discretion of all parties, the conference may occur up to nine months before the child's third birthday; and

(4) document the date of the conference in the child's record.

(c) The contractor must conduct the LEA Transition Conference, even if LEA representatives do not attend, and provide the parent information about preschool special education and related services, including a description of the:

(1) eligibility definitions;

(2) timelines;

(3) process for consenting to an evaluation and eligibility determination; and

(4) extended year services.

(d) The contractor is not required to conduct the LEA Transition Conference for children referred to the contractor's ECI program less than 90 days before the child's third birthday.

(e) The 14-day timeline for inviting the LEA may be changed by written local agreement. If the contractor becomes aware of a consistent pattern of the LEA representative not attending transition conferences, the contractor must make efforts to meet with the LEA to reach a cooperative agreement to maximize LEA participation.

(f) If the parent gives approval to have an LEA Transition Conference, but does not give written consent to release records to the LEA, then the contractor may only release limited personally identifiable information to the LEA. With informed written consent, other personally identifiable information may be released to the LEA.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER M. CHILD AND FAMILY OUTCOMES

40 TAC §108.1301, §108.1303

STATUTORY AUTHORITY

The repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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40 TAC §§108.1301, 108.1303, 108.1307, 108.1309

STATUTORY AUTHORITY

The adopted new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation

and provision of health and human services by health and human services agencies.

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SUBCHAPTER O. PUBLIC OUTREACH

40 TAC §§108.1501 - 108.1503, 108.1505, 108.1507, 108.1509, 108.1511, 108.1513, 108.1515

STATUTORY AUTHORITY

The repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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SUBCHAPTER P. CONTRACT REQUIREMENTS

40 TAC §§108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, 108.1617

STATUTORY AUTHORITY

The repeals are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The repeals are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

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40 TAC §§108.1601, 108.1603, 108.1605, 108.1607, 108.1609, 108.1611, 108.1613, 108.1615, 108.1617, 108.1619, 108.1621, 108.1623, 108.1625

STATUTORY AUTHORITY

The adopted new rules are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. The new rules are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.1605. Definitions.

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

(1) Applicant--A person or organization that applies for a DARS ECI contract through a no-competitive process, including contract renewal.

(2) Application--An application for a DARS ECI contract through a non-competitive process, including contract renewal.

(3) Competition--A process, using a solicitation instrument that allows the simultaneous and comparative evaluation of proposals or offers from two or more qualified respondents acting independently.

(4) Contract--A written agreement between DARS ECI and a subrecipient to deliver all ECI system requirements within a designated region of Texas.

(5) Monitoring--Ongoing activities to ensure compliance with the contract, state and federal laws and regulations, and applicable DARS rules, policy and procedures, including subsequent amendments. Monitoring includes desk reviews of financial data, client records, and other pertinent information and comprehensive on-site visits, follow up on-site visits, and focused on-site visits.

(6) Office of Management and Budget (OMB) Circulars--Financial management policies issued by the Office of Management and Budget (OMB) in the Executive Office of the President and made applicable to Texas and its subgrantees and contractors by regulations of the U.S. Department of Education or other funding agencies (see, for example, 34 CFR Part 74). The circulars are found in Title 2 of the Code of Federal Regulations or in official White House publications.

(7) Proposal--As defined in §102.205 of this title, a binding offer submitted by a respondent in response to a request for proposals (RFP).

(8) Respondent--A person or entity that submits an oral, written, or electronic response to a solicitation instrument. A respondent may also be referenced as an "offeror" or "proposer."

(9) Solicitation--As defined in §102.205 of this title, a document requesting submittal of bids or proposals for goods or services in accordance with the advertised specifications. May also apply to grant arrangements.

(10) Subrecipient--As defined in 2 CFR Part 225, a non-federal agency that expends federal funds received from a pass-through entity to carry out objectives of the federal program or award.

(11) TKIDS--Texas Kids Intervention Data System (TKIDS). DARS' automated data system established by Texas Human Resources Code §73.0051(k) used to plan, manage, and maintain records of client services.

(12) UGMS--Uniform Grant Management Standards (UGMS) located at 34 TAC §§20.421-20.432 (relating to Uniform Grant Management Standards), adopted under the authority of Texas Government Code, Chapter 783.

(13) Uniform Grant and Contract Management Act (UGCMA)--Texas Government Code, Chapter 783.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

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SUBCHAPTER N. FAMILY COST SHARE SYSTEM

40 TAC §§108.1403, 108.1413, 108.1415, 108.1419, 108.1427

The Texas Health and Human Services Commission (HHSC), on behalf of the Department of Assistive and Rehabilitative Services (DARS), adopts amendments to 40 TAC Chapter 108, Division for Early Childhood Intervention Services, Subchapter N, Family Cost Share System, §108.1403, Definitions; §108.1413, Family Monthly Maximum Payment; §108.1415, Information Used to Calculate Family Monthly Maximum Payment; §108.1419, Third-Party Payors; and §108.1427, IFSP Services Subject to Suspension for Nonpayment. Section 108.1403 is adopted without changes to the proposed text as published in the June 28, 2013, issue of the *Texas Register* (38 TexReg 4176) and will not be republished. Sections 108.1413; 108.1415; 108.1419; and 108.1427 are adopted with changes and the text of the rules will be published.

BACKGROUND AND JUSTIFICATION

Pursuant to DARS Rider 31, *Early Childhood Intervention Family Cost Share,* Article II of 83(R) SB 1, General Appropriations Act, DARS adopts amendments to 40 TAC §108.1413, which requires families with an adjusted income greater than 400% of the federal poverty level to pay the full cost of early childhood intervention (ECI) services, not to exceed 5% of the family's monthly adjusted income. DARS adopts additional amendments within 40 TAC Chapter 108, Subchapter N to align other rules with the above noted amendments. The rules are adopted as of September 1, 2013. In response to public comments, the changes to 40 TAC §108.1413 are effective January 1, 2014 to give families time to adjust to the change and to allow DARS ECI contractors time to adjust systems and communicate with families.

SECTION-BY-SECTION SUMMARY

DARS adopts an amendment to §108.1403(13), Definitions, to clarify the definition of Inability to Pay.

DARS adopts amendments to §108.1413, Family Monthly Maximum Payment, to provide a phase-in period to allow DARS ECI contractors to prepare for rule revisions made in response to Rider 31 and to clarify the use of amended Figure: 40 TAC §108.1413(c)(1) and new Figure: 40 TAC §108.1413(c)(2).

DARS adopts amended Figure: 40 TAC §108.1413(c)(1) to:

* clarify that Figure: 40 TAC §108.1413(c)(1) applies only to families enrolled before January 1, 2014

* move language from current §108.1415, Information Used to Calculate Family Monthly Maximum Payment, that requires parents to pay the highest maximum monthly payment if they refuse to attest that information regarding third-party coverage, family size, and gross income is true and accurate; and

* move language from current §108.1419, Third-Party Payors, that requires the parent to pay the highest maximum monthly payment if they refuse to consent to releasing personally identifiable information to third-party payors or to bill third-party payors, unless they meet the requirements in §108.1419(c).

DARS adopts new Figure: 40 TAC §108.1413(c)(2) to:

* increase the family monthly maximum payment to equal the full cost of services, not to exceed five percent of the family's monthly adjusted income, for families with an adjusted income greater than 400 percent of the federal poverty level;

* add a requirement that parents pay the full cost of services if they refuse to attest to information related to third-party coverage, family, size or income; and

* add a requirement that parents pay the full cost of services if they refuse to consent to release personally identifiable information to third-party payors or to bill third-party payors, unless they meet the requirements in §108.1419(c).

DARS adopts amendments that allow an exception to charging the parent the full cost of services if using the family's insurance will result in a reduction or loss of benefits due to: charges against the annual or lifetime cap, increased premiums, or loss of insurance benefits for any member of the family. If the parent provides verification that using the family's insurance may result in these negative outcomes, the contractor bills the family according to the family's adjusted income.

DARS adopts amendments that clarify that DARS ECI absorbs additional cost of family fees, insurance deductibles, co-pays, and co-insurance only when the cost exceeds the family monthly maximum payment.

DARS adopts amendments to §108.1427, IFSP Services Subject to Suspension for Nonpayment, to require the contractor to inform the parent of his or her options related to requesting a review of the family cost share amount, as described in §108.1421 (relating to Review of Family Cost Share Amount) or a reconsideration and adjustment of the family cost share obligation as described in §108.1423 (relating to Reconsideration and Adjustment of Family Cost Share Obligation).

DARS posted the proposed rules on the agency website for public review from June 7, 2013 until August 11, 2013; submitted the proposed rules for publication in the June 28, 2013, issue of the *Texas Register;* conducted public hearings in Dallas and Houston to collect public testimony; and accepted public comments from June 7, 2013 until August 1, 2013. DARS presented the adopted rule amendments to the DARS Council on July 26, 2013, as an information item.

DARS received comments regarding the proposed changes during the comment period. A summary of the comments and the agency's responses follow.

On June 28, 2013, the United States Department of Education (ED) provided comments related to the proposed rules. However, the ED comments were not related to the revisions made in response to Rider 31. Therefore, DARS will continue to work with ED on their comments, and DARS may propose future rule revisions in accordance with ED direction.

DARS received input from former ECI parents, DARS ECI contractor staff members, concerned citizens, the Texas Council for Developmental Disabilities, and Texans Care for Children. The public comments are summarized below.

DARS will handle comments, feedback, and input related to implementation and operationalization outside of the rulemaking process. DARS will provide technical assistance, training, other supports, and monitoring to assist DARS ECI contractors with consistently implementing the intent of the rules. DARS will provide materials, forms, and publications to help families understand the family cost share system.

DARS will consider comments related to rules that were not open for public comment for future rule revisions to improve cost effectiveness.

Comment: Many commenters expressed support for ECI. Commenters stressed the importance of ECI services and expressed how much ECI helps families, specifically related to challenges that come with raising a child with a developmental delay or disability. In addition, commenters described ECI as a cost savings to the state by lessening or remediating problems early in a child's life, thereby reducing costs to other public systems later.

Response: DARS continues to be committed to providing families with young children who have developmental delays or disabilities individualized services, supports, and resources.

Comment: Many commenters expressed concerns about how the proposed rules will affect middle class families and that these families may not choose to receive early intervention services due to increased cost. Several commenters suggest the income bracket for families charged the full cost of service be set higher than 400 percent of the federal poverty level.

Response: DARS adopts these rules pursuant to DARS Rider 31, Early Childhood Intervention Family Cost Share, Article II of 80(R) SB 1 General Appropriations Act. DARS is sensitive to the concerns expressed by the commenters. The department will provide technical assistance and materials to implement the changes fairly and consistently across the state.

Comment: Some DARS ECI contractors expressed concerns that parents may refuse or delay IFSP development or service delivery until they can determine how much their family can afford rather than focusing on what the child needs.

Response: To support families in making informed decisions related to the cost of their child's services, DARS will distribute informational materials, publications, and forms. DARS will provide technical assistance, training, and other supports for DARS ECI contractors to help their staff members talk to families about the family cost share system.

Comment: Some commenters expressed concern that the proposed changes may result in primary referral sources referring children to private therapy clinics rather than ECI.

Response: The ECI system provides a wide array of services not available in other systems. In addition, the ECI system provides parents financial protections that are not available in other systems. In no case are parents charged more than the cost of providing the service. DARS will provide technical assistance, training, and other supports to help DARS ECI contractors talk to primary referral sources about the family cost share system.

Comment: Some commenters expressed concerns that the proposed changes will create an administrative burden and will not be cost effective to administer, including costs to upgrade software systems and to hire staff to administer the new system.

Response: In order to improve the cost effectiveness of the family cost share system, DARS is collecting family cost share related data and information, in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060 which directs DARS to complete a study of the family cost share system.

Comment: Commenters expressed concerns that the DARS ECI contractors do not have enough time to make the necessary changes to implement the proposed rules by September 1, 2013.

Response: DARS agrees. Although the rules are adopted as of September 1, 2013, the changes to 40 TAC §108.1413 are not effective until January 1, 2014 to allow DARS ECI contractors four months to adjust local systems and communicate with families.

Comment: One commenter suggested ECI allow the families to receive services at no cost for six months to allow time for the contractor and family to determine insurance benefits.

Response: DARS will consider this recommendation for future efforts to increase cost effectiveness. DARS is collecting family cost share related data and information in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060, which directs DARS to complete a study of the family cost share system. DARS will be considering all options to increase cost effectiveness.

Comment: One commenter stated that families should receive all ECI services at no cost to the family.

Response: DARS declines to make this change at this time.

Comment: One commenter suggested specialized skills training be provided at no cost to the family.

Response: DARS will consider this recommendation for future efforts to increase cost effectiveness. DARS is collecting family

cost share related data and information in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060, which directs DARS to complete a study of the family cost share system. DARS will consider all options to increase cost effectiveness.

Comment: One commenter asserted that Medicaid families can afford to and should be required to pay a family cost share.

Response: DARS declines to make this change. Currently, co-pays are not charged for Medicaid services delivered to children.

Comment: One commenter suggested that ECI only charge a flat rate based on income and deductions.

Response: DARS will consider this recommendation for future efforts to increase cost effectiveness. DARS is collecting family cost share related data and information in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060, which directs DARS to complete a study of the family cost share system. DARS will consider all options to increase cost effectiveness.

Comment: One commenter suggested ECI not charge families who consent to use their insurance a family cost share.

Response: DARS will consider this recommendation for future efforts to increase cost effectiveness. DARS is collecting family cost share related data and information in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060, which directs DARS to complete a study of the family cost share system. DARS will consider all options to increase cost effectiveness.

Comment: One commenter suggested ECI charge families who refuse to consent to use their insurance the Medicaid rate for services.

Response: DARS will consider this recommendation for future efforts to increase cost effectiveness. DARS is collecting family cost share related data and information in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060, which directs DARS to complete a study of the family cost share system. DARS will consider all options to increase cost effectiveness.

Comment: One commenter recommended that DARS require families to provide written verification of their income (tax return or paycheck stub), deductions, and extraordinary circumstances.

Response: DARS declines to make this change at this time. The parent is responsible for attesting that the information they provide is true and accurate. Requiring this level of additional verification may increase administrative burden. DARS is collecting family cost share related data and information in compliance with revisions to Subchapter D, Chapter 117, Human Resources Code, made in response to Senate Bill 1060, which directs DARS to complete a study of the family cost share system. DARS will consider all options to increase cost effectiveness.

Comment: One commenter recommended that DARS revise §108.1413(f)(1) regarding how deductions are calculated.

Response: DARS will consider this recommendation for future rule revisions and solicit additional stakeholder input.

Comment: One commenter recommended revising §108.1427(c) to read, "Respite vouchers will be denied for payment during suspension period."

Response: DARS agrees to revise §108.1427(c), as this more clearly meets the intent of the state.

STATUTORY AUTHORITY

The adopted amendments are authorized by the Texas Human Resources Code, Chapters 73 and 117; and the Individuals with Disabilities Education Act, as amended, 20 USC §§1400 et seq., and its implementing regulations, 34 CFR Part 303, as amended. These amendments are adopted pursuant to HHSC's statutory rulemaking authority under Texas Government Code, Chapter 531, §531.0055(e), which provides the Executive Commissioner of HHSC with the authority to promulgate rules for the operation and provision of health and human services by health and human services agencies.

§108.1413. Family Monthly Maximum Payment.

(a) The family monthly maximum payment is the total amount of money collected from a family in one month, including family fees, co-pays, co-insurance, and deductibles. The assigned family monthly maximum payment does not increase if the family has more than one child receiving IFSP services.

(b) The contractor may not charge a family a co-pay or any co-insurance, deductibles or family fees for children in receipt of Medicaid.

(c) The contractor determines the family's assigned family monthly maximum payment based on the family's placement on the DARS ECI sliding fee scale. Placement on the sliding fee scale is based on family size and annual adjusted income. The sliding fee scale is based on the formula in the figure in this subsection. The sliding fee scale must be provided to the parent and additional copies can be obtained from DARS.

(1) For children and families enrolled in ECI services before January 1, 2014, the family monthly maximum payment shall be pursuant to the figure located in this paragraph until the family's annual IFSP review. Thereafter, the family monthly maximum payment shall be pursuant to the figure located in paragraph (2) of this subsection.
Figure: 40 TAC §108.1413(c)(1)

(2) For children and families who enroll in ECI services on or after January 1, 2014, the family monthly maximum payment shall be pursuant to the figure located in this paragraph.
Figure: 40 TAC §108.1413(c)(2)

(d) Family size is calculated by adding: the child, the number of parents living in the home, and the number of the parent's other dependents.

(e) The annual adjusted income is calculated by subtracting allowable deductions from the annual gross income.

(f) The contractor calculates the allowable deductions amount using:

(1) the actual amounts that were paid over the previous 12 months and are expected to continue during the IFSP period; and

(2) projections for new expenses expected to occur during the IFSP period.

(g) Allowable deductions are limited to the following family expenses that are not reimbursed by other sources:

(1) medical or dental expenses that meet the requirements in subsection (h) of this section;

(2) childcare and respite expenses;

(3) costs and fees associated with the adoption of a child; and

(4) court-ordered child support payments for children who were not counted as family members or dependents in calculating the adjusted income and family monthly maximum payment.

(h) Allowable deductions for medical and dental expenses are costs to primarily alleviate or prevent a physical or mental defect or illness. Allowable deductions for medical and dental expenses are limited to the cost of:

(1) diagnosis, cure, alleviation, treatment, or prevention of disease;

(2) treatment of any affected body part or function;

(3) legal medical services delivered by physicians, surgeons, dentists, and other medical practitioners;

(4) medication, medical supplies, and diagnostic devices;

(5) premiums paid for insurance that covers the expenses of medical or dental care;

(6) transportation to receive medical or dental care; and

(7) medical or dental debt that is being paid on an established payment plan.

(i) In situations where there is shared physical custody or shared legal or financial responsibility for a child, the adjusted income(s) of the parent who financially supports the child will be considered unless conditions warrant otherwise.

(j) The parent must sign a family cost share agreement acknowledging the family monthly maximum payment calculated according to the figures in subsection (c) of this section. The contractor must not provide IFSP services subject to a family cost share amount until the parent signs a family cost share agreement.

§108.1415. Information Used to Calculate Family Monthly Maximum Payment.

(a) The parent must attest in writing that information regarding third-party coverage, family size, and gross income is true and accurate.

(b) The parent must attest in writing that information regarding allowable deductions used to calculate the annual adjusted income is true and accurate.

(1) The contractor bases the family monthly maximum payment solely on annual gross income if the parent refuses to attest in writing that allowable deductions information is true and accurate.

(2) The contractor may implement written local policies requiring verification of allowable deductions in addition to the family's required written attestation.

§108.1419. Third-Party Payors.

(a) The contractor must assist the parent in identifying and accessing other available funding sources to pay for early childhood intervention services.

(b) The contractor must always obtain prior written parental consent before:

(1) releasing personally identifiable information to any third-party payor; or

(2) billing third-party payors.

(c) The contractor calculates the family monthly maximum payment using the family's adjusted income if the parent provides verification that using the family's benefits or insurance may result in the following outcomes, as described in 34 CFR §303.520:

(1) a decrease in available lifetime coverage or any other insured benefit for the child or parent;

(2) an increase in premiums; or

(3) a loss of insurance benefits for any member of your family.

(d) The contractor must assist the parent with enrolling a potentially eligible child in Medicaid or CHIP. The contractor may waive the family monthly maximum payment while Medicaid or CHIP eligibility is being determined, not to exceed 90 days.

(e) Payment from a third-party contributes toward the family cost share amount for the month the IFSP service was delivered. DARS ECI absorbs any additional cost of family fees, insurance deductibles, co-pays and co-insurance which exceed the family monthly maximum payment.

(f) The contractor must adjust the amount billed to the family if the contractor or parent successfully disputes a denied claim.

§108.1427. IFSP Services Subject to Suspension for Nonpayment.

(a) The contractor must suspend IFSP services subject to a family cost share amount as required by §108.1411 of this title (relating to IFSP Services Subject to the Family Cost Share Amount) when the balance remains delinquent for 90 days. For a family consenting to payment by third-party payors, the 90-day time period begins the date the contractor receives notice that the third-party payor has denied claims for reimbursement and all appeals are exhausted, if applicable.

(b) Before suspending IFSP services, the contractor must inform the parent that:

(1) he or she has the option to request a:

(A) review of the family cost share amount, as described in §108.1421 of this title (relating to Review of Family Cost Share Amount); or

(B) a reconsideration and adjustment of the family cost share obligation, as described in §108.1423 of this title (relating to Reconsideration and Adjustment of Family Cost Share Obligation);

(2) IFSP services subject to a family cost share amount will be suspended when a balance is delinquent for 90 days; and

(3) the contractor cannot guarantee the same schedule or the same individual service provider if IFSP services are later reinstated.

(c) Respite vouchers will be denied for payment during a suspension period.

(d) A notation must be made on the family cost share agreement that IFSP services subject to a family cost share amount have been suspended due to non-payment.

(e) The contractor must reinstate suspended IFSP services when the family's account is paid in full or the family negotiates an acceptable payment plan with the contractor. The IFSP team must reassess the appropriateness of the IFSP before reinstating IFSP services if IFSP services are suspended for more than six months. The contractor must document the reinstatement of IFSP services date on the IFSP and the family cost share agreement.

(f) The contractor must maintain written local policy for collecting delinquent family cost share accounts. Documentation must reflect all reasonable attempts to collect unpaid balances. Reasonable

attempts include multiple attempts at written notification, phone notification, and e-mail.

This agency hereby certifies that the adoption has been reviewed by legal counsel and found to be a valid exercise of the agency's legal authority.

Filed with the Office of the Secretary of State on August 12, 2013.

TRD-201303346

Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Effective date: September 1, 2013
Proposal publication date: June 28, 2013
For further information, please call: (512) 424-4050

TEXAS DEPARTMENT OF INSURANCE

Notification Pursuant to the Insurance Code, Chapter 5, Subchapter L

As required by the Insurance Code, Article 5.96 and 5.97, the ***Texas Register*** publishes notice of proposed actions by the Texas Department of Insurance. Notice of action proposed under Article 5.96 must be published in the ***Texas Register*** not later than the 30th day before the proposal is adopted. Notice of action proposed under Article 5.97 must be published in the ***Texas Register*** not later than the 10th day before the proposal is adopted. The Administrative Procedure Act, Government Code, Chapters 2001 and 2002, does not apply to department action under Articles 5.96 and 5.97.

The complete text of the proposal summarized here may be examined in the offices of the Texas Department of Insurance, 333 Guadalupe Street, Austin, Texas 78701.

This notification is made pursuant to the Insurance Code, Article 5.96, which exempts it from the requirements of the Administrative Procedure Act.

Texas Department of Insurance

Final Action on Rules

EXEMPT FILING NOTIFICATION PURSUANT TO TEXAS INSURANCE CODE CHAPTER 5, SUBCHAPTER L, ARTICLE 5.96

ADOPTION OF AMENDMENTS TO THE *TEXAS BASIC MANUAL OF RULES, CLASSIFICATIONS AND EXPERIENCE RATING PLAN FOR WORKERS' COMPENSATION AND EMPLOYERS' LIABILITY INSURANCE*

The commissioner of insurance adopts the amendments proposed by the April 5, 2013, petition filed by Liberty Mutual Insurance and its group affiliates (Reference No. W-0413-01). The petition requests that the commissioner amend the *Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance* to allow insurance carriers to file and use modeled rating factors to calculate their premiums. The petition specifies proposed amendments to Rule III E (Policy Preparation), Rule VII B (Premium Discount), and Appendix A (Procedures), and the addition of Rule VI M (Modeled Rating Factor) to the *Basic Manual.* The petition requests that the proposed amendments be effective 30 days after notice of the adoption is published in the *Texas Register.* The commissioner adopts the amendments with one editorial change to the proposed text.

TDI published notice of the proposal in the June 7, 2013, issue of the *Texas Register* (38 TexReg 3655). TDI received no comments and no requests for a hearing on the proposal.

The commissioner adopts the following amendments to the manual:

The amendments to Rule III E add a modeled rating factor (MRF) to the calculation of the total estimated policy cost of a workers' compensation policy. The MRF applies to the estimated modified premium to produce the estimated modified/modeled rating premium. The amendments also renumber the steps in calculating the total estimated policy cost.

The amendment to Rule VII B updates the definition of standard premium to include modeled rating. The amendment to Appendix A updates the list of items on the information page of the policy to include the MRF, if applicable, and re-letters the items in the list.

The amendments to Rule VI add section M (Modeled Rating Factor), which provides an explanation of the MRF, describes its application, and lists the insurance carrier's requirements to use the MRF. The commissioner has deleted the word "factor" after "MRF" in Rule VI, new section M.2.c, as proposed, because it is duplicative.

The MRF is an optional factor that insurance carriers can file with TDI and apply when calculating workers' compensation premium. The MRF takes into consideration individual risk characteristics and loss experience of an insured. Insurers may use predictive modeling to determine the MRF. The term MRF can include tier rating and other similar terms.

Under the amendments to Rule III E, an insurer will apply its MRF to the policy in a multiplicative manner, and must not apply or use the MRF in a way that duplicates other rating factors, such as schedule and experience rating factors. Once determined, the MRF will apply during the entire policy period. Insurance carriers will be required to evaluate each policy's characteristics and experience at each renewal to determine the MRF for the renewal policy.

The amendments to Rule VI require insurance carriers to make a filing with TDI under Title 28, Texas Administrative Code, Chapter 5, Subchapter M (Filing Requirements) before using an MRF. The filing must include the MRFs; the characteristics, variables, or criteria used to determine the MRFs; actuarial support for the MRFs; and other supporting documentation.

The commissioner has determined that the amendments to the manual are necessary for insurance carriers to use MRFs in calculating workers' compensation rates or premiums. The proposed filing requirement is necessary to promote transparency and accountability in the use of MRFs.

Including an MRF in premium calculations allows an insurance carrier to tailor premiums more precisely to each insured by including an insured's specific risk characteristics and loss experience. With a more precise risk assessment, the insurance carrier can come closer to charging the appropriate premium for the risk each insured actually presents.

A copy of the full text of the petition and related exhibits has been on file with the TDI Office of the Chief Clerk since April 5, 2013. The petition and exhibits, with the editorial change to Rule VI, section M.2.c, are incorporated by reference into this commissioner's order.

The commissioner adopts the amendments pursuant to Article 5.96 of the Texas Insurance Code. Article 5.96 exempts action taken under this article from the requirements of the Administrative Procedure Act (Government Code, Title 10, Chapter 2001), and authorizes TDI to prescribe, promulgate, adopt, approve, amend, or repeal standard and uniform manual rules, rating plans, classification plans, statistical plans,

and policy and endorsement forms for various lines of insurance, including workers' compensation.

TDI certifies that the amendments to the manual have been reviewed by legal counsel and found to be a valid exercise of TDI's authority.

The commissioner orders that the amendments to the Texas Basic Manual of Rules, Classifications and Experience Rating Plan for Workers' Compensation and Employers' Liability Insurance proposed by the April 5, 2013, petition filed by Liberty Mutual Insurance and its group affiliates (Reference No. W-0413-01) and exhibits attached to and incorporated into this order by reference be effective 15 days after notice of their adoption is published in the *Texas Register*.

TRD-201303303
Sara Waitt
General Counsel
Texas Department of Insurance
Filed: August 8, 2013

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 Plan

Texas Education Agency

Title 19, Part 2

TRD-201303337
Filed: August 9, 2013

♦ ♦ ♦

Adopted Rule Reviews

Department of Assistive and Rehabilitative Services

Title 40, Part 2

In accordance with Texas Government Code §2001.039, the Department of Assistive and Rehabilitative Services (DARS) adopts the review of the following subchapters in Texas Administrative Code, Title 40, Part 2, Chapter 108, concerning Division for Early Childhood Intervention Services:

Subchapter H. Eligibility

Subchapter I. Evaluation and Assessment

Subchapter M. Child and Family Outcomes

Subchapter O. Public Outreach

Subchapter P. Contract Requirements

The proposed rule review was published in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3359).

Elsewhere in this issue of the *Texas Register,* DARS contemporaneously adopts revisions in 40 TAC Chapter 108.

No comments were received regarding the rule review.

This concludes the rule review of Subchapters H, I, M, O and P.

TRD-201303295
Sylvia F. Hardman
General Counsel
Department of Assistive and Rehabilitative Services
Filed: August 7, 2013

♦ ♦ ♦

State Board for Educator Certification

Title 19, Part 7

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 239, Student Services Certificates, pursuant to the Texas Government Code, §2001.039.

The rules reviewed by the SBEC in 19 TAC Chapter 239 are organized under the following subchapters: Subchapter A, School Counselor Certificate; Subchapter B, School Librarian Certificate; Subchapter C, Educational Diagnostician Certificate; Subchapter D, Reading Specialist Certificate; and Subchapter E, Master Teacher Certificate. The SBEC proposed the review of 19 TAC Chapter 239 in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3359).

Relating to the review of 19 TAC Chapter 239, the SBEC finds that the reasons for the adoption of Subchapters A-E continue to exist and readopts the rules. It is anticipated that Texas Education Agency (TEA) staff will present changes to 19 TAC Chapter 239 for discussion and action at a future meeting to clarify the rules and incorporate current SBEC policy and procedures. The TEA staff anticipate conducting a stakeholder meeting prior to presenting changes to the SBEC.

Following is a summary of the public comments received and corresponding responses.

Comment: The Texas Educational Diagnosticians' Association, the Texas Professional Educational Diagnosticians' Registry Board, and 56 individuals commented in support of the continuation of the educational diagnostician certification requirements in 19 TAC Chapter 239 because the educators provide needed services that are required by federal and state mandates for students with special needs in public schools in the state of Texas.

Board Response: The SBEC agreed and adopted the review of 19 TAC Chapter 239.

Comment: An individual commented that the school counselor certification requirements in 19 TAC Chapter 239 should include a requirement for training in developmentally appropriate methods for helping students respond to, manage, and process crisis situations.

Board Response: The school counselor certification requirements, which are the subject of this comment, are not proposed for amendment at this time. The SBEC may consider this comment when the anticipated rule revisions to Chapter 239 are brought forward. The SBEC adopted the review of 19 TAC Chapter 239.

Comment: The Texas Counseling Association and an individual commented in favor of the adoption of the review of 19 TAC Chapter 239. The commenters also recommended that the SBEC begin the process of revising 19 TAC Chapter 239, Student Services Certificates, Subchapter A, School Counselor Certificate, to increase the academic rigor of school counselor preparation, strengthen continuing education requirements, and raise school counselor standards.

Board Response: The SBEC agreed and adopted the review of 19 TAC Chapter 239.

This concludes the review of 19 TAC Chapter 239.

TRD-201303329
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: August 9, 2013

♦ ♦ ♦

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 244, Certificate of Completion of Training for Appraisers, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 244 in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3360).

Relating to the review of 19 TAC Chapter 244, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. It is anticipated that Texas Education Agency (TEA) staff will present changes to 19 TAC Chapter 244 for discussion and action at a future meeting to clarify the rules and incorporate current SBEC policy and procedures. The TEA staff anticipate conducting a stakeholder meeting prior to presenting changes to the SBEC.

The SBEC received no comments related to the rule review of 19 TAC Chapter 244.

This concludes the review of 19 TAC Chapter 244.

TRD-201303330
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: August 9, 2013

♦ ♦ ♦

The State Board for Educator Certification (SBEC) adopts the review of Title 19, Texas Administrative Code (TAC), Chapter 245, Certification of Educators from Other Countries, pursuant to the Texas Government Code, §2001.039. The SBEC proposed the review of 19 TAC Chapter 245 in the May 24, 2013, issue of the *Texas Register* (38 TexReg 3360).

Relating to the review of 19 TAC Chapter 245, the SBEC finds that the reasons for adoption continue to exist and readopts the rules. It is anticipated that Texas Education Agency (TEA) staff will present changes to 19 TAC Chapter 245 for discussion and action at a future meeting to clarify the rules and incorporate current SBEC policy and procedures. The TEA staff anticipate conducting a stakeholder meeting prior to presenting changes to the SBEC.

The SBEC received no comments related to the rule review of 19 TAC Chapter 245.

This concludes the review of 19 TAC Chapter 245.

TRD-201303331
Cristina De La Fuente-Valadez
Director, Rulemaking, Texas Education Agency
State Board for Educator Certification
Filed: August 9, 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: 16 TAC §401.320(g)(1)(A)

Match	Odds	Prize
0	1 in 2,704,156	$250,000*
1	1 in 18,779	$500
2	1 in 621	$50
3	1 in 56	$10
4	1 in 11	$2
5	Not a winner	Not a winner
6	Not a winner	Not a winner
7	Not a winner	Not a winner
8	1 in 11	$2
9	1 in 56	$10
10	1 in 621	$50
11	1 in 18,779	$500
12	1 in 2,704,156	$250,000*
	Overall odds of winning any prize: 1 in 4.54	

*In any drawing where the number of top prize winning plays is greater than twenty (20), the top prize shall be paid on a pari-mutuel rather than fixed prize basis and a liability cap of $5 million will be divided equally by the number of top prize winning plays.

Figure: 40 TAC §108.1413(c)(1)

DARS ECI Sliding Fee Scale For Families Enrolled Before January 1, 2014	
Adjusted Income by % Federal Poverty Guideline	**Family Monthly Maximum Payments**
Family cost share amount is the total collection of co-pays, co-insurance, deductibles, family fees, and benefits paid by public or private insurance. The family cost share amount must not exceed the actual cost of services. In addition to payments received from insurance, the parent pays co-pays, co-insurance, deductibles, and fees up to the family monthly maximum payment.	
≤ 100%	$0
>100% to 150%	$3
>150% to 200%	$5
> 200% to 250%	$10
> 250% to 350%	$20
> 350% to 450%	$55
> 450% to 550%	$85
> 550% to 650%	$115
> 650% to 750%	$145
> 750%	$175
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate,	$175
refuses to release personally identifiable information to or give permission to bill a third-party payor unless they meet the requirements in §108.1419(c).	$175

Figure: 40 TAC §108.1413(c)(2)

DARS ECI Sliding Fee Scale Family cost share amount is the total collection of co-pays, co-insurance, deductibles, family fees, and benefits paid by public or private insurance. The family cost share amount must not exceed the actual cost of services. In addition to payments received from insurance, the parent pays co-pays, co-insurance, deductibles, and fees up to the family monthly maximum payment.	
If the adjusted income is within the following % of the federal poverty guideline:	**then the family monthly maximum payment is:**
≤ 100%	$0
> 100% to 150%	$3
> 150% to 200%	$5
> 200% to 250%	$10
> 250% to 350%	$20
> 350% to 400%	$55
≥ 400%	equal to the full cost of services, not to exceed 5% of family's monthly adjusted income
If the parent:	**then the family monthly maximum payment equals the:**
refuses to attest in writing that information about their third-party coverage, family size, and gross income is true and accurate,	full cost of services.
refuses to release personally identifiable information to or give permission to bill a third-party payor, unless they meet the requirements in §108.1419(c).	full cost of services.

The *Texas Register* is required by statute to publish certain documents, including applications to purchase control of state banks, notices of rate ceilings issued by the Office of Consumer Credit Commissioner, and consultant proposal requests and awards. State agencies also may publish other notices of general interest as space permits.

Office of the Attorney General

Child Support Guidelines - 2013 Revised Tax Charts

Pursuant to §154.061(b) of the Texas Family Code, the Office of the Attorney General of Texas, as the Title IV-D agency, has promulgated the following tax charts to assist courts in establishing the amount of a child support order. These tax charts are applicable to employed and self-employed persons in computing net monthly income.

INSTRUCTIONS FOR USE

To use these tables, first compute the obligor's annual gross income. Then recompute to determine the obligor's average monthly gross income. These tables provide a method for calculating "monthly net income" for child support purposes, subtracting from monthly gross income the social security taxes and the federal income tax withholding for a single person claiming one personal exemption and the standard deduction.

Thereafter, in many cases the guidelines call for a number of additional steps to complete the necessary calculations. For example, §§154.061 - 154.070 provide for appropriate additions to "income" as that term is defined for federal income tax purposes, and for certain subtractions from monthly net income, in order to arrive at the net resources of the obligor available for child support purposes. If necessary, one may compute an obligee's net resources using similar steps.

Reason for Revision:

Texas Family Code §154.125 provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2013, the adjusted amount determined under Subsection (a-1) is $8,550.00. (Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code §154.125" appearing in July 19, 2013, issue of the *Texas Register* (38 TexReg 4647).) These charts have revised and republished with a September 1, 2013, effective date showing the point where Monthly Gross Wages (Employed Persons) or Monthly Net Earnings From Self-Employment (Self Employed Persons) would result in the adjusted amount of net resources.

EMPLOYED PERSONS
2013 REVISED TAX CHART

Monthly Gross Wages	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (6.2%)*	Social Security Taxes: Hospital (Medicare) Insurance Taxes (1.45%)**	Federal Income Taxes***	Net Monthly Income
$100.00	$6.20	$1.45	$0.00	$92.35
$200.00	$12.40	$2.90	$0.00	$184.70
$300.00	$18.60	$4.35	$0.00	$277.05
$400.00	$24.80	$5.80	$0.00	$369.40
$500.00	$31.00	$7.25	$0.00	$461.75
$600.00	$37.20	$8.70	$0.00	$554.10
$700.00	$43.40	$10.15	$0.00	$646.45
$800.00	$49.60	$11.60	$0.00	$738.80
$900.00	$55.80	$13.05	$6.67	$824.48
$1,000.00	$62.00	$14.50	$16.67	$906.83
$1,100.00	$68.20	$15.95	$26.67	$989.18
$1,200.00	$74.40	$17.40	$36.67	$1,071.53
$1,256.67****	$77.91	$18.22	$42.33	$1,118.21
$1,300.00	$80.60	$18.85	$46.67	$1,153.88
$1,400.00	$86.80	$20.30	$56.67	$1,236.23
$1,500.00	$93.00	$21.75	$66.67	$1,318.58
$1,600.00	$99.20	$23.20	$77.81	$1,399.79
$1,700.00	$105.40	$24.65	$92.81	$1,477.14
$1,800.00	$111.60	$26.10	$107.81	$1,554.49
$1,900.00	$117.80	$27.55	$122.81	$1,631.84
$2,000.00	$124.00	$29.00	$137.81	$1,709.19
$2,100.00	$130.20	$30.45	$152.81	$1,786.54
$2,200.00	$136.40	$31.90	$167.81	$1,863.89
$2,300.00	$142.60	$33.35	$182.81	$1,941.24
$2,400.00	$148.80	$34.80	$197.81	$2,018.59
$2,500.00	$155.00	$36.25	$212.81	$2,095.94
$2,600.00	$161.20	$37.70	$227.81	$2,173.29
$2,700.00	$167.40	$39.15	$242.81	$2,250.64
$2,800.00	$173.60	$40.60	$257.81	$2,327.99
$2,900.00	$179.80	$42.05	$272.81	$2,405.34
$3,000.00	$186.00	$43.50	$287.81	$2,482.69
$3,100.00	$192.20	$44.95	$302.81	$2,560.04
$3,200.00	$198.40	$46.40	$317.81	$2,637.39
$3,300.00	$204.60	$47.85	$332.81	$2,714.74
$3,400.00	$210.80	$49.30	$347.81	$2,792.09
$3,500.00	$217.00	$50.75	$362.81	$2,869.44
$3,600.00	$223.20	$52.20	$377.81	$2,946.79
$3,700.00	$229.40	$53.65	$392.81	$3,024.14
$3,800.00	$235.60	$55.10	$407.81	$3,101.49
$3,900.00	$241.80	$56.55	$427.40	$3,174.25
$4,000.00	$248.00	$58.00	$452.40	$3,241.60
$4,250.00	$263.50	$61.63	$514.90	$3,409.97
$4,500.00	$279.00	$65.25	$577.40	$3,578.35
$4,750.00	$294.50	$68.88	$639.90	$3,746.72
$5,000.00	$310.00	$72.50	$702.40	$3,915.10
$5,250.00	$325.50	$76.13	$764.90	$4,083.47
$5,500.00	$341.00	$79.75	$827.40	$4,251.85
$5,750.00	$356.50	$83.38	$889.90	$4,420.22
$6,000.00	$372.00	$87.00	$952.40	$4,588.60
$6,250.00	$387.50	$90.63	$1,014.90	$4,756.97
$6,500.00	$403.00	$94.25	$1,077.40	$4,925.35
$6,750.00	$418.50	$97.88	$1,139.90	$5,093.72
$7,000.00	$434.00	$101.50	$1,202.40	$5,262.10
$7,500.00	$465.00	$108.75	$1,327.40	$5,598.85
$8,000.00	$496.00	$116.00	$1,452.40	$5,935.60
$8,500.00	$527.00	$123.25	$1,587.77	$6,261.98
$9,000.00	$558.00	$130.50	$1,727.77	$6,583.73
$9,500.00	$587.45*****	$137.75	$1,867.77	$6,907.03
$10,000.00	$587.45	$145.00	$2,007.77	$7,259.78
$10,500.00	$587.45	$152.25	$2,147.77	$7,612.53
$11,000.00	$587.45	$159.50	$2,287.77	$7,965.28
$11,500.00	$587.45	$166.75	$2,427.77	$8,318.03
$11,828.81******	$587.45	$171.52	$2,519.84	$8,550.00
$12,000.00	$587.45	$174.00	$2,567.77	$8,670.78
$12,500.00	$587.45	$181.25	$2,707.77	$9,023.53
$13,000.00	$587.45	$188.50	$2,847.77	$9,376.28
$13,500.00	$587.45	$195.75	$2,987.77	$9,729.03
$14,000.00	$587.45	$203.00	$3,127.77	$10,081.78
$14,500.00	$587.45	$210.25	$3,267.77	$10,434.53
$15,000.00	$587.45	$217.50	$3,407.77	$10,787.28

Footnotes to Employed Persons 2013 Revised Tax Chart:

* An employed person not subject to the Old-Age, Survivors and Disability Insurance/Hospital (Medicare) Insurance taxes will be allowed the reductions reflected in these columns, unless it is shown that such person has no similar contributory plan such as teacher retirement, federal railroad retirement, federal civil service retirement, etc.

** When income exceeds $200,000.00 per year there is an additional Medicare Tax of 0.9%. The additional Medicare Tax does not apply to any values shown on this chart because the highest gross income included is $15,000.00 per month ($180,000.00 per year).

*** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,900.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction ($6,100.00).

For a single taxpayer with an adjusted gross income in excess of $250,000.00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $250,000.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted gross income in excess of 372,500.00. In no case is the deduction for the personal exemption reduced by more than 100%. The phase out of the Personal Exemption does not apply to any values shown on this chart because the highest income included is $15,000.00 per month ($180,000.00 per year).

**** The amount represents one-twelfth (1/12) of the gross income of an individual earning the federal minimum wage ($7.25 per hour) for a 40-hour week for a full year. $7.25 per hour x 40 hours per week x 52 weeks per year equals $15,080.00 per year. One-twelfth (1/12) of $15,080.00 equals $1,256.67.

***** For annual gross wages above $113,700.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2013 maximum Old-Age, Survivors and Disability Insurance tax of $7,049.40 per person (6.2% of the first $113,700.00 of annual gross wages equals $7,049.40). One-twelfth (1/12) of $7,049.40 equals $587.45.

****** This amount represents the point where the monthly gross wages of an employed individual would result in $8,550.00 of net resources. Texas Family Code §154.125 provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2013 the adjusted amount determined under Subsection (a-1) is $8,550.00.

* *

References Relating to Employed Persons 2013 Revised Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

(1) Social Security Administration's notice dated October 23, 2012 appearing in 77 Fed. Reg. 65754 (October 30, 2012)

(2) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))

(3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

(b) Tax Rate

(1) Section 3101(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(a))

2. Hospital (Medicare) Insurance Tax

(a) Contribution Base

(1) Section 3121(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3121(a))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 3101(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §3101(b))

3. Federal Income Tax

(a) Tax Rate Schedule for 2013 for Single Taxpayers

(1) Revenue Procedure 2013-15, Section 2.01, Table 3 which appears in Internal Revenue Bulletin 2013-5, dated January 28, 2013

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2013-15, Section 2.07(1), which appears in Internal Revenue Bulletin 2013-5, dated January 28, 2013

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

(1) Revenue Procedure 2013-15, Section 2.11, which appears in Internal Revenue Bulletin 2013-5, dated January 28, 2013

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code §154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code §154.125" appearing in 38 TexReg 4647 (July 19, 2013)

SELF-EMPLOYED PERSONS
2013 REVISED TAX CHART

Monthly Net Earnings From Self-Employment*	Social Security Taxes: Old-Age, Survivors and Disability Insurance Taxes (12.4%)**	Social Security Taxes: Hospital (Medicare) Insurance Taxes (2.9%)**, ***	Federal Income Taxes****	Net Monthly Income
$100.00	$11.45	$2.68	$0.00	$85.87
$200.00	$22.90	$5.36	$0.00	$171.74
$300.00	$34.35	$8.03	$0.00	$257.62
$400.00	$45.81	$10.71	$0.00	$343.48
$500.00	$57.26	$13.39	$0.00	$429.35
$600.00	$68.71	$16.07	$0.00	$515.22
$700.00	$80.16	$18.75	$0.00	$601.09
$800.00	$91.61	$21.43	$0.00	$686.96
$900.00	$103.06	$24.10	$0.31	$772.53
$1,000.00	$114.51	$26.78	$9.60	$849.11
$1,100.00	$125.97	$29.46	$18.90	$925.67
$1,200.00	$137.42	$32.14	$28.19	$1,002.25
$1,300.00	$148.87	$34.82	$37.48	$1,078.83
$1,400.00	$160.32	$37.49	$46.78	$1,155.41
$1,500.00	$171.77	$40.17	$56.07	$1,231.99
$1,600.00	$183.22	$42.85	$65.36	$1,308.57
$1,700.00	$194.67	$45.53	$74.80	$1,385.00
$1,800.00	$206.13	$48.21	$88.74	$1,456.92
$1,900.00	$217.58	$50.88	$102.68	$1,528.86
$2,000.00	$229.03	$53.56	$116.62	$1,600.79
$2,100.00	$240.48	$56.24	$130.56	$1,672.72
$2,200.00	$251.93	$58.92	$144.50	$1,744.65
$2,300.00	$263.38	$61.60	$158.44	$1,816.58
$2,400.00	$274.83	$64.28	$172.38	$1,888.51
$2,500.00	$286.29	$66.95	$186.32	$1,960.44
$2,600.00	$297.74	$69.63	$200.26	$2,032.37
$2,700.00	$309.19	$72.31	$214.20	$2,104.30
$2,800.00	$320.64	$74.99	$228.14	$2,176.23
$2,900.00	$332.09	$77.67	$242.08	$2,248.16
$3,000.00	$343.54	$80.34	$256.02	$2,320.10
$3,100.00	$354.99	$83.02	$269.96	$2,392.03
$3,200.00	$366.44	$85.70	$283.90	$2,463.96
$3,300.00	$377.90	$88.38	$297.84	$2,535.88
$3,400.00	$389.35	$91.06	$311.78	$2,607.81
$3,500.00	$400.80	$93.74	$325.72	$2,679.74
$3,600.00	$412.25	$96.41	$339.66	$2,751.68
$3,700.00	$423.70	$99.09	$353.60	$2,823.61
$3,800.00	$435.15	$101.77	$367.54	$2,895.54
$3,900.00	$446.60	$104.45	$381.48	$2,967.47
$4,000.00	$458.06	$107.13	$395.42	$3,039.39
$4,250.00	$486.68	$113.82	$439.83	$3,209.67
$4,500.00	$515.31	$120.52	$497.92	$3,366.25
$4,750.00	$543.94	$127.21	$556.00	$3,522.85
$5,000.00	$572.57	$133.91	$614.09	$3,679.43
$5,250.00	$601.20	$140.60	$672.17	$3,836.03
$5,500.00	$629.83	$147.30	$730.25	$3,992.62
$5,750.00	$658.46	$153.99	$788.34	$4,149.21
$6,000.00	$687.08	$160.69	$846.42	$4,305.81
$6,250.00	$715.71	$167.38	$904.51	$4,462.40
$6,500.00	$744.34	$174.08	$962.59	$4,618.99
$6,750.00	$772.97	$180.78	$1,020.68	$4,775.57
$7,000.00	$801.60	$187.47	$1,078.76	$4,932.17
$7,500.00	$858.86	$200.86	$1,194.93	$5,245.35
$8,000.00	$916.11	$214.25	$1,311.10	$5,558.54
$8,500.00	$973.37	$227.64	$1,427.27	$5,871.72
$9,000.00	$1,030.63	$241.03	$1,549.74	$6,178.60
$9,500.00	$1,087.88	$254.42	$1,679.85	$6,477.85
$10,000.00	$1,145.14	$267.82	$1,809.96	$6,777.08
$10,500.00	$1,174.90*****	$281.21	$1,943.92	$7,099.97
$11,000.00	$1,174.90	$294.60	$2,082.04	$7,448.46
$11,500.00	$1,174.90	$307.99	$2,220.17	$7,796.94
$12,000.00	$1,174.90	$321.38	$2,358.29	$8,145.43
$12,500.00	$1,174.90	$334.77	$2,496.42	$8,493.91
$12,580.47******	$1,174.90	$336.92	$2,518.65	$8,550.00
$13,000.00	$1,174.90	$348.16	$2,634.54	$8,842.40
$13,500.00	$1,174.90	$361.55	$2,772.67	$9,190.88
$14,000.00	$1,174.90	$374.94	$2,910.79	$9,539.37
$14,500.00	$1,174.90	$388.33	$3,048.92	$9,887.85
$15,000.00	$1,174.90	$401.72	$3,187.04	$10,236.34

Footnotes to Self-Employed Persons 2013 Revised Tax Chart:

* Determined without regard to Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12)) (the "Code").

** In calculating each of the Old-Age, Survivors and Disability Insurance tax and the Hospital (Medicare) Insurance tax, net earnings from self-employment are reduced by the deduction under Section 1402(a)(12) of the Code. The deduction under Section 1402(a)(12) of the Code is equal to net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) multiplied by one-half (1/2) of the sum of the Old-Age, Survivors and Disability Insurance tax rate (12.4%) and the Hospital (Medicare) Insurance tax rate (2.9%). The sum of these rates is 15.3% (12.4% + 2.9% = 15.3%). One-half (1/2) of the combined rate is 7.65% (15.3% x 1/2 = 7.65%). The deduction can be computed by multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 92.35%. This gives the same deduction as multiplying the net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) by 7.65% and then subtracting the result.

For example, the Social Security taxes imposed on monthly net earnings from self-employment (determined without regard to Section 1402(a)(12) of the Code) of $2,500.00 are calculated as follows:

(i) Old-Age, Survivors and Disability Insurance Taxes:

$2,500.00 x 92.35% x 12.4% = $286.29

(ii) Hospital (Medicare) Insurance Taxes:

$2,500.00 x 92.35% x 2.9% = $66.95

*** When income exceeds $200,000.00 per year there is an additional Medicare Tax of 0.9%. The additional Medicare Tax does not apply to any values shown on this chart because the highest gross income included is $15,000.00 per month ($180,000.00 per year).

**** These amounts represent one-twelfth (1/12) of the annual federal income tax calculated for a single taxpayer claiming one personal exemption ($3,900.00, subject to reduction in certain cases, as described below in this footnote) and taking the standard deduction ($6,100.00).

In calculating the annual federal income tax, gross income is reduced by the deduction under Section 164(f) of the Code. For example, monthly net earnings from self-employment of $8,500.00 times 12 months equals $102,000.00. The Old-Age, Survivors and Disability Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $9,796.49 ($102,000.00 x .9235 x 12.4% = $11,680.43). The Hospital (Medicare) Insurance taxes imposed by Section 1401 of the Code for the taxable year equal $2,731.71 ($102,000.00 x .9235 x 2.9% = $2,731.71). The deduction under Section 164(f) of the Code for 2013 is equal to $7,206.08 (($11,680.43 x 0.5) + ($2,731.72 x 0.5) = $7,206.08).

For a single taxpayer with an adjusted gross income in excess of $250,000.00, the deduction for the personal exemption is reduced by two percent (2%) for each $2,500.00 or fraction thereof by which adjusted gross income exceeds $250,000.00. The reduction is completed (i.e., the deduction for the personal exemption is eliminated) for adjusted

gross income in excess of $372,500.00. In no case is the deduction for the personal exemption reduced by more than 100%. The phase out of the Personal Exemption does not apply to any values shown on this chart because the highest income included is $15,000.00 per month ($180,000.00 per year).

***** For annual net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) above $113,700.00, this amount represents a monthly average of the Old-Age, Survivors and Disability Insurance tax based on the 2013 maximum Old-Age, Survivors and Disability Insurance tax of $14,098.80 per person (12.4% of the first $113,700.00 of net earnings from self-employment (determined with regard to Section 1402(a)(12) of the Code) equals $14,098.80). One-twelfth (1/12) of $14,098.80 equals $1,174.90.

****** This amount represents the point where the monthly net earnings from self-employment of a self-employed individual would result in $8,550.00 of net resources. Texas Family Code §154.125 provides "The guidelines for the support of a child in this section are specifically designed to apply to situations in which the obligor's monthly net resources are not greater than $7,500 or the adjusted amount determined under Subsection (a-1), whichever is greater." Effective September 1, 2013 the adjusted amount determined under Subsection (a-1) is $8,550.00.

* *

References Relating to Self-Employed Persons 2013 Revised Tax Chart:

1. Old-Age, Survivors and Disability Insurance Tax

   (a) Contribution Base

      (1) Social Security Administration's notice dated October 23, 2012 appearing in 77 Fed. Reg. 65754 (October 30, 2012)

      (2) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))

      (3) Section 230 of the Social Security Act, as amended (42 U.S.C. §430)

   (b) Tax Rate

      (1) Section 1401(a) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(a))

   (c) Deduction Under Section 1402(a)(12)

      (1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

2. Hospital (Medicare) Insurance Tax

   (a) Contribution Base

      (1) Section 1402(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(b))

(2) Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, §13207, 107 Stat. 312, 467-69 (1993)

(b) Tax Rate

(1) Section 1401(b) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1401(b))

(c) Deduction Under Section 1402(a)(12)

(1) Section 1402(a)(12) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1402(a)(12))

3. Federal Income Tax

(a) Tax Rate Schedule for 2013 for Single Taxpayers

(1) Revenue Procedure 2013-15, Section 2.01, Table 3 which appears in Internal Revenue Bulletin 2013-5, dated January 28, 2013

(2) Section 1(c), (f) and (i) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §1(c), 1(f), 1(i))

(b) Standard Deduction

(1) Revenue Procedure 2013-15, Section 2.07(1), which appears in Internal Revenue Bulletin 2013-5, dated January 28, 2013

(2) Section 63(c) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §63(c))

(c) Personal Exemption

(1) Revenue Procedure 2013-15, Section 2.11, which appears in Internal Revenue Bulletin 2013-5, dated January 28, 2013

(2) Section 151(d) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §151(d))

(d) Deduction Under Section 164(f)

(1) Section 164(f) of the Internal Revenue Code of 1986, as amended (26 U.S.C. §164(f))

4. Adjusted amount determined under Subsection (a-1) of Texas Family Code §154.125

Office of the Attorney General "Announcement of Adjustment Required by Texas Family Code §154.125" appearing in 38 TexReg 4647 (July 19, 2013)

TRD-201303383
Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 14, 2013

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Texas Water Code and Texas Health and Safety Code Settlement Notice

Notice is hereby given by the State of Texas of the following proposed resolution of an environmental enforcement lawsuit under the Texas Water Code and the Texas Health and Safety Code. Before the State may settle a judicial enforcement action under the Texas Water Code, the State shall permit the public to comment in writing on the proposed judgment. The Attorney General will consider any written comments and may withdraw or withhold consent to the proposed agreed judgment if the comments disclose facts or considerations that indicate that the consent is inappropriate, improper, inadequate, or inconsistent with the requirements of the Texas Water Code and the Texas Health and Safety Code.

Case Title and Court: Harris County, Texas and the State of Texas, acting by and through the Texas Commission on Environmental Quality, a Necessary and Indispensable Party v. Akzo Nobel Polymer Chemicals, L.L.C., Cause No. 2013-05083, in the 334th Judicial District Court, Harris County, Texas.

Nature of Defendant's Operations: The case involves Akzo Nobel Polymer Chemicals, L.L.C., a chemical plant located in La Porte, Texas that is alleged to have released smoke from a fire at the facility without authorization on October 22, 2011. The smoke is alleged to have contained Aluminum Oxide, Ethane, and Hydrogen Chloride, and was released in such quantities as to require the closure of Independence Parkway for 70 minutes.

Proposed Agreed Judgment: The Agreed Final Judgment imposes on Defendant civil penalties of $37,500 to be divided equally between Harris County and the State of Texas. The Defendant will pay attorney's fees to the State of Texas in the amount of $2,500 and also pay attorney's fees to Harris County in the amount of $2,500.

For a complete description of the proposed settlement, the complete proposed Agreed Final Judgment should be reviewed. Requests for copies of the judgment, and written comments on the proposed settlement, should be directed to Anthony W. Benedict, Assistant Attorney General, Office of the Texas Attorney General, P.O. Box 12548, Austin, Texas 78711-2548, (512) 463-2012, facsimile (512) 320-0911. Written comments must be received within 30 days of publication of this notice to be considered.

TRD-201303298
Katherine Cary
General Counsel
Office of the Attorney General
Filed: August 8, 2013

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Comptroller of Public Accounts

Correction of Certification of the Average Taxable Price of Gas and Oil - June 2013

The Comptroller of Public Accounts files this correction to the Certification of the Average Taxable Price of Gas and Oil - June 2013 published in the July 26, 2013, issue of the *Texas Register* (38 TexReg 4769).

The Comptroller of Public Accounts, administering agency for the collection of the Franchise Tax, has corrected the certified average closing price of West Texas Intermediate crude oil for the month of June 2013 to $95.80 per barrel from $95.76 as previously filed. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall not exclude total revenue received from oil produced during the month of June 2013 from a qualified low-producing oil well.

The Comptroller of Public Accounts has corrected the average closing price of gas for the month of June 2013 to $3.81 per MMBtu from $3.82 as previously filed. Therefore, pursuant to Tax Code, §171.1011(r), a taxable entity shall exclude total revenue received from gas produced during the month of June 2013 from a qualified low-producing gas well.

Inquiries should be directed to Bryant K. Lomax, Manager, Tax Policy Division, P.O. Box 13528, Austin, Texas 78711-3528.

TRD-201303369
Ashley Harden
General Counsel
Comptroller of Public Accounts
Filed: August 13, 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 and §303.009, Texas Finance Code.

The weekly ceiling as prescribed by §303.003 and §303.009 for the period of 08/19/13 - 08/25/13 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 08/19/13 - 08/25/13 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.

TRD-201303368
Leslie L. Pettijohn
Commissioner
Office of Consumer Credit Commissioner
Filed: August 13, 2013

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Employees Retirement System of Texas

Request for Qualification

The state of Texas through the Board of Trustees ("Board") of the Employees Retirement System of Texas ("ERS") is issuing a Request for Qualification ("RFQ") for qualified Investment Managers/Firms (each, a "Contractor") to obtain Proposals for investment opportunities in a Large Cap Growth Index Fund for the 401(k) and 457 Plans of the Texa$aver Deferred Compensation Program ("Texa$aver Program") beginning on or after August 29, 2013 and extending through a term as determined by ERS. Contractors shall provide the level of benefits required in the RFQ and meet other requirements.

Qualified Contractors wishing to respond to the RFQ shall: 1) qualify and provide documentation evidencing its status as either an SEC-registered investment advisor or a national banking organization subject to the oversight of the Office of the Comptroller of the Currency ("OCC"), or otherwise provide evidence of exemption; 2) have managed tax-exempt assets for at least five (5) years; 3) not be the sub-advisor if the

proposed investment vehicle is a mutual fund or collective/commingled fund (this requirement does not apply to separate account investment vehicles); 4) serve as a fiduciary for the Texa$aver Program, with an additional requirement for the proposed vehicle that is a non-mutual fund (i.e., collective/commingled fund) to have the Texa$aver Program assets held in a fiduciary capacity consistent with 12 C.F.R. Part 9 (Fiduciary Activities of National Banks) and guidelines promulgated by the OCC; and 5) not have been subject to any major enforcement activities by federal or state regulators or been involved in any significant litigation surrounding investment activities. If selected, Contractors shall be required to execute a Contractual Agreement provided by, and satisfactory to, ERS.

The RFQ will be available on or after August 29, 2013 from the ERS website. Proposals must be received at ERS by 12:00 Noon (CT) on November 7, 2013. To access the RFQ from the ERS website, qualified Contractors shall email their request to the attention of iVendor Mailbox at: **ivendorquestions@ers.state.tx.us.** The email request shall include the Contractor's full legal name, street address, as well as phone and fax numbers of Contractor's main point of contact. Upon receipt of Contractor's emailed request, a user ID and password will be issued permitting access to the secured RFQ.

General questions concerning the RFQ and/or ancillary bid materials should be sent to the iVendor Mailbox where responses, if applicable, are updated frequently.

The Board is not required to select the lowest bid or investment fund but shall take into consideration other relevant criteria, including ability to service contracts, past experience, and other criteria as referenced in Article II of the RFQ. ERS reserves the right to select none, one, or more than one Contractor when it is determined that such action would be in the best interest of ERS, its Participants or the state of Texas.

ERS reserves the right to reject any or all Proposals and call for new Proposals if deemed by ERS to be in the best interest of ERS, its Participants or the state of Texas. ERS also reserves the right to reject any Proposal submitted that does not fully comply with the RFQ's instructions and criteria. ERS is under no legal requirement to execute a contract on the basis of this notice or upon issuance of the RFQ and will not pay any costs incurred by any entity in responding to this notice or the RFQ or in connection with the preparation of a Proposal. ERS specifically reserves the right to vary all provisions set forth in the RFQ and/or contract at any time prior to execution of a contract where ERS deems it to be in the best interest of ERS, its Participants or the state of Texas.

TRD-201303300
Paula A. Jones
General Counsel and Chief Compliance Officer
Employees Retirement System of Texas
Filed: August 8, 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 September 23, 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 September 23, 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: CBTP CORPORATION dba Tyrell Park Chevron; DOCKET NUMBER: 2013-0689-PST-E; IDENTIFIER: RN101758845; LOCATION: Beaumont, Jefferson 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: $4,999; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(2) COMPANY: City of Austin; DOCKET NUMBER: 2013-0794-MWD-E; IDENTIFIER: RN101607794; LOCATION: Del Valle, Travis County; TYPE OF FACILITY: wastewater treatment facility; RULE VIOLATED: Texas Pollutant Discharge Elimination System Permit Number WQ0010543012, Permit Conditions Number 2.g., 30 TAC §305.125(1), and TWC, §26.121(a), by failing to prevent an unauthorized discharge of wastewater from the collection system into or adjacent to water in the state; PENALTY: $9,375; ENFORCEMENT COORDINATOR: Remington Burklund, (512) 239-2611; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753, (512) 339-2929.

(3) COMPANY: City of Kendleton; DOCKET NUMBER: 2013-0572-PWS-E; IDENTIFIER: RN101246247; LOCATION: Kendleton, Fort Bend County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.121(b)(1)(B)(ii), by failing to develop, maintain on hand, and make available to the executive director upon request an accurate and up-to-date chemical and microbiological monitoring plan that includes, but is not limited to: identifying all sampling locations that are representative of the distribution system, describing the sampling frequency, and specifying the analytical procedures and laboratories that the public water system will use to comply with the monitoring requirements; 30 TAC §290.42(l), by failing to compile and maintain a current, thorough plant operations manual for the facility for operator use and reference; 30 TAC §290.41(c)(3)(N) and §290.46(s)(1), by failing to calibrate the well meters for Well Numbers 1 and 2 at least once every three years; and 30 TAC §290.46(s)(2)(C), by failing to verify the accuracy of the manual disinfectant residual analyzer at least once every 90 days; PENALTY: $260; ENFORCEMENT COOR-

DINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(4) COMPANY: City of Southside Place; DOCKET NUMBER: 2013-0768-PWS-E; IDENTIFIER: RN101178978; LOCATION: Houston, Harris County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.45(b)(1)(D)(iii) and Texas Health and Safety Code, §341.0315(c), by failing to provide two or more service pumps that have a total capacity of at least 2.0 gallons per minute per connection at each pump station or pressure plane; PENALTY: $145; ENFORCEMENT COORDINATOR: Sam Keller, (512) 239-2678; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(5) COMPANY: DOTCHY CORPORATION dba Green Oasis Market; DOCKET NUMBER: 2013-0487-PST-E; IDENTIFIER: RN101881092; LOCATION: Stafford, Fort Bend 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 §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $4,500; ENFORCEMENT COORDINATOR: Joel McAlister, (512) 239-2619; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(6) COMPANY: FT. WORTH PIPE SERVICES, LP; DOCKET NUMBER: 2013-0695-MLM-E; IDENTIFIER: RN106589831; LOCATION: Big Spring, Texas 79720, Howard County; TYPE OF FACILITY: unauthorized disposal site; RULE VIOLATED: 30 TAC §334.401(b), by failing to utilize a licensed on-site supervisor to perform and supervise the underground storage tank (UST) removal; 30 TAC §334.6(a)(1) and (b)(1)(A)(ii), by failing to provide a written notification to the TCEQ prior to performing a UST removal; and 30 TAC §330.15(c), by failing to prevent the unauthorized disposal of municipal solid waste; PENALTY: $8,605; ENFORCEMENT COORDINATOR: Theresa Stephens, (512) 239-2540; REGIONAL OFFICE: 9900 West IH-20, Ste. 100, Midland, Texas 79706, (432) 570-1359.

(7) COMPANY: Gulf South Pipeline Company LP (Edna and Refugio Plants); DOCKET NUMBER: 2013-0656-AIR-E; IDENTIFIER: RN100219245; LOCATION: Edna, Jackson County; TYPE OF FACILITY: natural gas transmission facility; RULE VIOLATED: 30 TAC §122.143(4) and §122.146(2), Texas Health and Safety Code (THSC), §82.085(b), and Federal Operating Permit (FOP) Number O3132, General Terms and Conditions (GTC), by failing to submit the Permit Compliance Certification (PCC) no later than 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3159, GTC, by failing to submit the PCC no later than 30 days after the end of the certification period; 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3159, GTC, by failing to submit the PCC no later than 30 days after the end of the certification period; and 30 TAC §122.143(4) and §122.146(2), THSC, §382.085(b), and FOP Number O3159, GTC, by failing to submit the PCC no later than 30 days after the end of the certification period; PENALTY: $8,624; ENFORCEMENT COORDINATOR: Rajesh Acharya, (512) 239-0577; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(8) COMPANY: Jarrell, Keith; DOCKET NUMBER: 2013-1112-WOC-E; IDENTIFIER: RN106653488; LOCATION: Evadale, Jasper County; TYPE OF FACILITY: gas station; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1830, (409) 898-3838.

(9) COMPANY: Ky Cheng dba Angus Discount Grocery; DOCKET NUMBER: 2013-0660-PST-E; IDENTIFIER: RN102426624; LOCATION: Corsicana, Navarro County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the pressurized piping associated with the UST system; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Elvia Maske, (512) 239-0789; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(10) COMPANY: M & M Mooring Company; DOCKET NUMBER: 2012-1263-MSW-E; IDENTIFIER: RN105815773; LOCATION: Brownsville, Cameron County; TYPE OF FACILITY: medical waste transporter; RULE VIOLATED: 30 TAC §330.1211(c)(2)(F), by failing to maintain the cargo compartment of a vehicle or trailer at a temperature of 45 degrees Fahrenheit or less for putresible or biohazardous untreated medical waste transported for more than 72 hours after initial receipt from the generator; 30 TAC §330.1211(h)(7), by failing to obtain the signature of a facility representative acknowledging receipt of the untreated medical waste and the weight of waste received; 30 TAC §330.1211(i), by failing to provide documentation of each waste shipment from the point of collection through and including the unloading of the waste at an authorized facility; 30 TAC §330.1211(h)(7), by failing to obtain the signature of a facility representative acknowledging receipt of the untreated medical waste and the weight of waste received; 30 TAC §330.171(b), by failing to obtain prior written approval from the executive director for the disposal of special wastes; 30 TAC §330.1211(i), by failing to provide documentation of each waste shipment from the point of collection through and including the unloading of the waste at an authorized facility; and 30 TAC §330.1211(j) and §330.15(c), by failing to prevent the disposal of untreated medical waste at an unauthorized facility; PENALTY: $26,826; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 1804 West Jefferson Avenue, Harlingen, Texas 78550-5247, (956) 425-6010.

(11) COMPANY: Motiva Enterprises LLC; DOCKET NUMBER: 2013-0304-AIR-E; IDENTIFIER: RN100209451; LOCATION: Port Arthur, Jefferson County; TYPE OF FACILITY: petroleum refinery; RULE VIOLATED: Federal Operating Permit Number O3387, Special Terms and Conditions Number 18, New Source Review Permit Numbers 6056 and PSDTX1062M1, Special Conditions Number 1, 30 TAC §§101.20(3), 116.115(c), and 122.143(4), and Texas Health and Safety Code, §382.085(b), by failing to comply with the permitted nitrogen oxides emissions rate of 5.22 pounds per hour for emissions point numbers STGTU6-1 and STGTU7-1; PENALTY: $22,500; ENFORCEMENT COORDINATOR: Rebecca Johnson, (361) 825-3423; REGIONAL OFFICE: 3870 Eastex Freeway Beaumont, Texas 77703-1892, (409) 898-3838.

(12) COMPANY: MUTUAL OIL TRADING INCORPORATED, dba One Stop & Go; DOCKET NUMBER: 2013-0957-PST-E; IDENTIFIER: RN101540912; LOCATION: Denison, Grayson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(b) and (c)(1), by failing to monitor the underground storage tanks (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the suction piping associated with the UST system; PENALTY: $3,503; ENFORCEMENT COORDINATOR: Jason Fra-

ley, (512) 239-2552; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(13) COMPANY: Nationwide DG New Waverly, Incorporated.; DOCKET NUMBER: 2013-0798-EAQ-E; IDENTIFIER: RN106654650; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: commercial building with associated parking; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Contributing Zone; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(14) COMPANY: PAINT CREEK WATER SUPPLY CORPORATION; DOCKET NUMBER: 2013-0878-PWS-E; IDENTIFIER: RN101263192; LOCATION: Stamford, Haskell County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to provide a Disinfectant Level Quarterly Operating Report (DLQOR) to the executive director each quarter by the tenth day of the month following the end of the quarter; 30 TAC §290.109(c)(3)(A)(ii) and §290.122(c)(2)(A), by failing to collect a set of repeat distribution coliform samples within 24 hours of being notified of a total coliform-positive result on a routine coliform sample collected during the month of October 2012, and failing to provide public notice for the failure to sample; and 30 TAC §290.110(e)(4)(A) and (f)(3), by failing to provide a DLQOR to the executive director each quarter by the tenth day of the month following the end of the quarter; PENALTY: $952; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(15) COMPANY: PIXLEY WATER WORKS, INCORPORATED.; DOCKET NUMBER: 2013-0615-PWS-E; IDENTIFIER: RN101182814; LOCATION: Goodrich, Polk County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §290.46(q)(1) and (2), by failing to issue a boil water notification to the customers of the facility within 24 hours of a low pressure event or water outage; PENALTY: $253; ENFORCEMENT COORDINATOR: Jim Fisher, (512) 239-2537; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(16) COMPANY: Quadvest, L.P.; DOCKET NUMBER: 2013-0692-MWD-E; IDENTIFIER: RN102180411; LOCATION: Tomball, Montgomery County; TYPE OF FACILITY: domestic wastewater treatment plant; RULE VIOLATED: TWC, §26.121(a), 30 TAC §305.125(1), and Texas Pollutant Discharge Elimination System Permit Number WQ0015003001, Interim Effluent Limitations and Monitoring Requirements Number 1, by failing to comply with permitted effluent limits; PENALTY: $2,875; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(17) COMPANY: R & A Harris South, LP dba Intercontinental Motors; DOCKET NUMBER: 2013-0662-IWD-E; IDENTIFIER: RN101610970; LOCATION: Houston, Harris County; TYPE OF FACILITY: automobile dealership; RULE VIOLATED: TWC, §26.121(a)(1) and 30 TAC §305.65 and §305.125(2), by failing to maintain authorization to treat and discharge wastewater; PENALTY: $6,100; ENFORCEMENT COORDINATOR: Nick Nevid, (512) 239-2612; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(18) COMPANY: Rainbow Landscape Materials, LLC; DOCKET NUMBER: 2013-0511-WQ-E; IDENTIFIER: RN105695563; LOCATION: Rainbow, Somervelle County; TYPE OF FACILITY: construction site; RULE VIOLATED: Texas Pollutant Discharge Elimination System (TPDES) General Permit Number TXRX150000, Part II, Section E.2.(b), Obtaining Authorization to Discharge, and 30 TAC §281.25(a)(4), by failing to post the construction site notice at the site in a location where it is safely and readily available for viewing by the general public, local, state, and federal authorities, prior to commencing construction, and to maintain the notice at that location until completion of the construction activity; TPDES General Permit Number TXRX150000, Part III, Section D.1., Plan Review and Making Plans Available, and 30 TAC §281.25(a)(4), by failing to make the storm water pollution prevention plan readily available at the time of an on-site inspection; TPDES General Permit Number TXRX150000, Part III, Section F.1.(c), (e), (f), and (g), Contents of Storm Water Pollution Prevention Plan (SWP3), and 30 TAC §281.25(a)(4), by failing to include a description of the intended schedule or sequence of activities that will disturb soils for major portions of the site, data describing the soil or the quality of any discharge from the site, a map showing the general location of the site, and a detailed site map in the SWP3; TPDES General Permit Number TXRX150000, Part III, Section F.2.(a)(ii), General Requirements, and 30 TAC §281.25(a)(4), by failing to properly maintain control measures; and TWC, §26.121(a), by failing to prevent the discharge of sediment into or adjacent to water in the state; PENALTY: $9,435; ENFORCEMENT COORDINATOR: Jorge Ibarra, P.E., (817) 588-5890; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(19) COMPANY: Randall C. Voorheis and Terry D. Voorheis; DOCKET NUMBER: 2013-0850-EAQ-E; IDENTIFIER: RN106654825; LOCATION: Dripping Springs, Hays County; TYPE OF FACILITY: commercial properties; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain approval of a Contributing Zone Plan prior to commencing a regulated activity over the Edwards Aquifer; PENALTY: $2,500; ENFORCEMENT COORDINATOR: Jill Russell, (512) 239-4564; REGIONAL OFFICE: 12100 Park 35 Circle, Austin, Texas 78753-1808, (512) 339-2929.

(20) COMPANY: S & Y Incorporated.; DOCKET NUMBER: 2013-0617-PST-E; IDENTIFIER: RN101572337; LOCATION: Grand Prairie, 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 (not to exceed 35 days between each monitoring); PENALTY: $3,375; ENFORCEMENT COORDINATOR: David Carney, (512) 239-2583; REGIONAL OFFICE: 2309 Gravel Drive, Fort Worth, Texas 76118-6951, (817) 588-5800.

(21) COMPANY: San Antonio Water System; DOCKET NUMBER: 2013-0323-PST-E; IDENTIFIER: RN102831864; LOCATION: San Antonio, Bexar County; TYPE OF FACILITY: fleet refueling facility; 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; 30 TAC §334.72, by failing to report a suspected release to the TCEQ within 24 hours of discovery; and 30 TAC §334.74, by failing to investigate a suspected release of regulated substance within 30 days of discovery; PENALTY: $17,563; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(22) COMPANY: South Hampton Resources, Incorporated.; DOCKET NUMBER: 2013-0840-AIR-E; IDENTIFIER: RN101995611; LOCATION: Silsbee, Hardin County; TYPE OF FACILITY: distillation and chemical toll processing facility; RULE VIOLATED: 30 TAC §116.115(c) and §122.143(4), Federal Operating Permit Number O2776, Special Conditions Number 13, New Source Review Permit Number 3295, Special Conditions Number 1, and Texas Health and Safety Code, §382.085(b), by failing to prevent unauthorized

emissions; PENALTY: $4,725; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(23) COMPANY: SOUTHERN TRI-STAR MARKETS, LTD. dba Texaco Food Mart; DOCKET NUMBER: 2013-0464-PST-E; IDENTIFIER: RN102394970; LOCATION: Lake Jackson, Brazoria 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 (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); and 30 TAC §334.10(b), by failing to maintain UST records and make them immediately available for inspection upon request by agency personnel; PENALTY: $6,100; ENFORCEMENT COORDINATOR: Mike Pace, (817) 588-5933; REGIONAL OFFICE: 5425 Polk Avenue, Suite H, Houston, Texas 77023-1486, (713) 767-3500.

(24) COMPANY: TA Operating LLC dba Petro Stopping Center 304; DOCKET NUMBER: 2013-0956-PST-E; IDENTIFIER: RN102424884; LOCATION: Beaumont, Jefferson County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $7,275; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3870 Eastex Freeway, Beaumont, Texas 77703-1892, (409) 898-3838.

(25) COMPANY: Terry N. Smith; DOCKET NUMBER: 2013-0089-MSW-E; IDENTIFIER: RN106145964; LOCATION: Bandera, Bandera County; TYPE OF FACILITY: unauthorized scrap tire transport site; RULE VIOLATED: 30 TAC §328.57(d) and §328.54(d), by failing to retain all manifests showing the collection and disposition of all used or scrap tires; and by Failing to identify all vehicles and equipment used for the collection and transportation of used or scrap tires or tire pieces on both sides and the rear of the vehicle; and 30 TAC §328.57(c)(3), by failing to ensure that used or scrap tires or tire pieces are transported to an authorized scrap tire facility; PENALTY: $7,000; ENFORCEMENT COORDINATOR: Danielle Porras, (713) 767-3682; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(26) COMPANY: Texas Department of Transportation; DOCKET NUMBER: 2013-0862-PST-E; IDENTIFIER: RN105824601; LOCATION: Midland, Midland County; TYPE OF FACILITY: fleet refueling facility; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and TWC, §26.3475(c)(1), by failing to monitor the underground storage tanks for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring); PENALTY: $3,750; ENFORCEMENT COORDINATOR: Jason Fraley, (512) 239-2552; REGIONAL OFFICE: 3300 North A Street, Building 4, Suite 107, Midland, Texas 79705-5404, (432) 570-1359.

(27) COMPANY: TRI-BAR RANCH COMPANY, LTD.; DOCKET NUMBER: 2013-0847-EAQ-E; IDENTIFIER: RN106617012; LOCATION: Uvalde, Uvalde County; TYPE OF FACILITY: ranch with associated airfield; RULE VIOLATED: 30 TAC §213.23(a)(1), by failing to obtain authorization prior to beginning regulated activities over the Edwards Aquifer Contributing Zone; PENALTY: $7,500; ENFORCEMENT COORDINATOR: Jennifer Graves, (956) 430-6023; REGIONAL OFFICE: 14250 Judson Road, San Antonio, Texas 78233-4480, (210) 490-3096.

(28) COMPANY: Vinookumar Patel dba Cracker Barrel 4; DOCKET NUMBER: 2013-0530-PST-E; IDENTIFIER: RN103019493; LOCATION: Victoria, Victoria County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.50(b)(1)(A) and (2) and TWC, §26.3475(a) and (c)(1), by failing to monitor the underground storage tanks (UST) for releases at a frequency of at least once every month (not to exceed 35 days between each monitoring), and by failing to provide release detection for the pressurized piping associated with the UST; PENALTY: $3,879; ENFORCEMENT COORDINATOR: Clinton Sims, (512) 239-6933; REGIONAL OFFICE: 6300 Ocean Drive, Suite 1200, Corpus Christi, Texas 78412-5503, (361) 825-3100.

(29) COMPANY: VJ MARLIN INVESTMENTS, INCORPORATED. dba Quick N; DOCKET NUMBER: 2013-1325-PST-E; IDENTIFIER: RN102867637; LOCATION: Marlin, Falls County; TYPE OF FACILITY: convenience store with retail sales of gasoline; RULE VIOLATED: 30 TAC §334.8(c)(4)(A)(vii) and (5)(B)(ii), by failing to renew a previously issued underground storage tank (UST) delivery certificate by submitting a properly completed UST registration and self-certification form at least 30 days before the expiration date; and 30 TAC §334.8(c)(5)(A)(i) and TWC, §26.3467(a), by failing to make available to a common carrier a valid, current TCEQ delivery certificate before accepting delivery of a regulated substance into the UST; PENALTY: $1,750; ENFORCEMENT COORDINATOR: Rebecca Boyett, (512) 239-2503; REGIONAL OFFICE: 6801 Sanger Avenue, Suite 2500, Waco, Texas 76710-7826, (254) 751-0335.

(30) COMPANY: White, Daniel H; DOCKET NUMBER: 2013-1196-WOC-E; IDENTIFIER: RN103880639; LOCATION: Vernon, Wilbarger County; TYPE OF FACILITY: public water supply; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

(31) COMPANY: Wilson, JoeDale; DOCKET NUMBER: 2013-1212-WOC-E; IDENTIFIER: RN106670029; LOCATION: Vernon, Wilbarger County; TYPE OF FACILITY: individual; RULE VIOLATED: 30 TAC §30.5(a), by failing to obtain a required occupational license; PENALTY: $175; ENFORCEMENT COORDINATOR: Heather Podlipny, (512) 239-2603; REGIONAL OFFICE: 1977 Industrial Boulevard, Abilene, Texas 79602-7833, (325) 698-9674.

TRD-201303371
Kathleen C. Decker
Director, Litigation Division
Texas Commission on Environmental Quality
Filed: August 13, 2013

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Notice of a Proposed Amendment and Renewal of a General Permit Authorizing Discharges from Quarries Located in the John Graves Scenic Riverway

The Texas Commission on Environmental Quality (TCEQ) is proposing to reissue Texas Pollutant Discharge Elimination System (TPDES) General Permit TXG500000 which authorizes the discharge of process wastewater, mine dewatering, stormwater associated with industrial activity, construction stormwater, and certain non-stormwater discharges to surface water in the state 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 general permit applies to 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 is authorized by Texas Water Code (TWC), Chapter 26, Subchapter M and 30 Texas Administrative Code (TAC) Chapter 311, Subchapter H.

The existing general permit is scheduled to expire on December 15, 2013. This notice is being published to comply with 30 TAC §205.5(d), which requires the TCEQ to propose reissuance of an existing general permit at least 90 days prior to expiration. The existing general permit will remain in effect for dischargers authorized under the general permit until the date the commission takes final action on the revised draft general permit. However, no new notices of intent will be accepted or authorizations issued under the existing general permit after December 15, 2013. TCEQ will provide the additional public notice required by §205.3 following approval of the revised draft general permit by the United States Environmental Protection Agency.

INFORMATION. If you need more information about this general permit or the permitting process, please call the TCEQ Office of Public Education Program, toll free, at 1-800-687-4040. General information about the TCEQ can be found at our Web site at: *http://www.tceq.texas.gov.*

Further information may also be obtained by calling the TCEQ's Water Quality Division, Stormwater and Pretreatment Team, at (512) 239-4671.

TRD-201303367
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 13, 2013

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Notice of Public Hearing on Proposed Revisions to the State Implementation Plan

The Texas Commission on Environmental Quality (commission) will conduct a public hearing to receive testimony regarding proposed revisions to the state implementation plan (SIP) under the requirements of Texas Health and Safety Code, §382.017; Texas Government Code, Chapter 2001, Subchapter B; and 40 Code of Federal Regulations (CFR) §51.102 of the United States Environmental Protection Agency (EPA) concerning SIPs.

The proposed SIP revision would satisfy the Regional Haze Rule requirements to submit a progress report for the mandatory Class I federal areas in the state in the form of SIP revisions every five years (40 CFR §51.308(g)). According to the rule, the deadline for Texas to submit a five-year regional haze SIP revision is March 19, 2014, five years after submittal of the initial regional haze SIP revision. 40 CFR §51.308(g) provides that the report must evaluate improvement towards the reasonable progress goal for each Class I area located within the state and in each Class I area outside the state that may be affected by emissions from Texas.

The commission will hold a public hearing on this proposal in Austin on September 24, 2013 at 2:00 p.m. in Building E, Room 201, at the commission's central office located at 12100 Park 35 Circle. The hearing is structured for the receipt of oral or written comments by interested persons. Individuals may present oral statements when called upon in order of registration. Open discussion will not be permitted during the hearing; however, commission staff members will be available to discuss the proposal 30 minutes prior to the hearing.

Persons who have special communication or other accommodation needs who are planning to attend the hearing should contact Joyce Spencer-Nelson, Air Quality Division, at (512) 239-5017. Requests should be made as far in advance as possible.

Written comments may be submitted to Margaret Earnest, MC 206, Air Quality Division, Texas Commission on Environmental Quality, P.O. Box 13087, Austin, Texas 78711-3087 or faxed to (512) 239-6188. Electronic comments may be submitted at: *http://www5.tceq.texas.gov/rules/ecomments.* File size restrictions may apply to comments being submitted via the *eComments* system. All comments should reference Non-Rule Project Number 2013-013-SIP-NR. The public comment period closes on October 1, 2013. Federal Land Manager comments will be available on August 21, 2013. Copies of the proposed SIP and Federal Land Manager comments can be obtained from the commission's Web site at *http://www.tceq.texas.gov/airquality/sip/bart/haze_sip.html.* For further information, please contact Margaret Earnest, Air Quality Planning, (512) 239-4581.

TRD-201303365
Robert Martinez
Director, Environmental Law Division
Texas Commission on Environmental Quality
Filed: August 13, 2013

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Notice of Water Quality Applications

The following notices were issued on August 2, 2013, through August 9, 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

AIR PRODUCTS LLC which operates La Porte Plant, which produces industrial gases, has applied for a renewal of Texas Pollutant Discharge Elimination System (TPDES) Permit No. WQ0001280000, which authorizes the discharge of process wastewater, utility wastewater, laboratory test solution water, hydrostatic test water, and storm water at a daily average flow not to exceed 500,000 gallons per day via Outfall 001; and storm water on an intermittent and flow variable basis via Outfalls 002, 003, and 004. The facility is located at 10202 Strang Road, approximately 1,500 feet northwest of the intersection of State Highway 225 and Miller Cutoff Road, bordered on the north by Strang Road, on the east by Miller Cutoff Road, on the south by the Union Pacific railroad tracks, and on the west by the Houston Light and Power right way power lines, northwest of the City of La Porte, Harris County, Texas.

BAYER MATERIALSCIENCE LLC which operates Bayer MaterialScience Baytown WWTP, an inorganic and organic chemical manufacturing facility, has applied for a renewal of TPDES Permit No. WQ0001499000, which authorizes the discharge of stormwater and hydrostatic test water on an intermittent basis via Outfalls 002, 003, 004, and 006, and treated process wastewater, treated sanitary wastewater (previously monitored at internal Outfall 107), utility wastewater, and stormwater via Outfalls 007 and 008 at a daily average flow not to exceed 10,000,000 gallons per day. The facility is located east of Cedar Bayou, approximately 0.5 mile south of the intersection of Farm-to-Market Road 1405 (West Bay Road) and Farm-to-Market Road 565 northeast of the City of Baytown, Chambers County, Texas 77253.

PABTEX I, L.P. (OWNER) AND SAVAGE GULF SERVICES LTD LLP (OPERATOR) which operate a marine cargo handling facility that stores and loads soft coal and petroleum coke, have applied for a renewal of TPDES Permit No. WQ0001702000, which authorizes the intermittent and variable discharge of storm water associated with industrial activity from Outfall 001. The facility is located approximately

0.50 miles southeast of the intersection of State Highway 73 and Taft Avenue, and 0.25 miles southeast of the City of Groves in Jefferson County, Texas.

AIR PRODUCTS LLC which operates the Battleground Road Facility, has applied to the Texas Commission on Environmental Quality (TCEQ) for a major amendment without renewal to TPDES Permit No. WQ0002177000, to reduce the monitoring frequency for pH from once per day (seven days per week) to once per day (Monday through Friday). The current permit authorizes the discharge of process wastewater, utility wastewater, hydrostatic test water, and storm water at a daily average flow not to exceed 12,000 gallons per day via Outfall 001. The facility is located on the east side of Battleground Road, approximately 1.75 miles north of the intersection of Battleground Road and State Highway 225 in the City of La Porte, Harris County, Texas 77571.

ENTERPRISE PRODUCTS OPERATING LLC which operates the Mont Belvieu FM 1942 Complex [a chemical manufacturing facility which produces Iso-Octane and Iso-Octene from Isobutene, produces Methyl Tertiary Butyl Ether (MTBE), Propane, Propylene, ethane, n-butane, isobutane, and natural gasoline]; has applied for a major amendment to TPDES Permit No. WQ0002940000 to expand the definition of stormwater for all outfalls to include stormwater commingled with hydrostatic test water, fire water system test water, water from fire-fighting activities, fire-hydrant flush water, landscape watering/irrigation drainage, potable water, external building/facility/pavement wash-water, uncontaminated condensates (air conditioner condensate, compressor condensate, and steam condensate), and dust suppression drainage; revise the authorized wastestream of "untreated stormwater" to "stormwater" at Outfall 003; authorize the discharge of demineralizer neutralization tank effluent via Outfall 002; revise the authorized wastestream description at Outfall 001 to be treated process wastewater, treated process area stormwater, and utility wastewaters; increase the daily average and daily maximum permitted flows at Outfall 001 to 260,000 gallons per day and 340,000 gallons per day, respectively; increase the daily average and daily maximum permitted flows at Outfall 002 to 350,000 gallons per day and 425,000 gallons per day, respectively; increase the effluent limitations for all limited parameters at Outfalls 001 and 002; authorize the discharge of previously monitored effluents from Outfalls 404 [stormwater on an intermittent and flow variable basis] and 504 [process wastewaters, utility wastewaters, process area stormwater, facility interior and exterior washdown water, neutralized utility wastewater, hydrostatic test water, and truck wash water at a daily average flow not to exceed 670,000 gallons per day] via proposed Outfall 004 (which was previously regulated at Outfall 001 in TPDES Permit No. WQ0003499000); authorize the discharge of stormwater via proposed Outfall 005 on an intermittent and flow variable basis; remove the effluent limitations for total dissolved solids, chlorides, and sulfates at proposed Outfall 004 (formerly Outfall 001 in TPDES Permit No. WQ0003499000); remove effluent limitations for total selenium from proposed Outfall 004 (formerly Outfall 001 in TPDES Permit No. WQ0003499000); revise the sampling point location description for proposed Outfall 504 (formerly Outfall 501 in TPDES Permit No. WQ0003499000); and include a definition for "utility wastewaters" in the permit. The existing permit authorizes the discharge of treated process wastewater, first flush stormwater, cooling tower blowdown, and filter backwash at a daily average flow not to exceed 213,000 gallons per day via Outfall 001; noncontact cooling water, cooling tower blowdown, and filter backwash at a daily average flow not to exceed 250,000 gallons per day via Outfall 002; and untreated stormwater on an intermittent and flow variable basis via Outfall 003. The draft permit authorizes the discharge of treated process wastewater, treated process area stormwater, and utility wastewaters via Outfall 001 at a daily average flow not to exceed 260,000 gallons per day; utility wastewaters and demineralizer neutralization tank effluent via Outfall 002 at a daily average flow not to exceed 350,000 gallons per day; stormwater via Outfalls 003 and 005 on an intermittent and flow variable basis; and previously monitored effluents from Outfalls 404 [stormwater on an intermittent and flow variable basis] and 504 [process wastewaters, utility wastewaters, process area stormwater, facility interior and exterior washdown water, neutralized utility wastewater, hydrostatic test water, and truck wash water at a daily average flow not to exceed 670,000 gallons per day] via Outfall 004 on a continuous and flow variable basis. The facility is located at 10207 Farm-to-Market Road 1942, in the area enclosed on the west by Hatcherville Road, on the east by the Southern Pacific Railroad, on the south by Farm-to-Market Road 1942, and on the north by the CIWA Canal in the City of Mont Belvieu, Chambers County, Texas 77580.

THE DOW CHEMICAL COMPANY which operates a brine production and hydrocarbon storage facility, has applied for a renewal of TPDES Permit No. WQ0004429000, which authorizes the discharge of storm water associated with industrial activity on an intermittent and flow variable basis via Outfalls 001 and 002. The facility is located northwest of Oster Creek along County Road 226, approximately one (1) mile west of the intersection of County Road 226 and Farm-to-Market 523 near the City of Clute, Brazoria County, Texas.

CITY OF PINELAND has applied for a renewal of TPDES Permit No. WQ0010249001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 214,000 gallons per day. The facility is located at intersection of Thomas Street and Transmission Boulevard in the City of Pineland approximately 1.25 miles southeast of the intersection of U.S. Highway 96 and Farm-to-Market Road 83 in Sabine County, Texas 75968.

CITY OF BAYTOWN has applied for a renewal of TPDES Permit No. 10395-007, which authorizes the discharge of treated domestic wastewater at an annual average flow not to exceed 6,000,000 gallons per day. The facility is located at 3030 Ferry Road approximately 2,250 feet south of the intersection of Ferry Road and Massey Tompkins Road in Harris County, Texas.

CITY OF LAREDO has applied for a renewal of TPDES Permit No. WQ0010681007, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 72,000 gallons per day. The facility is located approximately 9,865 feet west of the intersection of Farm-to-Market Road 3338 (Las Tiendas) and Rancho Penitas Road in Webb County, Texas 78045.

NORTH TEXAS DISTRICT COUNCIL ASSEMBLIES OF GOD has applied for a major amendment to TPDES Permit No. WQ0013847001 to authorize an increase in the discharge of treated domestic wastewater from a daily average flow not to exceed 21,000 gallons per day to a daily average flow not to exceed 80,000 gallons per day. The facility is located approximately 400 feet southeast of the east end of Soil Conservation Service Dam No. 56, and approximately 2.5 miles east northeast of the City of Maypearl in Ellis County, Texas 75167.

BAY BLUFF LP has applied for a renewal of TPDES Permit No. WQ0014931001, which authorizes the discharge of treated domestic wastewater at a daily average flow not to exceed 50,000 gallons per day. The facility is located approximately 2,200 feet north-northeast of the intersection of Bay Area Boulevard and Red Bluff Road in Harris County, Texas 77507.

ROLLING V RANCH WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 of Wise County has applied for a new permit, proposed TPDES Permit No. WQ0014977001 to authorize the discharge of treated domestic wastewater at a daily average flow not to exceed 250,000 gallons per day. The facility will be located approximately

9,500 feet south and 1,850 feet east of the intersection of US 287, Texas 114 and Farm-to-Market-Road 3433 near the City of Rhome in Wise County, Texas 76078.

LAKE LBJ WATER CONTROL AND IMPROVEMENT DISTRICT NO 1 has applied for a new permit, Proposed TCEQ Permit No. WQ0015066001, to authorize the disposal of treated domestic wastewater at a daily average flow not to exceed 11,745 gallons per day via non-public access subsurface area drip dispersal irrigation system with a minimum area of 2.7 acres. The wastewater treatment facility and disposal site will be located at 847 County Road 134, Burnet, approximately 0.32 mile south-southwest on a private ranch road which is located approximately 0.82 mile west of the intersection of County Road 134 and Farm-to-Market Road 2342 in Burnet County, Texas 78611. The wastewater treatment facility and disposal site will be located in the drainage basin of Lake LBJ in Segment No. 1406 of the Colorado River Basin.

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-201303381
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 14, 2013

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Proposal for Decision

The State Office of Administrative Hearings issued a Proposal for Decision and Order to the Texas Commission on Environmental Quality on August 9, 2013, in the matter of the Executive Director of the Texas Commission on Environmental Quality, Petitioner v. Aman & Brothers LLC; SOAH Docket No. 582-13-1825; TCEQ Docket No. 2012-0478-PST-E. The commission will consider the Administrative Law Judge's Proposal for Decision and Order regarding the enforcement action against Aman & Brothers LLC on a date and time to be determined by the Office of the Chief Clerk in Room 201S of Building E, 12100 N. Interstate 35, Austin, Texas.

This posting is Notice of Opportunity to Comment on the Proposal for Decision and Order. The comment period will end 30 days from date of this publication. Written public comments should be submitted to the Office of the Chief Clerk, MC-105, TCEQ, P.O. Box 13087, Austin, Texas 78711-3087. If you have any questions or need assistance, please contact Melissa Chao, Office of the Chief Clerk, (512) 239-3300.

TRD-201303382
Bridget C. Bohac
Chief Clerk
Texas Commission on Environmental Quality
Filed: August 14, 2013

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Texas Ethics Commission

List of Late Filers

Listed below are the names of filers from the Texas Ethics Commission who did not file reports or failed to pay penalty fines for late reports in reference to the listed filing deadline. If you have any questions, you may contact Robbie Douglas at (512) 463-5800.

Deadline: Monthly Report due May 5, 2013 for Committees

Peter Hwang, Houston 80-20 PAC, 8300 Bender Rd., Humble, TX 77396

Deadline: Personal Financial Statement due April 30, 2013

Christopher Gilbert, 1629 W. Alabama, Houston, TX 77006

TRD-201303366
David Reisman
Executive Director
Texas Ethics Commission
Filed: August 13, 2013

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General Land Office

Notice and Opportunity to Comment on Requests for Consistency Agreement/Concurrence Under the Texas Coastal Management Program

On January 10, 1997, the State of Texas received federal approval of the Coastal Management Program (CMP) (62 *Federal Register* pp. 1439 - 1440). Under federal law, federal agency activities and actions affecting the Texas coastal zone must be consistent with the CMP goals and policies identified in 31 TAC Chapter 501. Requests for federal consistency review were deemed administratively complete for the following project(s) during the period of June 18th through June 24, 2013. As required by federal law, the public is given an opportunity to comment on the consistency of proposed activities in the coastal zone undertaken or authorized by federal agencies. Pursuant to 31 TAC §§506.25, 506.32, and 506.41, the public comment period extends 30 days from the date published on the Texas General Land Office web site. The notice was published on the web site on August 14, 2013. The public comment period for this project will close at 5:00 p.m. on September 13, 2013

FEDERAL AGENCY ACTIONS:

Applicant: J.W. John Kelso Company, Inc; Location: The project is located in Galveston Bay at 6200 Harborside Drive, in Galveston, Galveston County, Texas. Latitude: 29.29855 North; Longitude -94.84496 West. Project Description: The applicant proposes to expand an existing multi-use facility. The proposed project consists of removing 200 linear feet of existing concrete sheet pile bulkhead and relocating to the proposed new north section. In addition, 400 linear feet of concrete sheet pile will be added on both the east and west side of the proposed dock expansion using a crane/barge unit. The area behind the sheet pile wall, 80,000 square feet, will be backfilled with clean sand/fill material after sheet pile wall has been installed from landside using crane/clam bucket. Existing elevation of bay bottom in area to be filled is -10 mean sea level (MSL) to -12 MSL. Volume of backfill material below elevation -2.0 is 36,000 cubic yards. The project plans are attached in 12 sheets. CMP Project No.: 13-1296-F1. Type of Application: This application is being evaluated under §10 of the Rivers and Harbors Act of 1899, Section 404 of the Clean Water Act (CWA).

Pursuant to §306(d)(14) of the Coastal Zone Management Act of 1972 (16 U.S.C.A. §§1451 - 1464), as amended, interested parties are invited to submit comments on whether a proposed action or activity is or is not consistent with the Texas Coastal Management Program goals and policies and whether the action should be referred to the Land Commissioner for review.

Further information on the applications listed above, including a copy of the consistency certifications or consistency determinations for inspection may be obtained from Ms. Sheri Land, Director, P.O. Box 12873, Austin, Texas 78711-2873 or via email at federal.consis-

tency@glo.texas.gov. Comments should be sent to Ms. Land at the above address or by email.

TRD-201303384
Larry L. Laine
Chief Clerk/Deputy Land Commissioner
General Land Office
Filed: August 14, 2013

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Texas Health and Human Services Commission

Public Notice

The Texas Health and Human Services Commission is submitting to the Centers for Medicare and Medicaid Services a request for an amendment of the Community-Based Alternatives waiver program, under the authority of §1915(c) of the Social Security Act. The Community-Based Alternatives Services waiver program is currently approved for the five-year period beginning September 1, 2012, and ending August 31, 2017. The proposed effective date for the amendment is September 1, 2013.

The Community Based Alternatives program provides home and community based services to persons age 21 and older who meet the requirements for nursing facility care and who reside in the Community Based Alternatives waiver service areas. Services are offered in the participant's home, a Department of Aging and Disability Services contracted adult foster care home, or a licensed assisted living facility. Services include personal assistance services; nursing; physical therapy; occupational therapy; speech, hearing, and language therapy; support consultation services; respite; prescribed drugs; financial management services; adaptive aids and medical supplies; dental; emergency response services; home delivered meals; minor home modifications; adult foster care; assisted living; and transition assistance services.

This amendment request proposes to make the following changes:

1. Remove cost containment service limits implemented during the 82nd Legislative Session because the Legislature removed those limits during the 83rd Legislative Session. The following services no longer have service limits: adaptive aids; dental; medical supplies; minor home modifications; personal assistance services; physical therapy; occupational therapy; respite; and speech, hearing and language therapy.

2. Allow individuals to transfer between waivers when medically necessary for services to continue to ensure health and safety.

3. Add a requirement that the Department of Aging and Disability Services case managers provide an overview of the consumer directed services option during the annual reassessment to individuals who are not currently utilizing this service option.

4. Change the name from consumer directed services agencies to financial management services agencies.

5. Allow individuals to receive adult foster care in homes that are operated or contracted by a relative with the exception of the spouse.

6. Update point-in-time limits to reflect the number of individuals who can be served in the waiver at a specific point in time.

The Texas Health and Human Services Commission is requesting that the Centers for Medicare and Medicaid Services approve this waiver amendment beginning September 1, 2013, and ending August 31, 2017. The waiver amendment application maintains cost neutrality for federal years 2013 through 2017.

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 85200, Mail Code H-370, Austin, Texas 78708-5200; telephone (512) 462-6289; fax (512) 730-7472; or by email at TX_Medicaid_Waivers@hhsc.state.tx.us.

TRD-201303388
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 14, 2013

♦ ♦ ♦

Public Notice

The Texas Health and Human Services Commission announces its intent to submit transmittal number 13-024 to the Texas State Plan for Medical Assistance, under Title XIX of the Social Security Act.

The purpose of this amendment is to add provisionally licensed psychologists (PLPs) as an additional type of provider that can perform psychological counseling and services under the direct supervision of a licensed psychologist. HHSC will reimburse the supervising psychologist for a PLP's services at 70 percent of the fee paid to a licensed psychologist for the same service. The requested effective date for the proposed amendment is September 1, 2013.

The proposed amendment is estimated to have no fiscal impact. The addition of PLPs as eligible Medicaid providers is not expected to increase Medicaid utilization or cost because HHSC already reimburses the supervising psychologist at the same rate for the same services provided by a licensed psychological associate. Before a PLP completes his or her doctoral degree and passes the required examinations, he or she may provide reimbursable services to clients as a licensed psychological associate.

To obtain copies of the proposed amendment, interested parties may contact Marcus Denton, State Plan Coordinator, by mail at the Health and Human Services Commission, P.O. Box 13247, Mail Code H-100, Austin, Texas 78711; by telephone at (512) 730-7413; by facsimile at (512) 730-7472; or by e-mail at marcus.denton@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Texas Department of Aging and Disability Services.

TRD-201303389
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 14, 2013

♦ ♦ ♦

Public Notice of Intent to Submit State Plan Amendment for Nursing Facilities

The Texas Health and Human Services Commission announces its intent to submit an amendment to the Texas State Plan for Medical Assistance under Title XIX of the Social Security Act. The proposed amendment is effective September 1, 2013.

The purpose of this amendment is to update Medicaid payment rates for the Nursing Facility (NF) program as a result of the 2014-2015 General Appropriations Act, Senate Bill 1, 83rd Legislature Regular Session, 2013 (Article II, DADS, Rider 40), which appropriated funds to provide for a two percent increase for the NF. The NF reimbursement methodology will be modified to indicate that, effective September 1, 2013, for each Resource Utilization Group and supplemental reimbursement group, each rate component will be equal to the rate component in effect on August 31, 2013, increased by two percent.

The increase of the NF payment rates is estimated to result in additional cost of $54,550,017 for federal fiscal year (FFY) 2014, consisting of $32,015,405 in federal funds and approximately $22,534,612 in state general revenue. For FFY 2015, the estimated cost is $54,810,218, consisting of $31,789,926 in federal funds and $23,020,292 in state general revenue.

In addition, the amendment will update the NF reimbursement methodology for pediatric care facilities as a result of the 2014-2015 General Appropriations Act, Senate Bill 1, 83rd Legislature Regular Session, 2013 (Article II, HHSC, Rider 69), which directed that the NF reimbursement methodology be modified to include a new annual cost-based retrospective cost-settlement process for pediatric care facilities, effective September 1, 2013. At this time, the Texas Health and Human Services Commission lacks information necessary to determine fiscal impact.

To obtain copies of the proposed amendment or to submit written comments, interested parties may contact Pam Robers, Director of Rate Analysis for Long Term Services and Supports, by mail at the Rate Analysis Department, Texas Health and Human Services Commission, P.O. Box 149030, H-400, Austin, Texas 78714-9030; by telephone at (512) 462-6223; by facsimile at (512) 730-7475; or by e-mail at pam.robers@hhsc.state.tx.us. Copies of the proposal will also be made available for public review at the local offices of the Department of Aging and Disability Services.

TRD-201303385
Steve Aragon
Chief Counsel
Texas Health and Human Services Commission
Filed: August 14, 2013

♦ ♦ ♦

Texas Department of Licensing and Regulation

Vacancies on Advisory Board on Cosmetology

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Advisory Board on Cosmetology (Board) established by Texas Occupations Code, Chapter 1602. The pertinent rule may be found in 16 TAC §83.65. The purpose of the Advisory Board on Cosmetology is to advise the Commission and department on adopting rules, setting fees, and enforcing and administering the Act, as applicable.

The Board is composed of nine members appointed by the presiding officer of the Commission, with the Commission's approval. The Board consists of one member who holds a license for a beauty shop that is part of a chain of beauty shops; one member who holds a license for a beauty shop that is not part of a chain of beauty shops; one member who holds a private beauty culture school license; two members who each hold an operator license; one member who represents a licensed public secondary or post secondary beauty culture school; one member who represents a licensed public secondary beauty culture school; and two public members. Members serve staggered six-year terms, with the terms of one or two members expiring on the same date each odd-numbered year. This announcement is for the vacancies of a member who represents a licensed public secondary beauty culture school and a public member.

Interested persons should download an application from the Department website at: www.tdlr.texas.gov. Applicants can also request an application from the Texas Department of Licensing and Regulation by telephone at (800) 803-9202, FAX (512) 475-2874, or email to advisory.boards@tdlr.texas.gov. Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201303332
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 9, 2013

♦ ♦ ♦

Vacancies on Auctioneer Education Advisory Committee

The Texas Department of Licensing and Regulation (Department) announces two vacancies on the Auctioneer Education Advisory Committee (Committee) established by Texas Occupations Code, Chapter 1802. The pertinent rule may be found in 16 TAC §67.65. The purpose of the Auctioneer Education Advisory Board is to advise the Texas Commission of Licensing and Regulation (Commission) on educational matters, operational matters, and common practices within the auction industry.

The Committee is composed of seven members appointed by the presiding officer of the Commission, with the Commission's approval. Four members are licensed auctioneers; one member is the administrative head, or the administrative head's designee, of any state agency or office that is selected by the Commission; and two public members. The auctioneer members, appointed under §1802.102(a)(1), serve two-year terms that expire on September 1 and may not serve more than two consecutive terms. This announcement is for an auctioneer and a public member vacancy.

Interested persons should submit an application on the Department website at: https://www.tdlr.texas.gov/AdvisoryBoard/login.aspx. Applicants can also request an application from the Department by telephone at (800) 803-9202, fax (512) 475-2874, or email to advisory.boards@tdlr.texas.gov.

Applicants may be asked to appear for an interview; however, any required travel for an interview would be at the applicant's expense.

TRD-201303293
William H. Kuntz, Jr.
Executive Director
Texas Department of Licensing and Regulation
Filed: August 7, 2013

♦ ♦ ♦

Texas Lottery Commission

Instant Game Number 1562 "Holiday Millions"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1562 is "HOLIDAY MILLIONS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1562 shall be $20.00 per Ticket.

1.2 Definitions in Instant Game No. 1562.

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, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, 50, GIFT SYMBOL, CANDY CANE SYMBOL, $20.00, $25.00, $50.00, $100, $300, $500, $1,000, $10,000 and $1,000,000.

D. Play Symbols 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. 1562 - 1.2D

PLAY SYMBOL	CAPTION
1	ONE
2	TWO
3	THR
4	FOR
5	FIV
6	SIX
7	SVN
8	EGT
9	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
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
36	TRSX
37	TRSV
38	TRET
39	TRNI
40	FRTY
41	FRON
42	FRTO
43	FRTH
44	FRFR
45	FRFV
46	FRSX

47	FRSV
48	FRET
49	FRNI
50	FFTY
GIFT SYMBOL	TIMES 10
CANDY CANE SYMBOL	WIN
$20.00	TWENTY
$25.00	TWY FIV
$50.00	FIFTY
$100	ONE HUND
$300	THR HUND
$500	FIV HUND
$1,000	ONE THOU
$10,000	TEN THOU
$1,000,000	1 MILLION

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 $20.00.

G. Mid-Tier Prize - A prize of $25.00, $40.00, $50.00, $100, $300 or $500.

H. High-Tier Prize - A prize of $1,000, $10,000 or $1,000,000.

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 (1562), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 025 within each Pack. The format will be: 1562-0000001-001.

K. Pack - A Pack of "HOLIDAY MILLIONS" Instant Game Tickets contains 025 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 025 while the other fold will show the back of Ticket 001 and front of 025.

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 "HOLIDAY MILLIONS" Instant Game No. 1562 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 "HOLIDAY MILLIONS" Instant Game is determined once the latex on the Ticket is scratched off to expose 54 (fifty-four) 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 "CANDY CANE" Play Symbol, the player wins that prize instantly. If a player reveals a "GIFT" Play Symbol, the player wins 10 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 54 (fifty-four) 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 54 (fifty-four) 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 54 (fifty-four) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 54 (fifty-four) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Players can win up to twenty-five (25) 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 four (4) 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 three (3) times.

G. The "CANDY CANE" Play Symbol (auto-win) and "GIFT" Play Symbol (win 10 TIMES) will never appear in the WINNING NUMBERS Play Symbol spots.

H. The "GIFT" Play Symbol (win 10 TIMES) will appear as dictated by the prize structure.

I. Non-winning Prize Symbols will never be the same as the winning Prize Symbol(s).

J. No prize amount in a non-winning spot will correspond with the YOUR NUMBERS Play Symbol (i.e., 5 and $5).

2.3 Procedure for Claiming Prizes.

A. To claim a "HOLIDAY MILLIONS" Instant Game prize of $20.00, $25.00, $40.00, $50.00, $100, $300 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 $25.00, $40.00, $50.00, $100, $300 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 "HOLIDAY MILLIONS" Instant Game prize of $1,000, $10,000 or $1,000,000, 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 "HOLIDAY MILLIONS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "HOLIDAY MILLIONS" 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 "HOLIDAY MILLIONS" 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 2,520,000 Tickets in the Instant Game No. 1562. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1562 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$20	252,000	10.00
$25	201,600	12.50
$40	100,800	25.00
$50	201,600	12.50
$100	44,100	57.14
$300	17,115	147.24
$500	1,680	1,500.00
$1,000	105	24,000.00
$10,000	12	210,000.00
$1,000,000	3	840,000.00

*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 3.08. 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. 1562 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. 1562, 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-201303304
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 8, 2013

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Instant Game Number 1563 "Season's Greetings"

1.0 Name and Style of Game.

A. The name of Instant Game No. 1563 is "SEASON'S GREETINGS". The play style is "key number match".

1.1 Price of Instant Ticket.

A. Tickets for Instant Game No. 1563 shall be $2.00 per Ticket.

1.2 Definitions in Instant Game No. 1563.

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: $2.00, $5.00, $10.00, $15.00, $20.00, $30.00, $50.00, $100, $1,000, $20,000, 01, 02, 03, 04, 05, 06, 07, 08, 09, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, GIFT SYMBOL and CANDY CANE SYMBOL.

D. Play Symbols 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. 1563 - 1.2D

PLAY SYMBOL	CAPTION
$2.00	TWO$
$5.00	FIVE$
$10.00	TEN$
$15.00	FIFTN
$20.00	TWENTY
$30.00	THIRTY
$50.00	FIFTY
$100	ONE HUND
$1,000	ONE THOU
$20,000	20 THOU
01	ONE
02	TWO
03	THR
04	FOR
05	FIV
06	SIX
07	SVN
08	EGT
09	NIN
10	TEN
11	ELV
12	TLV
13	TRN
14	FTN
15	FFN
16	SXN
17	SVT
18	ETN
19	NTN
20	TWY
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
36	TRSX
GIFT SYMBOL	DBL
CANDY CANE SYMBOL	WIN

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 $2.00, $5.00, $6.00, $10.00, $15.00, $16.00 or $20.00.

G. Mid-Tier Prize - A prize of $30.00, $50.00 or $100.

H. High-Tier Prize - A prize of $1,000 or $20,000.

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 (1563), a seven (7) digit Pack number, and a three (3) digit Ticket number. Ticket numbers start with 001 and end with 125 within each Pack. The format will be: 1563-0000001-001.

K. Pack - A Pack of "SEASON'S GREETINGS" Instant Game Tickets contains 125 Tickets, packed in plastic shrink-wrapping and fanfolded in pages of two (2). One Ticket will be folded over to expose a front and back of one Ticket on each Pack. All Packs will be tightly shrink-wrapped. There will be no breaks between the Tickets in a Pack.

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 "SEASON'S GREETINGS" Instant Game No. 1563 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 "SEASON'S GREETINGS" Instant Game is determined once the latex on the Ticket is scratched off to expose 18 (eighteen) Play Symbols. The player must scratch the entire play area. If a player matches any of YOUR NUMBERS Play Symbols to either of the HOLIDAY NUMBERS Play Symbols, the player wins the prize for that number. If a player reveals a "CANDY CANE" Play Symbol, the player wins the prize for that Play Symbol. If a player reveals a "GIFT" Play Symbol, the player wins DOUBLE the prize for that symbol instantly. No portion of the Display Printing nor any extraneous matter whatsoever shall be usable or playable as a part of the Instant Game.

2.1 Instant Ticket Validation Requirements.

A. To be a valid Instant Game Ticket, all of the following requirements must be met:

1. Exactly 18 (eighteen) 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 18 (eighteen) 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 18 (eighteen) Play Symbols must be exactly one of those described in Section 1.2.C of these Game Procedures;

17. Each of the 18 (eighteen) Play Symbols on the Ticket must be printed in the symbol font and must correspond precisely to the artwork on file at the Texas Lottery; the Ticket Serial Numbers must be printed in the serial font and must correspond precisely to the artwork on file at the Texas Lottery; and the Pack-Ticket Number must be printed in the Pack-Ticket Number font and must correspond precisely to the artwork on file at the Texas Lottery;

18. The Display Printing on the Ticket must be regular in every respect and correspond precisely to the artwork on file at the Texas Lottery; and

19. The Ticket must have been received by the Texas Lottery by applicable deadlines.

B. The Ticket must pass all additional validation tests provided for in these Game Procedures, the Texas Lottery's Rules governing the award of prizes of the amount to be validated, and any confidential validation and security tests of the Texas Lottery.

C. Any Instant Game Ticket not passing all of the validation requirements is void and ineligible for any prize and shall not be paid. However, the Executive Director may, solely at the Executive Director's discretion, refund the retail sales price of the Ticket. In the event a defective Ticket is purchased, the only responsibility or liability of the Texas Lottery shall be to replace the defective Ticket with another unplayed Ticket in that Instant Game (or a Ticket of equivalent sales price from any other current Instant Lottery game) or refund the retail sales price of the Ticket, solely at the Executive Director's discretion.

2.2 Programmed Game Parameters.

A. Consecutive Non-Winning Tickets within a Pack will not have identical patterns of either Play Symbols or Prize Symbols.

B. A Ticket will win as indicated by the prize structure.

C. A Ticket can win up to eight (8) times.

D. On winning and Non-Winning Tickets, the top cash prize of $20,000 and the $1,000 prize will each appear at least once, except on Tickets winning eight (8) times.

E. No duplicate non-winning YOUR NUMBERS Play Symbols on a Ticket.

F. Non-winning Prize Symbols will not match a winning Prize Symbol on a Ticket.

G. Tickets winning more than one (1) time will use as many HOLIDAY NUMBERS Play Symbols as possible to create matches.

H. No duplicate HOLIDAY NUMBERS Play Symbols will appear on a Ticket.

I. The "CANDY CANE" Play Symbol will never appear as a HOLIDAY NUMBERS Play Symbol.

J. The "CANDY CANE" Play Symbol will instantly win the prize amount directly below the "CANDY CANE" Play Symbol on a Ticket.

K. The "CANDY CANE" Play Symbol will never appear more than once on a Ticket.

L. The "CANDY CANE" Play Symbol will never appear on a Non-Winning Ticket.

M. On Tickets winning with the "CANDY CANE" Play Symbol, no YOUR NUMBERS Play Symbols will match any of the HOLIDAY NUMBERS Play Symbols.

N. YOUR NUMBERS Play Symbols will never equal the corresponding Prize Symbol (i.e., 2 and $2, 5 and $5, 10 and $10, 15 and $15, 20 and $20, 30 and $30).

O. On all Tickets, a Prize Symbol will not appear more than two (2) times except as required by the prize structure to create multiple wins.

P. On Non-Winning Tickets, a HOLIDAY NUMBERS Play Symbol will never match a YOUR NUMBERS Play Symbol.

Q. The "GIFT" Play Symbol will never appear as a HOLIDAY NUMBERS Play Symbol.

R. The "GIFT" Play Symbol will never appear on Non-Winning Tickets.

S. The "GIFT" Play Symbol will appear no more than one (1) time on a Ticket and all wins with the "GIFT" Play Symbol will appear only as per the prize structure.

2.3 Procedure for Claiming Prizes.

A. To claim a "SEASON'S GREETINGS" Instant Game prize of $2.00, $5.00, $6.00, $10.00, $15.00, $16.00, $20.00, $30.00, $50.00 or $100, 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 $30.00, $50.00 or $100 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 "SEASON'S GREETINGS" Instant Game prize of $1,000 or $20,000, 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 "SEASON'S GREETINGS" Instant Game prize, the claimant must sign the winning Ticket, thoroughly complete a claim form, and mail both to: Texas Lottery Commission, Post Office Box 16600, Austin, Texas 78761-6600. The Texas Lottery is not responsible for Tickets lost in the mail. In the event that the claim is not validated by the Texas Lottery, the claim shall be denied and the claimant shall be notified promptly.

D. Prior to payment by the Texas Lottery of any prize, the Texas Lottery shall deduct:

1. A sufficient amount from the winnings of a prize winner who has been finally determined to be:

a. delinquent in the payment of a tax or other money to a state agency and that delinquency is reported to the Comptroller under Government Code §403.055;

b. in default on a loan made under Chapter 52, Education Code; or

c. in default on a loan guaranteed under Chapter 57, Education Code; and

2. delinquent child support payments from the winnings of a prize winner in the amount of the delinquency as determined by a court or a Title IV-D agency under Chapter 231, Family Code.

E. If a person is indebted or owes delinquent taxes to the State, other than those specified in the preceding paragraph, the winnings of a person shall be withheld until the debt or taxes are paid.

2.4 Allowance for Delay of Payment. The Texas Lottery may delay payment of the prize pending a final determination by the Executive Director, under any of the following circumstances:

A. if a dispute occurs, or it appears likely that a dispute may occur, regarding the prize;

B. if there is any question regarding the identity of the claimant;

C. if there is any question regarding the validity of the Ticket presented for payment; or

D. if the claim is subject to any deduction from the payment otherwise due, as described in Section 2.3.D of these Game Procedures. No liability for interest for any delay shall accrue to the benefit of the claimant pending payment of the claim.

2.5 Payment of Prizes to Persons Under 18. If a person under the age of 18 years is entitled to a cash prize under $600 from the "SEASON'S GREETINGS" 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 "SEASON'S GREETINGS" 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 9,120,000 Tickets in the Instant Game No. 1563. The approximate number and value of prizes in the game are as follows:

Figure 2: GAME NO. 1563 - 4.0

Prize Amount	Approximate Number of Winners*	Approximate Odds are 1 in**
$2	948,480	9.62
$5	462,080	19.74
$6	218,880	41.67
$10	291,840	31.25
$15	24,320	375.00
$16	72,960	125.00
$20	48,640	187.50
$30	8,132	1,121.50
$50	5,434	1,678.32
$100	2,198	4,149.23
$1,000	16	570,000.00
$20,000	8	1,140,000.00

*The number of prizes in a game is approximate based on the number of tickets ordered. The number of actual prizes available in a game may vary based on number of tickets manufactured, testing, distribution, sales and number of prizes claimed.
**The overall odds of winning a prize are 1 in 4.83. 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. 1563 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. 1563, 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-201303305
Bob Biard
General Counsel
Texas Lottery Commission
Filed: August 8, 2013

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Texas Public Finance Authority

Notice of Request for Applications Concerning Texas Credit Enhancement Program

The Texas Public Finance Authority Charter School Finance Corporation (TPFA CSFC) voted Thursday, July 11, 2013, to make applications available for credit enhancement grant awards for eligible Texas open enrollment charter schools on Thursday, August 15, 2013. Criteria for eligible entities are outlined in the application.

Applications will be available in an electronic format to be downloaded from the TPFA CSFC's website: http://www.tpfa.state.tx.us/csfc/.

The Texas Credit Enhancement Program (TCEP) received a $10 million grant from the US Department of Education to establish a credit enhancement program for charter schools facilities funding. TCEP is a consortium formed by the TPFA CSFC, the Texas Charter Schools Association and the Texas Education Agency. Currently, there is approximately $1,037,209.20 available for credit enhancement grant awards. Individual awards granted will not exceed $1 million. The grant funds are to be used to establish reserve funds for charter schools that are issuing municipal bonds to finance the acquisition, construction, repair, or renovation of Texas charter school facilities. Refinancing of facilities debt may be included if it falls within federal program guidelines. The debt service reserve funds will be held in the State treasury solely to provide security for repayment of the bonds. The funds awarded will not be provided directly to the approved charter schools for construction.

Awards must be used within one year of the date of the award. Therefore, prior to submitting an application, charter schools should work with their financial advisors, bond counsel and an underwriter to structure a bond issue and prepare preliminary bond documents. These services will not be provided by TCEP.

The TPFA CSFC is a non-profit corporation created by the Board of Directors of the Texas Public Finance Authority (TPFA), a state agency, pursuant to §53.351 of the Texas Education Code. TPFA provides administrative and staff support for the TPFA CSFC. The TPFA CSFC is the entity responsible for awarding access to TCEP grant funds.

Complete applications are due by Friday, November 15, 2013, at 5:00 p.m. into the TPFA office at 300 West 15th Street, Suite 411, Austin, Texas 78701.

Applications will be reviewed by TPFA staff with input by other consortium member representatives and approved by the TPFA CSFC board. Awards will be announced in late November or early December of 2013. Dates are subject to change.

For additional information contact: Robert Coalter at robert.coalter@tpfa.state.tx.us.

TRD-201303386
Susan Durso
General Counsel
Texas Public Finance Authority
Filed: August 14, 2013

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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 August 6, 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 Cebridge Acquisition, L.P. d/b/a Suddenlink Communications to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41739.

The requested amendment is to expand the service area footprint to include the city limits of Amarillo, 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 41739.

TRD-201303299
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 8, 2013

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Announcement of Application for Amendment to a State-Issued Certificate of Franchise Authority

The Public Utility Commission of Texas (commission) received an application on August 13, 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 Baja Broadband, LLC to Amend Its State-Issued Certificate of Franchise Authority, Project Number 41760.

The requested amendment is to provide notice of change in ownership and a name change of the company.

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 41760.

TRD-201303391
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 14, 2013

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Notice of Application for Retail Electric Provider Certification

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 8, 2013, for retail electric provider (REP) certification, pursuant to §39.352 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Pro Power Providers, LLC for Retail Electric Provider Certification, Docket Number 41748.

Applicant's requested service area is for the geographic area of the entire state of 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 Docket Number 41748.

TRD-201303373
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 13, 2013

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Notice of Application for Service Provider Certificate of Operating Authority

Notice is given to the public of the filing with the Public Utility Commission of Texas of an application on August 12, 2013, for a service provider certificate of operating authority (SPCOA), pursuant to §§54.151 - 54.156 of the Public Utility Regulatory Act (PURA).

Docket Title and Number: Application of Practice Solutions Group, LLC for a Service Provider Certificate of Operating Authority, Docket Number 41759.

Applicant intends to provide data, facilities-based, and resale telecommunications services.

Applicant proposes to provide service throughout the entire State of Texas.

Persons who wish to comment upon the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll-free at (888) 782-8477 no later than August 30, 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 41759.

TRD-201303376
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 13, 2013

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Notice of Application for Waiver from Requirements in Automatic Dial Announcing Devices (ADAD) Application Form

Notice is given to the public of an application filed on August 2, 2013, with the Public Utility Commission of Texas (commission) for waiver from the requirements in the commission prescribed application for a permit to operate automatic dial announcing devices.

Docket Style and Number: Application of Eligibility Consultants, Inc. for a Waiver to the Federal Registration Number Requirement of the ADAD Application Form, Docket Number 41755.

The Application: Eligibility Consultants, Inc. filed a request for a waiver of the registration number requirement, in the Public Utility Commission of Texas prescribed application for a permit to operate automatic dial announcing devices (ADAD). Specifically, Question 11(e) of the application requires the Federal Registration Number (FRN) issued to the ADAD manufacturer or programmer either by the Federal Communications Commission (FCC) or Administrative Council Terminal Attachments (ACTA).

Eligibility Consultants, Inc. stated that its software provider, Contactual, does not have an FRN, and therefore is requesting a waiver.

Persons wishing to comment on the action sought or intervene 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 1-888-782-8477. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All comments should reference Docket Number 41755.

TRD-201303375
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 13, 2013

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Notice of Application to Relinquish a Service Provider Certificate of Operating Authority

On August 12, 2013, teleNetwork, Inc. (applicant) filed an application with the Public Utility Commission of Texas (commission) to amend its service provider certificate of operating authority (SPCOA) Number 60095. Applicant seeks to relinquish the certificate. Applicant stated that the company has not been actively conducting business as a competitive local exchange carrier for a number of years and has had no customers since 2007.

The Application: Application of teleNetwork, Inc. to Relinquish its Service Provider Certificate of Operating Authority, Docket Number 41754.

Persons wishing to comment on the action sought should contact the Public Utility Commission of Texas by mail at P.O. Box 13326, Austin, Texas 78711-3326 or by phone at (512) 936-7120 or toll free at 1-888-782-8477 no later than August 30, 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 41754.

TRD-201303374
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 13, 2013

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Notice of Intent to Implement a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171

Notice is given to the public of an application filed with the Public Utility Commission of Texas (commission) on August 7, 2013, to implement a minor rate change pursuant to P.U.C. Substantive Rule §26.171.

Tariff Control Title and Number: Notice of Mid-Plains Rural Telephone Cooperative, Inc. for Approval of a Minor Rate Change Pursuant to P.U.C. Substantive Rule §26.171 and Public Utility Regulatory Act, Section 53, Subchapter G; Tariff Control Number 41744.

The Application: Mid-Plains Rural Telephone Cooperative, Inc. (Mid-Plains Rural) filed an application with the commission for revisions to its member services tariff to reflect that customers will be charged a fee for late payments. Mid-Plains Rural proposed an effective date of September 1, 2013. The estimated revenue increase to be recognized by the applicant is $10,217 in gross annual intrastate revenues. Mid-Plains Rural has 2,619 access lines (residence and business) in service in the state of Texas.

If the commission receives a complaint(s) relating to this application signed by 5% of the affected local service customers to which this application applies by August 31, 2013, the application will be docketed. The 5% limitation will be calculated based upon the total number of

customers of record as of the calendar month preceding the commission's receipt of the complaint(s).

Persons wishing to comment on this application should contact the Public Utility Commission of Texas by August 31, 2013. Requests to intervene should be filed with the commission's Filing Clerk at P.O. Box 13326, Austin, Texas 78711-3326 or you may call the commission at (512) 936-7120 or toll-free 1-800-735-2989. Hearing- and speech-impaired individuals with text telephones (TTY) may contact the commission through Relay Texas by dialing 7-1-1. All correspondence should refer to Tariff Control Number 41744.

TRD-201303372
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 13, 2013

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Notice of Petition of the Electric Reliability Council of Texas, Inc. for Approval of Bylaws Amendments

On August 13, 2013, the Electric Reliability Council of Texas, Inc. (ERCOT) filed with the Public Utility Commission of Texas (commission) a petition seeking approval of bylaws amendments.

Docket Style and Number: Petition of the Electric Reliability Council of Texas for Approval of Bylaws Amendments, Docket Number 41761.

The Application: ERCOT proposes to adopt bylaws amendments approved by the ERCOT Board of Directors and the Corporate Members of ERCOT. The four amendments are described as follows: (1) Administrative and clerical amendments proposed by ERCOT Legal; (2) Budget provision amendment proposed by ERCOT Legal in response to a revision of §39.151(d-1) of the Public Utility Regulatory Act and intended to give the ERCOT Board flexibility in the timing of its approval of the budget; (3) Amendment proposed by Corporate Member Morgan Stanley Capital Group, Inc., relating to calculating votes required for action by the Technical Advisory Committee; and (4) Amendment proposed by Corporate Member Calpine Corporation revising the definition of "affiliate" to guard against affiliated entities becoming members of more than one segment, which impacts voting strength.

Interested parties may access ERCOT's petition through the Public Utility Commission's web site at http://www.puc.texas.gov under Docket Number 41761.

Persons who wish to intervene in the proceeding or comment upon the action sought should contact the Public Utility Commission of Texas, P.O. Box 13326, Austin, Texas 78711-3326 or call the commission's Customer Protection Division at (512) 936-7120. 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 41761.

TRD-201303392
Adriana A. Gonzales
Rules Coordinator
Public Utility Commission of Texas
Filed: August 14, 2013

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Office of the Secretary of State

Notice of Amendment to Texas Register Publication Schedule

In accordance with 1 TAC §91.6(c), concerning Publication Deadlines, the Texas Register gives notice of a change to the 2013 Publication Schedule. The deadline for submitting rulemaking documents for publication in the September 13, 2013, issue of the *Texas Register* is now 12:00 noon on Thursday, August 29, 2013. Renovations to Texas Register offices necessitate the schedule change.

TRD-201303408

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Texas Department of Transportation

Aviation Division - Request for Qualifications for Professional Services

The City of Dallas, through its agent the Texas Department of Transportation (TxDOT), intends to engage an aviation professional services firm for services pursuant to Government Code, Chapter 2254, Subchapter A. TxDOT Aviation Division will solicit and receive qualifications for professional services as described below:

Airport Sponsor: City of Dallas, Dallas Executive Airport. TxDOT CSJ No. 1418DALAS. Scope: Perform a Wildlife Hazard Assessment (WHA) by a qualified Wildlife Damage Management Biologist meeting the requirements established by FAA Advisory Circular AC 150/5200-36A latest edition. The assessment will include but is not limited to an analysis of the events prompting the assessment, identifying wildlife species observed and their numbers, locations, local movements, and daily and seasonal occurrences; identification and location of features on or near the airport that attract wildlife; a description of wildlife hazards to aircraft operations; and recommended actions for reducing wildlife hazards to aircraft operations.

There is no DBE goal. TxDOT Project Manager is Sophia Bradford.

Interested firms shall utilize the Form AVN-551, titled "Qualifications for Aviation Planning Services." The form may be requested from TxDOT Aviation Division, 125 E. 11th Street, Austin, Texas 78701-2483, phone number, 1-800-68-PILOT (74568). The form may be emailed by request or downloaded from the TxDOT web site at

http://www.txdot.gov/inside-txdot/division/aviation/projects.html.
The form may not be altered in any way. All printing must be in black on white paper, except for the optional illustration page. Firms must carefully follow the instructions provided on each page of the form. Qualifications shall not exceed the number of pages in the AVN-551 template. The AVN-551 format consists of eight eight and one half by eleven inch pages of data plus one optional illustration page. The optional illustration page shall be no larger than eleven by seventeen inches and may be folded to an eight and one half by eleven inch size. A prime provider may only submit one AVN-551. If a prime provider submits more than one AVN-551, that provider will be disqualified. AVN-551s shall be stapled but not bound or folded in any other fashion. AVN-551s WILL NOT BE ACCEPTED IN ANY OTHER FORMAT.

ATTENTION: To ensure utilization of the latest version of Form AVN-551, firms are encouraged to download Form AVN-551 from the TxDOT website as addressed above. Utilization of Form AVN-551 from a previous download may not be the exact same format. Form AVN-551 is a PDF Template.

Please note:

Five completed copies of Form AVN-551 **must be received** by TxDOT, Aviation Division at 150 East Riverside Drive, 5th Floor, South Tower, Austin, Texas 78704 no later than September 17, 2013, 4:00 p.m. Electronic facsimiles or forms sent by email will not be accepted. Please mark the envelope of the forms to the attention of Beverly Longfellow.

The consultant selection committee will be composed of Aviation Division staff members. The final selection by the committee will generally be made following the completion of review of AVN-551s. The committee will review all AVN-551s and rate and rank each. The evaluation criteria for airport planning projects can be found at

http://www.txdot.gov/inside-txdot/division/aviation/projects.html. All firms will be notified and the top rated firm will be contacted to begin fee negotiations. The selection committee does, however, reserve the right to conduct interviews for the top rated firms if the committee deems it necessary. If interviews are conducted, selection will be made following interviews.

If there are any procedural questions, please contact Beverly Longfellow, Grant Manager, or Sophia Bradford, Project Manager, for technical questions at 1-800-68-PILOT (74568).

TRD-201303370
Joanne Wright
Deputy General Counsel
Texas Department of Transportation
Filed: August 13, 2013

♦ ♦ ♦

Upper Rio Grande Workforce Development Board

Request for Proposals for Document Management Software and Scanning

PY14-RFP-100-300

The Upper Rio Grande Workforce Development Board (URGWDB) is responsible for the retention and infrastructure of materials in accordance with federal, state and local policies and procedures. The purpose of this Request for Proposals (RFP) is to solicit responses from qualified organizations to provide compatible document management software and scanning hardware with that of URGWDB technologies.

To download the RFP, please visit: http://www.urgjobs.com/wp-content/uploads/2013/03/Document_Managment_RFP.pdf.

Release Date: Wednesday, August 7, 2013, 12:00 p.m. MST

Question Submission Deadline: Wednesday, August 28, 2013, 3:00 p.m. MST

Respondents' Conference: None Scheduled

Proposal Submission Deadline: Wednesday, September 4, 2013, 5:00 p.m. MST

TRD-201303297
Joseph Sapien
Program Administrator
Upper Rio Grande Workforce Development Board
Filed: August 8, 2013

♦ ♦ ♦

Request for Proposals for Program and Fiscal Monitoring Services (Second Release)

PY14-RFP-200-020

Workforce Solutions Upper Rio Grande is soliciting proposals from interested applicants with experience in program and fiscal monitoring of the following workforce development programs: Child Care Services; Workforce Investment Act of 1998; TANF (Temporary Assistance for Needy Families)/Choices; Food Stamps Employment and Training; Project Reintegration of Offenders; Migrant Seasonal Farmworkers; and Trade Adjustment Assistance (TAA). The Upper Rio Grande Workforce Development Board (also known as Workforce Solutions Upper Rio Grande or the "URGWDB") is seeking the services of a qualified consultant to conduct independent reviews and issue written recommendations in response to concerns of fraud, waste, theft, and program abuse.

To download the Request for Proposals (RFP), please visit: http://www.urgjobs.com/wp-content/uploads/2013/03/Fiscal_and_Monitoring_Service_Second.pdf.

Release of RFP: Wednesday, August 7, 2013, 12:00 p.m. MDT

Question Submission Deadline: Friday, August 16, 2013, 3:00 p.m. MDT

Respondents' Conference: None Scheduled

Proposal Submission Deadline: Monday, September 9, 2013, 5:00 p.m. MDT

TRD-201303296
Joseph Sapien
Program Administrator
Upper Rio Grande Workforce Development Board
Filed: August 8, 2013

♦ ♦ ♦

Open Meetings

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

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

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

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

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

The Office of the Attorney General offers information about the open meetings law, including Frequently Asked Questions, the *Open Meetings Act Handbook*, and Open Meetings Opinions.
http://www.oag.state.tx.us/open/index.shtml

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

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

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

How to Use the Texas Register

Information Available: The 14 sections of the ***Texas Register*** represent various facets of state government. Documents contained within them include:

Governor - Appointments, executive orders, and proclamations.

Attorney General - summaries of requests for opinions, opinions, and open records decisions.

Secretary of State - opinions based on the election laws.

Texas Ethics Commission - summaries of requests for opinions and opinions.

Emergency Rules- sections adopted by state agencies on an emergency basis.

Proposed Rules - sections proposed for adoption.

Withdrawn Rules - sections withdrawn by state agencies from consideration for adoption, or automatically withdrawn by the Texas Register six months after the proposal publication date.

Adopted Rules - sections adopted following public comment period.

Texas Department of Insurance Exempt Filings - notices of actions taken by the Texas Department of Insurance pursuant to Chapter 5, Subchapter L of the Insurance Code.

Texas Department of Banking - opinions and exempt rules filed by the Texas Department of Banking.

Tables and Graphics - graphic material from the proposed, emergency and adopted sections.

Transferred Rules- notice that the Legislature has transferred rules within the *Texas Administrative Code* from one state agency to another, or directed the Secretary of State to remove the rules of an abolished agency.

In Addition - miscellaneous information required to be published by statute or provided as a public service.

Review of Agency Rules - notices of state agency rules review.

Specific explanation on the contents of each section can be found on the beginning page of the section. The division also publishes cumulative quarterly and annual indexes to aid in researching material published.

How to Cite: Material published in the ***Texas Register*** is referenced by citing the volume in which the document appears, the words "TexReg" and the beginning page number on which that document was published. For example, a document published on page 2402 of Volume 36 (2011) is cited as follows: 36 TexReg 2402.

In order that readers may cite material more easily, page numbers are now written as citations. Example: on page 2 in the lower-left hand corner of the page, would be written "36 TexReg 2 issue date," while on the opposite page, page 3, in the lower right-hand corner, would be written "issue date 36 TexReg 3."

How to Research: The public is invited to research rules and information of interest between 8 a.m. and 5 p.m. weekdays at the ***Texas Register*** office, Room 245, James Earl Rudder Building, 1019 Brazos, Austin. Material can be found using ***Texas Register*** indexes, the ***Texas Administrative Code***, section numbers, or TRD number.

Both the ***Texas Register*** and the ***Texas Administrative Code*** are available online at: http://www.sos.state.tx.us. The ***Register*** is available in an .html version as well as a .pdf (portable document format) version through the internet. For website information, call the Texas Register at (512) 463-5561.

Texas Administrative Code

The ***Texas Administrative Code (TAC***) is the compilation of all final state agency rules published in the ***Texas Register***. Following its effective date, a rule is entered into the ***Texas Administrative Code***. Emergency rules, which may be adopted by an agency on an interim basis, are not codified within the ***TAC***.

The ***TAC*** volumes are arranged into Titles and Parts (using Arabic numerals). The Titles are broad subject categories into which the agencies are grouped as a matter of convenience. Each Part represents an individual state agency.

The complete TAC is available through the Secretary of State's website at http://www.sos.state.tx.us/tac.

The following companies also provide complete copies of the TAC: Lexis-Nexis (800-356-6548), and West Publishing Company (800-328-9352).

The Titles of the ***TAC***, and their respective Title numbers are:

1. Administration
4. Agriculture
7. Banking and Securities
10. Community Development
13. Cultural Resources
16. Economic Regulation
19. Education
22. Examining Boards
25. Health Services
28. Insurance
30. Environmental Quality
31. Natural Resources and Conservation
34. Public Finance
37. Public Safety and Corrections
40. Social Services and Assistance
43. Transportation

How to Cite: Under the ***TAC*** scheme, each section is designated by a ***TAC*** number. For example in the citation 1 TAC §27.15: 1 indicates the title under which the agency appears in the ***Texas Administrative Code***; ***TAC*** stands for the ***Texas Administrative Code***; §27.15 is the section number of the rule (27 indicates that the section is under Chapter 27 of Title 1; 15 represents the individual section within the chapter).

How to update: To find out if a rule has changed since the publication of the current supplement to the ***Texas Administrative Code***, please look at the ***Index of Rules***. The *Index of Rules* is published cumulatively in the blue-cover quarterly indexes to the ***Texas Register***. If a rule has changed during the time period covered by the table, the rule's ***TAC*** number will be printed with the ***Texas Register*** page number and a notation indicating the type of filing (emergency, proposed, withdrawn, or adopted) as shown in the following example.

TITLE 1. ADMINISTRATION
Part 4. Office of the Secretary of State
Chapter 91. Texas Register
40 TAC §3.704.....950 *(P)*

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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.

Customer Support - For questions concerning your subscription or account information, you may contact LexisNexis Matthew Bender Customer Support from 7am to 7pm, Central Time, Monday through Friday.

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